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PENNSYLVANIA SPECIAL EDUCATION HEARING OFFICER DECISION AND ORDER

File Number: 7094/06-07 AS
Child's Name: SC
Date of Birth: xx/xx/xx
School District: Lake-Lehman
Type of Hearing: Open

For the Student:

For the School District:

Tina Antonello, Director of Special Education
Lake-Lehman School District
P.O. Box 38
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Hearing Request Date:	October 30, 2006
Resolution Meeting date:	Waived
Hearing Date:	December 22, 2006
Date of Receipt of Transcript:	December 26, 2006
Decision Date:	January 9, 2007
Hearing Officer:	Daniel J. Myers

BACKGROUND

Student is a xx year old resident of the School District with autism who alleges that he was denied a free and appropriate public education (FAPE) for up to four years prior to February 1, 2006. Student's educational program and placement since February 1, 2006 are not at issue. For the reasons described below, I find that Student was denied FAPE, and that he is entitled to 2 ½ months of compensatory education.

ISSUE

Whether or not Student was denied a free and appropriate public education at any time since October 30, 2004.

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a xx year old resident of the School District. He was diagnosed with autism when he was three years old. He has seven siblings.
 - a. Student has always been relatively more aggressive than typical students. (N.T. 113) He has a volatile nature and a propensity for unpredictable, spontaneous aggression. When he was ten years old, he was hospitalized at the [redacted facility] in Philadelphia for four months of medication trials and intensive behavior modification to address severe aggression and self-injury. He has been similarly hospitalized at least four more times since then.
 - b. Student is never allowed in a vehicle by himself, he is not permitted to sit behind the driver or next to a door, and his wrists are restrained while traveling in his family's vehicle to prevent injury to himself and others.
 - c. Student is minimally verbal. He does not initiate conversation. He can express his wants and desires with 3-4 word sentences, and he can respond to questions asking him to identify things.
(N.T. 35-36, 88-89, 115; P12, pp.1-2, 13; P15; SD11, pp.10, 18)¹
2. During the 2002-2003 and 2003-2004 school years, when Student was xx and xx years old, he attended a full-time autistic support classroom operated by Luzerne Intermediate Unit 18 at the Nanticoke Learning Center. (N.T. 17, 52)
 - a. Student also received mental health and mental retardation (MH/MR) wrap-around services from the [redacted] Center (Center), consisting of 47 hours per week of therapeutic support staff (TSS) service (35 of those hours were provided at school), as well as behavior specialist consultant (BSC) services. (P15; N.T. 35-36)

¹ References to "P," "SD," and "HO" are to the Parent, School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcript of the December 22, 2006 hearing session.

- b. Frequent interagency meetings of the Pennsylvania Child and Adolescent Service System Program (CASSP) were conducted to discuss and attempt to program for Student's difficult behaviors. (P1; N.T. 13, 19)
3. At least during the Spring 2003 semester, Student's classroom contained six children between the ages of 14 and 16. All six children had TSSs, and the classroom also had a teacher and two aides. The focus of classroom instruction was daily living skills. Student's Spring 2003 TSS testified that the classroom was very unstructured, with no established schedule. (N.T. 82-83, 87, 95)
4. By the time of his March 3, 2004 IEP, Student had shown a significant increase in disruptive behavior since the beginning of the 2003-2004 school year. This behavior included throwing things, head-banging, and tantrumming. At times, Student's parents were called to take him home because his very aggressive behaviors could not be controlled at school and Student had become a safety danger to himself and others. (P14, p.9; SD15; SD17; N.T. 14, 61-62, 66, 101)
5. On September 10, 2004, Student's behavior was so uncontrollable and dangerous that, after his parents were called to pick him up from school, Student was admitted to a psychiatric hospitalization at the [redacted] Hospital. (N.T. 17, 53, 73) Student returned to school in mid-October 2004, but by mid-day he had to be restrained by three people, and his parents were called to retrieve him. (N.T. 17)
6. An October 13, 2004 psychiatric evaluation indicated that Student's behaviors had unclear origins. He might have been experiencing a psychotic process that drove him to act with aggression and self-injury, or he might have been seeking to escape/avoid school and social interaction demands. His psychiatrist recommended residential placement at an intensive neurobehavioral treatment facility that specializes in the assessment and treatment of individuals with autism and severe aggression and self-injury. (N.T. 29; P12, p.4)
7. In October 2004, CASSP meeting participants concluded that Student needed to be residentially placed at the [redacted] Unit in [town, state redacted], but they were unable to secure immediate public funding, because they had not yet exhausted the possibilities for in-state residential placements. In addition, Student's MH/MR wrap-around BSC, who was a Board Certified Behavior Analyst (BCBA), had recommended consultation and supervision by Dr. F, a licensed psychologist, professor of psychology, BCBA, and behavior analysis expert based in Pennsylvania. Apparently, however, no public agencies would authorize payment for Dr. F's services. (N.T. 27, 30, 66, 124; P5, p.2; P9; SD21, p.2)
8. Meanwhile, Student remained at home, heavily sedated on Seroquel and Valium that had been prescribed to prevent Student from harming himself and others. Essentially, Student was either asleep or, when he was awake he started hitting himself and/or others. (N.T. 17, 32-33, 53-54, 59) School District officials

