

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 DECISION AND ORDER

File Number: 6951/06-07 KE
Child's Name: GD
Date of Birth: August 23, 1991
School District: Pocono Mountain

For the Student:

For the Pocono Mountain School District:

Betsy Guftason
Director of Special Education
Pocono Mountain School District
P.O. Box 200
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Date of Hearing Request: August 31, 2006
Date of Hearing: October 24, 2006
Type of Hearing: Closed
Date of Receipt of Transcript: October 31, 2006
Date of Decision: November 14, 2006

Hearing Officer: Daniel J. Myers

BACKGROUND

Student is a xx year old, 9th grade student of the Pocono Mountain School District (School District) with a specific learning disability. He contends that the School District's August 29, 2006 proposed individualized education program (IEP) does not accurately reflect Student's present education levels, does not contain realistic educational goals, and is not appropriate. He also contends that the School District has not appropriately complied with its pendency obligations during the pendency of this due process hearing. Finally, he contends that he was denied FAPE during his 7th grade, 2004-2005 school year, because his instructor lacked sufficient competence and because portions of his IEP were not implemented.

For the reasons described below, I conclude that the School District's proposed IEP is appropriate and that the School District has appropriately complied with its pendency obligations. I conclude that Student was denied FAPE during his 7th grade, 2004-2005 school year, because he did not receive effective instruction, but I conclude that Student did not establish that other portions of his IEP were not implemented. Finally, I conclude that the School District has already compensated for its 7th grade FAPE denial and, accordingly, I do not award compensatory education.

ISSUES

1. Whether the School District's proposed educational program and placement for 2006-2007 is appropriate?
2. Whether the School District has been implementing Student's pendent program and placement appropriately?
3. Whether the School District provided a free and appropriate public education to Student during 2004-2005?

FINDINGS OF FACT

1. Student is a xx year old, 9th grade student of the Pocono Mountain School District with a specific learning disability. (S6, p.5; P3, p.1)¹
 - a. In February 2000, the school district's psychologist concluded that Student required specially designed instruction as a child with a specific learning disability (SLD) in reading.
 - b. Nevertheless, Student's 2000 IEP team decided not to provide special education services, but rather to provide regular education with supplemental IST services. (P1, pp.17-18)
 - c. At least by 6th grade, 2003-2004, however, Student's IEP team had agreed that he had a SLD in reading and writing, and that he required an IEP. I

¹ References to "P," "S," and "HO" refer to Parent, School District and Hearing Officer exhibits, respectively. References to "N.T." refer to the transcript of the October 24, 2006 hearing session in this matter.

base this finding upon the fact that Student's 7th grade, 2004-2005 notice of recommended educational placement (NOREP) recommends that Student "continue to receive" itinerant learning support services. (P1, p.6)

7th Grade, 2004-2005

2. Over the course of the 2004-2005 school year, Student's parents and School District officials met nine times to discuss various concerns regarding Student's educational programming. (N.T. 222)
3. On or about October 15, 2004, Student's parents secured a private psychoeducational evaluation of Student. (N.T. 185, 227; S1; P4) The evaluator, Dr. H, is a licensed psychologist and director of psychological services at [redacted] Center. (N.T. 179) While Dr. H is not a certified school psychologist, his specialty is learning and attention disorders, he regularly performs independent psychoeducational evaluations, he trains school psychologists in the administration of the Woodcock Johnson, 3rd edition (WJ-III), and he has testified in due process hearings and civil cases relating to special education services. (N.T. 179-181)
4. Dr. H reported that Student's October 2004 Wechsler Intelligence Scale for Children, 4th edition (WISC-IV), indicated above average range standard scores of 110 for both verbal comprehension and nonverbal reasoning. (N.T. 186; S1, p.3)
 - a. A WJ-III indicated that Student's reading achievement was in the low average range, with decoding at the mid-3rd grade level, and reading comprehension in the average range and at the 5th-6th grade level. (N.T.188; S1, p.9) WJ-III Math scores indicated low average achievement in math calculation, and math reasoning in the average range. (N.T. 188; S1, p.11) Student's basic writing skills were at early 4th grade level. (N.T. 189; S1, p.11)
 - b. Dr. H concluded that Student's achievement was significantly below expectation in basic reading, reading comprehension, math calculation, written expression, and listening comprehension. Among other things, he recommended an intensive, research-based, remedial reading program. (N.T. 189; S1, p.17)
5. Based upon Dr. H's evaluation, Student's November 23, 2004 IEP contained a reading decoding goal, which was taken from the Wilson Reading Program. (S2, p.10; P1, p.42) Among other specially designed instruction and program modifications were books on tape/CD, when novels were assigned and when the books on tape/CD were available. (S2, p.12)
6. The reading program provided by the School District was the Wilson Reading Program, a highly controlled, multilevel, multisensory program. (N.T. 33) The ideal instruction period for Wilson instruction is either five 45 minute sessions per week, or three 90 minute sessions per week. (N.T. 154) It is not required to be

