

*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: G.S.

Date of Birth: [redacted]

Dates of Hearing:

September 30, 2013

October 24, 2013

December 10, 2013

### **CLOSED HEARING**

ODR Case #14031-1213KE

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Greensburg Salem School District  
1 Academy Hill Place  
Greensburg, PA 15601

Patricia Andrews, Esquire  
1500 Ardmore Boulevard  
Suite 506  
Pittsburgh, PA 15221

Date Record Closed:

December 10, 2013

Date of Decision:

January 3, 2014

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION & PROCEDURAL HISTORY**

Student<sup>1</sup> is an early teen-aged student residing in the Greensburg Salem School District (“District”). The parties agree, at this time, that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)<sup>2</sup>, although there is a dispute as to the nature of the student’s identification status and, consequently, the parties disagree over the type and intensity of the special education services which the student should receive.

The District believes the student should be identified as a student with an intellectual disability,<sup>3</sup> with functional life skills instruction in reading and mathematics (in addition to other supports and services) being the appropriate educational programming to provide the student with a free appropriate public education (“FAPE”). Parents believe the student has been appropriately identified as a student with a health impairment and should continue to receive learning support services in reading and mathematics.

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<sup>1</sup> Use of the term “student” is used throughout the decision to protect the confidentiality of the student’s name and gender. Where a witness or document refers to the student by name, or with a gender-specific pronoun, the hearing officer inserts, as a parenthetical, the generic term “student”.

<sup>2</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

<sup>3</sup> This decision utilizes the term “intellectual disability” in place of “mental retardation”, even if witnesses and/or documents utilize the latter term. *See Rosa’s Law*, P.L. 111-256 (2010).

The parents' complaint was filed in June 2013.<sup>4</sup> By that time, the parties had been involved in a long-standing dispute that led to an agreement in July 2012 related to parents' potential claims. The parties agreed to await the results of an independent educational evaluation ("IEE"), with the period from July 2012 through the issuance of a revised individualized education plan ("IEP") to be excluded from any potential compensatory education award. Ultimately, a revised IEP was proposed in March 2013. Parents rejected the March 2013 IEP, which led to the June 2013 complaint.

Parents' claims in the June 2013 complaint fell into two categories. The student's current 2013-2014 placement was at issue due to the parents' rejection of the March 2013 IEP. Also at issue were parents' retrospective claims of an alleged denial of FAPE prior to July 2012. In September 2013, at a prehearing conference with counsel before the initial hearing session, the hearing officer bifurcated the complaint. The student's current, time-sensitive 2013-2014 placement would be handled first, at this file number, so that the parties could gain clarity on the student's current educational needs. A second file number was established for adjudication, in a subsequent hearing process, of the retrospective denial-of-FAPE claims.<sup>5</sup>

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<sup>4</sup> Hearing Officer Exhibit ["HO"]-1.

<sup>5</sup> Office for Dispute Resolution file number 14334-1314KE. As an additional procedural clarification, parents were originally represented by counsel, who filed the June 2013 complaint and represented parents at the September 10<sup>th</sup> and October 24<sup>th</sup> hearing sessions. On November 21, 2013, parents' counsel filed a motion to withdraw his appearance. Following a conference call to assure the hearing officer that a plan was in

For the reasons set forth below, I find in favor of the District.

## **ISSUES**

Is the March 2013 IEP reasonably calculated  
to yield meaningful education benefit?

If not, is the student entitled to remedy?

## **FINDINGS OF FACT**

### April 2010 Re-Evaluation Report

1. In February 2010, in the spring of the student's 4<sup>th</sup> grade year, the District undertook a re-evaluation process. The re-evaluation process resulted in an April 2010 re-evaluation report ("RR"). (Parents' Exhibit ["P"]-26).
2. The student was receiving services in a learning support environment related to speech and language needs, attention deficit hyperactivity disorder ("ADHD"), and auditory processing. The student was supported by a one-on-one aide throughout the school day. (P-26 at pages 1-2, 33).
3. Parental input in the April 2010 RR indicated that parents felt the student had needs in most skill areas of written communication, visual skills, and auditory skills, and needs in most academic areas of language arts and reading. (P-26 at pages 2-3).
4. Parents indicated that the student had been receiving outside services for auditory processing and home-based mental health support, but both services had been discontinued. (P-26 at pages 3-4).
5. The April 2010 RR contained cognitive assessment results from a 2008 administration of the Wechsler Intelligence Scale for Children – 4<sup>th</sup> edition. The student's full-scale IQ was measured at 71, in the borderline range for intellectual disability. (P-26 at page 5).

