

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: Z. G.

Date of Birth: [redacted]

Dates of Hearing:

September 10, 2013

November 1, 2013

November 4, 2013

CLOSED HEARING

ODR Case #14032-1213AS

Parties to the Hearing:

Parent

Greater Johnstown School District
1091 Broad Street
Johnstown, PA 15096-2437

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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November 25, 2013

December 10, 2013

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is an early elementary school age student residing in the Greater Johnstown 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”)¹, although there is a dispute as to nature of the student’s identification status. Parent believes the student should qualify for specially designed instruction/related services as a student with a complex matrix of identifications, including autism and mild intellectual disability; the District has identified the student as a student with a health impairment, specifically attention deficit hyperactivity disorder (“ADHD”).

Due to this alleged mis-identification, parent asserts that the student has been denied a free appropriate public education (“FAPE”) as the result of inappropriate educational programming, both in what has been provided to the student and in what has been, in parent’s eyes, omitted. As a result of these claims, parent claims that compensatory education should be awarded for the 2011-2012 and 2012-2013 school years.²

¹ 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”).

² After the complaint was filed but before the commencement of the hearing, the local county-based office of children and youth services (“CYS”) had the student removed from the family home. This information came to light in a prehearing conference with counsel at the initial hearing session on September 10, 2013. Counsel further indicated that an educational decision-maker might have been, or was in the process of being, appointed by the county’s Court of Common Pleas. The status, if any, of an educational decision-maker, however, was unclear on the part of both counsel. Once this matter came to light for the hearing officer, the hearing officer requested counsel’s assistance to obtain contact information for the CYS case manager. That contact information was provided by parent’s counsel, and on September 16, 2013 the hearing officer contacted the CYS case manager to introduce himself, to advise her of the proceedings, and to request that if an educational decision-maker had been, or would be, appointed, that this individual could contact the hearing officer for arrangements to attend and observe the proceedings. (Notes of Testimony at 180-184). At

The District counters that, at all times, it met its obligations under the IDEA and provided the student with FAPE. As such, the District argues that no remedy is owed to the student.

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

ISSUES

Was the student provided with FAPE
in the 2011-2012 and 2012-2013 school years?

If the answer to this question is in the affirmative,
what remedy is available to the student?

FINDINGS OF FACT

1. In the 2010-2011 school year, the student was involved in a District preschool program. (School District Exhibit ["S"]-1).
2. In the preschool year, the student was involved in numerous behavioral incidents, including hitting/kicking/dragging other students, refusing to stay seated, crawling on the floor, acting out, work refusal, spitting on staff, using profanity, and bus misbehavior. (S-12).
3. In March 2011, the student's preschool individualized family services plan ("IFSP") indicated that the student's classroom behaviors did not impede learning but that the student had explicit communication needs. (S-1).
4. The March 2011 IFSP indicated that the student had difficulty with most academic tasks and had difficulty with verbal communication. (S-1).

no time from September 16, 2013 through the date of this decision was the hearing officer contacted by the CYS case manager and/or any educational decision-maker regarding the matter. Additionally, in the complaint, parent asserted a claim related to the student's placement for the 2013-2014 school year. With the involvement of CYS, however, the student had been attending a neighboring school district from the outset of the 2013-2014 school year. Consequently, at the September 10th hearing session, parent withdrew any claim related to the 2013-2014 school year. (Notes of Testimony at 14, 25).

5. The March 2011 IFSP included five goals: increasing interactive play with peers, fine motor skills (scissors), two expressive language goals (using age appropriate language concepts and increasing mean length of responses), and following directions. (S-1).
6. As part of the student's transition meeting for kindergarten in the 2011-2012 school year, the student's preschool teachers reported that the student's behaviors could, at times, impede the student's learning and that the student required supervision. The teachers noted that the student had difficulty attending to tasks and staying focused, and required adult supervision. (Parent Exhibit ["P"]-17).
7. The student's preschool teachers identified areas of need in behavior management, expressive and receptive language skills, social skills, and certain fine motor and academic skills. (P-17).
8. In April 2011, the District prepared a re-evaluation report ("RR").³ (P-12).
9. The April 2011 RR included much of the information from the March 2011 IFSP and preschool teacher input, as well as an observation by the District's school psychologist. The April 2011 RR indicated that additional data was required for the student's evaluation, including cognitive, academic, and adaptive testing as well as occupational therapy and speech/language evaluations. (P-12).
10. Over the period April – June 2011, the District requested permission to conduct the additional assessments and evaluations. (S-3).
11. In August 2011, parent granted permission to the District to conduct the additional assessments and evaluations. (P-13).
12. The student began the 2011-2012 school year in District kindergarten.
13. In September 2011, the student would not appropriately use instructional materials and these were removed from the student, would act out and distract other students, would repeatedly roam the classroom, spit on a peer, hit others, and engaged in bus misbehavior. (S-12).
14. In October 2011, the student scratched a peer. (S-12).
15. In October 2011, the District issued a RR. (P-14).

