

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

DUE PROCESS HEARING

Name of Child: C.P.

ODR #13978-12-13-AS

ODR #14051-12-13-AS

Date of Birth:

[redacted]

Date of Hearing:

November 18, 2013

CLOSED HEARING

Parties to the Hearing:

Parents

Representative:

Pro Se

Central Bucks School District
16 Welden Drive
Doylestown, PA 18901

Scott Wolpert, Esquire
Timoney Knox
400 Maryland Drive PO Box 7544
Fort Washington, PA 19034

Date Record Closed:

December 3, 2013

Date of Decision:

December 8, 2013

Hearing Officer:

Linda M. Valentini, Psy.D., CHO

Background

Student¹ is a xx-year-old student who is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] under the current classification of autism and speech/language impairment and consequently a protected handicapped individual under Section 504 of the Rehabilitation Act of 1973 [Section 504] as well as the federal and state regulations implementing those statutes.

The current matter concerns two due process requests from the Parents² who are seeking compensatory education for Student for the summer of 2012 related to Extended School Year [ESY] and an affirmation that Student is entitled to transition planning and activities related to Student's areas of vocational interest. These separate requests were consolidated and heard together in one hearing session.

The District requested that two additional issues be adjudicated in this hearing. These issues have been pending for some time, and both were touched upon in the expedited hearing in June 2013 as well as in a subsequent telephone conference with the hearing officer in July 2013 at which time it appeared that the parties were going to be able to resolve their differences in these areas. [NT 192-193] These matters involve the District's seeking permission to re-evaluate Student as well as seeking permission to send packets of information about Student to a number of approved private schools in the area; both activities require parental permission. Given that the Parents have not provided consent for either of these actions the District is seeking an Order from the hearing officer to be able to proceed. The Parents objected to including these issues in the current hearing as they were beyond the scope of the Parents' complaints, however realizing the District might move to introduce the issues Student's father did come prepared to address them. Given that these matters have been under discussion for well over six months with no resolution, the hearing officer included these issues in the hearing in light of Student's rapidly approaching end to entitlement to special education services at the conclusion of the 2014-2015 school year.

Issues

1. Should the District be required to provide compensatory education to Student for the ESY period June 1, 2012 to August 24, 2012?
2. Should the hearing officer define, affirm and preserve Student's right to vocational training in the realm of Student's interest in agriculture, horticulture, and landscaping from June 20th 2013 through the end of the 2014-2015 school year?

¹ This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

² The term "Parents" is used throughout unless the reference is specifically related to Student's father. Student's father came to the hearing and presented the Parents' case and in doing so acted for both himself and Student's mother.

3. May the District conduct a complete multidisciplinary psychoeducational evaluation of Student without the Parents' written permission?
4. May the District send packets of information about Student to potential prospective placements without the Parents' permission?

Findings of Fact

1. Student is a xx-year-old student whose primary disability classification is autism with a secondary classification of speech/language impairment. [HO-1 pp 36, 57³]
2. Student's non-verbal cognitive ability lies within the Average Range. [P-15]
3. Student attended the afternoon hearing session which lasted about two hours. Student, was able to testify even though nervous, and afterwards was able to sit beside father, quietly occupied with an iPad, for the remaining time while other witnesses testified. [Direct Observation of Hearing Officer; no inappropriate behavior recorded on the transcript]

Extended School Year 2012

4. Due to aggressive behavior in school Student was admitted to an inpatient psychiatric unit and remained hospitalized there from November 1, 2010 until February 2011 when Student was placed through the mental health system at [a] Residential Treatment Facility [RTF] until the end of April 2012. [HO-1 pp 59-60]
5. The District offered an ESY program/placement for summer 2012; the Parents disagreed with the proposal.⁴ [NT 80-82; S-5]
6. The District and the Parents had entered into a written Settlement Agreement regarding ESY for the summer of 2012 that covered such an eventuality. [NT 76-78; S-59]
7. According to the terms of the Settlement Agreement, if the Parents disagreed with and chose not to accept the District's program/placement offer for 2012 ESY the

³ At the father's request both the transcript from a previous expedited hearing [held on June 14, 2013] and the decision from that hearing [issued on June 29, 2013] were entered as exhibits. The District had no objection and took on the responsibility of marking and sending these exhibits. HO-1 is the transcript from the previous hearing and HO-2 is the Decision. Note that the date of record closing and the date of decision on the cover page of the original June 29th Decision are incorrect and should read "2013". The date beside the signature on the last page of the Decision is correct.

