

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: K.W.

ODR #3343/12-13-AS

Date of Birth:
[redacted]

Dates of Hearing:
November 12, 2012
November 19, 2012

CLOSED HEARING

Parties to the Hearing:

Parents

Western Wayne School District
1970 B Easton Turnpike
Lake Ariel, PA 18436

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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December 11, 2012

December 21, 2012

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

Background

Student¹ is a former resident of the Western Wayne School District [District]² who is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] under the classification of intellectual disability and consequently a protected handicapped individual under Section 504 of the Rehabilitation Act of 1973 [Section 504], as well as the federal and state regulations implementing those statutes.

The current matter addresses the Parents'³ assertion that the District denied Student a free appropriate public education [FAPE]. As the Parents also asserted exceptions to the IDEA's two-year limitations period, the first part of the first hearing day was devoted to addressing this issue. After receiving testimony the hearing officer ruled that neither exception applied. Accordingly the scope of the hearing was for the period from July 5, 2010 to the present.

The Parents filed for this hearing on July 5, 2012. The first hearing session was scheduled for August 20, 2012, a date within the statutory timelines. At the request of the parties this date was changed and the Decision Due Date extended; the hearing was rescheduled for September 17, 2012. Although the parties, witnesses and the hearing officer were gathered at the District on that date, one of the attorneys became ill on the way to the hearing and the matter needed to be rescheduled, resulting in a further extension of the Decision Due Date. A second session was needed to complete the hearing and parties were granted time to prepare written closing arguments thus further extending the Decision Due Date.

Issues

Did the Western Wayne School District deny Student a free appropriate public education? Specifically⁴:

Did the District provide appropriate instruction to Student in the area of functional academics?

Did the District appropriately address behavioral concerns that Student may have been exhibiting?

Did the District provide appropriate social skills [interpersonal skills] training to Student?

Did the District provide Student with appropriate speech and language services in the area of pragmatics?

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 Student was in 8th grade for the 2010-2011 school year, in 9th grade for the 2011-2012 school year, and is in 10th grade for the current 2012-2013 school year.

³ The plural Parents/Parents' is used throughout as the mother who participated in the hearing and was the couple's primary contact with the District acted on behalf of herself and her spouse.

⁴ The issue, "Did the District provide appropriate counseling services to Student as needed?" was introduced in the opening statements but very little specific testimony was provided regarding counseling. The hearing officer concludes that counseling is included in both behavioral and social skills areas and will not address it separately in this decision.

Findings of Fact

1. Student is a person with a genetic disorder and is identified as a student with a disability as defined by the IDEA under the classification of intellectual disability⁵, with a secondary classification of speech/language impairment. [S-16⁶, S-25]
2. At the Parents' request the District funded an Independent Educational Evaluation [IEE] that was performed by a Pennsylvania certified school psychologist/licensed psychologist chosen by the Parents. A number of recommendations resulted and were conveyed to the District. [NT 83, 124-125; S-4, S-16]
3. The District and the Parents reviewed and considered the recommendations from the IEE. [NT 164-169, 199-201; S-10, S-11]
4. The Parents continued to have concerns about Student's program and believed Student needed more intensive academic instruction, as well as additional social skills training and additional pragmatic language instruction. [NT 203-205; S-7]

Academics

5. A Reevaluation Report from February 24, 2006 when Student was in 3rd Grade recorded a Reading Level of 1st Grade and a Math Level of Kindergarten.⁷ [NT 39-40; S-94⁸]
6. Student was given the Gray Oral Reading Test – Fourth Edition in 2007, 2008, 2009, 2010, 2011 and 2012 in grades 4th through 9th. The grade equivalencies of academic achievement in Reading as assessed by this standardized instrument are as follows: [S-13, S-16, S-25, S-26]

GORT 4 Subtest	Jan. 2007 4 th	Feb. 2008 5 th	Jan. 2009 6 th	March 2010 7 th	Jan. 2011 8 th	Jan, 2012 9 th
Rate	----	----	2.2	2.0	1.7	3.0
Accuracy	----	----	3.2	2.2	2.4	3.7
Fluency	1.0	1.7	2.7	2.2	2.2	3.0
Comprehension	<1.0	1.0	1.2	1.2	<1.1	<1.0

⁵ References to mental retardation in the record will use the term intellectual disability consistent with Rosa's Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010); see 20 U.S.C. § 1401(3)(A)(i).

