

*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.*

PENNSYLVANIA

## Special Education Hearing Officer

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Child's Initials: T. M.

Date of Birth: xx/xx/xx

File Number: 6399/05-06 LS

Dates of Hearing: April 21, 2006; May 3, 2006; May 18, 2006

CLOSED HEARING

Parties to the Hearing:

Parent

Representative:

Vivian Narehood, Esq.  
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*pro se*

Date Transcript Received:

May 24, 2006

Date of Decision:<sup>1</sup>

June 8, 2006

Hearing Officer Name:

Gregory J. Smith

School District of Lancaster  
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<sup>1</sup> The record was kept open until receipt of the transcript. This decision was rendered within 15 days of the closing of the record.

## **Background**

STUDENT is a [teenaged] student who resides with his mother and other members of his family within the area served by the School District of Lancaster (District). STUDENT is eligible for special education and related services as a child with a disability who has been identified as having an emotional disturbance. STUDENT began his educational career in another school district and enrolled in the District at the start of fourth grade. During that period and through fourth grade STUDENT was not identified as a child with a disability. Prior to the start of fifth grade, STUDENT was placed in a psychiatric hospitalization. Shortly after, in September 2003, STUDENT was placed in an alternative residential school for children with behavioral and emotional problems. While in that placement STUDENT was identified as having an emotional disturbance. STUDENT remained in that placement until the end of January 2005. Upon his return to the District he was placed in an emotional support classroom. STUDENT's mother requested the present hearing seeking an order directing the District to refer STUDENT to the Intensive Day Treatment program run by [redacted]. The Intensive Day Treatment program provides mental health services and has an educational component that is run by the local Intermediate Unit.

## **Findings of Fact**

1. STUDENT is a [teenaged] (d.o.b. xx/xx/xx) student who resides with his mother and other members of his family within the area served by the School District (District). (N.T. at 141; S-10, S-11)
2. STUDENT is eligible for special education and related services as a child with a disability who has been identified as having an emotional disturbance. (S-5, S-10, S-11)
3. STUDENT attended kindergarten through third grade in the [redacted] School District ([redacted]). While at [redacted] he was not identified as a child with a disability. (N.T. at 512)
4. STUDENT enrolled in the District as a fourth grade student at the start of the 2002-2003 school year. (N.T. at 146, 255, 512)
5. Near the end of fourth grade STUDENT was placed in short-term psychiatric hospitalizations and day treatment programs on three occasions. (N.T. at 149; P-2)
6. During fourth grade, STUDENT was not evaluated by the District for special education services or identified as a child with a disability by the District. (N.T. at 512, 518; P-3, S-5)
7. On August 24, 2003, prior to the start of fifth grade, STUDENT was admitted to an inpatient psychiatric hospitalization. His admittance was precipitated by the taking of "a number of Sudafed tablets in an attempt to harm himself." S-5 at 2 Prior to that he had exhibited multiple harmful and dangerous behaviors at home. (N.T. at 150; P-2, P-3, S-5, S-10)

