

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: J.W.

ODR #15823 / 14-15-AS

Date of Birth:
[redacted]

Dates of Hearing:
June 5, 2015
June 8, 2015

OPEN HEARING

Parties to the Hearing:
Parent[s]

East Stroudsburg Area School District
50 Vine Street
East Stroudsburg, PA 18301

Date Record Closed :

Date of Decision:

Hearing Officer:

Representative:

Jamie Ray-Leonetti, Esquire
1315 Walnut Street Suite 500
Philadelphia, PA 19107

Anne Hendricks, Esquire
Levin Legal Group
1301 Masons Mill Business Park
Huntingdon Valley, PA 19006

June 20, 2015

June 24, 2015

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

Background

Student¹ is a teen-aged student who is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] and Pennsylvania Chapter 14 under the classifications of Intellectual Disability and Speech/Language Impairment. As such, Student is also an individual with a disability as defined under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The District requested this hearing because they believe that in order to receive a free appropriate public education [FAPE] Student requires a change in educational placement from Learning Support to Life Skills Support. The Parents oppose this change in placement.

Based upon the preponderance of the evidence before me I find for the District.

Issues

1. In order to receive FAPE does Student require a change of placement from Learning Support to Life Skills Support?
2. If Student requires a Life Skills Support placement should it be delivered in the middle school or the high school for the 2015-2016 school year?

Findings of Fact²

1. Student was adopted at age 27 months from an Eastern European country. [NT 438]
2. Student has attended school in the District since kindergarten and was in 8th grade in the District intermediate school for the 2014-2015 school year. [NT 31]
3. As early as 1st grade based on cognitive testing the District recommended Supplemental Life Skills Support programming but the Parents did not accept that placement. [NT 90]
4. Student's Parents, in the last few years, have consistently refused to have Student's adaptive skills and/or behaviors assessed, and they did not complete rating scales that their own expert witness provided to them. [NT 43-44; 97-98; 106; 405; S-11]
5. Student was reevaluated in February 2013 in 6th grade. At that time the school psychologist did not have parental permission to do adaptive behavior scales.

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

² The testimony of every witness, and the content of each exhibit, was considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit. The parties' written closings were also carefully considered. In this decision I have chosen to reference the testimony of each individual witness in considerable detail in the hope that this level of explanation will be helpful for the Parents to reach an understanding of my reasoning.

Although Student's cognitive functioning [IQ] was low, both the ability and the adaptive behavior measures were needed for a classification of Intellectual Disability. Therefore the school psychologist kept the disability category of Other Health Impairment because Student still had the seizure disorder, along with the speech and language impairment. [NT 96]

6. When Student's physician determined that Student no longer had a seizure disorder, the District sought to reevaluate Student to assess special education eligibility and classification. The Parents gave permission for some adaptive behavior scales to be used; teachers filled these out but the Parents declined to do so. [NT 45, 94, 96, 98; S-11]
7. Student was classified as having an Intellectual Disability in December 2014. This classification was not conferred earlier in middle school because the Parents refused to allow Student's adaptive functioning to be assessed³. At the time of the most recent District evaluation the Parents allowed the teachers to rate Student's adaptive functioning but they themselves declined to do so. [NT 43-45; S-11]
8. Student's current educational placement is Supplemental Learning Support with speech and language support.⁴ [NT 31]
9. At the December 17, 2014 IEP meeting the IEP team, with the exception of the Parents recommended that Student's placement be changed to Supplemental Life Skills Support with speech and language support. The proposed program was explained to the Parents and on several occasions they were offered but declined the opportunity to visit the proposed classroom. [NT 31, 37-39; S-7, S-12]
10. The Parents were not in agreement with the Life Skills Support program although they recognized that Student needed functional skills. [NT 38]
11. There is a significant conflict between what the school thinks is an appropriate program for Student and what the parents think is appropriate. Student's mother assures the school that Student can do the work that is sent home, yet in school Student cannot do the same work. Mother has reported that Student absolutely can spell longer words, that Student can write sentences, and that Student certainly can do multiplication and division, yet Student has not been able to demonstrate this in school. Student is not showing mastery of addition and subtraction, and actually is losing some of those skills, likely because Student is getting confused with some of the things that are being taught at home. [NT 102]

³ The hearing officer, a Pennsylvania licensed psychologist and a certified psychologist takes notice that in order to diagnose an Intellectual Disability both cognitive functioning and adaptive functioning must be assessed as being well below average.

⁴ Student was adopted at age 27 months. Student receives English as a Second Language [ESL] consultative support because when Parents registered Student in kindergarten they indicated that Student's native language was that of the Eastern European country in which Student was born. [NT 31-35]

12. At the December 17th IEP meeting, after the team had finished reviewing the re-evaluation report and before moving on to the IEP, the District offered the Parents an independent educational evaluation. The Parents did not accept the offer at that time. [NT 38]
13. The Parents did not return the Notice of Recommended Educational Placement [NOREP] but email correspondence indicated that they did not approve the offered placement. [NT40-42; S-20]
14. Given its belief that a change in placement was necessary in order to provide FAPE, the District informed the Parents that it would be requesting Mediation and filing for Due Process. [NT 42-43; S-20]

Testimony of the Director of Pupil Services

15. The District's Director of Pupil Services [hereinafter Director] for grades six through eight provided testimony in this matter. She has held her current position for eight years and for the three prior years she was the District's Supervisor of Special Education. She holds a bachelor's degree in elementary education from East Stroudsburg University and a master's of education in special education from East Stroudsburg University. She holds another master's degree in Administration, K to 12 from East Stroudsburg University. She has a learning disability teacher coordinator certification and a mentally and physically handicapped certification from New Jersey. [NT 27-28]
16. The Director has known Student since Student's 6th grade year and has attended all Student's IEP meetings. [NT 30-31]
17. In 6th grade there were six or seven IEP meetings to address revisions of the IEP, trying to add more functional opportunities to help Student be a little more independent. The District kept Student in the core curriculum but kept minimizing the amount Student has to do. Student was not doing well, but was receiving some educational benefit at that time to the point where the District did not see the immediate need for a change in programming. [NT 73, 76]
18. In or about April of 7th grade at the time of the annual March/April IEP revision⁵ the Director was recognizing that Supplemental Learning Support was not going to work for Student any longer because there were more of the frustration-signaling behaviors emerging such as chewing holes in Student's shirts, putting Student's head down, more escape such as needing to go to the bathroom. The Director spoke to the 7th grade teacher on several occasions and the teacher expressed concern that at that point Student needed more functional work. [NT 54-55, 75-76]

⁵ The Parents did not attend this IEP meeting. [NT 76]

19. Student has significant cognitive deficits and is struggling significantly in 8th grade. Although Student wants to please and to do well, Student is frustrated and is demonstrating task-avoidant behavior because Student does not understand what is going on in the Learning Support classes even with modifications and one-to-one Instruction. [NT 36, 54]
20. Student's reading level is at a very basic sight vocabulary of pre-primer and primer words; on progress monitoring, Student comes out at about a first grade level. In math Student has difficulty with very basic facts. Student confuses adding and subtracting, coming out on a very early 2nd grade level in computation although application skills, if given a picture with a graph come out at about a 10th percentile at the very beginning 4th grade level. On assessments done for progress monitoring, on math work completed in class, and on the evaluation conducted in December 2014, Student makes mistakes in basic adding and is not able to do subtraction correctly. [NT 49-51]
21. The Parents have indicated verbally and in writing that they expect Student to be given 8th grade work and be on grade level. They believe Student is able to do fractions, multiplication, and division. When the math teacher was sending homework involving practicing adding and subtracting using the touch methodology, they became very upset and said they did not want Student doing "baby work", they want Student to be doing 8th grade level work. [NT 48-49; S-12]
22. The Director believes Student is very confused because of seeing different kinds of math. Under the current IEP, because the Parents want Student exposed to the general education curriculum, Student is in the supplemental learning support classroom when the class is going over pre-algebra, using numbers and letters and multiplying and dividing fractions. When Student then goes to do math at Student's own level, it seems Student does not recognize the symbol and has difficulty doing just basic adding facts, not understanding what to do. [NT 51-52]
23. Student is aware of being different from the peers in the Supplemental Learning Support classes. Student sits in the rows of seats with the other students when they go over the basic pre-algebra concepts but Student is not able to do what the other students are doing so when they start on group work, Student tries to talk about other things and is distracting to peers. [NT 52]
24. When Student goes to the classroom's back table with the one-to-one Student Aide to do individual work, Student will put Student's head down, engage in a variety of escape tactics such as needing to go to the bathroom or intentionally breaking a pencil in order to be able to get up and move. Student is not defiant or argumentative. Student wants to please, but is not able to do what the other students in the class are doing. [NT 53-53]

