

*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 Student: J.T.

ODR #14384/13-14 AS

Date of Birth:  
[redacted]

Date of Hearing:  
November 25, 2013

CLOSED HEARING

Parties to the Hearing:

Parent[s]

Marple Newtown School District  
40 Media Line Road  
Newtown Square, PA 19073

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Dean Beer, Esquire  
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Berwyn, PA 19312

Mark Walz, Esquire  
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New Britain, PA 18901

January 11, 2014

January 21, 2014

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is a recent graduate of the District who at all times relevant to the matter in dispute was eligible for special education under the disability category of an Other Health Impairment (OHI), specifically Attention Deficit/Hyperactivity Disorder [ADHD]. The Parent brought this action under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 as well as Chapters 14 and 15 of the Pennsylvania Code alleging that the District failed to offer Student a free appropriate public education [FAPE] by not addressing all Student's needs, including organization, focus and transition<sup>2</sup>.

## Issue

Did the District fail to offer Student a free appropriate public education during the period from October 18, 2011 to the date of graduation in June 2013<sup>3 4</sup> by failing to address Student's needs such that Student could make meaningful educational progress?

## Findings of Fact

1. The family was represented by special education counsel starting at least in Student's senior year. In October 2012 through counsel the family requested and received a publicly-funded Independent Educational Evaluation that was conducted on October 25/November 1, 2012<sup>5</sup>. There was an IEP meeting following receipt of the IEE and only minor changes were made to the existing IEP. [NT 71-72; J-20]
2. The District issued a NOREP for Student with a recommendation for standards-based graduation in June 2013 along with a summary of academic achievement and functional performance. The Parent did not object and did not return the NOREP, and Student graduated on June 13, 2013. [J-23]
3. Student is living and working<sup>6</sup> in another state, where the family moved shortly after graduation. [NT 138]

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<sup>1</sup> Other than on the title page of this decision, Student's name and gender, as well as any particularly identifying information, have been omitted to preserve Student's privacy.

<sup>2</sup> Virtually no evidence was provided regarding transition services and therefore I decline to address that issue here.

<sup>3</sup> Neither of the exceptions to the IDEA's 2-year limitation on filing a due process request existed.

<sup>4</sup> In the record, the Graduation date was referenced as being on various dates. The Parent had the actual graduation program with her, which she said was dated June 13, 2013.

<sup>5</sup> Although the IEE was conducted on October 25 and November 1, 2012 the exact date it was received by the Parent and the District is not part of the record. The Parent testified that she believes she received the report in late March or early April 2013; she remembers calling the independent evaluator several times to see when the report would be finished and the evaluator apologizing because she was behind on typing up her reports. [NT 134-135]

<sup>6</sup> Although Student tested well in reading, mathematics and written expression on group standardized testing [PSSA] and individual standardized testing [WIAT III], and Student reportedly wanted to attend college, the record is silent as to whether or not Student took the SAT or the ACT for which Student would have qualified for extra testing time.

4. Although an initial evaluation by the District found Student ineligible for special education but qualifying for a 504 Service Plan in Kindergarten, worsening behaviors including “violent” tantrums, stealing, and reading/handwriting difficulties occasioned another evaluation by the District and Student was found eligible for special education services by October of 1<sup>st</sup> grade. [J-20]
5. As per a Re-Evaluation Report [RR] dated October 6, 2010 when Student was in 10<sup>th</sup> grade, Student was eligible for special education under the classification of Other Health Impairment [OHI]. [NT 42; J-2]
6. The RR noted that in addition to ADHD-related issues, Student continued to have an academic need/relative weakness in the area of written expression. However, although in 10<sup>th</sup> grade Student’s writing skills were at grade level 8.5, still about a year and a half below grade level as assessed by the Kauffman Test of Educational Achievement, Second Edition [K-TEA II], they had improved considerably from testing in 9<sup>th</sup> grade on the same instrument, the score having been increased by four grade levels in a year. [J-2]
7. By October of senior year Student scored a grade level score of 11.0 in written expression on the KTEA – II, reflecting an increase of 1 ½ grade levels in the course of a year. [J-2, J-21]
8. The PSSA testing in 8<sup>th</sup> grade placed Student as Basic in Writing. In 10<sup>th</sup> grade Student took the PSAT exam and scored in the 62<sup>nd</sup> percentile on writing skills. The PSSA testing in 11<sup>th</sup> grade placed Student at the Proficient Level in Writing. [NT 141; J-2, J-11, J-21]
9. During junior year Student failed a World Geography course, and recovered the credit over the following summer through an online course offered by a virtual academy under the [local] IU.<sup>7</sup> [J-13<sup>8</sup>]
10. Student expressed that Student had failed the course because of information overload and because difficulty with written expression made the written assignments too difficult. [NT 33]
11. The Parent engaged a tutor, a retired special education teacher, for two or three two-hour sessions a week to assist Student in completing the online World Geography course. [NT 22-24, 106-107]
12. The tutor spent the time making sure Student understood the readings, chunking assignments, assisting Student with pre-writing activities, editing written assignments and keeping Student focused. [NT 25-27, 29, 32, 34-35]