⁴ The appropriateness or lack thereof of the District's proposed program was not allowed to be addressed at the hearing because this was a moot point as explained to the parties and counsel at length on the record. [NT 91-100]

- District would upon receipt of an invoice from a provider pay a sum not to exceed \$3600 for independently procured summer programming. [NT 78; S-59]
8. A condition of the Settlement Agreement was the Parents' signing a District-issued Notice of Recommended Educational Placement [NOREP] for the 2012 ESY. [S-59]
 9. The Parents did not sign the NOREP for ESY as per the terms of the Settlement Agreement, therefore the District did not provide the funds for independent summer programming. There is no evidence in the record identifying the reason the Parents did not sign the NOREP⁵. [NT 79-80]
 10. In summer 2012 the Parents chose to have Student come to the District's Administration Building accompanied by Student's father and receive individual instruction with a special education teacher for 3 weeks, 5 hours each week. The Parents also took Student to Huntington Learning Center where Student was given an academic evaluation which the District funded; however, further tutoring services never materialized at Huntington in the summer of 2012. [NT 34-35; HO-1, p 86]

Vocational Training

11. A CareerScope Interest and Aptitude Assessment conducted in May 2010 resulted in a finding that Student has a high Interest in Plants/Animals and among other areas high Aptitude in the areas of Spatial Relations [94th percentile], Finger Dexterity [72nd percentile] and Manual Dexterity [63rd percentile]. [P-14]
12. The CareerScope Summary Report indicates Work Group Recommendations in the area of "Elem Work: Plants and Animals" and this is the single area in which Student's highest level of Interest and Aptitude Results converge. [P-14]
13. Student testified that Student would like to work in a greenhouse and would like to do landscaping. [NT 156]
14. When Student was in [the RTF] Student worked in the greenhouse three or four hours per week and received payment for that work. The W-2 Form indicates the Employer as "[Name redacted] Vocational". Student enjoyed working in the greenhouse. [NT 43-44, 160-162; P-11]

⁵ However, in their written Closing Statement the Parents argue that they did not have the ability to find and arrange for independent summer educational services if they disagreed with the District's ESY program/placement offer, and never viewed this as an obligation. There is no evidence in the record that the Parents asked the District for help in locating/engaging an independent provider or providers for tutoring [academic, social, vocational] services. There is evidence that the Parents located and initially engaged the Huntington Learning Center. The father is an intelligent individual who demonstrates the ability to pay attention to details, so the present assertion that the Parents did not view finding independent services as their obligation under the Settlement Agreement if they disagreed with the District's offer for ESY programming and placement is puzzling.