8. On September 29, 2003, STUDENT was discharged from the inpatient psychiatric hospitalization and admitted to [redacted] School ([redacted]). [Redacted] is “an alternative residential school for children with behavioral and emotional problems.” S-5 at 1 (N.T. at 150-152; P-2, P-3, S-5)
9. On November 11, 2003 a multidisciplinary evaluation was completed and an evaluation report (ER) was issued by the [redacted] School District ([redacted]). [Redacted] is located in the area served by [redacted]. The evaluation team concluded that STUDENT had an emotional disturbance and was in need of special education in a setting that would provide a strong behavior management system and would have the presence of psychotherapeutic personnel during the school day. (P-3, S-5)
10. The November 2003 evaluation team also concluded that STUDENT was a child with average intelligence who was continuing to learn reasonably well in spite of his emotional disturbance. On the WIAT-II he had a standard score of 87 and a grade equivalent of 3:6 in word reading; a standard score of 96 and a grade equivalent of 4:7 in numerical operations; and a standard score of 101 and a grade equivalent of 5:5 in spelling. (P-3, S-5)
11. While STUDENT was still at [redacted] a reevaluation was completed. On November 11, 2004 parts of the WIAT-II were again administered. STUDENT had a standard score of 89 and a grade equivalent of 4:8 in word reading; a standard score of 94 and a grade equivalent of 5:6 in numerical operations; and a standard score of 92 and a grade equivalent of 4:8 in spelling. (P-3)
12. STUDENT was released from [redacted] on January 27, 2005. He started to attend school in the District on February 1, 2005. (N.T. at 156)
13. An Individualized Education Program (IEP) team meeting was held on February 2, 2005. At that meeting the IEP team adopted, with slight modifications, an IEP developed at [redacted] on December 8, 2004. STUDENT’s placement was modified to a part-time emotional support classroom, with inclusion in regular education in physical education, art, health, and music. (N.T. at 160-161; S-9)
14. On February 2, 2005 a Notice of Recommended Educational Placement was issued with STUDENT’s program noted as a part-time emotional support placement with the location of intervention the neighborhood school he would normally attend. Both STUDENT’s mother and father approved of that recommendation. (N.T. at 159-161, 249; S-9)
15. The District did not immediately complete a reevaluation when STUDENT returned to the District. (N.T. at 158, 160)
16. In April 2005 a children’s resource coordination case manager (case manager) for [redacted] County MH/MR began to coordinate the services of a “team” of providers (herein referred to as the MH/MR team). The MH/MR team consisted of the case manager, a psychologist providing reactive attachment disorder (RAD) therapy, two family based therapists, and STUDENT’s mother. District staff were not part of the MH/MR team. (N.T. at 217-221)
17. In April and May 2005 a private psychologist evaluated STUDENT and concluded that he had a reactive attachment disorder (RAD). In September 2005 that psychologist began to provide weekly

RAD therapy. One focus of that therapy was to build an attachment between STUDENT and his mother. (N.T. at 37, 44-45, 52; P-6)

18. RAD is characterized as a “marked disturbance or developmentally inappropriate social-relatedness that occurs in most contexts before the age of five.” N.T. at 33 It may exhibit itself as a failure to initiate or respond in a developmentally appropriate way to relationships, as having diffuse attachments, and/or as having socially indiscriminate relationships. (N.T. at 33-34)

19. On October 26, 2005 the MH/MR team met to discuss ongoing concerns related to STUDENT’s safety, inappropriate sexual behavior, urinating on himself and in the home, and inappropriately talking to strangers. As a result of the October 26, 2005 meeting, the MH/MR team began to explore a placement at the Intensive Day Treatment program run by [redacted]. The Intensive Day Treatment program provides mental health services and has an educational component that is run by the local Intermediate Unit (the combined program is referred to herein as IDT). (N.T. at 56-60, 220-222)

20. As part of the IDT program, day treatment staff, IU staff, and the case manager meet on a monthly basis to review the program and to address any academic or mental health issues. (N.T. at 222)

21. On November 9, 2005 an evaluation was completed and a re-evaluation report (RR) was produced. Prior to that evaluation STUDENT was given the WIAT-II. Among other scores, STUDENT had a standard score of 82 and a grade equivalent of 4:5 in word reading; a standard score of 85 and a grade equivalent of 5:2 in numerical operations; and a standard score of 91 and a grade equivalent of 4:8 in spelling. The evaluation indicated that STUDENT had some difficulty in reading, both decoding and comprehension, and mathematics. The evaluator concluded that “when compared to previous testing results, [STUDENT] demonstrates adequate academic growth in all areas except spelling despite his emotional issues.” S-10 at 3 (S-10)

22. STUDENT’s classroom performance during the early part of the school year was noted as appropriate academically, behaviorally, and socially. It was also noted that during the two weeks prior to the evaluation appropriate behavior had declined and that STUDENT had “begun to rebel and attempt to manipulate by lying, stealing, and refusing to complete work/comply with directions.” S-10 at 3 (S-10)

23. Recommendations in the RR to the IEP team included limiting breaks and unstructured time, providing an escort any time STUDENT is in the hallway, providing transition activities, and providing inclusion in enrichment classes. (S-10)

24. On November 9, 2005 an IEP team meeting was held and an IEP was developed for STUDENT. The IEP included two annual goals in math, related to understanding the number system and understanding and applying the meanings of operations; two annual goals in reading, related to decoding and comprehension; one annual goal related to displaying on-task behaviors; and one annual goal related to displaying pro-social behaviors. (S-11)