- provided in one-on-one settings, except when it is part of a teacher's learning internship or practicum experience. (N.T. 144) It is generally projected that a child will complete the 12 Step Wilson program in 3-4 years. (N.T. 97, 148)
7. Fortuitously, during the 2004-2005 school year, the School District had initiated a pilot program to assist its teachers in obtaining their Wilson certification. (N.T. 34, 68, 225) The pilot program's Wilson certification requirements involved attendance of a two-day overview training, successful completion of a 90 hour, nine credit online course, 5-6 observations by a Wilson official, and one-on-one delivery of Wilson reading instruction to a practicum student. (N.T. 42-45, 65, 69-71, 86. 153)
 8. Beginning on or about October 15, 2004, Student was assigned to be the practicum student for Ms. S. (N.T. 34, 55, 67, 227)
 - a. At that time, Ms. S was in her fifth year of teaching, with a Level I Pennsylvania certification in special education K-12. (N.T. 77)
 - i. Throughout the 2004-2005 school year, Ms. S delivered the Wilson instruction to Student in accordance with its manual's step by step instructions, and she received satisfactory observations from a Wilson Program representative. (N.T. 45, 65, 69, 153)
 - ii. Ultimately, however, Ms. S did not obtain her Wilson certification because she failed to complete successfully the 90 hour, nine credit online course. (N.T. 40-41)
 - b. Ms. S testified that Student's attitude during Wilson instruction was not "fully cooperative" and that he became more difficult as time went on. (N.T. 75-76)
 - c. Ms. S was unable to explain adequately the relationship, if any, between Student's IEP goal and his Wilson programming goals. (N.T. 49, 59-60, 67)
 9. Student's parents allege that the books on tape/CD and the computer program services listed in Student's IEP were not implemented. They base these allegations upon the fact that Student never brought home any such materials. (N.T. 231, 233-234; S2, p.12; P1, p.63) The School District's principal did not know at the hearing whether or not Student received books on tape/CD during the 2004-2005 school year. (N.T. 220)
 10. On or about May 5, 2005, Student was reevaluated by Dr. H. (N.T. 190; S3; P5)
 - a. Dr. H found minimal gain on the WJ-III in basic reading skills, which went from a 3.5 to 3.7 grade level, essentially no change in reading fluency and spelling, minimal improvement in reading comprehension, and some increase in vocabulary. (N.T. 190; S3, p.4; P5, p.4)

- b. Dr. H observed a “very significant improvement in [Student’s] ability to spell nonsense words suggesting an improvement in phoneme/grapheme knowledge.” (S3, p.9; P5, p.10)²
 - c. Dr. H testified at the hearing, however, that “...a reasonable conclusion would be that there was no positive response to the Wilson program at that time.” (N.T. 196)
11. Student’s beginning-of-the-year Wilson Assessment of Decoding and Encoding (WADE) indicated that his skills were at level 1.3. (N.T. 72, 74) His end-of-year WADE indicated that he was at level 4.1 (N.T. 74)
12. During Summer 2005, Student received additional Wilson reading instruction.
- a. His teacher was Ms. C, a School District teacher with over 30 years experience, a Master’s degree in reading, reading supervisory and principal’s certifications, and who is a certified Wilson instructor. (N.T. 83-84, 86, 116)
 - b. During Summer 2005, Ms. C taught Student and one other student at the same time for two hours at a time. (N.T. 102, 151)
 - c. Although Ms. C began summer instruction at Wilson Step 4.2, she felt that Student had not mastered all concepts in previous Levels 1-4, and so she reviewed those previous levels with Student. (N.T. 91-92, 94, 121, 163)
 - d. Ms. C testified that Student’s 7th grade Wilson instruction provided the foundation for his summer instruction, and that he made progress in Wilson reading instruction during the 7th grade. (N.T. 122, 150, 165)
 - e. Ms. C testified that Student was a very motivated, persistent student who took his work seriously, and who offered no behavioral or cooperation problems. (N.T. 97, 113, 145-146)
 - f. By the end of the summer, Student had mastered all lessons through Level 4 and was ready to begin Level 5. (N.T. 124)