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place to facilitate the transfer of file materials to parents, the motion was granted on November 22, 2013. Parents represented themselves at the December 10<sup>th</sup> hearing session. (HO-2; Notes of Testimony at 228-232).

6. The April 2010 RR also contained achievement assessment results from a 2008 administration of the Wechsler Individual Achievement Test – 2<sup>nd</sup> edition. The student’s standard scores across all subtests ranged from 64 to 72. (P-26 at page 5).
7. The April 2010 RR indicated that “due to the concern with (the student’s) ability to retain and recall information”, the Test of Memory and Learning was administered. Across seven subtests, the student scored in the “very deficient” range on the three subtests, “deficient” on one subtest, “low average” on two subtests, and “average” on one subtest. (P-26 at pages 5-6).
8. The student’s regular education teachers and the classroom assistant provided input for the April 2010 RR. Socially, they reported that the student was pleasant and enjoyed being in school, sought to participate and got along well with peers. Academically, they reported that the student required one-on-one support in all tasks and consistent redirection. Recall and retention were listed as areas of concern. (P-26 at pages 9-12).
9. The student’s special education teacher provided input for the April 2010 RR. The student was described as an emerging reader, with comprehension difficulties involving inference and implication. The student exhibited basic counting, addition, and subtraction skills and was learning multiplication skills; math reasoning skills were described as emerging. The student required review and reinforcement of learning skills and had limited functional academic memory and executive functioning. (P-26 at page 12).
10. The student’s speech and language therapist provided input for the April 2010 RR, indicating that the student’s receptive and expressive language skills continued to be areas of weakness, although improvement was noted. (P-26 at page 13).
11. Formal speech and language assessment in the April 2010 RR yielded scores largely in the “below average”, “poor”, or “very poor” ranges. (P-26 at pages 14-17).
12. Following the collection of data in February 2010, the student’s IEP team determined that additional data was needed, and additional assessment took place in March 2010. (P-26 at page 22).

13. The evaluator was a school psychologist from the local intermediate unit (“IU”). (P-26; Notes of Testimony [“NT”] at 153-154, 158).
14. The IU evaluator completed additional assessments over five sessions in March 2010. She indicated that the student required significant redirection throughout all sessions, unable to maintain focus and attention during any subtest. The evaluator noted that these testing behaviors made the assessment results “extremely difficult to interpret”. (P-26 at pages 22-23).
15. The IU evaluator administered the Woodcock-Johnson Tests of Cognitive Abilities – 3<sup>rd</sup> edition. The student’s general intellectual ability score was 44, in the very low range. Composite scores in thinking ability, cognitive efficiency (the ability to process information automatically), working memory, and broad attention were all in the “very low” range. The composite score in verbal ability was in the “low” range. The composite score in phonemic awareness was in the average range. (P-26 at pages 23-25).
16. Parents requested an assessment of nonverbal intelligence, and the IU evaluator administered the Comprehensive Test of Nonverbal Intelligence – 2<sup>nd</sup> edition. The student scored in the “very poor” range in on the pictorial scale (69) and the geometric scale (59) composites. The student’s full-scale composite was 61, also in the “very poor” range. (P-26 at page).
17. The IU evaluator performed an achievement assessment utilizing the Woodcock-Johnson Tests of Achievement – III. All subtests and the three cluster scores (reading, math, and writing) were all in the “very low” range. (P-26 at pages 26-27).
18. The IU evaluator administered the Gray Diagnostic Reading Tests – 2<sup>nd</sup> edition (“GDRT-2”). All subtests were in the “very poor” range, except for the listening vocabulary subtest which was in the “below average” range. The composite scores (decoding, comprehension, and general reading) were all in the “very poor” range. (P-26 at page 27-28).
19. The IU evaluator’s analysis of the GDRT-2 results indicate that, on the reading vocabulary subtest, the student seemingly did not understand the concept of opposites and was unable to complete the opposites portion of the subtest. (P-26 at pages 27-28).