25. Even if Student were not engaging in task-avoidant behaviors Student still needs to be in Supplemental Life Skills because the behaviors are not the major issue. The major issue is that Student is frustrated by being asked to work with abstract concepts Student does not understand. Sometimes a tear runs down Student's cheek because Student wants to please but "even for all the money in the world" Student still can't answer because Student doesn't know what's going on. [NT 61]
26. The District has attempted everything that it can in Student's current placement in order to have Student be successful. The Director and Student's team have gone through the SAS tool kit, they have looked at the classroom environment, they have considered Student's needs and what supports are required, they have implemented all possible supports including providing a one-to-one staff person solely for Student, they have cut the core curriculum down to core concepts and then chunked the material, Student's assessments are modified multiple times, and "even with the modified of the modified of the modified" assessments, Student is not able to do them because Student doesn't understand the concept needed to be able to give an answer. Student is going through the motions but has no idea what Student is doing. [NT 64-65]
27. As part of the December 2014 reevaluation Student was seen by an occupational therapist who found that Student can form letters accurately and appropriately but laboriously in terms of spacing and shape in the occupational therapy setting, so passed the measures that were used in the occupational therapy evaluation. [NT 95]
28. To accommodate Student's laborious handwriting, the District has offered keyboarding instruction and has some of Student's work scribed. As do all the students in the intermediate school, Student has access to a laptop in every classroom. The laptops are equipped with assistive technology such as speech-to-text software and Read & Write Gold. Student is also given cloze notes to minimize the amount of handwriting demands. [NT 85-87, 92]
29. The Supplemental Learning Support Program in the high school places focus on the general education curriculum. Algebra is the 9th grade math course and the science course involves using algebra. As students move up through the high school core curriculum there is increasing demand for abstract and higher level thinking skills and synthesizing concepts. In 8th grade there is more concrete comparing and contrasting of concepts and Student cannot do that currently. The Director predicts that Student's frustration will only get worse in high school Supplemental Learning Support classes. [NT 64]
30. The Director has seen the same types of behaviors observed by the evaluator chosen by the Parents [hereinafter Parent's Psychologist] and her assistant and agrees with the Parent's Psychologist's hypothesis about their function. The District has already been implementing the strategies the Parent's Psychologist suggested in her report. [NT 59-60, 78; S-3]

31. The Director believes that these behaviors would be minimized if Student were in the appropriate educational environment where Student understands what is going on and is able to participate meaningfully and actively. [NT 61]
32. Life Skills Support class, where students work on the alternative core content standards, would be more meaningful to Student as it would be more concrete, more hands-on, something to which Student would be able to relate. The supports and services that are in Student's IEP are embedded in the Life Skills Support program. [NT 36]
33. The Life Skills Support program utilizes the Unique Learning Curriculum, which is an alternate core concepts curriculum designed for students with cognitive deficits. It is aligned to the alternate core concepts standards using monthly themes to teach all the core concept areas of reading, English, math, science, and social studies. The Unique Learning Curriculum provides three different levels depending on a student's need; the teacher conducts direct differentiated instruction in small group and large groups based on a student's levels. [NT 37]
34. Student would be much more successful and be able to progress educationally in the Life Skills Support program. [NT 36]
35. Whether Student remains in Supplemental Learning Support or changes to Supplemental Life Skills Support, Student could be moving to 9th grade in the high school in September 2015. The District recommends that Student stay in the current intermediate school in the Supplemental Life Skills Support class for several reasons. [NT 61-62]
36. The Director's reasons include giving Student the opportunity to have a very positive eighth grade year and a feeling of success; Student's familiarity with the Supplemental Life Skills Support teacher would increase Student's comfort level with the program change; the intermediate school's focus on trying to get the basic academics down; while academics are still presented in the high school through the Unique Learning Curriculum, there is more focus on vocational and transitional skills. [NT 62- 64]

Testimony of the School Psychologist

37. The IU school psychologist [School Psychologist] is assigned full time to the District. She holds a Bachelor of Arts degree in elementary education in music from Moravian College and a master of education in community counseling from Lehigh University. She has an educational specialist's degree in school psychology from Lehigh University, a supervisor of pupil services certification and an elementary education certification. She is a nationally certified counselor, a nationally certified school psychologist, a Pennsylvania certified school psychologist and a Pennsylvania licensed psychologist. [NT 93]

38. She first met Student in 6th grade and evaluated Student in February 2013 of 6th grade. She then reevaluated Student in December 2014. She has attended two of Student's IEP meetings including the December 2014 IEP meeting. [NT 93; S-4, S-5]
39. At the time of the February 2013 evaluation the School Psychologist found that in 6th grade Student was still functioning on a 1st grade level and struggling in developing acquisition of foundational skills. She therefore recommended that more focus be put on foundational and functional skills given that students have a finite amount of time in school and teams need to look at where a child is going to end up at the conclusion of high school. [NT 96-97]
40. For the December 2014 reevaluation the School Psychologist used the Adaptive Behavior Assessment System-Two [ABAS-II]. The assessment found Student to have significant lags in most areas of adaptive functioning. [NT 97-98; S-4]
41. For the December 2014 reevaluation the School Psychologist used two cognitive assessments.⁶ She first administered the Wechsler Intelligence Scales for Children – Fourth Edition [WISC-IV] and was surprised at how low the scores came out. On the WISC-IV Student had a Full Scale IQ of 49, with an Index Score of 63 in Verbal Comprehension; an Index Score of 51 in Perceptual Reasoning; an Index Score of 50 in Working Memory; and an Index Score of 70 in Processing Speed. On the February 2013 evaluation Student's Full Scale IQ score had been in the mid 60's. [NT 100; S-4]
42. In consideration of a likely early deprived background since Student was raised in an Eastern European orphanage for over two years, the School Psychologist decided to also administer the Stanford-Binet, which looks at the same skills as the WISC-IV but is a little less culturally and language loaded. However, Student's verbal skills scores were higher than the non-verbal skills. [NT 98-99; S-4]
43. On the Stanford-Binet, Student earned a Full Scale IQ of 51, a Non-Verbal IQ of 52, and a Verbal IQ of 54. Fluid reasoning was 65, Knowledge was 66; Quantitative Reasoning was 53; Visual-Spatial Processing was 53 and Working Memory was 54. [NT 100; S-4]
44. The testing results on ability and achievement obtained by the Parent's Psychologist were consistent with the results of the School Psychologist's results. [NT 106; S-3]

⁶ The hearing officer provides professional expertise as follows: IQ scores and Index Scores are placed on the bell-shaped curve which yields ranges of scores with 90-109 being the Average Range, 80-89 Low Average, 70-79 Borderline and below 69 Deficient. To complete the sequence, 110-119 is High Average, 120-129 is Superior and above 130 is Very Superior.

45. The in-school behaviors the Parent's Psychologist and her assistant observed, aside from the grunting, were the same behaviors the School Psychologist observed. [NT 110; S-3, S-4]
46. The School Psychologist agrees with the Parent's Psychologist's hypothesis about the functions of the behaviors. [NT 110; S-3]
47. The Parents' Psychologist recommended the following strategies: review of when it's an appropriate time to request help; extra support from the teachers; model appropriate ways to ask for help. [NT 110; S-3]
48. These strategies are typical for that hypothesis, but the School Psychologist does not believe that they will address the underlying reason for the behaviors. If the basic cause of Student's behaviors were an attention issue they might work. However if the basic cause is a lack of understanding of the task, the strategies are not going to address the lack of comprehension of the task. [NT 110-111]
49. All the strategies recommended by the Parents' Psychologist have been tried by Student's teachers. [NT 111]
50. The School Psychologist believes that the BASC rating scales' yielding a score suggesting that Student has an attention deficit disorder are an artifact of how the instrument is constructed and disagrees with the Parent's Psychologist's conferring an Attention Deficit Disorder, Inattentive Type diagnosis. Rather, the School Psychologist is seeing a cognitive delay and a mismatch between where Student is able to perform and the extent to which Student is cognitively able to compensate and understand the demands being imposed. [NT 109-110]
51. Based on the skills gaps Student demonstrated the School Psychologist advised the IEP team to seriously consider how much functional help Student needed versus how much academics Student needs. Student has a base of general knowledge because the Parents have offered enriching experience through taking Student places and talking with Student. Student is able to retain what [Student] experiences but has more difficulty with the novel, with unusual tasks. [NT 98-100; S-4]
52. The School Psychologist concluded, "It is obvious that [Student] is aware that the level of work presented to [Student] is different and easier [Student's mother reports [Student] calls it baby work] than presented to many of [Student's] peers; yet, [Student] struggles with these tasks despite years of specifically designed instruction, accommodations and modifications through [Student's] IEP." [NT 101-102; S-4]
53. Student is well aware that the work [Student] is doing is not the same as peers' work, and sometimes complains about this and wants the same work the other

