

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

PENNSYLVANIA

## Special Education Hearing Officer

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M.P., 6667 /05-06 KE  
Name/File Number

[redacted]  
Date of Birth

8/9/06, 9/6/06, 9/21/06, 10/3/06, 10/5/06, 11/1/06, 11/29/06, 1/3/07  
Dates of Hearing

Open  
Type of Hearing

Parties to the Hearing:

Parent[s]  
Parent(s) Name(s)

01/09/07  
Date Transcript Received

Date Record Closed

Unionville-Chadds Ford  
School District

03/08/07  
Date of Decision

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## **I. BACKGROUND**

[Student] is [an elementary school-aged] student in the Unionville Chadds Ford School District. [Student] had significant medical problems from infancy and began manifesting language and other developmental delays in the middle of [Student's] second year. Pursuant to an early childhood diagnosis of Pervasive Developmental Disorder (PDD), [Student] received early intervention services. [Student] transitioned to school age IDEA eligibility while [Student] was enrolled in kindergarten in the [redacted] School District, which [Student] repeated due to a high number of absences during [Student's] first year because of medical issues. In the middle of the 2004/2005 school year, when [Student] was in first grade, [Student's] family moved to [redacted] County and the School District.

[Student] has had numerous psycho-educational, neurological, language and behavioral evaluations, both before and after enrolling in [the School District], some obtained privately by [Student's] Parents and others provided by various public agencies, including an IEE requested by the Parents, approved by the School District and completed in May 2006. The results of all evaluations are consistent in detailing [Student]'s significant academic, social, language and behavioral needs, which persist despite the interventions [Student] receives in all areas, including the services of a TSS at home and in school, as well as a classroom aide. (Prior to the current school year, different persons provided those services, but the functions of both have now been combined in one person who assists [Student] with both academic and behavioral issues in school and at home).

By the end of the 2005/2006 school year, [Student]’s Parents became dissatisfied with [Student’s] progress toward the academic, social, behavioral and language goals in [Student’s] IEP, and such dissatisfaction crystallized over the School District’s refusal to provide their preferred ESY program for [Student]. When they filed the instant due process hearing to seek payment for the ESY program they had selected, they also wanted a full hearing on all of the problems they had identified with [Student]’s program and placement. Since it was not possible to compile a full record in this case within the time constraints of an expedited hearing, the parties agreed that the ESY issue would be treated as a tuition reimbursement claim and decided along with past and current program/placement issues.

## **II. FINDINGS OF FACT<sup>1</sup>**

1. [Student] is [an elementary school-age] child, born [redacted]. [Student] is a resident of the School District and is eligible for special education services. (Stipulation, N.T. p.12).
2. [Student] has a current diagnosis of autism spectrum disorder in accordance with Federal and State Standards. 34 C.F.R. §300.7(a)(1), (c)(1)(i); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp.13, 14, 35; P-12).
3. Both prior and subsequent to the autistic spectrum diagnosis, [Student] experienced significant medical difficulties, particularly with feeding and digestion. [Student] has also been diagnosed by medical and other professionals with a number of additional conditions affecting [Student’s] behavior and

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<sup>1</sup>The record in this case, developed over 8 hearing sessions between August 9, 2006 and January 3, 2007, encompasses 1,843 pages of testimony, 26 Parent exhibits and 59 School District exhibits. Inevitably, much information in such an extensive record is repetitive. In citing to the record to support the findings of fact, it was deemed unnecessarily time-consuming, if not impossible, to attempt to include every record reference to the same or similar information, whether found in testimony or documents. In addition, the following exhibits were produced by both Parents and School District: [redacted] School District ER dated 4/08/03 (P-2 and S-8); [School District] IEPs dated 3/1/05, 4/20/05 and 11/08/05 (P-5, S-18, S-20, S-23); [School District] IEP dated 02/21/06 (P-7; S-27); [School District] Reevaluation Report (RR) dated 04/06/06 (P-8, S-29); [redacted] County IU Psychological Report dated 05/06/06 (P-9, S-49); Dr. K IEE dated 05/24/06 (P-11, S-48). References to either Parent or School District exhibits for the foregoing documents shall be deemed to likewise refer to the other party’s exhibit.

- learning, such as ADHD, obsessive-compulsive disorder, sleep problems, possible mild mental retardation and anxiety. [Student] has had surgeries, takes or has taken, a number of prescription medications and participated in an intensive feeding program at Hershey Medical Center, which permitted a feeding tube in place for 7 years to be removed in May 2006. (N.T. pp. 33– 36; P-3, P-11, P-12, S-29)
4. Behavioral manifestations of [Student]’s conditions, particularly the autistic spectrum disorder, which impact [Student’s] school functioning include low tolerance for frustration, poor impulse control, difficulty maintaining focus when working on tasks, avoidance behaviors, perseverative, repetitive and obsessive interests and behaviors. [Student] also exhibits inconsistent responses to intervention and teaching strategies and requires a lot of sensory input to maintain alertness and attention. (N.T. pp. 419, 450, 694; P- 3, S-29, S-48)
  5. Generally a happy, friendly and energetic child, [Student] wants to engage socially with adults and peers and enjoys recreational activities with [Student’s] family. Because [Student] has difficulty initiating and sustaining appropriate social contacts both in school and community settings, however, [Student] has been unable to develop peer friendships. [Student’s] Parents believe that [Student] is lonely. (N.T. pp. 33, 61, 1643; P-3, S-29)
  6. After receiving early intervention services and attending two pre-school programs, [Student] was enrolled in the [redacted] School District for kindergarten beginning in the 2002/2003 school year. [Student] was evaluated for school-age eligibility for special education services early in 2003. As a result of the evaluation, [Student] was found to be eligible and it was determined that [Student] needed speech/language services, physical and occupational therapy as well as specially designed instruction. (N.T. pp. 36, 38, 39, P-2).
  7. [Student]’s Parents also obtained a speech/language evaluation from Dupont Hospital (12/03) and a neuropsychological evaluation from Drexel University (11/03) while [Student] was still enrolled in the [redacted] District. (N.T. pp. 49– 51; P-3, P-4)
  8. An IEP developed for [Student] by [redacted District] in April 2004, updated in November 2004, included goals in the areas of receptive and expressive language, written communication, reading readiness, math readiness, social skills, behavior and physical development (balance, strength, coordination). For the remainder of the school year ([Student’s] second year in kindergarten), [Student] continued in [Student’s] full time learning support program. The IEP provided that [Student] would move to resource room learning support for reading, writing and math the following year, when [Student] began first grade, with as much inclusion as possible in the regular classroom. The IEP also provided speech therapy, occupational therapy and physical therapy in two thirty minute sessions weekly for each of those related services. Wrap round services and a one to one

