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.

HEARING ORDER

Student's Name: C.P. File #5645/05-06 LS)
Date of Birth: [redacted]
Dates of Hearing: 3/7/06, 3/30/06, 3/31/06, 4/3/06, 5/2/06, 5/4/06, 5/31/06, 6/2/06, 6/7/06, 6/12/06, 6/14/06
Type of Hearing: Closed

Parties to the Hearing

Parents' Names:
Parent[s]

Date Transcripts Received: various

Parents' Representative:
Richard L. Chamovitz, Esq.

Date of Order:
July 28, 2006

Representative's Address:
4 Winding Way
Wayne, Pa 19087

Hearing Officer's Name:
William J. Wall, Esq.

School District:
Ridley School District

School District's Address:
1001 Morton Avenue
Folsom, PA 19033

School District Contact:
Ms. Kim Woods
Director of Special Education

Representative's Name:
Andria B. Saia, Esq.

Address:
Levin Legal Group, P.C.
Ste 1301, 1800 Byberry Road
Huntington Valley, Pa 19006

_____ Signature:
Hearing Officer
July 28, 2006

SPECIAL EDUCATION HEARING ORDER
STUDENT (FILE # 5645/05-06 LS)
Ridley School District

BACKGROUND INFORMATION

The Parents requested a due processing hearing in the instant matter by means of a hand delivered letter dated June 30, 2005 (P-107) to the School District. The District initiated the hearing on July 6, 2005(P-109). By means of a letter dated July 8, 2005, the parents were advised of my appointment as the Hearing Officer in this matter. There was an extensive discussion with the parent about whether or not the guidelines applicable under IDEA '97 or IDEA 2004 applied to the hearing. Before counsel for the parent entered his appearance, the parties agreed that the hearing would be conducted under the guidelines that were in effect as a result of IDEA '97. However, the agreement to conduct the hearing according to those guidelines does not extend to the application of the relevant law. The applicable law cannot be determined by agreement between the parties but must be ascertained by an analysis of the applicable statutes and the case law that has interpreted those statutes where relevant.

THE PARENTS' POSITION

In the June 30, 2005 letter requesting the Due Process Hearing the parents articulate their reasons for the request. They sought the implementation of all recommendations made by Dr. Y, contained in his School-Neuropsychological Evaluation dated May 31, 2005. (P. 97). They also requested one-to-one aide be assigned to the student during the school day. The aide is to have psychological and educational training that will enable the aide to deal with

the student's emotional and academic issues. The parents also requested a ruling that the District pay for the student's participation in a social skills group (limited to the costs not covered by the student's medical insurance). Compensatory education is also sought for all the days since September 2001 that the student missed as a result of disciplinary suspensions. The parents allege that the School District was aware that the student needed additional related services other than the services [Student] was receiving. As a result, the parents are seeking Compensatory Education for those services which were not provided, especially psychological counseling and language therapy. They allege the services should have been provided from September 2001 and thus are seeking Compensatory Education from that time to the present. Based on the complaints stated in the parent's letter and other alleged failures of the District as articulated in a three page attachment included in P.109 the parents contend that the School District failed to provide the student with a Free Appropriate Public Education (hereinafter "FAPE").

On August 23, 2005, I was advised by Mr. Chamovitz he would be representing the parents and the student in the Due Process Hearing. He requested and I granted a thirty day extension for him to become familiar with the case. Thereafter additional adjournments were granted at the request of either party or jointly in order to proceed with effort to resolve the differences between the parties. By letter of February 14, 2006 counsel for the parents amended the Due Process of Request of June 30, 2005. Counsel alleged on behalf of the parents that "the District failed to develop legally sufficient Evaluations Reports

("ER's"), Individualized Education Plans ("IEPs) and programs and placements from the 2001-2002 school year to the present...". It was also alleged that the District ignored recommendations for the student from non-District experts and its own personnel at times.

