

PENNSYLVANIA  
SPECIAL EDUCATION HEARING OFFICER

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6290/05-06 KE

File Number

H. C.

Child's Name

Xx/xx/xx

Date of Birth

April 12, April 13, May 15, 2006

Dates of Hearing

Closed

Type of Hearing

**For the Student:**

Parents

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**For the Souderton Area School  
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Dates of Hearing: April 12, April 13, May 15, 2006  
Receipt of Last Transcript: May 19, 2005  
Date of Decision: June 5, 2006  
Hearing Officer: Daniel J. Myers

## BACKGROUND

Student is a [teenaged] resident of the Souderton Area School District (School District) who disputes the School District's proposed educational program and placement for the upcoming 2006-2007 school year and seeks, instead, publicly-funded placement at a private school. Student also seeks compensatory education, alleging that he has been denied a free and appropriate public education (FAPE) since kindergarten. Finally, Student's parents seek reimbursement of two privately-secured evaluations. For the reasons described below, I will not order publicly-funded placement at a private school. I will, however, order that the School District provide the Orton-Gillingham based instruction that the Private School provides, as well as 660 hours of compensatory education. Finally, I will not order reimbursement of the private evaluations.

## ISSUES

- Whether or not Student should be placed at a private school for the 2005-2006 school year at public expense?
- Whether or not Student is entitled to compensatory education since kindergarten?
- Whether or not Student's parents are entitled to reimbursement of an audiological evaluation and a vision evaluation?

## FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a [teenaged] 8<sup>th</sup> grade resident of the School District. (N.T. 29) <sup>1</sup>

### 1997-1998 through 2000-2001, Kindergarten through 3<sup>rd</sup> Grade

2. In June 1998, at the end of his kindergarten year, the School District evaluated Student because his teacher had observed difficulty staying on task, focusing, and completing assignments, and his parents were concerned that he was behind in letter recognition and writing skills. (P 1)
  - a. A Wechsler Intelligence Scale for Children, 3<sup>rd</sup> Ed. (WISC-III) indicated solidly average cognitive abilities, with a Verbal standard score (SS) of 99, Performance SS of 99, and a Full Scale IQ SS of 100.

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<sup>1</sup> References to "JE," "SD," and "HO" are to the Joint Exhibits, School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcript of the May 10, 2006 hearing session.

- b. Kaufman Survey of Early Academic and Language Skills scores indicated academic readiness achievement below ability, with difficulties in letter and shape recognition. (P 1, pp.5-7)
  - c. Behavior rating scales indicated moderate levels of concern with inattentive and hyperactive impulsive behaviors.
  - d. The evaluation report concluded that Student met the diagnostic criteria for an attention deficit hyperactivity disorder (ADHD), with indications of a learning disability.
  - e. This evaluation report (ER) recommended an occupational therapy (OT) screening, preferential seating, very specific directions, a behavior modification program, and chunking of tasks. (P 1, p.10)
3. A January 1999 OT evaluation found no need for direct OT, but recommended limiting extended tabletop activities, interspersing movement activities, using an alphabet strip on the desk to help with visual memory, and writing letters kinetically in various media. (SD 48)
4. For the next several years, Student received services as a student with learning disabilities in reading, math and written expression. (N.T. 35-36)

#### **2001-2002, Fourth Grade**

5. On October 15, 2001, Student's 4<sup>th</sup> grade IEP team agreed upon a part time learning support program with goals in reading comprehension, decoding, spelling, written expression, math, and work/study skills. (P 2)
- a. The IEP contained no description of the grade level of the reading and spelling materials to be used.
  - b. The IEP described Student's present educational levels as "verbally express[es] himself well," "making progress in remembering to capitalize and punctuate," "spelling is difficult," and "needs encouragement to proofread and edit."
  - c. Student's math level was described as "can recognize coins...but has difficulty counting combinations of coins" and "can do basic computation and can count by 10s, 5s and 2s."
  - d. Reading levels were described as independent at late first grade, instructional at beginning 2<sup>nd</sup> grade, and frustrational at mid-second grade level.
- (P 2, p.9)