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<sup>7</sup> Student was also scheduled to take American History online at the same time but withdrew from that course for reasons not explained in the record. [J-13]

<sup>8</sup> The parties’ attorneys cooperated in creating joint exhibits [marked J] for which they are here commended. In addition there were three Parent exhibits [marked P].

13. The tutor saw Student as bright but having trouble focusing. The tutor testified, “There were times when [Student] was -- [Student] would be so, I don't want to say distracted, but just done with the assignment just like, okay, I have had enough. I reached my saturation point. I can't deal with this anymore. That no matter how much I would try to redirect [Student], it wasn't going to work. So at that point, I would make sure that [Student] took a break, maybe 10, 15 minutes, you know, go -- go text your friends. Go take care of whatever you need to do. And then once [Student] came back, [Student] could refocus on whatever the assignment was.” [NT 28, 30, 35-36]
14. The tutor was unaware of whether or not Student was taking medication for ADHD at the time she was working with Student. [NT 37]
15. The Parent testified that in the winter of junior year Student expressed not liking how Student felt on the medication and that starting from spring of 11<sup>th</sup> grade through senior year Student was not on medication to address ADHD. [NT 78, 121-125]
16. During junior and senior year of high school Student continued to have difficulty with organization skills and focus, and handed in assignments late, incomplete, or not at all. [NT 53-55]
17. The Parent testified that at home Student was angry and anxious and worried about the accumulation of incomplete or not-yet-started assignments, which the Parent attributed to difficulties with writing skills. However, Student was not seeing a psychologist or a psychiatrist or other professional mental health counselor for help with the alleged emotional distress, the Parent instead choosing to seek help from Student’s pediatrician and friends from church. [NT 128-129, 140]
18. The Parent and Student’s case manager, as well as the Parent and Student’s teachers, were in frequent even weekly communication about Parent’ concern regarding Student’s difficulty finishing assignments including the fear that Student would not graduate. [NT 55-56, 102; P-1]
19. Student would take responsibility, saying that Student knew what needed to be done but hadn’t been doing it, chose not to do it. The District offered incentives such as the possibility of work-study in senior year. [NT 73-74, 76]
20. The Parent reported variable motivation in 11<sup>th</sup> grade, with Student starting out motivated then slipping then picking up effort a little more.<sup>9</sup> Grades for the four marking periods in 11<sup>th</sup> grade were as follows: English F/C-/C/F; World Civilization and Culture F/F/F/F; 20<sup>th</sup> Century American History D/F/F/F; Algebra II B/D/D/D; Chemistry F/C/A/C-; Spanish B/D/D-/D. [NT 97-99; J-15]
21. The Parent believes<sup>10</sup> that Student began senior year with good motivation and self-confidence. At the IEP meeting on October 18, 2012 in Student’s senior year Parent

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<sup>9</sup> The Parent acknowledged having some difficulty keeping the years straight in her mind. [NT 98]

<sup>10</sup> See above.

expressed that she wanted Student to do well and graduate on time. She also expressed that she was pleased with Student's progress and felt that Student had much support at school. She also emphasized that she wanted Student to continue to take tests in the guided support room. [NT 111-112; J-17]

