

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

**HEARING OFFICER DECISION/ORDER**

**CHILD'S NAME:** M.M

(ODR FILE NO. 6251/05-06 KE)

MARS AREA SCHOOL DISTRICT

**Date of Birth:** xx/xx/xx

**Type of Hearing:** CLOSED

**Dates of Hearing:** March 28, 2006; April 12, 2006;  
April 25, 2006; May 10, 2006

**I. PARTIES TO THE HEARING**

**PARENT:**

Parent

**DATE TRANSCRIPT RECEIVED:**

MAY 16, 2006

**PARENT REPRESENTATIVE:**

Lilian Akin, Esquire  
428 Connor Street  
Pittsburgh, PA 15207

**HEARING OFFICER:**

Dorothy J. O'Shea, Ph.D.

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**Signature: Hearing Officer**

**DISTRICT CONTACT:**

Dr. Susan G. Cunnup  
Mars Area School District  
549 Route 228  
Mars, PA 16046

MAY 25, 2006

**Date of Decision/Order**

**DISTRICT REPRESENTATIVE:**

Thomas Breth, Esquire  
Dillon, McCandles, King, Coulter, &  
Graham L.L.P.  
128 West Cunningham Street  
Butler, PA 16001

**IN RE: STUDENT v. MARS AREA SCHOOL DISTRICT  
CASE NO. 6251/05-06 KE**

**II. BACKGROUND INFORMATION**

Student, age 14, a resident of the Mars Area School District (i.e., the District), attended the District's High School as a 9<sup>th</sup> grader during the 2005-2006 school year. In January 2006, Student's mother, Parent, made a due process hearing request. The parties disputed whether or not Student is eligible for special education services and is entitled to compensatory education.

**III. FINDINGS OF FACT**

1. Student, a District resident, was born xx/xx/xx (Hearing Officer Exhibit 3, page 1: HO3, page 1).
2. Student struggled since the 4<sup>th</sup> grade when he started having difficulty with reading and math (Notes of Transcript, pages 348, 349: NT 348, 349).
3. Student had difficulty in school during the 5<sup>th</sup> grade, especially in reading and writing skills (NT 223-234).
4. Student first received tutoring in the 5<sup>th</sup> grade (NT 223-234, 352).
5. Student's family took the following steps to try to help Student: hired tutors, sent him to [a learning center], and bought reading games (NT 271-272).
6. The [learning center] assessment found Student to be below grade level in writing and mathematics (HO 3; Parent's Exhibit 12: P12; P13, P17).
7. Student was never found eligible for special education by the District, but was receiving "*accommodations under a school plan*" (Parent's Exhibit 9, 1-10: P9, 1-10; NT 13-14).
8. On April 8, 2002, a District Educational Assessment included an evaluation to determine Student's levels of performance in reading, mathematics, and written language (P4, pages 1-3).
9. Student received subtests from the *Woodcock Johnson Test of Achievement-Third Edition* (WJ-III), obtaining the following standard scores: READING: *Letter-Word Identification*: 88; *Passage Comprehension*: 94; *Reading Fluency*--; and *Broad Reading Skills*: 73; MATHEMATICS: *Math Calculation*: 117; *Applied Problems*: 99; *Math Fluency* 85: and *Broad Math Skills*: 103; WRITING: *Spelling*: 89; *Writing Samples* 85: *Writing Fluency*: 106; *Written Expression*: 98; and *Broad Written Language*: 93; TOTAL: *Total Achievement*: 83 (P4, page 2).
10. On May 15, 2002, the District issued Student's initial Evaluation Report (ER) (P5, pages 1-8).
11. Student's reason for referral on his May 15, 2002 ER was at the request of his Parents, and at the recommendation "*of the Intervention Planning Team at Elementary School*" (P5, page 1).
12. Student's May 15, 2002 reason for referral named specific concerns regarding Student's acquisition and retention of decoding and phonetic analysis skills, reading comprehension, and mathematics calculation skills. Additional concerns included difficulty focusing attention, short attention span, procrastination type behaviors, incomplete homework, lack of internal motivation, and resistance to academic support (P5, page 1; NT 48).
13. Student's May 15, 2002 ER reported Student's full scale IQ of 107, as based on the *Wechsler Intelligence Scale for Children-Third Edition* (WISC-III) (P5, page 3).
14. Student's May 15, 2002 ER concluded that Student is not a child with a disability, or is a child with a disability but does not need specially designed instruction (P5, page 7).
15. Student's grades from 6<sup>th</sup> through 9<sup>th</sup> grades revealed he struggled in most academic subjects, especially those requiring reading (P11, pages 1-14).

16. Student's Parent kept "school plans" data from November 18, 2002 through November 8, 2005 that demonstrated Student's learning and behavioral problems and need for accommodations (P9, pages 1-10).
17. Student's Parent kept Student's Individual Student School Plans ("IPT") conference reports, specifying Student's learning and behavioral problems frequently observed in the classroom (P10, pages 1-19).
18. In the Spring 2005, Student was diagnosed privately with Attention Deficit Disorder (ADD), as well as Depression by his private physician, Dr. D. (P7, page 1).
19. Student received the prescribed medication, *Strattera*, for his diagnosis of ADD (P2, page 3).
20. Student's grades for the 6th through 8th grades were primarily Cs, Ds, and Fs (P11).
21. The Parent kept copies of minutes for meetings held May 11, 2005, September 8, 2005, and January 4, 2006. These minutes summarized the family's involvement with school personnel (P8, pages 1-12).
22. Student's scores were below basic in *Reading, Mathematics, and Writing* on the *Pennsylvania System of State Assessment* in 2005 (P13, pages 1-3).
23. Student had a problem with drugs and alcohol in the 8<sup>th</sup> grade during the 2004-2005 school year (NT 360-361).
24. Student attended outpatient treatment at [a rehabilitation center]. (P2, page 3).
25. Student's family participated in Student's treatment at [the rehabilitation center]. (NT 361-362).
26. Student's family did not see any signs of current drug usage (NT 362-364).
27. Student was hospitalized for psychiatric reasons approximately a year ago (NT 368).
28. During the 2005-2006 school year, Student refused to attend the resource room and did not bring his homework. The District punished Student for that (NT 81-82).
29. On September 2, 2005, the District provided Student's second ER at the request of Student's mother and grandparents (Parent Exhibit 2: P2).
30. Student's September 2, 2005 ER reason for referral was "*due to concerns regarding his inconsistent academic performance in middle school and significant concerns regarding his emotional and behavioral issues*" (P2, page 2).
31. Student stated he was not using drugs or alcohol at the time of his ER report in September 2005 and he was receiving counseling with a family counselor in private practice, once a week (P2, page 3).
32. Student's September 2, 2005 ER did not contain classroom based assessments and observations (P2, page 4).
33. Student's September 2, 2005 ER included an interpretation of Student's scores on the *California Verbal Learning Test-Children's Version*, administered by the District's School Psychologist, Mr. S. Mr. S is employed by the Intermediate Unit (P2, page 4).
34. Student's September 2, 2005 ER included an interpretation of Student's scores on the *Stanford Binet*, administered by the District's School Psychologist. P2, pages 6-7; NT 75).
35. Student's September 2, 2005 ER reported his Full Scale IQ standard score of 99. There was an onset of depression, and Student was starting to show a decrease in cognitive processing abilities (P2, pages 6-7; NT 75).
36. Student's September 2, 2005 ER included an interpretation of Student's scores on the *WLAT-II*, administered by the District's School Psychologist (P2, pages 7-8).
37. Student's September 2, 2005 ER included an interpretation of Student's "*Individual Academic Achievement Assessment-Ability/Achievement Discrepancy Analysis*," administered by the District's School Psychologist (P2, pages 7-8).