In addition to alleging inappropriate and inadequate goals and objectives, IEPs did not include appropriate Behavior Management Plans ("BMP") based on a Functional Behavioral Assessments (FBA). Based upon the allegations the parents seek full year compensatory education beginning with the 2001-2002 academic year; a new IEP that is specifically designed to meet the student's various needs; comprehensive Independent Education Evaluations (IEEs) at the District's expense so that the student's needs can be fully and properly identified. The parents also reserve their rights to seek monetary damages under IDEA 1997, IDEA 2004 and Section 504. The parents withdrew their harassment claim.

With the delivery of the Amended Due Process request, the possibility of a resolution of the dispute disappeared and hearings were scheduled.

THE DISTRICT'S POSITION

The District states that the burden of proof rests with the party bringing the action as stated by the Supreme Court in Schaffer v. Weast (04-598). In addition, the District contends that the courts have rejected the concept that every IEP is invalid unless the District proves it is not. The District also contends that IDEA does not support that concept.

The parents have sought compensatory education for alleged failures on the part of the District for several years but I have already ruled that the two year

statute of limitations is applicable to this case. The District contends that Compensatory Education is only an appropriate award when a school district becomes aware that the student's educational program is not appropriate and do nothing to remedy that or the student is only receiving a trivial educational benefit. The period of compensatory education should be equal to the time of deprivation less the reasonably required to implement an appropriate program. The District contends that Compensatory Education is only an available remedy if the District has failed to provide FAPE. In this case, the District states that the program offered to the student was designed and implemented in such a way that the student did receive FAPE. The District states that the educational records reflect the District made extraordinary efforts to provide a program reasonably calculated to provide a meaningful educational benefit to a student with many complex immutable medical issues. The District contends that its efforts allowed the student to be above grade level in many areas and has made significant progress with respect to [Student's] complex behavioral issues. Therefore the District contends that no Compensatory Education should be awarded to the student.

The parents have also sought additional independent evaluations paid for by the District. The District contends that the District is only obligated to pay for one independent evaluation and it has already done so. Moreover, the District contends that for the parents to receive IEEs paid for by the District the parents must first disagree with an evaluation performed by the District or show that the

Evaluation was inappropriate. The District contends the parents never did either of those with the exception of one evaluation performed by Dr. N. Therefore the District contends that it has no obligation to pay for any additional IEEs.

PRIOR RULINGS IN THIS CASE

With respect to the Statute of Limitations found in IDEA 2004, I have ruled that the Statute is applicable in this case and therefore the parent is limited to obtaining relief for only two years of any violations which I determine have been committed by the District and resulted in a denial of FAPE.

On March 29, 2006, I ordered the parents to provide to the District the answer sheets and raw data resulting from the testing, used in the administration of the WIAT and WISC tests, administered by Dr. Y to the student during 2005 in connection with this Due Process Hearing.

In addition, during the hearing the parents made a motion to preclude certain District exhibits and all testimony and references to those articles on the grounds that the exhibits and the testimony was prejudicial and should be excluded on that basis. I denied that motion.

THE ISSUES PRESENTED FOR DECISION

A review of the parents' request for this hearing as well as the additional requests made by counsel for the parents result in the following issues that were the subject of the hearing and these issues are the subject of this decision.

1. The implementation of all recommendations made by Dr. Y, contained in his School-Neuropsychological Evaluation dated May 31, 2005. (P. 97).

2. The assignment of a one-to-one aide to the student during the school day. The aide is to have psychological and educational training that will enable the aide to deal with the student's emotional and academic issues.
3. The District is to pay for the student's participation in a social skills group (limited to the costs not covered by the student's medical insurance).
4. Compensatory Education is sought for all the days since September 2001 that the student missed as a result of disciplinary suspensions.
5. Compensatory Education is also sought for those related services which were not provided, especially psychological counseling and language therapy.
6. The District failed to develop legally sufficient Evaluations Reports ("ER's"), Individualized Education Plans ("IEPs") and programs and placements from the 2001-2002 school year to the present.
7. The District ignored recommendations for the student from non-District experts and its own personnel at times.
8. The IEPs did not include appropriate Behavior Management Plans ("BMP") based on an adequate Functional Behavioral Assessments (FBA).
9. A new IEP that is specifically designed to meet the student's various needs is to be developed after comprehensive Independent Education

Evaluations (IEEs) at the district's expense so that the student's needs can be fully and properly identified.