³ Even though the April 2011 RR was the first evaluation performed by the District, it was denoted as a re-evaluation report. The reference, then, is to the document as noted on its face.

16. The October 2011 RR included input from the student's parent. At home, the student exhibited a broad range of disruptive behaviors. (P-14).
17. The October 2011 RR included input from the student's community mental health therapeutic support staff worker ("TSS"). The TSS reported similar behavioral problems as reported by the parent. (P-14).
18. The student exhibited lip-picking, occasionally to the point of bleeding, at home and in school. The student also perseverated on the topic of school buses. (P-14).
19. The October 2011 RR included information from the community mental health agency providing services to the student. The information indicated that the student had multiple problematic behaviors reported at home and school. The RR noted that "(the student's) ability to participate in age-appropriate developmental tasks appeared significantly impaired, both in terms of...academic and social functioning." (P-14).
20. The community mental health agency report indicated that the student exhibited potential markers of autism spectrum diagnosis but that the possibility of fetal alcohol syndrome may have, and the degree of impulsivity and lack of focus, prevented such a diagnosis by that agency. (P-14).
21. The community mental health agency report included a diagnosis of ADHD and oppositional defiance disorder. (P-14).
22. The October 2011 RR included the classroom behavior reports and observations which indicated that the student had difficulty with attention and focus, and that on-task behavior was rated at 20% compared to an 85% for a comparison peer. (P-14).
23. The October 2011 RR included a cognitive assessment on the Reynolds Intellectual Assessment Scales indicated a composite intelligence index in the extremely low range. Given a low average score on the nonverbal intelligence index, however, the District evaluator concluded that the student does not have an intellectual disability. (P-14).
24. The October 2011 RR included an achievement assessment on the Wechsler Individual Achievement Test – 3rd Edition indicated a score in the deficient range (<0.1 percentile) in early reading skills, and extremely low range (0.4 percentile) in math problem solving and alphabet writing fluency. (P-14).
25. The October 2011 RR included a behavior assessment on the Behavior Assessment System for Children – 2nd Edition ("BASC"). (P-14).

26. BASC ratings were completed by a preschool teacher, by the kindergarten teacher, and by the parent. The preschool teacher rated the student with clinically significant scores in the following subscales: hyperactivity, learning problems, atypicality, withdrawal, study skills, and functional communication. Clinically significant index scores were indicated in behavioral symptoms and adaptive skills. (P-14).
27. On the BASC ratings, the kindergarten teacher rated the student with clinically significant scores in the following subscales: atypicality and study skills. The kindergarten teacher's ratings indicated no clinically significant index scores. (P-14).
28. On the BASC ratings, the parent rated the student with clinically significant scores in the following subscales: hyperactivity, aggression, conduct problems, atypicality, attention problems, adaptability social skills, leadership, activities of daily living, and functional communication. Clinically significant index scores were indicated in externalizing problems, behavioral symptoms and adaptive skills. (P-14).
29. The October 2011 RR included an autism assessment utilizing the Gilliam Autism Rating Scale – 2nd Edition. The student's kindergarten teacher, TSS, and parent completed the assessment. Each rater indicated scores in the "very likely" range for the likelihood of autism in all subscales (stereotyped behavior, communication, and social interaction) as well as the autism index score. (P-14).
30. The October 2011 RR included BASC autism diagnostic considerations. The instrument was completed by a preschool teacher, the kindergarten teacher, and the parent. All raters agreed that the student never encourages others to do their best, sometimes communicates clearly, never compliments others, never makes suggestions without offending others, and is never chosen as a leader. The teachers agreed that the student sometimes responds appropriately when asked a question, never refuses to talk, and sometimes communicates clearly. The two teachers endorsed some combination of never/sometimes for making friends easily, adjusts well to changes in routine, and shows interest in others' ideas. (P-14).
31. The BASC autism diagnostic considerations reveal that, on certain items, the two teachers endorsed mutually exclusive ratings. The kindergarten teacher indicated that the student never played alone; the preschool teacher indicated that the student almost always played alone. The kindergarten teacher indicated that the student never avoided other children; the preschool teacher indicated that the student often avoided other children. The kindergarten teacher indicated that the student never had trouble making new friends; the preschool teacher indicated that the student almost always had trouble making new friends. (P-14).