⁶ This exhibit referenced throughout the Hearing as S-16 was inadvertently physically marked as S-116. [NT 83]

⁷ Scores recorded before the period defining the scope of potential recovery are used here and below only as baselines for comparison with scores within the scope of potential recovery.

⁸ This exhibit was not admitted into the record as it was part of the initial evidence on the SOL. However, the information to which the Parent testified comports with information contained in the document that was examined by the hearing officer during the first part of the hearing.

7. The IEE of October-December 2011 reports grade equivalent Reading scores derived from the Wechsler Individual Achievement Test – Third Edition [WIAT-III] as follows: Word Reading 1.8, Pseudoword Decoding 1.6, Reading Comprehension <1.0. [S-16]
8. Student received language arts instruction one period per day in 8th grade. In this period instruction was given in reading and writing. Although social skills was integrated into the daily work, one period per week in this class was devoted to social skills training. [NT 281-283]
9. The last five minutes of each language arts period was spent in a pairing activity with the teacher in order to increase rapport and provide an incentive for Student to do class work. [NT 284-285]
10. In 8th and 9th grades Student was instructed in Reading using the SRA Reading Mastery program which addresses letter sounds, decoding, vocabulary and comprehension, and the Edmark computer-based program which emphasizes sight word learning and word recognition. This instruction was delivered in a special education life skills classroom. [NT 129, 144, 153, 230, 384]
11. Although as part of the verbal behavior project some of the five pupils [one with autism and the other with intellectual disability] in Student's 8th grade language arts life skills classroom received more intensive teaching, daily cold probe data collection and graphing/charting of progress, Student was not part of the verbal behavior project and did not receive these supplements to instruction/ monitoring. [NT 153, 245, 247, 287]
12. The Key Math 3 test was administered to Student in 2008, 2010, 2011 and 2012 in 5th, 7th, 8th and 9th grades. The grade equivalencies of academic achievement in Mathematics are as follows: [S-13, S-16, S-25, S-26]

Key Math 3 Subtest/Composite	Feb. 2008 5 th	March 2010 7 th	January 2011 8 th	January 2012 9 th
Numerations	K.8	K.8	<K.0	1.2
Algebra	K.3	1.5	K.7	1.2
Geometry	<K.0	<K.0	<=K.0	K.5
Measurement	K.2	<K.2	K.8	1.3
Data Analysis and Probability	K.5	K.2	K.3	K.2
Basic Concepts	K.5	K.2	K.3	1.0
Mental Computation and Estimation	K.5	K.5	K.1	1.5
Addition and Subtraction	1.8	1.6	2.2	2.8
Multiplication and Division	1.8	1.8	1.8	3.6
Operations	1.4	1.3	1.5	2.6
Foundations of Problem Solving	<=K.0	1.5	<K.0	<K.0
Applied Problem Solving	K.2	<K.0	K.5	<K.0
Applications	<=K.0	K.4	K.2	<K.0
Total Test	K.5	K.5	K.7	1.3

13. The IEE of October-December 2011 reports grade equivalent Mathematics scores derived from the Wechsler Individual Achievement Test – Third Edition [WIAT-III] as follows: Numerical Operations 3.2, Problem Solving K.2, Addition Fluency 1.6, subtraction Fluency 1.9, and Multiplication Fluency 3.4. [S-16]
14. Student received math instruction in 8th and 9th grades in a special education classroom using the Saxon Math program. [NT 129, 145, 374]
15. There were ten pupils in the 9th grade math class with two teachers. The period was 42 minutes long and scheduled daily. [NT 374-375]

