

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. 13423-1213 KE

Child's Name: A.Z.

Date of Birth: [redacted]

Dates of Hearing: 4/11/13, 4/12/13, 5/2/13, 8/14/13,
10/15/13, 10/24/13, 12/3/13,
12/12/13, 1/10/14, 1/16/14

CLOSED HEARING

Parties to the Hearing:

Parents

Parent[s]

Representative:

Parent Attorney

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Parent[s]

None

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Date Record Closed:

February 14, 2014

Date of Decision:

March 1, 2014

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

This case was initiated by the District to change Student's IEP. Specifically, the District requests an order permitting it to implement an IEP that includes a time-based schedule for fading classroom supports and accommodations that have been in place since Student was identified as IDEA eligible during the 2011/2012 school year (8th grade), after head injuries sustained 7 weeks apart approximately mid-way through 7th grade. After the injuries, Student, who now attends a District high school, was diagnosed with several significant medical conditions, including post-concussion syndrome, complex regional pain syndrome (CRSD), reflex sympathetic dystrophy (RSD/amplified pain), and conversion disorder.

After receiving a report from a pain management program Student attended during the summer between 8th and 9th grades, the District conducted a reevaluation, changed Student's disability category from traumatic brain injury (TBI) to emotional disturbance (ED) and proposed revising Student's IEP to implement the recommendation from the pain management clinic.

Student's Mother agreed with and approved the District's proposed IEP, but Father initially opposed any lessening of supports. Although by the end of the extraordinarily lengthy hearing process, he appeared to acknowledge that there should be a fade plan, as recommended, Father continues to oppose the details of the District's plan.

The hearing was conducted over 10 sessions between the spring of 2013 and early winter of 2014. On two occasions, the parties requested and were granted lengthy breaks in the hearing process to explore settlement, but were ultimately unsuccessful in reaching a final agreement. Two of the hearing sessions included no testimony, one because of settlement negotiations and one because of discussions with respect to the details of the parties' compliance with the second

of two interim orders. Two other sessions included significant testimony relating to the first interim order and later to Father's motion to enforce the interim order, which were related, but tangential to the primary issue in the case.

Although the hearing process was thereby lengthened, the parties' agreement to alter the details of the case within the broad question of the appropriateness of the District's IEP proposals, as Student's somewhat fluid situation changed, was an eminently sensible response to changing circumstances.

The District will be permitted to implement its proposed IEP, and will be relieved of the obligation to continue providing Student with extensive assistive technology training.

ISSUE

Has the School District proposed an appropriate IEP, including a plan to fade accommodations, that it should be permitted to implement for Student?

FINDINGS OF FACT

1. Student, a teen-aged child born [redacted] is a resident of the School District and is eligible for special education services. (Stipulation, N.T. pp. 19, 21)
2. Student is currently identified as IDEA eligible in the emotional disability (ED) category, in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(4); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 20)
3. Although Student has a longstanding diagnosis of ADHD, symptoms were controlled with medication. Student did not receive accommodations or special education services, or exhibit school-related difficulties that required any special services or informal accommodations prior to the 2010/2011 school year (7th grade) (P-34, P-83, P-84 pp. 1—15, S-18 pp. 4—16)

History of Medical Issues, Diagnoses, Treatments

4. During the 2010/2011 school year, Student was involved in [an] accident in December 2010 and [a second] accident in February 2011. Student was diagnosed with concussion and post-concussion syndrome during the spring of 2011. (N.T. p. 73 (Stipulation); P-8, P-11))

