

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

Child's Name: J. P.

Date of Birth: [redacted]

Dates of Hearing:

April 25, 2013

June 17, 2013

June 27, 2013

July 16, 2013

July 31, 2013

OPEN HEARING

ODR Case # 13530-1213AS

Parties to the Hearing:

Parents

Wissahickon School District
601 Knight Road
Ambler, PA 19002

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Judith Gran, Esq.
Reisman Carolla Gran LLP
19 Chestnut Street
Haddonfield, NJ 08033

Scott Wolpert, Esq.
Timoney Knox LLP
400 Maryland Drive
P.O. Box 7544
Fort Washington, PA 19034

August 19, 2013

August 27, 2013

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (“student”) is a [teenaged] student residing in the Wissahickon School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹. The student, diagnosed with Downs Syndrome, has been identified under the terms of IDEA as a student with an intellectual disability. Parent claims the program and placement proposed in a January 2013 individualized education plan (“IEP”) for the student is not reasonably calculated to provide the student with a free appropriate public education (“FAPE”) in the least restrictive requirement (“LRE”), as required under IDEA and Pennsylvania special education regulations. Additionally, parents claim that the District has violated its obligations to the student under Section 504 of the Rehabilitation Act of 1973 (“Section 504”).²

More specifically, the parents claim that the District has failed to consider and/or employ a full constellation of supplemental aids and services to allow the student to remain fully included in regular education settings. Parents also specifically claim that the District’s

¹ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818.

² In their complaint, parents also claimed that the District has violated the federal Americans with Disabilities Act. Nothing in 22 PA Code §§14.102(a), 15.1(a), however, bestows jurisdiction on these proceedings for such claims. Therefore, the assertion of such claims was denied on the record at the first session of the hearing. (Notes of Testimony at 49-50, 73-74).

handling of the student's involvement with [an extracurricular activity] amounts to discriminatory behavior in violation of Section 504.

The District counters that the program proposed in the January 2013 IEP is reasonably calculated to provide FAPE in the LRE. Its position is that the program and placement, in which the student would receive instruction in a special education setting for 4.3 hours over the course of the school's 6-day instructional cycle, is not only reasonably calculated to provide FAPE to the student but is necessary for the student to continue to make educational progress. Additionally, the District denies that it has, in any way, engaged in discriminatory acts or omissions regarding any aspect of the student's educational life at the District, whether during the school day or in after-school activities. Finally, the District argues that the parties have exhausted any chance of collaborative decision-making by the student's IEP team and asks the hearing officer, in fashioning an order that involves the IEP team, to be more explicit and directive than he might normally be.

For the reasons set forth below, I find in favor of the parents and student on the LRE issue and in favor of the District regarding Section 504 discrimination claims. The order will also contain certain explicit directives to the student's IEP team.

ISSUES

Is the program/placement as proposed in the January 2013 IEP reasonably calculated to provide FAPE in the LRE?

Did the District engage in discriminatory acts and/or omissions in violation of its Section 504 obligations?

Are explicit directives to the student's IEP team required?

FINDINGS OF FACT

1. In April 2005, in anticipation of the student's kindergarten year at the District in the 2005-2006 school year, the student was identified as a student with an intellectual disability who required special education. (School District Exhibit ["S"]-6).

4th – 7th Grades (2009 – November 2012): Progress Monitoring

2. Through the ensuing school years, up to the time of the hearing in this matter (the conclusion of the 2012-2013 school year and the summer of 2013), the student has attended District schools.
3. Annual progress monitoring from December 2009-December 2010 at three points in December 2009, March 2010, and June 2010 was reported for the mid-point through the end of the student's 4th grade year. It reflects that the student made meaningful progress on all IEP goals across occupational therapy, speech and language, reading, writing, and mathematics. (S-46 at pages 1-20).

4. Annual progress monitoring from December 2010-November 2011 at three points in December 2010, March 2011, and June 2011 was reported for the mid-point through the end of the student's 5th grade year. It reflects that the student made meaningful progress on all IEP goals across occupational therapy, speech and language, reading, writing, and mathematics. (S-46 at pages 21-34).
5. Annual progress monitoring from November 2011-November 2012 at two points in November 2011 and January/February 2012 was reported for the middle portion of the student's 6th grade year. It reflects that the student made meaningful progress on all IEP goals across occupational therapy, speech and language, reading, writing, and mathematics. A new goal for independent skills (accessing the locker, accessing containers at lunch, buttoning, zipping) was added but not reported in the progress monitoring. In this collection of progress monitoring, the student's progress, while evident, was somewhat less linear and defined than in past periods of monitoring. (S-46 at pages 35-44).
6. Additional annual progress monitoring from November 2011-November 2012 was collected at two points in March 2012 and June 2012 [and] was reported for the latter portion of the student's 6th grade year. It reflects that the student made meaningful progress on all IEP goals across occupational therapy, speech and language, reading, writing, mathematics and independence skills.