- classroom aide were also included as supports for school personnel. (N.T. pp.707– 709, 711; S-11, S-15)
9. The [family] moved into the School District, (Hereafter referred to as “District”) and enrolled [Student] in the [redacted] Elementary School on January 10, 2005, the middle of [Student’s] first grade year. (N.T. pp. 236, 1156; S-18)
  10. Prior to [Student]’s enrollment in the District, the special education teacher assigned to serve as [Student’s] case manager and language arts teacher, along with the [redacted] Elementary special education math teacher, observed [Student] in [Student’s] [redacted] placement and reviewed a portion of [Student]’s educational records. (N.T. pp. 706, 1156)
  11. The District implemented the [redacted] IEP for [Student] between January 2005 and March 2005, when an IEP was completed by [Student’s] IEP team. The accompanying NOREP was approved by [Student]’s Mother on March 28, 2005. (N.T. pp. 707– 710; S-18, S-19)
  12. The first District IEP was revised on April 20 and November 18, 2005. A second IEP was dated February 26, 2006 and revised on April 24, 2006, and a third IEP dated July 25, 2006 was proposed for [Student]. (P-5, S-27, S-31, S-56)
  13. Since enrolling in the District, [Student] has received instruction in a learning support resource room or other pull-out setting for reading/language arts and math, as well as speech therapy, OT and PT, each related service for an hour each week, and 15 minutes/week of direct social skills training. [Student] joins a regular education class for the remainder of the school day. (N.T. pp. 421– 427, 430, 1351, 1352; S-19, S-32, S-34)
  14. The District does not have an autism support class, but when appropriate, sends autistic students to an autistic support class conducted by the County Intermediate Unit (CIU) or a neighboring school district (N.T. pp. 712, 1539)
  15. [Student] was not considered for an autistic support class because the District IEP team agreed that a learning support program was appropriate for [Student] in that [Student’s] needs could be and were met in that program in both [redacted] and the District. [Student] is also higher functioning and exhibits milder behavioral symptoms than students typically assigned to an autistic support class by the District. (N.T. pp. 712, 713, 1543— 1545 )
  16. CIU has an autistic support team which the District can consult for assistance in developing and providing appropriate instructional and behavioral support strategies for autistic students. The IU autistic support team observed [Student]’s special education teachers and speech therapist providing instruction to [Student] on one occasion, in June 2005, at the end of [Student’s] first half-year in the District. (N.T. pp. 246, 247, 447–451; P-21)

17. Since enrolling in the District, additional evaluations of [Student] have been conducted by CIU (Psychological Evaluations to assess [Student]’s continued need for wrap around services, 03/05 and 05/06, and a physical therapy evaluation, 06/06); by the School District’s school psychologist (Psycho-educational Reevaluation, 04/06) and by Dr K (IEE paid for by the School District at Parents’ request, 05/06). (N.T. pp. 513, 1041, 1349 ; P-11, S-9, S-29, S-35, S-48, S-49)
18. Formal evaluations, as well as teachers and therapists who have worked with [Student], are in agreement that [Student] is generally not an incidental learner, but must be explicitly taught academic, social and behavioral skills, and needs to be provided with adult modeling and cues to utilize such skills appropriately. (N.T. pp. 251– 253, 420, 545, 546; P-3, S-15)
19. The [redacted] IEP which accompanied [Student] to the School District was developed in April 2004, near the end of [Student]’s second kindergarten year, and was intended to span most of [Student’s] first grade year. (S-15)
20. When [Student] enrolled in the District, [Student’s] annual goal for reading from [Student’s] [redacted] IEP was to develop reading readiness skills within the kindergarten curriculum. Short term reading objectives included 1) writing at least 12 beginning consonant sounds; 2) demonstrating word awareness by tracking words in a sentence with [Student’s] finger; 3) demonstrating syllable awareness beginning with two syllable words and working up to 4 syllable words; 4) using left to right progression and page turning with decreased modeling; 5) answering where, when, why questions; 6) making predictions; 7) retelling three main events from a story in sequential order. For all objectives, [Student] was to listen to a story, passage or sentence read aloud to [Student], and only with respect to objective #2, was [Student] also expected to read after the teacher. All objectives also included fading teacher modeling and/or verbal or picture cues. (S-15)
21. In the first series of IEPs prepared by the District during the 2004/2005 school year, [Student]’s annual reading goal was to increase [Student’s] reading abilities from the kindergarten to pre-primer level. [Student’s] reading/language arts teacher used the Project Read Curriculum during the 2004/2005 and 2005/2006 school years, as well as Teaching Comprehension Skills to Children with Autism. (N.T. pp. 428, 436; P-5).
22. Several short term reading objectives were carried over from [Student]’s [redacted] IEP, including making predictions and answering “wh” questions (who, where, when, why). Different/additional objectives included correctly reading the first 50 words on the “Fry List” of the most frequently used words which appear in print; using sound/symbol relationships to read a list of 25 words at the pre-primer level and reading aloud a pre-primer passage. (S-15, P-5).

23. In an assessment conducted to establish present educational levels prior to developing [Student]'s first District IEP in March 2005, [Student]'s teacher determined that [Student] was able to read correctly 8 of the first 25 words on the Fry Instant Word List Assessment. By February 2006, [Student] was able to read 41 of the first 50 Fry List sight words and improved to reading the first 50 words on the Fry list and 17 of the next 30 words by May 2006. By February 2006, [Student] was able to read a pre-primer passage with 80% accuracy (frustration level). Although [Student] improved to 88% and 92% accuracy on two passages at the same level by May 2006, [Student] remained at the frustration level. (P-5, S-31, S-53)
24. In approximately October 2005, the beginning of [Student]'s second school year in the District, both [Student's] teacher and [Student]'s Mother became concerned that [Student] was not progressing appropriately in the reading curriculum in terms of learning to decode new words. [Parents] suggested an additional program with built-in visuals, which [Student]'s teacher incorporated into [Student's] reading instruction. At the IEP meeting in February 2006, [Student]'s teacher also offered to learn and implement a different reading program for [Student] if a more appropriate program were identified and if she were provided training in such program. (N.T. pp. 437--441)
25. In the current school year, [Student] has had two different reading/language arts teachers, [Student's] first teacher having resigned in approximately October 2006. [Student] is currently being instructed in reading using the Wilson method as recommended in Dr. K's evaluation. Based upon AIMSweb progress monitoring assessments of [Student]'s ability to read end of kindergarten level reading passages conducted between early October and early November 2006, and intended to be utilized for the remainder of the school year, [Student] was on a track to exceed the stated goal of reading 24 words correctly within 1 minute by the end of the 2006/2007 school year. The AIMSweb assessment included in this record measures oral reading fluency in the context of grade level passages. (N.T. pp.1633, 1642, 1743, 1752-1756, 1777; P-26, S-48)
26. From the time [Student] entered the District, [Student] has received two thirty minute speech/language therapy sessions weekly. [Student's] language therapist, however, also has the opportunity to observe [Student] at other times during the school day two additional times each week. (N.T. pp. 236, 237)
27. [Student] receives one weekly session of speech therapy in a resource room setting in a group of six or seven third through fifth grade students using a PDD language picture story program. (N.T. pp. 237- 240, 272)
28. In the other weekly speech therapy session, [Student] participates in a cooking class with six other children, all of whom are accompanied by an aide. That program was initiated for [Student] in November 2005. [Student] completes work

sheets based upon a hands on cooking activity, pre-taught vocabulary concepts and post-activity language targets. (N.T. pp. 271– 274, 331)