#### **2002-2003, Fifth Grade**

6. The School District issued a triennial reevaluation report on September 16, 2002. Based upon classroom observation, teacher input indicating low rate of acquisition of new material, frequent need for repetition and review, and severe classwork and behavior

concerns, the September 2002 ER concluded that Student is making progress in an appropriate placement in a part-time learning support classroom. (SD 47)

7. Student's 5<sup>th</sup> grade PSSA indicated that he was at the Basic level in both reading and math. (P 12, p. 107)

### 2003-2004, Sixth Grade

8. During this school year, the School District instructed Student using the SRA Corrective Reading Decoding program. (N.T. 339-340) Class sizes in middle school SRA classes were 6-8 students. (N.T. 193)
9. Student's October 22, 2003, 6<sup>th</sup> grade IEP listed present educational levels as:

<b>Skill</b>	<b>Independent Level</b>	<b>Instructional Level</b>	<b>Frustration Level</b>
Word ID in Isolation	1 <sup>st</sup> grade	2 <sup>nd</sup> , 3 <sup>rd</sup> grades	4 <sup>th</sup> grade
Word ID in Context	3 <sup>rd</sup> grade	4 <sup>th</sup> grade	
Oral Reading Comprehension		3 <sup>rd</sup> , 4 <sup>th</sup> grades	

(SD 2)

10. Student's sixth grade (2003-2004) report card contained all As and Bs. (SD 3) Student's 6<sup>th</sup> grade PSSA indicated that he was proficient in writing. (SD 12, p.107)
11. School District officials testified that, at the end of this 6<sup>th</sup> grade year, Student's IEP team decided to focus upon reading comprehension for Student's upcoming 7<sup>th</sup> grade school year because Student was now decoding at a 6<sup>th</sup> grade level, but evidencing low comprehension skills particularly in implicit comprehension. (N.T. 339-340)

### 2004-2005, Seventh Grade

12. Student's September 2004 IEP Woodcock Johnson III assessment indicated present education levels as follows:

<b>Subtest</b>	<b>Grade Equivalency</b>	<b>Age Equivalency</b>	<b>Standard Score</b>	<b>Percentile</b>
Letter Word Identification	4.1	9-5	85	16 <sup>th</sup>
Math Fluency	4.6	10-0	84	14 <sup>th</sup>
Reading Fluency	4.6	10-0	87	18 <sup>th</sup>
Broad Reading	4.7	10-2	88	21 <sup>st</sup>
Broad Math	5.5	11-1	91	27 <sup>th</sup>

<b>Subtest</b>	<b>Grade Equivalency</b>	<b>Age Equivalency</b>	<b>Standard Score</b>	<b>Percentile</b>
Math Calculation	5.7	11-3	92	30 <sup>th</sup>
Math Applied problems	6.0	11-7	95	37 <sup>th</sup>
Passage Comprehension	7.8	12-9	102	56 <sup>th</sup>

(SD 37, pp.394-395; SD 4, p.48; SD 12, p.103)

13. Student's November 2004 Terra Nova scores indicated above average (80<sup>th</sup> percentile) in reading, and average (52<sup>nd</sup> and 42<sup>nd</sup> percentile) scores in language and math, respectively. (SD 5, p.52)
14. In January 2005, Student's parents were concerned about Student's reading levels and sent him to the [Redacted] Learning Center for 3 hours per week after school. (SD 7, p.55)
15. Student's seventh grade (2004-2005) report card indicated an A in reading, A- in social studies and math, B in science and language arts, and a D in French. (SD 9, p.77; SD 12, p.104) The 3<sup>rd</sup> and 4<sup>th</sup> quarter A+ grades in Language Arts/Reading mean that Student was exceeding his teacher's expectations. (SD 9, p.77; N.T. 277-280) In monitoring Student's progress on his IEP goals, the School District simply indicated "P" for progress, which was described at the due process hearing as meaning that "progress is beginning to be made toward the goal." (N.T. 275)

### **2005-2006, Eighth Grade**

16. The focus in Student's 7<sup>th</sup> grade SRA reading program had been reading comprehension. (N.T. 298, 338) At the end of the school year, Student had mastered reading comprehension skills, but was evidencing deficits in reading decoding. (N.T. 298-299, 339) Accordingly, the IEP team decided to focus upon reading decoding for Student's upcoming 8<sup>th</sup> grade school year. (N.T. 298-299, 338)
17. Student's Woodcock Johnson III October 2005 IEP indicated Student's present education levels as:

<b>Subtest</b>	<b>Grade Equivalency</b>	<b>Age Equivalency</b>
Written Language Spelling	3.6	8-7
Letter Word Identification	3.8	9-2
Writing Fluency	3.9	9-4
Math Fluency	4.0	9-5
Broad Written Language	4.1	9-3
Academic Skills	4.3	9-7

<b>Subtest</b>	<b>Grade Equivalency</b>	<b>Age Equivalency</b>
Broad Reading	4.3	9-8
Academic Fluency	4.4	9-9
Passage Comprehension	4.5	9-9
Written Expression	4.6	10-0
Reading Fluency	4.8	10-3
Math Calculation	5.3	10-10
Broad Math	6.2	11-9
Math Calculation	6.2	11-9
Academic Applications	6.6	12-0
Math Applied problems	7.6	13-0
Writing Samples	>8.5	>13-10

(SD 37, pp.386-391)

18. In October 2005, the School District reevaluated Student because his parents: a) did not feel that they had a sufficient understanding of Student's present academic levels, and b) wanted Student to be included in more regular education classes. (N.T. 305-307; SD 12)
- a. Student's WISC IV results indicated Verbal Comprehension SS of 104 (61<sup>st</sup> percentile, average range), Perceptual Reasoning SS of 82 (12<sup>th</sup> percentile, low average range), Working Memory SS of 91 (27<sup>th</sup> percentile, average range), Processing Speed SS of 78 (7<sup>th</sup> percentile, borderline range), and Full Scale IQ SS of 87 (19<sup>th</sup> percentile, low average range.) (SD 12, p.106)
  - b. Student's WIAT II scores were all below grade level except for reading comprehension:

<b>WIAT II Subtest</b>	<b>Age Based SS</b>	<b>Age Based Percentile</b>	<b>Grade Based SS</b>	<b>Grade Based Percentile</b>
Spelling	79	8	76	2
Pseudo word reading	80	9	81	10
Numerical operations	84	14	86	18
Word reading	88	21	89	23
Math reasoning	90	25	90	25
Reading comprehension	107	68	107	68

- c. The ER described Student as a very dysfluent reader who is inconsistently accurate. He did work hard and did sustain concentration while reading. His difficulty was with visual processing and letter/sequence confusion, particularly with multi-syllabic words. His strong score in reading comprehension was reflective of his ability to use his background fund of knowledge, vocabulary and context to derive meaning.

- d. Student's sight word vocabulary was assessed at the 1<sup>st</sup> quarter of 6<sup>th</sup> grade, and Spelling skills were assessed at the last quarter of 3<sup>rd</sup> grade. Math problem solving skills were at mid 6<sup>th</sup> grade level. Math computational skills were at 3<sup>rd</sup> quarter of 5<sup>th</sup> grade. (SD 12, pp. 107-108)
  - e. The ER recommended direct instruction in decoding, with more emphasis on decoding than on reading comprehension skills.
  - f. The evaluator testified that Student can read grade level text. She based this opinion upon the fact that she used testing materials designed for 8<sup>th</sup> graders, which materials Student read with the exception of the higher level, multi-syllabic words. (N.T. 577)
    - i. I find this evaluator's opinion lacks credibility because this ER never considered the earlier, 2002 ER, nor did it ever compare Student's annual Woodcock Johnson achievement test scores for the purpose of trend analysis. (N.T. 582-583) In addition, the evaluator's testimony that Student could read 8<sup>th</sup> grade level text "with the exception of the higher level, multi-syllabic words" simply seems to me that, of the testing materials designed for 8<sup>th</sup> graders, Student was capable of reading the lower grade level words in the material, but not the 8<sup>th</sup> grade level words. (N.T. 577)
19. On October 19, 2005, the School District issued a Notice of Recommended Educational Placement (NOREP) continuing Student in part time learning support for math, reading, language arts and science, and mainstreaming Student into regular education classes for social studies and unified arts. (SD 14, p. 115) The October 2005 IEP listed Student's goals as follows:
- a. In Reading Decoding, increase from 3.8 to 4.2 grade level on Woodcock Johnson;
  - b. In Math Fluency, at 4<sup>th</sup> grade level, increase from 8 to 12 digits correct per minute 80% of the time;
  - c. In Silent Reading Comprehension at 4<sup>th</sup> grade level, increase from 65% to 80%;
  - d. In Reading Fluency of 6<sup>th</sup> grade level passages, increase from 98.5 to 147 words per minute;
  - e. In Math Computation, increase from 6.2 to 6.8 grade level on Woodcock Johnson;
  - f. In Written Expression, increase from Level 2 (Basic) to Level 3 (Proficient) in all five writing domains;
  - g. A goal for sight word recognition indicated 97% accuracy at present and did not indicate a future goal.
  - h. The IEP also included self-advocacy and organizational goals.
20. Student's parents disapproved the School District's proposed IEP because it did not include specifically designed instruction to address Student's reading and written expression needs, because expected levels of achievement were too low, and because they wanted an evaluation to determine why Student's Math Fluency was at the 4<sup>th</sup> grade level. (SD 17)