5. After the February 2011 accident, Student did not fully recover and continued, or began, exhibiting a number of persistent symptoms, including headaches, vertigo, fatigue, memory and learning issues, neck and back pain, sensitivity to light, vision problems, sleep difficulties and a foot/ankle deformity. Medical diagnoses of reflex sympathetic dystrophy (RSD), also known as amplified musculoskeletal pain syndrome (AMPS) and complex regional pain syndrome (CRPS) were added to the diagnosis of post-concussion syndrome by the Neurology Department of the a local hospital for children, where Student continues to be examined periodically. (N.T. pp. 1692—1694; P-11, P-17, P-24, P-34 pp. 1—10, P-133¹)
6. By the end of 2011, mid-way through 8th grade, Student’s physical symptoms had worsened, but despite numerous medical tests in the areas of neurology, brain physiology, ophthalmology and podiatry, no organic, physical cause had been identified to explain Student’s symptoms. Numerous medications and various other therapies were also ineffective in providing relief. (N.T. pp. 70—72, 74, 75; P-11, pp. 2, 3; P-27, P-29, S-3)
7. In December 2011, Student was diagnosed with Conversion Disorder by a doctor in the hospital’s pain clinic. (N.T. pp. 75; P-40, S-3, S-7)
8. Conversion is a “somatization” disorder in which psychological conditions such as anxiety or other stress reactions are manifested by real, not feigned, physical symptoms, including pain and/or functional deficits that affect sensory or motor functions for which no organic cause can be found within the affected physical structures. (N.T. pp. 104—106; P-47 p. 10, P-94 pp. 1, 3²)
9. The generally accepted medical practice for addressing conversion disorder is for others who deal with the patient to de-emphasize symptoms of illness, including eliminating pain medications, and maintain expectations for “normal” functioning. The patient should engage in physical activity, as well as therapies for regaining physical function and to address the underlying psychological issues. Such recommendations were included in the report in which the diagnosis of Conversion Disorder was first made. (N.T. pp. 77—80; S-3)
10. Among the reasons for discontinuing pain medications and continuous medical tests are to avoid the side effects of medication, which can affect mental and motor function and cause other physical symptoms; to reduce exposure to invasive medical tests that might cause harm, such as, *e.g.*, from exposure to radiation; to reduce “secondary gain,” which can include relief from responsibilities and extra attention. (N.T. pp. 107, 108; P-94 p. 3; S-3 p. 3)

¹ The District’s Objections to P-133 and P-134, medical reports received in December 2013 are overruled and those documents are admitted into the record.

² P-94 is an excerpt from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) regarding Conversion Disorder. During the course of the hearing DSM-IV was replaced by DSM-5, which includes a section on Conversion Disorder at pp. 318—321. There is no significant substantive difference between DSM-IV and DSM-5 with respect to the description of the symptoms, types, causes or diagnostic features.

11. The Conversion Disorder diagnosis was subsequently confirmed during Student's admission to the inpatient AMPS Program at the hospital for children in August 2012, which treated the pain symptoms with intensive physical, occupational, creative arts and psychological therapies. (N.T. pp. 75; P-40, S-3,S-7)
12. Included in the report of a District psychiatric examination completed after Student participated in the inpatient program was a report by Student's Mother of a kindergarten incident in which Student exhibited symptoms of a significant vision disorder that was "cured" by administration of "magic" eye drops. (N.T. pp. 84, 85; P-47 p. 3)
13. The full report of the District evaluation completed in the late fall of 2012 also noted a high number of visits to the school nurse for complaints of pain and illness during 2nd and 3rd grades, when Parents separated. (P-54 p. 6)
14. A history of somatization symptoms is a factor associated with a diagnosis of Conversion Disorder. (P-47 p. 10)
15. Although Student made significant progress in the hospital program, and left far more functional than upon entering, the AMPS team ultimately discharged Student early upon concluding that Student became resistant to and uncooperative with the treatments that were successfully addressing the conversion disorder symptoms. (P-40 p. 1, P-47 p. 2, S-7)
16. Student was subsequently reevaluated at the [Redacted] Center of a local rehabilitation center in October 2012, where the clinical director, a specialist in brain injury, concluded that conversion is the primary disorder underlying Student's symptoms, but ordered additional tests to rule out neurological conditions that might not be easily found. The additional studies were normal. (N.T. pp. 63, 64, 71, 1282; P-40 p. 2, P-42, P-47)
17. Student was admitted to a 3 week inpatient program at the [Redacted] Center in late August 2013, just as the 2013/2014 school year began. The program included several hours daily of therapies divided among physical (PT), occupational (OT) and speech/cognitive (cognition) therapy sessions which included functional assessments. (N.T. pp. 1282—1284, 1293, 1294)
18. The program also included daily examination by the attending physician, weekly treatment team meetings with Student and Parents, the opportunity for recreational therapy and opportunities to speak with a neuropsychologist on an "as needed" basis. Student met with the neuropsychologist on the treatment team 1—2 times weekly for approximately 30 minutes per session. (N.T. pp. 1284, 1285, 1337, 1342, 1343)
19. Based on the symptoms Student identified and the treatment team assessed during the program, including anxiety and a mild cognitive impairment, as well as the abilities Student demonstrated during the rehab program, the treatment team made recommendations for home and school, including: Attending school for a full day; structured routines; use of the stairs not the elevator at school; elimination of leg braces