- Here, though, the student's progress, again while evident, was slowing, especially in written expression. There was also a marked change in the measurement of the reading goal and written expression, as presented on the progress reports. (S-46 at pages 45-58).
7. In April 2012, a behavior review sheet was completed to ascertain details regarding work avoidance/work refusal, especially during science instruction. (S-27).
 8. A final round of annual progress monitoring from November 2011-November 2012 was collected in November 2012 [and] was reported for the beginning of the student's 7th grade year. In this collection of progress monitoring, speech and language data was not reported nor was data on independence skills. The monitoring reflects that the student made meaningful progress on all IEP goals across occupational therapy, reading, writing, and mathematics. The student's progress in written expression continued to be reported in the new format adopted in reporting after March 2012 and continued to lag. The student's progress in reading, however, as presented on the progress reports reverted back to formats utilized prior to the change in March 2012. (S-46 at pages 45-58).
 9. Overall, the student exhibited progress on all IEP goals from 4th grade through the beginning of 7th grade. One theme, however, that emerges over the course of the progress monitoring is an

increase in the effect of the student's task-attention skills on task-completion and assessment. (S-46 at pages 1-58).

7th Grade (2012 – 2013 school year): Programming Developments

10. By entering 7th grade in the 2012-2013 school year, the student transitioned from a District elementary school to a District middle school. The student's programming was governed by a December 2011 IEP that had been agreed-to by the parties in the midst of the student's 6th grade year. (S-24; S-50).
11. In the summer of 2012, the District sent three requests to parents, seeking permission to evaluate the student. Parents did not respond. (S-32, S-33).
12. In November 2012, the District issued a re-evaluation report ("RR") for the student. (Parents' Exhibit ["P"]-25, P-26, P-27, P-28, P-29; S-34, S-47).
13. The November 2012 RR included assessments in cognitive, achievement, adaptive skills, executive functioning, and speech and language. The RR noted teachers' consistent reports of attention and task-completion issues. While the conclusion of the RR that the student had an intellectual disability came as no surprise, the RR recommended that the student "would benefit from a program with an emphasis upon functional life skills." The

RR also recommended the completion of a functional behavior assessment (“FBA”). (S-24 generally and at page 19).

14. Parents noted in writing on the November 2012 RR: “Agree (the student) is in need of special education but disagree with RR”. (S-24 at page 23).
15. Later in the month in November 2012, the District requested permission to perform the FBA. Parents did not consent to the FBA. (S-35).
16. In December 2012, and based on the November 2012 RR, the District issued a proposed IEP. The December 2012 IEP contained three occupational therapy goals, a listening goal, a speech and language goal, two reading goals, a written expression goal, and two math goals. (S-37 at pages 22-29).
17. The December 2012 IEP contained modifications and specially designed instruction. Related services included pullout speech and language sessions and occupational therapy sessions, and the services of a full-time one-on-one aide. (S-37 at pages 29-31).
18. The student’s placement in the December 2012 IEP for academic instruction would be “the regular education class for all content area subjects with the exception of functional math 2X per six day cycle for 44 minutes; functional reading daily 44 minutes per day”. (S-37 at page 34).

19. The District issued a notice of recommended educational placement (“NOREP”) for implementation of the December 2012 IEP. Parents returned the NOREP, indicating disapproval, and requested an informal meeting. (S-38).
20. The student’s IEP team met in January 2013 and a revised IEP was produced. As drafted, the only substantive difference between the December 2012 and January 2013 IEPs was an increase in the amount of time the student would spend outside of regular education for functional reading, an increase from 44 minutes per day to 88 minutes per day. (S-38 at page 34, S-39 at page 34).
21. As a result of the informal meeting requested by parents, held on January 10, 2013, however, the resulting NOREP indicated that the District ultimately recommended: “(The student) will be in the general education classroom for all subjects except: Direct functional math instruction 2x per 6 day cycle for 44 minutes per day in the Special Education classroom; Direct instruction for functional reading 2x per 6 day cycle for 88 minutes per day in the Special Education classroom.” This amounts to the approximately 4.3 hours per 6-day cycle where the student would be removed from the regular education classroom, the proposed removal that lies at the heart of the parties’ dispute. (S-41).