20. The IU evaluator's analysis of the GDRT-2 results indicate that the student had deep difficulty with the meaningful reading subtest. The meaningful reading subtest utilized a cloze format where a word was deleted from a sentence with a blank inserted in its place, leaving the first letter of the deleted word as a clue. The test-taker is asked to say the word he/she thinks is missing. The example given in the RR was: "Sue and I saw the a \_\_\_\_\_ fly." The evaluator opined that the student did not seem to understand the concept of filling in the blank using the letter clue; "even with explanation and prompting from the examiner", the evaluator observed, "(the student) was unable to answer any of the questions correctly." (P-26 at pages 27-28).
21. The IU evaluator included results from the Key Math 3 Diagnostic Assessment, administered by a District elementary school math specialist. The math specialist reported that the student was frequently off-task and required redirection. Composite scores were all in the "well below average" range, including the total test composite (62). (P-26 at pages 28-29).
22. The April 2010 RR also included updated curriculum-based assessments completed in March and April 2010. Utilizing the District's 2<sup>nd</sup> grade mid-year assessment in mathematics, the student scored 42%. (P-26 at page 29).
23. Utilizing the District's 2<sup>nd</sup> grade mid-year assessment in reading, administered by District reading specialists, the student's total reading score (cumulative sub-scores from reading comprehension and vocabulary/word analysis) was 38 out of 62. (P-26 at page 30).
24. The District reading specialists identified the student's strengths as using pictures and identifiable words to aid comprehension, increased decoding success when focused, eager participation, and knowledge of high-frequency words. The reading specialists identified the student's constant guessing, struggling to decode unknown words, difficulty in written expression, and lack of focus. (P-26 at pages 29-30).
25. The student's adaptive behavior was assessed utilizing the Vineland II Adaptive Behavior Rating Scales, completed by the student's special education teacher and parents. All raters scored the student in the "low" range in the communication domain and "adequate" range in the socialization domain. The teacher scored the student in the "moderately low" range in the daily living skills domain; the parents scored the student in the "adequate" range.

The adaptive behavior composite for all raters was in the “moderately low” range. (P-26 at page 31).

26. The student’s social/emotional functioning was assessed utilizing the Behavior Assessment System for Children – 2<sup>nd</sup> edition (“BASC”), completed by the student’s special education teacher, the student’s science/homeroom teacher, and parents. The parents’ results indicated no areas for primary improvement; functional communication and attention problems were identified by parents as areas for secondary improvement. The regular education teacher indicated functional communication as an area for primary improvement; atypicality, attention problems, and study skills were identified by the regular education teacher as areas for secondary improvement. The special education teacher indicated functional communication and attention as areas for primary improvement; atypicality, anxiety, attention problems, learning problems, leadership, hyperactivity, and study skills were identified by the special education teacher as areas for secondary improvement.<sup>6</sup> (P-26 at pages 31-33).
27. The April 2010 RR included an assistive technology evaluation by an IU assistive technology coordinator. (P-26 at pages 33-34).
28. The April 2010 RR concluded that the student had made educational progress to that point. The RR concluded that the student should continue to be identified as a student who requires specially designed instruction for a health impairment and speech/language impairment. (P-26 at pages 35-36).
29. Following the issuance of the April 2010 RR, parents shared concerns in a letter sent to the District. While the parents’ letter was not made part of the record, in June 2010, the District responded with a letter addressing the parents’ concerns. (School District [“SD”] Exhibit – B).

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<sup>6</sup> As noted by the IU evaluator in the RR, BASC results that alert educators and parents to a student’s more pronounced needs are scores with descriptors in the “clinically significant” or “at risk” ranges. (P-26 at page 33). The evaluator did not report any specific scores or characterize any of the BASC scales with these descriptors. Apparently, the “primary improvement area” and “secondary improvement area” designations are the evaluator’s and correspond, respectively, to the “clinically significant” and “at risk” descriptors. This is implied from the evaluator’s testimony (NT at 206) and a passing mention in the April 2010 RR (P-26 at page 35) but is not made explicit enough, in the mind of the hearing officer, to make that correspondence a matter of fact.



30. In its June 2010 letter to parents, the District addressed certain disagreements that parents had brought forward involving audiological data, a summer reading program, reading curriculum, and a FM system for the student's use. The District also indicated its agreement to fund an IEE and an independent audiological evaluation. (SD Exhibit – B).