38. Student's September 2, 2005 ER included an interpretation of Student's "*Achenbach Child Behavior Checklist-Youth Self-Report*," administered by the District's School Psychologist (P2, pages 9-10).
39. Student's September 2, 2005 ER included an interpretation of Student's "*Behavior Assessment System For Children*," administered by the District's School Psychologist (P2, pages 9-13)
40. Student's September 2, 2005 ER included an interpretation of Student's "*Differential Test of Conduct and Emotional Problems*," administered by the District's School Psychologist (P2, pages 14).
41. Student's September 2, 2005 ER stated, Student's "*behaviors are socially maladjusted conduct-related behaviors*" (P2, page 13, 15).
42. Student's September 2, 2005 ER concluded, "*Student does not currently meet the eligibility or need requirements necessary for identification as a student with a specific learning disability, other health impairment, or serious emotional disturbance*" (P2, page 16).
43. Student's IPT reports named Student's academic and behavioral difficulties during his 9<sup>th</sup> grade, the 2005-2006 school year. Student was reported to lose focus, have poor note taking and organizational skills, and was easily distracted (P9, pages 1-10).
44. Student's teachers reported that Student would lay his head on his desk and not even try; he was either inattentive, lacked in class participation, not focused, or lethargic ( P12, page1; P14, pages 1-11; NT 69-70).
45. Student was consistently not doing his homework, not completing assignments, not motivated, reporting he doesn't like school, and not working up to potential (P 10, pages 1-19; P11, pages 1-4; P12, page 1).
46. Student's Parent could access Students' grades and teacher notes via a computer access program entitled "*Classroll.com*" (P14).
47. The District and Parent kept copies of Student's writing samples (School District Exhibit 19, pages 1-10: SD 19, 1-10; P17, pages 1-16).
48. Ms. E, Intermediate Unit Assistive Technology Consultant, evaluated Student January 6 and 10, 2006 (NT 485)
49. When Ms. E observed Student in class, she noted that he stumbled over words (NT 488-489).
50. On January 16, 2006, Ms. E wrote Student's *Assistive Technology* evaluation (P16).
51. Student's January 16, 2006 *Assistive Technology* evaluation did not have a date a copy of the report was provided to the parent, and did not have a signature page (P 16, page 6).
52. Student's reason for referral on the January 16, 2006 *Assistive Technology* evaluation was stated, "*according to the district, the referral was made by parent request as part of a due process settlement agreement*" (P16, page 1).
53. Student's *Summary of Findings/Interpretation of Assessment Results and Conclusions* on his January 16, 2006 *Assistive Technology* evaluation stated, Student "*...demonstrates difficulty with organization, spelling and grammatical structures....demonstrates some difficulty in sounding out multisyllabic words and new vocabulary...difficulty with organization, note taking and task completion....does not produce cursive writing...does not have consistent summary and organizational skills...difficulty with decoding and defining words in context...difficulty in reading cursive; demonstrates a preference for 12-14 point font; has difficulty staying engaged in learning*" (P16, pages 4-5; NT 492, 497).
54. Ms. E recommended direct instruction in summary and organizational skills (NT 493)
55. Student's mother made a January 18, 2006 due process hearing request (HO 3).
56. On January 24, 2006, Ms. I, an Intermediate Unit therapist, wrote Student's *Occupational Therapy* evaluation (P15).
57. Student's reason for referral on the January 24, 2006 *Occupational Therapy* evaluation was stated, "*in order to assess his ability to utilize a reading pen in the school setting*" (P 15, pages 1-2).