Behavior

16. Because Student's 8th grade classroom was a verbal behavior site, the District psychologist was in the room daily for about a half-hour. She observed that any inappropriate behavior Student exhibited was easily handled with redirection and prompting, and there were no behaviors that ever rose to the level of impeding learning. [NT 241, 246, 251]
17. The 8th grade language arts life skills teacher did not see Student as having significant behaviors. Student was easily redirected if Student talked back to a peer or an adult, refused to answer questions, or refused to do a project. [NT 292-293]
18. If the language arts teacher who served as Student's case manager, was notified of an inappropriate behavior in other places than her class she made it a point to connect with Student that day and discuss what happened. [NT 293]
19. An individualized daily behavior sheet was used with Student; the sheet was managed mainly by the personal care assistant [PCA]. One of the primary motivators was pleasing Student's mother. [NT 117]
20. Daily behavior sheets in evidence for the entire 2011-2012 school year reveal no serious incidents. The Parents are concerned about Student's being rude at times and saying inappropriate things. [NT 150-151, 154, 156, 215; S-35]
21. The special education language arts teacher also had a positive behavior support point system for her 5-pupil class that rewarded appropriate behavior and provided consequences for inappropriate behavior on a weekly basis. Consequences could be things such as loss of a field trip. The pupils in the classroom had multiple opportunities to repair inappropriate behavior and regain a lost point, and were coached by the classroom staff on how to repair inappropriate behavior. [NT 101, 114, 116-119, 291, 298-301, 327-333, 341-342]
22. Although it was the District's understanding that the Parents were supportive of a consistent approach to rewards and consequences, the Parents were upset when in 8th grade Student was denied a field trip to a baseball game that was used as one of the

rewards in Student's special education classroom. [NT 98-101, 110-113, 191-199, 221; S-22]

23. The Parents were also upset when Student served lunch detentions for instances of lack of cooperation. [NT 181-186]
24. Student had very few behavioral incidents of significance during the relevant time period: One in May 2011 when Student hit another pupil [redacted]; another around the same time when Student persisted in standing in front of another pupil during a science experiment demonstration. Both incidents resulted in a verbal warning. Together they resulted in Student's loss of the field trip to the baseball game. [NT 101, 119-124, 249-250; S-22, S-24]
25. Student tended to have more difficulty when the long-time one-to-one aide was not present. The aide was not present on the two days of these incidents. When the long-time aide is not present Student is attended by other paraprofessionals whom Student knows. [NT 99-100, 123, 147]
26. When Student began engaging in private behavior in public in 8th grade the classroom teacher consulted with the social worker and provided appropriate discreet guidance to Student, and when that did not suffice was in contact with the Parents. The teacher and the mother devised a plan to address the behavior and it was successfully eliminated. [NT 296-297, 311; S-34]
27. When Student was becoming habitually late for Science class in 9th grade the teachers conferenced with Student and altered Student's behavior sheet to include timeliness. [NT 149-150; S-19]
28. The social worker assisted as needed if there was a behavioral incident with Student. [NT 393-396]

Social Skills

29. In addition to academics, Student has needs in the areas of social skills – initiating social contact and maintaining social relationships with peers. [NT 97-98]
30. Social work services were part of Student's social skills training. Since the social worker was in touch with teachers on a daily basis in Student's 8th and 9th grades she could also immediately address issues as they arose. [NT 78-80]
31. In 8th grade in the life skills language arts classroom Student received verbal behavior skills training one period a week that included social skills training that used the Social Skillstreaming program. The District also utilized some materials from Boys Town to address social skills. Social skills were integrated into the language arts period that Student attended daily. [NT 81-82, 135, 243-244, 247-249, 281, 285-286, 309-311]

