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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: F.S.

Date of Birth: xx/xx/xx

Dates of Hearing:

March 7, 2006, March 27, 2006, April 3, 2006, April 4, 2006, May 2, 2006, May 10, 2006, May 11, 2006, May 24, 2006, June 8, 2006

CLOSED HEARING

ODR #6150/ 05-06 LS

Parties to the Hearing:

Parent

Pleasant Valley School District
Route 115
Brodheads ville PA 18322-2002

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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July 21, 2006

August 5, 2006

William F. Culleton, Jr., Esquire

INTRODUCTION

Student is a xx year old eligible student residing with his Mother (Parent) in the Pleasant Valley School District (District). (NT 8-22, 9-14 to 21.) He is identified with multiple disabilities including neurological impairment, mental retardation, orthopedic impairment, visual impairment and speech/language impairment. (S-19 p. 21.) [Redacted.]

The Student has received early intervention services since 1996, shortly after his birth, when he received physical therapy, occupational therapy, speech therapy and special education services through [redacted] in his County. (S-19 p. 2.) The County Intermediate Unit provided vision support and orientation and mobility. *Id.* The family moved to [another] County in 2001 and the Student received early intervention services through the [Redacted] Intermediate Unit, including speech/language therapy, physical therapy, occupational therapy, special education services and vision support. *Id.* The District also provided Orientation and Mobility services in anticipation of the Student's transition to school age services in 2002. *Id.* As of the filing for due process in this matter, the Student was receiving full time instruction in the home, with 15 hours per week of special education services and 8 hours per week of related services. (S-18 p. 94.) Related services included speech and language therapy, vision support, orientation and mobility training, physical therapy and occupational therapy. (S-19.) There are also a number of assistive technologies, including orthopedic equipment and a voice output communication device. (S-19 p. 12, 75 to 81.)

The Parent filed for due process in December 2005, seeking prospective orders and compensatory education. (S-24.) The Parent alleged numerous deficiencies in the District's educational program for the Student, resulting in a denial of free appropriate public education. *Id.* After a resolution meeting and negotiations, the issues were narrowed to those presented in this matter. The Parent charges that the IEP goals lack a "scope and sequence" and therefore fail to meet the Student's needs, that education is not provided in the least restrictive environment, that the District has failed to implement an effective behavior management plan, that Physical Therapy services are insufficient in quantity and that the Certified Occupational Therapy Assistants must be trained and supervised to deliver sensory stimulation services. The Parent also asserted that the District has failed to provide supplies, communication systems and communication devices at District expense, and that District staff have failed to utilize assistive technologies as required by the IEP. The Parent continues to claim compensatory education for these alleged failures.

The District responds that its IEPs and services are extensive and comprehensive, and that the goals are selected according to the unique needs of the Student, obviating a strict scope and sequence of curriculum. The District defends the placement in the home as least restrictive due to the Student's [medical condition] and the medical imprudence of placing him in a school building. It defends its behavior management, physical therapy and Occupational Therapy services as sufficient to meet the student's educational needs, and cites its extensive efforts to cooperate with and support the Parent's complex

and evolving plans for communication devices for the Student. The parties stipulate that any compensatory education award will not encompass a period earlier than December 8, 2003. (NT 10-1 to 7.)

PROCEDURAL HISTORY

The County Intermediate Unit provided a CER dated November 27, 2000 and a subsequent Early Intervention IEP. (P-2, S-39.) The Parents and Student moved into the District in October 2001. The District sent an initial ER to the Parents on September 20, 2002, when the Student was at the kindergarten level. (S-1.) On December 16, 2002, when the Student was in his kindergarten year, the Parents and the District entered into a Mediation Agreement providing for a series of private evaluations at District expense, a District-provided Functional Behavioral Analysis, and an IEP meeting upon completion of the private evaluations and FBA. (P-8.) The agreement provided that the 2002 preschool IEP would be the pendent IEP, (NT 1441—20 to 22; P-8), and the next IEP was completed on May 24, 2004, (P-22). In March 2005, the Parent filed a complaint with the Department of Education, resulting in an order that the District reevaluate the Student. (NT 235-7 to 17, 320-6 to 14.) In March 2005, the District offered a revised IEP with a NOREP offering Extended School Year Services, which the Parents signed. (S-15, S-17 p. 3.) Another IEP was offered in May 2005. (S-18 p. 11.) In September 2005, the District presented the reevaluation ordered by the state, offered a revised IEP and offered a NOREP. (S-19 to 21.) The Parent disapproved the NOREP in October 2005. (S-22.) The due process request was filed on December 8, 2005.

At the close of the Parents' case, the District moved to dismiss the due process request. (NT 1375-16 to 1379-1.) The District argued that the Parents had failed to produce evidence bearing upon whether or not there had been a denial of FAPE, especially with regard to the amount of PT and OT time, the use of a COTA. The hearing officer declined to dismiss on the basis of a failure to produce evidence, especially in view of the Supreme Court's limitation of its decision in Schaffer v. Weast to the burden of persuasion. (NT 1380-5 to 1384-16.) The hearing officer declined to carry the motion, seeing no practical reason to do so. (NT 1384-9 to 16.)

ISSUES PRESENTED¹

1. Did the District's 2004 and 2005 Individual Education Plans establish goals and objectives that offer an opportunity for sufficient educational progress, and was its

¹ During the hearing and in closing arguments, numerous issues were raised, some of which exceeded the scope of the issues as set forth in the parties' opening statements and the hearing officer's recapitulation. The hearing officer will consider only those issues raised in the parties' opening statements and the hearing officer's recapitulation. In particular, there was some evidence about ESY services and costs. However, the Parent specifically withdrew that issue from consideration, reserving the opportunity to reinsert it if not resolved during the course of the hearing. (NT 26-17 to 27-1.) The Parent never raised it formally to put the District and the hearing officer on notice that it was being pursued. Therefore, no claims related to ESY are considered here.

educational program sufficiently coherent, consistent and coordinated to provide an opportunity for meaningful educational benefit?

2. Did the District fail to provide a free appropriate public education in the least restrictive environment appropriate to the Student's needs between December 8, 2003 and January 1, 2006?
3. Did the District fail to provide an adequate behavioral management system to the Student, thus denying him meaningful educational benefit?
4. Did the District fail to provide staff time necessary to construct PECS materials and program the Student's communication device, as well as fail to pay for materials needed to construct PECS materials, and fail to provide a computer touch screen, thus denying the Student a free appropriate public education?
5. Did the District fail to provide adequate training to teachers and service providers in the utilization of the Student's communication device, thus denying the Student a free appropriate public education?
6. Did the District fail to provide adequate hours of Physical therapy as a related service in the IEP, thus denying the Student a free appropriate public education?
7. Did the District fail to provide adequately trained staff to provide Occupational Therapy services required in the IEP, thus denying the Student a free appropriate public education?
8. As a result of any failure to provide a free appropriate public education, is compensatory education an appropriate remedy?

FINDINGS OF FACT²

ADEQUACY OF THE DISTRICT'S EDUCATIONAL PROGRAM

1. The Student is classified with multiple disabilities due to [various] diagnoses [redacted]. (P-48 p. 1, 3, 21.)

² Numerous documents were admitted in this case, most by stipulation. These are listed in Hearing Officer Exhibit 1. (HO-1.) This is a list in which admitted documents are indicated by a check mark, and withdrawn documents by "W". The parties also stipulated to the contents of certain offered testimony, which the hearing officer accepts as part of the record. These are the Stipulation of Testimony of Ms. L, (HO-2), and the Stipulation of Counsel as to the Student's total hours in school, (HO-3). In addition, the parties submitted closing arguments in writing in the form of the Parent's Posthearing Memorandum, (HO-4), and the District's Closing Statement, (HO-5).

2. Throughout his early intervention and early school years, the Student has been trained through the discrete trial training method. (S-1 p. 7.)
3. The objects of this training included the following skills: identification of body parts, imitation with objects, matching objects, stacking blocks, sorting, learning colors, stacking rings, nesting cups, and play with cause and effect toys. (S-1 p. 7.)
4. The District presented an ER in September 2002 recommending continuation of discrete trial training, and the use of physical prompting, breaking tasks into smaller components, continual repetition and drill of new skills and use of a communication device. (S-1 p. 12.)
5. The Parent objected to many of the conclusions and recommendations for services set forth in the September 2002 ER. (S-1 p. 57 to 60.)
6. In December 2002, the parties participated in mediation, as a result of which they agreed that a number of private evaluations would be obtained and a Functional Behavioral Assessment would be performed by the District. The parties further agreed that an IEP meeting would convene when all reports were received and that the Early Intervention IEP would be pendant in the meantime. The FBA evaluator did not observe the Student. The reports were not all complete by February 2004. (NT 143-19 to 149-20, 293-20 to 25, 1448-11 to 1449-18, 2083-23 to 2086-7;S-3, P-8, P-9, P-22 p. 59.)
7. Some of the skills addressed in the May 2004 and May 2005 IEPs were first addressed in the Early Intervention IEP in January 2002, including climbing and descending steps, identifying body parts, washing hands, tooth brushing, categorization, reciprocating social greetings, using PECS icons to request breaks and choose toys or activities, drawing horizontal stroke with writing implement, pointing with right index finger, tolerating sensory stimulation, attending to tasks, cruising the walls and furniture, independent standing, stepping between items of furniture, and walking with walker. However, many of these goals were set at lower levels of accomplishment in the 2002 IEP than in the later ones. (S-39 p. 11, 21, 23, 24, 28, 29, 31, 32, 34, 35, 36.)
8. Some of the goals identified in the January 2002 Early Intervention IEP were fully or partially accomplished as recognized in the May 2004 and May 2005 IEPs. These include appropriate play with some toys, completion of tasks before seeking rewards, drinking from cups with and without lids, feeding with utensils, washing hands with assistance, tolerating a toothbrush in the mouth, sorting, imitating a motor activity, generalizing of skills across situations and personnel, reciprocating social greetings, following directions, using PECS to request breaks and preferred toys or activities, grasping a writing utensil, tolerating sensory stimulation to face and mouth, cruising walls and furniture, standing independently, walking with hand held, walking with a walker. (S-15 p. 16 to 17,

- 30 to 31, 39 to 40, 48 to 49, 53 to 54; S-18 p. 14 to 15, 28 to 29, 39 to 40, 50 to 51, 61 to 62; S-39 p. 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35, 36.)
9. An IEP was offered in May 2004, after a series of IEP team meetings. (S-15.) The May 2004 IEP offers a placement in full time instruction in the home, 15 hours plus 6 ½ hours of related services per week. The District provided three hours per day of instruction by special education teachers. (NT 2271-3 to 5, 2848-18 to 24; S-15 p. 69.)
 10. Instruction was provided and measured in part using trial sampling with a graduated prompt hierarchy and fading. Two to three special education teachers integrated instruction and training on academic, communication, vision, physical therapy and occupational therapy goals. (NT 2277-13 to 2279-5, 2841-1 to 12; S-15 p. 16.)
 11. Teachers coordinated their services through day to day communications and monthly meetings. (NT 2861-14 to 2862-8.)
 12. The May 2004 IEP sets forth appropriate academic goals in the areas of reading readiness, such as color recognition and spelling the Student's name; math readiness, including counting to three, and three basic shapes; categorization and sorting, and attention to task. (NT 2304-21 to 2305-5; 2434-23 to 2436-7, 2884-7 to 9; S-15 p. 18 to 23.)
 13. The present Levels of Educational Performance section of the May 2005 IEP sets forth baselines from trial data in twelve academic skills which are related to the academic goals set forth in the IEP. (S-15 p. 16 to 17, 18 to 23.)
 14. The May 2004 IEP does not establish new academic goals, but it does set performance levels for repeated goals that are higher than the baseline. (NT 2865-8 to 12, 2884-1 to 6; S-15 p. 116 to 23.)
 15. The District Special Education teachers working with the Student reported that the Student attained none of his academic goals in the May 2004 IEP. Progress was significant for the goal of identifying basic shapes. Progress was moderate for the goals of identifying, spelling and identifying the letters from his first name; identifying numerals; delaying reinforcement; and identifying pictures by function. Over the year there was significant improvement based upon the level and kind of prompting needed. (NT 2305-3 to 5, 2316-19 to 2319-17, 2321-17 to 18, 2841-18 to 2843-2, 2864-10 to 14; S-41 p. 3 to 8.)
 16. The May 2004 IEP sets forth speech and language goals including using the PECS system of pictures in a book to learn social greetings, basic language concepts, sentence construction, and making choices. It sets no goals for use of the digital communication device. (S-15 p. 33 to 38.)
 17. The present Levels of Educational Performance section of the May 2004 IEP sets forth baselines from trial data and from completion of portions of the PECS level

- system, as well as some subjective baseline descriptions of behavior, in 13 communication skills which are related to the communication goals set forth in the IEP. (S-15 p. 30 to 31, 32 to 38.)
18. The May 2004 IEP establishes new communication goals related to identified needs and sets performance levels for repeated goals that are higher than the baseline. (S-15 p. 30 to 38.)
 19. In communication, two goals were attained – completion of Phase IV of the PECS program (constructing sentences) and appropriate use of head movements for yes and no. Significant progress was reported in three communication goals: attaining PECS Phase V (sentences); matching pictures in context; and social greetings and using sentences for requests in PECS system. Moderate progress was reported in one goal: initiating social greeting by gesture. (S-41 p. 18 to 23.)
 20. The May 2004 IEP sets forth orientation and mobility goals including navigation to randomly selected locations, turning, and locating and ascending a curb cut. (S-15 p. 50 to 52.) .)
 21. In orientation and mobility, either attainment of the objective or significant progress was reported for all but one of the objectives. Moderate progress was reported in the remaining objective. (S-41 p. 35 to 37.)
 22. The May 2004 IEP sets forth vision support goals including visual spatial relationships, scanning and discrimination. (S-15 p. 26 to 29.)
 23. Two visual goals involving visual scanning and discrimination were attained. Progress was minimal for the two visual spatial relationship goals. (S-41 p. 11 to 14.)
 24. The May 2004 IEP sets forth functional mobility goals including ambulation for distance with a gait trainer, turning around corners, ambulation using walls and furniture for support, ambulation without a device, ascending and descending steps, standing and lowering self from and to the floor, and transfer into and out of gait trainer. (S-15 p. 55 to 59.)
 25. The present Levels of Educational Performance section of the May 2004 IEP sets forth baselines with graduated prompt data and subjective estimates of level of support needed in 11 functional mobility skills which are related to the functional mobility goals set forth in the IEP. (S-15 p. 53 to 54, 55 to 59.)
 26. The May 2004 IEP sets performance levels for repeated functional mobility goals that are higher than the baseline. (S-18 p. 50 to 60.)
 27. In functional mobility, significant progress was reported on five of five goals. (S-41 p. 40 to 44.)