15. Student is tall and solidly built and a video submitted into evidence shows that under close direction and prompting Student can mow a lawn, prune a tree and prepare a planting bed. [P-17 {video}]
16. Student demonstrates manual dexterity, spatial aptitude and attention to detail through assembling intricate Star Wars models with Legos using pictorial directions. [NT 151-152; P-18 {photographs}]
17. The Parents believe that employment in Student's declared areas of interest and aptitude is a realistic and appropriate post-secondary goal. [NT 36, 38]
18. The Middle Bucks Institute of Technology [MBIT] conducted screening/admissions procedures with Student and by letter dated October 2, 2009 MBIT indicated that it had tentatively reserved a place for Student in its Practical Environmental Landscaping Program pending approval of Student's IEP team. However at that time the District was not in support of that placement for Student. [NT 41-43; P-10]
19. A vocational assessment performed on March 25, 2010 and reported in a reevaluation report dated June 7, 2010 indicates that although Student has social deficits, Student is a warm and friendly individual who enjoys some interpersonal contact within tight parameters. The evaluator's conclusion was that "any vocational endeavor that requires use of visual/spatial/mechanical skills, working among others rather than in isolation should probably be considered." [P-13]
20. The vocational evaluator watched a video of Student performing yard work and noted that "most impressive was [Student's] patience, attention to tasks, and ability to follow directions" and that Student "showed a fair degree of coordination and stamina as well". The evaluator noted that Student "certainly possesses the ability to learn many names and subtypes of plants and vegetation and the habitats they need for survival. In this way, with appropriate supervision, Student could perform many of the landscaping/yard work tasks associated with this area with a knowledge base that would be helpful in residential or commercial enterprises." [P-13]
21. The vocational evaluator, in 2010, noted "Most important, however, is the need to have [Student] begin vocational training in some capacity in order for [Student] to better appreciate the nature of holding various responsibilities while maintaining appropriate interactions with those around [Student]. Such experience will be vital in shaping the direction of relevant vocations [Student] ultimately pursues." P-13
22. Student's October 17, 2011 IEP created while in [the RTF] carries a primary Employment Goal of working in landscaping. [NT 45-46; P-12]

Evaluation

23. As the time for the triennial reevaluation approached, the District sought the Parents' signed permission to conduct a complete evaluation of Student and at various times provided Permission to Evaluate [PTE] forms to the Parents, listing the types of assessments and procedures deemed appropriate for Student's re-evaluation. [NT 205-209; S-4, S-17, S-27, S-38, S-48, S-55, S-56]
24. On May 21, 2013 the District asked the Parents to sign a Permission to Re-Evaluate form for the mandated triennial evaluation. As the Parents withheld permission, the special education director conducted a review of records and a consultation with Student's school staff to satisfy the legal requirement of an evaluation. The Re-Evaluation in the form of record review was completed on June 4, 2013. No testing with standardized instruments was able to be done as the Parents had not signed a PTE. [HO-1, pp 98-99, 142]
25. Although the Parents agree that an evaluation is in order, they do not believe that the District has provided sufficient information about the types of assessments and procedures for which the District was seeking permission. [NT 21-22, 24-25]
26. The Parents want such information such as the names of the specific tests, a brief description of the tests, the length of the tests, the purposes of the tests, who the evaluators will be and the location where the tests would be administered. [NT 25, 185-186]
27. The Parents have given permission for a vocational assessment but have not signed a Permission to Evaluate form to that effect. [NT 23-24, 177-178; P-2]
28. The most recent report from a psychiatrist the District has is the Discharge Summary from [the RTF] dated May 1, 2012 that the Parents provided in November 2013. The Discharge Summary is not a psychiatric evaluation. [NT 23, 178, 195; S-56]

Records

29. The Parents approved an October 19, 2012 IEP and NOREP placing Student in [Redacted] Academy, a full time alternative setting, for the 2012-2013 school year. [HO-1, pp 91-94, 96]
30. Based upon Student's degree of impairment in emotional, social, and communication skills, the alternative setting at Academy's program for autistic students was deemed appropriate at the time because of the supplementary supports and services provided there including a one-to-one aide, a certified special education teacher who is also a Board Certified Behavior Analyst, a small class size and a crisis response team on site. . [HO-1, pp 62-64, 68, 89, 100-101, 110]