21. On November 9, 2005 the School District revised its proposed IEP goals as follows:
- The Math Fluency goal increased expected achievement to 20 digits correct per minute at the 5<sup>th</sup> grade level (not 4<sup>th</sup> grade level)
  - The Silent Reading Comprehension goal increased expected achievement to the 6<sup>th</sup> grade level (not 4<sup>th</sup> grade level) with a base line to be determined and to increase to 80%;
  - The Reading Fluency goal increased expected achievement to the 7<sup>th</sup> grade level (not 6<sup>th</sup> grade level) from 106 words correct per minute to 146 words per minute;
  - The Math Computation goal remained the same.
  - Reading Decoding goal remained the same; and
  - The sight words recognition goal was deleted.  
(SD 20)
22. On December 15, 2005, Student's parents privately secured an audiological evaluation which found significant central auditory processing deficits, resulting in difficulty understanding speech in noisy group situations such as traditional classroom environments, and deficits in working and short term memory making.
- The cost of the report to parents was \$410. (N.T. 126-127)
  - The report recommended speech and language therapy to address auditory working and short term memory, math tutorial, prepare outlines, preferential seating, study skills, simplification of tasks, and a personal listening device. (P 3)
  - I find this evaluation to lack credibility, primarily because it found Student's decoding skills to be a strength, which is contrary to all other evidence in the record. (P 3, p.3)
23. Student's parents also privately secured an optometry exam which found difficulties in focusing and coordinating binocular vision (eye-teaming) that may cause fatigue and discomfort when reading.
- The cost of the report to parents was \$376. (N.T. 127)
  - The report recommended vision therapy to improve focusing and eye teaming skills. (P 5)
  - I find this evaluation to lack credibility because it does not make clear the scientific bases for its conclusions and no expert testified to provide such bases.  
(P 5)
24. This summer 2006, Student will attend a private school program at the [Redacted] School (Private School.) (P 7; N.T. 602)
- Private School is a day school with a college preparatory curriculum for students with learning differences in grades 7-12. (N.T. 596)
  - All teachers are trained in the Orton-Gillingham approach, which is a systematic, focused, very organized, research-based approach using multi-sensory (auditory and visual) presentation of information in auditory and visual format that teaches



all elements of language, from phonemes to the more advanced elements of critical reading and writing. (N.T. 598-600, 613)