- students in the class get. When Student gets the work the other students have, Student can't read it, and needs the Student Aide to write every word, or spell every word, or read every word to Student. Student does not understand the scope of what is expected even though it's modified, and then because of being a really nice child feels bad because of wanting to please everyone and make everyone – parents and teachers - happy. [NT 102-103]
54. Student is in 8th grade and has been in the District since kindergarten, and between kindergarten and 8th grade has reached the point where Student is functioning at the end of 1st grade, beginning 2nd grade in reading, and in math between 2nd and maybe 3rd grade. It took Student nine years to get there, and Student has four to six years left in school. To function as an adult, a person needs to function at about a 7th grade level to really make it, to be able to pay bills and budget. If it has taken Student nine years to get to 2nd grade, in the next four to six years educators have to look at an alternative for Student, keep pushing the academics but also work on other functional skills so Student has some ability to be independent in adulthood. [NT 130]
55. The School Psychologist believes that Student has many future job opportunities if instruction can build on what Student does well. Student will be able to hold a job because Student is pleasant, polite, and well mannered, can interact with adults and other kids and wants to help. Student's education needs to build on those strengths and work on the more functional skills so Student can get one of the available jobs calling for those qualities and be a contributing member of society instead of somebody that's always disappointing everybody. [NT 104-105]
56. There is a large difference in high school from intermediate school. Some of the high school classes are block classes. 90 minutes long, and a year course is done in a half year. Even reducing the core concepts, it would be difficult and there is a limit to how much Student can be included in the regular curriculum. [NT 115]
57. The focus in high school is preparing students to pass the Keystone exams. Student doesn't need to take the Keystone exams because of taking the PASA, but the focus of the classes is getting everybody else to pass the keystones which involve taking foundation knowledge and applying it to real life, doing comparing and contrasting and trends and predictions and drawing conclusions. Student doesn't have the foundation skills to do that. [NT 115]
58. Supplemental Life Skills Support classes are designed so students can get core concepts through the Unique Learning Curriculum. [NT 116]
59. Content is related to the Core Curriculum but presented in a way that makes more sense and is relevant. These classes also focus on those functional skills everybody needs for adult life: organizing time, managing time, knowing whom to access in the community if there's a problem, reading signs, notes, filling out applications, how to approach getting a job, how do you hold a job, how do you

take care of yourself, what do you do when you get sick. From the rating scales it doesn't appear Student has those skills, and the school has the obligation to teach those skills. [NT 117]

60. If Student's placement is changed, Student's entire day would not be spent in the Life Skills classroom. Student would receive functional reading, functional math, functional writing, functional science and functional living skills in the Life Skills class. Student would be in regular education classes for physical education, technology education, and family and consumer science. Student could continue to receive corrective reading in a Learning Support class and possibly TransMath in Learning Support as well. [NT 135-138]

Testimony of the Special Education Learning Support Teacher I.C.

61. The Learning Support Teacher I.C. has held this position in the District for the past nine years, and previously taught in another state for sixteen years for a total of 25 years. [NT 146]
62. She holds a Bachelor's degree in human services and sociology, and a Master's degree in special education. She has a Pennsylvania teaching certificate and is designated Highly Qualified. [NT 147]
63. The Learning Support Teacher I.C. has known Student for one year in the English and Reading and Math Learning Support Class and is with Student three of five days a week. There are approximately 12 students in the Learning Support class and four adults. Student leaves the teacher's class for learning support science and social studies; this teacher goes into the science class with Student to provide "push-in" support. [NT 151, 153]
64. There is a one-to-one Student Aide solely assigned to Student; she does not assist any other student. [NT 153, 218-219]
65. The Learning Support Teacher I.C. describes Student as friendly, outgoing, and eager to learn. However, she has concerns about Student centered on Student's not progressing in the classroom. She believes that Student needs functional skills in order to achieve. [NT 148, 151]
66. The Learning Support Teacher I.C. has observed Student showing frustration by pouting, putting Student's head down, asking to use the bathroom, to go to the nurse to escape from doing the current work at hand. Student communicates not being able to do the work by tapping the pencil, grunting, and sometimes directly telling the teacher that the work is difficult. Student seeks to leave the room for the bathroom or the nurse at least twice in a 42-minute class period. [NT 148-149, 178]

67. The Supplemental Learning Support English class has been working throughout the year on the skills of grammar, punctuation, and mechanics. There has been a research project. The class does various genres of writing such as descriptive and persuasive pieces. [NT 154]
68. Student has worked on these types of assignments with modifications. For example, the students had to do a research paper and they had to find three to five citations. Student only had to find one citation with the assistance of the Student Aide. Student could not do this assignment without the assistance of the Student Aide, as Student could not find the citation on Student's own. [NT 154-155]
69. The other Learning Support students are writing five paragraph essays. Student is not able to write a paragraph. Student is not able to write a sentence. [NT 155, 213]
70. In English class, part is direct whole group instruction, and then the class breaks up into doing individual work or group work. When whole group instruction is occurring Student is sitting with the rest of the class. Student tries to participate and does raise Student's hand but Student's comments or questions are not appropriate to the topic. Sometimes Student understands what is going on but the majority of the time does not. [NT 155, 157]
71. The Parents have never suggested to the Learning Support Teacher I.C. that they would permit Student to be excused from the whole group instruction and taken for instruction on a different grade level. Rather, they have insisted that Student be exposed to the same curriculum as the other students. [NT 213-214]
72. When the students are seated in cooperative learning groups of four Student sits with two other students. The teacher tries to have Student participate with the groups, but sometimes it becomes difficult because Student doesn't know what to do or doesn't understand. When this happens the Student Aide and Student go to a private table and the Aide assists one-on-one so Student can have a better understanding of what to do. [NT 157]
73. During one-to-one work in English, if Student is working on a writing assignment, it is the same assignment that the other students in the room are working on but with modifications. The Student Aide will scribe for Student, will provide positive reinforcement for Student, will read with Student, will re-read if Student doesn't understand the question or the topic at hand, or may provide a graphic organizer depending on the subject, although Student does not understand the concept of a graphic organizer. Student also works on a computer/laptop when doing writing assignments with the assistance of the Student Aide. [NT 158-159, 210-212]
74. The Supplemental Learning Support reading class does not deal with decoding, it is a literature comprehension /appreciation class. The class reads novels and short

- stories and they touch upon drama and poetry. The students do two book reports in a year. Instruction takes place in both large group and small or individual group settings. [NT 161]
75. When Student is among peers in the large group instruction Student does not understand what is going on. [NT 161]
 76. In small group Student is working on the same piece of literature that the other students are. The teacher has two different types of literature books, one is a modified lower level user-friendly book but still written at the 8th grade level and the other is the regular education textbook. Student uses the modified book which has the same content that the other book has but might have only three or four paragraphs to summarize 15 to 20 pages of the literature book. [NT 162]
 77. Even though the modified book is written at the 8th grade level Student can access the text by having it read aloud or accessing the audio multiple times on computer in class. The literature book has instructions for accessing the text on a home computer. [NT 190-193]
 78. Student loves to listen to text on audio, and understands some of it but then usually cannot remember the information to answer questions about it. [NT 216-217]
 79. Student cannot read those three or four paragraphs so three things are done for Student. If the piece is not read aloud as a class, the Student Aide reads it with Student, the piece is also on audio for Student, and Student has a book taken home to reinforce the reading. [NT 162, 215-216]
 80. Student receives instruction in how to read [decoding] in a separate class. [NT 162]
 81. Student's curriculum is modified in science and in social studies. The Special Education Teacher scribes for Student in social studies. Student does not understand the concepts and when Student has passed tests it is largely through guessing on multiple choice and/or remediation. [NT 176, 197]
 82. Tests are modified and after Student takes the test with considerable assistance from the Student Aide a failing grade can be "remediated". Remediation consists of retaking the test the next day. Student has already been exposed to the test questions and Parents are informed that the test will be remediated and referred to the Study Guide [regular education classes] or Packet modified for Student [Learning Support subjects] that are sent home two days before each test. Any questions Student may have answered correctly are removed from the second administration and Student retains credit for those answers. Any new correct items are added to the score. Student may or may not obtain a better score with remediation. [NT 193-194, 200, 204-208]

83. There a difference in Student's maturity level and that of the rest of the classes. If the class is doing a group work assignment and the students have to share their ideas with one another, instead of focusing on the topic at hand Student will get up out of the seat, or walk around the desk, or walk around the classroom, instead of sitting down and talking with the small group about what needs to be talked about at that moment. [NT 179]
84. Student does not retain the conceptual information that is presented, for example finding the main idea in a paragraph, even when explanations and practice have been provided multiple times. [NT 183-184]
85. Progress monitoring is unreliable because Student rushes through work, and guesses most of the time because of not understanding the work. [NT 185]
86. The Learning Support Teacher I.C. believes that the Parents are doing much of Student's homework because the content that is brought back into the classroom is different from what Student does when Student is with the teacher. [NT 186-187]
87. The Learning Support Teacher I.C. disagrees with the Parents' Psychologist's opinion that a behavior plan will ameliorate Student's frustration, noting "It's not because Student has a behavioral problem; it's more so that Student becomes frustrated and upset because the work is too difficult for Student". [NT 180]
88. The Learning Support Teacher I.C. has already been using the strategies and consequences that the Parents' Psychologist suggested in her evaluation report. [NT 180-183]
89. The Learning Support Teacher I.C. has been attempting self-monitoring with Student all year. For example, if Student is writing for English and has completed a sentence or two, the teacher gives the self-evaluation checklist and points to the items, reading what the item is and asking Student to self-check the work. Student is not able to self-check; the teacher tries but Student cannot do the self-checking. [NT 208]
90. When Student cannot self-check then the Student Aide will assist but Student still cannot do/understand what is expected. Student will become frustrated, the Student Aide assists Student to calm down, and when needed the Learning Support Teacher I.C. will calm, praise, coax, and suggest relaxation strategies. [NT 210]
91. The Learning Support Teacher I.C. was part of the December 2014 IEP team that recommended a change in placement for Student because she believes that the life skills program would be beneficial for Student in that Student will have the functional curriculum that Student needs. [NT 149]

92. A review of Student's work product from the Learning Support classes supports the District's position that Student does not understand the work, cannot complete the work and it is very likely that Student is not profiting from having work presented at that level. [NT 166-175; S-19⁷]
93. Student's mother reported to the Learning Support Teacher I.C. that she didn't want Student to be with "those kids". The Parent went on to say that she didn't want Student to be with kids that have Down Syndrome, are autistic, or kids with wheelchairs. [NT 149-150]

Testimony of the Special Education Teacher K.F.