10. The parents contend that the School District failed to provide the student with a Free Appropriate Public Education (hereinafter "FAPE") as a result of the issues presented.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues in this case revolve around the special education program of the student from the time of [Student's] enrollment in kindergarten in 2001 until the completion of this school year in June 2006. It is my understanding that the parties have reached an agreement on the student's 2006/2007 IEP and placement. Any award to the parents in this hearing will be in addition to that agreement.

The issues presented for decision have been outlined in the above section. The decisions with respect to each issue will be based on the evidence and testimony presented at the hearing.

The district has sought nothing but a finding that the student has received FAPE and the program it developed and implemented for the student yielded a program reasonably calculated to provide the student with an appropriate educational opportunity.

The first contention presented by the parents is that the District failed to implement all of the recommendations of Dr. Y (P. 97) (RSD EX 45, pp. 21-43). His report is dated 5/31/05. Dr. Y's report made several recommendations, some of which are now incorporated into the student's current IEP.

Dr. Y's evaluation made two recommendations that were requested by the parents but denied by the District until the most recent IEP. The District stated that it did not provide counseling as it was not warranted by the diagnosis of ADHD and it was not necessary in view of the other related services already incorporated into the student's IEP. Dr. Y's report, delivered to the District on July 6, 2005. (Trans. p. 1093), did recommend psychological counseling. The record reflects continual requests by the parent for individual psychological counseling for the student as a related service. (Trans p.1079, l.13) Dr. B's report, dated 12/23/02 (RSD Ex. 45 pp. 100-107) included a recommendation that the parent read to be recommendation for psychological counseling. The recommendation reads

> 6. [Student] should work with a school counselor or school psychologist to learn how to better manage [Student's] frustration, reduce [Student's] anger levels, and develop a more positive self-image. Efforts should be made in the classroom to give [Student] special assignments, or single [Student] out for something done well, to help build a sense of self-esteem. (at p. 105)

The recommendation does not specifically require psychological counseling but it is not an unfair reading of the recommendation to see it as a recommendation for psychological counseling. The parent continued to seek psychological counseling on a one-to-one basis for the student and the District refused to provide it until the most recent IEP.

The District has agreed to provide psychological counseling in the May 2, 2006 IEP. As Mrs. W's testimony makes clear this is more in terms of an accommodation to the parents rather than a change of heart about the value of the counseling in this particular case. Based on the testimony received and the

documentary evidence entered, I am persuaded that the addition of psychological counseling is an appropriate related service which should be added to the student's IEP. Therefore, I order that the District provide psychological counseling to the student for a period one time a week for a period of no longer than one hour for the academic year 2006/2007, regardless of the placement. This counseling is to be provided in addition to other related services. If the student's new placement provides such a service as part of it academic supports then no additional counseling is ordered. If it is not provided, it is to be done by a qualified professional who is familiar with the academic placement. A qualified professional may be a Master's level licensed clinical social worker, a licensed school psychologist or Doctor of Psychology who is experienced in providing therapeutic counseling to students as well as a licensed psychiatrist. (Because of cost considerations, a psychiatrist shall be viewed as resource of last resort to provide counseling.) The district is not responsible for providing medical services to this student and therefore this order is not to be construed as any type of intrusion into the medical management of the student's issues.

Finally, with respect to psychological counseling, there has been a request for a compensatory award of psychological counseling. I find no basis for such an award. While the student has several diagnoses where psychological counseling is an appropriate treatment modality, even if it was not a clinically approved modality of treatment for ADHD, the record reveals that the student has had supports for [Student's] emotional issues during the course of [Student's] academic career. The faculty and the administration did respond to the student's

needs in a variety of ways, including a special person that the student could relate to when [Student's] anger became uncontrollable. The record reflects that these techniques worked to a point where there is credible testimony that the intensity and frequency of the student's outbursts were decreasing during the course of the last two academic years, until [Student] became aware of this due process hearing which no doubt caused significant anxiety for the student. The various disciplinary issues that arose just prior to and during the hearing cannot be considered a regression but rather, from the student's point of view, a natural response to a very uncertain, anxiety filled, experience. The disciplinary issues that were the subject of testimony and documentary evidence that occurred during the spring semester as the hearing progressed cannot be viewed in isolation or legitimately characterized as a significant regression or alteration in [Student's] behavior.