#### October 2010 Neuropsychological Evaluation

31. At some point between June-October 2010, the student was independently evaluated, at parents' expense, by a developmental neuropsychologist. The independent neuropsychological evaluation report ("neuropsych ER") was issued in October 2010. (P-37)
32. The October 2010 neuropsych ER indicated that a particular concern of the student's pediatrician was "the establishment of a reliable indication of (the student's) level of general cognitive ability." The neuropsych ER indicated that "(a)ssessment was requested to help further the understanding of factors related to (the student's) atypical developmental course and to establish a meaningful baseline from which (the student's) future needs can be measured." (P-37 at page 1).
33. The October 2010 neuropsych ER was organized as a "tripartite assessment...involving (1) traditional psychoeducational measures, (2)a neuropsychological battery, and (3) objective behavioral assessment". (P-37 at page 2).
34. The October 2010 neuropsych ER utilized the Wechsler Abbreviated Scales of Intelligence to assess the student's cognitive functioning. The student's full-scale IQ was scored at 61. (P-37 at page 2).
35. The October 2010 neuropsych ER utilized the Woodcock-Johnson Psychoeducational Battery – III ("WJ-III"), the Gray Oral Reading Test ("GORT"), and the Woodcock-Johnson – III General Knowledge Index ("WJ General Knowledge Index") to assess the student's achievement levels. The neuropsych ER summarized standardized mathematical assessments, although it is unclear whether this testing was part of the neuropsych evaluation or a compilation of the District's past achievement results in mathematics. (P-37 at pages 3-6).
36. The October 2010 neuropsych ER notes that the student's academic testing results "are...at levels that would be considered commensurate with (the student's) general level of intellectual

- ability.” The student’s broad reading index score on the WJ-III was 65. The student’s oral reading quotient on the GORT was <52. The referenced standard scores for mathematics achievement were reported as 68 and 72. The student scored a 67 on the WJ General Knowledge Index (a measure of general knowledge across science, social studies, and humanities). (P-37 at pages 3-6).
37. The neuropsychologist concluded the psychoeducational section of the October 2010 neuropsych ER with a conclusion that “the majority of the (the student’s) performances cluster at ability levels that are commensurate with (intellectual disability) functioning.” (P-37 at page 6).
38. The October 2010 neuropsych ER noted that the entirety of the student’s profile indicated that the student was progressing. “But”, the evaluator opined, “it must be recognized at the same time that the vector on which the path of continuing development is projected remains much shallower than that of (the student’s) age-mates. It would be reasonable to anticipate that (the student’s) academic skill set will remain well below that of...peers.” (P-37 at page 6).
39. As one might expect, the most expansive aspect of the October 2010 neuropsych ER was the neuropsychological battery of assessments. (P-37 at pages 6-15).
40. The neuropsychological battery consisted of assessments in the following areas: sensory and motor, attention, processing speed, higher-level cognitive functioning, higher-level visuoperceptual and constructional abilities, language, learning and memory, and executive functioning. (P-37 at pages 6-15).
41. The assessments across all areas bolstered observational and curriculum-based data from the April 2010 RR, and where standardized assessment areas overlapped between the two evaluation reports (for example, in attention and focus), the results of the October 2010 neuropsych ER mirror the April 2010 RR. (P-37 at pages 6-15).
42. Most pointedly, the neuropsychologist observed, and confirmed through formal assessment, the attention difficulties of the student, finding the student’s ability to focus and to attend to be “highly inconsistent”, the student was in “near constant motion...(this included multiple postural changes, manipulation of test materials or pencils that happened to be near, (the) need to turn pages of exam material, etc)”. (P-37 at page 8).

43. The neuropsychologist also noted that “there are obvious disparities associated with how (the student’s) adaptional competencies are perceived at school and at home.” (P-37 at page 15).
44. In the third segment of the October 2010 neuropsych ER, addressing behavior and adaptation, the neuropsychologist continued to note a disparity between behavioral ratings on the Brown Assessment of Attention Disorders Scales by parents in the home environment (no clinically significant ratings) and the school environment (across three raters—two teachers and the speech/language therapist –clinically significant ratings in 50% or more of the measured domains). (P-37 at pages 15-17).
45. The October 2010 neuropsych ER concluded that the student’s significant language-based disabilities, coupled with executive dysfunction (attention, processing speed, planning and organization) significantly impact the student’s learning. (P-37 at page 18).
46. The October 2010 neuropsych ER recommended a psychiatric evaluation to consider the potential efficacy of re-introducing ADHD medication. (P-37 at page 19).
47. The October 2010 neuropsych ER could not draw any conclusions related to encephalopathy or other medical issues. The October 2010 neuropsych ER concluded that “unless there is compelling evidence as to a medical-neurological basis for (the student’s) cognitive and learning deficiencies, it must be assumed that (intellectual disability) and (health impairment) classifications would be sufficient to drive educational decision making in (the student’s) behalf.” (P-37 at page 19).
48. Parents did not share the October 2010 neuropsych ER with the District. (NT at 192-193).
49. In February 2011, the parties were engaged in multiple IEP meetings. As part of those meetings, parents shared that they had independent evaluations. The District requested copies of those evaluations and/or sought consent for the direct release of the information to the District. The October 2010 neuropsych ER was not provided at that time nor was any authorization to speak with the neuropsychologist provided. (SD Exhibit – D).