32. The Social Skillstreaming program which Student received for one period a week is a research-based curriculum dealing with various topics such as helping others, sharing and telling the truth. [NT 281, 286, 288-290]
33. The District was working with Student on engaging, coping with frustration, work completion / work ethic. Part of working with Student involved reminders about Student's mother's expectations and following the good example of Student's older brother who is in college. [NT 82]
34. The District worked with Student on the skill of maintaining eye contact to engage with others. Early in 9th grade decreased eye contact was noted. [NT 82-83; S-19]
35. In 9th grade Student was observed not to interact with peers in the hallways or transition periods, at lunch, or work cooperatively in small groups. [NT 84-89; S-16]
36. In 9th grade Student was allowed to work for one period per week in the school store during a study hall period if all Student's class work was completed. [NT 139-140]
37. Student's IEP of April 23, 2010 implemented into 8th grade called for two 30-minute social work sessions⁹ per month. [S-32]
38. Student's April 18, 2011 IEP implemented into 9th grade also called for two 30-minute social work sessions per month. [S-26]
39. On January 27, 2012 Student's IEP was modified in 9th grade to provide for increased social work services at the level of three 30-minute sessions a month. Recommendations from the IEE included increased frequency of social work sessions to address both social skills training and monitoring of Student's emotional status in light of Student's depressive symptoms and tendency to withdraw. [S-13, S-16]
40. Student had no direct guidance counseling during the relevant period. The District engages an outside agency to provide counseling but did not do so for Student. [NT 148]
41. Student speaks with the social worker about Student's feelings. [NT 204]
42. The independent evaluator did not make a specific recommendation for counseling apart from the social work services. [NT 261-262; S-16]
43. In the Present Levels, the April 2010 IEP and the April 2011 IEP [modified in January 2012] contain the exact same language with a very few minor word changes. [NT 107-109; S-26, S-32]
44. In his report of October-December 2011 the independent evaluator recommended use of, "a research-based social skills curriculum with the opportunity for baseline measurement

⁹ The record remains unclear as to whether these were individual or group sessions or a combination of both. [NT 80-81]

and progress monitoring of Student's social competency in the classroom and in-group and/or individual sessions. The program should be focused on teaching social skills, modeling the skills, and practice demonstrating the skills with the opportunity to independently use the skill being taught." [S-16]

45. The independent evaluator later specified that he recommended two 45-minute sessions of social skills instruction per week. [S-4]

Speech/Language

46. Student's April 23, 2010 IEP which was implemented in 8th grade calls for two 30-minute sessions¹⁰ of speech/language therapy per week. [NT 132; S-32]
47. In September 2010 the April 2010 IEP being implemented in 8th grade was revised to provide for two 30-minute sessions of speech/language therapy per 6-day cycle rather than per week, representing a slight decline in the number of therapy sessions over the year. [NT 130-132; S-29]
48. Student's April 18, 2011 IEP calls for two 30-minute sessions of speech/language therapy per 6-day cycle. [S-19]
49. On November 22, 2011 at an IEP revision meeting the team discussed having Student slow down speech to improve articulation. [NT 96, 157; S-19]
50. Speech/language services the District provided to Student are limited to addressing speech sound production [articulation] problems, tone and rate. [NT 106, 205; S-25]
51. The District acknowledges that Student has expressive language needs and pragmatic language needs including learning how to pick up on social cues and knowing what is appropriate and inappropriate conversation. [NT 98, 275-276; S-16]
52. The District has not provided Student with speech/language services to address pragmatic language or expressive language. [NT 106; S-19, S-25, S-32]

Legal Basis

Burden of Proof:

In November 2005, the U.S. Supreme Court held the sister burden of proof element to the burden of production, the burden of persuasion, to be on the party seeking relief. However, this outcome determining rule applies only when the evidence is evenly balanced in " equipoise," as otherwise one party's evidence would be preponderant. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. *L.E. v. Ramsey Board of Education*, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). Thus, the party bearing the burden of persuasion must prove its case by a preponderance of the evidence, a burden remaining with it throughout the case. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa.