31. Because of Student's engaging in aggressive behaviors at Academy, the IEP team met on February 25th, March 15th, April 8th, and May 16th. [HO-2 pp 4-5]
32. At the April 8th meeting the IEP team also considered that Student's overall engagement at Academy was being compromised by time spent outside the regular programming area for reasons of challenging behaviors, requests to skip activities, and needing breaks over 3 minutes. At [Academy] Student spent over half the school day isolated from peers due to behavioral challenges. This continues to be the case; Student is spending over half the time away from instruction in the classroom. [NT 236-237, 259-260; HO-1, pp 110-112; HO-2 p 5]
33. On May 16, 2013 there was an IEP meeting to address several aggressive incidents directed towards peers and an incident of property destruction. Following that meeting the District issued a NOREP noting that "[Student] is demonstrating significant behavior – verbal and physical aggression...The team is recommending that the current program at [Academy] is no longer appropriate for [Student]." [HO-2, p 5]
34. A NOREP dated May 16, 2013 noted that the recommended educational placement was "Full Time Autistic Support at an Alternative School". The District by letter dated May 21, 2013 asked the Parents' permission to send packets to various other programs that might be appropriate and might accept Student. [HO-2, p 5]
35. At the present time it continues to be the position of the District and of Academy that Academy is not an appropriate program for Student. [NT 105-107, 267-268]
36. The Parents have continued to withhold consent for packets of information about Student to be sent to prospective approved private schools. [HO-1, p 111]

Legal Basis and Discussion

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3d Cir. 2012). In this case the Parents asked for the hearing and thus assumed the burden of proof on the issues of compensatory education and transition planning/vocational training. The District bore the burden of proof on the issues it introduced – permission for a re-evaluation and

permission to send packets to schools. However, as the evidence was not in equipoise on any issue, an analysis under *Schaffer* was not necessary.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses”. *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). All witnesses appeared to be testifying candidly and to the best of their recollections and were therefore found to be credible. The testimony of each was given appropriate weight in light of the information they were able to contribute about the issues. Again, as noted in my previous Decision of June 2013, I was profoundly impressed by the father’s loving, caring, respectful and affectionate interactions with his adult child. I was impressed as well as with Student’s friendly and appropriate acknowledgement of familiar District staff upon entering the hearing room and the individuals’ warm response.

FAPE: Having been found eligible for special education, Student is entitled by federal law, the Individuals with Disabilities Education Act as Reauthorized by Congress December 2004, 20 U.S.C. Section 600 *et seq.* and Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education [FAPE]. FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP). The standard for whether a student’s IEP is appropriate is that it must be reasonably calculated to enable the child to receive meaningful educational benefit at the time that it was developed. (*Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982); *Rose by Rose v. Chester County Intermediate Unit*, 24 IDELR 61 (E.D. PA. 1996); *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3d Cir. 1999).

ESY: Acknowledging that some students may require programming beyond the regular school year, the federal legislature deemed that ESY services are to be provided to an eligible student if necessary to assure that the student receives a free, appropriate public education (FAPE). 34 C.F.R. §300.106(a)(2). Pennsylvania regulations provide additional guidance for determining ESY eligibility, requiring that the factors listed in 22 Pa. Code §14.132 (a)(2) (i)—(vii) be taken into account. The parties do not disagree that Student qualified for ESY in summer 2012.

Over the past several years, federal courts have consistently ruled that a special education hearing officer or administrative law judge must take into consideration any settlement agreement that is relevant to the special education issue before the hearing officer. For example, in *H.C. v. Colton-Pierrepoint Cent. School Dist.*, 2009 WL 2144016 (2d Cir. 2009), the court stated that [while] a “due process hearing before an IHO [impartial

hearing officer] was not the proper vehicle to enforce the settlement agreement” the hearing officer had responsibility to “consider the settlement agreement to the extent it might have been relevant to the issue before him.” This is the case here; the determining factor on this issue is that the parties entered into a written and executed settlement that addressed the Parent’s and the District’s agreement as to the responsibilities of each if there was a disagreement about the ESY program/placement offered by the District. The Parents knowingly signed the settlement agreement and cannot now argue that their failure to comply with one of its terms should be forgiven.

The Parents seek compensatory education for Student for summer 2012. Compensatory education is an equitable remedy for a deprivation of FAPE, and it is a “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 235, 249 (3d Cir. 2009) (internal quotation marks and citation omitted). Although Student did not receive the District’s proposed or the Parents’ favored center-based ESY program in summer 2012 Student was not deprived of ESY services altogether. When the Parents rejected the District’s ESY program/placement [and I decline to reach the question of the appropriateness or inappropriateness of that offer as this is a moot point given the settlement agreement] the District provided alternative one-to-one ESY instruction to which the Parents did agree and which the father helped facilitate. Therefore Student did not suffer a deprivation of ESY FAPE.