22. In mid-January 2013, the parents rejected the NOREP. (S-41).
23. On February 14, 2013, in response to a parental request for an independent evaluation, the District issued a permission to evaluate to put the wheels in motion for such an evaluation. (S-43).
24. On February 18, 2013, parents filed the complaint that led to these proceedings. (S-1).
25. By February 25, 2013, the conversation between the parties regarding an independent evaluation had continued, and the District issued another permission to evaluate regarding the independent evaluation. The parties never agreed on the provision of an independent evaluation. (S-44).
26. The December 2011 IEP guided the student's instruction throughout 7th grade, including the period since the November 2012 RR through the issuance of the District's final NOREP in January 2013 and continuing through the end of the 2012-2013 school year. (S-24).

7th Grade (2012 – 2013 school year): Progress Monitoring & Performance

27. In 7th grade, the student was placed in an inclusive regular education classroom. The student was assisted by a one-to-one

aide and would receive individual instruction from a special education teacher. (S-51).

28. The student completed academic materials in mathematics and language arts, with materials, methods, pacing, and instruction individualized for the student. (P-2, P-10, P-17, P-31 at pages 1-36, P-32 at pages 20-21, P-34, P-35; S-53, S-54, S-55, S-61, S-62).
29. Annual progress monitoring continued from November 2012 – June 2013. Progress monitoring reports for the occupational therapy, listening, and speech and language goals indicate that progress data for January 2013 is reported in the January 2013 IEP. This, however, appears to be inaccurate as neither the present levels of academic/functional performance nor the goals contain any updated progress data as of January 2013. (P-37 at pages 1-6; S-39).
30. Progress monitoring reports for the occupational therapy, listening, and speech and language goals reported in April 2013 and June 2013 indicate that the student made progress on the goals in those areas, although it was segmented and choppy. Again, task-attention and the need for prompting were consistent themes in the reports. (P-37 at pages 1-6).
31. Progress monitoring reports for the reading, written expression, and mathematics goals were provided only for data

gathered in June 2013. At that time (the conclusion of the 2012-2013 school year), the student had:

- met the goal in reading (demonstrating 54% accuracy from a baseline of 20% accuracy, with the goal calling for 50% accuracy);
- continued to show little, if any, progress in written expression;
- and had met the goal in mathematics (demonstrating correct solutions in various areas of 77%, 71%, and 100% from a baseline of 30% accuracy, with the goal calling for 50% accuracy). (P-37 at 7).

32. In June 2013, there was no progress monitoring for the independence skills goal. (P-37).

7th Grade (2012 – 2013 school year): [Extracurricular Activity]

33. [An extracurricular activity] as an afterschool activity is available through the District for the first time in 7th grade. (NT at 1199).

34. In September 2012, the student's school held [extracurricular activity] tryouts which were publicized to the school population. (NT at 1203).

35. Each student performs [specific activities] for the tryout. Tryouts are judged by six volunteer teachers from the school. The

judges use a rubric to score each student's tryout. Two of the judges in September 2012 were special education teachers at the school. (NT at 1204-1205).

36. When the student indicated an interest in trying out for [this extracurricular activity], the District provided the following accommodations prior to tryouts:

- the student was only required to audition on three [performances] instead of six;
- the three selected [performances] were the shortest of the six and required the least amount of movement and memorization;
- the student was provided with a hard copy of the three [performances] a week before the hard copies were provided to other students;
- prior to the tryout, the student was provided with a video of the three [performances] performed by a [particular] coach; and
- instructional time was spent in speech and language to help the student review and practice the [performances].

All of these accommodations were individualized and not offered to others engaged in tryouts. (NT at 1205-1207).