32. The October 2011 RR assessed the student's adaptive functioning with the Vineland Adaptive Behavioral Scales – 2nd Edition. Almost all subscales and indices were in the “low” range except for the expressive communication subscale and the daily living skills-personal subscale, which were in the “moderately low” range. (P-14).
33. In the October 2011 RR, the District speech and language evaluator indicated that the student did not require speech and language services. (P-14).
34. The October 2011 RR indicated that the student presented with “severe behavioral and learning needs”. Even though the student was a year older than class peers, the student exhibited “significantly delayed academic progress despite several years of early intervention services”. (P-14).
35. The October 2011 RR opined that while the student demonstrates “significant difficulty with social interaction, adherence to routine, and some characteristics of autism spectrum disorder, (the student's) medical history of significant inattention and hyperactivity better explain (the student's) difficulty at this time”. (P-14).
36. The October 2011 RR identified the student with a health impairment. (P-14).
37. The October 2011 RR included a behavior intervention plan. (P-14).
38. In November 2011, the student's individualized education plan (“IEP”) team met to develop the student's IEP. (P-15, S-7).
39. The November 2011 IEP included five reading goals, a task-completion goal, and three math goals. (P-15).
40. The November 2011 IEP included occupational therapy (“OT”) services but no OT goal. (P-15).
41. The November 2011 IEP did not include any goal or services in speech and language. (P-15).
42. The November 2011 IEP called for the student to receive push-in learning support in reading, writing and math 20-30 minutes per week. The emotional support classroom was available to the student “for time out as needed”. (P-15).
43. The November 2011 IEP indicated that the student's behavior impeded the student's learning or that of others. The November 2011 IEP included a

- positive behavior support plan (“PBSP”), but it was not based on a functional behavior assessment (“FBA”). The IEP did not contain any behavior goal. (P-15).
44. The November 2011 IEP did not provide for a 1:1 aide, but the student was accompanied and assisted by the TSS throughout the school day in all instructional environments. (P-15).
 45. The November 2011 IEP indicated that the student would spend 98% of the school day in regular education. (P-15).
 46. In December 2011, the student engaged in bus misbehavior, including hitting a peer. (S-12).
 47. In January 2012, the student’s kindergarten teacher reported that the student called out without raising a hand, engaged in lip-picking to the point of bleeding, was occasionally defiant, did not attend to instruction, and made little eye contact. The student required “constant redirecting from classroom teacher and TSS (approximately every 30 seconds)” and was removed from the classroom twice-weekly for tutoring sessions with a college student volunteer. (P-21).
 48. In January 2012, the student engaged in bus misbehavior, including hitting a peer. (S-12).
 49. In May 2012, the student engaged in bus misbehavior, including hitting a peer. (S-12).
 50. In May 2012, the student’s IEP was revised. The student began to receive pull-out academic instruction. (S-8).
 51. The May 2012 IEP revision began to include information about a “secondary diagnosis of (emotional disturbance)”, but no such identification was made, or even contemplated, in the October 2011 RR. (S-8).
 52. The May 2012 IEP revision indicated that the student would spend 80% of the school day in regular education. (P-15).
 53. The student’s 2011-2012 progress monitoring shows that two of the five reading goals (letter identification and letter-sound correspondence) showed some degree of progress from December 2011 to March 2012. There was no progress monitoring on these two goals for May 2012. The three remaining reading goals were not monitored at all. (P-16, S-9).