22. The IEP team in October 2012 noted Student's ADHD diagnosis and frequent number of absences<sup>11</sup> that had been negatively impacting functional performance in 11<sup>th</sup> grade, although the District gave Student extensions of due dates for assignments or tests and provided modified [shortened] assignments. However the team noted that the current review of attendance, academic progress, and discipline records showed moderate improvement. [NT 96; J-17]
23. Student's assignment completion and motivation again began to lag in senior year. However, when Student's IEP team with Student present made it clear that graduation was not guaranteed Student increased assignment completion with structuring by the case manager and intensive work with the special education teacher in concert with the regular education teachers. [NT 74-75, 113]
24. Student's grades in senior year reflect enhanced motivation between the 2<sup>nd</sup> and the 3<sup>rd</sup> terms: From 73 to 85 in English, from 67 to 78 on World Literature, from 79 to 86 in Politics and Economics, and maintenance of 94 for both terms in Physics. The sole grade that slipped was 20<sup>th</sup> Century American History where Student went from 75 to 70. [J-15]
25. On April 12, 2013 after the receipt of the IEE the IEP team met and amended the IEP slightly, with the thrust being planning for Student to achieve the necessary work to be able to graduate. [NT 144-146]
26. The IEE completed in October/November 2012 by a Developmental Neuropsychologist<sup>12</sup> who is both a Pennsylvania certified school psychologist and a Pennsylvania licensed psychologist indicated that the Parent was concerned that the following factors were reportedly "adversely impacting [Student's] functioning in the classroom: (a) heightened distractibility, (b) a low tolerance for frustration, and (c) a general tendency to avoid tasks that require sustained concentration and effort over a period of time." [J-20]
27. The independent evaluator noted a family history of ADHD on both maternal and paternal sides, as well as a family history of anxiety and more serious mental health issues. [J-20]
28. In preschool Student was "highly impulsive" and "hands on" with peers. Student was evaluated and received Early Intervention services to address attention, listening/following directions, and turn-taking. The services ended upon transition to

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<sup>11</sup> In junior year Student had 17 absences and 11 tardies. In senior year Student had 4.5 absences and 7 tardies. [NT 85-86; J-15]

<sup>12</sup> The name of the evaluator on the IEE report is not the evaluator cited in the Parent's Written Closing; this appears to be an oversight and not an indication that more than one IEE was done.

school-age programming. In May 2000 while in Kindergarten Student was diagnosed with ADHD by a Pediatric Psychologist at Alfred A. DuPont Hospital for Children in Wilmington, DE. [NT 97; J-20]

29. After a trial of alternatives to medication [hypnosis, craniosacral therapy, art therapy] the Parent agreed to a trial of medication to address Student's ADHD. An initial trial was stopped because of side-effects, however the independent evaluator noted that "[Student] has been on medication for the majority of [Student's] school-age years. At present however, [Student] is not taking any prescription medications on a daily basis." [J-20]
30. Although the Parent acknowledged to the independent evaluator that at the time of the evaluation Student "has seemed somewhat isolated from [Student's] peers" Student generally got along well with others and had one close friend with whom Student spent time once or twice a week. [J-20]
31. There were no concerns about drug or alcohol use reported to the independent evaluator. [J-20]
32. A thorough testing battery administered by the independent evaluator found Student to have average intelligence, average language skills, average visual/perceptual functioning, low average visual/motor skills [evaluator noted the score was likely compromised by Student's approach to the testing task rather than by an actual deficit in this area], average to above average memory and learning skills [with fluctuations evaluator noted likely related to variability in attention and concentration], low average working memory, above average to well above average cognitive flexibility and problem solving, high average reading, low average to average math [the evaluator noted these scores were likely an under-representation of Student's achievement due to "an unusually low tolerance for frustration" and quickly skipping "items that posed even the slightest challenge"], and average to high average written language. [J-20]
33. In addition to the tests/subtests directly administered to Student that tapped into executive functioning skills, Student's executive functioning was also explicitly assessed by a standardized inventory completed by the Parent and a teacher. There was a pattern of higher levels of dysfunction noted at home than in school, with the Parent's responses yielding "clinically significant" scores on seven of eight categories and the teacher's responses yielding only two clinically significant scores and two borderline [at-risk] scores. The discrepancy seemed to be based not as much on the observation of the types of behaviors but on the frequencies reported by the respondents. [J-20]
34. Social / emotional functioning was assessed by inventories completed by the Student, the Parent and a teacher. Student's self-report responses yielded no areas of clinical significance or borderline significance. The teacher's responses yielded average scores for all subscales. The Parent's responses yielded clinically significant scores on Hyperactivity, Anxiety, Somatization, Attention Problems and Withdrawal as well as borderline scores on Aggression and Atypicality. [J-20]