58. Student's *Summary of Findings/Interpretation of Assessment Results* on his January 24, 2006 Occupational Therapy evaluation stated, "*Student demonstrates the functional ability to accurately utilize a reading pen in the school setting*" (P15, pages 1-2).
59. Student's January 24, 2006 *Occupational Therapy* evaluation did not state conclusions, did not have a date a copy of the report was provided to the parent, and did not have a signature page (P15, page 2).
60. Ms. I said she completed the *Occupational Therapy* evaluation of Student in January 2006, expecting her report to be combined with other reports and shared with the family (NT 470, 474-475, 482).
61. The District did not share the January 2006 *Assistive Technology* and *Occupational Therapy* evaluations with the family (P 15, P 16; NT 267, 382-383).
62. The District never convened an MDE Team nor wrote an updated, integrated ER, concerning the January 2006 *Assistive Technology* and *Occupational Therapy* evaluations (P 15, P 16; NT 267, 382-383).
63. On January 26, 2006, the Office for Dispute Resolution assigned the Hearing Officer (HO1, page 1).
64. On January 27, 2006, the Hearing Officer wrote a letter to the parties, designating the local education agency (LEA) and parent responsibilities and naming the due process hearing date: March 9th, 2006 (HO1, page 1).
65. On January 30th, 2006, the District's [counsel] responded to the Parent's January 18, 2006 request for due process, naming a resolution meeting (HO3, pages 1-6).
66. During the February 8, 2006 resolution meeting, the resolution attempt was unsuccessful (HO 3, pages 1-6).
67. On February 10, 2006, the Hearing Officer held a three-way pre-hearing telephone conference with the Parent's attorney and the District's attorney (HO2, pages 1-6).
68. On February 10, 2006, the Parent requested a continuance because neither of the Parent's expert witnesses was available for the March 9th, 2006 hearing. The District did not object to the Parent's request for a continuance (HO2, page 2).
69. On February 14th, 2006, the Hearing Officer cancelled the March 9, 2006 hearing, rescheduling to three mutually agreed-upon dates of March 28th, 2006; March 31st, 2006; and April 5th, 2006 (HO2, pages 1-6).
70. On March 28, 2006, the parties disputed whether Student should be compelled to attend the hearing as a District witness (HO4, page 1; NT 28-29).
71. On March 28, 2006, the Parent opined that it is inappropriate for Student to be present during this hearing and to be a party to this hearing. The Parent objected to the District calling Student as a witness (HO4, page 1; NT 28-29).
72. On March 28, 2006, the District contended that because the Parent initiated the due process proceedings, the District has the right to call witnesses in order to defend the litigation before the Hearing Officer (HO4, page 1; NT 28-29).
73. On March 28, 2006, the parties agreed to submit legal briefs by April 5, 2006 concerning compelling Student's attendance. The District requested Student's attendance via a subpoena (HO4, page 1).
74. On March 28, 2006, the District requested an immediate continuance until the Hearing Officer addressed the legal question. However, the Parent wanted to proceed because one of her expert witnesses, Dr. C, was available to testify only that day (NT 32-33).
75. On March 28, 2006, the Hearing Officer refused to grant the District's request for an immediate continuance and directed both sides to question Dr. C (HO 4, page 1; NT 33).

76. Dr. C, certified school psychologist, completed an evaluation on Student to determine whether medication would help Student. The purpose of the evaluation was to provide a physician with documentation to prescribe medication for Student (NT 40-42).
77. On March 28, 2006, Dr. C testified he reviewed Student's psycho-educational records when Student was in 5th grade and the evaluation when he was in 9th grade, and then more recently, the assistive technology evaluation that was done. He reviewed Student's grades, parental reports, teachers' daily observations on Student's behaviors, and school plan documents (NT 43-44).
78. Dr. C's report is based on his review of others' work, including Dr. D (Student's physician), Mr. S's psycho-educational evaluation of Student in 5th grade, Mr. S's psycho-educational evaluation of Student in 9th grade, a third evaluation by Dr. D, the assistive technology document, information provided by the grandparents in terms of whether or not the interventions were working, and whether or not Student was complying with the resource room (NT 115-117).
79. Dr. C did the record review for purposes of testifying at this hearing (NT 43-44, 110-114).
80. Dr. C wrote an evaluation report on Student in March 2006 (P22).
81. Dr. C saw Student first, for the initial evaluation, and then for a follow-up meeting when the report was prepared and given to the family so that they could take it to the pediatrician for medication (NT 87-88).
82. During the follow-up meeting, held approximately two weeks after Dr. C's evaluation of Student, Dr. C wanted to talk with Student individually before sharing the results with his family (NT 89-90).
83. Student was diagnosed by Dr. C and Dr. D with ADD and depression (P7, P2; NT 355, 356, 359, 374).
84. Dr. C testified he evaluated Student, but not for educational purposes (NT at 41).
85. On April 5, 2006 the Parent's attorney and the District's attorney submitted legal briefs on whether the Hearing Officer should compel the attendance of Student, a minor child (HO 5, pages 3-70).
86. On April 10, 2006, the Hearing Officer refused to issue a subpoena compelling Student's hearing attendance. She ordered the hearing to continue as scheduled for April 12, 2006 and April 13, 2006 (HO 5, page 1-2).
87. On April 11, 2006, the Parent's attorney requested another hearing continuance due to the Parent's absence (NT 318).
88. The hearing officer did not grant the continuance (NT 318-324).
89. On April 12, 2006, Student's grandmother, [redacted], attended and was available to testify. Student's grandmother participated in virtually all educational meetings with Student's mother and had been involved actively in the educational dispute, sitting at the Parent's side during most hearing sessions. Both grandparents had heavy involvement in Student's education and were active in the January 18, 2006 hearing request (HO 3, page 1).
90. On April 12, 2006, the hearing continued with Student's grandmother called to testify on behalf of the Parent (NT 237).
91. On April 12, 2006, Student's grandmother testified that Student would get frustrated when corrected about his reading (NT 237, 302).
92. Student's poor reading affected his self-esteem (NT 238).
93. Student did not have confidence to do his homework (NT 241).
94. Student's family monitored his behaviors for relapses and did not see any signs of such (NT 246).
95. Student has not had any positive drug tests since his treatment ended (NT 246).

96. No one from the District approached the family with concerns about current drug use (NT 255).
97. On April 12, 2006, the Hearing Officer cancelled the hearing scheduled for April 13, 2006 and continued to the agreed upon date, April 25, 2006. (HO 6, pages 1-5; NT 318-340).
98. On April 25, 2006, Student's mother stated, Student becomes very frustrated and disinterested when doing his homework (NT 350).
99. Student struggles with reading, and does not always fully comprehend what he is reading as he reads too fast and skips words (NT 351).
100. Student currently takes the prescribed medications, *Concerta* and *Fluvoxamine* (NT 359).
101. Almost all of Student's teachers reported that attention difficulties interfered with Student's ability to learn (P8, pages 7, 10; P9, pages 1-10; P10, pages 1-19).
102. On April 25, 2006, Mr. B, Student's 8th grade Social Studies teacher, testified that Student had difficulty doing any reading outside of the classroom (NT 512).
103. Mr. B had to frequently tap Student on the shoulders to wake him up (NT 509, 513, 523-4).
104. Student failed Mr. B's class (NT 524).
105. On April 25, 2006, Ms. D, Student's 8th grade Science teacher, testified that Student would not complete homework and Student would put his head down in her class (NT 533, 538-539, 542).
106. On April 25, 2006, Mr. C, Student's 9th grade Social Studies teacher, testified that Student is currently failing his class (NT 563).
107. Student was not completing homework (NT 564).
108. Student had difficulty with respect to memory and retaining information/facts (NT 572-573).
109. Student refused to bring his work to the Resource Room (NT 579).
110. Student had difficulty with attention in Mr. C's class (NT 583)
111. On April 25, 2006, Ms. K, Student's 9th grade English teacher, testified that there were times when Student was lethargic in class and would put his head down (NT 594).
112. Student's grades for the 9th grade year up to the time of the hearing were Cs, Ds, and Fs (P11, SD 11).