- c. All class sizes during the school year are 10 students or fewer, with one teacher per class. (N.T. 597-598) Language arts classes are smaller than other classes, with 4-7 students. (N.T. 604) Math classes are grouped according to skill level. (N.T. 622)
  - d. Students meet with their faculty advisors at the beginning and end of each day for assistance in organization and structure. (N.T. 613)
  - e. The Private School summer school program is five weeks long, offering one-to-one tutoring 50 minutes each day, followed by a study hall, enriched math, and an art option. Summer program tuition is \$2,750, and regular school year tuition is \$29,800 per year. (N.T. 603, 621)
  - f. Private School's headmistress has a good understanding of Student's strengths and weaknesses, describing him as having good verbal intelligence, some weakness in processing speed and working memory, and some question regarding visual processing. (N.T. 605) She notes a long history of delay in reading fluency and writing, with some math weakness that is not as severe as the reading and writing deficits. (N.T. 605) She believes that Student realistically can achieve one year's growth in language arts in one year. (N.T. 644)
25. School District officials do not dispute that Student has deficits in decoding skills. (N.T. 183, 310, 580) They argue, however, that Student has always made some progress, and has never "flat-lined." (N.T. 284) School District officials further note that some people with learning disabilities will always have trouble with phonetics, and they must learn to use compensatory strategies. (N.T. 183) They contend that FAPE is provided where, in this case, Student's reading comprehension is strong, and he manages to compensate for his decoding deficits. (N.T. 183, 262, 581, 585) School District officials contend that they do not "teach to the IEP" but rather they teach specific skills based upon their progress monitoring. (N.T. 257-258, 409) School District officials caution against making decisions on the bases of isolated Woodcock Johnson achievement assessments. (N.T. 341)
26. I find that the arguments of School District officials lack credibility. The School District's reading teacher acknowledged that, unless a reader learns to decode words, he will be limited to reading only those words that he has memorized by sight. (N.T. 411) In addition, the School District's progress monitoring documents simply indicate "P" for "progressing toward goal" and "L" for "limited progress," without any meaningful indication of Student's performance, and no apparent mechanism for checking to determine the effectiveness of any particular teaching strategy. (SD 32, p.281-284; N.T. 444-445, 449-451) School District officials appear reluctant to compare annual objective achievement tests in an "apples to apples" manner, and they are too quick to dismiss negative objective assessment results, such as Woodcock Johnson scores, as "isolated" scores that are unreliable. (N.T. 341, 582-583) At the hearing, School District personnel

appeared to be rigidly tied into their compartmentalized functions rather than flexibly responsive to Student's progress monitoring results. (N.T. 394, 398, 446, 452-453, 456-457, 459) Student's current reading teacher thinks Student has mastered his IEP decoding goal, but she has never discussed this with Student's IEP manager and she will simply keep teaching the same old thing until someone else bothers either to assess Student's performance and/or change the IEP. (N.T. 391-393, 445, 448)

27. On December 8, 2005, Student's parents rejected the School District's November 23, 2005 NOREP. (SD 23) On February 3, 2006, Student's parents requested a due process hearing. (SD 28) On April 12, 13 and May 15, 2006, I conducted a due process hearing in this dispute. School District exhibits 1-44 and 47-49 were admitted into the record without objection. (The School District did not offer into the record exhibits 45 and 46.) Parent exhibits 1-7 were admitted into the record without objection. (N.T. 649)
28. This decision is issued 122 days after the due process hearing request was filed and 17 days after the record was closed.

### **DISCUSSION**

The Individuals With Disabilities Education Improvement Act (IDEIA) requires that states receiving federal funds for education must provide every disabled child with a free appropriate public education (FAPE). This entitlement is delivered by way of the IEP, i.e., a detailed written statement arrived at by the IEP team, which summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993).

In this case, Student is seeking publicly-funded placement in a private school setting for the upcoming school year. My first determination is whether or not the program and placement offered by the School District is appropriate. An appropriate program is one that is provided at no cost to the parents, is individualized to meet Student's educational needs, is reasonably calculated to yield meaningful educational benefit, and conforms to applicable federal requirements. The IEP for a child with a disability must include present levels of educational performance, measurable annual goals and short term instructional objectives, appropriate objective criteria by which it may be determined on at least an annual basis whether short term objectives are being achieved, and specially designed instruction that will be provided to meet the unique needs that result from the child's disability. A school district's failure to offer an IEP reasonably calculated to enable the child to receive meaningful educational benefit will be deemed a denial of FAPE. Rowley v. Hendrick Hudson Board of Education, 458 U.S. 176, 102 S. Ct. 3034 (1982).

The appropriateness of the IEP is based on information known at the time it is drafted. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993). While school districts are not required to provide the optimal level of services, a program that confers only

trivial or minimal benefit is not appropriate. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989). The IEP must be likely to produce progress, not regression or trivial educational advancement. Board of Education v. Diamond, 808 F.2d 987 (3d Cir. 1986).