I am persuaded that District's decision to not provide psychological counseling until late in this academic year does not constitute a denial of FAPE unless there was a serious educational detriment to the student. The record reflects that the student did make meaningful academic and emotional progress during the time that the specific related service of psychological counseling was not on the student's IEP. While it may have been a service that could have enhanced the student's educational experience, the fact that it was not provided does not amount to a violation of FAPE.

The second major recommendation of Dr. Y was that the District "Review Eligibility for Language Therapy as a Related Service". (Exhibit P.97 p.21) . He supports this recommendation with references to three prior evaluations made by Dr. N, Dr. B and Ms. H as well as his own testing and observation. The district has provided speech therapy on a regular basis but has not provided language therapy on the theory that the speech therapy was adequate to meet the student's needs and [Student's] testing scores did not warrant language therapy as a related service. There is no question that the professionals who evaluated the student did recommend language therapy but none of them described the therapy as a requirement for the student to make meaningful educational progress. I do not dispute that speech therapy would be a nice accoutrement to the student's package of related services. However, I cannot find fault with the District's determination that at various times [Student] was not eligible for the service according to the Department of Education guidelines and the professional judgment of the various IEP teams who had the recommendations before them

when they determined that language therapy was not a necessary service for the student. Nevertheless, I note that language therapy has been added to the student's May 2, 2006. Thus Dr. Y's principal recommendations have now been included in the student's IEP.

There is one additional recommendation from Dr. Y that has not been implemented by the District. Dr. Y recommends that an updated Central Auditory Processing evaluation be completed. He states some indications of auditory processing difficulties were manifested in the past and he felt it would be an important update as auditory processing difficulties can have a significant impact on various learning processes. I concur with that recommendation and so order it. The IEP should be modified if any significant auditory processing deficits are uncovered. The remainder of Dr. Y's recommendations has either been incorporated into the student's program or are not the responsibility of the District to implement.

The next request for the parent is the assignment of a qualified one-to-one aide for the student to keep [Student] focused and calm. The aide was not provided because in the judgment of the IEP team it was not an appropriate remedy for the student. Mrs. W testified on the issue of a one on one aide.

> Q. In your opinion, did [Student] have any learning disabilities that necessitated a one-on-one aide?
> A. No, [Student] did not. [Student] made better than adequate progress throughout [Student's] career.
> Q. Has [Student] ever been diagnosed as having a learning disability either independently or by the District?
> A. No, [Student] has not.
> Q. In your 27 years of experience in programming for emotionally disturbed students and your, at this point, four years experience with

> [Student] with and out[sic] a TSS would a one-on-one aide help [Student] with learning disabilities, behavioral and emotional-social issues?
> A. No. It is my professional opinion that, no, it would not.
> Again, [Student] has learned the talk, so to speak. [Student] knows what [Student] needs to do. What we need to get [Student] to do is to learn to identify [Student's] stressors and be able to utilize those strategies before [Student] blows and to do that when an incident occurs. (Transcript at p. 1948, l. 2 ff.)

There was no professional support for a one-on-one aide during the hearing. A review of all the evaluations did not reveal any recommendation that [Student] be assigned a one to one aide. The recommendations rather focused on [Student] internalizing the necessary strategies [Student] needs to deal with [Student's] emotional issues. The testimony of the parent reflected a concerned parent who was seeking alternative methods of providing her child with additional supports for [Student's] education and [Student's] emotional needs. That is commendable and her suggestions and requests were certainly worthy of consideration. It is clear from the evidence and testimony that this was done for the most part. However, many of the suggestions were not adopted and this led to significant tension between the District personnel and the parents. That is unfortunate but cannot impact the legal and regulatory standards that must be applied to this student's academic career. The request of a one-to-one aide for the student is denied.