#### IV. ISSUES

The parties agreed to the hearing issues on the record (Notes of Transcript, page 26: NT 26):

1. Is Student eligible for special education as a student with a Specific Learning Disability, Emotional Disturbance, and/or an Other Health Impairment?
2. If eligible, is Student entitled to compensatory education back to May of 2002?

The Hearing Officer granted continuances on the record (HO 1, HO2, HO 4, HO 6). (34 C.F.R. §300.511(c)). Student's hearing initiated March 28, 2006 and adjourned May 10, 2006.

#### V. DISCUSSION AND CONCLUSIONS OF LAW

##### *Burden of Proof and Persuasion*

The District cited to the burden of proof and persuasion in Student's due process hearing. The *Individuals with Disabilities Education Improvement Act of 2004* (i.e., P.L. 108-446, referred to hereafter as the "IDEA 2004") required that students with disabilities be provided with a free, appropriate public education (FAPE). Currently, neither the IDEA mandates and {existing} regulations, nor the Pennsylvania Code, specifically address the issue of which party bears the burden of proof in administrative hearings. (See 20 U.S.C. §§1401-1482; 34 C.F.R., Part 300; 22 Pennsylvania Code at Chapter 14.)

However, the District cited to *Schaffer v. Weast*. Under *Schaffer v. Weast*, the *burden of persuasion* is at issue, per agreement of the parties. *Schaffer v. Weast*, 126 S. Ct. 528; 163 L. Ed. 2d 387; 2005 U.S. LEXIS 8554; 74 U.S.L.W. 4009 (2005). In the instant case, because the parties agreed that the *burden of production* (i.e., going forward with the evidence) was placed on Student's mother as she had requested the hearing, Student's mother held the burden of presenting her case-in chief first to establish that Student is an eligible student with a disability and has been denied a FAPE.

The *burden of persuasion* in an administrative proceeding, which comes into play when the evidence is in "*equipoise*," rests with the party seeking relief. Although this Hearing Officer, upon analysis, did not believe that the evidence is closely balanced, (and therefore the burden of persuasion is not at issue in Student's case), in the instant matter, Student's Parent demonstrated through evidence entered into the record that Student has been denied a FAPE. Educational documents and testimony provided by both the Parent and the District were revealing, speaking to both procedural and substantive flaws. Based on this Hearing Officer's authority to assess the credibility of witnesses and weigh evidence (See *Carlisle Area School District v. Scott P.*, 62 F.3d 520,524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996)), the testimony and documents supporting the Parent's position were more credible and more than supported the Parent's burden of proof.

The record, taken as a whole, supports the Parent's claim that Student was denied a FAPE and did not receive procedural and substantive protections as afforded under the IDEA. The District neglected both its evaluation and Child Find obligations.

#### **ISSUE 1: IS STUDENT ELIGIBLE FOR SPECIAL EDUCATION AS A STUDENT WITH A SPECIFIC LEARNING DISABILITY, EMOTIONAL DISTURBANCE, AND/OR AN OTHER HEALTH IMPAIRMENT?**

The *Individuals with Disabilities Education Act Amendments of 1997* (P.L. 105-17, hereafter referred to as the "IDEA 1997") and the IDEA 2004 both required that the eligibility for special education and related services be determined by a "*team of qualified professionals and the child's parent.*" Section (614(b)(4)(A). A team approach also has been underscored in Pennsylvania law regarding decisions to determine eligibility for special education and related services. According to 22 Pennsylvania Code at Chapter 14, a multidisciplinary evaluation (MDE) must be conducted by a



multidisciplinary team, on the basis of the student's needs. As explained at 22 Pennsylvania Code, §14.25, the MDE team shall:

*“(j) prepare a comprehensive written report which brings together all of the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths based upon present performance levels, and which includes an interpretation of assessment results and information on observations in the classroom and other settings. The report shall make recommendations as to whether the student is exceptional; shall indicate the bases for those recommendations; and shall provide recommendations for the educational program of the student, regardless of whether the student is found to be exceptional.”*

Both federal and State laws specify that the District must include a variety of assessment tools and strategies to gather relevant functional and developmental information that may assist the team in making the critical determinations. Accordingly, Student's resulting ER must indicate the use of tests and evaluation procedures that are individually selected to assess his specific areas of educational need and ability (Section 614(b)(2); 22 Pa. Code § 14.25).

Student's record review revealed an attempt to single out selected assessment results and interpretations in the ERs presented to his Parent, while mentioning, but not attaching other relevant documents without scores, interpretation and explanation. This purposeful singling out of selected assessments infringed on Student's right to an appropriate, full and individual initial evaluation. The evidence was overwhelming that the District misplaced or did not provide relevant ER attachments. Omitting relevant documents and other evidence that could have supplied insights into Student's needs (and may have been contrary to the selected reporting highlighted in the ERs presented to Student's Parent), was highly disturbing.

THE FOLLOWING ARE RELEVANT BASED ON THE FACTUAL EVIDENCE OF RECORD:

**A. STUDENT'S MAY 15, 2002 EVALUATION REPORT DID NOT REFLECT A TEAM EFFORT AND CAME TO AN INCORRECT CONCLUSION**

1. **The May 2002 ER ignored the reasons for referral.** Student's Parent and his Intervention Team noted both learning and behavioral problems expressed as reasons for referral (P5, page 1). However, the May 15, 2002 ER did not evaluate Student's behavior at all, including expressed concerns related to difficulty focusing attention, short attention span, procrastination type behaviors, verbal comments, incomplete homework, lack of internal motivation, and resistance to academic support (P5, pages 1-8). Student displayed attention and behavioral difficulties that interfered with Student's educational progress. It was unfortunate that Student's behavior was not given full attention (NT 768-769).