35. Adaptive functioning difficulties were noted in the categories of Leadership and Study Skills by the teacher and in Adaptability by the Parent. Individual responses contributing to the scores are as follows: Teacher – not being chosen as a leader, not working well under pressure, not reading assigned chapters, showing poor organizational skills and lacking appropriate study habits. Parent – not volunteering to do household chores, having trouble organizing chores or tasks, failing to adjust easily to changes in plans or recovering after a setback, complaining when asked to do things differently, not joining clubs or social groups, having trouble working well under pressure, not encouraging others to do their best. [J-20]
36. The independent evaluator noted that “results of the IEE do not signify the need for major changes in the IEP, **it is recommended that the program be expanded to include targeted instruction in areas of skills deficit (e.g. organization, time management) in order to make [Student] less dependent upon the compensatory supports offered by teachers and other adults.**” [bolded and underlined emphasis in the original] [J-20]
37. The independent evaluator made various suggestions under the topics of 1) frequent instruction in study skills, with explicit teaching Student to break down long term projects, employ pre-writing strategies, self-edit, use metacognitive strategies [highlighting, stopping and summarizing each paragraph read, developing an outline], make connections between new and old information, review new material; 2) providing Student with class notes or written outlines of lectures; 3) providing extended time for assignments and tests, preferential seating, direct instruction in quiet periods, reduction of extraneous distractions, adoption of a discrete prompt for refocusing, shortening of verbal directions, allowing use of a calculator. [J-20]
38. The independent evaluator noted that the “most pressing challenge facing the IEP team” is “finding a way to reconcile the “discrepancy between what [Student] can do and what [Student] does do.” [emphasis in the original] [J-20]
39. The October 18, 2011 IEP that was in place for junior year contained the following Modifications/Specially Designed Instructions: extended time for tests; use of a calculator for all classes; chunking of material; positive reinforcement for being on task and participating; preferential seating when deemed necessary; structured guide/graphic organizer for written assignments; opportunity to take tests in smaller/.quieter environment; reminders to stay focused in class; in English class, opportunity to turn in a written draft of assignment prior to due date for teacher to edit and make corrections; and allowing the recording of assignments on cell phone at the end of class. [J-10]
40. The October 18, 2011 IEP had the following goals: 1) Increase Student’s current written expression grade level of 9.5 by a minimum of one year by the IEP anniversary date; 2) Increase Student’s rate of assignment completion from the current level of 50% to 90% by the IEP anniversary date. [J-10]
41. The IEP that was in place at the time the IEE was conducted was the October 18, 2012 IEP. In that IEP the Modifications/Specially Designed Instructions were the same as

those in the October 18, 2011 IEP with the addition of: ability to complete all writing assignments, essays, reports, etc. in school whether written or on computer. [J-17]

42. The October 18, 2012 IEP had the following goals: 1) Increase Student's current grade level in written expression from the current 11.4 a minimum of one grade level by the IEP anniversary date; 2) Increase Student's rate of assignment completion from the current level of 60% to 90% by the IEP anniversary date; 3) Increase time on task in the classroom from the current 60-70% to 90-100%. [J-17]
43. The baselines of the 2012 IEP goals demonstrate that Student exceeded the written expression goal, moving ahead almost two grade levels in one year, and that Student made only marginal progress on the assignment completion goal, increasing 10 percentage points rather than 40 percentage points. [J-10, J-17]
44. From the beginning of senior year, prior to receiving the IEE report the District had already scheduled Student three to four times a week for a "guided support" class where Student could work on making up work. The guided support class, which was conducted by a special education teacher and ranged from three to ten students at any one time, was designed to assist students with IEPs to organize and work on their assignments. [NT 58-59, 151]
45. In the guided support class a special education teacher provided individualized assistance to students in their areas of need, whether these needs be in writing or another academic subject or organization and time management. [NT 150]
46. The special education teacher in the guided support class worked with Student specifically on writing, English vocabulary, history graphic note-taking organizers, history essays and research for assignments, organization, and getting work completed. [NT 150-151, 153-154]
47. If they were working on a writing assignment the special education teacher spent almost the entire period with Student since the other students were generally capable of working on their own. [NT 156]
48. The special education teacher would work with Student on an assignment, and then work out with Student what Student was going to do that night at home. Sometimes Student did the work at home and sometimes not; sometimes no reason was given and at other times Student would say Student "didn't have time" to do the work. [NT 152-153]
49. Sometimes Student had difficulty getting started but once started could continue. [NT 154]
50. The special education teacher worked closely with the teachers and the case manager. The guided support teacher attended every IEP meeting held for Student. [NT 152, 157-158]
51. After receiving the IEE report the guided support teacher worked more intensively with Student on organization and outlining and a system for written assignments. Because