25. The November 2005 IEP included the following program modifications and specially designed instruction: use of a daily checklist to monitor and manage STUDENT's behavior every 45 minutes, provide specific consequences and feedback, provide guided practice and repetition, limit physical interaction, and provide an adult escort in the hallways at all times. (S-11)
26. The November 2005 IEP called for a part-time emotional support placement, with all of STUDENT's academic courses to be provided in the emotional support classroom, with opportunities for inclusion in regular education in music, art, gym, and health. (S-11)
27. As the 2005-2006 school year progressed STUDENT's participation in a regular education setting was discontinued and he received all of his education in the emotional support classroom. (N.T. at 387, 390-392, 403, 405, 425)
28. Because of continuing concerns regarding safety and hygiene issues in the home, in December 2005 the psychologist providing RAD therapy made a specific referral to IDT. (N.T. at 55-56; P-6)
29. STUDENT was in a residential placement from February 20, 2006 through March 1, 2006 and then in a day treatment program from March 2, 2006 through March 22, 2006. (N.T. at 81)
30. STUDENT's mother requested the present hearing seeking an order directing the District to refer STUDENT to IDT. (N.T. at 12-18, 27; P-1)
31. STUDENT's father participated in the present hearing and disagreed with his ex-wife's (STUDENT's mother) request, preferring that STUDENT remain in a District run program. (N.T. at 26-27)

## **Issues**

Must the School District refer STUDENT to the Intensive Day Treatment program run by [redacted] and the educational component of that program run by the local Intermediate Unit?

## **Discussion**

STUDENT is a [teenaged] student who resides with his mother and other members of his family within the area served by the District [Fact 1] He is eligible for special education and related services as a child with a disability who has been identified as having an emotional disturbance. [Fact 2] STUDENT began his educational career in another school district [Fact 3] and first enrolled in the District at the start of fourth grade, the 2002-2003 school year. [Fact 4] Prior to enrollment in the District and through his fourth grade year in the District, STUDENT was not identified as a child with a disability. [Facts 3 and 6] After three short-term psychiatric hospitalization and day treatment program placements near the end fourth grade [Fact 5] and a month-long inpatient psychiatric placement just prior to the start of fifth grade, [Fact 7] on September 29, 2003 STUDENT was admitted to [redacted]. [Fact 8] [redacted] is "an alternative residential school for children with

behavioral and emotional problems.” N.T. at 149 It was while at [redacted] that STUDENT was first identified as a student with an emotional disturbance. [Fact 9]

STUDENT was discharged from [redacted] in January 2005 [Fact 12] and began to attend a part-time emotional support program in the District in February 2005. [Facts 12, 13, and 14] Shortly after that a MH/MR team began to meet to discuss and plan STUDENT’s therapeutic needs, home based and family therapies, and (eventually) RAD therapy. [Fact 16] School staff were not invited to be part of the MH/MR team. [Fact 16] In the fall of 2005 the MH/MR began to consider the possibility of a placement at IDT. [Fact 19] In December a specific referral to the IDT program was made by a member of the MH/MR team. [Fact 28]

Wanting STUDENT to be placed in the IDT program, STUDENT’s mother requested that the District make a referral to that program. When that request was denied, STUDENT’s mother requested the present hearing. [Fact 30]

Because STUDENT’s mother requested the present hearing, she carries the burden of proof in this matter. That is the case because the Supreme Court, in it’s decision in *Schaffer v. Weast*, 126 S.Ct. 528 (2005) held that the “burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief” at 537. In so doing the Court found no reason to depart from “the ordinary default rule that plaintiffs bear the risk of failing to prove their claims.” at 534

That decision effectively settled a split, present in the Circuit Courts, in assigning the burden of proof. As noted in *M.S. v. Ramsey Bd. of Educ*, 435 F.3d 384 (3d Cir. 2006) the Third Circuit Court had previously placed the burden of proof on the school district. However, in *M.S. v. Ramsey* the Third Circuit Court found *Schaffer* controlling and extended the reach of *Schaffer* writing “It would be unreasonable for us to limit that holding to a single aspect of an IEP, where the question framed by the Court, and the answer it provided, do not so constrict the reach of its decision.” at 5