2. **Relevant documents were not attached and could not be verified.** Student's May 15, 2002 ER stated Student received classroom based assessments and observations, however, documents titled: *Classroom Observation form, Classroom Observation of Student Performance form, Referral for IPT team form-Mars Area School District, IPT team Summary form*, and so forth, were not attached to Student's May 15, 2002 ER (P5, page 2). When questioned where the data were to substantiate that the District actually completed the classroom based assessments and observations (and other evaluations), the District's school psychologist could not locate them and did not know what happened to them (NT 772-775, 781, 785, 797,800-802,803, 808, 811 815).

3. **Relevant scores documenting Student's needs were missing.** The IDEA 1997 defined criteria for determining the existence of a specific learning disability. 34 CFR §300.541. However, while ignoring relevant data from others, Student's May 15, 2002 ER provided a summary of

findings and interpreted scores from one primary source: the District's school psychologist. Results reported, interpreted, and explained were from the administration by the District's school psychologist of the *Visual-Motor Integration/Perceptual Analysis Skills Assessment* (P5, pages 2-3); the *WISC-III* (P5, pages 3-4); and the *Key Math-Revised* (pages 4-5). Although Student's May 15, 2002 ER also cited to Student's receipt of other assessments pertaining to his April 8, 2002 *Speech and Language* needs (P5, page 3) and his *Reading, Mathematics, and Writing* needs as per the Educational Diagnostician's April 8, 2002 WJ-III administration (P5, page 4-5), scores by these other "team members" were not provided, not interpreted, and not explained in Student's ER.

4. **Relevant scores revealed Student's severe discrepancy between ability and achievement.** The evaluation completed in April 2002 by the District's Educational Diagnostician indicated achievement scores that were severely discrepant with Student's IQ. Scores for *Broad Reading, Math Fluency, Writing Samples* and *Total Achievement* were 20 points or more discrepant from Student's IQ. Scores for *Letter-Word Identification* and *Spelling* were borderline discrepant (P4, page 2; P5, page 3). Student's *Speech and Language* evaluation completed in April 2002 recommended the development of *Phonological Awareness* skills (P6). These results could not be considered by Student's evaluation team when making Student's eligibility determination, because relevant scores and recommendations were neither provided, interpreted, nor explained in Student's May 15, 2002 ER.

5. **The May 2002 ER came to the wrong conclusion.** Despite his severe discrepancy between his reported full scale IQ of 107 and his standard achievement scores (P5, page 3; P4, page 2), Student's ER team concluded, "*these results indicated that no significant differences...was (SIC) observed between his actual achievement test scores and the levels of achievement expected for a student of his ability level in any of the areas assessed in this evaluation*" (P5, page 6).

6. **All relevant data were not included in the ER in order for Student's "team" to make an appropriate decision.** The District did not provide a fair, complete and multidisciplinary ER (P5, pages 1-7), as based on Student's needs (22 PA Code § 14.53 (f)). Only testing completed by the District's school psychologist received reporting, explanation and interpretation in Student's May 15, 2002 ER (P5, pages 1-8). The ER concluding that Student was ineligible for and did not need special education was flawed (P5, page 7).

## **B. STUDENT'S SEPTEMBER 2, 2005 EVALUATION REPORT DID NOT REFLECT A TEAM EFFORT AND CAME TO AN INCORRECT CONCLUSION**

1. **The May 2, 2005 ER ignored the reasons for referral.** Student again was referred for a "MDE" as stated under the reason for referral. Student's Parent and grandparents expressed concerns regarding Student's "*inconsistent academic performance in middle school and significant concerns regarding his emotional and behavioral issues*" (P2, page 2). Even though the District's two experts testified that the September 2005 ER was complete, the September 2005 ER did not include classroom observations. As found in the May 2002 ER, Student's September 2, 2005 ER also included references to documents that were not attached and the contents of which could not be verified. The scores reported, interpreted, and explained, for the most part, relied heavily on those administered by the District's school psychologist (P2, pages 1-17).

2. **Relevant scores documenting Student's needs were missing.** Student's September 2, 2005 ER included reporting, interpretation, and explanation of Student's general cognitive-intellectual functioning on the *Stanford Binet*, administered by the District's school psychologist. Student obtained a Full Scale IQ standard score of 99 (P2, pages 6-7). Student's September 2, 2005 ER named achievement tests administered (i.e., the 8/1/05 *Woodcock Diagnostic Reading Battery*; the 8/1/05 *Woodcock-Johnson Tests of Achievement-Third Edition*; the 8/1/05 *Key-Math Revised*; and the 6-

29-05 and 7-6-05 *Wechsler Individual Achievement Test-Second Edition: WIAT II*). The District's school psychologist administered the 6-29-05 and 7-6-05 WIAT II and only his findings received reporting, explanation and interpretation in the September 2, 2005 ER.

3. **Relevant documents were not attached and could not be verified.** The District did not attach other relevant documents, such as those of current classroom based assessments and observations by teachers and related service providers (P2, page 4). The District did not attach the report of the District's Educational Diagnostician (P2, pages 6-7).

4. **Eligibility determination steps were missing.** PL 108-446 added specific requirements regarding the determination of a specific learning disability. In determining whether a child has a specific learning disability, an LEA "shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability...However, the LEA may use a response to scientific, research-based intervention" (614(b)(6)(A)). While the District was not required to use a discrepancy model, the District provided no evidence of providing Student with any kind of scientifically based instruction (P 2, pages 1-17; NT 64). See §1401 (26). [614(b)(6)].

5. **Relevant scores revealed Student's severe discrepancy between ability and achievement.** On a close examination of the tests administered by the District's Educational Diagnostician, Student received a WJ-III standard score of "58" under *Written Samples*. Student also received a standard score of 83 under the *Key-Math Revised, Operations Area*. As such, Student displayed a severe discrepancy between his reported IQ score of 99 and his WJ-III *Written Samples* standard score of "58." He further displayed a discrepancy when comparing his IQ score and his mathematics *Operations Area* (SD 4, pages 3, 4; P2, pages 5-6).

6. **Testing corroborated Student's previous noted problems in learning and behavior.** Student's September 2, 2005 ER discrepancies were consistent with a [learning center] assessment that found Student to be below grade level in writing and mathematics (HO 3, P13, P17), as well as results from the *Pennsylvania System of State Assessment* in 2005 that reported Student's "below basic" scores in *Reading, Math, and Writing* (P13, pages 1-3).