Student's case manager was in the same office with the guided support teacher, she and the teacher had daily communication about Student. [NT 58]

52. In senior year when it became apparent that Student was not going to do any assignments at home the IEP team decided to keep all Student's assignments in school [with copies going home if the Parent wanted them] and having Student work on the assignments one hour a day in guided study class. Student was also encouraged to seek individual subject matter teachers' help in a structured system called Help Class held at various times/days before and after school. [NT 88-89]
53. The independent evaluator utilized standardized nationally normed tests to evaluate Student's cognitive ability and achievement. On the IEE, Student's Full Scale IQ as assessed by the Wechsler Adult Intelligence Scale – Fourth Edition [WAIS-IV] was 96, in the Average Range. Student's Wechsler Individual Achievement Test – Third Edition [WIAT-III] scores were as follows: Total Reading 104/61<sup>st</sup> percentile, Basic Reading 112/79<sup>th</sup> percentile, Reading Comprehension and Fluency 96/39<sup>th</sup> percentile, Mathematics 94/34<sup>th</sup> percentile, Math Fluency 85/16<sup>th</sup> percentile, Written Expression 103/58<sup>th</sup> percentile. With the exception of Math Fluency which was Low Average, all Student's academic achievement scores were in the Average Range commensurate with and mostly above expectations for Student's cognitive potential. <sup>13</sup>[J-20]

### Legal Basis

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 (3<sup>rd</sup> Cir. 2012). In this case the Parent asked for a hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

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*

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<sup>13</sup> The Hearing Officer, a licensed psychologist with school certification, notes the following for the reader's reference: The standard scores of the Wechsler scales are normed along the "bell-shaped curve" with relevant ranges as follows: 80-89 Low Average Range, 90-109 Average Range, 110-119 High Average Range. The 50<sup>th</sup> percentile is exactly average, indicating that half the comparison cohort scored below and half scored above the individual.

*Unit*, 2003 LEXIS 21639 at \*28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). Generally the District witnesses and the tutor presented no significant credibility issues. Although the Parent presented as a most cooperative and cordial witness, there were certain elements in her narrative that led me to give reduced weight to her testimony. First of course was the Parent's clear desire for Student to graduate in June 2013 and the consequent lack of contemporaneous disagreement with either of the IEPs in question, particularly the senior year IEP, and the lack of a contemporaneous challenge to Student's graduation. Second, was the Parent's stated belief that Student was falling behind in assignments because of "struggles with written expression" [NT 140], a factor that Student also cited as a reason for failing World Geography, when in fact Student scored in the 62<sup>nd</sup> percentile in writing skills on the PSATs taken in sophomore year, and reached the 58<sup>th</sup> percentile in written expression in the IEE, the highest of the achieved percentiles on the WIAT III. The Parent's testimony in this regard is weighed against the independent evaluator's citing the IEP team's greatest challenge as finding a way to reconcile the discrepancy between what Student can do and what Student does do. The third notable aspect of the Parent's testimony was that despite her describing Student as anxious and angry and depressed at home which she attributed to school work issues [NT 128], she testified that Student was not seeing a mental health professional. Given the Parent's proactive and responsive seeking of services for Student as early as preschool, this choice not to do so leads to whether Student's presentation at home was as significant as the Parent's testimony would suggest. On the IEE, Student's self-report was unremarkable with respect to emotional functioning and a teacher endorsed indicators at a much lower level than did the Parent.

Special Education: Special education is defined as specially designed instruction...to meet the unique needs of a child with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible child ...the content, methodology, or delivery of instruction to meet the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. §300.26.

Once disabled children are identified as being eligible for special education services the IDEA requires the State to provide them with a "free appropriate public education". 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). School districts provide FAPE by designing and implementing a program of individualized instruction set forth in an Individualized Education Plan ("IEP"). 20 U.S.C. § 1414(d). The IEP must be "reasonably calculated" to enable the child to receive "meaningful educational benefit", a principle established by over thirty years of case law. 381 F.3d 194, 198 (3d Cir. 2004)(quoting 853 F.2d 171, 182-85 (3d Cir.1988)); *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); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3rd Cir. 2009).