The next issue presented is the request for the District to pay for the student's participation in a Social Skills group. Those payments are to be to the extent that the participation is not covered by the parents' insurance.

The testimony reflects that the student is engaged in a social skills program as part of [Student's] curriculum at school. The parents are seeking

additional participation in a social skills group because they believe that it will provide additional opportunities for the student to participate and develop such skills.

Here the record reflects that some of the professionals did believe participation in such a group would be helpful. A review of the reports and evaluations offers no support for additional social skills groups as a required additional related service. The record reflects a social skills group is conducted regularly as part of the curriculum. I find no obligation on the part of the District to pay for a Social Skills group as it does not appear to be a necessary related service for the student to receive a meaningful benefit from [Student's] educational program.

The next issue presented by the parents is a request for compensatory education for each day that the student missed class as a result of disciplinary suspensions. The basis for that request is the allegation by the parents that inappropriate Behavior Management Plans ("BMP") based on a Functional Behavioral Assessment (FBA) which themselves were inadequate resulted in a failure of the District to provide FAPE.

Whether or not the Assessments or the Plans were adequate or not they were in place. The first FBA is found at Exhibit P. 7 at page 14 and the Behavior Plan on page 19. In addition, other FBAs and BMPs were developed. A FBA and BMP are included in the Evaluation Report of 4/4/03. Parts of the Plan were developed by a Behavioral Specialist from the IU. The 4/5/05 IEP also contains a FBA and BMP. The testimony and the record reflect that the student was never

suspended for ten or more consecutive days and the suspensions did not exceed 15 days in the year. Thus although there were a number of one day suspensions and, on occasion two day suspensions, they did not amount to a change of placement as contemplated in chapter 14 or the federal regulation 300.519 b. Because the student has an IEP and is classified as a student with a disability there was no obligation on the part of the district to hold a Manifestation hearing on any of the suspensions or on the total number of suspensions for the year. The regulations call for a reevaluation of the BMP if the suspensions continued and there was not improvement in the student's behavior. There is no question that [Student] has continued to make significant academic progress despite a less than successful program for [Student's] emotional difficulties. The question to be decided at this hearing is, does the failure of the District to immediately develop a FBA and BMP in kindergarten and the assessments and plans developed later on fail to provide adequate strategies and plans such that the student was deprived of a meaningful educational opportunity that resulted in the denial of FAPE.

At this point in the decision I want to reiterate the standards that the District must follow when considering the development of a program for a student with a disability including the IEP, the related services and recommended placement. IDEA Sec.601(d) read as follows.

Purposes-The purposes of this title are-(1)(A)to insure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living:...In Sec. 602 Definitions. (9) Free Appropriate Public

Education-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 the individualized education program required under section 614(d).

The Supreme Court further clarified those terms in Rowley (Board of Education v Rowley, 458 U.S. 176 (1982),). In that case, the Court states “The requirement that States provide “equal” educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to non-handicapped children would in all probability fall short of the statutory requirement of “free appropriate public education”; to require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child’s potential is, we think, further that Congress intended to go. (at Education for the Handicapped Law Report Supplement 74,553-666). The Court stated succinctly “Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.”

There have been several Appeals Panel Decisions that have summarized those requirements, including citations to appropriate laws and cases. Appeal 1370 states “Generally, to be appropriate the program must be in a regular public school class unless certain criteria are met, and when offered be “reasonably

calculated" to confer "educational benefit" or ""meaningful educational benefit", that is not trivial nor de minimis.

In the following paragraph of that decision the Appeals Panel articulated the elements of an IEP that is statutorily sufficient.

> In examining Student's IEP the Hearing officer found, and this Panel concurs, a document satisfying these precedents in that when offered it was "reasonably calculated" to confer "meaningful educational benefit". Indeed, it stated then present performance levels and measurable annual goals with benchmarks as well as short term objectives, to foster progress in the general curriculum and meet his other educational needs. Further it included special education and related services with supplements and program modifications so as to enable him to progress and be educated among other children with and without disabilities.