37. The tryouts unfold over three days, two days of group practice and a third day for the tryout itself. (NT at 1208).

38. At the tryout day, the District provided further accommodations to the student. A one-on-one aide was present throughout the three-day tryout and assisted with prompting and additional practice. Also, normally, a group of three or four randomly assigned students perform [redacted]. The student, however, was made one of a group of three and purposefully assigned with two experienced 8th grade [students] who were already familiar with the three selected [performances]. The hope was that, should the student look to others in the group for a cue or guidance, the student could follow the example of experienced [students]. (NT at 1207-1210).
39. The student's tryout was not strong, and the student was one of six students (out of a total of 27 candidates) whose score did not reach the level for qualifying for the [extracurricular activity]. (NT at 1210-1211).
40. The student was offered an opportunity to support the [extracurricular activity] as team manager. Team manager is a position which is not normally filled. As team manager, the student attended [events] but did not attend [the] practice[s]. (NT at 1212-1218).
41. While in attendance at [events], the student was outfitted as [the students performing]. Whenever the [performing students performed the activities] which the student had learned, the

student joined the [activity]. The student attended every [event] and [performed at every event]. The student was included in the [extracurricular activity group] picture. (NT at 1215-1217, 1219, 1224-1226).

42. The student had a one-on-one aide at the [events]. The [group's] coaches found it to be necessary for cuing and monitoring; the student's parents disagreed. (NT at 620-621, 1220-1224).
43. Parents also voiced disagreement that the student could not attend [the] practices. (NT at 620-623, 1215, 1217-1218).

Credibility of Witnesses & Weight Accorded to Testimony

44. Several of the student's school fellows, who were in the student's class in 6th grade, testified, called as witnesses by parents. They testified to social interactions with the student and their experiences with the student in school settings and in out-of-school settings. All were found to be credible, but given their age and the fact that their experiences related to 6th grade, their testimony was found to be not very probative and was accorded very little weight. (NT at 98-113, 143-175, 182-198, 499-537).
45. A community member who coached the student in a community-based athletics program where the student participated [redacted] testified as a parents' witness. She was

credible and, to the extent her testimony focused on the student's affect in an environment regulated by adults where the student had significant interaction with peers, it was probative and given due weight. (NT at 230-264).

46. A community member and family friend who worked with the student in community-based outreach program as a volunteer testified as a parents' witness. She was credible. Her testimony was less focused on peer-interaction, but it had some probative value in terms of how the student cooperated with others to reach a goal and how the student understood directions. (NT at 264-293).

47. An individual who observed the special education classroom proposed by the District for functional reading and math instruction testified as a parents' witness. He was credible, but his testimony was quite confusing and often hard to follow. His testimony was found to be not very probative and was accorded very little weight. (NT at 295-492).

48. The remaining witnesses—the student's mother, an expert witness called by the parents, District teachers, professionals and administrators—were all found to be credible. As individuals with experience with the student and the student's education, and/or expertise regarding the issues in this matter, their testimony was highly probative and accorded full weight. (See generally NT at 541-2275).

DISCUSSION AND CONCLUSION OF LAW

FAPE in the LRE

To assure that an eligible child receives FAPE,³ an IEP must be “reasonably calculated to yield meaningful educational...benefit and student or child progress.”⁴ “Meaningful benefit” means that a student’s program affords the student the opportunity for “significant learning”,⁵ not simply *de minimis* or minimal education progress.⁶

Moreover, both federal and Pennsylvania law require that the placement of a student with a disability be in the LRE, considering the full range of supplemental aids and services that would allow a student to receive instruction and make progress in the LRE.⁷ Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

“Each (school district) must ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled, and...separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the

³ 34 C.F.R. §300.17.

⁴ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

⁵ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁶ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

⁷ 34 C.F.R. §§300.114-120; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3^d Cir. 1993).

use of supplementary aids and services cannot be achieved satisfactorily.”

Additionally, to comply with LRE mandates, the school district must ensure that “unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.”⁸

Pennsylvania special education regulations mirror this emphasis on LRE. Where a student “can, with the full range of supplementary aids and services, make meaningful education progress on the goals in...the IEP”, a school district cannot require separate schooling for a student.⁹ Similarly, “(a) student may not be removed from...(a) placement in a regular education classroom solely because of the nature or severity of the student’s disability, or solely because educating the student in the regular education classroom would necessitate additional cost or for administrative convenience.”¹⁰

In this case, the record strongly supports a finding that the student, while fully included in regular education for all instruction in 7th grade, made progress on all goals over the course of the 2012-2013 school year. In fact, the student has made progress on every IEP goal presented on this record going back to 4th grade.

⁸ 34 C.F.R. §300.116(c).

⁹ 22 PA Code §14.145(3).

¹⁰ 22 PA Code §14.145(4).

Having said that, the evidence also contains signs to proceed with deliberation. First, the tenor of progress reports, and the data itself, indicate that the student's progress over time has become more labored and less fluid. It is still progress, but the pace and quality of progress has diminished over time. Second, progress in written expression has been markedly slow, and arguably has stalled. Third, and most important, the student has demonstrated consistent issues with task-approach and task-attention, including work avoidance and work refusal. These behaviors impact instruction in certain areas more than others, but it is clear that a FBA is necessary to ascertain whether these behaviors need to be addressed and, if so, how.