February 2013 Independent Educational Evaluation & March 2013 IEP

50. By July 2012, the parties had come to a point where parents filed a special education due process complaint. As a result of the resolution process related to that complaint, the parties agreed to toll any claim for compensatory education at that point as they awaited the results of an IEE. (HO-1).
51. After an initial exchange with an independent evaluator did not bear fruit, by November 2012 an independent evaluator had been retained and the independent evaluation, made part of the parties' agreement about the July 2012 complaint, was underway. (P-80).
52. Meanwhile, in late November 2012, the fall of the student's 7<sup>th</sup> grade year, the student's IEP was revised. This was the last agreed-upon IEP and guided the student's educational program for the remainder of 7<sup>th</sup> grade (the 2012-2013 school year). (P-79; NT at 32-35).
53. In November and December 2012, the independent evaluator conducted his evaluation. (P-79).
54. In February 2013, the independent evaluator issued the IEE. (P-79).
55. The District adopted the IEE as a formal District re-evaluation of the student. (P-79 at pages 1-2).
56. The February 2013 IEE provided an extensive overview of the student's prior medical and educational evaluation history. This was the first time the District had become aware of the October 2010 neuropsych ER. (P-80 at pages 4-8; NT at 192-193).
57. The February 2013 IEE included input from both parents. (P-80 at 8, 11).
58. The February 2013 IEE utilized the Woodcock-Johnson 3<sup>rd</sup> Edition Normative Update – Test of Cognitive Abilities to assess the student's cognitive ability, finding that the student scored a 57 for overall general intellectual ability. The independent evaluator found this score to be consistent with the overall cognitive results in the April 2010 RR and the October 2010 neuropsych ER. (P-80 at pages 12-13).

59. The February 2013 IEE utilized the Woodcock-Johnson 3<sup>rd</sup> Edition Normative Update – Tests of Achievement to assess the student’s achievement levels. The evaluator found that the student’s achievement scores in reading and math were, as the evaluator expected, in the “deficient” or “well below average” ranges. Achievement results, however, were consistent with the student’s cognitive profile, however, and so the evaluator concluded that the student did not exhibit specific learning disabilities. (P-80 at pages 13-15).
60. The February 2013 IEE also contained assessments of the student’s neuropsychological functioning. Results were consistent with the October 2010 neuropsych ER in areas such as attention, executive functioning, language, perceptual/motor skills, and memory. (P-80 at pages 15-24).
61. The February 2013 IEE contained social/emotional/behavioral assessments utilizing the BASC-2 and the Adaptive Behavior Assessment System – 2<sup>nd</sup> edition (“ABAS-2”). (P-80 at pages 24-28).
62. On the BASC-2, neither parent rated any subscale or area as clinically significant. The student’s mother rated the student as at-risk in hyperactivity, attention problems, and functional communication. The student’s father’s rated the student as at-risk in functional communication. (P-80 at page 25).
63. Four teachers completed the BASC-2. Two raters found the student at-risk or clinically significant in hyperactivity, atypicality, withdrawal, and social skills. Three raters found the student at-risk or clinically significant in attention problems and study skills. All four raters found the student at-risk or clinically significant in school problems, leadership, functional communications, and adaptive skills. All four raters found the student clinically significant in learning problems. (P-80 at page 26).
64. On the ABAS-2, both parents rated the student as average or above average on all subtests, except for father who rated the student as below average on the functional academics subtest. (P-80 at page 27).
65. The same four teachers completed the ABAS-2. Across all raters, 26 of the 36 subtests were rated as deficient, two were well below average, and two were below average. Five of the six average scores were yielded by one rater who, the evaluator noted, “made a high number of guesses about the frequency with which (the

student) performs the stated skills”. All four raters found the student deficient on the communications and functional academics subtests. (P-80 at page 27).