28. The May 2004 IEP sets forth fine motor, pre-writing and self help goals in manipulating pennies, snipping with scissors, opening lids and caps, isolated finger point, holding a writing utensil, making vertical and horizontal marks, washing and drying hands, brushing teeth, doffing and donning his coat. (S-15 p. 41 to 47.)
29. The present Levels of Educational Performance section of the May 2004 IEP sets forth baseline information, both subjective and data – based, with designation of the Student’s graduated prompting levels, in 13 fine motor, self help, and prewriting skills which are related to the goals set forth in the IEP. (S-15 p. 39 to 40, 41 to 47.)
30. The May 2004 IEP sets performance levels for repeated goals in fine motor, self help, and prewriting skills that are higher than the baseline. (S-15 p. 39 to 47.)
31. In fine motor, prewriting and self help skills, one goal was attained: improved grasp of writing utensil to imitate vertical and horizontal strokes. There was significant progress on two goals: manipulation of objects with the right hand and removing the coat. Moderate progress was reported on two goals: hand washing and tooth brushing. The goal of donning the coat was reported as minimal progress. (S-41 p. 26 to 32.)
32. The May 2004 IEP includes a behavior support plan. (S-15 p. 60 to 62, 71.)
33. The May 2004 IEP includes specially designed instruction, but does not include a full body brushing and joint compression program or an oral stimulation program for sensory awareness. (S-15 p. 63 to 64.)
34. The May 2004 IEP includes related services including speech/ language, vision support, occupational therapy, physical therapy and orientation and mobility. (S-18 p. 87.)
35. The May 2004 IEP provides for occupational therapy services in two forty-five-minute sessions per week. (S-15 p. 64.)
36. The May 2004 IEP provides for physical therapy services in two forty-five-minute sessions per week. (S-15 p. 64.)
37. The May 2004 IEP includes ESY services. (S-15 p. 66 to 67.)
38. The May 2004 IEP includes supports for personnel including information about the Student’s chemical sensitivities, monthly staff meetings, training of special education teachers and training of support services providers. (S-15 p. 65.)
39. Training of replacement special education teachers in the May 2004 IEP includes two forty-five minute consultation sessions with PT. (S-15 p. 65.)

40. Training of all staff in the May 2004 IEP includes prior observation, training in use of PECS system and electronic communication device, as well as training on behavioral plan. (S-15 p. 65.)
41. The teachers were provided the training called for in the IEP. (NT 2280-22 to 2282-5, 2745-14 to 22, 2849-3 to 2850-3, 2874-7 to 2876-10, 2884-20 to 2885-10.)
42. Goals were to be measured by systematic data collection and reported in quarterly summary. (S-28 p. 18 to 59.)
43. Data was collected daily and reported quarterly; staff collaborated across disciplines to determine the progress codes assigned, by averaging the data that they individually collected. (NT 1959-13 to 20, 1961-13 to 19, 1962-18 to 1969-25, 2303-14 to 22, 2308-16 to 2309-22, 2842-22 to 2843-2; S-25, S- 29, S-30.)
44. Teachers coordinated their services through day to day communications and monthly meetings. (NT 2347-13 to 2351-2.)
45. The May 2005 IEP offers a placement in full time instruction in the home, 15 hours per week plus 8 hours of related services. (S-18 p. 94.)
46. Instruction is provided and measured using trial sampling with a graduated prompt hierarchy and fading. (S-18 p. 14.)
47. The May 2005 IEP sets forth appropriate academic goals in the areas of reading readiness goals such as color recognition and sight words; math readiness, including completing puzzles, counting to three, and basic shapes; categorization and sorting, attention to task, and prewriting skills such as using a writing utensil. (NT 2321-19 to 2329-13; S-18 p. 14 to 27.)
48. The present Levels of Educational Performance section of the May 2005 IEP sets forth baselines from trial data in thirteen academic skills which are related to the academic goals set forth in the IEP. (S-18 p. 14 to 15, 17 to 27.)
49. The May 2005 IEP establishes new academic goals related to identified needs, including new colors and shapes, and sets performance levels for repeated goals that are higher than the baseline. (NT 2322-8 to 2330-5; S-18 p. 14 to 27.)
50. The May 2005 IEP sets forth speech and language goals including using a hand held communication device with pictures and icons to learn social greetings, basic language concepts, sentence construction, vocabulary building, making choices and telling about himself. (S-18 p. 30 to 38.)
51. The present Levels of Educational Performance section of the May 2005 IEP sets forth baselines from trial data in 34 communication skills which are related to the academic goals set forth in the IEP. (S-18 p. 28 to 29, 30 to 38.)

52. The May 2005 IEP establishes new communication goals related to identified needs and sets performance levels for repeated goals that are higher than the baseline. (S-18 p. 28 to 38.)
53. The May 2005 IEP sets forth orientation and mobility goals including directional concepts, use of landmarks, and identifying drop – offs in terrain for safety. (S-18 p. 40 to 44.)
54. The May 2005 IEP sets forth vision support goals including visual scanning, discrimination, matching, and figure-ground discrimination. (S-18 p. 46 to 49.)
55. The May 2005 IEP sets forth mobility goals including ambulation for distance with a gait trainer, turning, ambulation with a quad cane, ambulation without a device, ascending and descending steps, standing and lowering himself from and to the floor, sitting, and independent standing and leaning while using hands for an activity. (S-18 p. 52 to 60.)
56. The present Levels of Educational Performance section of the May 2005 IEP sets forth baselines with graduated prompt data or subjective estimates of level of support needed in 24 functional mobility skills which are related to the functional mobility set forth in the IEP. (S-18 p. 50 to 51, 52 to 60.)
57. The May 2005 IEP establishes new functional mobility goals related to identified needs and sets performance levels for repeated goals that are higher than the baseline. (S-18 p. 50 to 60.)
58. The May 2005 IEP sets forth fine motor goals in hand washing, donning and taking off a coat, tooth brushing, cutting with scissors, eating, and hand grasp, (S-18 p. 63 to 70.)
59. The present Levels of Educational Performance section of the May 2005 IEP sets forth baseline information, both subjective and data – based, with designation of the Student’s graduated prompting levels, in 24 fine motor, self help, prewriting and sensory tolerance skills which are related to the goals set forth in the IEP. (S-18 p. 61 to 62, 61 to 70.)
60. The May 2005 IEP establishes new functional mobility goals related to identified needs and sets performance levels for repeated goals that are higher than the baseline. (S-18 p. 61 to 70.)
61. The May 2005 IEP includes a behavior support plan. (S-18 p. 71 to 74.)
62. The May 2005 IEP includes specially designed instruction including a full body brushing and joint compression program and an oral stimulation program for sensory awareness. (S-18 p. 80 to 85.)

63. The May 2005 IEP includes related services including speech/ language, vision support, occupational therapy, physical therapy and orientation and mobility. (S-18 p. 87.)
64. The May 2005 IEP provides for occupational therapy services in two sixty-minute sessions per week. (S-18 p. 87.)
65. The May 2005 IEP provides for physical therapy services in two sixty-minute sessions per week. (S-18 p. 87.)
66. The May 2005 IEP includes supports for personnel including information about the Student's chemical sensitivities and [reactions], monthly staff meetings, training of special education teachers and training of support services providers. (S-18 p. 87 to 89.)
67. Training of replacement special education teachers in the May 2005 IEP includes fifteen hours of transitional training with outgoing teachers in use of communication devices and adaptive equipment, behavioral strategies, instructional strategies, assisting the Student in walking using a harness, and brushing and oral stimulation programs. (S-18 p. 88.)
68. Training of replacement special education teachers in the May 2005 IEP includes one to two hours of consultation with PT and OT to train in teaching mobility , brushing and oral stimulation, hand strengthening, self-help, prewriting, and fine motor skills. (S-18 p. 88 to 89.)
69. Training of support services personnel in the May 2005 IEP includes one session of co-treating with previous therapist and one hour of consultation with speech/language teacher on use of communication devices. (S-18 p. 89.)
70. The May 2005 IEP provides for ESY services. (S-18 p. 90 to 91.)
71. In the 2005-2006 school year, two to three special education teachers integrated instruction and training on academic, communication, vision, physical therapy and occupational therapy goals. (NT 2271-23 to 2272-1, 2330-9 to 2331-3, 2334-2 to 2334-23.)
72. For the 2004 and 2005 school years, progress evaluation as reported in quarterly reports was tied to data collection through a percentage scale. (NT 1965-8 to 1966-6, 2422-5 to 8.)
73. The teachers received training according to the requirements of the May 2005 IEP. (NT 2346-3 to 2349-8, 2475-17 to 2476-13.)
74. The Student made significant progress in the 2005-2006 school year in communication, time on task, feeding himself, walking, standing, taking of his jacket, and sorting. (NT2319-21 to 2321-12, 2327-19 to 2328-11.)

75. As implemented, the 2005 IEP provided educational benefit and the Student made significant educational progress during the 2005-2006 school year. (NT 2344-8 to 2346-2.)
76. In the 2004-2005 and 2005-2006 school years, certain necessary skills were repeatedly and appropriately drilled because the data did not yet show mastery, because the Student had demonstrated regression in the absence of frequent repetition, and because his diagnoses suggest that he will require repetition even after the student demonstrates mastery. (NT 131-20 to 132-12, 2293-25 to 2294-15, 2305-6 to 2306-11, 2381-14 to 2382-25, 2467-12 to 2470-2, 2862-9 to 2863-8 2884-1 to 8; S-1 p. 54, S-19 p. 35, P-22 p.31.)

LEAST RESTRICTIVE ENVIRONMENT

77. As of the 2001-2002 school year, the Student was in early intervention. He was given an early intervention IEP that called for transition to a school based program and set forth goals for socialization with peers; these goals have not been attained. In May 2002, the District's physical therapist recommended that the District provide school based physical therapy services. (S-1 p. 22, S-39 p. 4, 13, 14, 16, 17, 20.)
78. As of September 2002, the District was providing two one-half hour sessions per week of Orientation and Mobility (O&M) training at the [redacted] Elementary School. One of these sessions was part of a previous compensatory education award. Each session consisted of traveling various routes through the school building in a walker, making various stops along the way. (S-1 p. 1-2, HO-3.)
79. The September 2002 ER recommended providing an in-service training to staff in O & M training. In September 2002, the Student needed staff attendance in the form of constant "paired walking" while engaging in the O & M training due to the risk of his falling out of his walker. (S-1 p. 3.)
80. The September 2002 ER recommended instruction in the home based upon reports of various physicians and independent experts who found that the Student could not be placed full time in a public school setting due to his chemical sensitivities, as well as the [Student's medical history] with subsequent regression in cognitive functioning. (S-1 p. 8-12, 37, 38, 40.)
81. The Parent agreed in 2002 that full time placement in the school environment would be too dangerous for the Student due to chemical sensitivities and the ER of September 2002 incorporated this conclusion. However, the Parent did not agree to preclude the Student entirely from the school environment; rather, she was consulting with doctors and the District to find ways to reintroduce the Student into the school environment safely. (NT 1242-1 to 1249-2, 1347-18 to 1349-22, 1422-15 to 1425-2; S-1 p. 12, 37, 38, 40.)

82. The September 2002 ER also recommended that staff facilitate the Student's social interaction with other children, and incorporated a psychological report calling for such interaction. (S-1 p. 13, 56.)
83. In September or October 2002, the Student had a [reaction at the school while waiting to] the building for a scheduled O & M session. (NT 137-7 to 139-5.)
84. The District moved the O&M sessions to the home, indicating to the Parent that they could not make the school environment safe for the Student, then attempted in February 2003 to reintroduce the Student into the school environment, again withdrawing him in March 2003 [redacted]. The Student's O&M sessions were moved to a local mall from March 2003 to June 2003. (NT 139-2 to 140-4, 163-7 to 166-11, 954-2 to 958-22, 1251-2 to 14; S-15 p. 48, HO-3.)
85. In September 2002, the Student's pediatrician recommended that the Student could resume O & M and PT activities at the school with the Parent present to monitor for chemicals. Various physicians indicated in notes and reports that the Student could have limited time in the school setting. (NT 155-12 to 20, 1257-10 to 20; S-1 p. 37, 40, S-4.)
86. The District did not receive contrary medical advice. (NT 2083-14 to 22.)
87. In May 2003 the District requested that the Parent sign a notice of the understanding that the Parent would be responsible for any harm that could befall the Student due to his chemical sensitivities in the school setting. (NT 155-21 to 156-15; S-4 p. 3.)
88. [Redacted.]
89. It was not possible to control the chemicals in the environment at Elementary School so as to render that environment safe for the Student, because of the size of the student body. (NT 1438-16 to 1439-5.)
90. The District resumed O&M sessions at the school in the summer of 2003. (NT 139-18 to 140-4, 1251-2 to 14; S-15 p. 48, HO-3.)
91. From June of 2003 to the middle of the 2003-2004 school year, the Student returned to Elementary School, [but due to medical conditions, eventually the parents] asked for a transfer of O&M and PT services to the Second Elementary School. (NT 163-3 to 164-14.)
92. [Redacted.]
93. On February 20, 2004, [a] specialist [of Student's] wrote that the public setting was "not medically recommended" but that the Student could go to school with the Parent accepting responsibility for the environment, and that his weekly hours could be increased slowly [redacted], "until he is able to tolerate a full program." (NT 157-11 to 158-14, 1253-16 to 1255-15; S-4.)