Also, it must be noted, and is an explicit finding, that the District's programming, both by design and implementation of the student's IEPs, is and always has been reasonably calculated to yield meaningful education benefit. In short, the student has made meaningful progress and has not been denied FAPE as the result of District programming. But this very strength of the record regarding the student's progress under the terms of appropriate IEPs undermines the District's assertions regarding LRE.

In sum, the January 2013 IEP, as modified and offered through the January 2013 NOREP, is reasonably calculated to yield meaningful education benefit. But given the fact that the student has never shown a lack of progress to this point, the student's academic programming can,

and should, be delivered entirely in an inclusive regular educational setting. Progress in that environment, however, must continue; the District argues, in good faith and with some persuasiveness, that there are elements in the student's educational profile which would urge watchfulness. These are mentioned above and, to an extent, will be addressed in the order.

Accordingly, the LRE for this student for academic instruction is an inclusive regular education classroom with appropriate supplemental aids and services.

Discrimination/Retaliation under Section 504

Discrimination. To establish a *prima facie* case of disability discrimination under Section 504, a plaintiff must prove that (1) he is disabled or has a handicap as defined by Section 504; (2) he is "otherwise qualified" to participate in school activities; (3) the school or the board of education received federal financial assistance; (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at the school; and (5) the school or the board of education knew or should be reasonably expected to know of his disability.¹¹

In the instant case, the first, second and fifth prongs of this analysis are undisputed. While not a matter of evidence, the third prong—the receipt of federal funds by the District—is a near certainty.

¹¹ Ridgewood; W.B. v. Matula, 67 F.3d 484, 492 (3d Cir. 1995).

The crux of a finding that the District discriminated against the student, then, is the fourth prong: was the student excluded from participation in, denied the benefits of, or subject to discrimination at the District is as the result of the student's disability?

Here, the entirety of the record supports a conclusion that the District did not exclude the student from participation in learning or in [the extracurricular activity], did not deny the student the benefits of learning or [the extracurricular activity], and did not subject the student to discrimination in learning or [the extracurricular activity]. As indicated above, on this record, the District has entirely met its obligations to provide FAPE to the student. And the record is strongly preponderant in the District's favor that, with regard to [the extracurricular activity] and the student's disability status, it has not excluded the student (and, in fact, sought to include the student), has not denied the student the benefits of [the extracurricular activity] (and, in fact, provided opportunities for the student to enjoy the benefits of [the extracurricular activity]), and has not discriminated against the student (and, in fact, has treated the student with a thoughtful degree of accommodation and fairness).

Accordingly, there will be an explicit finding that the District did not engage in any act or omission which violated its obligations to the student under Section 504.

Directives to the IEP Team

The record in its entirety, including certain exhibits and the notes of testimony, support a need for this hearing officer to provide more explicit directives to the student's IEP team than he ordinarily might. Additionally, the demeanor and interaction of the parties in the presence of the hearing officer at the hearing, while not inappropriate in any way, could not be described as cordial. Therefore, off-the-record observations and interactions, in addition to the record created in these proceedings, support the need for an order with some explicit components.

CONCLUSION

The student has not been denied FAPE as the result of design or implementation of any IEP. The program and placement for the student outlined in the January 2013 IEP, however, is not designed to be delivered in the LRE. Therefore, the student's IEP team will be ordered to meet to design an IEP for implementation in the LRE and explicit directives to the IEP team will be part of that order. The District did not engage in any act or omission which violated its obligations to the student under Section 504.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, on this record, the student has not been denied a free appropriate public education through the design or implementation of any educational programming for the student. However, the program and placement outlined in the January 2013 IEP, as offered through the January 2013 NOREP, is not designed for delivery in the least restrictive environment.

Program & Placement. As of the date of this decision, the least restrictive environment for the student to receive instruction, with appropriate modifications, adaptations, aids, services and supports required by the student, is an inclusive regular education classroom at the school the student would attend if not eligible for special education.

As of the date of this decision, the student's pendent IEP shall be the January 2013 IEP, as written, with the modification being that the academic instruction contained in the IEP shall be delivered entirely in an inclusive regular education classroom.