in all activities; engaging in enjoyable leisure and physical activities; minimal accommodations in school, such as a 14 point print font, use of an iPad during school and at home, a Smart Pen for note taking in school, use of voice recognition software for homework assignments, assistance in refining study skills and strategies, preferential seating in the front of classes, math class moved to the morning. The recommendations also included taking tests in class with peers in the same amount of time, since Student was able to perform tasks in a reasonable amount of time during the treatment program. (N.T. pp. 1287—1291, 1303; P-109)

20. Student's diagnosis of post-concussion syndrome was continued by the brain injury clinic because Student still reported symptoms consistent with that diagnosis such as headaches, memory loss and sleep problems. Symptoms of post-concussion syndrome typically diminish over time, and do not persist for a period of years, but that can occur. (N.T. pp. 1310, 1311; P-108)
21. Conversion Disorder was not ruled out as a diagnosis for Student. Emotional factors contributing to Student's continuing problems were extensively discussed by the treatment team. (N.T. pp. 1311, 1312)

District Evaluations, Services, Accommodations, 7th—10th Grades

22. Although Student returned to school to complete 7th grade following the second head injury, teachers noted a marked change in Student and a decline in the quality of Student's work. Teachers provided informal accommodations to address Student's academic difficulties and pain. (P-34 p. 11)
23. During 8th grade, Student was placed on homebound instruction for approximately 150 days based on a treating neurologist's assessments of medical need. (N.T. pp. 684, 685; P-34 p. 9, P-54 p. 9)
24. Parents first requested an evaluation to determine Student's need for special education services or a §504 Service Plan late in the fall of 8th grade. (P-34 pp. 3, 4)
25. The final version of the District's initial evaluation report, issued in February 2012, included an extensive review of Student's medical history since the second head injury, Student's educational history, parent and teacher input, an interview with Student, observations of Student during homebound instruction and during testing, standardized cognitive and academic achievement assessments and assessments of Student's social/emotional functioning. (P-34 pp. 4—26, 37—40)
26. A brief measure of cognitive ability (WASI—Wechsler Abbreviated Intelligence Scale) was administered to Student in 1st grade. At that time, Student's overall cognitive potential was measured in the high average range overall, with verbal ability in the superior range and performance ability in the average range. Student's academic performance through the end of 9th grade has been consistent with high cognitive ability. (P-34 p. 13; S-18)