94. The May 2004 IEP did not provide goals for socialization with peers, although there was discussion of the issue in IEP team meetings. The District urged that the IEP be approved and that socialization needs would be addressed later. (NT 185-13 to 186-10, 1353-17 to 1354-9; P-22, S-6 p. 4, S-18 p. 4.)
95. The Parent signed a NOREP dated May 24, 2004, which specified that the Student's placement would be "full time instruction in the home." (NT 1252-8 to 24; S-11 p. 3.)
96. Contact with peers during the Student's O&M sessions in Elementary School and Second Elementary School was minimal and incidental, usually amounting to no more than passing them in the hallways, and brief meetings at the Second Elementary School cafeteria on an irregular basis. (NT600-1 to 602-1, 1773-14 to 1777-7, 1894-3 to 9, 2038-18 to 2041-5, 2103-15 to 2104-7.)
97. The District has provided no opportunities for meaningful interaction with peers from the date of the ER of September 2002 until the date of the resolution session on December 13, 2005. (NT 135-18 to 24, 242-13 to 18, 1352-17 to 1353-12, 2050-24 to 2052-24; P-63, 67.)
98. From May 2004 until the resolution meeting in January 2006, the Student's time in the school setting did not meaningfully increase. (NT 1353-2 to 12, 1498-1 to 1499-23, 2029-10 to 19, 2052-25 to 2055-21, 2058-24 to 2059-4, 2109-7 to 13, 2110-12 to 2112-21; HO-3.)
99. Involvement with other children in groups is educationally important for the Student, because he needs to learn social skills and his learning style relies heavily upon modeling. (NT 633-18 to 634-6, 700-11 to 703-13; S-19 p. 35, 69 to 71.)
100. In the summer of 2004, there was a plan to paint the curb cut at Second Elementary School that the Student uses in his O&M sessions, to enable him to see the cut better and navigate to it to enter and leave the building. Painting was partially completed in November 2004 and finished in March 2005. (NT 200-17 to 201-13, 1747-3 to 5, 1809-19 to 23.)
101. In the summer of 2004, the Parents provided the Student with a private training called "conductive education." This was in a group of three children, and the Student ate lunch with the children. (NT 258-4 to 259-20.)
102. The District was aware of this experience at the beginning of the school year in 2004. (NT 259-21 to 260-4.)
103. The Student received O&M services at Second Elementary School from October 2004 until June 2005. (NT 1759-10 to 11; HO-3.)
104. There was discussion on inclusion in special classes in the fall of 2004, but no plan resulted. (NT 2157-15 to 2158-18.)

105. In December 2004 or January 2005 the Parent again raised the question of greater inclusion of the Student with his peers at Second Elementary School, but the District did not offer any meaningful opportunity for greater inclusion at that time due to scheduling difficulties. (NT 1830-9 to 1832-10.)
106. In the summer of 2005, the Parents allowed the Student's O&M services to resume at Elementary School, because the building offered more varied opportunities to provide O&M training due its layout. However, the [reactions] began again and the Student was returned to Second Elementary School for his O&M services in November. (NT 165-6 to 166-11, 1760-1 to 1763-3.)
107. In a series of meetings leading up to the amendment of the IEP in 2005, the Parent requested that the Student's O&M sessions at the Second Elementary School include social interaction opportunities. (NT 274-6 to 17; P-37 p.1, 4.)
108. The District encountered scheduling difficulties due to the six day cycle of special classes at Second Elementary School, which conflicted with the Student's full five day week of appointments; the Student would not be able to stay in one class consistently. However, after the resolution conference in January 2006, it was decided that the Student would attend whatever special class happened to fall on his appointed day for inclusion at the school. The District did not suggest this alternative to the Parent prior to the resolution conference. The Student then began receiving about three hours per week of inclusion in special classes. (NT 947-17 to 949-20, 2057-16 to 2058-2, 2059-14 to 2061-14.)
109. The District did not develop a plan for including other students in the Student's O&M and PT sessions until a September 22, 2006 addition to the May 2005 IEP added an item of support for school personnel that required building staff in his assigned building to familiarize peers with Student and encourage socialization. (NT 2113-8 to 2116-3; S-20 p. 16.)

ASSISTIVE TECHNOLOGY

110. Because of the Student's disabilities, assistive technologies are necessary in order to provide FAPE to the Student in the area of language development. (P-22 p. 18 to 19, P-42 p. 22 to 23.)
111. An assistive technology SETT was completed in February 2002 and indicated that the District was establishing a PECS system at that time. (S1 p. 30.)
112. The February 2002 SETT recommended a trial of a vocal output device. (S-1 p. 31.)
113. The PECS system relies upon pictures that serve as a kind of vocabulary for the Student; to allow his vocabulary to grow, the Parent created new pictures. This began in 2002 and continued until August 2006, when the District purchased

- a printer that could print the pictures from the communications device. However, the Parent still remained responsible for doing the printing and arranging the pictures in the PECS book. (NT 1014-8 to 1016-3, 1340-17 to 1341-9, 1604-17 to 1605-20, 1624-15 to 1626-13.)
114. The Parent took responsibility to physically create the PECS pictures in or about 2002 when the District did not make them as she had requested. (NT 125-10 to 128-12; P-12.)
115. In 2003, the District declined to reimburse the Parent for the materials needed to make the PECS pictures and boards and books for their use as a communication device. The District also declined to create the PECS materials needed by the Student, due to lack of available staff time. (NT 129-2 to 130-15; P-12.)
116. The District did not offer to make the PECS materials in its proposed IEP in March 2004. The Parent continued to make the PECS materials until the resolution session in the present due process matter, December 15, 2005. (NT172-19 to 173-4, 186-11 to 187-25, 203-21; P-19, P-22 p. 21.)
117. The May 24, 2004 IEP called for providing various materials to the Student for his education in the home environment, including PECS icons and pictures of specific sizes. These were not provided as of October 2004. (NT 205-20 to 22; P-28 p. 2.)
118. As of September 30, 2003, the PECS system was in place and the Student was able to use about fifty picture-words with the PECS system; the Student was just beginning to sequence pictures for verbs with pictures for objects to form sentence – like communications. He could string the picture for “I want” with the picture for the thing that he wanted. (P-16 p.3, S-10 p.12.)
119. The Parent spent as much as \$2,699.00 for PECS related materials. She had requested reimbursement repeatedly but had not been reimbursed. (NT 11 to 1060-7, 1093-24 to 1095-13; P-66.)
120. The Parent provided many items and materials used for teaching and therapy in her home. The District and its staff also provided some materials. (NT 6 to 21.)
121. A private consultant paid for by the District pursuant to mediation recommended the Student begin a trial use of a small digital communication device, the DynaVox 3100. The private consultant recommended that the DynaVox device be programmed with photographs and icons based upon the Student’s personal activities and experiences, containing a vocabulary involving a variety of syntactic categories, and facilitate syntactical sequencing of two or three symbol utterances.” (P-16 p. 4-5.)

122. The District initially provided the device. (NT 1895-1 to 22.)
123. The Student received the device in October 2003, but the device was unable to handle the memory demands of the photographs being used as vocabulary and was replaced after February 2004 with a “DynaVox Series 4” device. (NT 153-15 to 154-24; P-16 p. 3-4.)
124. Due to the Student’s progress in communication, the DynaVox device became inadequate to meet his needs by November 2004, and in November and December, the Parent and District began a period of deliberation, considering three different devices. (NT 1904-21 to 1905-4.)
125. In December 2004, the Parent obtained a new device, called a “DynaMyte” device, and began a trial of three devices to find the most useful one for the Student and his teachers and therapists. The Student began using the DynaMite device in January 2005. (NT 217-4 to 219-4, 281-20 to 25.)
126. In January 2005, the Parent decided on her own to purchase the DynaMyte device that the Student uses today. (NT 1895-13 to 1896-19.)
127. From January to June 2005, there was a period in which the device was not fully programmed and was malfunctioning, further reducing its use with the Student. (NT 1607-1 to 17, 1896-24 to 1898-11.)
128. From February 2005 to October, the District attempted to obtain training on programming the device, but it was not until October 2005 that the District’s Speech and Language Therapist was able to obtain useful training. After that, the District was making efforts to find staff availability to take over the programming from the Parent. (NT 1898-12 to 1902-11, 1941-18 to 22, 1942-7 to 1945-9.)
129. Meanwhile, the Parent, who was knowledgeable in programming similar devices, proceeded to program the DynaMyte. The Parent volunteered to do this, and it was necessary that she be intimately involved in the programming. (NT 1564-13 to 1569-10, 1706-18 to 1708-18, 1902-12 to 1903-1, 2177-19 to 2179-2181-3.)
130. The District speech therapist also programmed the device for fourteen days in 2006, to accommodate new goals for the 2006-2007 school year, because the Student reached all but one of his 2005-2006 communication goals. (NT 1564-13 to 1569-10, 1902-12 to 1903-1, 2177-19 to 2179-2181-3.)
131. The device had to be programmed individually for the Student because of his combination of disabilities. There were constant changes and additions to the pictures programmed into the device and there were many suggestions from the teaching and service delivery staff. There also was a need for planning and freeing up the Speech therapist’s time to do programming. All of these things were going on at once while the Parent was programming the device. (NT 213-23

- to 215-14, 288-20 to 290-11, 1576-11 to 1584-15, 1942-7 to 1943-17, 1944-8 to 1945-9.)
132. In 2004 and 2005, most of the staff used the device in teaching the Student, some on a daily basis, throughout their lessons. (NT 1570-17 to 20, 2167-14 to 2168-7, 2334-24 to 2337-13, 2729-7 to 16, 2857-2 to 12.)
133. For all three devices, the Parent did much of the programming until the resolution meeting in March 2006. The Parent programmed approximately 355 pages, many of which required over an hour of work to program. (NT 213-19 to 23, 215-15 to 216-16, 219-6 to 220-13, 289-5 to 13, 961-23 to 963-16.)
134. In April 2006, there were areas of pictures that were being converted from old programming to new programming within the device, and the Parent was doing much of the programming. (NT 1085-8 to 1086-5.)
135. The PECS system continued to be needed as a backup to the communication device. (NT 1624-9 to 11.)
136. The Student had difficulty [using] the communication device, [due to physical limitations]. The Parent was advised to use a [specific] procedure to allow [the Student use the device more] successfully [but the] District declined to perform these functions because of staff concerns about possible injury from a procedure in which they had not been trained. (NT 223-8 to 224-7, 225-2 to 226-25, 274-14, 1947-15 to 1950-8; S-9 p. 1, 2, 5, P-37 p. 2.)
137. After January 2005, the speech therapist [made a recommendation for Student's use of the device, but t]he District did not provide this until after May 2005 (NT 227-25, 274-13, 1558-11 to 16; P-31 p. 1.)
138. Because of the Student's physical disabilities, the device had to be mounted on his desk at home or carried by an adult when the Student was engaged in his O&M activity at the school. (NT 290-16 to 291-1.)
139. The May 2004 IEP requires training for all staff working with the Student on the use of the Student's communication device. (P-22 p. 53.)
140. The May 2004 IEP required utilization of PECS or DynaVox for communication as determined by the speech/language therapist. (S-15 p. 63.)
141. In 2004 and 2005, the Supervisor of Special Education supervised staff in implementing the IEP, including the required utilization of PECS and communication devices, by providing training to staff through the speech therapist and visiting the home to observe staff performing their duties, and by communicating with the Parent about implementation issues. (NT 1570-21 to 1574-18, 1586-23 to 1588-10, 1872-1 to 1874-15, 2024-20 to 2030-24, 2447-23 to 2449-6, 2857-13 to 22.)

142. During the transition to the DynaMyte device, the Student was provided with the DynaMyte when available, but when it was unavailable, he utilized the older DynaVox device or the PECS system so that he was not without a communication device for a substantial period of time. (NT 1607-1 to 24, 1905-5 to 1906-8.)
143. By October 2004, the Student had mastered his private speech-language therapist's goal of sequencing two to three symbol utterances using the DynaVox communication device. He made significant progress in utilizing the device for communication and using it for social interaction. His communication skills had improved substantially. (NT 1373-19 to 21; S-10 p.15 to 18.)
144. By the Spring of 2005, the Student had made substantial progress in utilizing the DynaMyte for communication, and had met all but one of his 2004-2005 goals in communication. (NT 1543-10 to 1544-22, 1590-10 to 17, 1936-13 to 23, 2345-2 to 3.)
145. The Parent purchased computer software and equipment to allow the Student to use her home PC, without any agreement by the District to pay for it, and before use of a computer was an objective in the IEP. This situation continued until a SETT meeting convened in November 2005. (NT 974-12 to 978-9, 1089-23 to 1091-22 to 1093-13, 1089-22 to 1093-13.)
146. In or after August 2005, the Parent requested that the District purchase software for the Student to use at home for educational purposes. In March 2006 the District purchased educational software for the Student. (NT 1016-8 to 1017-21, 1936-7 to 1940-11.)