94. Special Education Teacher K.F. has been a special education teacher for twelve years. She holds a Bachelor's and a Master's degree, and is certified in elementary education, special education, and reading specialist. [NT 221]
95. She teaches Student for math and reading resource. The math class is a learning support class and the reading class is a special education resource class that provides Student extra reading instruction three days out of the six-day cycle. [NT 221-222]
96. The math class is a pre-algebra class. The syllabus includes working on integers, expressions, numeric, algebraic, rational/irrational numbers, statistics earlier in the year, and some surface area geometry. [NT 223]
97. Student has not shown the ability to perform any of those pre-algebra skills. At the start of the year Special Education Teacher K.F. baselined all the students; Student did not earn any points on computation at the eighth grade level and had difficulty and needed considerable assistance from the Student Aide on the first unit, a sixth grade unit on integers. [NT 222-223]
98. Whole group instruction, for which Student is present, is on pre-algebra skills. Student does not understand the material because it is too difficult. Student will volunteer to answer questions, and when Student does so Special Education Teacher K.F. will offer multiple choice so Student can answer. However, Student also gets up a lot and moves about the room more during the whole group time than when working one-on-one with the Student Aide. Student asks to go to the bathroom, get a drink, see the nurse, all of which the teacher views as avoidance tactics. [NT 223-224, 238-239]
99. Student sometimes calls out an answer in class during large group direct instruction; sometimes what Student says is appropriate. [NT 239]

⁷ Although not all pages of S-19 were referenced at the hearing the hearing officer did review the entire exhibit and found no evidence that supported the Parents' position.

100. When the class is working in small groups Student is working on individual math skills, according to the IEP on addition, subtraction, time and money. Student is at a 1st to 2nd grade level in computation and 4th grade for application. Student hasn't made progress this year on computation [addition and subtraction], having started the year at the 10th percentile for fall of 2nd grade, but in the last three probes fell slightly below that with four points in eight minutes as opposed to six. Student has struggled with computation all year. [NT 224-225]
101. On math applications skills, 4th grade skills are time, graphs, and charts. Student can tell time to the hour and the half hour consistently at the 80 percent accuracy, having mastered the half-hour this year. Graphs involves reading a bar graph or a table, such as for example, telling the number of apples, bananas, pears. On applications Student has maintained baseline but has not made any progress. [NT 225-228]
102. Student uses a number line for subtraction and was also introduced to TouchMath for second and third marking period this year because it is a concrete teaching tool. A calculator was also introduced for "department store math" with some success in addition to counting coins. [NT 228-230]
103. Despite its being appropriate for Student, the Parents objected to TouchMath, saying that it was "baby work"; they would not let Student use it at home. [NT 229-230]
104. In individual math sessions, Student almost always refuses to do work, and always refuses with time and money, which are really difficult for Student and where the most frustration is exhibited and when Student is more likely to shut down. Student will refuse to do the work, play with a pencil or Student's clothing. Student won't talk, and at times won't answer. Student closes Student's eyes and puts Student's head down and says. "I don't know" to the Student Aide. [NT 232-233]
105. When Student shuts down the teacher brings Student back on track in various ways. Student responds well to praise, and so the teacher tries to be very positive and encouraging, gives some wait time, doesn't push Student. Student will repeat "I can do this" after the teacher. Student needs breaks more with math than reading, between every few problems. [NT 234-235]
106. Student can identify coins but has not made any real progress in counting coins. Student cannot do a combination - pennies, nickels, dimes, and quarters - at all. The instruction is then broken up to work on nickels for example until Student seems to get that 80 percent, but if instruction goes to dimes, and then back to nickels, Student doesn't have the nickel skill anymore and needs to start over. Student cannot transfer from a nickel to a penny; although Student knows how much they're worth Student doesn't know how to count them. Student likes to work on counting coins on the computer and this is provided as an incentive, but

- Student's scores are about the same as when not using computer. [NT 233-235, 244]
107. The Parents are likely to be providing significant assistance on math homework. Student receives math homework each day, alternating between application and computation. The application is a grade level higher than what is being worked on in class. With the homework there are only a couple errors; however, when Student is doing those types of problems in school, there are only a couple that are right, with more errors than correct answers and what is presented in school is a grade level below what is sent home. [NT 235-236]
108. Student's math tests are addition and subtraction. During remediation the Student Aide works through the problems with Student and they do them together. [NT 236-237; S-19]
109. Special Education Teacher K.F. believes it would be beneficial to Student to not have to sit through whole group instruction about pre-algebra, but instead spend math period working on the first and second grade computation skills and the fourth grade application skills. [NT 231, 237]
110. Student has no major problems with the other students in the math class. The teacher could not say that Student has friends, but there are those that are friendlier with Student than others. The other students treat Student fairly but they don't always initiate the interaction. [NT 238]
111. Special Education Teacher K.F. who holds a Pennsylvania reading specialist certification instructs Student in reading [decoding] on a one-to-one basis using the SRA program. Student currently is at the very end of the last lesson of Level A, which is the first book in the decoding series and translates to an early 2nd grade level. In the beginning of the year Student was about halfway through that book, translating to an early 1st grade level, having started it the previous year. [NT 221, 231-232]
112. Student is working on pre-primer and primer sight words. [NT 232]
113. Special Education Teacher K.F. believes that a change from Learning Support to Life Skills Support is appropriate for Student. If Student's placement is changed to Life Skills Student can still receive the one-to-one remedial SRA program with this teacher. [NT 237-238]
114. Special Education Teacher K.F.'s concerns are Student's lack of progress, the fact that Student experiences frustration on a regular basis, and is not retaining learned skills. She believes that Student needs more time to work on functional math skills because that is what will be needed after high school. [NT 242-243]

Testimony of the Life Skills Support Teacher/Student's Former 6th Grade Learning Support Teacher

115. The Life Skills Support Teacher is teaching Life Skills Support for the second non-consecutive year. Her intervening position was 6th grade Learning Support for 14 years. [NT 248]
116. She holds a Bachelor's degree in special education and elementary education and a Master's degree in special education supervision and administration. She is Pennsylvania certified for all five core academic areas. [NT 248]
117. She was Student's 6th grade Learning Support Teacher and has known Student casually in the halls through 7th and 8th grades. [NT 248]
118. When Student was in this witness' Learning Support classroom Student had a hard time - a hard time with the type of work that was provided, a hard time socially and a hard time with the environment itself, following the general procedures of the classroom. There were IEP meetings to address Student's difficulties, providing additional supports and a new IEP during the year. [NT 278-279, 297]
119. Student's report card grades were accumulated differently than the other students. Student was not always tested on the same things on which everyone else was tested, the work was very much individualized for Student and although Student earned the grades conferred the work was not typical 6th grade Learning Support work. [NT 279-284; P-6]
120. The Life Skills Support Teacher conducted Student's alternate state test, the PASA, this year along with the Student Aide. Additionally since the learning support students were doing their PSSA testing, Student had a hole in Student's schedule, so along with some other students joined the Life Skills class for about six days. They did some instructional activities and some social activities. [NT 254-255]
121. The functional activities involved some calendar activities, some group discussions, and some personal identification information. Student showed good effort and a very strong work ethic, was happy and eager to participate, and raised Student's hand quite frequently. Student sat right in the group and engaged with the peers and with the adults in the room. [NT 255, 258]
122. Student did struggle with some of the information that was being taught, having trouble identifying or recalling some personal information such as full name, address, telephone number, age, and grade, date of birth as well as today's date and the weather. Student was not able to identify address or phone number, and there was part of Student's birthdate missing. [NT 256]