"Meaningful educational benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). An eligible student is denied FAPE if the IEP is not likely to produce progress, or

if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3d Cir. 1996).

Under the Supreme Court’s interpretation of the IDEA in *Rowley*, and in interpretations rendered in other relevant circuit court cases, a school district is not required to provide the best possible program to a student, or to maximize the student’s potential. Rather, an IEP must provide a “basic floor of opportunity”. There is no requirement to provide the “optimal level of services.” *Mary Courtney T.; Carlisle Area School District v. Scott P.*, 62 F.3d 520, 532 (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544 (1996). What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving Parent.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). The Eastern District Court of Pennsylvania recently noted, “Districts need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by the IDEA represents only a basic floor of opportunity.” *S. v. Wissahickon Sch. Dist.*, 2008 WL 2876567, at \*7 (E.D.Pa., July 24, 2008), citing *Carlisle*. The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. An IEP’s appropriateness must be determined as of the time it was made, and the reasonableness of the school district’s offered program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010). The test of an offer of FAPE is whether or not it is reasonably calculated to provide meaningful opportunity for meaningful educational benefit – not whether it is ultimately successful. *Allyson B. v. Montgomery County Int. Unit*, 2010 WL 1255925 at \*13 (E.D. Pa. 2010). “[T]he measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.” *Fuhrmann ex. rel. Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (“Neither the statute nor reason countenance ‘Monday morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.”); *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995); *L.R. v. Manheim Twp. Sch. Dist.*, 2008 U.S. Dist. LEXIS 23966 (E.D. PA 2008).

The federal regulations implementing the IDEA require that school districts provide FAPE to children with qualifying disabilities until the age of twenty-one. 34 C.F.R. § 300.121. This obligation, however, does not apply where the disabled student has “graduated from high school with a regular high school diploma.” 34 C.F.R. § 300.122. Graduation from high school with a regular high school diploma constitutes a change of placement, requiring written prior notice in accordance with §300.503. In deciding whether to graduate a student an LEA must consider the student’s progress in his/her IEP goals in making the determination. 34 C.F.R. § 300.102(a)(3)(i). To graduate a student with a disability under the IDEA, the student must meet the general graduation requirements and make progress on or complete the IEP goals and objectives. *Chuhran v. Walled Lake Consol. Sch.*, 839 F.Supp. 465, 474 (E.D.Mich.1993), *aff’d*, 51 F.3d 271 (6th Cir.1995). Parent have the opportunity to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child [subject to time limitations not applicable in this matter] 20 USC §1415 (b)(6)(A).

## Discussion and Conclusions

Student evidenced behavior and attentional difficulties as early as preschool and received Early Intervention services. Upon entering Kindergarten in the District Student received a Section 504 Service Plan and at the beginning of 1<sup>st</sup> grade was found eligible for special education services based upon a diagnosis of ADHD conferred in May of the Kindergarten year. Student received medication to address ADHD for most of the years prior to the relevant period, but not for most of the relevant period.

Emerging difficulties with writing in elementary school/middle school occasioned a classification of specific learning disability [SLD] in written expression. Although by 10<sup>th</sup> grade Student still demonstrated some delays in written expression which continued to be addressed in the IEP, Student had made significant progress in that area such that the SLD classification was no longer necessary. Student's ADHD, which by the Student's and the Parent's choice was unmedicated during most of the relevant period, continued to contribute to interferences with Student's focus and attention affecting completion of required course work, and problems with assignment completion contributed to failing classes as did frequent absences totaling close to ten percent of junior year [17 days out of 180 school days].

Student told the IEP team that Student knew what had to be done but was not doing it. During the relevant period Student started talking about wanting to drop out of school. Concerned that Student might not graduate given poor grades, the Parent retained legal counsel to help ascertain whether Student's program was appropriate. The Parent's concerns about Student as a child in the late teen years are certainly understandable, specifically in light of Student's family mental health history and early behavioral history<sup>14</sup>. The Parent through counsel requested an independent educational evaluation at public expense and the District agreed. The chosen independent evaluator, a Developmental Neuropsychologist who was both licensed and school certified in the Commonwealth of Pennsylvania, conducted a thorough and comprehensive assessment. I accept her report as an expert report and have given it considerable weight in my deliberations.