8th Grade, 2005-2006

13. Student continued to receive Wilson reading instruction, one-on-one, from Ms. C in 8th grade. By the end of this school year, Student had mastered Wilson level 8. (N.T. 88, 95, 125, 150-151) Student’s 2005-2006 IEP simply provides that Student will receive daily Wilson reading instruction; it does not specify either the length of that daily instruction, or the required teacher: student ratio. (S4, p.16; P2, p.14) Student’s parents are satisfied with Student’s educational progress for this 8th grade school year. (N.T. 9-10, 26)

² The School District’s exhibit 3 is missing the sixth page of Dr. H’s evaluation report. (compare S3,pp.6-7 to P5,p7)

9th Grade, 2006-2007

14. On or about August 16, 2006, Dr. H reevaluated Student. (N.T. 191; S5, p.1; P6, p.11) Dr. H's written report of that evaluation was dictated and transcribed on August 31, 2006. (S5, p.11; P6, p.11; N.T. 203) He testified that Student's basic reading skills showed welcome progress, up to 6.4 grade level and into average range, with improvement in comprehension, particularly in vocabulary. (N.T. 192; S5, p.4) He testified that Student's reading fluency was in the "borderline" range at the 4th grade level. (N.T. 192; S5, p.4) Believing that Student was beginning to benefit from his Wilson reading instruction, Dr. H recommended continued Wilson reading instruction. (S5, p.8)
15. Ms. C, Student's Wilson reading instructor, testified that Student's reading disability compromises his reading automaticity and fluency. She further testified that the Wilson program itself teaches students to take their time rather than guess, which naturally means that Student's reading will be relatively slow. She testified that Student's reading fluency will never be "normal," which I interpret to mean "equivalent to his nondisabled peers," because he must intentionally apply the techniques that his nondisabled peers have easily internalized. (N.T. 167)
16. On August 29, 2006 the School District proposed an IEP for the 2006-2007 school year. (N.T. 126-127; S6; P3) At that time, Student's parents requested an assistive technology evaluation. (N.T. 172-173) On August 31, 2006, Student's parents rejected the proposed IEP because they did not agree with the IEP's present levels of academic achievement. (S6, p.29; N.T. 269)
17. Student's high school schedule this year is considered "block scheduling" which means that instruction is generally provided in 90 minute blocks, rather than in 45 minute blocks. (N.T. 99)
 - a. Ostensibly to comply with its pendency obligation, the School District is providing Student with 45 minute blocks of Wilson programming, rather than 90 minute blocks. (N.T. 102, 136)
 - i. Student's Wilson teacher, Ms. C, credibly testified that she ensures that Student receives 45 minutes of Wilson reading instruction during each session. (N.T. 111) She does not think, however, that it is beneficial to provide Student with Wilson programming in only 45 minute blocks. (N.T. 102)
 - b. Throughout this school year, Student has received Wilson instruction with another student or two in the room, and with Ms. C dividing her time among the students. (N.T. 108-109, 140-141)
 - i. While Ms. C considers one-on-one Wilson instruction to be ideal, she does not believe that having other students receiving Wilson instruction at the same time is harmful. (N.T. 109-110)
 - ii. Ms. C ensures that Student actually masters each concept before moving on to the next Wilson step in his program. (N.T. 110)

18. An unsuccessful mandatory resolution meeting was conducted prior to the due process hearing. (N.T. 266-267) At the October 24, 2006 due process hearing, Parent exhibits P 1 through P 8 were admitted into the record. The School District's objections to exhibits P 9 and P 10 were sustained, and those exhibits were not admitted into the record. (N.T. 248-249) School District exhibits S1-S6 were admitted into the record without objection. (N.T. 249-250)