29. Although [Student]'s IEP team felt [Student] made a fairly easy transition to a new classroom, teachers, aides and general school environment when [Student] entered the District in January 2005, [Student] did not speak above a whisper and was using primarily one word utterances for several months. (N.T. pp. 240, 242, 400, 1090, 1115)
30. In the April 2004 [redacted] IEP which came to the District with [Student], [Student's] utterances were reported to range from two to nine words, with an average length of five words, based upon a language sample consisting of 47 sentences included in that IEP. [Student]'s observed language within the District reached that level approximately a year after [Student] enrolled, in the middle of the 2005/2006 school year. [Student's] current therapist has not, however, compiled a similar language sample. (N.T. pp. 242, 244; S-15)
31. Based upon standardized testing completed in December 2003 and January 2006, [Student] maintained the same relative rate of progress in acquiring language skills, neither advancing nor falling behind relative to non-disabled peers. [Student] has not met the annual goal listed in the 2005 District IEP of increasing receptive and expressive language skills to grade level. (N.T. pp. 295– 296; S-29, P-4, P-5)
32. The speech/language goals in the IEPs completed for [Student] within the District, including the IEP proposed for the current school year, are very similar. The latest proposed IEP includes baseline data for the first time and includes a new objective, completing two step directions. (N.T. pp. 360–364; P-5, S-31, S-56)
33. [Student]'s [redacted] IEP included one annual goal for math, to develop readiness skills in numeration, computation and data analysis using the kindergarten curriculum. Of the four short term objectives listed, [Student's] District math teacher noted moderate progress with respect to matching counted objects with whole number representations to demonstrate 1:1 correspondence for numbers to 20 and for representing addition problems for sums up to 10 using manipulatives. The other short term goals, grouping objects to demonstrate the concepts of more, less and the same, and creating three step patterns, were neither introduced between January and March 2005, nor included in the first District IEP. (N.T. pp. 1161–1164; S-15, S-45)
34. According to present educational levels reported in subsequent District IEPs and proposed IEPs, [Student] can count to 100 and identify numbers to 100 with 100% accuracy. In March 2005, [Student] had trouble counting past 40, although [Student] could accurately identify numbers to 100. In March 2005, [Student] could perform simple addition and subtractions to 10 using manipulatives and counting on strategies. By the end of the 2005/2006 school year, [Student] could



- perform those operations to 20. In 2005, [Student] could identify a quarter, dime, nickel and penny but did not know their values. By the end of the last school year, [Student] could calculate various amounts of coins to \$.50. In the same period, [Student] was reported to have improved in telling time from 2/3 accuracy to the hour and no ability to tell time to the half hour, to telling time to both the hour and half hour with 100% accuracy. (N.T. pp. 1218– 1225, 1240; P-5, S-31, S-56)
35. When [Student] was evaluated by the School District in April 2006, the school psychologist noted that [Student] had difficulty telling time to the nearest hour and could not add or subtract without manipulatives or visuals. [Student]’s teacher was also aware that [Student]’s Mother reported having trouble eliciting the same level of math performance at home as reported in the school setting. (N.T. pp. 1173– 1175, 1191; S-29)
  36. The special education math teacher who worked with [Student] from the time [Student] enrolled in the District through the school year initially instructed [Student] using Touch Math, to which [Student] responded well. Although she was able to fade to far less cueing, she needed to reintroduce it by February 2006 due to increased attentional difficulties. (N.T. pp. 1167, 1172, 1248; P-5, S-31)
  37. For the current school year, [Student] has been instructed in the Saxon Math program as recommended by Dr. K. [Student]’s initial placement assessment placed [Student] at the first grade level and that assessment confirmed acquisition of the math skills relating to counting, 1:1 correspondence, telling time knowledge of money values . (N.T. pp. 1202, 1254; S-48, P-25, S-56)
  38. [Student]’s District IEPs for the 2004/2005 and 2005/2006 school years provided for direct instruction in social skills from the [redacted] Elementary School Guidance counselor for 15 minutes each week in a group with two other students. (N.T. pp. 1085 –1087)
  39. During the 2004/2005 school year, the focus of the social skills group was social language/conversation – making eye contact, using an audible voice, responding to questions and keeping the conversation going when speaking with another person. The counselor used a variety of materials and resources rather than a specific curriculum during that year. (N.T. pp.1086–1092, 1139)
  40. According to the list of activities covered in [Student]’s social skills group during the 2005/2006 school year, the focus remained on social conversations, as in the previous school year. At the mid-year point, the counselor also began using a social skills workbook for instructing [Student] which added concepts such as maintaining an appropriate social distance, initiating casual, short-term contact, *e.g.*, greeting people in the morning and throughout the day, and also introduced activities specifically related to play, including asking one person to play, joining

a group engaged in play, sharing, compromise and taking turns. (N.T. p. 1099, 1101–1113, 1121–1123, 1125, 1126; P-14)

41. During the 2005/2006 school year, the group instruction occurred over lunch and the time expanded to approximately 25 minutes. Each week, [Student] was paired, on a rotating basis, with a peer from [Student's] regular education setting. By the middle of that school year, [Student] had progressed to inviting someone from [Student's] class rather than having [Student's] TSS or aide issue the invitation. (N.T. pp. 1094–1096, 1107)
42. Although [Student] appeared to enjoy and respond both appropriately and consistently in the group, there was little or no consistent, sustained carry-over to natural social settings such as the playground and classroom. (N.T. pp. 1097, 1108, 1111, 1112, 1124, 1126, 1127, 1137)
43. The social skills goal in [Student's] IEPs from January 2005 until the latest proposed IEP was to improve [Student's] play skills to grade level by initiating and sustaining appropriate play with a toy or peer for at least 10 minutes. Short term goals included appropriately initiating play with a peer, responding appropriately for at least five minutes with fading adult prompts and engaging in reciprocal play for seven and then ten minutes with fading adult prompts. (S-15, P-5, S-31)
44. In the IEP proposed for the current school year, the goal of [Student] improving [Student's] play skills to an age appropriate level was dropped. Instead, [Student's] target is to engage in sustained appropriate play with a peer in either a natural or contrived social situation with prompts fading to independence for eight minutes, from a baseline of five minutes, with interim goals of six and seven minutes. (S-56)
45. [Student's] negative/disruptive behaviors have been variable throughout [Student's] time in the District. Notwithstanding strategies in place for [Student], including break cards, planned ignoring and a sensory diet, [Student's] negative behaviors escalated during second grade, (the 2005/2006 school year), resulting in a functional behavioral assessment completed in January/February 2006 by the behavior specialist consultant who worked with [Student]. As a result, [Student's] teachers incorporated several new strategies, including additional visuals, into the instructional methods used with [Student]. (N.T. pp. 431– 434, 454, 455, 457, 460–464, 1192– 1196, 1248; P-22; S-31)
46. At some point between January and May 2006, [Student's] teacher also instituted a token economy, as recommended by both a new behavioral consultant and Dr. K, after evaluating [Student]. That strategy continues to the present, although it was inconsistently applied, as were other behavioral interventions, at the end of October 2006, apparently due to a transition in [Student's] reading/language arts teachers at the beginning of the school year. According to the behavior consultant

hired by the District to conduct a new FBA of [Student] in the fall of 2006, consistent use of motivational strategies with [Student] greatly improved between the end of October and end of November 2006. (N.T. pp. 471– 473, 1788, 1797– 1802, 1805, 1806, 1816, 1822–1826)