I will not order compensatory education for ESY for summer 2012.

VOCATIONAL TRAINING: The IDEA provides that transition services must be part of delivering FAPE to a student with a disability, and where appropriate, transition services must be included as part of a student’s IEP (34 C.F.R. §300.320(b)). In Pennsylvania, this includes all students with IEPs who have reached age fourteen. (22 PA Code §14.131(a)(5)). The IDEA requires that students who are transition-age must be provided with appropriate measurable postsecondary goals, which are based upon age appropriate transition assessments related to training, education, employment, and independent living skills where appropriate, as well as the transition services and courses of study needed to assist the child in reaching those goals. 20 U.S.C. § 1414(d)(1)(A)(VIII). Students of transition age must be part of their IEP team when postsecondary goals and transition services are considered. 34 C.F.R. §300.321(b)(1). “If the child does not attend the IEP meeting the public agency must take other steps to ensure that the child’s preferences and interests are considered.” 34 C.F.R. §300,321(b)(2).

To date there is no controlling appellate case law in Pennsylvania or the Third Circuit that definitively addresses the appropriateness of the nature or design of transition services. “Unlike the IEP the transition plan is not a strictly academic plan but relates to several post-secondary skills including independent living skills and employment.” *High v. Exeter Township School District*, 2010 WL 363832 at *6 (E.D. Pa. 2010). However, we are certainly not left without guidance. Under the IDEA’s implementing regulations, a transition plan is “a coordinated set of activities” that “(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional

achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation". 20 U.S.C. § 1401(34); *see also* 34 C.F.R. § 300.43.

In the instant matter Student not only expresses an interest in the areas of agriculture, horticulture and landscaping but has performed supervised paid work in that area, and most importantly on standardized interest and aptitude testing scored highest in the area of plants and animals. While it is unlikely that anyone doubts that Student will require direct close supervision during post-secondary employment, the evidence is quite clear that Student is capable of working in Student's expressed and demonstrated area of interest and ability. Although Student's behavior in the school setting supports the District's concerns about appropriate functioning in other settings, there is no evidence that Student's inappropriate behaviors have emerged in vocational settings. In fact, it would not be unusual or surprising if Student's behavior when working in an area of specific interest, especially outdoors, would be quite different from behavior exhibited in a school setting.

It is very important for Student's successful transition to adulthood that Student is prepared to engage in meaningful employment. Given Student's strong interest and aptitude in the area of agriculture/horticulture/landscaping it is imperative that specific vocational instruction and experience in one or more of these areas be a focus during Student's remaining period of eligibility. Whether Student is accepted into a school that already has a vocational program in this area, or whether such a vocational program needs to be created and tailored individually for Student, the IEP team must ensure that Student does receive this very important portion of Student's educational program.

I will order that Student's IEP team, including the Parents and Student, the District and Academy staff, and IU representatives if appropriate, shall meet within 15 school days of the date of this decision to discuss a plan for Student to receive vocational training in the area of Student's interest, i.e. agriculture, horticulture, and/or landscaping. The plan will necessarily be implemented through Academy, the District or the IU until Student begins a placement in another school. When Student's placement is going to change, the IEP team process must be repeated to ensure that an appropriate plan for vocational training will continue to be in place. Although I will properly leave the details to the IEP team to work out, I do specify that the plan for vocational training must include actual work experience, that is, it cannot be solely classroom-based. When instruction is being provided in the work location Student's one-to-one aide must be present and a job coach/instructor must also be present. The safety of Student and others must be the primary concern, but the default starting position of the IEP team must be that vocational training with the appropriate supports and services is a mandated and implemented part

of Student's IEP. The IEP team must be cautious about prejudging what Student's behavior will be in the work setting based on behavior in the school setting.

