

*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: R.T.

Date of Birth: [redacted]

Dates of Hearing:

June 18, 2014

August 8, 2014

August 11, 2014

August 28, 2014

OPEN HEARING

ODR File No. 14915-1314AS

Parties to the Hearing:

Parent[s]

Hatboro-Horsham School District  
229 Meetinghouse Road  
Horsham, PA 19044

Date Record Closed:  
Date of Decision:

Hearing Officer:

Representative:

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September 19, 2014  
October 3, 2014

Cathy A. Skidmore, M.Ed., J.D.

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student)<sup>1</sup> is a preteen-aged student in the Hatboro-Horsham School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> Student's Parents filed a due process complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,<sup>3</sup> as well as the federal and state regulations implementing those statutes, and sought various forms of relief.

The case proceeded to a due process hearing convening over four sessions, at which the parties presented evidence in support of their respective positions. The Parents sought to establish that the District failed to provide Student with FAPE throughout the time period in question, and requested a number of remedies including compensatory education, specific Independent Educational Evaluations (IEE) at public expense, and explicit directives for Student's programming moving forward: placement in an approved private school and/or specific directives to the Individualized Education Program (IEP) team. The District maintained that its special education program, as offered and implemented, was appropriate for Student and that no remedy was warranted. A request by the Parents to have their independent evaluator observe Student during the course of the proceedings at public expense was denied, but they were not precluded from seeking reimbursement for those observations as part of their IEE claim.

For the reasons set forth below, I find in favor of the Parents on a portion of their claims and will order appropriate relief. I decline to order a prospective private placement.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

<sup>2</sup> 20 U.S.C. §§ 1400-1482.

<sup>3</sup> 29 U.S.C. § 794.

## **ISSUES**

1. Whether the Student has been provided with an appropriate special education program from August 29, 2011 through the present;
2. If Student's educational program has not been appropriate, is Student entitled to compensatory education and, if so, in what form and amount;
3. Whether Student's educational program should include the removal of the full-time Personal Care Assistant (PCA);
4. Whether the District should be required to provide training for the Parents by a Board Certified Behavior Analyst (BCBA) to help them work with Student to generalize skills learned into the home and community;
5. Whether the Parents are entitled to an IEE for speech/language and psychiatric evaluations, and for reimbursement for observations by their private psychologist during the summer of 2014; and
6. Whether Student should be placed prospectively in a private school or, alternatively, whether Student's IEP team should be directed to reconvene and determine an appropriate placement.

## **FINDINGS OF FACT**

1. Student is a pre-teenaged Student who resides in the District. Student attends middle school in the District. (Stipulation, Notes of Testimony (N.T.) 77-78)<sup>4</sup>
2. Student is eligible for special education on the basis of an Autism Spectrum Disorder and a Speech/Language Impairment. Student performs well academically and is generally successful in the regular education environment with supports. The Parents are concerned with Student's social and emotional development which has become a more significant difficulty as Student gets older, as well as with Student's behavior in certain situations; low self-esteem and self-confidence; lack of independence with some activities of daily living; and difficulties with attention, completing assigned tasks, and self-advocacy. (N.T. 92-93; P-5; S-21)

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<sup>4</sup> A number of exhibits were made part of the record in this case, and they will be referenced as follows: Parent Exhibits as "P-" followed by the exhibit number; and School District Exhibits as "S-" followed by the exhibit number. The single Hearing Officer Exhibit will be referenced as HO-1. All of the exhibits were admitted at the hearing except P-2 and P-7, which were taken under advisement. (N.T. 1244-50) After review of the record, the District's objections to P-2 and P-7 are sustained, as those documents are not the final versions of the IEPs; the final versions are exhibits and were considered. Citations in this decision will not necessarily be made to every page of the transcript or to every exhibit in this lengthy record that supports the factual findings; and, it should be noted that many of the parties' exhibits are duplicative.

## General Background

3. Student sees a psychiatrist one time per month and takes medication prescribed by that professional. Student has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) and Anxiety Disorder, with the latter strongly related to social situations, in addition to Autism Spectrum Disorder. (N.T. 145, 154; P-1 pp. 2 and 7, P-4 pp. 1-2, P-5 pp. 2-3; P-21)
4. Student and the family have wraparound services three hours per week in the form of therapy for all members of the family. The mobile therapist works with Student on coping skills and sometimes homework. Student's wraparound service provider and the Parents work with Student on differentiating between appropriate and inappropriate conversation. Beginning in second grade through April 2013, Student had a Behavioral Services Consultant. Student initially had three hours of these services per week, which decreased over time until they ended. (N.T. 136-37, 149-52, 859-60, 887-89, 932-33; P-23)
5. Student participates in a social skills group outside of school one time each week. (N.T. 152-53, 934)
6. Student entered the District in first grade, and has always had a PCA assigned to Student. During third and fourth grades (2010-11 and 2011-12), the PCA was successfully faded such that in third grade, the PCA was no longer directly next to Student, and in fourth grade, the PCA provided support more on an as-needed basis. Student's Parents believe that Student is dependent on the PCA much like a parent-figure, just as Student relies on one of the Parents outside of school. (N.T. 102-03, 488-89; P-1 p. 3)
7. Student received occupational therapy until 2008 when that service was discontinued. The Parents did not agree with that decision, and believe that Student continues to demonstrate fine motor skill weaknesses such as when fastening clothing and tying shoes; they also are concerned with Student's large handwriting. (N.T. 93-95, 96-97, 923-24)
8. Student has difficulty with social language skills and relating well to adults. When Student sees peers or adults from school outside of the school setting, Student either tries to hide or makes noises such as growling. Student also exhibits these behaviors at other times. (N.T. 91-92, 98-99, 102, 123-27, 914-15; S-26 pp. 116-17)
9. At home and in the community, Student at times screams when frustrated or when asked to perform a task that Student does not wish to do. Student also sometimes screams at school. (N.T. 126, 137, 141-42, 718)
10. Student at times laughs or smiles to Student's self, and others are not able to determine what it is that Student is laughing or smiling about. This behavior has occurred in and out of school and has increased over the past two years. (N.T. 170, 235-37, 238-40, 707-08; P-22, P-25 p. 6)

11. Student's Parents do not believe that Student has any friends, and have observed that Student is unable to relate to peers. (N.T. 92-93, 101, 104, 105-06, 122-23, 125, 912-13, 927; S-25 pp. 116-17)
12. Student gets anxious on Sunday evenings about returning to school on Monday mornings; and exhibits difficulty when returning to school after an absence or break, needing a day or two to return to the normal school routine. Student also has difficulty focusing on homework. (N.T. 101-02, 464-65, 729, 928, 925-26, 932-33)

#### 2011-12 School Year

13. Before the start of the 2011-12 school year, the District conducted an evaluation of Student and issued a Reevaluation Report (RR) that included a review of records including the most recent IEP from 2010. The school psychologist conducted an observation, and teachers provided information on Student's performance. Notably, a teacher reported that Student "rarely participates" in class discussions without a teacher calling on Student; and that Student "will not engage in conversation with [Student's] peers unless prompted by the teacher or PCA." (P-26 p. 10; S-1 p. 21) Student was reportedly able to complete most tasks and assignments with support, and sometimes needed prompting for attention. (P-26; S-1)
14. The District also conducted some assessments for the RR. Cognitively, Student achieved a Full Scale IQ of 86 (below average range) on the WISC-IV, but, due to significant discrepancy in Student's composite scores, the result was noted to be treated with caution. Student's Full IQ score on the Comprehensive Test of Nonverbal Intelligence – Second Edition was 98, in the average range. A separate assessment of Social Perception revealed weaknesses in Affect Recognition and Theory of Mind. (P-26; S-1)
15. In academic achievement, Student's reading abilities were measured using select subtests of the Wechsler Individual Achievement Test – Third Edition (WIAT-III) as well as a Qualitative Reading Inventory (QRI). Student achieved solidly average scores on all of the WIAT-III reading subtests, and the QRI revealed that Student was instructional at grade level on Word Recognition skills and Reading Comprehension with lookbacks. Student scored in the average range on the Spelling subtest of the WIAT-III; in Mathematics, Student achieved a below average score on Math Reasoning and an average score on Numerical Operations. (P-26; S-1)
16. A speech/language evaluation was also part of the RR. Student had mastered the goals in the previous IEP for articulation and making basic inferences; in the social skills group, Student was on identifying "expected behaviors" as well as conversational skills and turn-taking. Formal measures for this part of the evaluation were the Comprehensive Assessment of Spoken Language (CASL) and the Goldman-Fristoe Test of Articulation – Second Edition (GFTA-2). On the GFTA-2, Student exhibited no weaknesses. On the CASL, Student performed well in many areas, but deficits were noted with synonyms, paragraph comprehension, nonliteral language, inference, and pragmatic judgment (with the latter the lowest standard score at 70). The speech/language pathologist recommended that Student be provided with services to address articulation and

expressive language focused on critical thinking skills and pragmatic language. (P-26; S-1)