In this case the relevant IEPs are also sufficiently clear and detailed to meet the statutory requirements of valid IEPs, i.e. IEPs that if properly implemented will provide the student with a meaningful education experience. Although I permitted the introduction of evidence from the 2001 year to the present, because the statute of limitations applies, the only relevant IEPs are those written after 2003. Those include the IEPs dated 4/4/03 (P 41), 4/1/04 (P 58), 4/5/05 (P 89) 5/4/05 revision (P 95). The IEPs of 4/21/06 and 5/2/06 are not the subject of this decision as they were reached by agreement between the parties. Each of those IEPs contains all of the essential elements to permit the student to have a meaningful educational experience. I note that the parents contend the IEPs are legally deficient because the District failed to either gather significant amounts of statistical information or analyze the information gathered. The parents also complain that the District failed to sufficiently quantify the goals and objectives on the IEPs particularly with respect to emotional issues. I

conclude that is not the case. Each goal is clearly written and then benchmarks and short term objectives which contain measurable results are also included in each IEP. While the parents may disagree with the specificity of the goals and objectives, I conclude that they are legally sufficient to meet the criteria established by IDEA and both the federal and state regulations as interpreted by various appeals panels and courts. I note that the parents spent a great deal of time examining witnesses with respect to the various emotional outbursts of the student. The teachers admitted they did not track the outbursts with the accuracy of an accountant but their testimony also makes it clear that they were very familiar with the student and [Student's] behaviors. The record also reflects that the District did loose certain records that dealt with the emotional outbursts of the student during the 2003/2004 school year. There was no credible evidence that these records were deliberately misplaced or thrown away after the parent filed for the due process hearing. Because the district did not maintain the records of the student's emotional issues with the mathematical precision the parent wished for does not mean that the records failed to meet the required degree of certainty that allowed the District to develop appropriate IEPs as specified by the law and regulations. The parents also complain that the FBA developed by the Intermediate Unit failed to provide an adequate methodology to gather relevant information about the student's behavior. Yet the testimony of Mr. K clearly indicates that he felt that different circumstances would generate different requirements for the accumulation of the information necessary to develop a FBA. (Trans at p. 529 l. 2) He testified that he used a functional assessment

interview form.(at p. 531,532 ll. 25, 1) The direct examination focused on the methods of Mr. K. as well as the Assessment and Plan that was developed. I found him to be a credible competent witness who explained his rationale for his fact finding and the Assessment and plan he developed. In his testimony Mr. K articulated what he thought was necessary information to develop a FBA. Thereafter he discussed the development of the MBP. From a review of his testimony, the assessment and the plan I conclude that the FBA and MBP are legally sufficient. While the parents expended a great deal of effort to document and summarize the student's behavior and counsel argued that without such documentation and analysis any FBA is inadequate, there is no regulatory requirement that such information be gathered and analyzed. The regulations specify only that the FBA and MBP be developed using appropriate techniques. There are advisory documents issued by the Department of Education but even those do not call for the documentation that counsel argues is necessary to develop adequate FBAs and MBPs. The cases cited by counsel, Appeals 1642, 1680 and 1280, refer to various date gathering requirements and conclude that the Districts failed to provide FAPE either because they failed to either gather appropriate or sufficient data. Each of those cases is distinguishable from the present case. In each case special circumstances such as autism or another factor drove the requirements to collect certain types and amounts of data. Without that data the Appeals panel held there was a denial of FAPE. In this case collection of data was more than adequate to provide a reasonable basis for the FBA and MBP. I conclude there was not a failure on the part of the District in

developing the FBAs and MBPs. Therefore I decline to award any compensatory education because I do not find there has been a denial of FAPE.

The next claim by the parents is for compensatory education because they allege that the District failed to develop adequate Evaluations and IEPs leading to a denial of FAPE. One element of this claim is that the district failed to take the advice of both independent evaluators and at times their own personnel.