Shortly after the Third Circuit issued its decision in *M.S. v. Ramsey*, the Eastern District Court issued a decision in *Greenwood v. Wissahickon*, 2006 U.S. Dist. LEXIS 4274 (E.D. Pa. 2006) concluding that “the burden of persuasion at the administrative level in Pennsylvania is now on the party contesting the IEP.” at 7

It should be noted that in their analyses the above referenced courts have limited themselves to the burden of persuasion and have not considered the burden of production. As noted by the Supreme Court, the burden of persuasion addresses “which party loses if the evidence is closely balanced.” *Schaffer v. Weast* at 533-534

Because it is STUDENT’s mother who has sought a change in placement for STUDENT, it is STUDENT’s mother who carries the burden in this matter. In order to prevail, STUDENT’s mother must first prove that the November 9, 2005 IEP is not appropriate. That is the case because if the IEP, as offered by the District, is appropriate, this hearing officer cannot order the District to refer a student to a placement outside of the District. If it is established that the IEP offered by the District is not appropriate, then STUDENT’s mother must also prove that the proposed placement at IDT is appropriate. That is the case because this hearing officer cannot order the District to refer a student to

a placement that has not been proven to be appropriate. The two questions of whether or not the IEP is appropriate and whether or not the placement at IDT is appropriate will be addressed in order below.

Is the November 9, 2005 IEP appropriate for STUDENT?

The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) U.S.C. §1400 *et seq.*, is the Federal Statute designed to ensure that "all children with disabilities have available to them a free appropriate public education," §1400(d)(1)(A). Under IDEIA, school districts must create an individualized education program for each child with a disability. §1414(d). An appropriate program is one that is provided at no cost to the parents, is provided under the authority of the District, is individualized to meet the educational needs of the student, is reasonably calculated to yield meaningful educational benefit, and conforms to applicable federal requirements. *Rowley v. Hendrick Hudson Board of Education*, 458 U.S. 176 (1982); 20 U.S.C. § 1401(8). The United States Court of Appeals for the Third Circuit has interpreted *Rowley* to require school districts to offer children with disabilities individualized education programs that provide more than a trivial or *de minimus* educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180-85 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). Specifically, the Third Circuit defined a satisfactory IEP as one that provides "significant learning" and confers "meaningful benefit." 853 F.2d at 182-184. see also *Board of Education of East Windsor Sch. Dst. v. Diamond*, 808 F.2d 847 (3d Cir. 1986); *J.C. v. Central Regional Sch. Dst.*, 23 IDELR 1181 (3d Cir. 1996)

When STUDENT was released from [redacted] on January 27, 2005, he returned to the District and started to attend school on February 1, 2005. [Fact 12] An IEP team met and, with slight modifications, adopted an IEP that had been developed at [redacted] only three months earlier. [Fact 13] With the adoption of that IEP and the agreement to same by both STUDENT's mother and father, [Fact 14] the District complied with the requirements for inter-district transfers within a state. 20 U.S.C. §1414(d)(2)(C)(i)(1) The District was not required to complete an evaluation at that time, and although it did not complete an evaluation immediately, [Fact 15] it did complete one on November 9, 2005, [Fact 21] within the three year limit since prior evaluations required under the law. [Facts 9 and 21] §1414(a)(2)(B)(ii)

The purpose of an evaluation is to collect enough information, through a variety of methods, to determine whether or not the student is and/or continues to be a child with a disability, to determine the need for special education and related services, to determine whether or not additions and/or modifications to the IEP are needed, and in general, to inform the IEP team about the content of the IEP. 20 U.S.C. §1414(b)(2)(A); §1414(c)(1)(B) Depending on the student and his or her needs, cognitive, behavioral, physical, and developmental factors are to be considered, §1414(b)(2)(C) and the student must be assessed in all areas of suspected disability. §1414(b)(3)(B) Following an evaluation, the IEP team, informed by that evaluation, as well as other factors, develops the IEP. §1414(d)(3)(A) In short, the evaluation is intended to provide a comprehensive picture of the student's strengths, weaknesses, and specific needs and then, based on the results of that evaluation, the IEP is developed so that it is responsive to and addresses those identified needs.

After careful consideration of the entire record produced at this hearing, it is the conclusion of this hearing officer that the November 2005 evaluation was neither reasonably comprehensive nor able to provide an adequate basis for the development of an appropriate IEP.