DISCUSSION

The IDEIA requires states receiving federal funds for education to provide every child with a disability with a free and appropriate public education (FAPE.) This entitlement is delivered by way of the individualized education program (IEP,) a detailed written statement that summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. Oberti v Board of Education, 995 F.2d 1204 (3rd Cir. 1993) A school district's failure to offer an IEP reasonably calculated to enable the child to receive meaningful educational benefit will be deemed a denial of FAPE. Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982) A program that confers only trivial or minimal benefit is not appropriate. Polk v Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988) The appropriateness of the IEP is judged based on the information known at the time it is drafted. Furhmann v East Hanover Board of Education, 993 F.2d 1031 (3rd Cir. 1993) In Re N.S. and the Warwick School District, Special Education Opinion No. 1775 (2006)

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging a special education IEP is upon the party seeking relief, whether that is the disabled child or the school district. Schaffer v. Weast, ___ U.S. ___, 126 S.Ct. 528 (2005); In Re N.S. and the Warwick School District, Special Education Opinion No. 1775 (2006) In this case, Student's parents seek relief and, therefore, they bear the burden of proof.

The School District's proposed educational program and placement for 2006-2007 is appropriate.

Student's parents believe that the School District's proposed IEP does not accurately reflect Student's present educational levels. (N.T. 23) Student's parents contend that Student has a very high IQ and that the School District has set the bar very low in reading grade level expectations. (N.T. 25-26, 238, 243) In essence, they are arguing that the School District's proposed IEP is not calculated to yield meaningful educational benefit in light of Student's intellectual potential. In Re J.N. and the Pittsburgh School District, Special Education Opinion No. 1780 (2006), citing Ridgewood Board of Education v. N.E., 172 F.3d 238, 247-248 (3rd Cir. 1999); In Re S.J. and the Springfield Township School District, Special Education Opinion No. 1624 (2005); see West Chester Area School District v. Bruce and Suzanne C, 194 F.Supp.2d 417 (E.D.Pa.2002)

I conclude that the School District's proposed IEP does accurately reflect Student's present educational levels and is calculated to yield meaningful educational benefit in light of Student's intellectual potential.

Student has average to high average cognitive abilities and a specific learning disability in reading. This means to me that, in contrast to his nondisabled peers, reading is not effortless for Student, but that he has the intellectual ability to learn, explicitly, those reading skills that his nondisabled peers have already internalized. Ms. C, Student's Wilson reading instructor, testified that Student's reading disability compromises his reading automaticity and fluency. She further testified that the Wilson program itself teaches students to take their time rather than guess, which naturally means that Student's reading will be relatively slow. She testified that Student's reading fluency will never be "normal," which I interpret to mean "equivalent to his nondisabled peers," because he must intentionally apply the techniques that his nondisabled peers have easily internalized. (N.T. 167)

Fortunately, Student also has the persistence and motivation to learn and explicitly apply reading skills, despite the relatively greater effort that he must expend in comparison to his nondisabled peers. This is established by Ms. C's testimony (N.T. 167) and it is reflected in the School District's proposed IEP. (S6, p.7) It is also supported by Dr. H's evaluations, which indicate that Student has been benefiting from the Wilson Program's explicit instruction in reading skills. (S3, p.10; S5, p.8) Technically, Dr. H's most recent evaluation report is not relevant to this IEP because the appropriateness of a proposed IEP must be judged on the basis of information available at the time that the IEP was written, and not on the basis of subsequently-obtained information. In Re A.D. and the Schuylkill Haven Area School District, Special Education Opinion No. 1611 (2005); In Re B.S. and the West Chester Area School District, Special Education Opinion No. 1466 (2004) Under this principle, I cannot use Dr. H's August 31, 2006 evaluation report (S5, p.11; P6, p.11; N.T. 203) to judge the accuracy of the present education levels in the School District's August 29, 2006 proposed IEP. Contrary to the position of Student's parents, however, I think Dr. H's most recent evaluation report supports, rather than conflicts with, the present education levels in the School District's August 29, 2006 proposed IEP.

Accordingly, I conclude that the School District's August 29, 2006 proposed IEP does accurately reflect Student's present education levels, does contain realistic educational goals, and is appropriate.

The School District has been implementing Student's pendent program and placement appropriately.