47. Since [Student]’s IEP team determined that [Student] was eligible for Extended School Year (ESY) services during the summer of 2005 and 2006, the District proposed month long programs conducted by the District for each summer. For the summer of 2006, the proposed program focused on social skills, phonological awareness, spelling, reading, written expression and math and included both OT and speech/language services. (P-5, S-31)
48. For the summer of 2006, [Student]’s Mother requested, and the District considered, an alternative ESY program, specifically, a Lindamood Bell reading program suggested by Dr. K. (N.T. pp. 1521– 1525; S-2, S-3, S-4, S-48)
49. Ultimately, the District refused the Parent’s request for an alternative summer placement, offering instead to have staff trained in Lindamood Bell methods provide [Student]’s ESY reading services, in addition to math and social skills instruction and speech/language services. (N.T. pp. 1526, 1528– 1532; S-5, S-6)
50. [Student]’s Parents rejected the School District’s ESY program and enrolled [Student] in the Lindamood Bell summer program at their own expense. [Student] did not, however, respond very well to that intervention. Dr. K attributed [Student]’s lack of success to poor behavior control. (N.T. pp. 604, 1532, 1533, 1679; S-7)

### **III. ISSUES**

1. Did the School District provide [Student] with an appropriate educational program and placement, including related services sufficient in type and amount to assist [Student] in making reasonable educational progress in the areas of reading/language arts, math, speech, behavior and social skills at all times since [Student] enrolled in the District in January 2005?
2. Is [Student] entitled to compensatory education for any period and if so, in which area(s), how much, and in what form(s)?
3. Did the School District offer [Student] an appropriate educational program and placement for the 2006/2007 school year?
4. Should the School District be required to develop an autistic support program within the District in order to meet [Student]’s special education program/placement/related service needs?

5. Did the School District offer [Student] an appropriate ESY program for the summer of 2006?
6. If not, are [Student]'s Parents entitled to reimbursement for the ESY program they selected and paid for during the summer of 2006?

#### **IV. DISCUSSION AND CONCLUSIONS OF LAW**

As is so often the case, resolution of the significant issues presented with respect to this child's educational program and placement centers on discerning how much progress is enough to be considered "meaningful" for an eligible child. A closely related matter which often arises, and is present in this case, is discerning when a program or method that worked well for a time needs to be altered or replaced in order for a school district to continue meeting a child's needs. As is true more often than not, the answers here fall somewhere between the School District's contention that it has done everything required to fulfill its obligations under the IDEA statute at every moment since [Student] enrolled in the District and the Parents' contention that the District has largely failed to meet the child's serious needs. The record in this case reflects the extensiveness and complexity of [Student]'s disability, as well as the difficulties faced by both the Parents and School District in moving [Student] closer to [Student's] non-disabled peers in the areas of basic academic and social skills, language and behavior. [Student], described as a joy to have in class, has endeared [Student's] self to [Student's] teachers and therapists, who clearly care about [Student] and want [Student] to advance. Nevertheless, the District has had limited success in helping [Student] gain, maintain and generalize the skills [Student] needs to succeed both in school and in the community.

[Student]'s Parents have become so frustrated with [Student]'s slow progress that they seek an order requiring the District to develop an autistic support program staffed

with teachers and therapists specifically trained and experienced in using applied behavioral analysis (ABA) or other method(s) designed for teaching autistic children. There are, however, two primary difficulties with the Parents' position in this regard: 1) the legal question of a hearing officer's authority to mandate the creation of an entirely new District program with explicit criteria for staffing it; *See, In Re: The Educational Assignment of T.G.*, Special Education Opinion No.1759 (Aug. 23, 2006); 2) a lack of evidence, other than the beliefs of [Student]'s Parents and their expert witness, Dr. K, upon which to conclude that [Student] would respond better to any such intervention method, leading to more effective control of negative behaviors and resulting in greater progress in acquiring and generalizing speech/language, reading/language arts, math and social skills. Although such beliefs are based upon a fund of knowledge and experience on the part of both sources, their predictions concerning the likelihood that [Student] will make better progress in an autistic support program of their design do not provide an appropriate basis for interfering with the District's prerogative to allocate limited resources to educational programs which provide maximum benefit to the School District's students.<sup>2</sup>

The legal standards applicable to the issues in this case are very clearly stated, albeit considerably less clear in their application. Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14

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<sup>2</sup> Although it may very well be a great advantage to the District and its residents to establish the type of autistic support program [Student]'s Parents would like, they, along with other interested parents, such as those who attended one of the open hearing sessions, should consider other means for accomplishing that goal, *e.g.*, petitioning the school district administration and/or school board. In this realm, as in other areas where citizens with a particular interest and focus seek to accomplish worthy goals, the adjudicative process cannot and should not be used as a substitute for means which they may consider more lengthy or difficult, such as working through the appropriate local executive or legislative body.

and 34 C.F.R. §300.300, an eligible student is entitled to receive a free appropriate public education (FAPE) from [the] school district of residence in accordance with an IEP that meets procedural and substantive regulatory requirements. *In re: The Educational Assignment of Steven A.*, Special Education Appeals Panel Opinion No. 1036 (July 17, 2000). To be substantively appropriate, an IEP must be “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). “Meaningful benefit” means that an eligible student’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3<sup>rd</sup> Cir. 1999). Consequently, in order to properly provide FAPE, the student’s IEP must specify educational instruction designed to meet the unique needs of the child and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3<sup>rd</sup> Cir. 1988).

Where there is evidence that there were deficiencies in either an IEP itself or in the delivery of the program resulting in a denial of services altogether or in a trivial or minimal educational benefit in any area of need, a student is entitled to an award of compensatory education. In such cases, compensatory education is due for a period equal to the deprivation, measured from the time that the school district knew or should have known of its failure to provide FAPE. *M.C. v. Central Regional School District*, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996). The school district, however, is permitted a reasonable amount of

time to rectify the problem once it is known. *In Re: The Educational Assignment of R.A.*, Special Education Opinion No.1431 (Jan. 5, 2004).

It is important to note, however, that a school district is not required to provide a student with services designed to provide the “absolute best” education or to maximize the eligible student’s potential. *Rowley; Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995); *In re: The Educational Assignment of Derrick B.*, Special Education Appeals Panel Opinion No. 1044 (August 7, 2000); *In Re: The Educational Assignment of Kenneth M.*, Special Education Opinion No.1215 (Feb. 20, 2002); *In Re: The Educational Assignment of Matthew L.*, Special Education Opinion No.1498 (July 1, 2004). Consequently, in every case where a parent seeks an alternative program, the program offered by the school district must be assessed in terms of the student’s identified needs and a determination made whether the IEP is appropriate and whether the school district appropriately and consistently delivers the specified services.<sup>3</sup> If a student’s program/placement is appropriate and the services are being appropriately delivered, such that the student has made and is making meaningful progress, a school district is not required to “consider an alternative that might be better or even different.”

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<sup>3</sup> Relying on the principle that the appropriateness of an IEP must be assessed as of the time it is offered rather than in light of whether the student made meaningful progress, (*See, Scott P., Kevin M.*), the District strenuously objected to evidence concerning delivery of [Student]’s program, and [Student]’s progress, particularly during the current school year. Although evidence of progress or lack of progress in a program and placement clearly cannot be used as a “mirror” to determine whether an IEP was appropriate when offered, such evidence is relevant for other purposes, such as determining whether the IEP has been appropriately implemented and whether developing needs require adjustment to the IEP going forward. A special education due process hearing, and, indeed, the IEP process itself, is fluid, in that current circumstances must be continually, or at least frequently, monitored to assure that a program that may have been entirely appropriate when offered remains appropriate in terms of both its components and delivery, based upon evolving circumstances, including the student’s response to it.