REEVALUATION: The local educational agency must ensure that a reevaluation of each child with a disability is conducted "if it is determined that the educational or related services needs including improved academic achievement and functional performance of a child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation." A reevaluation "may occur not more than once a year, unless the parent and public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary." 34 C.F.R. §300.303⁶

Although a re-evaluation under 34 CFR 300.303 is not defined in the IDEA or in the implementing regulations, it is understood to be a comprehensive evaluation analogous to an initial evaluation under 34 C.F.R. 300.301, conducted for students who already have undergone evaluations and been found eligible for services. While a reevaluation must meet the same IDEA requirements as an initial evaluation, a student's reevaluation need not be identical to Student's initial evaluation in every respect. For example, because a re-evaluation must be individualized, it must take into account the student's then current needs. As a result, different procedures may need to be used. A reevaluation under 34 C.F.R. §300.305(a)(2) should address the following five issues: 1) Whether the child continues to have a disability. 34 CFR §300.305(a)(2)(i); 2) The child's educational needs. 34 CFR §300.305(a)(2)(i); 3) Ascertainment of the child's present levels of academic performance, and related developmental needs. 34 CFR §300.305(a)(2)(ii); 4) Whether the child continues to need special education and related services. 34 CFR §300.305(a)(2)(iii); and 5) Whether any additions or modifications to the special education and related services called for in the child's IEP are needed to enable Student or her to meet the measurable annual goals set out therein and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a)(2)(iv).

There is ample evidence that a reevaluation is required in order for Student to receive FAPE. In order to be able to plan, locate and implement an appropriate educational placement for the precious year and a half remaining of Student's entitlement the District and the Parents need to gather every available piece of current data to assist in this endeavor. In addition to a review of educational and other relevant records, interviews with the Parents and Student's program staff, and interview[s] with Student, a complete evaluation requires cognitive testing with standardized instrument[s] to see if the former imbalance between non-verbal and verbal skills still exists; achievement testing with standardized instrument[s] to gauge at which levels academic instruction needs to be pitched; visual-motor integration testing with standardized measure[s] to assess whether psychomotor issues either endogenous or medication-related are interfering with Student's work output; a speech/language evaluation with standardized instrument[s] to identify areas of need in speech/articulation and in language/pragmatics; social/emotional

⁶However, with regard to students with disabilities who are identified as intellectually disabled, those students must be reevaluated at least once every 2 years. 22 Pa. CODE §14.124. This is not the case with Student.

inventories as well as a functional behavioral analysis to identify areas of strengths and deficits and construct an effective plan for positive behavior management; a psychiatric evaluation to assess current mental status and clarify diagnosis with an eye toward communication and feedback between the school and Student's prescribing physician as to the effectiveness of the medication regimen; and a vocational assessment using interest inventories and aptitude assessment to plan for Student's imminent transition to meaningful supervised employment.

Certified school psychologists and speech/language therapists are qualified by training and experience to select appropriate testing instruments to satisfy the foregoing requirements. The psychiatrist performing the psychiatric evaluation should be one who regularly works with school districts and parents; this is important because an individual with this background can offer a broader perspective than a clinician working in relative isolation. At this time it does not appear that a neurological evaluation is necessary, unless results of the above assessments suggest the presence of a possible progressive neurological process.

A complete multidisciplinary psychoeducational evaluation is required, and as the Parents have withheld permission such an evaluation shall be ordered to be conducted forthwith and completed no later than 60 days of the date of the Order below.