123. In the current 8th grade Life Skills classroom there are eight students, and the ages range from 12 up to 15 with most being ages 13 and 14, grades six through eight, with instructional levels ranging from pre-school to roughly third grade level as far as reading, writing, and math abilities go. All the students are verbal. [NT 259, 271]
124. Student's skill levels place [Student] right in the middle of the group of students in that class. [NT 271]
125. If Student were in that classroom and was working on the fourth grade level in something, the work can be modified to instruct on [Student's] level. There is a large variety of materials at all different levels and the number of adults to support that, the teacher and two paraprofessionals. The students are grouped according to ability and there is a curriculum that provides materials in varying levels. [NT 259]
126. The students are with the Life Skills teacher for a large part of the day but not the entire day. They are out of the classroom for breakfast, pickup, and lunch in the cafeteria. They go out to at least one or two specials per day mixed in with their regular education peers, including technology education classes which involve a graphics design and woodshop, a family and consumer science program that involves both cooking and sewing, physical education, health, music, and art, the same as all the other students in the school. In those classes the students sit among the regular education students, unless an IEP calls for special seating. There have also been opportunities where the students, along with the teacher and the aides, will go into other classrooms to do joint academic work, such as into a regular education science lab to do experiments. [NT 259-260, 286-288]
127. It is also possible that if the team determined that Student should be in a learning support class for a particular subject, Student could go out for learning support and then come back because both Learning Support and Life Skills Support are both in the building and the programs are readily available. Since the Life Skills Teacher was only recently a Learning Support teacher she works very closely with the current learning support teacher, and they often consult each other on lessons and materials and strategies for the students that they have. [NT 260]
128. It is an IEP team decision as to whether Student's homeroom would be a regular education homeroom or the Life Skills classroom. [NT 275]
129. Since having the Life Skills Support Teacher for the PASA testing and then joining the class during the PSSA testing Student has quite frequently been to visit the teacher's classroom several times in a week during break time allowed when working for extended periods of time. [NT 258, 274]

130. The Life Skills Support Teacher has spoken several times a year with Student's 7th and 8th grade teachers about how Student was doing and the struggles Student was having. The 7th and 8th grade teachers approached her to ask what kind of strategies she used in 6th grade with Student, as well as what kind of materials or supports [she] might offer to them to bring into their classrooms for Student from Life Skills. [NT 248-249]
131. The Life Skills Support Teacher was made aware that in December 2014 the IEP team recommended a change of placement for Student to life skills. She is very comfortable with that decision as she has definitely always considered that to be an appropriate placement for Student since they first met. [NT 250]
132. She holds this opinion because Student needs the type of skills that are offered in Life Skills Support. The structured small group environment seems to work for Student. The one-on-one attention from the teacher is something Student needs quite frequently. The content that is taught in Life Skills seems appropriate for Student as Student lacked some of these skills and the instruction is functional and meaningful. [NT 250]
133. Having taught in both Learning Support and Life Skills the Life Skills Support Teacher notes that in learning support the instruction is highly academic, with the main focus on the general education curriculum and limited opportunities for functional academics. The Life Skills Support class is very functional - functional math, functional reading, functional writing skills, things that are applicable to the students' everyday lives. The Life Skills classes prepare students for independence rather than higher education; where learning support does the opposite, prepares them for higher education as well as independence. [NT 250-251]
134. In functional reading skills, students focus on the words and type of reading they will need to be independent so they study survival words that, practice recognizing reading survival signs that they would see out in the community as well as in public buildings. There is a program for practicing recognizing the high frequency sight words, the most frequently used words in the English language. There is a reading program in which the pieces are mainly science and social studies content based and where the students work mainly on comprehension, but it also has some modification built in so that the students can build reading fluency. [NT 261-262]
135. For functional writing in Life Skills students work mainly on writing personal information, filling out forms, and basic self-expression to be able to write sentences and to be able to communicate at a basic level. [NT 262]
136. For math students do the core computation skills: adding, subtraction, multiplying, and dividing for those who are ready for it, but with unique methods of teaching them. For example, for adding or subtracting students might use touch

- points or manipulatives depending on what the student is comfortable with. Students focus a lot on money skills and time management skills, so practice and learn telling time, and doing elapsed time. [NT 262]
137. As noted, reading comprehension has science and social studies built into it and then students build upon some of those topics. The teacher also works on map reading skills so that the students could functionally receive a map and know their way around a community or a public place. [NT 262]
138. Additionally, focusing on functional academics, students are working on raising money, earning money, calculating spending money and making change. These activities are not done as forced structured lessons, but rather are ongoing throughout the day and the week in a natural progression rather than in isolated lessons such as those in a Learning Support setting. [NT 252]
139. Students learn adaptive skills with work on personal maintenance, being sure students are properly prepared for their workday, which for them is school, using self-monitoring and adult monitoring of personal appearance, hygiene, and grooming. Students are taught to monitor themselves and advocate for themselves to have their needs met during the school day. Household maintenance is addressed as well in a hands-on practical manner. [NT 263-265]
140. The class concentrates a great deal on communication so that students can express themselves in an appropriate manner; students are taught strategies to help to express frustration or to seek assistance in an appropriate way. [NT 264]
141. Community-based learning takes place through trips to stores to purchase supplies and to restaurants to practice dining out. [NT 266-267]
142. Having reviewed the Parents' Psychologist's recommendations for strategies, the Life Skills Teacher agrees with the strategies and believes that while they would be difficult to implement in a Learning Support class, they are and would be easily incorporated into the Life Skills class. [NT 268-269]
143. The teacher believes that this is the crucial age and at this point as much independence from adults as possible is the goal. [NT 252]
144. The teacher is also concerned about the reported frustration Student is exhibiting. [NT 252]
145. The Life Skills teacher who also was Student's Learning Support teacher recommends that Student join the Life Skills class in the intermediate school for the 2015-2016 school year. Student is very comfortable with that class and the teacher does not think Student is ready for the high school focus and environment yet. [NT 267-268]

Testimony of the Social Studies Teacher

146. The 8th grade Social Studies Teacher is also a Social Studies department head and the Athletic Director at the school. He has been a teacher for 15 years, since the building opened. Student is one of his pupils in Social Studies. [NT 415]
147. He holds a Bachelor's of Science in history and in secondary education from East Stroudsburg University and is certified in Pennsylvania. [NT 415]
148. The 8th grade Social Studies curriculum is world geography. It covers cultural geography and physical geography, different countries and the regions within them, different governments ,as well as a unit on the World Wars, to coincide with what students learned about The Diary of Anne Frank. [NT 416]
149. There are 21 pupils in the class, the teacher, an instructional aide, and sometimes another aide in addition to I.C. The class includes both small and large group instruction and time when the students are working alone. [NT 416, 419]
150. At times Student participates in the large group if it's a topic that Student is comfortable with. [NT 416]
151. Student sits near the front of the room in large group. Student's desk is in the front closest to the board, right next to the teacher's desk. Student also receives one-to-one instruction at that spot. Student's seat may be moved when the class breaks into small groups. [NT 416, 432]
152. Student participates in small groups depending on the activity. [NT 417]
153. When the other students are working individually Student works with the Student helper. [NT 417]
154. The Social Studies curriculum is modified for Student. Student will be asked to do fewer questions, work will be chunked, word banks are provided, extended time will be given when needed, and things will be read to Student and scribed for Student. [NT 418]
155. Student's Learning Support Teacher I.C. is in class with Student. When I.C. reads to Student she puts the language into simpler terms if the text is too complex. [NT 418]
156. Sometimes Student refuses to do the work. It's usually after a long period of working with Student and to the point where repackaging things, and trying to explain it and put it in another way, and then ultimately it will come to a point where Student feels like Student just isn't getting it and will just put hands down and sort of look around the room and [the teacher will] say, "[Student, Student]

- come on, come on” and Student will say “I can't, I don't know what I'm doing”. [NT 419-420]
157. This behavior depends on the assignment and what's happening that day. Student struggles with any sort of individual seat work. [NT 421]
158. During the large group instruction Student understands bits and pieces of the content, but doesn't seem to be getting the broad picture of it. Student understands certain components of it here and there. When Student grasps something, Student is very quick to put a hand up and show everybody that Student's got it. [NT 421]
159. Otherwise, Student will sort of sit quietly. If the teacher asks students to write something out or put something together, Student can't really do that. Sometimes Student tells him that it's too hard. [NT 421]
160. I.C. does a lot of modeling for Student such as saying “Let me do number one with you or let me do number one for you, and let's do number two together. I'll take what you did for two and let's try that for three”. Sometimes smaller segments of information are made larger, for example instead of having to find life expectancy to the single digit, Student will be asked to the ten's to get it in the ballpark. [NT 421]
161. Student is given homework and it is completed. The teacher thinks Student does some of it but not all of it. A lot of times the ideas that Student comes back with are not the ideas that Student left with. The subtleties that Student's grasping are not indicative of what Student shows in class. Student is provided with an answer key for every homework assignment, and often the answers match the key, almost too well. For example, one recent homework assignment where the answer key was given and number 10 was an opinion question about the strategic advantage of gaining the Louisiana Territory from the French the answer key for number 10 said "their opinion" and when the homework was returned the following day, the answer to number 10 was "their opinion". [NT 422-423]
162. On a pennant project Student's product came back the next day completed in detail but Student could not say any part of it Student worked on. When asked if Student's mother had done it Student said yes. Afterwards when doing another pennant in class Student's was very simplistic and Student had a hard time doing the project. [NT 423-424]
163. The Social Studies Teacher noted in conversations in class Student was unable to identify who the President was and was unable to identify the country Student lives in. [NT 436]
164. Homework plays a key role in Student's grades. [NT 425, 434]