*In Re: The Educational Assignment of Kyle W.*, Special Education Opinion No.1217 at 9 (Feb. 25, 2002).

In this case, therefore, the services provided/offered by the District since January 2005 and the IEP proposed for the 2006/2007 school year will be examined in light of [Student]'s identified needs in the areas of speech/language, reading/language arts, social skills and behavior.

### Speech/Language

Given [Student]'s autism spectrum disorder, which makes transitions particularly difficult, it would be astonishing if [Student's] entry into the District in the middle of a school year had created no substantial problems for [Student]. [Student] was faced with an entirely new school environment, including unfamiliar teachers, aides and peers, yet by all reports became acclimated to [Student's] new surroundings fairly quickly. *See, e.g.*, P-5 at p. 12. The only notable issue was an apparent regression in speech, *i.e.*, reverting to one word utterances and using a voice barely above a whisper. (F.F. #29) The IEP which [Student] brought from the [redacted] School District described much better language skills. (F.F. #30) Nevertheless, the District speech therapist had no choice but to begin working with [Student] at the level [Student] manifested when [Student] entered the District. As a practical matter, for purposes of assessing whether the district appropriately addressed [Student]'s speech/language needs for the portion of the 2004/2005 school year [Student] spent in the District, it doesn't matter whether [Student] had regressed in language for reasons related to making the major transition of



enrolling in a new school or whether [Student] had never really reached the levels reported by [redacted].

Certainly, nothing in the record suggests that any loss of language skills [Student] experienced in January 2005 can be attributed to the District staff. In addition, there is no evidence suggesting that [Student] would have spontaneously regained either a normal voice level or the ability to generate more than one word utterances without explicit intervention by the District staff who worked with [Student]. As the Parents repeatedly pointed out, quantifiable progress monitoring by the District has been weak for [Student], but the evidence that [Student] steadily improved in using a normal tone of voice through the remainder of the 2004/2005 school year was uncontradicted. The speech therapist testified, however, that [Student] did not reach the same level of word use reported by the [redacted] School District until [Student] had been in the District for a year, suggesting that [Student] was affected by the transition to a new school for the remainder of the 2004/2005 school year, at least. It would, therefore, be unrealistic to expect significant additional progress in language skills during [Student]'s first six months in the District. The evidence that [Student] was consistently speaking at a normal voice by the end of [Student's] first half year in the District demonstrates progress in speech/language measured from the baseline noted by all District staff in January 2005. Although such progress appears modest and, as the Parents point out in their argument, might have been no more than simply regaining ground [Student] had lost in the transition, [Student's] progress was appropriate under the stressful circumstances of transferring to a new school. In addition, the District should be credited with the entire second half of the

2004/2005 school year to get to know [Student] and better identify the specifics of [Student's] language needs.

[Student]'s speech/language issues continued to be an area of significant need for [Student] during [Student's] second grade year. As [Student's] early voice and length of utterance issues abated, [Student's] needs in the area of social and pragmatic language skills should have become more apparent to the District, yet [Student's] speech therapy sessions were not sufficiently individualized to meet [Student] where [Student] was and move [Student] toward where [Student] truly needs to go in that area. The testimony of [Student's] speech therapist left the impression that [Student] was placed in established speech therapy group sessions which most closely approximated [Student's] level of functioning, but without really determining whether both group sessions are appropriate for [Student] in that all of [Student's] speech/language needs were and are met via [Student's] participation in those groups.

[Student]'s speech/language program has never included working on social communication skills, which is clearly a significant need for [Student]. With an hour of speech therapy scheduled for [Student] each week, [Student] should have been receiving direct instruction in that very important area, especially since [Student] clearly wants to socialize with [Student's] peers and the ability to engage in conversation is an essential skill that [Student] will need throughout [Student's] life. Such need should have been identified and incorporated into [Student]'s IEP by June 2005 and implemented from the beginning of the 2005/2006 school year.

Nevertheless, the speech/language goals that were identified for [Student] are also important, and [Student] has made meaningful progress toward them. The methods used

by the District, therefore, have been effective, but an essential subset of speech/language skills was omitted from [Student]'s program during second grade and likewise not included in the IEP proposed by the District for the current school year. Consequently, the District must develop speech/language goals for [Student] in the area of pragmatic language/social communication skills, using an appropriate curriculum for a child with autism, and provided with such instruction during at least one of [Student's] two weekly sessions of speech therapy. In addition, [Student] will be awarded one half hour/week of compensatory speech language services in the same area for the 2005/2006 school year and during the current school year until [Student] begins receiving those services.

### Behavior

Nothing in the record suggests that [Student] exhibited behaviors during [Student's] first six months in the District that staff working with [Student] could not and did not successfully address. There is also ample evidence that although the District staff did not request the autistic support team consultation independently, the teachers certainly did not resist the suggestion from [Student]'s Mother to seek the consultation, learned and implemented additional strategies for dealing with [Student]'s variable behaviors and attention difficulties. [Student's] case manager also made a strong effort to assure that everyone working with [Student] used consistent strategies.

There is no doubt, however, that [Student]'s negative behaviors escalated during [Student's] second grade year, from the beginning of the school year until at least late winter, and that it became considerably more difficult to deal with [Student] effectively in school. [Student]'s case manager, however, promptly sought assistance from an outside

agency to perform an FBA, implemented the recommended strategies in her own teaching and again made a strong effort to assure that she and her colleagues were consistent in dealing with [Student]'s behavioral issues.<sup>5</sup> It is difficult to imagine how the District could have done more to address [Student]'s behavioral issues during this period, and there is no evidence to suggest that there were resources available that the District did not use, except, perhaps, the autism consulting team from CIU. That team, however, had been at the District in June 2005. There was nothing inherently unreasonable or inappropriate in taking another approach several months later. The District's strategy ultimately worked, since the staff was again able to deal with [Student]'s behavioral issues to minimize the disruption to [Student's] educational program and the environment for other students. The record does not support the conclusion that the District failed to deal appropriately with [Student]'s behavioral issues during the 2005/2006 school year.

In the IEP proposed by the District for the current school year, [Student]'s behavioral objectives are similar to those in prior IEPs, but that is because [Student's] needs remain the same. The record supports the conclusion that the goals remain appropriate for [Student]. It is, however, extremely important that the program be

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<sup>5</sup> In their closing argument, Parents took a comment of [Student]'s case manager entirely out of context and drew from it an entirely unwarranted inference that the case manager, in effect, threw up her hands and simply hoped that [Student]'s behavior would spontaneously improve.

Parents referred to a purported comment of the case manager that the staff should deal with [Student]'s lengthy period of difficult behaviors that could not be abated with previously successful strategies by "riding it out." P-22. Reading that comment in context, however, establishes that the phrase was absolutely not an expression of the teacher's frustration. In fact, she was relating to [Student]'s other teachers a caution from the behavior specialist who had conducted the FBA that removing [Student] from a situation when he was acting out could be counter-productive in that [Student] might "think that [Student] can act out and then be removed from a situation." It was in that context that she passed on the further suggestion that the teachers would need to "try to ride it out, if possible" meaning in those temporally limited situations where they suspected that [Student]'s acting out was for the purpose of being removed from the specific situation.

applied consistently and that adequate data be collected to provide a basis for assessing the appropriateness of [Student]'s behavioral goals on an ongoing basis, to accurately determine when goals and strategies need to be adjusted. Progress monitoring and data collection is an area of weakness in all aspects of the District's programming for [Student] and must be improved.