STUDENT was a student who had previously been identified as having an emotional disturbance and who had previously had multiple psychiatric placements, including one that had removed him from the district for about 18 months. [Facts 5, 7, 9, 10, and 12] Yet the RR is almost void of any actual assessment of STUDENT's emotional needs. In partial defense of its actions the District presented testimony at the hearing that claimed that the behavioral manifestations of STUDENT's disability were not often seen in school. If that was in fact the case, then the very restrictive recommendations to the IEP team contained in the RR, in particular limiting breaks and unstructured time and providing an escort any time STUDENT is in the hallway, [Fact 23] would not be appropriate.

The behaviors noted in the RR and the recommendations found in the RR are serious and cannot be dismissed by statements that they were either not seen in school or that they merely related to a single incident. If they were not seen in school or they only related to a single incident, then they should not have been included in the RR. But they were included, including the statement that STUDENT had "begun to rebel and attempt[ed] to manipulate by lying, stealing, and refusing to complete work/comply with directions." S-10 at 3 [Fact 22] As noted above, recommendations to the IEP team included limiting breaks and unstructured time and providing an escort any time STUDENT is in the hallway. [Fact 23]

If STUDENT's behaviors were significant enough to be noted in the RR and were significant enough to warrant recommendations that he be escorted at all times in the hallway and that breaks and other unstructured time be limited, they were significant enough to warrant the completion of a functional behavioral assessment (FBA). Although the school psychologist testified otherwise, N.T. at 302 a FBA is needed because a FBA would allow the District to better understand STUDENT's behaviors and allow it to develop programs to address those behaviors.

The District was not solely at fault for its failure to adequately evaluate STUDENT. At the time of the evaluation another team was operating. It is unfortunate that a separate MH/MR team was operating at the same time and that it did not include District staff. [Facts 16 and 19] It limited the information available to the District as it attempted to evaluate and then program for STUDENT. As unfortunate as that was, the District still had the responsibility to complete an appropriate evaluation.

Turning at STUDENT's academic performance, the District also failed to adequately evaluate STUDENT in this area. Prior to November 2005 evaluation STUDENT was given the WIAT-II. [Fact 21] A comparison of WIAT-II sub-scale scores from the November 2003 Devereux evaluation and the District's September 2005 evaluation almost two years later shows a decline in his word reading standard score, with less than a year progress in that area; a decline in his standard score for numerical operations, with less than one-half year progress in that area; and a decline in his spelling standard score and a decrease in his grade equivalent by over one-half year. [Facts 10 and 21] The decline in standard scores across areas and the minimal progress or decrease in grade equivalencies in each area should have been enough to trigger additional consideration of a possible learning disability. It was not.

The evaluator concluded, that "when compared to previous testing results, [STUDENT] demonstrates adequate academic growth in all areas except spelling despite his emotional issues" S-10 at 3 That conclusion is directly contradicted by the documentary evidence presented at the hearing. In addition



to spelling, as noted above, STUDENT did not show adequate academic growth in word reading or numerical operations. The RR did go on to indicate that STUDENT had some difficulty in reading, both decoding and comprehension, and mathematics. [Fact 21] This apparently contradicted the statement that the only area where he did not show growth was in spelling. More importantly, they never adequately assessed those areas of difficulty or considered the possibility that STUDENT might have a learning disability affecting some of his performance.

Following the evaluation, an IEP was developed for STUDENT. In what may be termed the more academic areas, the IEP included two annual goals in math, related to understanding the number system and understanding and applying the meanings of operations, and two annual goals in reading, related to decoding and comprehension. [Fact 24] While the math and reading goals appear to address needs identified in the RR, the failure to include any goal related to spelling, the one area where he had, in fact, shown regression, makes the IEP not appropriate for STUDENT

Looking at the more emotional and behavioral goals, there is one annual goal related to displaying on-task behaviors and another annual goal related to displaying pro-social behaviors. [Fact 24] These goals appear to be responsive to needs identified in the RR. There are also the following program modifications and specially designed instruction in the IEP: use of a daily checklist to monitor and manage STUDENT's behavior every 45 minutes, provide specific consequences and feedback, provide guided practice and repetition, limit physical interaction, and provide an adult escort in the hallways at all times. [Fact 25] While some of these program modifications and specially designed instructions may be useful, they are not adequate to address STUDENT's needs and the goals in contained in the IEP.