54. The student's 2011-2012 progress monitoring shows that the student made some progress on the three math goals from December 2011 to March 2012 to May 2012. (P-16, S-9).
55. There was no progress monitoring on the task-completion goal. (P-16, S-9).
56. The student entered 1st grade for the 2012-2013 school year. (P-9).
57. In October 2012, the student's IEP was revised. (P-10).
58. The October 2012 IEP indicated that the student did not have communication needs and did not have behavior that impeded the student's learning or that of others. (P-10).
59. The October 2012 IEP indicated that "(the student) becomes fixated on a topic and expresses this fixation throughout the school day in oral responses". (P-10).
60. The October 2012 IEP contains two reading goals (identifying sight words and oral reading), although progress monitoring from December 2011 (the last data on the student's reading goals from the 2011-2012 school year) indicated that the student could identify only 16 of 26 letters and could produce letter-sounds for only 18 of 26 letters. (P-10, P-16, S-9).
61. The October 2012 IEP contains three math goals (rote counting, counting objects, and addition/subtraction). Both counting goals built on the student's progress in the 2011-2012 school year. (P-10).
62. The October 2012 IEP added a written expression goal and an OT goal. (P-10).
63. The October 2012 IEP did not include any goal or services in speech and language. (P-10).
64. The October 2012 IEP did not provide for a 1:1 aide, but the student was accompanied and assisted by the TSS throughout the school day in all instructional environments. (P-10).
65. The October 2012 IEP continued to reference an emotional disturbance identification. (P-10).
66. The October 2012 IEP indicated that the student would spend 69% of the school day in regular education. (P-10).
67. The October 2012 IEP did not contain a PBSP. (P-10).

68. In October 2012, the student was involved in bus misbehavior, including hitting peers. (S-12).
69. In December 2012, parent obtained a private psychological report. (P-1).
70. Based on cognitive and adaptive functioning assessments (respectively, the Wechsler Intelligence Scale for Children – 4th Edition and the Adaptive Behavior Assessment – 2nd Edition), the December 2012 psychological report diagnosed the student with mild intellectual disability. The scores on these assessments were quite consistent with the cognitive and adaptive functioning results in the District’s October 2011 RR. (P-1).
71. Based on autism assessments (the Autism Diagnostic Interview – Revised and the Gilliam Autism Rating Scale – 2nd Edition), the December 2012 psychological report diagnosed the student with pervasive developmental disorder-not otherwise specified, an autism spectrum disorder. (P-1).
72. The December 2012 psychological report also diagnosed the student with mood disorder – not otherwise specified. (P-1).
73. In February 2013, the District received permission to re-evaluate the student. (P-3, S-14).
74. In March 2013, the parent obtained a private speech and language evaluation. (P-5).
75. The March 2013 speech and language evaluation utilized the Goldman-Fristoe 2 Test of Articulation, finding that the student exhibited nineteen mis-articulations, placing the student at the <0.1 percentile for the student’s age. (P-5).
76. The March 2013 speech and language evaluation noted inappropriate comments, increased volume and rate-of-speech which, in turn, decreased intelligibility. The evaluation indicated the student had difficulty with questions and poor eye contact. Requests to repeat unintelligible sentences led to frustration on the student’s part at not being understood. (P-5).
77. In April 2013, the District issued a RR. The RR included results from the December 2012 psychological report. (P-4).
78. The April 2013 RR indicated that the student continued to show “very limited” academic skills or achievement in reading, writing, and math. (P-4).