PHYSICAL THERAPY

147. In May 2002, the District's physical therapist reported that the Student could walk "moderate distances" with a walker, with hand-over-hand assistance for direction and some assistance for turning, and maximum assistance to get doors open. He could pull himself up from sitting to standing with support or with hand hold assistance, and could stand for six seconds without losing his balance. He could ascend stairs with close supervision and descend stairs with hand held assistance. (S-1 p. 3.) .)
148. In September 2002, the District's ER recommended two sessions of direct physical therapy per week, forty five minutes per session, and one fifteen minute session per week by consultation. (S-1 p. 3, 12.)
149. In September 2002, the District's ER found a "high degree of need for specially designed instruction" to include verbal cues for independent movement,

- moderate assistance on steps, physical assistance and close supervision when walking, and moderate assistance to walk with hand held. (S-1 p. 12.)
150. From September 2003, the Student received school based physical therapy in a school setting for one hour per week. (S-15 p. 54.)
151. From December 2003 until March 2005, the Student was receiving two sessions per week of one hour duration each through a privately retained physical therapist who was experienced in providing such services in school settings to children with absence of corpus colossum and a variety of other physical and cognitive differences. (NT 89-16 to 22, 91-5 to 6, 92-4 to 5.)
152. The private therapist reported progress with the Student when tasks were carefully timed during the session to maximize the Student's motivation; broken down into increments; and combined with play or practical objectives. (NT 95-4 to 97-16.)
153. In PT sessions, the Student displayed fatigue and challenging motivational difficulties and when he did not like an activity he would throw things or lie on the ground. (NT 95-24 to 96-3, 97-4 to 16.)
154. From December 2003 to March 2005 the Student made progress in developing physical abilities and skills including spinal flexibility, tolerance for firm pressure input, independent standing for a few seconds at a time, walking with one hand held without twisting due to left side stiffness and shortness, walking with a quad cane or suspension apparatus for fifteen or twenty feet independently, weight shifting, and regaining balance. (NT 93-7 to 94-20.)
155. At the IEP conferences for the May 2004 IEP, the Parent requested that the District provide 2 hours per week of PT services, and that the sessions be increased in length to one hour each. The District provided two sessions per week, each forty-five minutes in length, in the May 2004 IEP. (NT 1002-12 to 16; S-15 p. 64.)
156. The District's May 2004 ER reported that the Student was able to walk 25 to 30 feet with one hand held and left shoulder facilitation. He could walk up to 50 feet holding on to furniture and walls in the home with close supervision and oral prompting; he has taken a very few independent steps as well. (P-22 p. 41.)
157. In 2004, in the school setting, the Student could stand independently for as much as 11 seconds, and for an average of 6 to 8 seconds. He could walk with a gait trainer for 150 feet straight in a hallway and several hundred feet with left arm prompt, oral prompts and close supervision. He could take two steps without physical supervision or support. He could pull himself up from the floor with furniture as support or with hand held, inconsistently. He could stand independently. He was climbing stairs with close supervision and descending

- stairs without hand held, but with contact to his left shoulder. He required moderate assistance opening and going through doors. (P-22 p. 41.)
158. The Student was not able to navigate the school setting safely in 2004 and was not able to do so in April 2006. (NT 13 to 25, 956-5 to 23, 2783-24 to 2784-19, 2738-21 to 25, 2797-18 to 24.)
159. The 2004 ER also reported that the Student had demonstrated improved strength, endurance, gait pattern, walker control and distances walked as well as requiring fewer prompts for turning and negotiating doorways. (P-22 p. 36.)
160. From June 2004 to November 2004, the Parents provided an additional one hour per week of physical therapy at the [redacted] Hospital. (NT 245-2 to 246-8.)
161. From January 2005 to April 2006, the Student received one hour per week of private physical therapy from a private therapy group. This therapy included substantial touching manipulation and guidance. (NT 866-8, 933-20, 890-25 to 891-13, 939-9 to 18.)
162. During this time, his flexibility, independent standing time, reciprocal stair stepping and walking distances increased. Much of his improvement was due to greater flexibility due to the private therapist's stretching work with him. By April 2006, with the private PT group, he could stand independently for 15-20 seconds; stand with quad cane for one minute and fifteen seconds; take 10 steps without physical assistance, and walk 25 to 50 feet, with a walker or rolling quad cane; stand from sitting without physical assistance 2 out of five times; and ascend and descend stairs with less physical assistance. (NT 890 to 914-3.)
163. Most of the physical functions that the private physical therapists are addressing are the same as those that the District physical therapist is addressing. (NT 2791-10 to 2792-22.)
164. Improved walking with a quad cane would allow the Student to develop greater mobility in the school setting. With the school PT, the Student has demonstrated no progress using a quad cane without wheels. (NT 2786-13 to 2787-22; S-18 p. 50.)
165. As of April 2006, the Student's behaviors materially reduced the amount of time of actual physical therapy he received in the private one hour sessions. This was true of the period from January 2005 to April 2006, in both the school and private settings. In 2006 -2006 school year, the behavior management plan was difficult to implement in the school setting. This and the behaviors themselves have limited the attainment of some goals. (NT 902-3 to 15, 2765-21 to 2768-20, 2804-22 to 2805-6, 2807-23 to 2809-6.)

166. From December 2003 to April 2006, the Student needed three to four hours per week of physical therapy to continue progress in physical rehabilitation. (NT 92-4 to 5, 915-17 to 21, 102-17 to 103-5.)
167. In preparation for the May 2005 IEP, the Parent requested that the District add an additional hour of PT services, a total of three hours per week, and increase the length of sessions to one hour each. In the May 2005 IEP, the District did not agree to provide the additional session per week, but did increase the length of sessions to one hour per session. (NT 1004-6 to 1005-22; S-18 p. 87.)
168. One rationale for the District's limitation of PT services to two sessions per week was that the IEP was to be an "integrated" IEP in which teachers and support professionals would reinforce each other's programs; for example, the Student would receive PT reinforcement from the teachers when they would have him walk from one learning environment to another within the home. (NT 204-10 to 17.)
169. The May 2004 IEP required that "any new special education teacher" receive two forty-five minute consultation sessions with the physical therapist in the home with the Student present. (NT 262-18 to 19: P-22 p. 53.)
170. At the expense of the District, the private therapist provided one or two training sessions to the District's assigned physical therapist, teaching techniques for behavior management. (NT 110-9 to 111-15.)
171. At the Parent's expense, the private therapist also provided several sessions in which she trained the assigned special education teachers in behavioral management, teacher body mechanics for walking with the student and picking him up, and controlled fall techniques. The Parent paid for these sessions. (NT 108-25 to 113-22.)
172. The District purchased a vest – restraint for the Student, recommended by the physical therapist, who trained the teachers in its use at Parents' expense. (NT 114-15 to 115-18.)
173. The District did not provide the training required; instead, it indicated that the special education teachers would train new staff. (NT 262-7 to 9, 16 to 25; P-37 p. 1.)
174. In preparation for an IEP meeting on March 23, 2005, the Parent informed the District that the 45 minute sessions of PT at the Second Elementary School were not sufficient time to accomplish all the tasks that were set forth in the pendent IEP. (NT 243-24 to 245-1, 263-14 to 22; P-37, P-41.)
175. At the end of the 2004-2005 school year, the Parent requested that the school PT address two PT goals that were not on the 2004 IEP. The Parent's requests were denied in part because there was not enough PT time to fulfill them.

The PT time in the IEP was not increased to address the issues the Parent had raised. (NT 321-5 to 323-23, 324-9 to 11, 352-2 to 355-10, 2772-5 to 2775-22, 2817-3 to 16; P-46 p. 2, P-56.)

176. The District physical therapist did not incorporate these goals in part because she considered her role as an educational physical therapist to assist students to access the school environment safely, in light of the mandate for education in the least restrictive environment; she did not consider her role to be to improve or maximize physical functioning, which she considered to be a medical role. (NT 2721-13 to 2722-24, 2773-5 to 2774-2775-23, 2718-3 to 2822-20, 2827-19 to 2830-11, 2834-10 to 2936-8.)

OCCUPATIONAL THERAPY

177. The September 2002 ER recommended that the District provide one hour per week of direct Occupational Therapy to the Student, and fifteen minutes per week of service through staff in consultation with the District's Occupational Therapist. (S-1 p. 5, 12.)
178. Pursuant to mediation, the District agreed in December 2002 to provide independent evaluations at District expense. (P-8.)
179. One of the evaluations done was a sensory processing evaluation. This evaluation recommended a sensory diet to address sensory defensiveness, vestibular and proprioceptive difficulties and modulation problems. (NT 150-19 to 151-4; P-11.)
180. The sensory processing evaluation recommended one hour per week of occupational therapy for sensory processing and sensory diet. NT 151-21 to 152-2; P-11 p. 4.)
181. The 2005 IEP identifies as a need increased toleration time for sensory activities such as brushing teeth and washing hands. Tooth brushing, hand washing and eating are goals. Program modification and specially designed instruction include the full body brushing program and oral motor stimulation program as directed by the educational occupational therapist. (S-18 p. 62 to 63, 66, 68, 80, 82, 84.)
182. It is not necessary for a trained Occupational Therapist or a person trained in sensory integration to administer or be present for the administration of sensory integration protocols of brushing and oral motor stimulation to be administered as long as there is proper supervision over time, or trained lay persons are present.

- (NT 385-3 to 13, 388-19 to 15, 392-19 to 395-2, 418-20 to 419-14, 2500-4 to 2501-19.)
183. A Certified Occupational Therapy Assistant, or COTA, is expected to be able to provide occupational therapy services without direct supervision. (NT 425-24 to 426-4.)
 184. COTAs are trained in sensory integration. (NT 2612-5 to 10.)
 185. The COTA's role is to select activities and work directly with the Student to address the goals of the OT related service. (NT 2554-8 to 2556-11, 2559-20 to 2560-6, 2929-19 to 2934-23.)
 186. In this role, one COTA varied the instrument used for brushing, contrary to the Wilbarger Protocol, but consistent with the supervising Occupational Therapist's advice and within the professional discretion and competence of each of them. (NT 2981-6 to 19.)
 187. The brushing protocol for the Student requires use of a brush, not any other kind of instrument. (FF 439-5 to 9.)
 188. In the selection of sensory diet activities, it is accepted that the occupational therapist will use a trial and error approach. (NT 2530-5 to 6.)
 189. The District Occupational Therapists are qualified, licensed in Pennsylvania and nationally registered. (NT 2490- 5 to 2491-25, 2921-13 to 24.)
 190. The District Occupational Therapists are experienced in training educational staff in Occupational Therapy strategies and supervising COTA staff. (NT 2513-1 to 2515-23, 2922-16 to 2924-4.)
 191. State policy requires a certain level of contact with the COTA providing educational services for purposes of supervising the COTA, including observation and indirect means, such as email or telephone. (NT 2562-4 to 2563-3.)
 192. At all relevant times, the occupational therapists supervised the COTAs in implementing sensory stimulation activities and the brushing and oral motor stimulation required under the Specially Designed Instruction required in the 2005 IEP, through review of daily records, weekly supervision meetings, monthly IEP meetings, periodic site visits and quarterly meetings to determine the Progress Report on the Goals for OT. (NT 2565-18 to 2571-22, 2616-2 to 2617-1, 2923-13 to 2924-4, 2937-15 to 2940-15.)
 193. The District Occupational Therapists appropriately trained the COTAs assigned to perform sensory stimulation activities with the Student. (NT 2573-16 to 2575-23, 26121-11 to 2613-7, 2926-9 to 2929-20, 2952-14 to 2953-22.)

194. The Parent's private Occupational Therapist provided training for District staff in the brushing and oral – motor protocols. (NT 428-12 to 429-6.)
195. It was professionally appropriate for the COTAs to implement the brushing and oral motor stimulation activities called for in the 2005 IEP. (NT 2584-22 to 2585-18, 2924-5 to 10, 2946-19 to 2947-25.)

DISCUSSION AND CONCLUSIONS OF LAW

ADEQUACY OF THE DISTRICT'S EDUCATIONAL PROGRAM

An appropriate IEP is one that is reasonably calculated to enable the child to receive meaningful educational benefit at the time that it was developed. Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. PA. 1996). The IEP must be likely to produce progress, not regression or trivial educational advancement. Board of Educ. v. Diamond, 808 F.2d 987 (3d Cir. 1986), Polk v. Central Susquehanna IU #16, 853 F.2d 171, 183 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989).

Districts need not provide the optimal level of service, or even a level that would confer additional benefits, since the IEP as required by the IDEA represents only a basic floor of opportunity. Carlisle Area School District v. Scott P., 62 F.3d 520, 533-534 (3d Cir. 1995). An IEP is appropriate if at the time it was offered it was reasonably calculated to provide some meaningful educational benefit to the child. Reasonably calculated suggests something less than the absolute certainty and precision afforded by hindsight, the luxury of which educators cannot have in planning, as the law requires, for the future. M.C. v. Central Regional School District, 81 F.3d 389 (3d Cir. 1996). The benefit must be more than de minimis. Susan N. v. Wilson School District, 70 F.3d 751 (3d Cir. 1995); Carlisle Area School District v. Scott P., 62 F.3d 520 (3d Cir. 1995). If personalized instruction is being provided with sufficient supportive services to permit the student to benefit from the instruction the child is receiving a “free appropriate public education as defined by the Act.” Polk, Rowley. The purpose of the IEP is not to provide the “best” education or maximize the potential of the child. Fuhrman v. East Hanover Bd. of Educ., 993 F.2d 1031 (3d Cir. 1993). The IEP simply must propose an appropriate education for the child. Id.