17. Behaviorally, the Behavior Assessment System for Children – Second Edition (BASC-2) was administered through rating scales provided to one of the Parents and a teacher. Both the Parents and the teacher endorsed behaviors in the clinically significant range on the Atypicality, Withdrawal, and Social Skills scales. Both noted behaviors in the At-Risk range for Attention Problems, Adaptability, Leadership, and Functional Communication, with the Parents also rating Student in the at-risk range in Activities of Daily Living. In addition, both the teacher and one of the Parents completed the Gilliam Asperger’s Disorder Scale, and the responses for both were in the High/Probable range for Asperger’s Disorder. Of significance on this measure was that Student had difficulties interacting with peers and in the areas of pragmatic language and adaptability. (P-26; S-1)
18. A Functional Behavioral Assessment (FBA) was also conducted for the RR with four identified behaviors of concern: on task responding, nonperformance of tasks, disruption, and isolation. Each was believed to serve the functions of attention and escape. A Positive Behavior Support Plan (PBSP) was recommended. (P-26, P-27; S-1)
19. This RR identified Student as eligible for special education on the bases of Autism and a Speech/Language Impairment. A number of strengths, needs, and recommendations were contained in the RR. Specifically, Student demonstrated needs for improving listening and reading comprehension skills, written expression, articulation, critical thinking skills, social skills, and completion of non-preferred tasks. Recommendations included direct instruction in pro-social skills; social stories and cues as rehearsal and preparation for changes in routines and to address anxiety; instruction and practice in and prompting for social and pragmatic language skills; accommodations and adaptations for tests and assignments; sensory breaks; and strategies for teaching cursive writing. (P-26; S-1)
20. Student was in full time regular education with itinerant learning support and speech/language as a related service (two 30-minute sessions per week) as well as small group social skills with the school psychologist. Fourth grade students, including Student, had two teachers; one for language arts, and one for mathematics, science, and social studies. That year, Student had a full-time PCA whose role was to keep progress monitoring data and to provide prompts as needed. The PCA circulated around the classroom rather than sitting next to Student. (N.T. 1182-83, 1179-80, 1182-83; S-2)
21. Student’s IEP for the start of the 2011-12 school year included goals for listening comprehension; reading comprehension; written expression; mathematics computation and problem solving; completion of non-preferred assignments; articulation; making basic inferences; and identifying expected and unexpected behaviors in role-play situations.<sup>5</sup> Program modifications and items of specially designed instruction followed

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<sup>5</sup> The progress reports indicate that the expected behaviors addressed by this goal included conversational skills such as using a friendly voice and listening to the speaker. (S-23 p. 26)

exactly the recommendations in the most recent RR. A PBSP addressed the behaviors of concern from the FBA and provided antecedent strategies, replacement behaviors, and consequences for performing the replacement behavior or a behavior of concern. (N.T. 1184-85; P-27; S-2)

22. Student was observed to engage in interactions with Student's peers at lunch in fourth grade. (N.T. 1203-04, 1211-12)
23. A new IEP was developed for Student in February 2012 to be implemented in March. Student's reading abilities were assessed around that time using a QRI, on which Student demonstrated a fifth grade instructional level for Word Recognition and Reading Comprehension (with lookbacks). Student had mastered the previous reading comprehension and listening comprehension goals, so those skills would be maintained and reinforced. Overall, Student was performing well academically in all classes, with prompts as needed from the teacher or PCA and accommodations, with the exception of mathematics where performance was inconsistent. (P-15; S-4)
24. Parent concerns at the February 2012 IEP meeting were Student's reading comprehension, mathematics, and generalization of social skills to the home and community, as well as Extended School Year (ESY). The Parents also noted a concern with Student's sensory needs, although the IEP team recommended discontinuation of the consultative occupational therapy Student had been receiving. (P-15; S-4)
25. The March 2012 IEP noted needs in written expression, mathematics computation and problem solving, expected behaviors when interacting with others at school, social skills, articulation, and expressive language. Goals addressed written expression; mathematics computation and mathematics problem solving; conversations with peers in the classroom (in small groups) and in social skills group; applying learned behaviors (using a friendly voice and not screaming out loud) when interacting with others in the classroom and in social skills group; articulation; and expressive language. Program modifications and specially designed instruction included direct instruction in social skills; a visual schedule; preferential seating; use of social stories for anxiety and frustration; prompting for and instruction on social and pragmatic skills; test adaptations; notice of personnel or schedule changes; practice and reinforcement of new material; and opportunities for sensory breaks. Speech/language therapy (two 30-minute sessions per week) and a PCA were related services; and, Student was eligible for ESY. Student would be in regular education with itinerant learning and speech/language support. (P-15; S-4)
26. In April 2012, Student's IEP team met and discussed the upcoming ESY program, and the Parents requested a private school placement. The team revised Student's IEP to add guidance counseling as a related service to help Student manage anxiety and frustration; and, added a social skills component to the ESY program. (N.T. 160; P-14, P-16; S-5, S-6)
27. Student was introduced to a five-point scale in approximately the middle of fourth grade. That color-coded scale allowed Student to indicate Student's level of frustration. (N.T. 430-31, 528, 536; P-1 pp. 14, 16)

## Progress

28. Progress monitoring on Student's IEP goals for the 2011-12 school year through March 2012 reflected that Student was making progress toward goals in listening comprehension; reading comprehension; some aspects of the written expression goal; mathematics computation and problem solving; articulation; and making inferences. Student's performance on completing non-preferred assignments and identifying expected and unexpected behaviors was inconsistent. (S-23 pp. 7-28)
29. Student met grade level expectations in all subjects throughout the 2011-12 school year, with few trimester marks below expectations, with the following exceptions: Writing (content) – approaching grade level; Math (basic computations, data analysis & probability, and classwork effort & quality) – approaching grade level. The District also provided marks for Characteristics of a Successful Learner, where Student met grade level expectations in many categories, with the following exceptions on which Student was below grade level: working cooperatively in groups; demonstrating positive attitude; demonstrating self-control; and demonstrating respect for property, self, and others. (S-23 p. 1)

## 2012-13 School Year

30. The IEP team met again in August 2012 and planned for Student to visit the school and meet teachers. The Parents expressed a number of concerns with Student's reading, mathematics, and social skills, as well as Student's PBSP. New program modifications and specially designed instruction were added to the IEP, including parent training for facilitating and generalizing social skills, and the services of a behavior consultant to assist in that generalization. The team also agreed to begin planning for Student's transition to middle school. (P-16; S-7)
31. Students in fifth grade have two teachers as in the prior grade; one for language arts, and one for mathematics, science, and social studies. (N.T. 1180, 1185)
32. In late September 2012, the Parents sent a letter to the District noting their continuing concerns that Student's behavioral needs were not being addressed and that Student was regressing in that area. They requested an appropriate program and placement for Student. (N.T. 122-23, 1212-13; P-17 p. 4; S-7 p. 19)
33. The District convened an IEP meeting to address those concerns of the Parents. The team at that time discussed the Parents' interest in a private school for Student. After the meeting, the District issued a NOREP refusing to change the placement of Student to a private school. The Parents did not approve the NOREP. (N.T. 1212-13; P-17; S-8)
34. The Parents obtained an IEE that was completed in October 2012. This evaluator observed Student at school on two occasions, during which Student's interaction with peers was extremely limited, in both unstructured settings (lunch and recess) and academic classes, despite prompting by the PCA, direction of teachers, and encouragement by classmates. (P-20; S-11)