27. A cognitive ability assessment (WJ-III NU COG -Woodcock-Johnson III Normative Update Tests of Cognitive Ability) administered as part of the District's initial evaluation in the fall of 2011 showed a marked decline in terms of an overall score that fell in to the very low range. (P-34 pp. 14, 29)
28. The school psychologist concluded that the overall score was not meaningful in light of statistically significant differences among various ability areas. In order to obtain additional information concerning Student's intellectual ability, the school psychologist also administered subtests from the Verbal Comprehension Index of the WISC-IV (Wechsler Intelligence Scale for Children-Fourth Edition). Student's verbal ability as measured by those tests was in the high average range. (P-34 pp.14, 17, 29)
29. The results of standardized assessments of Student's academic achievement by means of the Woodcock-Johnson III Normative Update Tests of Academic Achievement (WJ-III NU Ach) placed Student at the average level in reading, math and written language skills. (P-34 pp. 17, 18, 29)
30. The District accepted its school psychologist's conclusion that Student should be identified as IDEA eligible in the disability categories of traumatic brain injury (TBI) and other health impairment (OHI) based on Student's ADHD diagnosis. (P-34 p. 31, P-28)
31. By the end of the 2011/2012 school year, Student was able to return to school on a part-time basis, and participated in ESY to ease the transition back to classroom instruction/school attendance during the 2012/2013 school year. Pursuant to the recommendation of the hospital for children's neurologist following Student's medical progress/recovery from the head injury, Student was permitted to arrive at school for the second period pursuant to a physician recommendation. (N.T pp. 684, 686, 733)
32. After Student returned to school for the 2012/2013 school year, the parties agreed on an updated IEP that included three academic goals to address the effects of Student's head injuries, along with specially designed instruction that included significant modifications, accommodations and supports, including modified academic, assessment and homework requirements, extended time to complete course work and assignments, access to the school nurse's office as needed throughout the school day, preferential seating, guided lecture notes. The IEP also included school-based counseling as a related service (P-69 pp. 25—31)
33. Early in the school year, the District Supervisor of Special Education and guidance counselor received the 8/30/12 letter from the pain clinic with the Conversion Disorder diagnosis and recommending that Student should be held to the same expectations as same age peers for completing school work without accommodations. (S-7)
34. After reviewing the letter, District staff became concerned that providing Student with significant accommodations was in direct contradiction to the recommendations of

the medical experts, and, therefore, questioned the continuing appropriateness of the accommodations and supports it was providing to Student. (N.T. pp. 471, 472, 692, 693)

35. The letter prompted the Special Education Supervisor to issue a permission to reevaluate (PTRE) to gather additional information to assure that the District had a full understanding of Student's needs and how to best address them. (N.T. pp. 692, 693, 694; S-8 p. 5)
36. Although Father refused the District permission to consider the August 2012 pain clinic letter for the reevaluation, other medical records that the school psychologist was permitted to review and consider also included the Conversion Disorder diagnosis. (N.T. pp. 471—473, 696; P-54, pp. 17, 18)
37. A different school psychologist conducted the reevaluation in the late fall of 2012. She noted that Student's memory was unusually uneven compared to other TBI students she had assessed, in that Student was well able to recall matters with respect to scheduling testing sessions around classes that Student felt could or should not be missed and independently appear for the testing sessions, but was unable to recall even the instructions for the digit span subtest on the WISV-IV assessment and could not perform adequately on either the rote memory or working memory tasks. (N.T. pp. 475—482, 487; P-54 p. 38)
38. Student's performance on cognitive testing during the reevaluation was comparable, overall, to the cognitive ability results obtained on the District's initial evaluation. Student's score on the Verbal Comprehension Index (VCI) fell to the average range but was still much better than on the perceptual reasoning, working memory and processing speed indices. (N.T. pp. 489—491; P-34 p. 14, P-54 pp. 25, 26, 38)
39. Student's achievement test scores, measured on the reevaluation with the WIAT-III (Wechsler Individual Achievement Test-Third Edition) fell into the average to low average range, comparable but somewhat lower than the initial evaluation results. (P-54 pp. 27, 28, 37, 38)
40. Relying on the medical records she had reviewed, the surprisingly low scores on standardized assessments in comparison to Student's functioning in daily life, including the classroom, and relying especially on the psychiatric examination and report that were part of the reevaluation, the school psychologist concluded that Student remained IDEA eligible, but recommended a change in disability category to emotional disturbance (ED). (P-47, P-54 p. 38)