165. When providing information to Parents' Psychologist the teacher noted that Student was having academic difficulties. Student has a real problem grasping the information that is taught in class; what is talked about in class and then given an assessment on it, Student scores extremely low despite modifications, study guides, and one-on-one assistance. Student seems to be not grasping the content at all. [NT 425]
166. The Social Studies Teacher does not believe that Student is properly placed in his class. The scores that Student gets on quizzes and tests are beyond low, such as 12's and 21's. Student is not grasping even the most basic of concepts that he is teaching in class. [NT 426; S-19]
167. With extensive one-on-one help and extra time Student has done writing projects in class. The teacher has never seen Student independently be able to write a complete sentence. [NT 428]
168. Other than sometimes being exposed to some "neat things" Student seems not be to gaining anything academically in the Social Studies class. [NT 428]
169. The other children in the class treat Student "kindly". They understand who Student is and are accepting of Strident. [NT 428-429]
170. The teacher does not see a resemblance between the behavior of students he has known who have ADHD or ADD and Student's behavior. [NT 429]
171. The teacher has seen Student get to the point where material has been repackaged various different ways, and when asking Student to put pen to paper and come up with an idea, Student has looked at him with teary and watery eyes, at which point he has learned to back off, give a break for a couple minutes. [NT 430]
172. The Social Studies Teacher agrees with the IEP team's recommendation that Student be placed in a Life Skills Class. He feels that for his specific class, Student is not gaining anything. He believes that in life skills Student will be given an opportunity to learn a curriculum that is more suited to Student's abilities. He thinks that they would be able to provide instruction that would really help Student as a young adult as Student goes out into the community and seeks employment. [NT 430]

Testimony of the Student Aide

173. This is the Student Aide's third year in her position. She taught math to 7th and 8th grade students in New York for four years, and upon moving to Pennsylvania taught Preschool. After having her children, she returned to work

- and substituted in three school districts, and finally took the position in the District as a Student Aide. [NT 308]
174. She holds a Bachelor's degree in social science and a Master's degree in elementary education and special education. She is certified in Pennsylvania, New York and New Jersey on the elementary level. In addition, in New York and New Jersey she has a students with disability certificate, and in Pennsylvania she is mid-level mathematics certified. [NT 308]
175. The Student Aide is assigned to work with Student and is assigned only to Student. She met Student at the beginning of the 2014-2015 school year. She is with Student eight out of nine periods every school day. When Student goes to science Special Education Teacher I.C. is with Student as the one-to-one. [NT 309, 311]
176. She describes Student as very friendly, very sweet, thoughtful, and very pleasant to be around, but as a student, struggling with the work that's presented. The school work is above Student's level, and Student is not understanding a lot of things that are happening. Student exhibits frustration. [NT 309]
177. When Student is frustrated because they are doing something that Student doesn't understand, sometimes Student will say "I don't understand" and "I can't do it". Frequently Student starts picking at Student's skin, puts Student's head down, rocks, starts eating pencils, taking pens apart, states not feeling good and has to go to the nurse. [NT 310]
178. The Student Aide, an experienced and qualified teacher, is 100% in agreement that Student needs a change in placement from Learning Support to Life Skills. [NT 310]
179. The Student Aide observed that when Student spent the six days in the Life Skills classroom Student fit in very well in that group of students and the lessons they were doing. Student did not ask to use the bathroom or state not feeling well and have to go to the nurse. Student was happy and able to do the work with the Student Aide's assistance. [NT 311]
180. The way the Student Aide works with Student is that after the teacher gives directions to an assignment, she goes back over those directions with Student. She spells things for Student, reads things for Student, rephrases questions for Student, repeats things for Student and clarifies things for Student. [NT 311]
181. In English, Student does not understand the assignments that are given or the instructions that are given with the assignment. When the Student Aide prompts Student to begin Student has no idea of what to do. The Student Aide

- then repeats and tells Student what has to be done and always modifies the instructions by using different words and simplifying for Student. [NT 312]
182. Student cannot get past the concepts of nickels and pennies and cannot put different kinds of coins together. [NT 317]
183. Student cannot write a complete sentence. Student can write a few pre-primer words independently. Sometimes Student tries to write other words, even though Student doesn't know how they're spelled. [NT 317-318]
184. In math class while the other students are working on pre-algebra Student is working on addition and subtraction and cannot multiply or divide. [NT 318]
185. Student does not understand the science even when the content is modified and when the teacher and the rest of the class are reading the textbook Student is looking around, tapping the pencil, taking a mechanical pencil apart, having to use the bathroom, and/or turning around to talk to the Student Aide. [NT 319, 330]
186. When the Student Aide re-reads the material with Student one-to-one and modifies the content by simplifying the words and explaining the material it sometimes works. [NT 320]
187. On modified tests Student gets very few correct. Student may tell the Student Aide that Student wants to read the questions alone then moves quickly through the questions and seems to be guessing; even when the test is remediated Student cannot do well. [NT 314-316; S-19]
188. When doing tests Student shows frustration by doing such things as saying Student does not feel well, has to go to the nurse or to the bathroom. [NT 317; S-19]
189. When the Student Aide reads questions or text to Student, Student does not understand the content. [NT 315]
190. When homework comes back to school the Student Aide believes that "sometimes" Student has done the work but the work is at a higher level than Student can produce in school. [NT 323; S-17]
191. The Student Aide has tried strategies based on her own teaching expertise and has also tried all the strategies that have been suggested to her. [NT 324]
192. The Student Aide has a good relationship with Student and wants to see Student succeed. She is 100% confident that Life Skills is a place where Student can succeed. [NT 325]

193. Student socializes with the other classmates but it is awkward because Student will say things that the other students don't understand, or will laugh at things that aren't funny to the other students.
194. At these times the other students don't say anything. They are kind to Student. [NT 320]
195. The Student Aide saw a difference in how Student related to peers when in the Life Skills classroom during the PSSA testing period. They were laughing at the same things. They had the same interests. Student wasn't isolated sitting in the back doing something different than the rest of the class. They were all doing a science lesson that Student was a part of, and the Student Aide thinks Student felt good about that. [NT 321, 329-330]

Testimony of Parents' Psychologist⁸

196. Parents' Psychologist evaluated Student at the request of the Parents after they had filed for the Due Process Hearing. She was asked to investigate some behavioral issues that Student was having in the classroom, as well as to evaluate Student's neurocognitive status. [NT 351]
197. She is a licensed psychologist in Pennsylvania; and a certified school psychologist in Pennsylvania. She practices pediatric neuropsychology having completed post-doctoral fellowships in that field. As part of her graduate training she studied functional behavioral assessment. She is self-employed. [NT 349-350]
198. The Parents' Psychologist used a Post-doctoral Fellow [Fellow] to assist in the evaluation. [NT 352]
199. The Parents' Psychologist and her Fellow conducted observations at Student's school. The fellow arrived at the school first and she spoke with the teachers about behaviors of concern, and also did some behavior observation, using a 15-second interval sampling for her data collection. At any time that a targeted behavior that they had learned was an issue in the classroom from the teacher occurred, the Fellow would document that, and also did an ABC analysis concurrently, which means that she looked at the target behavior, and also what was happening immediately before and immediately after the target behavior occurred. [NT 352-353; S-3]
200. The target behaviors were work refusal, asking to leave the room, and calling out. [NT 353; S-3]

⁸ Although I generally reference an evaluator appearing for Parents as a Private Evaluator or Independent Evaluator I specifically chose the designation Parents' Psychologist because there was a clear alignment with the Parents or at least with the Parents' counsel as exemplified by this witness and the Parents' counsel hugging one another as they were leaving the hearing room.

201. In Supplemental Learning Support homeroom the Fellow observed motor movements during independent seat work that were not relevant to the task and refusal to change the task. [NT 356]
202. In Learning Support English class the Fellow observed Student's head down a great deal of the time during independent work. The Fellow charted the data that she observed in the graph. The data is charted electronically by a software program. The Parents' Psychologist reviewed the data. [NT 357]
203. In Social Studies class the Fellow observed target behaviors during large group instruction of asking to visit the nurse, calling out, not paying attention to the lesson, looking around the room, pointing to other things, and being off-task. [NT 360-361]
204. In large group Reading instruction the Fellow observed that Student asked to visit the nurse, appeared to be randomly guessing on a quiz, had head down during the quiz, left to get a drink of water, left for a bathroom break, and was yelling at peers. [NT 362]
205. Both the Parents' Psychologist and the Fellow observed Student in Tech Ed where Student engaged in work refusal behaviors by three instances of saying things like "I don't know", had excessive motor movements, left seat to get a tissue, went to the bathroom and had one instance of yelling at a peer when the peer was tapping a pencil. [NT 364]
206. One of the instances where Student said "I don't know" was when asked to draw a straight line with a ruler. The Student Aide encouraged Student several times to do the task and then the Student Aide did the task for the Student. [NT 366]
207. The Parents' Psychologist does not know why Student said "I don't know". [NT 364]
208. The Parents' Psychologist believes that prompting was an appropriate strategy but believes that if Student was unable to carry out the demands of the task then the Student Aide should have modeled how to do it, then allowed Student to do it with feedback, and then have Student do it independently when the Student Aide was confident that Student was able to do the task. [NT 369-370]
209. The Parents' Psychologist and the Fellow jointly observed Student in Math class. [NT 401]
210. The Parents' Psychologist's opinion is that observed behaviors serve the function of getting attention and escaping work demands and that they are not compatible with the task and understanding the lesson or the instruction. [NT 361]