35. Student's cognitive ability was assessed using the WISC-IV, on which Student's Full Scale IQ was 100 (average range) with a relative strength on the Perceptual Reasoning composite and a relative weakness on the Processing Speed composite. Achievement testing (WIAT-III and the Kaufman Test of Educational Achievement – Second Edition (KTEA-II)) revealed that Student achieved generally average range scores with the exceptions of oral reading rate and writing fluency. Assessment of Student's language skills (Developmental Neuropsychological Assessment – Second Edition and WIAT-III) revealed average or above average skills, with the exception of programmatic and social language (Social Language Development Test), an area of significant weakness. (P-20; S-11)
36. Social and emotionally, Student, the Parents, and a teacher completed the BASC-2 rating scales, the Behavior Rating Inventory of Executive Function (BRIEF), and the Social Responsiveness Scale (SRS). On the BASC-2, Student's Self Report reflected clinically significant scores for Attitude to School and Attitude to Teachers (School Problems composite) and Depression (Internalizing Problems composite); the scales of one or both Parents were clinically significant for Adaptability, Social Skills, and Functional Communication (Adaptive Skills composite), Hyperactivity (Externalizing Problems composite), and Atypicality and Withdrawal (Behavioral Symptoms Index). The only clinically significant score by any teacher was for Withdrawal. All of the raters provided scores in the at risk range on several if not all of the composite scales. All raters also endorsed clinically significant scores across the BRIEF and SRS, reporting "significant social deficits" (P-20 p. 26, S-11 p. 26) in addition to concerns with attention and executive functioning. (P-20; S-11)
37. This private evaluator made a number of recommendations in the IEE: specially designed instruction and support for social/pragmatic skills, inferential understanding and reasoning, social/emotional coping skills, and processing speed, with specific support for mathematics; instruction in a small class environment with a low student to teacher ratio; training of aides; participation in friendship groups including a "lunch bunch" (P-20 p. 33; S-11 p. 33); continuous review of and revision to Student's FBA and PBSP; and a number of potential instructional strategies, therapies, and other supports. (P-20; S-11)
38. The role of the PCA in fifth grade was to meet with Student in the morning to prepare Student for any schedule or other changes, prompt and facilitate social interactions with peers, and observe Student so that prompts could be made as needed. The PCA also assisted in the classroom. (N.T. 1193-96)
39. A District Board Certified Behavior Analyst (BCBA) conducted a Functional Behavioral Assessment (FBA) of Student in January 2013. At that time, the school-based behavior of concern was calling out, yelling or screaming, or making loud noises at inappropriate times. This behavior also occurred in social situations outside of school. However, the behavior was not frequent at school at the time of the FBA, and did not occur during any of the observations by the BCBA. The hypothesis generated by the FBA was that Student exhibited the behavior of concern before or during a non-preferred activity or situation in order to avoid, delay, or escape attention or the activity/situation. The BCBA recommended a number of antecedent and consequent strategies. (P-8; S-10)

40. A new IEP was developed in February 2013. Student's reading abilities were measured using select subtests of the WIAT-III as well as a QRI. Student achieved solidly average scores on all of the WIAT-III reading subtests. The QRI revealed that Student was instructional at grade level on Word Recognition skills, but was at the third level with lookbacks on Reading Comprehension, although the results were to be viewed with caution due to Student's inconsistent effort. (P-9; S-12)
41. Student's teachers reported that Student was performing well academically in all classes with accommodations and the support of the PCA, although Student did not typically volunteer to participate in most classes. A classroom observation in a language arts class in February 2013 by the school counselor was also included, reflecting Student's participation with a few prompts by the PCA. Student's progress toward previous IEP goals was summarized in detail in this IEP. Needs were identified in the areas of written expression, organizational skills, pro-social skills, adaptive response skills, articulation, and expressive language. (P-9; S-12)
42. Goals in the February 2013 IEP addressed expected social skill behaviors in structured group sessions; applying learned behaviors during interactions with others; social interactions throughout the school setting; adaptive responses; articulation; expressive language in speech/language therapy; and organizational skills. Program modifications and specially designed instruction included test and assignment accommodations; review and reinforcement of new concepts and skills; use of graphic organizers; a visual schedule; notice of changes to personnel or schedule, preferential seating; social stories to lessen anxiety; and direct instruction in social skills. Student was to be provided a PCA, counseling, and speech/language therapy (two 30-minute sessions per week) as related services. A PBSP addressed task refusal, disruption as defined by the recent FBA, refusal of help, and speaking disrespectfully through the use of a behavior chart. (P-9; S-12)
43. Student's proposed program was regular education with itinerant speech/language and learning support. Student was eligible for ESY in 2013. (P-9; S-12)
44. On March 5, 2013, the Parents did not approve the NOREP, and wrote a letter to the District expressing pleasure that Student was not exhibiting negative behaviors at school and requesting that the PCA be removed. They also suggested a follow-up FBA after the PCA was eliminated. (P-10)
45. Student's IEP team met again in early April 2013 to discuss the request to remove the PCA. The District agreed to begin a plan of gradual reduction of that support. At a subsequent meeting in May 2013, Student's IEP was revised to provide for a plan for Student's transition to middle school, including a meeting during the first week of school that year. (P-13; S-13, S-14)

46. Student exhibited overall few behaviors of concern over the course of the 2012-13 school year, and had a notable decrease toward the end of the school year.<sup>6</sup> By that time, Student did not need the PCA. The PCA was removed from one of Student's classes at a time. (N.T. 493-94, 505-06, 521-22, 1191-93, 1196-99, 1208-09, 1217, 1224-25; P-9 pp. 64-67; P-18 pp. 18-)
47. Student at times engaged in interactions with Student's peers at lunch in fifth grade, and also attended a day camp where the students worked cooperatively on various activities in groups. (N.T. 1203-04, 1211-12)

### Progress

48. Progress monitoring on Student's IEP goals for the end of the 2011-12 school year and the 2012-13 school year through March 2013 reflected that Student was making progress toward goals in using expected social skill behaviors in the social group sessions; articulation; expressive language in speech/language therapy sessions; and applying adaptive responses in role-play settings. Student's performance was inconsistent on goals for written expression; mathematics computation and mathematics problem solving; social interactions in the school setting; and applying learned expected behaviors. (S-23 pp. 29-46, 52)
49. Progress monitoring on Student's IEP goals at the end of June 2013 reflected demonstration of expected behaviors with prompting; application of learned expected behaviors without exhibiting behaviors of concern during interactions with PCA support; inconsistent initiation of conversations with peers (with notable decrease after removal of the PCA support); use of learned adaptive responses when anxious; continuation of articulation progress in reading and conversations; expressive language skills building on the goal in the previous IEP; and 90% accuracy on organization with 2 or fewer prompts. (P-18; S-23 pp. 48-52, 53-56)
50. Student met or exceeded grade level expectations in all subjects for the second and third trimesters, as well as in the list of characteristics of a successful learner for the entire school year. Student scored in the Below Basic range in Reading and in the Proficient range in Writing on the Pennsylvania System of School Assessment (PSSA). (P-18; S-23 p. 2)

### 2013-14 School Year

51. Students in middle school come from various elementary schools. The students change classes every period, unlike in elementary school. Students have different teachers for most classes and must navigate the hallways between classes, stopping at their lockers as necessary. Student's IEP team made the decision to reinstate the full-time PCA for Student's transition to middle school (sixth grade). (N.T. 111, 118-19, 246-48, 250-52, 1201, 1228-30)

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<sup>6</sup> Student's behavior charts reflect color-coded levels by class for the second half of the school year. A number of incidents of positive and negative behaviors are noted on the charts, but the exhibit pages were in black and white, so the assigned levels are difficult if not impossible to ascertain. (P-18 pp. 15-23)

52. When Student first started sixth grade, Student told the autistic support teacher that Student had difficulty with navigating the hallways between classes because of the number of students. Student's schedule was adjusted so Student could leave classes a little early to move to Student's locker and the next class without the crowds in the hallways. (N.T. 392-93)
53. Student had a full-time PCA as a related service throughout the sixth grade school year. The same person who had been Student's PCA in fifth grade transitioned to the middle school with Student until that person left the District for another position after the winter break. Throughout the school year, the Parents asked that Student's PCA be faded, and the District representatives responded that when Student was ready for this change, the PCA could be faded. (N.T. 115-16, 135, 355-56, 394-95, 695, 933, 1201-02)
54. Student's PCA and the autistic support teacher met on a daily basis to talk about Student, for the teacher to review the data that the PCA collected, and to discuss new strategies. However, the PCA for the second half of the school year was not familiar with Student's IEP outside of the specially designed instruction and PBSP. (N.T. 394-96)
55. The main role of the PCA was to help prompt Student throughout the day to use social skills appropriately (generalizing learned social skills to environments outside of the small group sessions) and to prompt Student as necessary to complete tasks. The PCA was not always next to Student in the classroom but was usually in close enough proximity to be able to hear what Student said. She paid close attention to Student to provide prompts when Student "show[ed]" that Student was not focused (N.T. 697); she also intervened when Student asked for help. The frequency of prompting varied from day to day; Student required less prompting in classes that Student preferred. Additionally, the PCA took data on Student's initiation of conversations. (N.T. 397-98, 405-07, 695-702, 706, 723, 730-31, 1103-04, 1107-08)
56. The PCA did not attend lunch with Student, and did not stay in close proximity to Student in the hallways. (N.T. 723)
57. Student had speech/language as a related services twice per week, for thirty minutes per session, in sixth grade. One session was in a small group to address pragmatic language and social skills with the school psychologist and the speech/language pathologist; the groups used social stories and problem solving strategies. The speech/language pathologist met with Student alone for the second session each week. Student also met with the autistic support teacher two to three days per week for some direct social skills training. Student was able to demonstrate some social skills in those small group settings. (N.T. 393-94, 417-18, 970-71, 981-84, 994-96)
58. A meeting convened in March 2014 to develop a new IEP. This IEP included a significant amount of information from recent evaluations, IEPs, and progress reports. Needs identified were those set forth in the January 2014 RR as well as to improve Student's ability to accept redirection and to follow directions, improve abstract reasoning and inferential comprehension, and improve time on task. (S-19 p. 26)