Recommendations, Current IEP Proposal

41. In accordance with the recommendations of the doctor from the Pain Clinic who follows Student, as well as the doctor from the rehabilitation hospital Brain Injury Center, the psychiatrist who evaluated Student for the District recommended that Student's physical symptoms be de-emphasized by conveying the message that the symptoms will improve

over time, that Student be treated as much as possible as a “typical” student who is “more capable than incapable.” (N.T. pp. 108—110; P-47 pp. 11, 12)

42. The District psychiatrist also recommended a positive rather than a negative approach by teachers to Student’s symptoms in terms of empathizing with the difficulty of completing school work and complying with the demands of the school day, but expressing confidence that Student can be successful and that the physical symptoms will improve, rather than confront Student with discrepancies in day to day functioning or tell Student that there is nothing wrong that prevents Student from completing school-related tasks. The psychiatrist also recommended a reduction of homework to reduce Father’s responsibility for supervision and assistance and to make school as positive an experience as possible. At the time the psychiatric evaluation was conducted, Student had not been in school regularly and/or full-time during the prior or then-current school year. (N.T. pp. 111—114; P-47 pp. 11, 12)
43. The District’s current proposal for a revision to Student’s IEP includes an emphasis on developing functional skills to help Student take control of learning, compensate for lingering deficits and be treated as normally as possible. To accomplish that, the IEP proposal also includes fading some of the accommodations included in the specially designed instruction, specifically, the modified assessments, 50% reduction in homework assignments, 50% extended time on assignments. (N.T. pp. 1454, 1455, 2105, 2106; P-111 pp. 30—35)
44. The proposed IEP also provides for a specified number of weekly visits to the school nurse, and for the nurse to go to the classroom to assess Student’s need for medical attention if/when Student’s requests to see the nurse exceeds the weekly allotment. During the current school year, Student’s visits to the nurse’s office have declined significantly. (N.T. pp. 2106—2110; P-111 p. 34)
45. The neuropsychologist on Student’s treatment team in the rehabilitation program Student attended at the beginning of the school year agreed that the goals and specially designed instruction in the District’s most recent IEP proposal are appropriate for Student, including the plan to fade accommodations over a period of a few weeks. In particular, she approved a study skills class to help Student develop problem solving strategies to address the difficulties Student was reporting. Strategies the neuropsychologist believed would be appropriate and helpful to Student that are included in the District’s IEP proposal include preview, re-teaching and practicing information and skills to be learned or already learned in the classroom in the study skills setting, as well as taking practice tests and developing questions to ask teachers to assure understanding of the material taught in classes and to assist Student in preparing for tests. (N.T. pp. 1295, 1296, 1317—1318, 1322—1324, 1359)
46. The neuropsychologist favors a fade plan based on a percentage reduction of accommodations over time rather than a plan that relies on Student attaining specific goals. She has concerns that a goal-based plan could get sidetracked by a focus on reaching goals rather than on the process of reducing supports, and stall when difficulties

inherent in the fade process delay goal attainment. She noted that some struggle is part of the process of increasing expectations/removing supports. (N.T. p. 1372)

47. The neuropsychologist also agreed that Student's frequent visits to the school nurse should be discouraged due to missed instructional time and to de-emphasize the "sick role" for Student by continuing the focus on problems over abilities. She participated in the October 2013 IEP meeting discussion and agrees with providing Student a specific and limited number of weekly visits to the nurse's office, with the nurse to meet Student outside the classroom if Student asks to see the nurse after the weekly visit quota was exhausted. (N.T. pp. 1321, 1322)