The hearing officer relies upon the well established principle that the sufficiency of an offer of FAPE cannot be judged purely by the results. It must be judged as of the time of the offer, and a student's failure to reach his or her goals is not determinative of whether or not the student has received an offer of FAPE. Carlisle Area S.D. v. Scott, 62 F.3d 520, 530-34 (3d Cir. 1995). Here, there was evidence to support the fact that the IEPs were appropriate based upon what the District knew about the Student at the time in the areas of need identified in the IEPs. Thus, the offers were appropriate at the time. The hearing officer also relies upon the principle that educational progress must be judged in light of the severity of the student's disabilities. Ridgewood Board of Educ. V. N.E., 172 F.3d 238, 247 (3d Cir. 1999). Here, the Student is severely disabled, with a

diagnosis of moderate to severe mental retardation, neurological impairment and a host of physical challenges. In such a case, ostensibly small successes cannot prove the unreasonableness of an IEP in hindsight.

The District's educational effort for this Student is substantial and complex. Delivered almost entirely at home, the Student's educational program consists of numerous related services, both through the District and through private providers. (FF 1, 2, 4, 9 to 71.) The 2004 and 2005 IEPs challenged in this proceeding are fifty-six and eighty-seven pages long, respectively, with scores of objectives across a broad spectrum of functional issues. (S-15, S-18.) The Student's present cognitive functioning is limited at this time, in the moderate to severe range of mental retardation, and his behaviors of avoidance and resistance to instruction further complicate the task of educating him. (FF 1.) Moreover, the Student virtually does not speak, and he is learning to communicate through pictures and icons, even as his various teachers and supportive service providers are teaching him according to their own developed goals. (FF 1, 16 to 19.) There are monthly team meetings to coordinate the numerous personnel delivering services in the Student's home. (FF 38, 66.) The discrete trial data are in the hundreds of pages. (S-25, 26.)

In spite of this complexity, the Student's teachers report that he made significant, substantial progress on a significant number of educational goals, and both the data reports and the educational documentation in the IEPs corroborate this judgment. (FF 15, 19, 21, 23, 27, 31, 74, 75.) In the 2004-2005 school year, he attained goals in communications, orientation and mobility, vision and pre-writing. Id. He made significant progress in identifying shapes, functional mobility, fine motor and self help. Id. In the 2005-2006 school year, the Student made significant progress in communication, time on task, feeding himself, walking, standing, taking of his jacket, and sorting. Id. From the record as a whole, the hearing officer finds that the 2004 and 2005 IEPs offered an opportunity for meaningful educational advancement. See M.C. v. Central Regional H.S., 81 F.3d 389 (3d Cir. 1996)(program for lower functioning child initially stresses basic life skills); Polk v. Central Susquehanna Int. Unit, 853 F.2d 171, 176 (3d Cir. 1998)(program consisting largely of related services).

The Parent offered numerous criticisms of the Student's educational program. The Parent complained that the goals and objectives addressed skills that the Student already had mastered, leading to repetitious drills that bored the Student and engendered avoidance behaviors that disrupted his education and would be unacceptable in a classroom. However, a careful review of the 2004 and 2005 IEPs offered to the Student demonstrates that the goals and objectives changed over time. (FF 3, 5, 18, 49, 50.) Old goals were abandoned and new ones instituted. (FF 7, 8, 12, 13, 18, 49, 50, 53.) In some cases, new goals were begun before the next IEP, through discrete trials on new target skills. (FF 12, 13, 18, 49, 50, 53.)

To be sure, many of the goals remained the same; however, District witnesses, whom this hearing officer finds credible and reliable in their judgment about these issues, (NT 1326-18 to 1329-18), testified that many of these repeated goals were changed in

terms of number and type of prompts and distances. (FF 14, 18, 26, 49, 52, 57.) This was corroborated by the record. (S-15, S-18.)

Moreover, some of the goals were repeated because they were fundamental skills that the Student would need, and he had not demonstrated mastery to his teachers. (FF 34, 76.) The Parent argues that the Student had demonstrated mastery to her, but this is not an appropriate criterion for abandoning an important educational goal for the Student. Indeed, one of the private psychological reports that the Parent obtained for reevaluation purposes emphasized that the Student's performance is variable in different settings, and that it is easier for him to learn at home than it would be at school, due to his different learning style. (S-19 p. 33, 34.)

The District's choice of methodology, staff and other such core academic matters is entitled to deference just as long as it is reasonably calculated to provide meaningful benefit in light of the child's abilities. In re: The Educational assignment of A.G., a Student in the Wissahickon School District, Spec. Educ. Op. No. 1455 at 6 (2004). The Parent, while contributing her considerable knowledge of the subject matter and of the Student, cannot supplant the expertise of trained and experienced special education teachers in making the judgment as to selection and mastery of IEP goals and objectives. (NT 2384-4 to 2385-7.)

The Parent also complained that the District failed to provide an IEP from February 2002 until May 2004. While this is true and would otherwise be a procedural violation, the Parent agreed to this as part of a mediation plan. (FF 5, 6.) Much of the delay was due to the large number of independent evaluations to which the parties both agreed. (NT 1364-3 to 1365-23, 1446-3 to 1447-8, 1450-2 to 1451-23, 1455- 18 to 1458-6; S-3.) The District in this case cannot be held to account for the absence of an IEP when this is pursuant to a mediation agreement.

The Parent argued that the teaching team in her home was inadequately trained. However, the IEPs for 2004 and 2005 require adequate training; indeed, their requirements are quite thorough. They require observation by new teaching staff before starting to teach, and this was implemented. (FF 38 to 40, 67.) They require specific training sessions with related services providers, and this too was implemented. (FF 38 to 40, 68, 69.) Thus, the District cannot be charged with negligence in getting its teachers trained regarding the very unique constellation of needs of the Student.

The Parent argues that the educational and service team was not properly coordinated. However, again the record does not support this argument. On the contrary, there was testimony by a special education teacher, whom this hearing officer finds to be credible, that the teachers conferred on a daily basis, and another teacher reported at least occasional collaboration. (FF 11, 44.) In addition, there were monthly meetings of all service staff. (FF 38, 66.) Similarly, there were conferences among relevant staff when formulating the quarterly progress reports. (FF 42, 43, 72.) Again, the District appears to have made a substantial effort to properly coordinate the many service providers serving the Student.

The Parent argues that the District did not provide enough goals, and was limited in the amount of instructional the time it was willing to provide to the Student. However, the selection and number of goals is an educational judgment that must be left to the District, as long as the District addresses every substantial need of the student. There was no substantial evidence that the selection of the goals addressing academic, communication, vision, ambulation, fine motor, self help or pre-writing needs was contaminated by bad faith or administrative or cost considerations.

The Parent also argued that deficiencies in record keeping led to inappropriate performance evaluation and inappropriate selection of goals and objectives. There was testimony indicating that particular data were in error and that record keeping was not strictly consistent over time. It is also obvious from the documents that not everything was charted systematically. Progress reporting was not tied directly to the data; rather, it was a subjective evaluation of the data reached by consensus among multiple providers, and the data was averaged. (FF 42, 43, 73.) Nevertheless there was a scale that helped to standardize the judgments across disciplines and individual raters, by tying the verbal quarterly progress reports to percentages from the data. (FF 72.)

Nevertheless, this premise does not prove that the entire educational program was inadequate. The documents provided by the District disclose a massive record keeping effort. (S-25, 26, 29, 30, 37, 38, 44.) Although not all inclusive as required by the IEPs, it was comprehensive in that it touched upon every area of instruction and related services in the IEP. Ibid. This data was reviewed by the personnel making the daily records and these personnel discussed the implications of their data as part of the quarterly reporting process. (FF 42, 43.) The Supervisor of Special Education was also involved in some of these discussions, and she oversaw the process. (NT 1954-8 to 1955-12, 1959-13 to 20, 1961-13 to 19, 1962-18 to 1969-25.) Thus, at least on a quarterly basis, professional judgment was exercised concerning the meaning of the data, and conclusions were drawn regarding the Student's progress. Doubtless, this was not a pure report on data, but it was data driven to a great extent. (NT 1966-9 to 20.) The exercise of subjective professional judgment in the unique circumstances of this case does not render the entire program fallacious.

The Parent argues that data from the first two quarters of the 2005-2006 school year demonstrate regression in most objectives of the 2005 IEP, and progress in very few. (S-26.) While these facts give pause, when balanced against the weight of the evidence in support of the 2005-2006 educational program, they do not persuade this hearing officer that that program failed to offer or provide FAPE in the areas covered by the IEP.

These data are insufficient to persuade for three reasons. First, the data relied upon by the Parent are not for a full year and as such are not a fair measure of the Student's attainment within the educational program for that year. (NT 2465-16 to 25, 2474-22 to 2475-14.) Indeed, they are suspect, because the previous year's data show a pattern – or at least a frequent occurrence - of regression or minimal progress in the first two quarters of the year for many objectives, followed by significant progress in the two

final quarters. (S-41.) Second, the data and the record as a whole overwhelmingly show that the Student's performance is very erratic, and can range from complete failure in trials to complete success in a very short span, due not to his level of ability but to external variables such as distractions in the environment and fatigue. (NT 2871-21 to 2872-1, 2846-15 to 2847-17.) Third, the Parent asked the educational staff to expand the goals and objectives in the IEP, based upon her belief that the staff expectations for the Student were too low. (NT 2382-9 to 25.) At least one teacher admitted that, in response to the Parent's wishes, the teacher had set goals that were unrealistically high. Ibid. Thus some of the data relied upon by the Parent to suggest regression or lack of progress may be artifacts of her own requests for higher goals. In short, these data, while troubling, are not sufficiently probative of the Parent's position.

The Parent complained about a number of requests that she made of the Supervisor of Special Education that were not fulfilled or not fulfilled within what she considered a reasonable time. For example, she had requested that a particular curb cut used by the Student be painted in contrasting colors so that the Student would be better able to sight on it when proceeding to and from the Second Elementary School for his school based activities. (NT 201-2 to 12.) Similarly, the Parent as of October 2004 insisted that once in the school building for O&M and PT training, the Student's traveling route through the school building be meaningful and purposeful. (NT 208-4 to 209-5; P-29, P-37 p.1.) The District agreed to do these things, but implementation was delayed. (NT 200-17 to 19, 210-6 to 12, 228-15, 229-2 to 11, 242-3 to 18, 244-8 to 20; P-31 p. 1.)

While an educational program must address the unique needs of the student, it is not required to address every need to fullest extent possible, as discussed above. The Parent provided no evidence that the Student's educational progress was rendered de minimis due to these delays.

The Parent's request for an order for an amended IEP is denied.

LEAST RESTRICTIVE ENVIRONMENT

Both federal law and state policy mandate education in the least restrictive environment appropriate to the student's needs. The IDEIA requires state education plans to ensure that:

To the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled [unless] the nature and severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

20 U.S.C. §1412(a)(5)(A). The governing regulations, 34 C.F.R. §300.551(a), implement this statutory requirement by requiring the state to "ensure" the availability of a "continuum of alternative placements ... to meet the needs of children with disabilities

for special education and related services. The placement must be reviewed annually. 34 C.F.R. §300.552(b)(1). Moreover, the regulations require that:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and [nonacademic services] each public agency shall ensure that each child with a disability participates with nondisabled children ... to the maximum extent appropriate to the needs of that child.

34 C.F.R. §300.553.

In its seminal decision in Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit set forth a two – step analysis for determining compliance with the LRE mandate. The first determination is whether it is necessary to place the child outside the regular education setting. If so, the second determination is whether or not the placement provides for contact with nondisabled peers to the maximum extent possible. Oberti, 995 F.2d at 1215. The court was guided by the “strong Congressional preference” for integration of disabled children, and declared that a school district may violate the IDEA “if it has not made sufficient efforts to include the child in school programs with nondisabled children wherever possible.” Id. at 1214. The court emphasized the “key” role of supplementary aids and services in making integration possible, and declared that schools must consider “the whole range of supplementary aids and services” in trying to include the child. Id. at 1214 to 1216. This would include opportunities for “meaningful” contact with nondisabled children through socialization at lunch times and integration into classes in special subjects. Id. at 1209. If a district fails to give “serious consideration” to inclusion strategies, and provides only “token”, “negligible” or “perfunctory” gestures to inclusion, it fails to comply with the legal mandate. Id. at 1216 to 1221.

State policy also mandates extraordinary effort on the part of school districts to include disabled students. For example, in BEC October 31, 2001, Instruction Conducted in the Home, the Pennsylvania Department of Education forbids instruction in the home except under exceptional circumstances. The Department declares that such a placement “is restricted” to students who require instruction outside the school setting for the entire day. “Ordinarily” this is limited to students with severe medical conditions or mobility impairments who “cannot leave home to attend school.” Id. at 344. BEC July 1, 2002 establishes a clear “preference” for inclusion, and defines “supplementary aids and services” as “all of the modifications and innovations of which a school district is reasonably capable.” Id. para F.

Thus, the District’s obligation was not limited to placement in a school. Even where, as here, this was impossible, the District was still obligated to explore the “whole range of supplementary aids and services” in order to “provide programs with nondisabled children wherever possible.” Oberti, 995 F.2d at 1214-16. Under state policy, this included considering “all of the modifications and innovations” of which the District was “reasonably capable.” BEC July 1, 2002 at para F.