59. Goals in the March 2014 IEP addressed on-task behavior; initiation of conversations in the school setting including counseling sessions; identification and responses to frustration and anxiety; pragmatic language and “expected” behaviors in speech/language therapy; higher-level reading comprehension skills (drawing inferences, conclusions, and generalizations); articulation; and expressive language. New program modifications and specially designed instruction included provision of a list of assignments with the opportunity to choose tasks to complete; daily check-in and check-out with the autistic support teacher; use of a “power card” with reminders for coping/relaxation strategies and techniques as well as settings and topics for initiating conversations; a composition book for journaling of Student’s thoughts; instruction in and use of social stories; explicit praise for appropriate social behaviors; opportunities for community trips to apply social skills and follow directions; provision of copies of class notes; meetings to schedule classes and select clubs; direct instruction in internet safety and daily living skills; parent trainings; and fading of PCA prompting in all academic classes. Related services included the PCA, counseling, and speech/language therapy (approximately two 30-minute sessions per week). The IEP also included a PBSP which addressed the single targeted behavior of refusal to complete non-preferred tasks. Student’s program was to be regular education with itinerant autistic and speech/language support. Student also was determined to be eligible for ESY. (S-18)
60. The use of a journal as an item of specially designed instruction was to be used when Student began to laugh to Student’s self or when Student was distracted. Student was to write down in the journal what prompted the laughing or distraction, so that Student could return to tasks. (N.T. 460)
61. At the March 2014 meeting, the team again discussed fading the PCA. Although the Parents asked that the PCA be removed, the team decided to begin fade the assistance of the PCA one class at a time. The first class was science, which the team chose because Student had an interest in that class, and it was held in the morning when Student had less difficulty with attention. (N.T. 165, 355-56, 400-04)
62. After the PCA was faded in science class, she sat on the opposite side of the room as Student and functioned more as a classroom assistant. The PCA also took data on the number of prompts the teacher provided to Student, and sometimes made anecdotal notes on Student’s IEP goals. Student was generally able to complete tasks without prompting at least fifty percent of the time, which is consistent with performance of Student’s sixth grade peers. Student’s exhibited good organizational skills in that class. (N.T. 178, 182-83, 220-21, 269-70, 401, 440-41, 724, 733-74, 1108)
63. When Student was unsure about how to complete an assignment or task in science class, Student would wait for the PCA to prompt Student rather than ask for help. Student rarely asked the science teacher for help but occasionally would turn to a peer for assistance. Either the science teacher or PCA would assist Student when it appeared that Student needed help or prompting, which Student needed more of on some days than others. (N.T. 192-95, 208, 228-29, 271-72, 273-74, 282-83, 395-96; P-1 p. 11)

64. Student occasionally yelled out in science class and typically avoided eye contact. Student at times did not participate in class discussions. The sixth grade science teacher believed that Student exhibited less problematic behavior and better interpersonal skills at the end of the school year than at the beginning. Specifically, Student performed tasks more independently toward the end of the year and participated more in class discussions. (N.T. 229-30, 272-73, 274-76)
65. Toward the end of the sixth grade school year, Student's science grades declined. Student was provided with the opportunity to use a task card to choose from a number of tasks to decide which to complete. This strategy helped alleviate stress Student was experiencing. (N.T. 267, 281)
66. The autistic support teacher believed that Student was more willing at the end of the school year to initiate peer interactions in unstructured settings as well as to engage in conversations with adults when compared to the beginning of the school year. Student also spoke more readily with that teacher when Student was anxious about something or frustrated. (N.T. 414-15, 418-19)
67. Student at times had inappropriate interactions with teachers and peers in sixth grade, and had appropriate interactions at other times, including at lunch. Student generally did not initiate interactions with others at school, was inconsistent in responding to others, and overall did not exhibit age-appropriate social skills. (N.T. 189-92, 209-10, 219, 343-44, 349-50, 351, 370, 383-84, 726, 728-29)
68. In March 2014, Student had an assignment to write a five-page essay about qualities of a friend. Student struggled with that assignment, so Student's autistic support teacher suggested that Student write about how an animal could be a friend as a topic for the friendship essay. The teacher believed that revising the topic to one of interest to Student would make the assignment less abstract, and Student was able to complete the writing assignment on that topic. (N.T. 105-06, 352-53, 386-87, 709; P-3 p. 3, P-5 p. 6)
69. Student began to engage in distracted, noncompliant behavior during the second half of the school year, and also was frequently observed laughing and talking to Student's self at school. Student sometimes exhibited inappropriate behavior, such as playing with utensils at lunch. (P-25 pp. 6-7; S-25 p. 81) Other specific incidents of concern included:
  - a. In early January 2014, Student went to the autistic support teacher's classroom for a break and spent some time on the computer. Student accessed a website related to mathematics, and began to post a reply to a thread from other students. The autistic support teacher saw that Student was asking to meet one of the other students and see a picture. The teacher stopped Student from sending the message, which Student deleted. The teacher talked to Student about internet safety. (N.T. 366; P-25 pp. 3, 5; S-25 pp. 85, 111-15)
  - b. Also in January 2014, Student left the school restroom without having dressed completely. Student's PCA redirected Student into the restroom to finish dressing,

- and Student complied. Student made a remark about Student's anatomy that possibly related to Student approaching puberty. (N.T. 362; P-25 p. 4; S-25 p. 89)
- c. In mid-February, Student told the PCA that Student was planning to print "sexual pictures" at home that day. The autistic support teacher spoke again with Student about internet safety. (N.T. 371; P-25 p. 8; S-25 p. 77)
  - d. In late March 2014, Student asked a teacher about a part of the teacher's anatomy. The PCA and autistic support teacher spoke with Student about topics that were private and inappropriate for conversations. The teacher asked the Parents if they wanted her to provide any resources for sex education. (N.T. 373; P-25 p. 14)
  - e. In late April 2014, there were a few successive days when Student became frustrated in or going to a class. On two occasions, Student yelled at the PCA and autistic support teacher, and on one of those days, Student yelled during a small group class. Student also was discovered crying in the hallway during this several-day period. (N.T. 357-58; P-25 p. 16; S-25 p. 21)
  - f. Toward the end of the 2013-14 school year, Student exhibited disorientation and confusion at school. On a few occasions, Student asked the autistic support teacher and PCA questions such as what Student did the night before and why Student had a PCA. On one of those occasions, Student became upset about not remembering something and curled into a fetal position and began to yell. Student also related an incident from the night before involving strangers arriving at the home and later hearing Student's name called. Student was not certain whether this incident actually happened or not. (N.T. 361-62, 375, 377-78; P-25 pp. 20-22)
70. The autistic support teacher did provide materials to the Parents at the end of March 2014 related to internet safety, sexual education, and social stories for adolescent development. (N.T. 407-08; S-20)
71. Toward the end of the sixth grade year, Student's homework completion decreased significantly. The District professionals believed that Student's behavior of laughing to Student's self was a result of unpreparedness for class. ( N.T. 420-21, 726-28; P-25 p. 6)
72. Student's IEP team met again in May 2014. The members discussed fading the PCA as well as the Parents' concerns that Student's needs were not addressed. (N.T. 412-14, 1090-91, 1132; S-22 pp. 3-6)
73. A few items of specially designed instruction were added to Student's IEP in May 2014; one for scheduled breaks during longer classes to improve attention, and one for modified assessments to focus on essential content. Fading of the PCA in specific classes was also included. (N.T. 422-23; S-22 pp. 43, 46)
74. After the May 2014 IEP meeting, the District began to implement the check-in/check-out system for Student to meet with the autistic support teacher first thing in the morning and at the end of the day. During the check-in, Student and the teacher discussed

conversation starters for Student to use for initiating a conversation, and also read a social story. (N.T. 420)