The November 2005 IEP called for a part-time emotional support placement, with all of STUDENT's academic courses to be provided in the emotional support classroom and opportunities for inclusion in regular education in music, art, gym, and health. [Fact 26] However, as the year progressed STUDENT's participation in a regular education setting was discontinued and he received all of his education in the emotional support classroom. [Fact 27]

If STUDENT's behavior was so severe that he had to remain in a full-time placement even though his IEP called for a part-time placement, and if his behavior was so severe that it had to be monitored and managed every 45 minutes, and if his behavior was so severe that he required an adult escort in the hallways at all times, then his IEP should have had better interventions built into it, including a behavior support plan. The IEP should have included a program designed to help STUDENT develop the skills needed to control his own behavior.

The District claimed at the hearing that District staff had not seen the severe behaviors in school and/or that the interventions were only put into the IEP at the request of STUDENT's mother. Those claims failed to convince this hearing officer that an appropriate program had been provided. If those claims were true, then the District utterly failed STUDENT by placing him in a very restrictive program of monitoring, escorts, and full-time emotional support, when he required something else. In either case, his program was void of a behavior support plan or any other specially designed instruction that would help STUDENT to learn how to control and improve his own behavior.

Even the components in the IEP that may be construed as program modifications that could be helpful

are apparently not implemented in any systematic fashion that can benefit STUDENT. Take for example the program modification that he be monitored and managed every 45 minutes. After listening to STUDENT's teacher testify in this matter, after asking her direct questions to try to get a better understanding of the monitoring and management, and after re-reading her testimony in the transcript two times, this hearing officer still cannot tell exactly what she did or how what she did could possibly benefit STUDENT. At best it seems that she wrote down a number for each behavior after each class period and then, at some point later, put those numbers into a computer program. She does not appear to have ever used those numbers for any purpose other than to print them off to be used as an exhibit at the present hearing. Those actions by STUDENT's teacher do not equate to monitoring and managing in any way that could be construed to be of a benefit to STUDENT and they certainly cannot be construed as being any part of the delivery of an appropriate program.

Other aspects of STUDENT's teacher's testimony were equally difficult to understand. For example, she testified that Exhibit S-13 contained progress reports, one for each marking period. N.T. at 456-457 Yet, she also testified there were only four marking periods in the year. N.T. at 457 When this hearing officer reviewed S-13, he found it contained six progress reports produced between September and February of the 2005-2006 school year. Clearly STUDENT's teacher was not correct on either what S-13 is or on how many marking periods there are in a school year. Either way, it is difficult to believe that a teacher so confused about such simple details could possibly provide an appropriate program to STUDENT. STUDENT's teacher went on to testify that she obtained percentages and grades for various behaviors noted in the RR and IEP and presented in the progress reports by putting numbers related to various projects into a grading program and then obtaining some output. N.T. at 460-461, 480 That would be fine except for the fact that there was no indication that STUDENT's teacher understood what that output meant or that she ever used that output to provide an appropriate program for STUDENT. Being able to produce percentages and/or grades is meaningless if the teacher cannot understand and use that information to provide an appropriate program for the student.

Based on all of the above, and after careful consideration of the entire record developed at the hearing, it is the conclusion of this hearing officer that the IEP developed for STUDENT in November 2005 is not appropriate because it does not have a goal to address his needs in spelling, it does not have a behavior management plan, and it does not have a program designed to help STUDENT control and manage his own behavior.

With STUDENT's mother having met her burden to prove that the November 2005 IEP is not appropriate, the second question, that of the appropriateness of the IDT program, can now be considered.

#### Is the IDT program appropriate?

Turning now to the second question that must be considered, that of whether or not the IDT program would be an appropriate placement for STUDENT. Again, as with the question about the appropriateness of the IEP, STUDENT's mother bears the burden of proof. On this question she failed to carry that burden. The record before this hearing officer does not provide a clear and detailed picture of what the program and placement at IDT would consist of. Therefore, it simply does not allow for any conclusion regarding the appropriateness of the IDT program. It certainly does not establish as fact that the IDT program is appropriate for STUDENT.