For the allegations of faulty evaluations as well as the refusal of the District to rely on various evaluations from independent evaluators to reach the level of a denial of FAPE one must find that as a result of these alleged failures the student was deprived of a significant educational opportunity.

Nevertheless, the issue of additional IEEs remains. The standards for conducting evaluations and developing IEPs are found in the law and regulations some of which have been clarified or interpreted by Administrative Appeals or litigation. The applicable regulations for Evaluations are found at 300.531ff. The regulations specify the necessary procedures and criteria required to be used by District to evaluate a student. Those regulations are incorporated in to this decision by reference. The significant points of the regulations require a variety of tests and sources so that one source is not relied on to develop a comprehensive view of the student's situation. The other significant requirement is that the testing employed be validated for the purposes it is used in conducting the evaluation. The record of this hearing does not reflect the use of any tests or evaluations conducted by the District that do no meet that standard. Moreover the Evaluations all contain various sub-parts that reflect the use of a variety of

tests and evaluations all of which are recognized as properly normed. The private consultants and evaluators on occasion did use tests that were not normed for the student at the time they were administered. I do not criticize that practice or the expert that employed the technique. I simply note that that is not permitted to the District and the record does not reflect any violation of that requirement in any of the evaluations conducted by the District. The conditions under which IEEs are necessary and required are found in 300.502

Essentially, the regulations provide that the parents must disagree with an evaluation that had been done by District personnel before they are entitled to an IEE. In the event they do disagree with an evaluation the district must start a due process hearing or provide the parents with an evaluation at the district's cost. In this case the parents questioned several evaluations but did not disagree with evaluations performed by the District. They did want additional evaluations that the District did not feel the necessity of undertaking. The regulations governing independent evaluations are found at 300.500 ff. 300.502(b) specifies the conditions under which parents are entitled to such evaluations The regulation reads in pertinent part.

(b) *Parent right to evaluation at public expense*

> (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by a public agency.
> (2) If a parent request an independent educational evaluation at public expense, the public agency must without unnecessary delay, either-(i) Initiate a hearing under § 300.507 to show that its evaluation is appropriate; or (ii)Ensure that an independent educational evaluation is provided at public expense, unless that the evaluation obtained by the parent did not meet agency criteria.

> (3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational, but not at public expense.

In this case, the parents have requested certain additional IEEs for the student because they feel that additional information is needed to completely evaluate the student and prepare a CR that will give rise to a more complete IEP including a better FBA and BMP. However, according to the regulations, parents are only entitled to IEEs if they have disagreed with the findings of a District evaluation or alternatively the District failed to provide FAPE to the student. They contend that the failure to provide the additional evaluations did result in a failure to provide FAPE and thus are entitled to have the IEES performed. Specifically the parents request that complete IEEs be done at district expense. The record does not reflect objections or disagreements with the evaluations undertaken by the District. The record does reflect that the parents were unhappy with some of the evaluations or requested additional evaluations.

An Appeals Panel in Appeal 912 stated that "The district is not required to conduct or fund any additional evaluations because its most recent reevaluation is appropriate". The standard then according to Appeals Panels is that if the overall evaluation is adequate to provide the necessary information to develop an IEP that is reasonably calculated to provide the student with a meaningful educational opportunity there is no need for additional evaluations. It is clear that the District's program has provided the student with that meaningful education opportunity. There is no dispute that [Student] is still having difficulties with emotional outbursts and uncontrolled displays of anger but there has been

progress in that area as well. The fact that improvement is documented, more from testimony that from statistical reports, about the decreasing intensity of [Student's] outbursts, [Student's] willingness to participate in various coping mechanisms all reflect the improvements. As I stated above, once [Student] became aware of the due process hearing [Student's] behavior did deteriorate but I cannot conclude that deterioration reflects a failure on [Student's] part or the part of the parents or District. This acting out simply reflects [Student's] increased anxiety about a situation over which [Student] has no control. This leads me to conclude that [Student's] IEP and placement were appropriate. Therefore I conclude that the parents are not entitled to additional payments for IEEs other than those agreed to by the District. It is my understanding that a new IEP has been developed for the student for the coming school year. In addition, RS 52 at p.3 reflects an agreement between the parties for a specified sum of money to be used in the coming school year (2006/2007) for the development of a FBA by Dr. H, should that be necessary.