In the present matter, the hearing officer has found that the District provided FAPE during the 2004 and 2005 school years with regard to IEP goals and objectives and their implementation. However, the District's program did not offer or deliver meaningful educational opportunity to the Student in socialization and social skill development, even though this was demonstrably one of the Student's essential needs. In fact, the IEP did not even recognize this essential need. This deprivation denied FAPE to the Student in and of itself. 20 U.S.C. §1414(d)(1)(A)(i)(IV)(cc) (IEP must provide opportunity to be educated and participate with other children); Millersburg Area Sch. Dist., Spec. Educ. Opin. No. 749-A, 25 IDELR 1266 (1997); see Polk v. Central Susquehanna Int. Unit, 853 F.2d 171, 184 ("major areas of need" may not be omitted); Oberti, 995 F.2d at 1214.

In the present matter, the evidence shows that education "with" other students, whether nondisabled or disabled, is essential for this Student, providing him with the opportunity to learn basic social skills. (FF 99.) The earliest evaluations in this case include recommendations for greater opportunities to socially interact with other children, and it is undisputed that the Student's educational needs include contact with other children and with nondisabled peers. (FF 81, 82, 85, 86, 93, 99.)

The District did not provide any meaningful program of social contact with other students at its schools. (FF 96 to 98, 104, 109.) Moreover, the evidence demonstrates that the District knew that such contacts were recommended as early as 2002, and received numerous recommendations for greater social contact in subsequent years. (FF 82, 85, 86, 93.) The Parent in particular repeatedly requested such socialization opportunities. (FF 81, 94, 104, 106, 108.)

The District's primary position is that it was impossible to provide greater social opportunities in a school setting because of the Student's chemical sensitivities. They submit that it was physically dangerous to return the Student to the school building, and that when this was attempted, programming was disrupted repeatedly because of the Student's [reactions], especially at Elementary School, where he was being provided with O&M and PT services. The record supports a conclusion that the Student's chemical sensitivities and concomitant [reactions] were serious, potentially very damaging, and recurrent so that the Student's programming was disrupted repeatedly. (FF 80, 81, 83, 84, 91, 93, 107.)

Applying the first step of the two step test in Oberti, the record in this case overwhelmingly supports the placement of instruction in the home. Indeed, the Parents never have disagreed with that conclusion. (FF 80, 81, 88, 89, 91.) This is true despite the record showing that it was medically appropriate to gradually reintroduce the Student into school environments with the goal of changing that placement in the future, and the history showing that the Student was in school regularly for a small amount of time during most of the time relevant to this proceeding. (FF 78, 79, 82, 85, 86, 90, 92, 93, 99, 103, 106.)

However, the District's duty under Oberti does not end with this determination. The second step to the analysis is whether or not the District provided contact with nondisabled peers "to the maximum extent possible". Id. at 1215. Here, the District fails the test. The hearing officer finds that the District failed to provide any "meaningful", Oberti, 995 F.2d at 1209, social contact with peers in a school setting. (FF 96 to 98.) Despite long periods of relative stability when the Student was placed at Second Elementary School, (HO-3), the District failed to increase the hours the Student spent at Second Elementary School in programming - beyond negligible, fleeting increments to his O&M and PT hours. (FF 98.) Until January 2006, after due process was filed, there was no more than negligible effort to solve the logistical problems involved in providing the Student with access to "special" classes. (FF 108.) There was no meaningful effort to incorporate other students in the O&M and PT sessions being provided at the Second Elementary School school. (FF 109.)

The District argues that, in February 2004, after the District received a doctor's note approving the Student's gradual reintroduction into the school environment, there were insuperable logistical difficulties that prevented increasing the Student's time in the Second Elementary School. (NT 1498-1 to 1499-23, 1834-3 to 24.) The District offers the same explanation for the period after January 2005. (NT 1830-9 to 1832-10.) The hearing officer does not credit this testimony or this argument as dispensation of the District's duty to provide contact with peers. The Stipulation of Counsel shows that there was no meaningful increase in time in school from that point until January 2006. (HO-3.) The hearing officer finds it implausible that logistical difficulties would remain insuperable for nearly two years.

The District also stated that inclusion was not accomplished in 2004 because of the transition from Elementary School, where the student was having [medical reactions], to Second Elementary School, a new environment for the Student. The Supervisor of Special Education stated that the intent was to reintroduce the Student gradually, and that this precluded inclusory activities. (NT 1832-12 to 1834-2.) The hearing officer does not credit this testimony either, for two reasons.

First, the period of time in which this gradual transition to Second Elementary School was taking place - February to June - is just too long to be accounted for by this explanation; it should have been clear after two weeks that the environment was better for the Student's [reactions] than Elementary School. Second, this does not explain why the O&M sessions were not combined with socialization opportunities, and why the District provided no other opportunities for socialization in connection with school activities other than classes. The hearing officer concludes that the District did not exert the kind of determined effort to include the Student that is called for by the strong federal and state policies in favor of inclusion that are set forth above.

The Supervisor also suggested that the District in October 2005 was looking at including the Student in two "multiple disability classes" at Elementary School, and suggested that that was the reason for trying the Student again at Elementary School, an experiment that ultimately failed. (NT 1891-15 to 1892-10.) This is contradicted by the

O&M therapist, who testified that he had instigated the move to Elementary School because of its superior floor plan for O&M purposes. (NT 1760-1 to 1762-6.) Moreover, the explanation again fails to account for all of the District's omissions in regard to inclusion during this time period. The move to Elementary School was begun in the summer of 2005 and continued into November 2005. At no time during this period of several months was there any attempt to include the Student with peers while at Elementary School, despite the greater range of opportunities there as attested by the Supervisor of Special Education. While the Supervisor explained that she hesitated to provide such opportunities because the Student's [medical reactions] were increasing, the hearing officer is not persuaded that this is a logical reason for not providing some form of social contact with peers, if only in arranging for the Student to socialize on a regular basis during lunch periods or engage in play activities at recesses or in gym periods.

The District argues that the Parents did not convey an urgent desire for inclusive opportunities and that the District was being responsive to the Parents in addressing other priorities. The Supervisor of Special Education suggested that inclusion was not an area of great concern to the Parent. (NT 2721-18 to 2722-3.) However, the District's duty to provide the least restrictive setting transcends the obligation to be responsive to parental desires and suggestions. The Oberti tests and state BECs look to the school district's efforts, not to those of the parent. Moreover, a student's rights under IDEIA do not depend upon parental vigilance. Ridgewood Board of Education v. N.E., 172 F.3d 238, 250 (3d Cir. 1999); M.C. v. Central Regional High School, 81 F.3d 389, 397 (3d Cir. 1996). The hearing officer finds the Parent credible in testifying that she repeatedly requested greater opportunities for social interaction in a school setting. (FF 81, 94, 104, 105, 108.) It is unreasonable to fault her if her requests did not convey a sufficient degree of urgency to alert the District to duties that it should have recognized on its own.

The history of the District's neglect counsels in favor of a prospective order. The hearing officer does not import improper motive to the District and its personnel as the Parent has invited; however, the District at the very least appears to have misplaced the important goals of inclusion among the many other demands that this case placed upon it.

The practicalities further complicate the matter of what prospective relief is appropriate. The record supports gradual reintegration of the Student into the school environment, but the [medical condition], while it appears to have dissipated in severity, appears likely to continue limiting the extent to which the District and Parents can prudently increase the amount of time the Student spends at school. (NT 1255-16 to 1257-23.) In these circumstances, it is necessary to devise an order that gives due regard to the need to balance safety issues with the legal mandate for inclusion. Therefore, the order will include prospective direction that the District convene an IEP team meeting specifically to decide the amount of inclusion that it is possible to provide the Student, taking into consideration his [medical condition] and safety in a school setting, as well as the scheduling needs of his related services.

BEHAVIOR MANAGEMENT

The Parent produced a behavioral specialist who is a certified guidance counselor in Maryland, with a masters degree in “counseling in educational psychology”. (NT 609-15 to 19, 717-8 to 14.) He had little understanding of the IEP process in Pennsylvania. (NT 753-18 to 754-8.) He admitted that the purpose of his consultation was not to evaluate the staff. (NT 759-24, 762-8.) The specialist provided a lengthy report with prescriptions of how to use discreet trial techniques, how to extinguish problematic behaviors, and other advice on how to structure the Student’s program, including a proposed curriculum. (S-19 p. 44 to 71.)

In addition, the specialist repeatedly remarked upon the staff’s implementation of discreet trial methodology and behavioral management techniques. He claimed to have received an impression that some of the staff were biased in believing that the Student could not learn as much as the Parent and the expert believed. He also testified to his “impression” from emailed questions he received from staff that their focus was on how to implement more restrictive techniques, rather than less restrictive techniques for behavior management. He noted inconsistency among the various staff in their ability to utilize the techniques he was advocating. (NT 743-23 to 744-12.) He criticized the District’s allocation of time to his presentation to staff, in that it did not allocate enough time, although he admitted that his recommendations were intended to be implemented over time, not necessarily at the time of his meeting with staff

When pressed, this expert witness demonstrated to this hearing officer a complete failure to accept the importance of basing his opinions upon facts derived from accurate observations and notes. (NT 744-13 to 746-24, 755-6 to 7, 759-18 to 760-13, 761-19 to 764-1, 780-1 to 5.) He admitted that he did not keep notes of his observations sufficient to answer simple empirical questions about the sources of his information. *Id.* He held to his impression regarding staff bias, but on cross examination, admitted that no one ever had made a statement to that effect, asserting that it had been implied. (NT 761-6 to 8.) Then he admitted that his impression was his “interpretation” of what people had said. (NT 761-10 to 762-3.) Then he admitted that it was “just my bias” and that he could not specify what person he had that “impression” about. Finally, he explained that it was “just what I perceived as the generic negative perception of the rest of the world towards developmentally disabled people.” (NT 783-15 to 17.) This “impression” had no basis in his observation of how staff were treating the student. (NT 783-21 to 22.)

This expert provided much in the way of theory, general knowledge of the typical behaviors of neurologically impaired persons, and creative ideas for programming, and the hearing officer has no criticism of the specialist’s opinions in that regard. However, he offered little in the way of fact about staff implementation of the Student’s educational plan. The hearing officer finds this witness’ impressions in that realm to be entirely unreliable and accords them no weight.

The Parents also presented the expert testimony of a Pennsylvania certified school psychologist. The hearing officer gives much weight to this testimony. The hearing officer found this witness to be clear about what he knew and did not know, devoid of an agenda, and quite credible.

Many of this expert's recommendations mirrored the behavior specialist's recommendations, and he provided some theoretical background on the student's learning differences. It was clear that the expert had not performed a thorough evaluation of the Student, for that was not the purpose of the consultation. (NT 528-18 to 529-4, 550-7 to 14, 551-16 to 20, 553-22 to 554-3.) It was also clear that, unlike the behavioral specialist, the expert school psychologist did not even purport to evaluate the District's implementation of the program, and indeed, the expert readily admitted that he did not have even basic information that would be necessary to evaluate the program's implementation. (NT 470-15, 543-21 to 22.)

This hearing officer finds that very many of this expert's recommendations were being performed or at least attempted by the District's educational team. For example, with the glaring exception of inclusion, the team was performing nearly all of the expert's recommendations for the IEP. (NT 534-15 to 537-16, 540-1 to 9; FF 12 to 73; S-19 p. 39 to 40.) Similarly, the expert recommended teaching letters by isolating the first letter in the Student's name. (NT 462-24 to 463-23, 483-5 to 11; FF 12 to 15, 47 to 49.) Likewise, he recommended monthly meetings. (NT 486-10 to 21; FF 38, 66.) He also recommended including goals desired by the Parent. (NT 474-20 to 475-6, 536-22 to 537-7, 488-6 to 11, 2382-9 to 25.)

Significantly, the expert seemed to disagree fundamentally with both the behavioral expert and the Parent's position in this proceeding that there should be a greater number of goals and objectives in the educational program. (NT 462-20 to 23, 464-6 to 464-13, 480-1 to 7, 530-21 to 531-10.) He recommended that educators focus on practical skills that the Student will need when he is eighteen. (NT 464-14 to 22, 479-2 to 10.) One of the District's teachers testified that that is one of the teachers' guiding principles as well. (NT 2862-9 to 2863-8.) The expert's top priority for the Student would be teaching him to communicate. (NT 479-11 to 15.) The District not only put a great deal of emphasis on this goal, but was able to show success, in the years from May 2004 to January 2006. (FF 16 to 19, 51, 69, 71, 74.)

The expert also corroborated that the student's performance is characterized by inconsistency. (NT 457-15 to 459-16, 530-12 to 20; FF 76.) In this hearing officer's estimation, the expert's educational recommendations in light of this inconsistency contradicted the Parents' position on repetition in the curriculum. He recommended repetition, while at the same time recognizing that it causes boredom leading to what the parties have characterized as the Student's "behaviors." (NT 461-17 to 462-23, 467-20 to 469-1, 530-9 to 10.) He recognized that there is an acute dilemma inherent in this Student's cognitive functioning: repetition is essential for learning, but also engenders behavioral disruption of the teaching program. *Id.* This frank recognition of both sides of the dilemma stands in stark contrast to the behavioral specialist's view that repetition

should be avoided, and the Parent's similar position in this proceeding. The hearing officer considers the District's implementation of the Student's IEP in that context. The conclusion based upon this testimony and the weight of the record is that the District's educational decisions to utilize repetition were not demonstrably incorrect, and its teaching approach was not shown to be inadequate in that regard.