Student Progress, Assistive Technology³

48. Before the current school year began, the District was permitted, over Parent's objection, to provide Student with an iPad to replace the CCTV and laptop provided to Student during the 2012/2013 school year as assistive technology devices to address, primarily, vision issues. The District, however, was directed to provide Student with extensive training on the iPad and the apps the District intended to provide. (HO-1)
49. A few days after Student returned to school after completing the Brain Injury inpatient program, Parent began complaining about the extent of the training Student was receiving, contending that the District was not fully complying with the interim order. (HO-2)
50. Parent's motion was denied, but the District was ordered to provide a list of the training the District provided to Student, a description by teachers of Student's use of the iPad in their classrooms and a review by an independent observer of the skills and iPad features reviewed and Student was taught during from the time Student began the school year. (HO-2)
51. The District complied with the supplemental order and provided an extensive document outlining the skills Student was taught, as well as teacher check lists of Student's use of various features. The independent observer documented Student's denial that some of the more sophisticated uses of the iPad were taught, and/or statements that Student could not remember how to access certain features. (S-52 pp. 1—36)⁴
52. All of Student's final grades in academic subjects for 8th and 9th grades were in the A/B range (A-, B-, B+), with "No Grade (NG) in two art classes. Student's report grades for

³ By agreement of the parties, evidence was taken during the mid-August hearing session concerning the District's proposal to replace the CCTV and laptop with an iPad, as well as a proposal to assign Student to two lower level classes for the current school year and an interim order was issued denying the request to change Student's classes and permitting the change in assistive technology. The August 31, 2013 Interim Order is now admitted into the record as HO-1, and the Memorandum Denying Parent's Motion to Enforce the Interim Order (Designated Explanation, Denial of Motion to Enforce the Interim Order, Supplement to Interim Order is admitted into the record as HO-2.

⁴ Parent's objection to the admission of P-52 is hereby denied, and the document is admitted to the record.

the 1st quarter of 10th grade, at the end of November 2013, included two C-, two D, a B+, an A- an NG and an “Incomplete” (IN). By the time an interim progress report was issued on December 13, Student’s grades were all A and B, including two A+ and 2 B+. (P-104, P-122, P-136 p. 1, S-18 p. 2)

DISCUSSION AND CONCLUSIONS OF LAW

Despite the extensive record in this case, there is a single overarching issue—whether the District has met its IDEA obligation to Student by proposing an IEP that will meet Student’s special education needs in a manner reasonably calculated to lead to meaningful educational progress. *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982).

Since the District initiated the due process hearing, it had the burden of proving the appropriateness of the proposed IEP. The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The District, therefore, was required to establish its right to implement the proposed IEP by a preponderance of the evidence, and cannot prevail if the evidence clearly supports Parent’s position that the IEP is not appropriate for Student or if the evidence is evenly balanced. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). The factual record in this case, as well as basic legal principles applicable to IDEA cases amply support the conclusion that the District’s IEP proposal is appropriate and should be implemented.

Parties’ Positions

The District contends that it is time to begin fading the significant supports and accommodations that Student is receiving under the IEP currently in effect, with the goal of treating Student like a non-disabled child in terms of academic and other school-related expectations.

Parents disagree with each other concerning the District's proposed IEP. Mother accepts the District's proposal but Father disagrees with both the District's proposal, and with the opinions and recommendations of professionals experienced in addressing Student's symptoms that the District accepts.

Parent⁵ contends that the District relied primarily on the diagnosis of Conversion Disorder as the basis for its current IEP proposal and further argues that such reliance is misplaced, since medical doctors continue to list post concussion syndrome and pain conditions as part of Student's medical diagnoses. The record establishes, however, that the District's current IEP proposal is based upon its own extensive evaluations including a full review of medical records, standardized cognitive and achievement testing and a psychiatric evaluation, as well as the explicit recommendations from two inpatient treatment programs that Student should be treated as "normally" as possible in school.

Parent's position, in essence, is that the District should accept only his opinions concerning the relative effects of the various diagnoses on Student's continuing symptoms and the likely effect of fading accommodations on Student's school functioning. There is, however, no objective basis for accepting Parent's belief that post concussion and pain syndrome have a greater effect on Student's current condition than the conversion disorder diagnosis. It is certainly not unreasonable or inappropriate for the District to accept the opinions of professionals with considerable knowledge and experience in diagnosing conversion disorder and addressing its effects over Parent's subjective opinions.