I return to the question of an overall compensatory education award at the end of this decision because there must be a significant denial of FAPE for such an award. In this case, the only basis for a conclusion that there was a significant denial of FAPE would be the overall failure of the program and placement rather than particular serious individual actions by the District that resulted in a denial of FAPE. The fact that the parents and the District had very different views of the needs of the student and the appropriate program and placement do not automatically lead to a determination that there has been a denial of FAPE.

There are several legal standards that must be applied before a conclusion can be reached about the provision of or the failure to provide FAPE to a student. I have reviewed those standards and applied the facts as I understand them in this decision. I found that all of the witnesses were credible and spoke about the case as they experienced it.

The only remaining issue I feel must be addressed is the question of a locked time out room and the report by the parent that the student said [Student] was locked in it. It is undisputed that for a period of time a lock was in place on the door to the time out room. It was also confirmed that the lock was removed. Nevertheless, there was an allegation that the student was locked into the room while the lock was in place. That is a serious violation of Chapter 14. Section 133. The District representative testified that at no time was the student ever locked into the room. The parents offered no corroborating testimony to support the child's statement that [Student] was locked in. From the parent's credible testimony it is clear that the student believed [Student] was actually locked in. But to sustain that allegation on hearsay testimony alone is beyond my authority. The dispute resolution manual makes it clear that hearsay evidence is admissible in a due process hearing but it is also clear that a hearing officer may not use uncorroborated hearsay and objected to evidence alone to sustain a finding of fact. Section 909 of the manual reads in pertinent part. "C. Uncorroborated and objected to hearsay evidence may not be relied upon by a Hearing Officer as the sole basis for findings of fact or conclusions of law that are necessary to render a decision." Therefore since the only evidence of the student being locked into the

time out room is the hearsay statement of the student who did not testify, I decline to rule on the fact of [Student's] being locked in and therefore base no rulings in this case on the testimony with respect to the student being locked in the timeout room. The District can be faulted for being careless about the use of a door with a lock in the construction of the time out room as in itself a locked door is in violation of Chapter 14.133 but I cannot find any violation of FAPE or any other violation that would be subject to my authority based solely on hearsay evidence as there is no other evidence that the lock was ever used.

ORDER

1. The District is ordered to provide individual psychological counseling to the student as it is now specified on [Student's] most recent IEP. The counseling shall not be discontinued unless the IEP team consults with a psychologist or other appropriate mental health professional who is not involved with the student's education and that person concurs with the recommendation. The qualified professional may be a qualified District employee or an Independent Evaluator who shall be paid for the evaluation by the school District. Because there were various therapeutic techniques employed in the program while the student was participating, I find no compensatory education is appropriate for the District's decision not to provide psychological counseling during the previous school years. The failure to provide individual psychological counseling during the last two years did not result in a denial of FAPE.

2. The District has incorporated both speech and language therapy into the student's IEP dated May 2, 2006 (RDS 53). The language therapy is to remain a

part of the student's IEP until such time as the IEP team determines it is no longer necessary and obtains a concurring opinion from a qualified speech and language therapist who is not involved in the student's education. That qualified therapist may be a District employee or an Independent Evaluator who shall be paid by the district for such evaluation.

3. The District is ordered to pay for an Updated Auditory Processing Evaluation by an independent evaluator. No District personnel are to be used to perform any part of this evaluation.

4. The District is not obligated to pay for an additional social skills program for the student. No evidence was introduced that led me to conclude that the denial of such an additional program results in a denial of FAPE.

4. With respect for the request for compensatory education because of the time missed from school as a result of disciplinary suspensions, it is denied. The record reflects that the suspensions were appropriate to the misbehavior of the student. The fact that there were numerous suspensions over the years does not mean they resulted in a denial of FAPE.

Dated: July 28, 2006