7. **Student's grades and teacher reports documented Student's learning needs and effects on classroom performance.** Student received Cs, Ds and Fs from 6<sup>th</sup> grade through 8<sup>th</sup> grade (P11). Currently his grades are similar. Teacher comments from *Clasroll.com* indicated that his poor grades are in part due to failing to do work (P14). Examples of Student's writing attest to his poor grammar and inadequate and illegible written expression skills (SD 19, P17). The testimony of District personnel (NT 509, 512, 513, 523-524; 533, 537, 538, 563, 564, 572-573, 583, 594) and written documents (P10, P11, P12), found that teachers often identified disorganization, impulsivity, and attention problems as impediments to Student's learning and social behavior. The District ER chose to downplay this information.

8. **Data highlighted Student's specific learning disabilities.** Student's reading, mathematics, and writing difficulties; teachers' documented effects of Student's learning and behavioral difficulties on his educational progress; family concerns noting difficulties with homework completion, motivation, and attention to tasks; as well as past test scores (i.e., his reported IQ from 2002 District testing revealing Student's 107 full scale WISC-III score, and his standard scores in *Broad Reading, Math Fluency, Writing Samples, and Total Achievement* (P4, page 2)); and Student's most recent test scores (a severe discrepancy between Student's Stanford Binet IQ score of 99 and his WJ-III *Written Samples* "58" standard score), support a conclusion that Student displays specific learning disabilities in the areas of reading, mathematics, and written expression (P5, page 3).

9. **Student's ADD demonstrated it was comorbid with his specific learning disabilities.** Pennsylvania regulations define *Other Health Impairments*. The term means: "having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that- (i) Is due to chronic or acute health problems (including ...attention deficit

*disorder or attention deficit hyperactivity disorder...*) and (ii) *Adversely affects a child's educational performance*" 22 Pennsylvania Code §14. 101 (9). The District did not provide evidence that it considered Student as an eligible student under the IDEA 2004 classification of "*Other Health Impairment*." While the District cited to reports that Student received the medical diagnosis of ADD and was taking medication for his ADD (P7), and many teachers noted concern with Student's attention to task, behaviors, and motivation (P9, P11, P12, P14), the District's September 2, 2005 ER ignored an important consideration to Student's eligibility determination. As reported in a recent Appeal Panel decision, the findings of behavioral and social imperceptions appear to be common among a large portion of children with learning disabilities, displaying attention and motivational difficulties. ADD is comorbid with learning disabilities for a large portion of children. (See, *IN RE The Educational Assignment of N.S., A Student In the Mars Area School District*: Special Education Opinion No. 1717, April 14, 2006.)

10. **Student did not display the eligibility criteria necessary to receive an "Emotional Disturbance" classification.** The definition at §300.7(c)(4) of an Emotional Disturbance is "*a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) Inappropriate types of behavior or feelings under normal circumstances; (D) A general pervasive mood of unhappiness or depression; (E) A tendency to develop physical symptoms or fears associated with personal or school problems. ... The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.*" In the Spring of 2005 when he was in the 8<sup>th</sup> grade, Student was diagnosed with depression by both Dr. C and Dr. D (P7, P 21).

The District underscored Student's drug and alcohol experiences. However, the District did not provide any proof that Student's school behavior and poor educational performance were due to drug use or abuse. Teacher reports for Student's 8th and 9th grade years supported the conclusion that attention, distractibility and academic learning needs were interfering with his ability to learn (SD 9, SD 11, P9, P10, P11, P12). School Plans written by the District (P9) supported the conclusion that lack of attention, distractibility, motivation, and organizational skills had an impact on Student's learning. Given his diagnoses and the behaviors that the teachers were seeing, however, Student's behaviors were viewed by the District as "*socially maladjusted conduct-related behaviors*" (P2, page 13, 15). The District questioned Student's diagnosis of depression, but presented no evidence to the contrary it doesn't exist. The District had the ability to have Student evaluated by an outside medical doctor or psychiatrist had they wanted to, but did not. Student did display depression, however, Student's depression appeared to be situational. Student did not display depression frequently, over time, and intensely across settings. Student developed appropriate peer relations and had friends in school. He did activities with those friends and he appeared to be well liked (NT 180-181). He developed a relationship with his teachers (NT 181). He demonstrated a very close relationship with his grandparents. They worked with him, including on his homework. Student demonstrated compliance to them (NT 181-182). Accordingly, Student did not display the eligibility criteria necessary to receive an "Emotional Disturbance" classification.

11. **The District questioned Student's diagnosis, yet provided him services based upon his diagnosis and related needs.** The District is required under IDEA to address those needs that interfere with Student's education. The District did not provide sufficient evidence that Student's alleged drug addiction and depression interfered with his education. Despite facing other obstacles in the past few years, Student was not functioning at the achievement level that would be expected given his ability. Student's Individual Student School Plans indicated that Student received services due to his ADD diagnoses, as well as his difficulty with organizational and planning skills (P9). This school plan indicated the impact on Student's learning: "*loses/forgets homework assignments, loses focus,*

*poor note taking, unable to prioritize and organize notes, and easily distracted.*” It was disingenuous of the District to question Student’s diagnosis, yet provide him services based upon his diagnosis and related needs. It also was disingenuous to say that Student’s ADD was not having an impact on Student’s learning when it is spelled out how Student’s ADD was having an impact on learning, as per his Individual Student School Plan. *Id.* The District’s position centered on Student doing poorly in school because he did not value school and did not care. Yet, a thorough review of teacher reports found that teachers indicated he had difficulty maintaining attention and was easily distracted (P10). Out of 7 teacher reports included in P10, 5 teachers named problems with attention, 3 named distractibility, and 3 named written expression. Student’s attention issues and poor academic skills interfered with his ability to learn.

12. **Student meets the eligibility requirements under state and federal law.** To be eligible under Chapter 14/IDEA, Student must demonstrate two basic components for eligibility – 1) whether, he meets one or more of the specified disability classifications, and 2) “by reason thereof,” needs special education, including any necessary related services. Student is eligible for special education as a student with specific learning disabilities. Student should have been identified as a child in need of special education by the beginning of the 2003-2004 school year. The District’s own evaluations found deficits in the areas of reading, mathematics, and written expression (P2, P4, SD 4).

The major determinative element in this case is the second criterion, and the proof is preponderant that, regardless of a classification of a Specific Learning Disability (or Other Health Impairment), Student did not perform successfully in school academically and behaviorally. The evidence consisted not only of grades, but also of teachers’ reports, school plans, family and specialists’ observations, and test scores.