¹⁰ A witness believes this was one-to-one therapy. [NT 146]

October 26, 2006). Here, the Parent requested this hearing and was therefore assigned the burden of persuasion pursuant to *Schaffer*, and in this matter the Parent also accepted the burden of production even though case law does not clearly assign same to either party. In this matter the evidence was not in equipoise so an outcome governed by *Schaffer* was not reached.

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).

The former Director of Instructional Services clearly felt invested in Student and the family. She was justifiably proud of such accomplishments as developing a school store and using it to teach pupils various socialization and organizational skills [NT 137-140] but consistently answered defensively particularly when discussing Student’s regression in academics and blatantly denied the significance of standardized testing [NT 102-105]. She also provided many answers off the point of the questions while providing extraneous details [NT 132-136]. Most importantly, she tended to exaggerate benefits offered to Student, for example spending a good deal of time talking about the verbal-behavior classroom when it turned out the Student was only in that class one period per day and did not get all the extra teaching and progress monitoring some of the other Students received.[NT 133-136] Likewise the witness talked at length about the school store in which Student could work on socialization but it turned out Student was only there one period a week during a study hall if class work was completed. [NT 137-140] In general it was not possible to credit her testimony with significant weight.

The Parent testified in a straightforward manner without rancor. Her testimony was credited with considerable weight in all areas except her perception of the District’s behavioral interventions.

The District Psychologist’s testimony about Student’s academic achievement and ability was troubling and could not be credited with a great deal of weight. She avoided directly addressing Student’s minimal progress as reflected in standardized testing in the areas of Reading and Mathematics by reiterating the point that curriculum-based measures indicated progress. [NT 227-228] It was disturbing that she would opine that “[Student’s] disability hinders [Student’s] significant movement in any academic area”. Although Student can no doubt be expected to learn slowly Student can be expected to learn and setting low expectations may have contributed to Student’s lack of meaningful academic progress.

The 8th grade special education language arts teacher/case manager was clearly devoted to Student and conveyed the sense that she loves and is invested in her work. Her classroom system of positive behavior support is commendable and her testimony was persuasive in establishing that Student’s behaviors were well-managed in the school and did not require an FBA or a different behavior plan. It is unfortunate that she didn’t have additional time with

Student; providing the intensity of reading instruction Student needed while also addressing writing in what amounted to four days per week [given one day per week taken out for Skillstreaming] was not a reasonable demand on this teacher.

The 9th grade special education math teacher also presented as enthusiastic about teaching and as invested in Student. Again, however, the schedule did not afford her the time to provide direct, individual instruction in mathematics that Student required.

Special Education:

Free Appropriate Public Education: Students in Pennsylvania who are found eligible for special education are entitled by federal law, the Individuals with Disabilities Education Act as Reauthorized by Congress December 2004, 20 U.S.C. Section 600 *et seq.* and Pennsylvania Special Education regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). The term “free appropriate public education” means *special education and related services* that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with [an] individualized education program [IEP]. 20 U.S.C. §1414(d); 34 C.F.R. § 300.347. The Supreme Court identified the IEP as the “primary vehicle” and the “centerpiece of the statute’s education delivery system for disabled children”. *Honig v. Doe*, 484 U.S. 305, 311 (1988).

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

In *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034. 3051 (1982), the U.S. Supreme Court articulated for the first time the IDEA standard for ascertaining the appropriateness of a district’s efforts to educate a student. It found that whether a district has met its IDEA obligation to a student is based upon whether “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.”

Benefits to the child must be ‘meaningful’. Meaningful educational benefit must relate to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003) (district must show that its proposed IEP will provide a child with meaningful educational benefit).

Evidence that the courts hold schools responsible for teaching social skills and emotional regulation in addition to academics abounds in case law. Going back to the seminal Oberti ruling, the Third Circuit the court wrote, “[L]earning to associate, communicate and cooperate with nondisabled persons is essential to the personal independence of children with disabilities.