66. The February 2013 IEE included the independent evaluator’s interview with teachers interviews and observations of the student. (P-80 at pages 28-30).
67. The February 2013 IEE concluded that the student’s cognitive, achievement, and adaptive profile supports the conclusion that the student has a mild intellectual disability. In this regard, the independent evaluator explicitly echoed the conclusions of the October 2010 neuropsych ER. (P-80 at page 31).
68. The February 2013 IEE explicitly rejected the notion that the student has an auditory processing disorder and, again explicitly citing the October 2010 neuropsych ER, concluded that the student’s needs are the result of the complex mosaic of the student’s cognitive ability, language needs, and executive functioning deficits. (P-80 at page 31).
69. The February 2013 IEE recommended that the student receive an alternative curriculum in the nature of life skills instruction with a community-based instruction component. The IEE concludes that:

“(The student) should be included with same-age non-disabled peers [‘mainstreamed’] in school settings to the greatest extent possible, but (the student’s) clear need for a replacement curriculum on (the student’s) current instructional level means that such ‘mainstreaming’ would not be instructionally appropriate or effective for (the student’s) instruction in core academic subjects [e.g., reading, math, language arts, etc.]. As well, this means that instruction that targets strictly academic skills without life-skills/functional skills focus will be increasingly frustrating and inappropriate for (the student) as (the student) approaches graduation age; strictly academic instruction for (the student) will deny (the student) the opportunity that (the student) requires to develop increased skills of functional

independence through specially-designed instruction.”<sup>7</sup> (P-80 at pages 31-32).

70. In March 2013, the student’s IEP team met to discuss the student’s draft IEP. (P-81).
71. The March 2013 IEP included present levels of performance from the February 2013 IEE as well as academic and curriculum-based data from the student’s programming. (P-81 at pages 6-15).
72. The March 2013 IEP identified the student as needing a functional academic curriculum and social skills instruction in safety, decision-making, and peer interaction. (P-81 at page 15).
73. The March 2013 IEP includes eleven goals: two in expressive language (semantics and using complete sentences), two in written expression (multi-sentence paragraph writing and address accuracy), four in reading (two accuracy goals, sight word, and reading rate), two in reading comprehension (W/W/W/W and passage-questions accuracy), and one in mathematics (time, money, and measurement concepts). (P-81 at pages 21-28).
74. Baseline data is contained within each of the nine academic goals, indicating that instruction on these goals through a functional curriculum, instead of regular education instruction in reading, writing, and mathematics, is appropriate for the student. (P-81 at pages 21-28).
75. The March 2013 IEP contains extensive modifications and specially-designed instruction. Speech and language therapy, as a related service, will be provided twice weekly for 30 minutes per session. (P-81 at pages 29-31).
76. Under the terms of the March 2013 IEP, the student will be included in regular education, with adaptations and modifications, for science, social studies, and all special area classes. Instruction in reading, language arts and mathematics will be through an alternative curriculum in a special education setting. The student will be in regular education settings for 65% of the school day. (P-81 at pages 33-35).
77. All witnesses testified credibly, and no witness’s testimony was accorded more or less weight than any other’s due to any concrete factor. (NT at 58-141, 153-220, 257-385).

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<sup>7</sup> Bracketed material is in the original.

## **DISCUSSION AND CONCLUSIONS OF LAW**

In evaluating a student who might qualify under IDEA and Chapter 14, a school district's evaluation process "must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent" and must ensure "the child is assessed in all areas related to the suspected disability."<sup>8</sup> Independent evaluations, where available, must be considered by a student's IEP team.<sup>9</sup>

Additionally, to assure that an eligible child receives a FAPE,<sup>10</sup> an IEP must be reasonably calculated to yield meaningful educational benefit to the student.<sup>11</sup> 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning",<sup>12</sup> not simply *de minimis* or minimal education progress.<sup>13</sup>

The parties dispute both the identification profile of the student and the appropriateness of the March 2013 IEP. These claims will be addressed in turn.

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<sup>8</sup> 34 C.F.R. §300.304(b)(1).

<sup>9</sup> 34 C.F.R. §300.502(c).