The District cited to a recent court decision in its own jurisdiction, that is, *Mars Area School Dist. v. Laurie L.*, 827 A.2d 1249 (Pa. Commw.Ct. 2003). In the *Laurie L.* case, a District student with frequent behavior problems was diagnosed with ADHD, emotional disturbance and other health impairments during two different evaluations, and received special education under an IEP that included a behavior intervention plan. Later, the student was involved in a drug incident and was placed in an alternative school. Evaluations there revealed that the student’s behavior problems were more related to social maladjustment than emotional disturbance. As a result, the IEP team found he had been improperly identified as eligible for special education. His mother requested a due process hearing, at which the hearing officer found that the school had performed a more thorough evaluation of the student than the parents’ expert, and that the student was not eligible for special education. The Appeal Panel reversed, but the Commonwealth Court reinstated the hearing officer’s decision. The evidence supported a finding that the student was socially maladjusted, not emotionally disturbed.

In Student’s case, this Hearing Officer constructed and considered the facts, gave due weight to the evidence, and interpreted the important testimony/exhibits. This Hearing Officer did not see the relevance of the District’s citing to the *Laurie L.*, case. The District performed inappropriate evaluations of Student and provided inconsistent and superficial testimony concerning Student’s need for special education and related services. The documents and testimony as presented into evidence refute the District’s underlying assertion that Student’s behaviors are “*socially maladjusted conduct-related behaviors?*” (P2, page 13, 15).

### **C. THE DISTRICT DID NOT UPDATE STUDENT’S ER.**

1. **The District failed to properly include the Parents in the *Occupational Therapy* evaluation and the *Assistive Technology* evaluation.** Intermediate Unit personnel completed

Student's January 16, 2006 *Assistive Technology* evaluation and January 24, 2006 *Occupational Therapy* evaluation. The District provided neither report to the Parent; neither report had a signature page (P15, page 2).

2. **The District did not integrate Student's Occupational Therapy and Assistive Technology reports into a multidisciplinary team ER.** The District did not include the results, interpretation, and explanation of these assessments concerning Student's needs because the District did not update and integrate these reports once received into a "MDE" report, as required by " (614(b)(4)(A). The District ignored both the January 16, 2006 *Assistive Technology* evaluation and January 24, 2006 *Occupational Therapy* evaluation.

3. **These evaluations were completed as part of a settlement agreement (P16, page 1; HO 3, page 1), but that does not change the fact that they were educational assessments completed by the District.** As such, they should have been included in an updated evaluation report and input obtained from the Parent. Neither happened. In fact, these reports were not even shared with the Parent (P 15, P 16; NT 267, 382-383).

Section 615(f)(3)(E) states:

*(I) IN GENERAL. – Subject to clause (II) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.*

*(II) PROCEDURAL ISSUES. —In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:*

*(I) Impeded the child's right to a free appropriate public education;*

*(II) Significantly impeded parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or*

*(III) caused a deprivation of educational benefit.*

By not providing Student's Parent the opportunity to obtain multidisciplinary ERs based on Student's needs (i.e., Student's May 2002 ER, September 2005 ER, and January 2006 Occupational Therapy and Assistive Technology reports), the District impeded Student's right to a FAPE and significantly impeded Student's Parent in the decision making process regarding the provision of a FAPE to Student. The District's conduct was not only procedurally flawed; it was substantively flawed in that an incorrect eligibility determination, made as the result of a fatally flawed evaluation process, absolutely resulted in a denial of FAPE.

After reviewing and weighing the evidence presented on behalf of the Parent, in comparison to the evidence provided on behalf of the District, the Parent has met her burden of proof. Student qualifies as an eligible student and in need of special education. Student meets eligibility as a student with Specific Learning Disabilities. His ADD is comorbid with his Specific Learning Disabilities. Based upon the above, Student is entitled to compensatory education.

## **ISSUE 2: IS STUDENT ENTITLED TO COMPENSATORY EDUCATION BACK TO MAY OF 2002?**

The District cited to *Montour School District v. S.T.*, arguing that absent mitigating circumstances, the Parent's claim for Student's compensatory education must be limited to one year prior to the request for due process. See 805 A.2d 29 (Pa. Cmmw. 2002). However, the *Montour* decision carries no weight in Student's proceedings. The *Montour* statute of limitations applies to hearings filed before July 1, 2005. The IDEA 2004 period of two years for hearings filed after July 1, 2005 holds jurisdiction in Student's case because Student's mother filed for due process January 18, 2006. In January 2006, Student was a "thought to be" eligible student with all IDEA procedural protections afforded to him (HO 3, page 1). Furthermore, the two-year limitations period, effective

July 1, 2005 as a result of the 2004 Amendments to the IDEA, has an exception to timelines. 20 U.S.C.A. §1415(f)(3)(C) (2005).

#### *Child Find*

The District has an affirmative obligation to locate, identify, and evaluate all children thought to be disabled who reside in the District. 22 Pa Code. 14. 121 (a). *Justin G., Opinion No. 1292* (SEA PA 2002). Child Find provisions under the IDEA and 22 Pennsylvania Code at Chapter 14 require that the state must assure:

"...*All children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*" 20 U.S.C. 1412(a)(3). See also 34 CFR § 300.125. 22 Pennsylvania Code §14.121 (b), (c).

THE FOLLOWING ARE RELEVANT BASED ON THE FACTUAL EVIDENCE OF RECORD:

### **A. IN STUDENT'S SPECIAL EDUCATION DUE PROCESS HEARING, A REVIEW OF THE RECORD OF EVIDENCE REVEALS THAT THE DISTRICT DID NOT MEET ITS CHILD FIND OBLIGATIONS, PURSUANT TO 20 U.S.C. 1412(A)(3); 34 CFR § 300.125; AND 22 PENNSYLVANIA CODE §14.121 (B), (C).**

1) **The District Had An Obligation To Perform A Full And Complete Evaluation On Student To Determine Whether He Is A "Child With A Disability" And To Determine His Educational Needs.** 34 C.F.R. §300.320. There are two duties generally characterized as Child Find under Pennsylvania regulations and the IDEA. First, it is the District's **affirmative** obligation to disseminate information for identifying eligible children. 22 Pa. Code § 14.121; 34 C.F.R. § 300.125. Second, it is an **affirmative and individual** obligation to Student, which overlaps with the District's evaluation duty and which is at issue in this case, of conducting a defensible eligibility determination of this child reasonably suspected of qualifying under the two-part definition of a child with a disability. See, e.g., *id.* § 300.320. Because it is an **affirmative** duty on the part of the District to identify, locate, and evaluate all eligible children, and the District denied that process to identify, locate, and evaluate Student, the District violated its Child Find obligations. Not only did the District ignore the presentation of evidence concerning its affirmative obligation to disseminate information for identifying all eligible children in the District, the District did not meet its individual Child Find obligation to Student. The District violated Student's right to be found and served.