211. The Parents' Psychologist is not suggesting that Student should be denied permission to use the bathroom or to go to the nurse. [NT 400]
212. The Parents' Psychologist thinks that the behaviors that Student displayed are due to frustration over the task demands. She thinks that Student is uncertain a lot of the time what it is that is supposed to be done in terms of instructions or content. [NT 371]
213. Based upon the four observations made by the Fellow and the two joint observations the Parents' Psychologist would recommend that a positive behavior support plan be a part of Student's IEP; the Parents' Psychologist said that Student had not had a Positive Behavior Support Plan in a very long time. [NT 367]
214. The Parents' Psychologist was not aware that there was a Positive Behavior Support Plan in the April 2012 IEP that was in effect for a year until April 2013. [NT 397-398; S-10]
215. The Parents' Psychologist and the Fellow developed a Positive Behavior Support Plan. [NT 368; S-3a]
216. Part of the support plan the Parents' Psychologist and the Fellow developed is what should be done to replace the behavior that serves the same function but is a more adaptive way to get what Student wants. The goals would be to ask for help in an appropriate manner after attempting the work on Student's own and putting supports in place that would allow Student to wait to be called upon to participate in the classroom discussion instead of calling out. [NT 373]
217. The Parents' Psychologist believes Student requires functional academic skills that are going to prepare Student for life in the real world after formal education is completed. [NT 389]
218. The Parents' Psychologist believes that Student's behaviors are related to skill deficits. [NT 402]
219. The Parents reported to the Parents' Psychologist that they had no concerns about Student's behavioral health. [NT 403; S-3]
220. When her attention was invited to the various academic goals in Student's proposed IEP the Parents' Psychologist agreed that they addressed functional academics. [NT 393; S-8]
221. The Parents' Psychologist recommends access to a keyboard. She was not aware that every classroom Student is in has a computer/laptop. [NT 394]

222. The Parents' Psychologist recommends access to assistive technology. She was not aware that every computer/laptop Student uses has speech to text software; she did not inquire. [NT 394]
223. The Parents' Psychologist does not think that a placement is appropriate if a student is sitting in the back of the room doing something entirely different than the rest of the students in the class. [NT 403-404]
224. The Parents' Psychologist was not aware that many of her recommended strategies have already been attempted with Student, and did not ask the teachers about strategies they use. [NT 405]
225. The Parents' Psychologist wrote, "At the same time it appears that Mr. and Mrs. [redacted]'s expectation for Student's level of achievement and adaptive behaviors have been unrealistically high for a number of years"; she confirmed that this was correct. [NT 406]
226. The Parents' Psychologist was not aware that Student's passing grades at this point are in large part a reflection of homework grades, but was aware that the teachers suspect that the Parents are doing a large part of the homework. [NT 406]
227. The Parents' Psychologist believes that TouchMath is an appropriate instructional method for Student but is also aware that the Parents have refused to allow the District to employ this method. [NT 406-407]
228. The Parents' Psychologist believes that having Student close to the source of the instruction in large group direct instruction is appropriate. [NT 409-410]
229. The Parents' Psychologist would change the location of the table where Student does one-to-one work. The Parents' Psychologist also believes that the District should use real money instead of plastic facsimiles when teaching Student money skills. [NT 410]

Testimony of Student's Mother

230. Student enjoys horseback riding, soccer, basketball, arts and crafts, zip lines, and amusement parks. Student likes to do chores, to cook, bake, vacuum the house and help out with laundry. [NT 439]
231. Student's chores are vacuuming, making the bed, making sure Student's room is clean, folding the laundry, cleaning the dishes, helping with loading and unloading the dishwasher, making the bed and changing the sheets. Student likes to dust the furniture. [NT 439]

232. Student did not have Early Intervention services prior to Kindergarten. Student attended a private preschool from age two to age four. From age four to five Mother resigned from her position and Student stayed home with her. [NT 441-442]
233. Student began receiving special education services in 1st grade. [NT 442]
234. Student repeated 1st grade. The District proposed placement in a Life Skills class during the second year in 1st grade but the Parents did not approve after visiting the proposed placement and perceiving it as “an institutional learning environment”. [NT 443-446]
235. From Student’s second time in 2nd grade through 5th grade Student had a behavior plan that addressed the issues still being seen today with the exception of rocking which is a new behavior. Student did not have a behavior plan in 6th grade because Student was not showing the behaviors. [NT 448-451]
236. When Mother decided to return to the workforce in October 2014 Student, at age 13, was “Devastated” and had a very hard time even though Mother worked during the day and was home by 5:00 or 6:00 pm. Mother thought Student felt “abandoned”. Although there were no dramatic changes in Student Mother decided that going back to work “was not working” and so she resigned upon which Student became happier and more enthusiastic. [NT 474-475]
237. Although Mother noted that Student was becoming more independent during the three months Mother was working [for example found the hidden can opener and used it] and was getting used to being home alone Mother “just felt as a parent's decision that it was best I was home”. [NT 475-476]
238. Mother illustrated how she reads with Student. For example in the sentence "This is required for students age 14 or younger" Mother would say, “Okay, let's go”. [Student] would go ‘this’, I go ‘this’, then [Student] goes ‘is’, I go ‘is’. I let [Student] say it first because I want to make sure [Student]'s reading. And then I start a routine of ‘hop-hop, read to the beat, hop-hop, read to the beat’, to pick up the speed. [NT 485]
239. Mother first claimed that she did not know the literature book has an audio component but later said she knew about Book Share [unclear from Mother’s testimony if this is also called Achieve 3000] but thought it was just for school [NT 485-488]
240. When reminded that audio books were on the IEP SDIs Mother testified that she didn’t pay attention, “I don't know. I didn't pay attention. I always looked at it as school-based.” [NT 520]

241. Mother had noted that there was no testing done in 2013 but when shown that there had been testing she said that she had meant that there was no psychiatric testing done. [NT 527-528; S-5]
242. Mother first testified to telling Student to read the directions about making a volcano project erupt then said that she received no directions. [NT 494-496]
243. The Parents objected when the District proposed changing Student's program to Life Skills Support because that proposal had not been made for years. [NT 505]
244. The Parents perceived the District's proposed change as telling them, "Your child is no good. [Student] is going to Life Skills." [NT 506]
245. When given feedback on the December re-evaluation the Parents perceived that the District's Psychologist was saying that [Student] can't think, [Student] can't function, [Student] doesn't remember anything, didn't socialize, doesn't have friends." [NT 507]
246. The Parents claimed that the first time they saw the proposed IEP was in their attorney's office - "Never saw it. It was never presented" - implying that they were not provided with a copy. [NT 508-509]
247. However when asked if she agreed with the IEP the Mother said, "No, I never read it. Never had it. Everybody else has it; we don't have it. *If I do have it, it's buried somewhere. When I tried to open it up, it didn't open up. Stuff came over as bit map.* I never saw this until the day I walked in your [Parents' counsel's] office." [Emphasis added][NT 509]
248. Later, in the same vein, Mother testified, "Whatever I received was a NOREP, and after that everything was all bit map and gobbled up. I didn't receive anything of an IEP, no." [NT 518]
249. The Parents did not tell the District that they could not open the email file containing the IEP. Mother said that she "let everything go because they ordered remediation [sic] and due process. I just didn't communicate with them...I was told not -- I didn't communicate with them. We were on bad terms after that meeting." [NT 518-519]
250. The Parents and Student were invited to visit the class at a time a holiday party was going to be happening. The Parents declined the invitation because they thought it was inappropriate to come for a party that was rewarding the students in the class and because Student "needed to see the real life structure of what an everyday routine would be like in that classroom, to see what the children were like in that classroom." [NT 510-511]

251. The Parents are concerned that if Student goes into the Life Skills program Student would lose all [Student's] academic knowledge. Any pieces that [Student] puts or could use for the future of [Student's] goals and knowledge -- people have to have an education in the outside world." [NT 512]
252. Mother predicts that if Student goes into the Life Skills class, as time goes on and Student realizes it's not a visit, it's reality, Student's going to become very emotionally withdrawn, is going to shut down, is going to be depressed. [NT 513]
253. Mother no longer believes that Student should be doing 8th grade work because after seeing the Parents' Psychologist's report she "sees things more clearly now". [NT 516]

Discussion and Conclusions of Law

Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. The burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case therefore the District asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); *see also generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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). Each of the District's witnesses was judged to be credible, and their testimony was most persuasive, as they offered their

perceptions and related their direct experiences with Student; notably almost without exception none of the teachers was present for the testimony of any other District witness but their experiences with Student were consistent. Although I found the Parent to be a stalwart advocate for her child, I did not find that I could rely upon her testimony in deciding the issues before me. Parent offered strongly worded testimony, some of which she backed away from during a brief and considerate cross-examination. I found the testimony of the Parents' Psychologist to be less than robust and unpersuasive in several respects. First, given her credentials I was puzzled by her belief that a positive behavior support plan teaching Student to ask for help when needed and teaching her to raise her hand to ask/answer questions would make any appreciable difference in Student's success in learning given that Student has one-to-one assistance in every one of Student's classes. Second, I found her suggestion that the Student Aide, whose education and experience is at least equivalent if not greater than the average teacher in a good school district, needed training in behavior analysis to be inappropriate. Third, I was frankly astonished that the majority of the school observations upon which she relied to form her behavioral analysis were collected by her Fellow and not herself and also found her basing collection of data on a computer scoring system to be less than convincing. Finally, given that her Fellow, later joined by herself, spent six periods observing Student it was surprising that she they did not query teachers about available supports and in the end made suggestions that the school implement strategies that were already in place.