In this case, Student does not have an IEP that meets the fundamental requirements of an “appropriate IEP.” Present educational levels are confusing and described in random formats (sometimes as percentile rankings, sometimes as national grade equivalencies, and sometimes in curriculum based assessment terms.) Baseline information in the goals is often missing. (SD 20, pp. 206-208, 212) In addition, the School District does not adequately explain why it anticipates only six months progress in decoding and math computation in one year. (SD 20, pp. 205, 209) See MB and the Coatesville Area School District, Special Education Opinion No. 1603 (2005). Student’s learning difficulties are perplexing, but not impossible either to understand or to program for. He needs much more intensive, systematic and individualized reading instruction than is currently offered by the School District.

Private School can provide the instruction that Student needs, but before I can order that Student be placed at Private School, I must determine that no supplemental aids and services will support public school placement and that no greater level of inclusion in programs with nondisabled peers is appropriate. I must then determine whether or not the Private School setting is appropriate to address Student’s needs. In re D.M. and the Williamsburg Community School, Special Education Opinion No. 1076 (2000); Oberti v. Board of Education of the Borough of Clementon, 995 F.2d 1204 (3d Cir. 1993).

Taking the analysis described in the paragraph above in reverse order, I conclude that Private School clearly is appropriate to address Student’s needs. Private School’s headmistress has a good understanding of Student’s strengths and weaknesses, describing him as having good verbal intelligence, and realistically projecting that Student can achieve one year’s growth in language arts in one year. (N.T. 605, 644) Private School offers, in very small classes, a systematic, focused, very organized, research-based approach using multi-sensory (auditory and visual) presentation of information in auditory and visual format that teaches all elements of language, from phonemes to the more advanced elements of critical reading and writing. (N.T. 598-600, 604, 613) To meet Student’s organizational needs, he would meet with faculty advisors at the beginning and end of each day for assistance in organization and structure. (N.T. 613)

There is no reason, however, that the School District cannot provide the same intensity, care and small class sizes in a public school setting that the Private School offers. Thus, I will order that the School District provide an Orton-Gillingham based program similar to that offered by Private School, with similarly small class size in language arts, and with similar organizational check-in procedures at beginning and end of day. It is irrelevant to me whether the School District chooses to implement that program by placing Student into Private School, or by creating the necessary learning environment in its own building.

### **Student is entitled to 660 hours of compensatory education**

Compensatory education is available to address the failure to provide a free appropriate public education (FAPE) for more than a de minimis period of time. Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Carlisle Area School District v. Scott P., 62 F.2d 520 (3d Cir. 1995). In this case, Student has been denied FAPE for a substantial period of time. Certainly, teaching is an art, not a science, and I believe that Student's teachers over the years were competent, hard-working professionals. Yet, I developed a strong impression at the hearing that the School District was not seriously programming for Student.

School District officials testified that, at the end of this 6<sup>th</sup> grade year, Student's IEP team decided to focus upon reading comprehension for Student's upcoming 7<sup>th</sup> grade school year because Student was now decoding at a 6<sup>th</sup> grade level, but evidencing low comprehension skills particularly in implicit comprehension. (N.T. 339-340) I find this testimony to be not credible, however, in light of the September 2004 Woodcock Johnson III assessment indicating 4<sup>th</sup> grade decoding and reading fluency scores and a 7<sup>th</sup> grade reading comprehension score. (SD 37, pp.394-395; SD 4, p.48; SD 12, p.103)

Student's progress was not measured meaningfully, with pre-and-post assessments that used the same measures, and upon which current programming was periodically evaluated and mid-year corrections to instructional strategies made. Progress monitoring on IEP goals consisted simply of "Ps" for progress, which was described at the due process hearing as meaning that "progress is beginning to be made toward the goal." (N.T. 275) Student's 3<sup>rd</sup> and 4<sup>th</sup> quarter 7<sup>th</sup> grade A+ grades in Language Arts/Reading meant that Student was exceeding his teacher's expectations, but no changes to instructional strategy were made. (SD 9, p.77; N.T. 277-280) Student's 8<sup>th</sup> grade reading teacher thinks Student has mastered his IEP decoding goal, but she has never discussed this with Student's IEP manager and she will simply keep teaching the same old thing until someone else bothers either to assess Student's performance and/or change the IEP. (N.T. 391-393, 445, 448)