IEP Team. On or before September 13, 2013, the student's IEP team shall meet to revise the student's programming for the 2013-2014 school year. To the extent the IEP team can agree to modifications of the goals, they are free to do so. To the extent that the IEP cannot so agree, any such goal shall remain as written (with one potential exception

below), with new baselines established from the June 2013 progress reports for each goal except for the independence skills, where the last reported baseline data was in June 2012. The IEP team shall, however, explicitly engage in collaborative revision of the student’s written expression goal. To the extent that the IEP team cannot agree on a revision to the written expression goal, it shall remain as is.

Operative IEP Dates & Progress Monitoring. Also, the “current date” on page 1 of the IEP shall be changed to the date of this order. The “IEP team meeting date” on page 1 shall be the last date the IEP team meets under the terms of this order but shall be no later than September 13, 2013. The “IEP Implementation date” on page 1 shall be determined by the parties at the IEP meeting but shall be no later than September 23, 2013. The “anticipated duration of services and programs” shall be February 28, 2014.

To ensure that the student continues to make progress, the student’s IEP shall reflect data collection on all goals, and progress reporting, on a monthly basis. The data collection and progress reporting shall take place on the following schedule:

Data shall be <u>collected the week of...</u>	...and progress monitoring <u>shall be reported by...</u>
October 14, 2013	Friday, October 25, 2013
November 4, 2013	Friday, November 15, 2013
December 2, 2013	Friday, December 13, 2013
January 6, 2014	Friday, January 17, 2014
February 3, 2014	Friday, February 14, 2014

In addition to the “FBA IEP meeting” ordered in the Independent Functional Behavior Assessment section below, the student’s IEP team may meet when either party feels, or both parties feel, it is necessary. But no later than February 28, 2014, the student’s IEP team shall meet to revise the student’s IEP as necessary and to develop a new IEP with an “implementation date” no later than March 3, 2014. The “anticipated duration of services and programs” in that IEP shall be determined by the IEP team.

Agreements Otherwise by the IEP Team. Nothing in this order should be read to limit or interfere with the ability of the IEP team, by agreement of parents and the District, to alter the explicit directives of this order related to the student’s IEP. Nothing in this order should be read to limit or interfere with the ability of the IEP team, by agreement of the parents and the District, to make additions or deletions to the student’s IEP.

Independent Functional Behavior Assessment. Not hearing to the contrary that the parties have reached a meeting of the minds on a functional behavior assessment for the student, and finding that a functional behavior assessment is necessary for future considerations of the student’s IEP team, it is ordered that:

- On or before September 20, 2013, the District shall provide in writing to the parents information (as set forth below) for three independent evaluators experienced in the conducting

of data-gathering for, and authorship of, functional behavior assessments who will make themselves available to conduct an independent functional behavior assessment at District expense.

- The District's selection of the evaluators shall be based solely on the background and experience of the evaluators.

Communications by the District with a potential evaluator shall not include any discussion of an evaluator's rate or fee, and, in selecting the independent evaluators, the District shall not give any consideration to its estimation of the cost of the independent functional behavioral assessment.

- The information provided to the parents regarding the selected evaluators shall include the name, contact information, and full curricula vitae for the evaluators.
- The cost of the independent functional behavior assessment shall be at the evaluators' rate or fee and shall be borne by the District at public expense.
- On or before October 4, 2013, the parents shall contact the District's director of special education in writing to inform the District of the evaluator selected by the parents to conduct the independent functional behavior assessment.
- The selected evaluator shall coordinate with the District on the scheduling of observations, but the number and nature

of those observations shall be determined solely by the evaluator. Furthermore, the scope, details, findings and recommendations of the functional behavior assessment shall be determined solely by the selected evaluator.

- After the independent evaluator has issued the functional behavior assessment (“FBA”) for the student, the student’s IEP team shall meet to consider the findings of the assessment in light of the student’s IEP and educational programming (“the FBA IEP meeting”). At the FBA IEP meeting, the IEP team shall invite and include the independent evaluator in the IEP team meeting (making scheduling accommodations for the participation of the evaluator as necessary), and the District shall bear any cost, or rate, for the appearance of the independent evaluator at the FBA IEP meeting.
- The terms of this order regarding the involvement of the independent evaluator shall cease after the independent evaluator has participated in the FBA IEP team meeting, although nothing in this order should be read to limit, or interfere with, the continued involvement of the independent evaluator as one party, or both parties, see(s) value in such continued involvement and might make arrangements therefor.

Any claim not specifically addressed in this decision and order is denied.

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

August 27, 2013