### Progress

75. Student's progress on the speech/language goals was slow in the first semester of sixth grade and increased in the second semester. Student's progress was assessed in the speech/language sessions. (N.T. 978-81, 984-86, 995, 1009, 1018-20, 1021)
76. Data collected over the first two trimesters of the sixth grade year on Student's social skills (demonstrating the "expected" behaviors during a conversation by looking at speakers, having a friendly voice, taking turns, and initiating comments or questions with a peer) in the small groups reflected no change in the frequency of the "expected" behavior, with varying levels of prompting necessary. (N.T. 427-28; S-23)
77. Data collected over the first two trimesters of the sixth grade year on Student's social skills outside of the small group sessions (applying learned "expected" behaviors: calm, friendly voice; completing assignments; and asking for information; and, refraining from inappropriate behaviors: yelling, screaming, calling out, making loud noise) when interacting with peers and adults reflected no change in the frequency of the goal behavior, with varying levels of prompting necessary. (S-23)
78. Data collected over the first two trimesters of the sixth grade year on Student's application of learned adaptive responses (using a five-point scale and asking questions) when feeling anxious or frustrated reflected even performance with prompting. However, by the end of the school year, Student was able to express anxiety and frustration through words rather than using the five-point scale, and began to ask for assistance in the hallways rather than calling out in frustration. (N.T. 430-33; S-23)
79. Data collected over the first two trimesters of the sixth grade year on Student's organizational skills reflected increased accuracy at an independent level such that the goal was met by January 2014. Student also made progress on the articulation goal. (N.T. 434-35, 713-15; S-23)
80. In April 2014, the District began to provide data on Student's performance in individual classes on the goals for advocacy, initiation of conversations/social skills, and task completion, including the number of prompts necessary. (N.T. 439; S-23 pp. 91-100)
81. Student's grades throughout the 2013-14 school year were As and Bs, with a significant decline in most subjects in the fourth quarter that did not result in a final grade lower than a B. (S-23 pp. 3-6)
82. Progress reporting in June 2014 for the third trimester of the school year reflected inconsistent or minimal progress in the goals for on-task behavior; initiating conversations with peers in the school setting (particularly when compared to progress reporting from June 2013-April 2014); applying adaptive responses (with prompting); identifying and responding to anxiety and frustration (with prompting); and higher-level reading comprehension skills. Progress was indicated on goals for demonstrating



expected behaviors in interactions with others in speech/language therapy and in articulation. (S-28)

83. There was no additional fading of the PCA for the rest of the sixth grade year, because Student was not demonstrating the ability to attend to tasks and complete work without prompting from the teacher. (N.T. 401-03, 1135-36)
84. The District planned to have the full-time PCA for Student for the seventh grade school year to help Student make that transition. The same fading process from March 2014 (starting with one class without the PCA and adding others as Student demonstrates independence) was to occur in seventh grade. (N.T. 404-05, 1090-91, 1103-04)
85. Student was eligible for Extended School Year (ESY) programming for the summer of 2014. Student participated in a portion of the ESY program offered by the District, wherein Student attended a type of day camp focused on mathematics and science. Anecdotal reports from the ESY indicated that Student was able to engage with others with support when the activity interested Student, such as a musical activity. (N.T. 453-56, 954-56; S-29)

## Recent Evaluations

### Fall 2013

86. The speech/language pathologist conducted an evaluation of Student and issued a report in October 2013. In completing the report, the speech/language pathologist conducted a review of records and obtained an informal language sample from Student by engaging Student in a conversation. She did not observe Student for this evaluation. (N.T. 972-73, 1018, 1028-29)
87. Formal measures for the speech/language evaluation were the CALP and the GFTA-2. These instruments were administered in accordance with the publishers' instructions by and the speech/language pathologist was appropriately qualified as well as trained in administering both assessments. (N.T. 972-73; S-15 pp. 5-8)
88. The speech/language pathologist made recommendations for Student including a continuation of the two, thirty-minute sessions each week. (N.T. 975-76; S-15)
89. Student was evaluated by a private psychologist in the fall of 2013, and he issued an IEE Report. The IEE included background information and parent input, with Student's primary needs identified by the Parents as social skills including making and keeping friends and initiating conversations. Another weakness was making transitions. (P-4 pp. 1-2; S-17 pp. 1-2)
90. The Parent's evaluator who conducted the IEE observed Student at school in the fall of 2013 before the two were introduced. He observed Student on two different days in the same two classes and at lunch; on one of those days, the PCA was present and on the other, the PCA was not. In both sets of classroom observations, Student consistently engaged in very limited interactions with Student's classmates, including those times

when the class was encouraged to have a small group discussion. In both lunchtime observations, Student sat with or near other students but did not engage in conversations with them. (N.T. 548-550; P-4 pp. 3-7; S-17 pp. 3-7)

91. The private evaluator administered the KTEA-II. Student scored in the average range on all of the KTEA-II composites with the exception of Oral Language where Student's score was in the below average range (Standard Score 82). (P-4 pp. 9-11; S-17 pp. 9-11)
92. Student's social/emotional development was assessed using the BASC-2. Three teachers completed the Teacher Rating Scales, both Parents completed the Parent Rating Scales, and Student completed a Self-Report. One or more teacher scales reflected Clinically Significant scores for the Withdrawal scale (Behavioral Symptom Index); Adaptability and Social Skills scales (Adaptive Skills composite); and Developmental Social Disorders (Content scales). One or both parent scales endorsed Clinically Significant scores for the Anxiety scale (Internalizing Problems composite); the Behavioral Symptoms Index including both the Atypicality and Withdrawal scales; Adaptability, and Social Skills (Adaptive Skills composite); Anger Control, Developmental Social Disorders, Executive Functioning, and Resiliency (Content scales). Student's Self-Report reflected scores in the Clinically Significant range for Depression (Internalizing Problems composite); Attitude to School (School Problems composite); and Relation with Parents (Personal Adjustment composite). Numerous scores of all raters were in the At-Risk range. (P-4 pp. 11-27; S-17 pp. 11-27)
93. The private evaluator utilized the Parent and Teacher Rating Forms for the Vineland Adaptive Behavior Scales – Second Edition. Results from the Parents' forms indicated low general adaptive functioning; scores were also low for the Communication, Daily Living Skills, and Socialization Domains; Maladaptive Behavior was in the Clinically Significant range. Two of Student's teachers completed a form together (a deviation of standard test protocol), and their results were not materially inconsistent with those of the Parents (with the exception of the Maladaptive Behavior Domain not part of the Teacher form). (P-4 pp. 27-34; S-17 pp. 27-34)
94. On the Bender Visual-Motor Gestalt Test – Second Edition, Student scored in the average range, suggesting a relative strength in overall visual and perceptual-motor skills, except that Student's visual-motor responses involving processing speed may require extended time. (P-4 p. 34; S-17 p. 34)
95. The fall 2013 IEE also included the results of the Independent FBA. Recommendations in the IEE included a private school placement for high functioning students with Autism Spectrum Disorder, in a program where Applied Behavioral Analysis is a component part. (P-4 pp. 34-45; S-17 pp. 34-45)
96. The Parents arranged for an Independent FBA of Student in the fall of 2013. This assessment was conducted by a private agency of BCBA's, who issued a report in December 2013. (N.T. 737, 739, 741; P-6; S-17)

97. The private BCBA's reviewed educational records, conducted direct observations of Student, and obtained rating scales and information from interviews with Student, teachers, and the Parents. The school-related problem behaviors identified were, in order of most observed during the FBA to least: (a) non-contextual statements/questions; (b) (b) motor stereotypy; (c) disruptive behavior; (d) protest/defiance; and (e) out-of-seat behavior. The private BCBA's also collected data on Student's on- and off-task behavior and social interactions. (P-6; S-16)
98. The private BCBA's identified a number of setting events that impacted Student's engagement of problem behaviors: social skills deficits, lack of peer relationships, organizational skill deficits, difficulty focusing and remaining on task, and other biological/physical circumstances such as anxiety. They concluded that the two areas of most significant need for Student are on-task behavior (to increase from 50% to 80-85%) and social skills. (N.T. 811-12; P-6 p. 9; S-16 p. 9)
99. Recommendations for Student's PBSP included a preference assessment for effective reinforcements; a non-contingent reinforcement schedule; a check-in/check-out procedure; opportunity for choices across the school day; a strategy of behavior momentum (beginning with preferred or easy tasks and increasing the level of difficulty of instructions while also increasing levels of praise); differential reinforcement of appropriate replacement behavior; planning ignoring with praise of peers performing appropriate behavior; and a card for Student to have and use whenever feeling anxious, frustrated or needing help. They also suggested other strategies including relaxation training and social skills training in the natural environment to promote generalization. (N.Y. 798-808; P-6 pp. 11-14; S-16 pp. 11-14)
100. The District was provided a copy of the IEE and Independent FBA reports in early February 2014. (P-3)