PACKETS/PLACEMENT: A placement decision is a determination of where a student's IEP will be implemented. Placement decisions for children with disabilities must be made consistently with 34 CFR §300.116. The IEP team, including parents, makes placement decisions. Like the formulation of an IEP, a placement decision is not a unilateral matter for school district determination. 34 CFR §300.116(a)(1) however, it is also clear that parental preference cannot have been the sole nor predominant factor in a placement decision. The IDEA merely mandates parental participation in the placement decision, 34 CFR §300.116(a)(1), but does not suggest the degree of weight parental preference should be given. Nevertheless, the placement should be based on the child's IEP, and, of course, be able to carry out its implementation. Although the Parents believe that Academy continues to be an appropriate placement, both the District and the Academy staff working with Student for the past year and a half acknowledge that while the program seemed appropriate when it was first put in place it has ceased to be appropriate as Student is spending over 60% of the time outside instruction for reasons of behavior management with little if any improvement over the life of this placement. This is especially significant given the high behavioral supports available at Academy.

In order to seek an appropriate placement for a student Districts must follow the established procedure in this region and obtain parental permission to send packets of information personally identifying their child to various approved private schools that have historically successfully served students similar to Student. Approved "private" schools are private, and unlike public schools they do not have to accept any student who applies. They base their acceptance/rejection on the information provided about a student, an assessment of how well the information about that student matches the profile of students with whom they have successfully worked, and the availability of slots in the

particular age group of the student in question. Slots usually open up toward the end of a school year and at the beginning of the next school year.

Because Student is currently in an LEA-funded placement that both the District and the placement staff believe is inappropriate at this time, steps must be taken immediately to try to locate a different placement.⁷ The Parents have raised concerns about various approved private schools that the District has asked them to consider at various times. The Parents' concerns seem to be three-fold: travel time and distance⁸; functional level of other students in the school; and availability of a vocational program appropriate for Student. I find these concerns to be without significant merit. First, the Parents assert, but have produced no proof, that Student cannot safely travel on a school bus or van with an escort longer than a certain period of time. Second, many approved private schools have programs for students with different levels of cognitive functioning and a school that cannot accommodate Student's cognitive level within one of its divisions should not be considered. Third, the issue of available vocational training in Student's specific area of interest and aptitude will be appropriately addressed by my Order as discussed above.

As the Parents have withheld permission for the District to send out packets to potential schools, in the best interests of Student I will order the District to do so forthwith.

⁷ This issue which arose in the June 2013 expedited hearing was to be addressed in July 2013 but a summer hearing session was once postponed at both parties' request and once more postponed at the Parents' request.

⁸ The Parents have raised the possibility of Student being placed in a residential school that offers vocational training in Student's area of interest and aptitude. The evidence does not support that Student requires that level of restrictiveness at this time.

Order

It is hereby ordered that:

1. The District is not required to provide compensatory education to Student for the ESY period June 1, 2012 to August 24, 2012.
2. Student's right to vocational training from June 20th 2013 through the end of the 2014-2015 school year in the realm of Student's interest in agriculture, horticulture, and/or landscaping is affirmed consistent with the discussion above. Such training may be offered as part of Student's school placement or arranged with an outside facility, business, or other external entity. Student's training must involve both theoretical [classroom] and practical [work site] instruction. Student's IEP team, including the Parents and Student, the District, Academy staff, and IU representatives if appropriate, shall meet within 15 school days of the date of this decision to discuss a plan for Student to receive this vocational training. The plan will be implemented through or around the Academy program until Student begins a placement in another school at which time the IEP team process must be repeated to allow for the changed circumstances.
3. The District must conduct a complete multidisciplinary psychoeducational evaluation of Student forthwith to be completed within 60 days of this Order. The District must include all the elements addressed in the discussion above, and this Order covers each of the named areas of assessment. No written parental consent is required.
4. The District must send packets of information about Student to potential prospective alternate placements forthwith. No written parental consent shall be required. Whether or not the placement has a specific vocational program in one or more of Student's areas of interest shall not be a critical factor, however vocational training in Student's stated areas of interest and aptitude must be procured or arranged as provided in paragraph #2 of this Order.

Any claims not specifically addressed by this decision and order are denied and dismissed.

December 8, 2013

Date

Linda M. Valentini, Psy.D., CHO

Linda M. Valentini, Psy.D., CHO
Special Education Hearing Officer
NAHO Certified Hearing Official