79. Teacher observations in the April 2013 RR continued to show consistent difficulty with attention, focus, distractions, following directions, work-avoidance. The April 2013 RR described the student's school behaviors as "socially and age inappropriate". (P-4).
80. Additional cognitive and achievement assessment in the April 2013 RR continued to show the student with cognitive and achievement results that indicate the student has significant cognitive and learning issues. (P-4).
81. Additional autism assessment, utilizing the Childhood Autism Rating Scales – 2nd Edition, in the April 2013 RR indicated severe symptoms of autism spectrum disorder. (P-4).
82. The April 2013 RR continued to find the student eligible as a student with a health impairment. (P-4).
83. In May 2013, the student's IEP was revised. (P-7).
84. The May 2013 IEP indicated that the student did not have communication needs or exhibit behaviors that impeded the student's learning or the learning of others. (P-7).
85. The May 2013 IEP contained three reading goals (letter-sound association/sight word, oral reading, and comprehension). The letter-sound association was added to the sight word from the October 2012 IEP. The oral reading goal was maintained from the October 2012 IEP. The reading comprehension goal was added. (P-7).
86. The May 2013 IEP maintained the same written expression goal from the October 2012 IEP. (P-7).
87. The May 2013 IEP contained two math goals (numerical concepts and addition/subtraction). The numerical concepts goal replaced the counting goals from the October 2012 IEP. The addition/subtraction goal was maintained from the October 2012 IEP. (P-7).
88. The May 2013 IEP maintained the OT goal. (P-7).
89. The May 2013 IEP did not include any goal or services in speech and language. (P-7).
90. The May 2013 IEP did not provide for a 1:1 aide, but the student was accompanied and assisted by the TSS throughout the school day in all instructional environments. The April 2013 RR noted that "(the student's) TSS...does an excellent job and has been an invaluable part of (the student's) progress." (P-4, P-7).

91. The May 2013 IEP removed the reference to an emotional disturbance identification. (P-7).
92. The May 2013 IEP indicated that the student would spend 69% of the school day in regular education. (P-7).
93. The May 2013 IEP did not contain a PBSP. (P-7).
94. In May 2013, the student was involved in bus misbehavior, including hitting peers. (S-12).
95. The 2012-2013 progress monitoring indicates that, by the District's own characterization, the student made minimal, limited, slight progress on all IEP goals. (P-8, S-19).
96. In June 2013, parent filed the special education due process complaint that led to these proceedings. (P-19).
97. All witnesses were all found to be credible and to have provided testimony that was probative. The testimony of the student's TSS and behavior support consultant ("BSC") from the community-based agency were especially persuasive and was accorded heavy weight in considering the evidence. (Notes of Testimony at 29-180, 197-242).

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to the requirements of IDEA and Chapter 14, Pennsylvania school districts have an obligation "to establish a system of screening...to", *inter alia*, "identify students who may need special education services and programs."⁴ School districts are explicitly granted the authority to seek permission from parents to

⁴ 22 PA Code §14.122(3); *see also* 34 C.F.R. §300.111.

evaluate a student who the school district feels might qualify as a student with a disability.⁵ This duty is known as a school district's child-find obligation.

In meeting its child-find obligation when 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."⁶

Additionally, to assure that an eligible child receives a FAPE,⁷ an IEP must be reasonably calculated to yield meaningful educational benefit to the student.⁸ 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning",⁹ not simply *de minimis* or minimal education progress.¹⁰

Parent has claimed that (a) the student has been mis-identified by the District and (b) has failed to program appropriately for the student. These claims will be addressed in turn.

Child-Find

Here, from its first evaluation in October 2011, the District knew or should have known that the student had an autism spectrum disorder. Knowing all that it

⁵ 34 C.F.R. §§300.300(a), 300.301(b).

⁶ 34 C.F.R. §300.304(b)(1).

⁷ 34 C.F.R. §300.17

⁸ Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

⁹ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

¹⁰ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

did about the student, and surfacing out of its own data in the October 2011 RR, the student should have been identified as a student with autism.¹¹

While the data was very strong in October 2011 that the student may have had an intellectual disability, the District's conclusion was defensible that certain factors might mitigate such a conclusion. However, after seeing the student's academic performance in the 2011-2012 school year, coupled with the December 2012 private psychological report, the District knew, or should have known, that the consistency in both sets of cognitive and adaptive assessments (its own and the private report) supported an identification of the student with a mild intellectual disability in the April 2013 RR.¹²

Accordingly, the District erred in its identification of the student.

IEPs & Programming

More profound than these errors in identification, however, is the fact that the student's IEPs are not reasonably calculated to yield meaningful education benefit. The most glaring omissions relate to the student's most profound needs—namely the deeply problematic behaviors. These behaviors are documented throughout the record at every year and in every phase of the student's education. At first, in the November 2011 IEP, the District recognized these needs and programmed for those needs with a PBSP (albeit it without first performing a FBA).¹³ But, inexplicably, in the October 2012 IEP and thereafter, what it had put

¹¹ 34 C.F.R. §300.8(a),(b),(c)(1)(i); 22 PA Code §14.101.