In this hearing officer's judgment, the expert also contradicted the Parent's repeated urging that the Student's curriculum must have a greater "scope and sequence" - more structured than what the District has offered - to be minimally adequate. (NT 479-2 to 10.) The expert explained that because the Student's learning style is inconsistent in differing settings, times and persons, it is necessary to design a curriculum that is unique for the Student - far more so than with most other learners, even those with developmental disabilities. (NT 458-18 to 459-16.) The teachers need to reverse roles and "learn from" the Student in order to develop an appropriate curriculum. (NT 459-460-14.) The expert envisioned a team that "listens" to the Student's behaviors to find clues to what works for him and what does not. He emphasized that the curriculum must enable the student to be successful. (NT 460-18 to 462-19.) He viewed this approach as serving a neurological function of helping the Student to integrate during the learning experience. (NT 460-18 to 461-16.) The expert did propose published curriculums, but his basic criterion was that the curriculum be "developmental." (NT 538-1 to 539-25.) This is not far from what the teachers said when they spoke of drawing from the kindergarten and even pre-kindergarten curricula. (NT 2434-21 to 2436-7.) Moreover, the documentary record demonstrates that the IEP goals and objectives - with some exceptions - followed a developmental trajectory from 2002 to 2005. (FF 2 to 65.) The hearing officer concludes that the curriculum design for this Student is a matter of professional judgment upon which experts, within the bounds of good judgment and practice - can and do differ. Thus, the presentation of views that contradict those of the District does not persuade this hearing officer that the District has failed to provide a meaningful opportunity for educational benefit with regard to curriculum design.

ASSISTIVE TECHNOLOGY

The Parent asserts that the District's instruction in communication was inadequate because it was implemented inconsistently and because it was not free. Specifically, the Parent claims that the teachers and staff were not trained to utilize the digital communication devices sufficiently, as a result of which the Student did not receive training in communication that was fully integrated with the other areas of education and training set forth in the 2004 and 2005 IEPs. (NT 25-8 to 26-4; HO-19.) The Parent also claims that there were inordinate delays in resolving the Student's difficulty using the digital device because of his inability to point with only his pointer finger. (HO-4 p. 7.) In addition, the Parent claims that the District denied the Student the use of computer touch screen and software for an inordinate period. (HO-4 p. 2.)

The Parent also claims that she paid for thousands of dollars worth of materials and equipment for making pictures and books for the PECS communication system which was used in implementing the Student's communication goals. (FF HO-4 p. 2, 5,

19, P-66.) She claims that she spent many hours of her own time programming the digital devices used for the same purpose. The Parent requests prospective orders regarding staff training and the District's responsibility to program the devices, and compensatory education³ and reimbursement of her out-of-pocket expenses. HO-4 p. 19 to 20.)

As to the adequacy of teacher training in the communication devices, the bottom line under the IDEA is whether the training was so defective as to result in the denial of FAPE. As stated above, this is not a high legal standard. The law requires far less than the ideal, and certainly perfection is not a legal measure of the District's performance. As stated above, the legal standard is that the District provide meaningful opportunity to succeed, not that it provide maximum opportunity. While it might appear to knowledgeable observers that the implementation of an IEP is fraught with serious deficiencies, that implementation can nevertheless meet the legal standard if a basic floor of opportunity is provided.

In the instant matter, the Parent was able to identify instances that appeared to demonstrate serious lack of knowledge in some of the District staff regarding the operation of the most sophisticated instrument the Student was using. (NT 963-17 to 968-3.) Moreover, the Parent testified to her impression that the staff were not using the communication devices. *Id.* Nevertheless, the hearing officer finds that this evidence does not come close to establishing a failure to provide FAPE during the years in question. The record as a whole demonstrates that the communication goals were implemented through an administrative process that was reasonably competent and calculated to provide the services set forth in the IEP. (FF 141.) (Indeed, the Parent did not challenge the IEP goals themselves in communication. (NT 1547-16 to 20.)) Thus, the District did not fail to offer the Student a meaningful opportunity to learn communication skills.

Regarding the Parent's allegations, there was no proof that she had systematically or empirically evaluated staff compliance with the IEPs. It was not demonstrated on the record that the Parent observed the staff sufficient to form a reliable conclusion as to their utilization of the communication devices. There was no expert review and evaluation. In contrast, the District presented four witnesses, all of whom the hearing officer finds credible, based upon their demeanor, the care with which they expressed themselves in response to the questioning, and corroboration of their testimony in the record. These were the Supervisor of Special Education, the Speech Therapist, and two Special Education Teachers. All three testified that the entire staff had been trained by the speech therapist; the training provided by the speech therapist appeared to be adequate. (FF 139 to 141.) All testified that the teaching staff and service providers were to their knowledge using the communication devices, and the teachers both described how they would

³ The record is ambiguous as to whether or not the compensatory education claim encompasses the Parent's claims as to staff training in and use of the communication devices. The compensatory education claims are stated broadly in the opening statements and the hearing officer's statement of the issues, and even more broadly in the Parent's Posthearing Memorandum, HO-4. Nevertheless, the record is sufficient to reach a conclusion about this issue and the hearing officer has considered the issue in light of the record.

position the digital devices and the alternate PECS device around them as they prepared to teach the Student. (FF 132.) All testified that they discussed their work with the Student at monthly and quarterly meetings, and none had become aware of a substantial problem. (FF 141.) The Supervisor and the Speech Therapist testified that they had observed other staff teaching the Student without observing any problem with utilization of the device. Id. Thus the District's evidence clearly outweighed the Parent's anecdotal evidence and informal impressions regarding staff skill and behavior.

The Parent makes the specific point that most of the training was provided in 2005, toward the end of the 2004-2005 school year. (NT 963-17 to 968-3.) There is some support for this in the testimony of the Speech therapist, although it is contradicted by the Supervisor of Special Education, who oversaw training. (FF 141; NT 1570-21 to 1574-18, 1868-15 to 1872-4.) One must put this concern in context of the constantly changing communication systems and devices that were being utilized during the 2004-2005 school year, the devices malfunctioning repeatedly, and the changing of devices repeatedly due to the Student's progress in utilizing language for communication. (FF 111 to 112, 118, 121 to 138.) The constant changes in plans depicted in this record made it difficult if not impossible for the District to provide training at the precise times that it was desired or needed.

Moreover, the Student's performance raises an inference that the District did not deny the Student FAPE in this time period. The Student attained all of his goals but one in communication. (FF 142 to 144.) His teachers and therapist all testified that he made substantial progress under the two IEPs. Id. Even before the May 2004 IEP, the Student demonstrated progress. (FF 118.) There is no basis to find that the Student did not make meaningful educational progress

The Parent also indicates that the District improperly delayed resolution of – and refused to pay for – special devices to help the Student physically point at the screens of the communication devices in order to utilize them. The Parent, in consultation with her private speech and communication specialist, learned [a procedure to enable Student to better use the device], but the District declined to [use that procedure] because of concerns about possible medical consequences to the Student inherent in this technique. Moreover, the District did not provide an alternative for months, until the Speech therapist and possibly others suggested [an alternative which] was eventually provided. (FF 136 to 137.) However, as pointed out above, there is no evidence that this disagreement between the parties and the consequent delays and difficulties detracted in any way from the Student's ability to make meaningful progress in communication skills. Thus, these problems do not merit prospective or compensatory relief. .

The District's efforts, including its training of its staff, were sufficient to provide meaningful educational benefit to the Student. The request for prospective and compensatory relief for failure to train staff is denied.

The Parent claims that the District should have provided a computer touch screen and educational software in a timely fashion. (HO-4 p. 2, 19 P-66.) There was little evidence on this issue. (NT 230-1 to 231-12; FF 145 to 146.) The Parent's chief exhibit

regarding her out of pocket expenses was P-66, and this makes an oblique reference to “adaptive computer equipment.” (P-66.) The 2004 IEP contained no requirement for this assistive technology. (NT 230-1 to 231-12; S-15 p. 15, S-18 p. 12.) Essentially this was a technology that the Parent desired to provide, but that the IEP team had not decided to provide as part of the Student’s plan. The Parent has not proven that its omission from the plan constituted a denial of FAPE, and it will not be ordered.

The Parent claims thousands of dollars for out of pocket expenses which she avers are all for the purpose of the Student’s education. (FF 113 to 120.) These included numerous items of toys, puzzles, tapes and CDROM discs, specialized materials relating to sensory issues, and, prominently, materials and even a device for making PECS instruments and pictures. Id. (P-66.)

Substantial evidence was presented with regard to the PECS system. Id. There is no doubt that the PECS system was an integral part of the educational programming for the Student. (FF 110 to 111, 117 to 118, 135, 140 to 141, 142 to 143.) It was called for in both IEPs. (S-15 p. 16, 30 to 32, S-18 p. 15, 28.) Nevertheless, the District relied upon the Parent to provide and pay for materials related to this system, as well as to construct the pictures and other materials used in instruction. (FF 113 to 111 to 117.) The Parent repeatedly requested reimbursement for these materials but continued to pay for them out of pocket. (FF 119.)

The District is obligated to provide assistive technology to the Student where the IEP team determines that it is needed. 34 C.F.R. §300.308(a). This includes any equipment or product system used to increase the functional capabilities of a child with a disability. 20 U.S.C. §1401(1)(A). The PECS system materials clearly fall within this definition. Assistive technology must be provided in the home where the IEP team decides that it is needed there. As discussed above, the record clearly shows that the IEP team decided that the PECS system was needed in the home for the student. A free appropriate public education must be at public expense. 20 U.S.C. §1401(9)(A); 34 C.F.R. §300.13. Here, the record clearly shows that the PECS system was not provided at public expense, but at the Parent’s expense.

However, as to the other materials and services for which the Parent requests reimbursement, there is insufficient evidence to show that those materials and services were deemed necessary by the IEP team for use in the home setting. Moreover, there was virtually no evidence that the materials were purchased within the limitations period stipulated by the parties. Therefore, the request for a compensatory order with respect to the remainder of the materials and services list in the Parent’s exhibit (P-66) is denied.

The Parent has provided many hours of personal time in programming the communication devices for the Student. (FF 129, 131, 133.) There is no doubt that the District has utilized these devices in the Student’s instruction under the IEP. (FF 139 to 140.) Indeed, the record shows that the District originally recommended and provided the first such device. (FF 112, 122.) However, the record also shows that the Parent has volunteered to do the programming. (FF 129.) It is true that the District did not identify

anyone with the requisite skills to do so, but that was due in part to the fact that the Parent decided unilaterally to purchase a new model, the DynaMyte, and it took the District months to obtain appropriate training for the device. (FF 125 to 128.) The Parent always took the lead in programming these devices. (FF 124 to 126, 129, 131, 133.) Thus, the District cannot be found to be at fault for its omission to program these devices.

Nevertheless, the Parent has put the District on notice that she is no longer willing to program the devices. The DynaMyte is clearly accepted in the 2005 IEP as one of the Student's assistive technology devices. Although the hearing officer will not enter an order finding the District liable for any of the costs of the devices themselves, or for past programming, clearly the District is obligated to provide such programming in the future as an assistive technology service. 34 C.F.R. §300.6. Therefore, the hearing officer will enter a declaratory order requiring the District to provide adequate staff hours to program the device as needed in the future, except to the extent that the Parent chooses to do programming work on the device. This order will extend similarly to the creation of the PECS materials presently used as backup system.

PHYSICAL THERAPY

The Parent bears the burden to prove that the student needs additional services in order to make meaningful progress. Schaffer v. Weast, __ U.S. __, 126 S.Ct. 528, 533-36 (2005). The Parent's evidence consisted of two private physical therapists and the Parent's testimony. (FF 151, 161.) The private therapists recommended a total of three to four hours per week of PT. (FF 166.) Their recommendations were based upon their estimate of the Student's potential and on the fact that his avoidance and other behaviors regularly disrupt PT sessions, thus reducing the amount of PT services that he can benefit from in a given session. (FF 152, 154, 161 to 162.)

The record supports the inference that the Student's unusual and disruptive behaviors seriously restrict what can be accomplished in a given PT session. (FF 152, 153, 158, 165.) This was true in both the private setting, and in the school setting as well. Id. Indeed, the District brought in one of the private physical therapists to train its own PT on behavior management techniques. (FF 170.) From the totality of the record, the hearing officer concludes that, since the Student receives less benefit in a given session, he needs more sessions or longer ones to provide the ordinary amount of service that would be provided in a standard PT session.

The record showed that the Parent has provided the Student with two to three hours per week of PT on a private basis from 2002 to 2006. (FF 151, 160 to 161, 170 to 172.) The Parent argues that any progress that the Student has made in PT is the product of both the two weekly private sessions that he has received from May 2004 to April 2006, and the two weekly sessions provided by the school, one of which is a combined session with the Orientation and Mobility therapist. Consequently, any progress the Student has made demonstrates that he needs four sessions per week. See DeMora v. Department of Public Welfare, 768 A.2d 904 (Pa. Cmwlth. Ct. 2001). Viewing the

record as a whole, the hearing officer is persuaded by this analysis. (FF 147, 154, 156 to 157, 159, 162 to 147, 149, 151, 163.)

The District's physical therapist testified and attempted to rebut this analysis. The physical therapist did not attempt to demonstrate that the Student's progress in the last three years was due solely to the District's PT services. *Cf. DeMora*, 768 A.2d at 907.⁴ Rather, the physical therapist drew a distinction between educational and medical goals, arguing that educational goals require less PT time, and asserting that the private providers were projecting a need to work on purely medical goals that would not be part of the IEP. (FF 161, 178.)

However, the Parent was able to demonstrate that the private providers were working on the same skills, for the most part, that are identified in the IEP as necessary for educational opportunity. (FF 154, 156, 157, 159, 162, 163 to 164.) These include independence and endurance in ambulation, ascending and descending steps, sitting and standing, and moving between sitting and standing. *Id.* Thus, the recommendations of the private providers were not for some alternate goals for medical purposes.