The Act's mainstreaming directive stems from Congress's concern that the states, through public education, work to develop such independence for disabled children." Oberti v. Board of Education of Clementon Sch. Dist., 995 F.2d 1204, 19 IDELR 908 (3d Cir. 1993). Three years later the Third Circuit articulated its position that education is more than academics and involves emotional and social progress in its holding that an IEP is appropriate if it offers meaningful progress in *all relevant domains under the IDEA* (emphasis added). *M.C. v. Central Regional S. D.*, 81 F.3d 389 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996). At least two federal district courts in Pennsylvania have expressly considered social skills as an educational benefit that must be addressed through special education when needed. In *Girty v. School Dist. of Valley Grove*, 163 F. Supp. 2d 527, (W.D.Pa. 2001), aff'd 60 Fed. Appx. 889, 175 Ed. Law Rep. 408 (3d Cir. 2002), as part of its analysis under *Oberti*, the court considered social skills as an educational benefit to be weighed when comparing the benefits of regular education and non-inclusive education. More recently, in *Breanne C. v. Southern York County School District*, 2010 WL 3191851 (M.D. Pa. 2010) the court noted that when an eligible child receives an IEP, that IEP must be reasonably calculated to afford the child the opportunity to receive a "meaningful educational benefit" [*Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir.2004); *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir.1999)] and that an IEP confers a meaningful educational benefit when it is more than a trivial attempt at meeting the educational needs of the student, and it is designed to offer the child the opportunity to make progress in all relevant domains under the IDEA, including behavioral, social and emotional.

Pennsylvania statutes firmly establish that in addition to instructing in academics, school districts are mandated to attend to behavioral, social and emotional education. The Pennsylvania Department of Education [PDE], headed by the Secretary of Education, is charged by the General Assembly with developing rules and regulations to carry out its legislative enactments as set forth in the Pennsylvania School Code. Act of July 23, 1969, P.L. 181, § 1, 71 Pa. Stat. Ann. §§ 1037, 1038; Act of June 16, 1994, P.L. 319, No. 49, § 9, 64 Pa. Stat. Ann. § 468. The PDE explains that public education "prepares students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible. In conjunction with families and other community institutions, public education prepares students to become self-directed, life-long learners and responsible, involved citizens." 22 Pa Code § 4.11(b). Thus, public education in Pennsylvania is intended to provide opportunities for students to: (1) Acquire knowledge and skills. (2) Develop integrity. (3) Process information. (4) Think critically. (5) Work independently. (6) Collaborate with others. [and] (7) Adapt to change. 22 Pa Code § 4.11(c). If schools must address behavioral, social and emotional domains in public education when educating disabled students, then a student with a disability in these domains who has not benefitted from regular education programming to address these domains necessarily requires specially designed instruction in these areas.

Discussion

The record of standardized testing in reading and mathematics using the same test instruments over a period of years compels a finding that Student did not make meaningful educational progress in these areas of academics. Although the District utilized systematic programs of reading instruction, these programs were not delivered with sufficient intensity to enable Student

to progress. Although it is acknowledged that in January 2012 testing with the GORT reflected progress that was quite different from the previous pattern of little or no progress and in fact some regression, findings from the WIAT III are closer to the pattern of scores prior to 2012. Even if Student actually did realize the gains reflected in the January 2012 GORT scores, a full two years of compensatory education using individual, targeted, systematic reading instruction is necessary to begin to remediate the stagnant status of Student's reading as seen in the repeated testing. Likewise, repeated mathematics testing provides ample evidence that Student failed to make meaningful educational progress in that area. Again, a full two years of compensatory education is necessary to begin remediation in mathematics.