#### Spring 2014

101. The District conducted a re-evaluation of Student and issued an RR on January 22, 2014. Student's autistic support teacher conducted a QRI for that RR. Student's instructional level scores on the QRI were at the sixth grade level for word recognition in isolation, at the fifth grade level for word recognition in context, and at the fifth grade level for comprehension. However, the case manager stated that these scores should be viewed with caution because Student was noncompliant and distracted during the assessment. This behavior was not consistent with other assessment for the RR, including the administration of the WIAT-III, or with the case manager's typical observations of Student. (N.T. 344-45, 382-83; P-1 p. 8; S-18 p. 8)
102. Parent input into this RR included concerns with activities of daily living, initiation of conversations and interactions with others, a desire to be isolated from others, behavior when meeting a new person, low self-esteem and self-confidence, difficulty following directions, and a need to develop self-regulation and coping skills. (P-1 p. 7; S-18 p. 7)

103. Previous cognitive assessment, the WISC-IV from the February 2013 independent evaluation, was included in this RR in addition to a summary of various other assessments performed at that time. The October 2013 speech/language evaluation was also included. The RR noted that Student was not exhibiting needs for further assessment of fine or gross motor skills or adaptive behavior. (P-1 pp. 12-13, 17, 19; S-18 pp. 12-13, 17, 19)
104. The January 2014 RR reported Student's scores on the WIAT-III in October 2013. Student achieved scores in the average range on all subtests on the Reading, Spelling, and Mathematics portions of the test. Input from Student's teachers reflected solid performance in all general education classes with support from the PCA (providing reminders and organizational support, helping Student understand class content and complete assignments, and prompt Student to remain on task) and accommodations. The teachers also uniformly reported that Student rarely volunteered to participate in class, and most noted Student's difficulty with peer interactions in class. (P-1; S-18)
105. A classroom observation conducted by a school counselor in December 2013 in the science class for this RR indicated that Student's PCA was in close proximity to Student and provided continuous feedback and reinforcement to Student. Student did not initiate any peer or adult conversations. Student did exhibit some agitation during the observation, and required some redirection from the PCA. (P-1 p. 20; S-18 p. 20)
106. Student was determined to be eligible for special education in the disability categories of Autism and Speech/Language Impairment. Needs in the RR included improvement of all of the following: organizational skills; pro-social skills; skills to manage and cope with anxiety; pragmatic language and social communication; verbal expression; receptive language; and articulation. A number of recommendations for the IEP were contained in the RR. (P-1 pp. 22-25; S-18 pp. 22-25)
107. The private BCBA's conducted a home observation in March 2014 and recommended that a formal FBA be conducted in the home in order to make hypotheses about the function of problem behaviors exhibited there. (P-6; S-16)
108. The District conducted another reevaluation of Student in the spring of 2014 and issued an RR on April 25, 2014. This RR was a response to the recent IEE and Independent FBA. The document summarized Student's records and updated Student's progress through the third quarter. Student remained identified as eligible for special education on the bases of Autism and a Speech/Language Impairment. Needs were essentially the same as those in the January 2014 RR, with the addition of improvement of abstract reasoning and inferential comprehension and increased time on task. (P-5; S-21)
109. The April 2014 RR added a number of recommendations in addition to those from the January 2014 RR, including: provision of a list of assignments with the opportunity to choose tasks to complete; scheduled breaks during longer classes; daily check-in and check-out with the autistic support teacher; use of a "power card" with reminders for coping/relaxation strategies and techniques as well as settings and topics for initiating conversations; a composition book for journaling of Student's thoughts; instruction in

and use of social stories; explicit praise for appropriate social behaviors; wait time for responses to questions; provision of copies of class notes; meetings to schedule classes and select clubs; direct instruction in internet safety and daily living skills; parent trainings; and fading of PCA prompting. (P-5 pp. 31-33; S-21 pp. 31-33)

110. The Parents' evaluator observed Student again in the same classes as well as a family consumer science class in June 2014. As in the previous observation, he asked to observe Student both with and without the PCA; however, the District refused the request for an observation without the PCA. The Parents' evaluator noted that Student completed assigned tasks with prompts as needed from the PCA or teachers, but did not engage in interactions with peers other than to practice an oral presentation in a small group as part of a class activity. At the end of the last class observed, the evaluator noted that the PCA prompted Student to go converse with two peers, which Student did. The District's school psychologist was present for this observation, and she wrote a summary of her own observations of Student on that day. (N.T. 562-63, 575-78, 1122-24, 1127, 1137-38; P-22)
111. The Parents' evaluator observed Student again in late summer 2014 at a church day camp. Student had attended this camp in the past, and was training to volunteer. Student performed tasks given to Student under the supervision of one of Student's Parents. Student did ask questions of adults, and also made statements or asked questions that did not appear to be directed to any person in particular, but Student did not interact with any peers. This observation was conducted on the second day of the camp program. (N.T. 588-93; P-32)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in "equipoise." The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be generally credible, testifying to the best of their recollection. The testimony overall was not inconsistent with respect to the issues presented for hearing. It should also be noted that the Parents, District personnel, and independent evaluators all presented as dedicated individuals who care about Student and Student’s education, despite their differences of opinion and the parties’ conflicting positions at the hearing. The District must also be commended for its attention to and thoroughness of its paperwork and the adherence to the timelines in the IDEA and regulations.

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit.

#### IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under

the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). Local education agencies (LEAs) meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Nevertheless, “the 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 v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

Also critical is the IDEA obligation for eligible students to be educated in the “least restrictive environment” which permits them to derive meaningful educational benefit. 20 U.S.C. § 1412(a)(5); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000). In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1205 (3d Cir. 1993), the Third Circuit adopted a two-part test for determining whether a student has been placed into the least restrictive environment as required by the IDEA. The first prong of the test requires a determination of whether the child can, with supplementary aids and services, successfully be educated within the regular classroom; and the second prong is that, if placement outside of the regular classroom is necessary, there must be a determination of whether the child has been included with non-exceptional children to the maximum extent possible. *Id.* In evaluating the first prong, the efforts the school has made to include the child, a comparison of the benefits to the child of placement in a regular classroom versus a separate special education classroom, and the effect on the other students, must be considered. *Id.*

The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d

925 (Pa. Commw. 2005). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

In order to establish a violation of § 504 of the Rehabilitation Act, a plaintiff must prove that (1) he is “disabled” as defined by the Act; (2) he is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

*Ridgewood* at 253. The obligation to provide FAPE to a child with a disability is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005).

### The Parents’ Claims

The first issue is whether the District’s program for Student since the beginning of the 2011-12 school year<sup>7</sup> to the present is appropriate. The Parents challenged the lack of occupational therapy as well as the speech/language and social and emotional aspects of the program;<sup>8</sup> accordingly, this decision will only address the programming at issue. Because this issue is intertwined with the issue regarding the PCA, those two claims will be addressed together.

The Parents’ concerns with Student’s social, emotional, and speech/language needs are closely connected, and are directly related to the PCA. With respect to Student’s social skills, and particularly Student’s ability to initiate and engage in conversations with others, there is some anecdotal evidence that Student does, at times, interact with peers at school. However,

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<sup>7</sup> The parties had an agreement to toll the statute of limitations in this matter. *See* N.T. 32.

<sup>8</sup> *See, e.g.*, Parents’ Closing at unnumbered p. 2.



there is much more evidence that Student typically does not interact with others and does not participate regularly in class discussions; and, when Student does do so, the engagement is very limited. To the extent that Student does demonstrate this ability in the school environment, Student is clearly not independent in this skill and, critically, is not generalizing social interaction skills to other environments.