Although the psychologist providing STUDENT's RAD therapy asserted that IDT was an appropriate placement for STUDENT, and although she gave a list of reasons why she felt IDT was a good placement, (see N.T. at 73-77) nothing in her testimony provided the sort of detail that would allow this hearing officer to determine whether or not IDT is an appropriate placement for STUDENT. She did not provide sufficient detail about either the therapeutic or the educational programs that would be provided at IDT. In addition, her recommendation that IDT is appropriate was void of any understanding about what was available or could be available to STUDENT within the District. She had not observed at school, had not talked with STUDENT's teacher, and, other than one telephone conference, had not talked with any school staff. Before writing her evaluation she had not talked with school staff at all. N.T. at 85-86 Likewise, the testimony of the case manager was lacking any specificity about the IDT program and she too had not observed STUDENT in school. N.T. at 235 At best, two things are known about the IDT program: first, it combines mental health services and educational services [Fact 19] and second, the day treatment staff, IU staff who provide the educational component, and the case manager meet on a monthly basis to review the program and to address any academic or mental health issues. [Fact 20] That is simply not enough for this hearing officer to conclude that IDT is an appropriate program for STUDENT and to order a placement there. There is nothing in the record that establishes what either the mental health services component or the educational component of that program will consist of. No one from either the mental health component or the educational component of the IDT program testified in the present matter. Without that testimony or some other specific testimony or documentation about the program, the IDT program cannot be adequately evaluated and therefore cannot be found to be an appropriate placement for STUDENT. In short, STUDENT's mother failed to meet her burden of proof to establish that IDT is an appropriate program and placement for STUDENT.

At the hearing this hearing officer allowed several evaluations and/or reports into the record over the objection of the District, in particular materials from Dr. M and Mr. S. To the extent that they relate to the IDT program, either through making a specific recommendation in favor of that program or through suggesting behaviors that are dangerous, they do not add any weight to STUDENT's mother assertion that the IDT program is appropriate. Neither Dr. M nor Mr. S testified in the present matter and neither appear to have had made any contact with District staff, visited STUDENT's current placement, or had any understanding regarding what is or could be provided within the District. It was difficult to even determine, especially with the material from Mr. S, whether or not the concerns raised were at all educationally related or were they limited to concerns about the family and/or behaviors in the home. Therefore, materials produced by Dr. M and Mr. S could not be given any weight in this matter.

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In conclusion, STUDENT's mother met her burden of proof to show that the IEP offered by the District was not appropriate. However, she failed to meet her burden to show that IDT was an appropriate placement for STUDENT. Because STUDENT's mother failed to meet her burden to prove that IDT is an appropriate placement, this hearing officer cannot and will not order that the District refer STUDENT to that program. However, having concluded that the November 9, 2006 IEP is not appropriate, this hearing officer can and will order the District to correct the deficiencies in that IEP by first completing a comprehensive multidisciplinary evaluation, including an assessment for

possible learning disabilities, and then developing an appropriate individualized educational program. That process must be completed and a new IEP must be in place prior to the start of the 2006-2007 school year.

STUDENT's mother is encouraged to more openly share evaluations with the District so that a truly comprehensive evaluation may be completed. Only through that process may an appropriate program and placement be determined and developed. It may be that once all available information is cooperatively shared between the home and the school the IEP team will decide that the IDT placement or some other therapeutic placement is appropriate. However, that cannot occur when District staff are excluded from participation on a team that is making educational placement decisions for STUDENT.[Facts 16 and 19]

Because STUDENT's mother limited this hearing to the sole issue of a referral to the IDT placement, and because she did not raise other issues such as child find, the appropriateness of STUDENT's program after his return from [redacted], or compensatory education, this hearing officer has not considered any other issue and has not made any determination or ruling relative to other issues, including compensatory education. The order that follows is limited to the prospective relief of the completion of an adequate evaluation and the development of an appropriate IEP. Something that merely requires the District to do what it should do anyway.

Accordingly we make the following:

### **ORDER**

The School District is not required to refer STUDENT to the Intensive Day Treatment program run by [redacted] and the educational component of that program run by the local Intermediate Unit.

The School District must complete a comprehensive multidisciplinary evaluation and develop an appropriate individualized education program for STUDENT consistent with the discussion in this decision. The multidisciplinary evaluation must be completed and the individualized education program developed by the start of the 2006-2007 school year.

*Gregory J. Smith*

Signature of Hearing Officer