The District, however, cannot be expected to exercise perfect control at all times. Some allowance must be made for unexpected situations, such as the staff turn over that occurred in the beginning of the current year. According to the evidence in the record, [Student]'s program was not delivered as well as it should have been in the beginning of the current school year, but improved by the end of November. (F.F. 46)

#### Math

The record establishes that [Student] has made consistent but slow gains in math since enrolling in the District, advancing from still needing to develop math readiness skills in 2005 to working at a first grade level at the beginning of this school year. (F.F. 33, 37) [Student] made good progress, initially, with the Touch Math instructional program, but it did not continue to work well for [Student], as evidenced by the need to backtrack by re-instituting cues that had been faded and the inability to perform as well at home as at school using touch points. (F.F. 34, 35, 36)

The suggestion from [Student]'s Mother to change [Student]'s instructional method to Saxon Math at the beginning of the current school year was both timely and appropriate. The change has likely allowed [Student] to continue advancing [Student's] math skills with a fresh approach to which [Student] appears to be responding well. Indeed, the District might look to its experience with [Student]'s math curriculum as a

paradigm of how to deal with [Student]'s needs in all areas as they change and evolve. Changing methods appears to be much more effective with [Student] than moving back to a lower level when there are signs that an instructional method has become ineffective for [Student].

I conclude that [Student] has made appropriate progress in math since enrolling in the District. [Student] has advanced steadily in developing math concepts and skills, such as telling time, although [Student's] progress was not reflected in recent standardized testing. That is understandable, however, since the methods that work well for [Student] in the classroom, such as visual materials and manipulatives, as well as prompting and cueing, are not available to [Student] in the testing situation. [Student] is obviously far behind non-disabled peers in terms of math skills and concepts, but [Student] is nevertheless making meaningful progress given [Student's] disability and its effects on [Student's] ability to learn and has been afforded the opportunity for significant learning in math since enrolling in the District. The math portion of the IEP offered by the District for the 2006/2007 school year is likewise appropriate for [Student]

#### Reading/Language Arts

Although [Student] has made progress in reading sight words in isolation since entering the District, [Student] remained unable to read a pre-primer passage above a frustration level by the end of second grade. For the current school year, the District offered, and is implementing, the Wilson reading program as an alternative to Project Read. Near the beginning of the current school year, [Student]'s reading fluency on kindergarten level reading passages was increasing. (F.F. 25)

The District added a specific keyboarding goal to the IEP it proposed for [Student] for the current school year. (S-31 at p. 24) This is an appropriate and necessary addition to the proposed IEP.

[Student]'s spelling and written expression goals remained the same as in the prior IEP. (S-56 pp. 22, 28; S-31 pp. 23, 16). A baseline added to the English/Language Arts goal in the proposed IEP demonstrates that [Student] previously made no progress toward that goal, which was identical in the mid-2006 IEP. [Student]'s goal is set at writing a fairly complex sentence in 4 out of 5 probes, starting from a baseline of 0 out of 5 probes. The fact that the spelling goal was also identical suggests little or no progress toward that goal from the prior IEP. In fact, [Student]'s teacher, looking at the spelling progress she had charted for [Student], was unable to testify with certainty how many words the 80% success rate on her graph actually represented. (N.T. pp. 915, 916; S-43 at p.14). In the absence of a true picture of [Student]'s baseline spelling skills, and given [Student's] prior lack of progress, as well as a lack of evidence indicating what the District proposes to do differently to assure that [Student] begins to make measurable progress toward [Student's] spelling and written expression goals, I cannot conclude that they were appropriate for [Student] at the time the 2006/2007 IEP was offered. [Student]'s IEP team needs to determine where [Student's] skills are at this point and either confirm the appropriateness of the goals in the proposed IEP or develop appropriate goals based on [Student's] current levels.

With respect to reading, it was obvious by the middle of [Student]'s second grade year that [Student] was not making appropriate progress in the Project Read program. Although [Student's] behavior difficulties from the beginning through the middle of the

2005/2006 school year undoubtedly affected [Student's] progress, the lack of a reading program appropriate for [Student], as opposed to one generally appropriate for a child with autism, as Project Read may be, was obvious to [Student's] teacher as well as to [Student's] Mother very early in second grade. (F.F. 24) Steps should have been taken at that point to find a different program for [Student]. Instead, [Student's] reading program remained the same even after [Student's] teacher suggested looking for a different program at the February 2006 IEP meeting. (F.F. 24)

Based upon [Student]'s lack of progress in reading and language arts during the 2005/2006 school year, [Student] is entitled to compensatory education for that period measured by the length of the language arts block on each school day during [Student]'s second grade year, and limited to additional services in reading, spelling and/or written expression selected by [Student's] Parents.

### Social Skills

It is absolutely clear from the record that [Student] needs intensive and explicit social skills instruction on a daily basis. [Student]'s desire to make friends and engage in social activities is an area of strength for [Student], but [Student] cannot build on that strength by developing, practicing and generalizing the kinds of social experiences [Student] clearly enjoys unless such experiences are provided to [Student] with far greater frequency than 15—25 minutes/week. Although it was not unreasonable for the guidance counselor to conclude that a 15—25 minute block of time for the kind of instruction [Student] provided to [Student] during the portion of the 2004/2005 school year for which the District had developed its own IEP, as well as for the 2005/2006 school year, was an appropriate amount of time/session, given [Student]'s limited



attention span, providing such instruction only once a week was clearly insufficient. Moreover, explicit instruction lessened once the lunch group began, toward the middle of the 2005/2006 school year, although that addition was very beneficial to [Student]. The record establishes that inviting one student from [Student's] regular education class to join [Student] for lunch each week is a very enjoyable activity for [Student]. [Student] might, therefore, be given the opportunity for similar types of structured activities with one other child or a small group of children from [Student's] regular education classes more frequently, along with other social skills training for small blocks of time during other periods of the school day. To have any hope of mastering and generalizing the skills [Student] is taught, they must be explicitly presented on a daily basis. The social skills program might also be presented in conjunction with the explicit social language training which will be ordered, as long as [Student] receives the total amount of time for both social/pragmatic language training and social skills training each week. [Student]'s IEP team will determine how such training shall be delivered to [Student], by whom and the appropriate curriculum to be used.<sup>6</sup>

Social skills training has been identified as one of [Student]'s significant needs since [Student] enrolled in the District and [Student] has been provided with 15 minutes of social skills training weekly from that time. Although the length of each session may have been based upon maximizing [Student]'s ability to focus and attend, there is no evidence that the selection of only one 15—25 minute session each week was based upon [Student]'s needs rather than the convenience of the School District, in terms of the availability of the guidance counselor. Moreover, it is clear that [Student] has been

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<sup>6</sup> The foregoing comments are merely suggestions of the types of social skills training [Student]'s IEP team might consider and are not intended to constitute a directive that the social skills training must include those components.

unable to generalize the skills [Student] has been taught, and although all of [Student]'s teachers tried to work on aspects of social skills, such as making eye contact, throughout [Student's] school day, there was no explicit, consistent and systematic effort to teach [Student] social skills every day. This part of [Student]'s program, therefore, has been inadequate to permit [Student] to make meaningful progress in the area of social skills development. [Student] will, therefore be awarded compensatory education amounting to 20 minutes/day of social skills training from the date the first District IEP was offered to [Student] until the date a new IEP is offered which includes 20 minutes of explicit social skills training every school day. Since [Student] received one period of social skills instruction each week, the compensatory education award will amount to four twenty minute sessions each week (80 minutes/week). This portion of the compensatory education award shall be used by [Student]'s Parents to provide [Student] with additional explicit social skills training of their choice which is appropriate for autistic children.