Student's IEPs since the spring of 2011 have noted this weakness and, accordingly, have included goals and specially designed instruction to teach Student pro-social skills and to facilitate those skills. Indeed, all of Student's IEPs have been directly responsive to the various comprehensive evaluations. However, Student's progress on acquiring the needed social skills has been remarkably inconsistent throughout the relevant time period, with a noted minimal trend during the third trimester of the 2013-14 school year. Further, the progress monitoring on Student's interactions with peers is confusing; for example, the reports in November 2012 and February 2013 reflected that Student interacted with peers in small group activities in the classroom, with prompts, with ">80% frequency/accuracy" and ">90% frequency/accuracy" respectively. (P-9 p. 61; S-23 pp. 37-39) It is not clear how the frequency and accuracy were calculated, nor what the percentages really tell anyone reviewing those reports about whether and to what extent Student engaged in interactions with peers over the course of the trimesters. Moreover, and critically, Student is only being taught the pro-social and pragmatic language skills in individual or small group sessions, and then "is expected to go and generalize that throughout [the] day with the support and prompting of the PCA." (N.T. 1118) As is evident from the record as a whole, and as described by the private psychologist who observed Student several times over the course of the 2013-14 school year, Student needs assistance in applying the social and pragmatic language skills Student is learning outside of those small group sessions

and into other environments. (N.T. 584-85) Student's lack of consistent and meaningful progress in developing and using social skills over the course of the past three school years compels the conclusion that the PCA support that has been provided for Student to transfer those skills across settings has been only minimally effective.<sup>9</sup>

This inescapable determination leads to the next question, of Student's need for a PCA. By the end of the fourth grade school year, Student no longer needed the PCA, and that individual only provided support for Student when Student needed prompting and otherwise functioned as a classroom assistant. In fifth grade, the support was similar with the addition of facilitation of peer interactions and a morning check-in. Because Student was not exhibiting problematic behaviors, the IEP team appropriately decided to begin a plan of reducing that support. Even during those time periods when the PCA served a role more akin to a classroom assistant, however, Student was aware of that individual's presence and the reasons for it.

At the start of middle school, the decision to return to a full-time PCA for Student and retain the same individual was certainly appropriate, particularly given Student's difficulty with transitions and the new requirements of navigating hallways and changing classes. What is puzzling, however, is the lack of consideration of whether Student actually needed a full-time PCA other than during that transition to middle school, and the absence of a truly systematic plan for fading or reducing that support to Student after that school year began. The described

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<sup>9</sup> There was considerable testimony elicited about the meaning of the minimal change in Student's standard score and percentile rank on the Pragmatic Language subtest between two administrations of the CASL. (N.T. 1008-09, 1033-34, 1038-39, 1040-45, 1046-49, 1050-52) While the ultimate answer was unclear (N.T. 1052), this hearing officer recognizes that progress should not be evaluated merely by making a comparison of a set standard scores, without more; the District's school psychologist explained this very well (N.T. 1072-74). Moreover, there was no explanation of how the confidence interval factored into those particular CASL scores, nor was there any evidence that such a comparison on that instrument would provide a meaningful indicator of progress. It may be that such evidence does not exist, as it did not in 2004. Salvia, J. & Ysseldyke, J., *Assessment in Special and Inclusive Education* (9th ed. 2004) at 526. In any event, the record overwhelmingly establishes that Student has long had, and continues to exhibit, a significant need in pragmatic language and social skills, and that Student has not made meaningful progress in this area.

approach to wait until Student demonstrated the ability to attend to tasks and complete all work in science class without prompting from the teacher suggests that this was a realistic expectation of a middle school child; but is something that the science teacher testified was not typical for sixth grade students. (N.T. 178) And, because there was no specific reporting on prompting broken down by class prior to the fading of the PCA from science class, that data starting in April 2014 cannot be compared to any earlier point in the school year to assess whether, for example, Student required more or less prompting after the support was removed in the one class.

The one private BCBA who is the director of the agency testified, quite persuasively, to the flaws in the District's approach to fading the PCA. Specifically, he first observed that there was no prompt hierarchy that set forth the criteria for what Student does to warrant intervention by the PCA (or teacher). (N.T. 755, 758-59, 762-63) Although the District argues such a hierarchy was not necessary for the type of prompts Student needed (District's Closing at 19), it was up to the observation and discretion of the PCA when a prompt would be given and what that prompt would be, reflecting a purely subjective interpretation.<sup>10</sup> It is also noteworthy that the PCA was not familiar with the entirety of Student's sixth grade IEP, which specified her role in implementation of many of the goals. While it is true that this paraprofessional worked under teacher supervision, her support of Student throughout the entire school day was not clearly defined or objective.

This private BCBA also convincingly explained that the data that was collected on the number of prompts provided to Student was not an accurate measure of Student's actual on-task behavior, but rather provided information about the aide's reactions to her observations of Student. Further, he provided a well reasoned explanation that identification of the specific

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<sup>10</sup> See, e.g., N.T. 566-67 (reflecting s differing perspective on whether a prompt given was necessary).

criteria for what Student must do in order to move to the next level of decreased support, as well as what specifically is done to “fade” the PCA (such as identifying the proximity of the PCA and how that changes when the criteria is reached), would provide necessary direction and consistency. (N.T. 759-61, 764-65, 778-81, 783-84) With this type of specific and written information, anyone who would be providing support to Student would easily understand what to do and when, so that the plan would be implemented consistently with defined purposes of generalization across environments, maintenance of skills, and independence. (*Id.*)<sup>11</sup>

For all of these reasons, the District will be directed to convene a meeting of Student’s IEP team to discuss these recommendations and develop a specific, written plan, with objective criteria, to gradually reduce the support of Student’s PCA with a goal for independence. The meeting will include a District professional who is a qualified BCBA and familiar with Student. The plan must also include an objective prompt hierarchy as well as criteria for monitoring and assessing Student’s performance in all settings at school with the decreased support, with contingencies for regression. The IEP team will determine together the specific content of this plan.

The remaining area of FAPE that the Parents challenge is the absence of occupational therapy services during the relevant time period. The Parents did raise their concern with Student’s fine motor skills to the District on several occasions, noting Student’s difficulty with certain tasks and large handwriting.<sup>12</sup> However, while their observations and concerns are undoubtedly sincere, the record does not establish a need for occupational therapy or a

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<sup>11</sup> This witness also elaborated on a flaw in the goal for initiating conversation with others; namely, that the expectation should not merely be that Student would make a statement or comment to a peer, but rather that Student would engage in reciprocal conversation. (N.T. 787-90) This hearing officer does not conclude that the District is focused solely on Student initiating interactions; nevertheless, the IEP team should consider whether and how to revise these social and pragmatic language goals to better define the behavior Student is expected to attain and to allow for more meaningful progress monitoring.

<sup>12</sup> See, e.g., S-20 pp. 69-70.

demonstrated weakness in Student's fine motor skills in the educational environment that would warrant a conclusion that Student was denied FAPE due to the absence of occupational therapy.

Finally, to the extent that the FAPE issue included Student's behaviors at school, the focus of the Parents' concerns in this regard has been in the social/emotional realm, and they have been addressed above. Further, the record as a whole establishes that the District has been responsive to Student's needs to manage anxiety and frustration at school, continually revising that programming as needed. Student's more recent concerning behaviors will be discussed in connection with the IEE issue.

### Compensatory Education

Having found a denial of FAPE, the last issue is what relief is warranted. It is well settled that compensatory education is an appropriate remedy where a school knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the school fails to remedy the problem. *M.C. v. Central Regional School District*, 81 F.3d 389 (3d Cir. 1996). Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school to correct the deficiency. *Id.* In addition to this "hour for hour" approach, some courts have endorsed a scheme that awards the "amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE." *B.C. v. Penn Manor School District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) (awarding compensatory education in a case involving a gifted student); *see also Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005) (explaining that compensatory education "should aim to place disabled children in the same position they would have occupied

but for the school district's violations of IDEA.”)) Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

This hearing officer finds no evidence in the record to support an award using the *B.C.* approach, and will therefore apply the *M.C.* standard. Throughout the time period in question, Student has been provided approximately 30 minutes of speech/language services per week for social skills in addition to the weekly 30-minute social skills group. Additionally, Student was to be provided with opportunities to generalize learned social and pragmatic language skills to various settings throughout the school day. Without a dedicated and regular program to teach Student to transfer the skills learned to other environments, the social and pragmatic language skills Student demonstrated in those small groups or individually were not meaningfully incorporated into Student’s day. Absent an objective basis to assess the “social” aspect of Student’s use of social and pragmatic language skills, it is impossible to determine the extent to which Student truly made some progress in that area of need. At Student’s age, acquisition of these skills is critical, and the window of opportunity is slowly narrowing. Thus, in addition to that one hour of weekly small group social skills services, this hearing officer estimates that Student should have been provided with an additional one hour per week to learn to generalize and transfer the social and language skills learned throughout this period. Student shall therefore be awarded two hours per week of compensatory education to remedy the denial of FAPE with respect to social and pragmatic language skills. This award shall include the 2011-12, 2012-13, and 2013-14 school years and continue until an appropriate IEP providing for these services is implemented. For the deprivation through the end of the 2013-14 school year, this award is 216 hours (2 hours per week, 36 weeks per school year).