The District provided Student with one period a week of a structured social skills training program for one year, and the opportunity to sometimes spend one period a week working in the school store. Additionally, in one class period four days per week the teacher used a verbal behavior model to integrate social skills into the academic work. The District did not support its position that the social work services it provided Student during the years covered in this hearing delivered social skills training in a structured instructional format. It appears that some of the social worker's time was appropriately spent in a counseling capacity and/or in consultation with other staff. Student is at an age where socialization becomes extremely important for integration into the community and for building self-esteem and self-confidence. Student is also at an age where socialization can be quite difficult. Because of Student's disability, Student cannot be expected to pick up and generalize appropriate social skills from the environment. Student requires a structured systematic social skills training program and the opportunity to practice learned skills in educational and recreational settings. As the District did not provide Student with an intensive structured social skills program Student is entitled to compensatory education in this area.

Student received only speech [articulation] therapy, not language therapy, during speech/language sessions. The District admits that Student requires instruction and practice in pragmatic language and does not deny that it failed to offer this to Student. Given Student's disability, direct work in the area of pragmatic language is essential and failure to provide this is a denial of FAPE.

Remedies:

The IDEA authorizes hearing officers and courts to award "such relief as the Court determines is appropriate" 20 U.S.C. § 1415(h)(2)(B), and compensatory education is an appropriate remedy when a school district has failed to provide a student with FAPE *Lester H. v. Gilhool*, 916 F.2d 865, 871-73 (3d Cir. 1990) as the purpose of compensatory education is to replace those educational services lost because of the school district's failure. [*Id.*] Compensatory education is an equitable remedy. [*Id.*] *B.C. v. Penn Manor Sch. Dist.*, 805 A.2d 642 (Pa. Commw. 2006) provides instruction for awarding compensatory education, counseling an award that would bring a student to the point where the student would be had FAPE been offered.

In this case, predicting where Student would be in reading and in mathematics had FAPE been offered, and what would bring Student to that level if known, is not practically possible. Therefore Student is awarded two hours of compensatory education for every day school was in

session for the 2010-2011 and the 2011-2012 academic years, for a subtotal of 720 hours [2 hours x 180 days x 2 years] with an additional subtotal of 30 hours [5 hours per week for 6 weeks] for summer programming, for a total of 750 hours. These hours should be used for academic instruction in the areas of literacy and mathematics. Likewise, an hour-for-hour approach is appropriate to compensate Student for a denial of FAPE in the area of social skills training. Student is awarded 1 hour per week for each week of the 2010-2011 and the 2011-2012 academic years for a subtotal of 80 hours [1 hour per week x 40 weeks x 2 years], and an additional subtotal of 3 hours [1/2 hour per week for 6 weeks] for summer programming, for a total of 83 hours. These hours should be used for social skills training and/or a specialized structured recreational program such as a summer camp or after school/weekends therapeutic program designed to assist children with socialization. Finally, in the area of speech/language, Student is awarded 1/2 hour per week for each week of the 2010-2011 and the 2011-2012 academic years for a subtotal of 40 hours [1/2 hour per week x 40 weeks x 2 years] and an additional subtotal of 3 hours [1/2 hour per week for 6 weeks] for summer programming, for a total of 43 hours. These hours are to be used for speech/language therapy, specifically language therapy dealing with the pragmatic aspects of language. The hours of compensatory education in each category are to be in addition to and not in place of services provided in Student's IEP. The Parents are free to choose the services and the providers to deliver these services. The hours of compensatory education may be used past the year Student turns twenty-one, but must be used before Student's 26th birthday.

Order

It is hereby ordered that:

The [District] denied Student a free appropriate public education in certain areas. Specifically:

The District did not provide appropriate instruction to Student in the area of functional academics;

The District did not provide appropriate social skills [interpersonal skills] training to Student;

The District did not provide Student with appropriate speech and language services in the area of pragmatics.

The [District] did appropriately address behavioral concerns that Student may have been exhibiting;

The [District] shall provide Student with 876 hours of compensatory education as specified in the discussion above, specifically 750 hours related to reading and mathematics, 83 hours related to social skills training and practice, and 43 hours related to speech/language therapy.

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

December 21, 2012

Date

Linda M. Valentini, Psy.D., CHO

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