Federal regulations require that, during the pendency of this administrative due process hearing, Student must remain in his current educational placement unless the parties agree otherwise. 34 CFR §300.518(a)

Student's parents contend that, to comply with its pendency obligation, the School District must implement Student's Wilson reading program in 90 minute increments according to the high school's block scheduling system. (N.T. 272) Instead, the School District applies 90 minute block scheduling to all of Student's academic subjects except his Wilson reading program, which is provided in only 45 minute increments. (N.T. 136, 272)

Apparently, the School District believes that, because it provided Wilson reading instruction to Student 45 minutes per day last year, its pendency obligation is to do the same this year. Student's parents sought to establish at the hearing that, with more than one student in the classroom, Student does not receive currently a full 45 minutes of Wilson instruction each day. (N.T. 108-109) I reject that contention. Student's Wilson teacher, Ms. C, credibly testified that she ensures that Student receives 45 minutes of Wilson reading instruction during each session. (N.T. 111)

My finding on this issue, however, is much more basic than even a simple counting of minutes on Wilson instruction. The 2005-2006 pendent IEP simply provides that Student will receive daily Wilson reading instruction. It does not specify the length of that daily instruction. (S4, p.16; P2, p.14) Because the School District provided Wilson reading instruction last year, its pendency obligation is simply to provide Wilson reading instruction now. Because the School District is, indeed, providing Wilson programming during the pendency of this dispute, it has met its pendency obligation.

I note, as dictum, however, my disappointment in the School District's behavior on this issue, which appears petty and overly legalistic. First, despite limiting instruction to 45 minutes, ostensibly because that is what pendency requires, the School District conveniently does not apply the same principle to the one-on-one instructional setting that it also provided to Student last year. (N.T. 150-151). Second, the School District's very capable Wilson instructor could easily have provided a full 90 minutes of Wilson instruction to Student during the pendency of this hearing, and suggested that it would have been more beneficial to Student than the limited 45 minutes. (N.T. 102) Finally, the federal pendency regulations permit parties to "agree otherwise" with respect to pendency, 34 CFR §300.518(a), thereby permitting the School District to have provided 90 minutes of Wilson instruction during the pendency of this proceeding – had it wanted to do so.

Nevertheless, as I indicated above, the School District has satisfied its pendency requirements.

Whether the School District provided a free and appropriate public education to Student during 2004-2005?

Student's parents contend that Student was denied FAPE during his 7th grade, 2004-2005 school year, essentially arguing that Student's 7th grade, 2004-2005, Wilson instructor, Ms. S, lacked competence to provide effective Wilson instruction. (N.T. 40-41) Student's parents also allege that Student did not receive SDI and program

modifications that were required by the IEP. More specifically, they allege that the books on tape/CD and the computer program services listed in Student's IEP were not implemented. They base these allegations upon the fact that Student never brought home any such materials. (N.T. 231, 233-234; S2, p.12; P1, p.63)

The School District's position is that, while Student's 7th grade program was not flawless, "flawless" is not the standard for FAPE. (N.T. 254) The School District contends that Student received meaningful educational benefit during 7th grade, which meets the School District's FAPE requirement. The School District notes that Students' Parents were aware that Student would be Ms. S's practicum student and, while there were some gaps in Student's Wilson instruction during that school year, they were remediated in Summer 2005. With respect to all other allegations regarding FAPE denial, the School District contends that they lack evidence in the record.

I agree with Student's parents that Student's 7th grade Wilson instruction did not amount to FAPE. While I do not believe that it was necessary for Ms. S to be a certified Wilson instructor in order to provide FAPE in this case, it is clear that the Wilson instruction that Student received from Ms. S was not effective enough to constitute FAPE. Ms. S's testimony that Student had progressed from Level 1.3 to Level 4.1 during the school year (N.T. 74) lacks credibility for several reasons. First, it is contradicted by more credible evidence from two other witnesses. Ms. C, Student's summer 2005 Wilson instructor, felt that Student had not mastered all concepts in previous Levels 1-4, and consequently she reviewed those previous levels with Student. (N.T. 91-92, 94, 121, 163) In addition, Dr. H found in his May 5, 2005 evaluation, minimal gain on the WJ-III in basic reading skills, which went from a 3.5 to 3.7 grade level, with essentially no change in reading fluency and spelling, minimal improvement in reading comprehension, and some increase in vocabulary. (N.T. 190; S3, p.4; P5, p.4) He testified at the hearing that "...a reasonable conclusion would be that there was no positive response to the Wilson program at that time." (N.T. 196)

In addition, Ms. S's inability to explain adequately the relationship, if any, between Student's IEP goal and his Wilson programming goals causes me to discount her conclusions regarding Student's educational progress during the 7th grade. (N.T. 49, 59-60, 67) Finally, I note the contrast between Ms. S's description of Student as not "fully cooperative" and "more difficult as time went on" (N.T. 75-76), and the description by Student's next Wilson instructor, Ms. C, of a very motivated, persistent student who took his work seriously, and who offered no behavioral or cooperation problems. (N.T. 97, 113, 145-146) In light of Ms. C's more extensive teaching experience, I am inclined to give little weight to the educational progress opinion of Ms. S.³

³ I note that Ms. C did testify that Student's 7th grade Wilson instruction provided the foundation for his summer instruction, and that he made progress in Wilson reading instruction during the 7th grade. (N.T. 122, 150, 165) Her use of the phrases "foundation" and "made progress," however, indicate equivocation, and they do not equate to "meaningful educational benefit."