The remedy for the continued full-time PCA throughout the time period, without any systematic plan to reduce that level of support, is much more difficult to equitably determine. After careful consideration, this hearing officer concludes that the above award does not sufficiently remedy Student's need to learn to be independent throughout the school day; and, the requirement for Student to "earn" additional fading of PCA support by attaining a level that is well beyond expectations for any child of that age was not appropriate. Accordingly, Student shall be awarded an additional one hour per week of compensatory education to remedy the lack of a carefully prescribed plan toward gradual reduction of the PCA based on objective criteria. This award shall include the 2011-12, 2012-13, and 2013-14 school years and continue until the newly created plan to fade the PCA described above is first implemented. For the deprivation through the end of the 2013-14 school year, the award is 108 hours.

The hours of compensatory education are subject to the following conditions and limitations. Student's Parent may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional and speech/language goals and skills. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age eighteen (18).

There are financial limits on the parents' discretion in selecting the compensatory education; 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 (or average salary and benefits) that would have been paid to the District and other professionals who did and would have provided social/emotional and/or speech/language services to Student during the period of the denial of FAPE.

### Parent Training

The Parents next seek training by a BCBA to assist them with Student's generalization of skills into other environments. Parent training is a type of related service to help parents acquire the skills necessary to support their child's IEP. 34 C.F.R. § 300.34(c)(8). As discussed above, Student clearly needs to learn to transfer learned skills to other settings, and has great difficulty in doing so. Student requires explicit instruction in order to generalize skills and, as explained above, has not been provided with the opportunity to use and apply learned skills, such as social and pragmatic language, to other settings. In this case, the Parents need some form of training going forward in order to be prepared to support Student's ability to generalize skills into the home and community. The District will be required to provide the Parents with training to assist in Student's generalization of social and pragmatic language skills by a qualified BCBA who is familiar with Student.

### IEE

The Parents seek an IEE for a speech/language evaluation and a psychiatric evaluation. They also seek reimbursement for observations conducted by their private evaluator in June and August 2014. The District opposes any such IEE or reimbursement.

The Parents made a request just before the first hearing session to have the private evaluator who completed the fall 2013 IEE and subsequent observations conduct an additional observation of Student at public expense during the ESY program. Following argument by



counsel, that request was denied, but without prejudice to the Parents' ability to seek reimbursement for such observations. (N.T. 46-50, 53-56; HO-1)

This hearing officer concludes that the summer 2014 observations conducted by the Parents' private evaluator must be considered to be part of the same IEE and that reimbursement for them is warranted. Those observations provided continued impartial insight into Student's functioning in several settings, including Student's lack of meaningful interaction with peers. The June observation, moreover, provided the District with an unplanned opportunity to have its own school psychologist observe Student in various classes and to summarize those observations, adding to its understanding of Student and Student's needs. For all of these reasons, this request will be granted.

The request for an independent psychiatric evaluation shall also be granted. The District argues that it never conducted a psychiatric evaluation with which the Parents could disagree, so this claim must be denied as a matter of law. (District's Closing at 21.) It is true that the law provides that, when parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Here, the District conducted two evaluations in 2014, neither of which included a psychiatric evaluation. Nevertheless, given Student's new and increasingly concerning behaviors at school in the second half of the school year, coupled with Student's known psychiatric history, this hearing officer concludes that the District's failure to seek permission to conduct a psychiatric evaluation in the spring of 2014 is tantamount to an inappropriate evaluation for purposes of this claim. Further, under the circumstances, it is patently clear that a psychiatric evaluation of Student is necessary to assess the impact of Student's anxiety and other concerning recent behaviors on Student's education. Thus, the District will be ordered to fund an independent psychiatric evaluation.

With respect to an independent speech/language evaluation, however, the record does not support this claim. In conducting an evaluation, the law imposes certain requirements on local education agencies to ensure that sufficient and accurate information about the child is obtained.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) 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, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b). The evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Assessments must be used for the purposes for which the instruments are valid and reliable, and be administered by trained and knowledgeable personnel in accordance with the test-maker’s instructions. 34 C.F.R. § 300.304(c)(1).

The Parents point to no deficiencies in the District’s speech/language evaluation.

(Parents’ Closing at unnumbered pp. 9-10) Its assessments, conclusions, and recommendations

are consistent with all known information about Student. This evaluation was performed by a qualified person who was trained in the assessments administered, which were in accordance with the publishers' instructions. This evaluation did not rely on a single measure, and identified Student's speech and language needs in a manner that informed the IEP team. Accordingly, there will be no order for an independent speech/language evaluation.

#### Prospective Placement and Programming

The Parents seek an order for a prospective private school placement or, in the alternative, a directive for the IEP team to reconsider placement after removal of the PCA. However, despite having found that the District denied Student FAPE in certain respects, the most recent IEP includes a number of new provisions to address Student's needs based on the several recent evaluations. The foregoing discussion and the attached order provide a plan for the IEP team going forward, and relates to continued placement in regular education consistent with LRE principles. The IEP team must, of course, continually assess the appropriateness of Student's program and make revisions as needed. The ordered psychiatric evaluation will add to the comprehensive information available to the IEP team in guiding future decisions. Should the team reach the point where it determines that the public school program is not appropriate, it can and should consider other placements including private schools. There is not, however, sufficient evidence to convince this hearing officer that a prospective private placement is necessary to meet Student's needs at this time. Based on this record, therefore, this hearing officer declines to order a prospective private placement.

#### Section 504

The Parent's complaint also raised a claim under Section 504. Because the obligation of a local education agency to provide a "free appropriate public education" is substantively the

same under Section 504 and under the IDEA, and further because all of the Parent's claims have been addressed pursuant to the IDEA, there need be no further discussion of the claims under Section 504.

### **CONCLUSION**

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District denied Student FAPE in some respects; that directives must be given to the IEP team; that relief is warranted with respect to certain independent evaluations; and that compensatory education is an appropriate remedy for the denial of FAPE.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. Student was denied FAPE by the District with respect to social/emotional and speech/language needs and the absence of a systematic plan to reduce the PCA support.
2. The District shall provide Student with compensatory education for the FAPE denial, to address Student's social/emotional speech/language needs, subject to the conditions and limitations set forth above. The amount of compensatory education shall be 324 hours for the 2011-12, 2012-13, and 2013-14 school years. This award of 3 hours per week shall also extend into the 2014-15 school year through and until the first day of implementation of the plan to reduce the PCA support described in Paragraph 3 of this Order.
3. On or before October 20, 2014, the District shall convene a meeting of Student's IEP team to revise the IEP to (a) specifically provide for a plan for direct instruction in and opportunities to use social and pragmatic language skills in the general education environments; and (b) develop a plan for reduction of PCA support; all in accordance with the foregoing discussion.
4. On or before October 13, 2014, the District shall provide to the Parents, in writing, a list of not less than three qualified individuals to perform an Independent Psychiatric Evaluation of Student.

- a. Within 10 days of receipt of the District's list of qualified individuals, the Parents shall notify the District, in writing, of their selection. If the Parents do not notify the District, in writing, of their selection within 10 days of receipt of the District's list of qualified individuals, the District shall make the selection from that same list.
  - b. The selected evaluator shall provide a written report of the Independent Psychiatric Evaluation within a reasonable time, not to exceed 30 days from the date of engagement, unless otherwise agreed by the parties.
  - c. The Independent Psychiatric Evaluation shall be at public expense.
5. The District shall reimburse the Parent's private evaluator for the cost associated with his observations of Student in the summer of 2014.
  6. Within 45 days of the date of this Order, the District shall provide 5 hours of training to the Parents, by a BCBA, to afford them with resources and guidance to assist Student in learning to generalize social and pragmatic language skills into the home and community. The District shall have the discretion to select the BCBA who may be a District employee. The Parents shall have the discretion to determine where the training shall take place (home, school, or community) and whether to involve wraparound service personnel.
  7. Nothing in this Order precludes the parties from mutually agreeing to alter any of the directives set forth in this decision and order.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

*Cathy A. Skidmore*

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Cathy A. Skidmore  
HEARING OFFICER

Dated: October 3, 2014