### ESY

As noted, the ESY issue in this case, whether [Student]'s Parents are entitled to reimbursement for the Lindamood Bell reading program they provided for [Student] during the summer of 2006, will be decided under the same standards used for tuition reimbursement.

To determine whether parents are entitled to reimbursement from a school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985) and *Florence County School District v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993).

The first step is to determine whether the program and placement offered by the school district is appropriate for the child, and only if that issue is resolved against the School District are the second and third steps considered, *i.e.*, is the program proposed by the parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof. *In Re: The Educational Assignment of Cindy D.*, Special Education Appeals Panel Decision No. 994 (June 27, 2001). A decision against the parents at any step of that process results in a denial of reimbursement. *Id.*

This case is highly unusual in that I conclude that there is insufficient evidence in this extensive record to make a reasoned determination whether the District's proposed program was appropriate for [Student] as offered. The District's proposed program with respect to reading, which was to be a primary focus of the summer instruction, would have been new for [Student]. It was based upon a Lindamood Bell program for which [Student]'s case manager/reading/language arts teacher provided training for the teachers who would actually deliver the summer instruction. There is no way of knowing whether that instruction would have been more effective for [Student] than [Student's] second grade school year reading program, which I found to be ineffective for the entire school year. Consequently, the first step in the analysis supports neither the District's nor the Parents' position.

There is, however, no difficulty in determining the second factor, the appropriateness of the program selected by the Parents. That was clearly ineffective for [Student], as the Parents' own expert witness testified. (F.F. 50) [Student]'s Mother's subjective belief that [Student] derived benefit from the program cannot overcome that

testimony.<sup>7</sup> This factor is determined against the Parents. Reimbursement for the ESY program they provided for [Student] during the summer of 2006 will, therefore, be denied.

#### Miscellaneous Issues

There are a number of additional issues which must be briefly addressed in order to adequately evaluate the District's proposed IEP and assure that all issues in this matter are fully considered.

#### [Student]'s Prompt Dependency

Virtually every witness at the hearing testified to [Student]'s dependence upon prompts and cues in every aspect of [Student's] academic instruction and other activities. Every witness likewise agreed that prompts should be faded to independence. No witness testified, however, and no document in this extensive record provided any guidance with respect to an appropriate method and schedule for working toward that goal for [Student]. There is simply no way to determine from this record whether [Student]'s past or prospective programs were/are deficient for not systematically working toward lessening [Student's] prompt/cue dependency because there was no information concerning how and when that should be done in terms of age or level of functioning or level of skill mastery with prompts and cues. This is, however, an issue that needs to be explicitly addressed in developing [Student]'s goals and specially designed instruction at present and going forward. If the parties have specific, research-based information concerning

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<sup>7</sup> It was quite interesting to note that the Parents, who strongly believe that [Student]'s response to intervention must be objectively measured in all aspects of his District-provided program, readily abandoned that position with respect to the ESY program, asking there that their subjective beliefs concerning the unquantifiable, amorphous benefit they believe [Student] derived from the program be credited over their own expert's testimony.

this issue, it wasn't made a part of this record. If the parties lack such information they would be well-advised to acquire it.

#### Evaluation Schedule

There was some suggestion in the record that [Student]'s Parents believe [Student] should be re-evaluated on a two year schedule rather than the usual three year schedule. *See*, 34 C.F.R. §300.536(b). That issue was not developed at the hearing, but the parties should note that the regulation actually provides that "Each public agency shall ensure...(b) That a reevaluation of each child...is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years." As with other aspects of the IDEA statute, a reevaluation schedule should be individualized to meet the child's needs. The general regulatory standard of reevaluating an eligible student every three years is a floor, not a ceiling.

#### Progress Monitoring

Testimony concerning progress monitoring was elicited from every witness, and the Parents contended that the District's past and prospective programs for [Student] are deficient due to a lack of systematic progress monitoring. As noted, the record does support the conclusion that progress monitoring for [Student] has been an area of significant weakness on the District's part. Nevertheless, there is no support for the conclusion that inadequate progress monitoring alone constituted an independent basis for finding a denial of FAPE with respect to any aspect of [Student]'s program. Rather, lack of adequate monitoring can lead to delays in determining that an aspect of [Student]'s program is inappropriate, whether as designed, as delivered or because of changing needs. If that is not rectified within a reasonable period, the inappropriate

program constitutes a denial of FAPE, not the absence of adequate and/or consistent progress monitoring. It is, however, much to the District's advantage, as well as to the child's advantage, to assure that adequate progress monitoring occurs to assure, in turn, the appropriateness of an eligible child's program, particularly a child with as many serious and changing needs as [Student] exhibits. Going forward, the District should assure that [Student]'s response to intervention and general progress is adequately and frequently assessed to assure that [Student's] program can be modified as necessary to achieve and maintain meaningful progress in all areas.

#### Autistic Support Consultations

The District's proposed IEP for [Student] provides that the IEP team will consult with the [redacted] assistive technology autistic support consultant once per semester and with the District autistic support consultant once per semester. Such regular consultations are certainly a positive development, but the IEP team should also consider specifically naming the [redacted] autistic support team as a potential resource on either a regular or "as needed" basis and broadening the schedule to note that more frequent consultations can be requested if the team believes there is a need for additional consultations.

#### Delivery of Services/Regular Education Goals

With such intense focus on [Student]'s numerous and serious needs and special education program and related services, the regular education component was given no attention in this lengthy proceeding. The District and IEP team should be aware, however, that an appropriate IEP for an eligible child who spends part of the school day in a regular education setting requires goals and objectives for the regular education

portion of the of the child's program as well as for the special education program. *See, In Re: The Educational Assignment of K.B.*, Special Education Appeals Panel Opinion No. 1470 (Apr. 2004).

Finally, [Student]'s Mother expressed dissatisfaction with [Student]'s reading instruction for the current school year because there are no other children in [Student's] reading group. Although that is unfortunate, since [Student] enjoys spending time with other children, one to one delivery is not a basis to find the reading program inappropriate. If the program allows [Student] to make meaningful progress in reading, then it is appropriate for [Student]. The District is also required to provide an appropriate reading program for all other eligible children and could not assign a child to participate in [Student]'s reading program unless that child's IEP team specified the same reading program and the child were at the same instructional level as [Student]. Designing appropriate individualized programs for children with various needs is challenging and such challenges are increased when the individualized needs of several children must be met within a group. The standard for assessing the appropriateness of each eligible child's program or segment thereof always depends upon whether that child is making meaningful progress even though all conditions may not be ideal. As noted earlier, a school district is required to provide an appropriate program for each eligible child, not an ideal program or setting.