The annual goals in Student's IEPs are vague and not measurable. (SD 1; SD 4; P 2) The present levels of educational performance do not appear to have driven goal development and it is not possible to tell what Student is expected to accomplish in one year's time. Further, some needs identified in the present levels of educational performance were not addressed in the annual goals or short term objectives. I cannot find a reading goal in the 7<sup>th</sup> grade IEP (other than a vocabulary goal.) (SD 4) The annual goal for writing and spelling provides that progress and expected levels of achievement will be measured by reference to the Pennsylvania rubric (i.e., the Writing Assessment Domain Scoring Guide), which the Appeals Panel considers not to meet the requirements of objective measurement required by IDEIA and special education regulations. R.U., Special Education Opinion No. 1492 (2004). The Pennsylvania rubric is general and subjective, and is designed for general education; reference to a level of the rubric as the expected level of progress or achievement does not enable one to tell what a student is

expected to accomplish in one year's time. MB and Coatesville Area School District, Special Education Opinion No. 1603 (2005).

In this case, the School District was aware of Student's language arts needs throughout elementary and middle school – since the end of kindergarten, in fact. The record lacks evidence of actual FAPE denial, however, prior to the inadequate 2001 4<sup>th</sup> grade IEP. (P 2) Thus, I cannot find that Student has been denied FAPE prior to October 15, 2001. (P 2)

I need not determine precisely how long Student has been denied FAPE, however, because IDEIA limits Student to claims going back no more than two years.<sup>2</sup> Of course, School Districts entitled to some grace period within which reasonably to determine and appropriately program for Student's needs. M.C. v Central Regional School District, 81 F.3d 389 (3d Cir. 1996) I conclude, therefore, that Student is entitled to two hours of compensatory education per day for two years, less 30 days reasonable rectification period, for a total of 660 hours. (2 hours x 180 days/year x 2 years – [30 days x 2 hours] = 660.)

### **Student's parents are not entitled to reimbursement for private evaluations**

The parents also assert the right to reimbursement for independent audiological and vision evaluations. The Individuals with Disabilities Education Act and Chapter 14 of the Pennsylvania Code allow for independent evaluations at public expense if the parent disagrees with an evaluation obtained by the agency. See 22 Pa. Code Chap 14; 300 CFR § 300.502(b)(1) I will not order reimbursement of either evaluation. They both lack credibility and I find that they do not assist in Student's educational evaluation and programming. (P 5; P 3) In such circumstances, districts must consider but are not required to pay for the IEE.

### **CONCLUSION**

Student disputes the School District's proposed educational program and placement for the upcoming 2006-2007 school year and seeks, instead, publicly-funded placement at a private school. Student also seeks compensatory education, alleging that he has been denied a free and appropriate public education (FAPE) since kindergarten. Finally, Student's parents seek reimbursement of two privately-secured evaluations. For the reasons described above, I will not order publicly-funded placement at a private school. I will, however, order that the School District provide the Orton-Gillingham based instruction that the Private School provides, as well as 660 hours of compensatory education. Finally, I will not order reimbursement of the private evaluations.

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<sup>2</sup> Even if IDEIA contains a deadline for filing compensatory education claims, but no limitation to the recovery period available to a Student when a timely claim is filed, Pennsylvania then must be considered to have a one-year maximum recovery period, as described by its Commonwealth Court. Montour School District v. S.T., 805 A.2d 29 (Pa. Cmwlth. 2002).

**ORDER**

For the reasons described above, I ORDER that:

- The School District's current programming for Student is not appropriate.
- The School District shall provide Orton-Gillingham based language arts instruction to Student in classes of 4-7 students or fewer.
- The School District shall ensure that Student meets with a faculty advisor at the beginning and end of each day for assistance in organization and structure.
- The School District shall provide to Student 660 hours of compensatory education.
- Student's parents are not entitled to reimbursement for privately-secured audiological and vision evaluations.

*Daniel J. Myers*

Hearing Officer

June 5, 2006

Re: Due Process Hearing  
File Number 6290/05-06 KE