Past IEP Implementation

Throughout the due process hearing, as well as in the closing argument, Parent contended that the District failed to provide all of the accommodations and supports required by the IEP

⁵ "Parent" refers to Student's Father, who is the opposing party.

currently in effect, and that as a result, Student had not made meaningful progress. Although that issue was not part of initial identification of the issues, it will be addressed because it bears, to some extent on the appropriateness of the District's proposed IEP.

It must be noted, first, that the District is not required to eliminate all adverse effects of a disability. It is only required to provide appropriate supports and services to assure that a student with a disability has the opportunity to make meaningful progress. The "gold standard" for the opportunity for meaningful progress is delineated in the provision of the IDEA statute and regulations that defines the "specially designed instruction" component of "special education," *i.e.*,

...[A]dapt[ing], as appropriate to the needs of an eligible child...the content, methodology or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. §300.39(b)(3)(i),(ii). *See also*, §300.320(a)(2)(i), (ii)—measurable annual goals in an IEP must include "academic and functional goals designed to [m]eet the child's needs that result from ...the disability to enable the child to be involved in and make progress in the general education curriculum," as well as "[m]eet each of the child's other educational needs that result from the child's disability[.]" In addition, in *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 567 (3rd Cir 2010) the Court of Appeals noted that, "[A] special education student 'who is being educated in the regular classrooms of a public school system' and who is performing well enough to advance from grade to grade generally will be considered to be receiving a meaningful educational benefit under the IDEA," *citing Rowley*, 458 U.S. at 203.

There was no objective evidence presented at the hearing to suggest, must less establish, that the District failed to meet the minimum legal standards for providing Student with FAPE in the period since the onset of Student's injuries that ultimately resulted in IDEA eligibility.

In addition, Parent's argument that the District has not properly implemented the last agreed IEP, and has not, in fact, been providing the supports and accommodations required by the IEP undercuts Parent's primary position that the District's proposed IEP is inappropriate because it proposes fading the supports provided in Student's pendent IEP. If, indeed, the District has not been fully implementing the current IEP, Student clearly does not need the level of support and accommodations Parent believes is necessary, since Student could not, in that event, have been able to make progress in the general education curriculum commensurate with same age/grade level, non-disabled peers. Student has been assigned primarily to regular education classes, and earned above average grades for the most part.

If Parent is correct that the IEP has been imperfectly implemented, the District can reasonably fade the accommodations with little likelihood of an adverse effect on Student's ability to make meaningful educational progress despite the effects of Student's disabilities.

Parent Participation

The true issue underlying the longstanding controversy between Parent and the District is Parent's insistence on a level of control over the District's provision of services to Student, manifested primarily by his opposition to the fade plan included in the IEP and to the change in assistive technology from the CCTV and laptop provided last year to the iPad. Parents have the right to participate in IEP meetings but not the right to select or veto the means and methods for delivering FAPE in general, or to select particular services.

The outcome of the District' extraordinary efforts to assure that Student was trained to derive maximum benefit from using the iPad supports the opinion of the neuropsychologist from the Brain Trauma program that a fade plan based on attaining particular gals is less likely to be effective than a time-based plan. Despite the District's efforts, Student still professes an inability to remember how to use most of the more sophisticated applications due to memory issues. It is likely that Parent's and Student's resistance to the change in assistive devices interfered with Student's ability to retain the skills on which she was trained.

There is little doubt that the same situation would arise with respect to whether Student met the goals set for fading accommodations.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, is hereby **ORDERED** that School District is permitted to implement the proposed IEP dated October 8, 2013.

It is **FURTHER ORDERED** that the District may discontinue the extensive training in the use of the iPad required by the interim order in this matter dated August 31, 2013 provided, however, that teachers and other District staff should continue to respond reasonably to specific requests from Student, not Parent, for additional training and/or assistance in learning and using iPad applications provided by the District. Student shall be responsible for making arrangements to receive such assistance at a time and in a manner reasonably convenient to both Student and staff.

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

March 1, 2014