## **V. SUMMARY**

[Student] is an endearing child enrolled in the third grade at [redacted] Elementary School in the School District. [Student] has been identified as eligible for special education services due to autism spectrum disorder, which creates significant

needs in the areas of reading/language arts, math, speech/language, behavior and social skills development. For the most part, the District has appropriately addressed [Student]'s needs through extensive specially designed instruction and related services, although progress in all areas has been slower than both the Parents and District would like.

[Student]'s first six months in the District, (second half of first grade), was a period of transition to [Student's] new school, teachers, therapists and other staff. During that time, the District provided an appropriate program for [Student] in all areas of need except for social skills training, as to which it provided insufficient time and insufficient specifically planned opportunities to generalize the skills [Student] was being taught in a natural environment with peers. [Student], therefore, will be awarded compensatory education from March 5, 2005, when the District offered its first IEP, to June 2005 in the amount of twenty (20) minutes/per day for four days each week to be used for additional social skills training. The specific services/programs shall be selected by [Student's] Parents within the parameters set for compensatory education costs as set forth in the accompanying order.

During the 2005/2006 school year, the District provided an appropriate program in math and appropriate behavior support strategies, but did not appropriately address all of [Student]'s speech/language needs, in that there were no goals and no explicit instruction devoted to developing and practicing social/pragmatic language skills in at least one of [Student]'s two weekly half hour speech therapy sessions, both during the 2005/2006 school year and continuing to the present. [Student], therefore, will be awarded one half hour per week of compensatory education to be used by [Student's]



Parents to provide additional speech/language services in the area of social/pragmatic language skills for each week of the 2005/2006 school year and of the 2006/2007 school year until [Student's] speech/language program is adjusted to provide [Student] with such services for one half hour each week. In addition, [Student]'s social skills instruction suffers from the same deficiency of insufficient time and opportunity to generalize instruction as during the 2004/2005 school year. Consequently, [Student] will be awarded compensatory education for social skills instruction as described above for 20 minutes daily, four days a week (80 minutes/week) for the entire 2005/2006 school year and continuing in the current school year until this portion of [Student's] program is adjusted to include at least 20 minutes of social skills instruction daily.

Since the record establishes that [Student] did not make meaningful progress in reading during the 2005/2006 school year, and that [Student's] progress in other aspects of [Student's] language arts program was minimal, and, in any event, difficult to determine due to lack of adequate progress monitoring, [Student] will be awarded compensatory education for the entire block of language arts instruction for everyday school was in session during the 2005/2006 school year, to be used for additional instruction in reading, and/or spelling and or keyboarding and/or written expression. [Student's] Parents will be permitted to select the specific programs and services in this area within the parameters set forth in the accompanying order. The School District will be further ordered to assess [Student]'s current levels and the progress [Student] has made to date during this school year in the areas of reading and language arts in order to determine whether the program proposed for the 2006/2007 school year is currently appropriate or needs to be adjusted in that area. The record establishes that the reading

program, at least, has been altered, and that [Student] appeared to be making better progress in reading at the beginning of the current school year. I conclude, however, that there is insufficient evidence in the record to determine whether the program was appropriate as offered and, therefore, whether [Student] is due compensatory education for the current school year. Despite the District's assistance that the appropriateness of a proffered IEP cannot be determined in light of the child's progress, I see no other way to make that decision in this case, when it appears from the record that the instructional method in reading was changed after the IEP was offered. In any event, it is clear, that [Student]'s IEP team must meet to review [Student's] IEP in its entirety and develop a new, integrated IEP which covers all aspects of [Student's] program. As discussed, the social skills and speech/language aspects of [Student's] program definitely need to be adjusted.

The Parents' other requests for relief, *i.e.*, ordering the District to develop an autistic support program appropriate for [Student] within the District and reimbursement for the ESY program they provided for [Student] at their expense during the summer of 2006 are denied for the reasons discussed in detail above.

## **VI. ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to take the following actions:

1. Convene [Student]'s IEP team immediately to review all aspects of [Student's] current program and make revisions as necessary, taking into account the discussion of various aspects of [Student's] program in the hearing decision. [Student]'s IEP team shall specifically assure that [Student] receives 20 minutes

of explicit social skills instruction daily and at least ½ hour weekly of explicit speech/language instruction/therapy in the area of pragmatic/social communication skills;

2. Provide [Student] with compensatory education as follows:
  - a. For social skills instruction: 20 minutes for four days each week (80 minutes weekly) that school was/is in session beginning March 5, 2005 and continuing until the date the School District, through [Student]’s IEP team, offers [Student] at least 20 minutes of social skills instruction daily. The specific compensatory services/programs for social skills development shall be selected by [Student]’s Parents. If there is a dispute concerning the cost of the service(s)/program(s) selected by the Parents, the total cost of such compensatory education shall not exceed the cost to the District for the services of the guidance counselor who currently provides such instruction for [Student] for 20 minutes each day, for four days each week for the amount of time covered by this compensatory education award, such cost to include the proportional 20 minutes/day share of [Student]’s total compensation, including salary and fringe benefits, for four days each week. (80 min/week x number of weeks of compensatory education x cost of compensation of the guidance counselor for 20 minutes, four days/week)
  - b. For pragmatic/social communication speech/language instruction/therapy: ½ hour/week for each week school was in session from the first day of the 2005/2006 school year and continuing until the date the School District, through [Student]’s IEP team, offers at least ½ hour per week of explicit pragmatic/social language instruction/therapy. The specific compensatory services/programs for pragmatic/social communication development shall be selected by [Student]’s Parents. If there is a dispute concerning the cost of the service(s)/program(s) selected by the Parents, the total cost of such compensatory education shall not exceed the cost to the District for the services of the speech therapist who currently provides such instruction for [Student] for ½ hour each week, such cost to include the proportional ½ hour/week share of her total compensation, including salary and fringe benefits. ( ½ hour/week x number of weeks of compensatory education x cost of compensation of the speech therapist for ½ hour each week)
  - c. For reading/language arts: the amount of time [Student] was assigned to the resource room for that block of instruction for every day school was in session during the 2005/2006 school year. The specific compensatory services/programs for reading/language arts shall be selected by [Student]’s Parents. If there is a dispute concerning the cost of the service(s)/program(s) selected by the Parents, the total cost of such compensatory education shall not exceed the cost to the District for the services of the teacher who provided such instruction for [Student] for the

amount of time each day during the 2005/2006 that [Student] was assigned to her class for reading/language arts instruction. Such cost shall include the proportional daily share of her total compensation, including salary and fringe benefits. (# hours/day [Student] was assigned to her class for instruction in reading/language arts x number of school days during the 2005/2006 school year x cost of compensation of the reading/language arts teacher for that amount of time each day)

- d. The compensatory education services described above may occur after school hours, on weekends and/or during the summer months when convenient for [Student] and [Student's] Parents. The hours of compensatory education may be used at any time from the present to [Student]'s 21<sup>st</sup> birthday. In the event that as [Student]'s needs change and develop, [Student's] Parents believe it would be in [Student's] best interests to provide program/services in areas other than those specified, and/or more or less time than specified in each area, such adjustments may be made with the approval of the IEP team, provided that the total cost of the entire compensatory education award, calculated as specified above, is not exceeded.

Dated: 03/08/07

*Anne L. Carroll*

Anne L. Carroll, Esq., Hearing Officer