Legal Basis: The IDEA requires that a state receiving federal education funding provide a "free appropriate public education" [FAPE] to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan [IEP]. 20 U.S.C. § 1414(d). The IEP must be "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *Shore Reg'l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3rd Cir. 2009).

"Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child's IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Board of Education v. Rowley*, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); *Oberti v. Board of Education*, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a "trivial" or "*de minimis*" educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3rd Cir. 1996), *cert. den.* 117 S. Ct. 176 (1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

There is a strong and specific preference in the IDEA that, (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §300.114(a)(2). The IDEA regulations also recognize, however, that there are circumstances where “the nature and severity” of an eligible student’s disability makes education in a regular school setting unsatisfactory. For those situations, the IDEA regulations require an LEA to provide “a continuum of alternative placements,” such as “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals.

In *Oberti*, the Third Circuit set forth a two-part test to determine whether a school district is complying with the mainstreaming requirement. First, a “court must determine whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily.” *Id.* (quotation omitted). Second, if placement outside the regular classroom is necessary, then a “court must decide whether the school has mainstreamed the child to the maximum extent appropriate.” *Id.*

A placement decision is a determination of where a student’s IEP will be implemented. Placement decisions for children with disabilities must be made consistently with 34 CFR 300.116. The IEP team, including parents, makes placement decisions. Like the formulation of an IEP, a placement decision is not a unilateral matter for school district determination. 34 CFR 300.116(a)(1) however, is also clear that parental preference cannot have been the sole nor predominant factor in a placement decision. The IDEA merely mandates parental participation in the placement decision 34 CFR 300.116(a)(1), but does not suggest that the degree of weight parental preference should be given.

Numerous court decisions have noted that although Parents are members of the IEP team and entitled to full participation in the IEP process, they do not have the right to control it. *See, e.g. Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) [noting that IDEA “does not require school districts simply to accede to parents' demands without considering any suitable alternatives”]; *Yates v. Charles County Board of Education*, 212 F.Supp.2d 470, 472 (D.Md.2002) [“[P]arents who seek public funding for their child's special education possess no automatic veto over a school board's decision”]; *Rouse v. Wilson*, 675 F.Supp. 1012 (W.D.Va.1987); 34 C.F.R. Pt. 300 App. A, at 105 9 “The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive [a free appropriate public education]” and *A.G. v. Wissahickon School District*, 374 Fed. Appx. 330 (3d Cir. 2010)[[Did the district consider the] “whole range of supplemental aids and services,” including “efforts to modify the regular education program to accommodate” and the student “made little if any progress on her academic goals in her mainstreamed courses and received little educational benefit from her mainstreaming.]

Discussion: Almost from the beginning of Student's public school experience it has been recognized that Student cannot receive FAPE in the general education environment. The District members of the IEP team now have seen that Student has come to the age and the point in the curriculum that Supplemental Learning Support is no longer an appropriate placement. The Parents strongly disagree with the District's proposal of a Supplemental Life Skills Support placement for their child.

The IDEA requires states to ensure that children with disabilities will be educated with children who are not disabled, "to the maximum extent appropriate" 20 U.S.C. §1412(a)(5)(A). The District's proposal to place Student in the Supplemental Life Skills Support program with participation in general education classes and activities is appropriate because it is consistent with its obligations under the IDEA requirement for placement in the least restrictive environment. The law does not require placement in the least restrictive environment, it requires placement in the least restrictive environment that is *appropriate* for a student.

The foregoing Findings of Fact detail each witness' testimony and were presented in the witness-by-witness format to illustrate the inevitable conclusion that although the District has tried in multiple ways to provide Student with the opportunity to derive meaningful educational benefit from Student's special education Learning Support program, Student requires a change of placement in order to receive FAPE.

Student was identified as being eligible for special education in 1st grade. During Student's second time in 1st grade the District proposed a Supplemental Life Skills placement but the Parents refused to approve the change, so Student has remained in Supplemental Learning Support through 8th grade. Although Student's cognitive functioning was low, the classification of Intellectual Disability could not be conferred because the Parents refused to permit assessment of Adaptive Behavior. In a December 2014 reevaluation assessment of Adaptive Functioning was done and results were consistent with low cognitive functioning such that Student was classified as having an Intellectual Disability.

Student is an early-teen-aged Student. Mother started back to work at the beginning of this school year but Student reacted badly to this change even though Mother was home by 5 or 6 pm; after three months Mother stopped working again. Mother hid the electric can opener because she was afraid Student would use it and receive a cut. Mother helps Student load the dishwasher. Mother is delighted that Student can make pasta and make a salad. The Parents supervise from a distance while Student buys fast food. Mother reads word-by-word with Student.

Student, a teenager in 8th grade, demonstrates a reading level at a very basic sight vocabulary of pre-primer and primer words; on progress monitoring, Student comes out at about a first grade level. In math Student has difficulty with very basic facts. Student confuses adding and subtracting, coming out on a very early 2nd grade level in computation although application skills, if given a picture with a graph come out at about a 10th percentile at the very beginning 4th grade level. On assessments done for progress

monitoring, on math work completed in class, and on the evaluation conducted in December 2014, Student makes mistakes in basic adding and is not able to do subtraction correctly. Student cannot write a complete sentence without assistance and cannot write a paragraph.

The Parents produced two witnesses – the Mother and the Parents’ Psychologist and the testimony of neither could be given much weight. With regard to the Parents’ Psychologist, both her methods and her recommendations were not helpful in addressing Student’s needs. Two thirds of the Parents’ Psychologist’s school-based observations were done not by the Parents’ Psychologist but by a Fellow, and the observations were collected and scored through an electronic program. The suggestions offered by the Parents’ Psychologist are not accepted as being useful – teaching Student [who has a full-time teacher as an aide] to ask for help and to raise a hand with questions are likely to be ineffective in addressing Student’s core problem – that Student is simply not capable of understanding the work presented in 8th grade learning support even with extensive supports in place. Moreover most if not all the suggestions offered by the Parents’ Psychologist have already been implemented/tried by school staff. With regard to the Mother, although her testimony was indeed heartfelt, on various occasions there were exaggerations or interpretations offered that the Mother later had to retract or modify.

The Parents have insisted that Student receive instruction at an 8th grade level. The District believes that Student is not profiting from being in 8th grade Learning Support. The Parents’ Psychologist, whose cognitive testing results for Student closely mirrored the District Psychologist’s results, acknowledges that the Parents have held unrealistic expectations about Student’s abilities.

Without exception Student’s Learning Support teachers, and Student’s Aide observe that Student does not understand most of the concepts taught in their classes and observe Student being frustrated and wanting to escape the learning environment because the work is too difficult. Student is deriving minimal benefit from the academics to which Student is being exposed, and is deriving minimal real social benefit, although the classmates are “kind” to Student and “understand how Student is”.

Although the Parents point to passing grades, grades do not tell the whole story. A considerable part of Student’s grades are based on homework and each teacher strongly suspects, and I believe, that the Parents provide extensive help with homework. In addition, Student’s tests are modified, sometimes read to Student and put into simpler language, and then re-administered with score averaging.

The District has attempted everything that it can in Student’s current placement in order to have Student be successful. The Director and Student’s team have gone through the SAS tool kit, they have looked at the classroom environment, they have considered Student’s needs and what supports are required, they have implemented all possible supports including providing a one-to-one teacher solely for Student, they have cut the core curriculum down to core concepts and then chunked the material, Student’s assessments are modified multiple times, and “even with the modified of the modified of the modified”

assessments, Student is not able to do them because Student doesn't understand the concept needed to be able to give an answer.

Conclusion

Every witness unequivocally testified that Student is a lovely young person who wants to do well and to please, and this reflects very well on the Parents and their undeniable dedication to their child. The District also produced convincing evidence that Student is deriving minimal benefit from being in Supplemental Learning Support 8th grade classes, and the District has met its burden of proof that in order to receive FAPE Student requires a change in placement to a Supplemental Life Skills Support class. Given the Student's functional academics are considerably far behind, and given the greater emphasis in high school on vocational planning, Student requires another year in the Intermediate School in the 8th grade.

Order

It is hereby ordered that:

1. In order to receive FAPE Student requires a change in educational placement from Supplemental Learning Support to Supplemental Life Skills Support.
2. Student must remain in 8th grade at the current intermediate school for the 2015-2016 school year.

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

June 24, 2015

Date

Linda M. Valentini, Psy.D., CHO

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