2) **The District violated Student's right to a full and complete evaluation by a Multidisciplinary Evaluation Team.** 34 C.F.R. §300.320. In Student's case, the District's own documents revealed clear procedural and substantive violations of the District's Child Find and evaluation obligations. The original title of IDEA 2004 was the *Education for All Handicapped Children Act* (PL 94-142). Congress used that title to emphasize how important it was for all children with disabilities to have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. Congress then, and now, wanted to emphasize that no child with a disability was to be excluded from receiving a FAPE. As early as 2002, the District was negligent in its evaluation duty to Student of conducting a defensible eligibility determination of this child reasonably suspected of qualifying under the two-part definition of a child with a disability.

## **B. The 2004 IDEA STATUTE OF LIMITATIONS ALLOWED A SPECIFIC EXCEPTION TO TIMELINES.**

1) **The IDEA 2004 did not reauthorize the federal law to remove a basic tenet of the right to a FAPE, as guaranteed since the inception of PL 94-142 and in all versions of the federal law enacted since 1975.** That is, a basic tenet of the federal law is that all children with disabilities have a right to be found and served appropriately. The IDEA 2004 contained an explicit timeline for filing a due process hearing. A parent or LEA must request a hearing within 2 years of the date the parent or LEA “*knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State Law allows.*” 20 U.S.C. 1415(f) (3) (C). This timeline does not apply, however, if a parent was prevented from requesting a hearing due to “*specific misrepresentations by the LEA that it had resolved the problem forming the basis of the complaint; or the LEA’s withholding of information from the parent that was required under this part to be provided to the parent.*” 20 U.S.C. 1415(f) (3) (D). (emphasis added).

*IN RE The Educational Assignment of D.H., A Student in the Kiski Area School District* (Special Education Opinion 1672, dated December 1, 2005), a Pennsylvania Appeal Panel opined that the IDEA exception to the statute of limitations did not apply to “Child Find” issues. However, this Hearing Officer respectfully asserts that a violation of the District’s “Child Find” obligation provision, as well as a violation of the duty to provide a complete and comprehensive multidisciplinary team evaluation to Student, is a specific exception to the 2004 IDEA statute of limitations.

The District did not fulfill its “Child Find” obligations because the District did not provide to Student’s Parent the opportunity to receive multidisciplinary evaluations based on Student’s needs (i.e., Student’s May 2002 ER, September 2005 ER, and January 2006 Occupational Therapy and Assistive Technology reports). The District withheld information that was to be provided to Student’s Parent and significantly impeded Student’s Parent in the decision making process regarding the provision of a FAPE to Student. The District’s conduct was procedurally and substantively flawed in that an incorrect eligibility determination, made as the result of a fatally flawed process, absolutely resulted in a denial of Student’s FAPE.

2. **The District was on notice of Student’s learning and behavioral issues and the impact these issues had on Student’s educational needs as early as 2002 that either indicated a qualifying disability, or would cause District personnel to suspect a qualifying disability.** The District did not evaluate Student in a timely manner. When it did evaluate Student, the District violated Student’s procedural and substantive rights to a “team” decision. The District’s evaluations failed to properly identify Student as an eligible student. The District failed to complete full and complete ERs on Student in 2002 and 2005. The District failed to share the results of the January 2006 *Occupational Therapy* and *Assistive Technology* evaluations with Student’s family. The District failed to incorporate the results of any of these evaluations into Student’s integrated, multidisciplinary team ER.

3. **Student has been denied a FAPE and, as such, Student qualifies for compensatory education.** Compensatory education is appropriate because the denial of FAPE is more than de minimus (See, e.g., *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 537 (3rd Cir. 1995); *Bd. of Educ. v. Munoz*, 792 N.Y. S.2d 275 (App.Div.2005). Also see *Central Bucks Sch. Dist. v. Sara K.*, 34 IDELR 235 (Pa. Commw. Ct. 2000)). Student’s educational progress has suffered extensively because of learning and behavioral problems that the District knew about but did not address appropriately.

The IDEA provides that the Hearing Officer has the authority to grant “appropriate relief” to correct the denial of a FAPE. 34 C.F.R. §§ 300.509, 510, 511, 512. However, Student’s Parent only



requested 2 years worth of compensatory educational services. Thus, this Hearing Officer will abide by the Parent's wishes and award two years. (The compensatory education award is calculated @ 180 days per school year X 2 school years @ 5 hours per day.)

## HEARING OFFICER DECISION/ORDER

**AND NOW, this 25 th day of May 2006, this Hearing Officer orders the District to take the following action:**

1. The District shall view Student as an eligible student for special education by virtue of having Specific Learning Disabilities in the areas of reading, mathematics, and written expression. Student's ADD is comorbid with Student's Specific Learning Disabilities.
2. Within 30 calendar days of the receipt of this Order, the District must complete, at District expense, a comprehensive and in-depth reevaluation report (ER) relative to Student. Through a comprehensive data review, the multidisciplinary report must consider the input of all MDE team participants, including Student's Parent, and all IEEs, relative to Student's needs for special education and/or related services.
3. Within 15 calendar days of the receipt of the ER in No. 2 above, Student's IEP team must convene for the purpose of developing Student's specific program, services, and placement, as based on Student's needs. The IEP team must consider all information available to it in making the determinations.
4. Because of a denial of FAPE, Student is entitled to two years of compensatory education. The total compensatory education hours are to supplement, not replace appropriate instruction according to Student's IEP.
5. Student's Parent shall decide how the compensatory education hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction that furthers Student's needs and furthers the goals of Student's pendent or future IEPs. These services may occur during the weekday, on weekends and during the summer months, when convenient for Student and Student's Parent.

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**Dorothy J. O'Shea, Ph.D.**  
**Hearing Officer**

**DECISION DATE:** \_\_\_\_\_