In addition, the Parent showed that there were concrete examples indicating a need for more PT staff time. For example, there were instances in which the PT was unable to address additional goals requested by the Parent, goals that would have addressed functionality within the school environment. (FF 177 to 178.) Moreover, there were difficulties with obtaining training from the PT for teachers and other members of the service team. (FF 168 to 173.) In addition, the Student made no progress with the quad cane, even though this was recognized as a skill that would enable him to access the school environment with greater independence and less physical restraint. (FF 164.) Finally, progress in the school setting is very slow; the Student still cannot safely navigate in the school environment. (FF 147, 156 to 159.)

Given the fundamental need for competence in these areas to provide an opportunity for education in the school setting, and the recommendation that the Student needs more PT time to accomplish it, the hearing officer concludes that the Student needs more PT time to accomplish the goals of his IEP, (FF 178), if he is to have any meaningful educational benefit in terms of the purpose of educational PT services: access to and safe function in the school setting. *Polk v. Central Susquehanna Int. Unit*, 853 F.2d 171, 176 (3d Cir. 1998)(related services constituting "essential prerequisite to education").

The Parent has been providing part of the physical therapy necessary to provide a meaningful educational benefit to the Student. Yet this is the District's burden. The District must provide more than two hours of PT in order to give the Student an opportunity to meet his IEP goals. The Parent has shouldered part of this burden as a volunteer, but she indicates that she cannot continue to do so indefinitely. The District

⁴ The hearing officer by this reference does imply that he is allocating the burden of persuasion to the District on this point. Rather, the hearing officer finds that the Parent has proven that the Student's progress was not due solely to the District's efforts alone.

must make up for this drop in necessary services. The District will be ordered to provide one additional hour of PT services per week as part of the Student's IEP related services.

OCCUPATIONAL THERAPY

The Parent has failed to prove that she is entitled to an order requiring more training and supervision for the Certified Occupational Therapy Assistants who are assigned to perform the sensory stimulation activities required by the 2005 IEP in its Specially Designed Instruction section. (S-18 p. 80.) Although sensory integration interventions were recommended as early as 2002, (FF 177 to 180), these activities were not required in the IEP until they were placed in the 2005 IEP, (FF 181), and the District implemented the IEP as written. (FF 192.) Nevertheless, the Parent asserted that the IEP was not being implemented adequately, and cited a lack of supervision of the COTA staff by the responsible Registered Occupational Therapists. The Parent also took the position that the brushing and oral motor stimulation protocols that she specified for the Student could not be provided by a COTA unless the COTA were specifically trained in sensory integration and in a particular form of brushing and oral stimulation pursuant to the Wilbarger Protocol. (S-18 p. 84.)

The record clearly demonstrates that the District addressed the Student's need for specially designed instruction in the form of sensory stimulation activities. (FF 181, 192.) The District implemented all of the goals and specially designed instruction required by the IEP. (FF 192 to 194.) There is evidence that the Student's sensory tolerance has improved over time. (NT 1373- 2 to 21.) The Parent's contention that special training is necessary for a COTA to implement such a program is incorrect. The District presented substantial evidence that COTA staff are trained in sensory integration principles, (FF 184), and that the District COTA staff were fully certified. (183 to 185.) Moreover, they were trained thoroughly by the occupational therapists who supervised them, and also by the Parent's private OTR. (FF 193 to 194.) Thus, it was appropriate for the COTA staff to implement the specially designed instruction of brushing and oral motor stimulation. (FF 195.)

The Parent argued that the COTA staff were not properly supervised, leading to improper discharge of their duties. Again, the record supports the opposite conclusion, especially for the year 2005. The COTA staff were supervised by Registered occupational Therapists with substantial experienced in their fields. (FF 189 to 190.) These professionals described the comprehensive manner in which they initially trained the assigned COTA staff, observed them, and communicated weekly with them, both informally and in weekly face to face supervision sessions, in which the Student's case was always discussed for 15 to 20 minutes. (FF 192.) Although the OTR who supervised the COTA under the 2004 IEP appeared to have conducted few observations in the home and participated in only one IEP meeting, even this OTR still provided substantial supervision to the COTA , who was very experienced and skilled, in brushing and oral motor stimulation. Id.

The Parent suggested that the COTA should not perform sensory stimulation activities without direct supervision of the OTR. However, the District proved that the OTR is fully qualified to conduct such activities on his or her own. It is the role of the COTA to deliver OT services without direct supervision. (FF 183.) This is authorized by state regulations which define the level of supervision by the OTR. 49 Pa Code §42.22. Even the Parent's expert witness testified that it is not necessary for a person to be supervised by an OTR while performing the brushing and oral motor stimulation. (FF 182.) Indeed, that expert had trained the Parent to do perform those services, and did not require them done by the Parent in the presence of the private OTR. Id.

The Parent pointed to incidents in the 2004-2005 school year in which the COTA deviated from the Wilbarger protocol by substituting a vibrating toy for the brushing. (FF 186, 187.) It was explained that the Student was resisting the brushing, so he was given a choice of the brush or the vibrating toy, and that this was done at the direction of the supervising OTR. (FF 186.) While this was a deviation from the Parent's wishes for a strict application of the Wilbarger protocol, the IEP at the time did not require these stimulative activities, either substantively or by the name of the protocol. (S-15.) Moreover, it is within the professional judgment of occupational therapists to identify the best therapeutic activities for the student by a trial and error method. (FF 188.) By training and professional certification, COTA staff are specialists in selecting the activities that will best advance the goals. (FF 185.) Therefore, these staff did not act contrary to the IEP or to prevailing professional standards in varying the method used. Neither this incident nor the evidence of disagreement by one OTR with the strict application of the Wilbarger protocol is sufficient evidence to enter an order in this regard. The Parents' application for an order will be denied.

COMPENSATORY EDUCATION

Least Restrictive Environment

While the duty to provide inclusion is indisputable, the District argues that even if it failed to comply with this duty, compensatory education is not an appropriate remedy. The District cites the Appeals Panel decision in In re: The Educational Assignment of A.G., a Student in the Wissahickon School District, Spec. Educ. Op. No. 1455 at 10 to 12 (2004), in which the Panel held that such relief does not lie. On the other hand, the Parents rely upon the equally unequivocal affirmation of the appropriateness of compensatory education awards for failure to provide inclusion set forth in In re: The Educational Assignment of B.R., a Student in the Northern Lebanon School District, Spec. Educ. Op. No. 1102 at 5 (2001), as well as In re: The Educational Assignment of K.M., a Student in the Bristol Township School District, Spec. Educ. Op. No. 1313 (2001)(which appears to affirm such an award without reaching the issue of appropriateness of the remedy for LRE violations). See also, In re: The Educational Assignment of T.W., a Student in the Kutztown Area School District, Spec. Educ. Op. No. 1224 (2002) (tacitly approving compensatory education awards for LRE violations).

The Pennsylvania Commonwealth Court has addressed this issue in Millersburg Area School District v. Lynda T., 27 IDELR 595, 598 (Cmwlth Ct. 1998). There the Court upheld an Appeals Panel decision awarding compensatory education for failure of inclusion, Millersburg Area Sch. Dist., Spec. Educ. Opin. No. 749-A, 25 IDELR 1266, (1997). The Commonwealth Court held:

Where, as here, the School District has denied a disabled student a free appropriate public education ... by failing to comply with the mainstreaming requirement, the appropriate remedy is an award of compensatory education to cure the deprivation of the student's rights.

Millersburg, 27 IDELR at 598. The Millersburg award had been based upon a "clear-cut" denial of FAPE, including supplementary aids and services, and the A.G. panel distinguished Millersburg on that basis. In re: The Educational Assignment of A.G., a Student in the Wissahickon School District, Spec. Educ. Op. No. 1455 at 12 (2004). Thus, A.G. does not appear to stand for the proposition advanced by the District, that compensatory education simply is unavailable to remedy a failure to provide inclusion. Rather, reading the above authorities as a whole, this hearing officer concludes that the remedy is available if warranted under the facts of the case.

The hearing officer concludes that the remedy is appropriate in this case, but only for a portion of the time during which the Student was deprived of social interaction in the school setting. The deprivation was indeed "clearcut" (although not coupled with a denial of FAPE such as is described in the Panel decision in Millersville). Here, there was no cognizable effort to provide education "with" nondisabled peers – or any other contact with peers, for that matter. The District was on notice that the Student could be returned gradually into a school setting, and the Parent asked it repeatedly to provide social opportunities. For over two years, this fundamental educational need of the Student was neglected. As discussed above, the record does not support the argument that the District was precluded from all options due to the Student's [medical condition].

Nevertheless, in calculating compensatory education, an equitable remedy, it is necessary to recognize that the chemical sensitivities and [reactions] did disrupt the District's educational programming and planning repeatedly. (FF 83, 84, 89 to 92, 106.) Therefore, in recognition that these transitions would ordinarily require a wholesale change in planning for activities with peers, or prevent such contacts entirely, the hearing officer will deduct from the award those periods in which the Student was in transition from one school to another, or was precluded from the school setting due to his [condition].

Calculation

The IDEIA provides for an explicit limitation period for claims arising thereunder. 20 U.S.C.A. §1415(f)(3)(C) (2005). This limitations period applies to requests for compensatory education. In re: The Educational Assignment of C.H., a

Student in the Souderton Area School District, Spec. Educ. Op. No. 1750 at 9 n. 45 (2006). In this matter, the parties stipulated that the applicable statute of limitations period would extend back to December 8, 2003. (NT 10-1 to 14.) Therefore, compensatory education will be awarded from this date.

The period of compensatory education is the period of deprivation less the period it would have taken for the district to recognize and remedy the deprivation. Here, the District knew or should have known of its obligation as of the ER dated May 2002. (FF 82, 85.) Thus, there is no reduction of compensatory education time for recognition and remedy; the District could have remedied this before the two year look back period commenced. However, as stated above, the repeated disruptions in programming and location of services engendered by the Student's chemical sensitivity and [reactions] made it impossible for the District to comply with its obligations for substantial periods of time. Accordingly, the award will be reduced by the sum of the following periods: 1) four calendar weeks, (NT 2113-8 to 2114-6), for the transition to Second Elementary School in mid January 2004; 2) four calendar weeks for transition back to Elementary School in September 2005; 3) four calendar weeks for transition back to Second Elementary School in November 2005. On sum, a total of twelve calendar weeks will be deducted from the award to account for the need to plan for transitions of location during the period of the award.

As to the number of hours of compensatory education to be awarded, the hearing officer relies upon the recommendations available to the District at the beginning of the relevant time frame, as well as the most recent provisions of the IEP pursuant to resolution after the due process request in this matter. In December 2003 the District had medical recommendations that the Student could have limited time in a school environment. (FF 85.) At that point, one school session of activity, up to one hour, with non-disabled peers in school during his visits to the school would have been a prudent offer. The medical recommendation in February 2004 was for gradual increases in time spent in school, (FF 93), and the award will reflect this. Pursuant to the resolution conference in this matter, the parties agreed to approximately three hours per week of inclusion in "special" classes, two days per week, for the current school year. (FF 108.) Therefore, the award will be one hour per week of inclusion with nondisabled peers for the months in which school was in regular session, from December 8, 2003 to December 8, 2004, less four weeks as explained above; and two hours per week during regular school sessions from December 8, 2004 until January 1, 2006, less eight weeks as explained above.

Assistive Technology

The District's failure to pay for the PECS system deprived the Student of a free appropriate public education. The District will be ordered to reimburse the Parent \$2,699.00, conditional on presentation to the appropriate District office receipts or a reasonable equivalent thereof for purchase of materials and equipment for the creation of PECS materials, dated on or after December 8, 2003. cf. In re: The Educational

Assignment of T.F., a Student in the Pocono Mountain School District, Spec. Educ. Op. No. 1233 at III (compensatory education in form of reimbursement not available because student not eligible.)

ORDER

1. The District shall convene an IEP team meeting specifically to decide the amount of inclusion to be provided to the Student, taking into consideration the mandate of inclusion to the maximum extent possible as balanced with the Student's [medical condition] and safety in a school setting, as well as the scheduling needs of his related services.
2. The hearing officer finds that the District is obligated to provide adequate staff hours to program the Student's current voice output communication device as needed, both now and in the future, as a support for school personnel in the Student's IEP. Similarly, the District is obligated to fabricate the PECS materials so long as the PECS system remains as an assistive technology utilized as a backup to the voice output communication device.
3. The District shall amend the Student's IEP to provide one additional hour of PT services per week as a related service.
4. The District shall provide compensatory education in the form of educational services or activities that are inclusive or in the least restrictive educational environment.
 - a. The number of hours of compensatory education services or activities shall be calculated as the sum of:
 - 1) One hour per week for every week in which the District's elementary schools were in session from December 8, 2003 until December 8, 2004; and
 - 2) Two hours per week for every week in which the District's elementary schools were in session from December 8, 2004 until January 1, 2006; minus
 - 3) Twenty hours.
 - b. The compensatory education ordered in this paragraph four shall not be used in place of services that are offered in the current IEP or any future IEP. The form of the services shall be decided by the Parent, and may include any form that the Parent decides is appropriate for purposes of

educational services or activities that are inclusive or in the least restrictive educational environment. The services may be used after school, on weekends, or during the summer, and may be used after the Student reaches 21 years of age. The services may be used hourly or in blocks of hours. The District has the right to challenge the reasonableness of the hourly cost of the services.

5. The District shall reimburse the Parent \$2,699.00 for her expenditures on PECS materials and on equipment for making PECS materials, conditional on presentation of receipts or a reasonable equivalent thereof for purchase of materials and equipment for the creation of PECS materials, dated on or after December 8, 2003. Receipts or equivalents shall be presented to the appropriate District office.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

August 5, 2006