The independent evaluator found Student to have average cognitive capacity, and testing with nationally normed instruments resulted in Student's receiving average to above average scores in reading, mathematics and written expression with the exception of one low average score in a mathematics subtest. The independent evaluator reviewed the October 2011 and the October 2012 IEPs, and concluded that no major changes were needed, but made various suggestions to enhance Student's study skills; however, most of these strategies were already incorporated into the two relevant IEPs. Also, possibly unbeknownst to the independent evaluator, Student had been receiving a guided support class that provided assistance with organization, study skills and assignment completion; once the IEE report was received in late March or early April the special education teacher intensified her specific instruction on focus and organization with Student.

The family was represented by legal counsel prior to, during, and after the IEE process, and during the time the IEP team met to consider the IEE. Further, the family continued to be

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<sup>14</sup> Information about these matters was included in the IEE. The record is unclear about whether or not the District was previously aware of the extent of Student's early behavior issues and/or Student's familial mental health history.

represented by counsel when Student's graduation was being contemplated and when Student graduated. The Parent herself and/or through counsel did not object to the IEPs created before or after the IEE, nor was there any objection to Student's graduation. If this decision were resting on equities, the equities would weigh in the District's favor. However, weighing the equities is not necessary in this case because applying the law to the facts I cannot find substantive or procedural fault with the District's program for Student such that compensatory education should be awarded.

The Parent is to be commended for her vigilance throughout Student's academic career, starting with preschool, and her frequent communication with the school on Student's behalf is recognized, as is her twice obtaining summer tutoring to assist Student to pass credit completion courses. Given the investment the Parent had in Student's doing well, and knowing that Student was not unintelligent, it must have been disappointing to see poor or marginal grades and truly concerning to realize in senior year that Student could be in danger of not graduating, particularly because the family was moving to a distant state following Student's anticipated graduation<sup>15</sup>. However, although discontinuing Student's medication for ADHD is a personal family decision, I cannot ignore the fact that for approximately three-fourths of the relevant period Student's neurological condition was not being addressed through medication. Likewise I cannot ignore the fact that Student missed almost 10% of 11<sup>th</sup> grade through absences, and that Student very often did not do the work at home that was needed to complete assignments on time. Finally, if the Parent's description of Student's emotional manifestations at home are accurate, whatever their etiology, I cannot overlook the fact that no qualified professional mental health help was afforded to Student.

Reviewing the testimony and the documents, I must conclude that the District offered Student an appropriate program that was reasonably calculated to allow Student to make meaningful educational progress. The testimony of the tutor was telling: she needed to continually provide external structure to help this rising Senior exercise the executive functioning skills that the IEE testing clearly showed Student already possessed, and had to provide a constant counterweight to Student's low frustration tolerance and habit of escaping demands. This level of support – which would have required providing Student with a one-to-one personal tutor at home throughout the school year to ensure assignment completion – would have been well beyond what the District should have done and would as well have made Student extraordinarily dependent on external structure.

Student's grades during the relevant period reflect lack of assignment completion in a timely manner and as such Student did not build an impressive GPA for a college application. However, the fact remains that on nationally normed measures of the "Three R's" – reading, written expression and mathematics - Student demonstrated academic knowledge/achievement consistent with and in some cases greater than cognitive potential. Student's success in significantly raising the written expression score to a point exceeding the related IEP goal is particularly commendable. Given Student's standardized scores as obtained through the independent evaluation, it appears that Student was absorbing and remembering essential information needed for post-secondary life even though Student resisted completing assignments.

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<sup>15</sup> The family was house-hunting at the end of May or beginning of June of Student's senior year. [NT 138]

### Conclusion

Looking at the facts presented through documents and testimony, particularly in light of the final outcome – graduation from high school and achieving average to above average mastery of the subjects essential for adult living and eventual independence – I find that the Parent has not met her burden of proof in this matter and is not entitled to the relief requested. I find therefore in favor of the District.

### Order

It is hereby ordered that:

1. The School District offered Student a free appropriate public education by appropriately addressing Student's needs such that Student made meaningful educational progress.
2. The Parent' claims for compensatory education are denied.
3. The District is not required to take any further action.

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

January 21, 2014

Date

*Linda M. Valentini, Psy.D., CHO*

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