¹² 34 C.F.R. §300.8(a),(c)(6).

¹³ 22 PA Code §14.133(a),(b).

in place was removed, no behavior intervention of any type was provided by the District, and the student's IEPs did not even recognize that the student's behaviors impeded the student's learning or the learning of others. The record clearly supports that this is a prejudicial flaw.

The record also supports a finding that the District, in effect, "outsourced" management of the student's behaviors to the community-based mental health agency through the involvement of the TSS and BSC. The documentary evidence in terms of the role of the TSS in kindergarten, and the documentary evidence in addition to the testimony of the TSS and BSC for 1st grade, supports a finding that to the extent that behavior management was not part of the District's programming, it is because the TSS was, one-on-one on a daily basis, providing behavior support. How the District chose to support the student's behavior needs for the IEP team's consideration is its own concern; but to not make any behavior support part of this student's IEP is, again, prejudicially flawed.

Another prejudicial flaw in the IEPs is the lack of any speech and language services. Part of this arises out of the District's mis-identification of the student; the District did not see the student's communication needs as rooted in autism. Again, though, mere mis-identification is not at the heart of the denial of FAPE in this regard: the record clearly supports a finding that the student had needs in receptive and, especially, expressive language. On any assessment or observation where social skills and pragmatic language was being discussed, everyone (except, by and large, the student's kindergarten teacher) recognized that that student had significant difficulty with those issues.

And this lies apart from explicit articulation issues. Often, the student was unintelligible simply from the perspectives of articulation and volume/rate of speech. To not address the needs of the student both for pragmatics and articulation is a prejudicial flaw.

Accordingly, these omissions amount to a denial of FAPE. An award of compensatory education will follow.

Compensatory Education

Compensatory education is an equitable remedy that is available to a claimant when a school district has been found to have denied a student FAPE under the terms of the IDEA.¹⁴ In this case, the District has denied the student a FAPE from April 2011 onward.

In Pennsylvania, a kindergarten student must be provided with a minimum of 2.5 hours per school day; an elementary school student must be provided with a minimum of five hours of education per school day.¹⁵ Here, the mis-identification of the student set the stage for decisions about programming that were misguided. Those decisions ultimately resulted in IEPs that were prejudicially flawed, especially regarding behavior and speech/language services. Denial of FAPE for this student in those two areas, especially, strikes at the heart of the student's needs and has ramifications for the entirety of the student's education programming over both kindergarten (2011-2012) and 1st grade (2012-2013).

¹⁴ Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992).

¹⁵ 22 PA Code §11.3

Having said that, there is some evidence of progress across those school years, most explicitly in mathematics. As such, there was not a complete denial of FAPE. Therefore, as a matter of equity, the student will be awarded compensatory education at a rate of 80%-- 2 hours for each kindergarten school day and 4 hours for each 1st grade school day. Also, the District did not have any IEP in place until November 2011 because it did not have permission, first, to conduct its evaluation heading into kindergarten or, second, agreement by the parent to implement the initial IEP. These delays were the result of parent's actions, so that period will be excluded from the calculation of compensatory education.

As for the nature of the compensatory education award, the parent may decide in [Parent's] sole discretion how the hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, when convenient for the student and the family.

There are financial limits on the parent's discretion in selecting the appropriate developmental, remedial or enriching instruction that furthers the goals of the student's IEPs. The costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the District professionals who provided services to the student during the period of the denial of FAPE.

In sum, then, an award of compensatory education will be made for the denial of FAPE for the 2011-2012 and 2012-2013 school years.

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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 a disability, namely as a student with autism and an intellectual disability who, as a result of those disabilities requires specially designed instruction.

Additionally, compensatory education will be awarded as follows:

two (2) hours of compensatory education for every school day from the date in November 2011 when the District received the signed notice of recommended educational placement through the end of the 2011-2012 school year; and

four (4) hours of compensatory education for every school day in the 2012-2013 school year.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

December 10, 2013