With regard to the implementation of other aspects of Student's 2004-2005 IEP, I do not agree with Student's parents. The School District's principal did not know at the hearing whether or not Student received books on tape/CD during the 2004-2005 school year. (N.T. 220) Neither, however, did Student's parents. They simply assumed it had not been implemented because they did not see books on tape/CD come home. (N.T. 231, 233-234) This is not a sufficient evidentiary basis upon which I can conclude that the School District failed to implement the IEP. Where the burden of proof is upon Student's parents on this issue, I find that they have failed to satisfy that burden.

Compensatory education is an appropriate remedy for a failure to provide FAPE. The Pennsylvania Commonwealth Court has held that, in fashioning the amount of the remedy, an equitable award of compensatory that is tailored to the particular student's needs is more appropriate than an hour-for-hour standard. B.C. v Penn Manor School District, 805 A.2d 642 (Pa. Commw. Ct. 2006) An equitable calculation would include what the student has or has not achieved. In Re C.R. and the North Pocono School District, Special Education Appeal No. 1770 (2006) The Commonwealth Court observed that, in some situations, a student may be entitled to little or no compensatory education because (s)he has progressed appropriately despite having been denied a FAPE. B.C. v Penn Manor School District, 805 A.2d 642 (Pa. Commw. Ct. 2006)

In this case, I believe that no compensatory education award is required. Although Student's IEP did not require extended school year services (P1, p.64; S2, p.13), he did, in fact, receive two hours per day of high quality summer instruction from Ms. C in the Wilson Reading program. (N.T. 102) When Ms. C discovered that Student had not mastered all concepts in previous Levels 1-4, she reviewed those previous levels with Student. (N.T. 91-92, 94, 121, 163) By the end of the summer, Student had surpassed the point expected. He had mastered all lessons through Level 4 and was ready to begin Level 5. (N.T. 124) Student then continued to receive Wilson reading instruction, one-on-one, from Ms. C in 8th grade, mastering Level 8 by the end of the school year. (N.T. 88, 95, 125) The effectiveness of Ms. C's Wilson instruction is confirmed by Dr. H's August 2006 reevaluation report. (S5, p.11; P6, p.11; N.T. 203) Dr. H found welcome progress in Student's basic reading skills, with improvement in comprehension, particularly in vocabulary. (N.T. 192; S5, p.4) Believing that Student was beginning to benefit from his Wilson reading instruction, Dr. H recommended continued Wilson reading instruction. (S5, p.8)

I conclude that the School District has already compensated Student for his 2004-2005 FAPE denial. His Summer 2005 Wilson instruction remediated his lack of mastery in levels 1-4 and had him ready for level 5 at the beginning of the 2005-2006 school year. Student began the 2005-2006 school year in the position that he would have been in had he not been denied FAPE during the previous school year. Thus, Student has already been compensated and is not entitled to an award of compensatory education.

CONCLUSION

For the reasons described above, I conclude that the School District's proposed IEP is appropriate and that the School District has appropriately complied with its pendency obligations. I conclude that Student was denied FAPE during his 7th grade, 2004-2005 school year, because he did not receive effective instruction, but I conclude that Student did not establish that other portions of his IEP were not implemented. Finally, I conclude that the School District has already compensated for its 7th grade FAPE denial and, accordingly, I do not award compensatory education.

ORDER

- The School District's August 29, 2006 proposed IEP is appropriate.
- The School District has appropriately complied with its pendency obligations during the pendency of this due process hearing.
- Student was denied FAPE during his 7th grade, 2004-2005 school year.
- No compensatory education is owed because the School District has already compensated Student for its 7th grade FAPE denial.

Daniel J. Myers

Hearing Officer
November 14, 2006

Re: 6951/06-07 KE
Student
Pocono Mountain