<sup>10</sup> 34 C.F.R. §300.17

<sup>11</sup> Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

<sup>12</sup> Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

<sup>13</sup> M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996).



### Identification

Here, the record fully supports a finding that the student has a mild intellectual disability and a speech and language impairment. While the April 2010 RR did not formally identify the student as having an intellectual disability, the data reviewed in/developed as part of that RR reveals that, even as early as 4<sup>th</sup> grade, the student's cognitive and adaptive profile was clarifying around data that pointed toward something more than ADHD and a language disorder.

The October 2012 neuropsych ER and the February 2013 IEE confirmed the string of data points that supported the conclusion in those reports that the student has a mild intellectual disability. This intellectual disability is complicated by factors related to the student's language and executive functioning needs. But the entire mosaic supports a finding that this student's primary educational needs are framed by the student's cognitive ability. As sagely pointed out by the independent evaluator, the formal identification (or eligibility category) does not dictate anything related to the student's educational programming; the student's cognitive, academic, and adaptive skills and needs guide programming.<sup>14</sup> But a formal identification is required as part of qualifying as a student with a disability under the IDEA and,

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<sup>14</sup> P-80 at page 31.

here, the student is most appropriately identified as a student with an intellectual disability.<sup>15</sup>

Accordingly, the District has not erred in considering the student as having an intellectual disability.

### IEPs & Programming

As noted above, while a formal identification plays some role in understanding a student's needs, it is the substance of a student's IEPs that are at the heart of providing FAPE. Here, the March 2013 IEP is reasonably calculated to yield meaningful education benefit.

The March 2013 IEP contains extensive goals which address the student's needs for a functional understanding of reading, writing, and mathematics. The student's speech and language goals are also appropriately addressed.

And even though an alternative curriculum and a highly structured learning environment are appropriate for the student, the March 2013 IEP balances those needs, as it must, against the student's access to the regular education environment to the maximum extent appropriate. By including the student in regular education for nearly 2/3 of the school day, the student will enjoy the benefits of engaging with non-identified peers in academic and instructional, as well as non-structured, settings. On balance, the March 2013 IEP does exactly what

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<sup>15</sup> 34 C.F.R. §300.8(a),(b),(c)(6); 22 PA Code §14.1029(a)(2)(ii).

it is designed to do—provide an appropriate education program for the student, including specially-designed instruction and related services, in the least restrictive environment.

Accordingly, the District has not denied the student FAPE in its proposed March 2013 IEP. Therefore, no remedy is owed by the District. The order will, however, explicitly address the student's IEP to account for adjusting operational dates in the IEP and for necessary transition planning.

### **CONCLUSION**

Let there be no doubt of the parents' attentiveness to the needs of their child. They have made their claims in good faith. Their participation at the hearing, and their testimony, made palpable the depths of their caring. They are to be commended for the ever-apparent devotion they exhibited for their child.

Likewise, the District has, at all times on this record, acted toward the family with respect and in good faith, with due regard for the student's needs in the educational environment.

The entirety of the record supports a finding that the March 2013 IEP is reasonably calculated to yield meaningful education benefit.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, under the terms of the IDEA and Chapter 14, the student is a child with disabilities, namely a student with an intellectual disability and a speech/language impairment who, as a result of those disabilities requires specially designed instruction.

The March 2013 IEP is reasonably calculated to yield meaningful education benefit.

On or before January 24, 2014, the IEP team shall meet to design a transition plan to facilitate the student's transition from the student's current placement/services to the placement/services outlined in the March 2013 IEP.

Also, the IEP shall be amended as follows: The "IEP Team Meeting Date" on page 1 shall be the date the IEP team meets under the terms of this order but shall be no later than January 24, 2014. The "IEP Implementation Date" on page 1 shall be determined by the parties at the IEP meeting but shall be no later than February 24, 2014. The "Anticipated Duration of Services and Programs" on page 1 shall be one chronological year from the IEP Implementation Date referenced in the preceding sentence.

Prior to the IEP Team Meeting Date referenced in the preceding paragraph, the District shall gauge new baseline data on each of the eleven IEP goals.

The parties are urged to work collaboratively in scheduling, and participating in, the IEP meeting(s) outlined in this order. To the extent that parents choose not to participate in the IEP meeting(s) outlined in this order, District-based members of the IEP team may engage in developing and implementing the transition plan under the timelines indicated.

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

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

January 3, 2014