- contacted the [six facilities redacted], and Student's parents visited these in-state facilities. Student was eventually rejected by every Pennsylvania facility that was approached, due to the acute level of his aggressive behaviors. (N.T. 18, 32, 58, 68, 104-105; P12; P13, p.1)
9. On November 11, 2004, the School District offered to send a teacher to Student's home while he waited for a residential placement. Student's parents declined this offer because Student was so heavily medicated that education efforts would have been of limited value. Student's parents made clear to the School District, however, that they (parents) did not believe Student's behaviors were related to an acute "medical condition," and they requested an IEP meeting. (N.T. 28, 55-56, 102; P 10; P11; P19; SD 19; SD20)
 10. On November 23, 2004, Student's wrap-around BSC considered Student's behaviors to be so extremely aggressive and self-injurious that they were beyond the BSC's professional limits and competence. The BSC then recommended placing no demands upon Student at all and terminated Student's wrap-around services because he no longer had a treatment plan with any goals (demands.) (P5, p.2; P9; P13; SD21, p.2; SD 22; SD23; N.T. 27, 34, 42, 64-65, 124)
 11. On December 6, 2004, the School District referred Student's case to the Regional Interagency Coordinator (RIC) for intensive interagency coordination pursuant to Pennsylvania Department of Education (PDE) Basic Education Circular (BEC) "Intensive Interagency Coordination," 20 USC §1412(a)(12) (also referred to as the Cordero BEC.) (P21; N.T. 48) On January 21, 2005, PDE approved the School District's request to revise its annual special education plan to include an out of state placement for Student. (SD24) No one can recall when, or even whether, any School District officials ever referred Student's case to a Cordero RIC prior to December 2004. (N.T. 117)
 12. Finally, on February 15, 2005, public funding of Student's residential placement at [Unit] was approved. [Unit] professionals assessed Student's preferences, analyzed the functions of his problem behaviors, and developed educational and health plans. (SD11, p.7; SD12) Student's educational goals were considered to be "on the back burner" for the first six months until his acute aggressive behaviors were brought under control. (N.T. 24-26, 32, 32, 70, 107, 125; P8; P14, pp.7-8; SD9) The School District paid for the educational component of Student's placement at [Unit]. (SD13; SD15, p.5) Student stayed at [Unit] for a year. (N.T. 24; P5, p.2; SD8; P8)
 13. On February 1, 2006, Student was discharged from [Unit] and transferred to a full-time life skills education program at the [redacted] Center. The appropriateness of Student's current educational program and placement at [Center] is not in dispute. (N.T. 70-71; SD1; SD2; SD3; SD4; SD7; SD12)

14. On or about June 4, 2006, Student's parent wrote to the School District seeking four years of compensatory education services. (P4; P6) The parties met to discuss this request on July 7, 2006. (N.T. 19-20; P4; P5) Student's parent acknowledges that he was never misled by the School District regarding his right to file due process. (N.T. 71, 106)
15. On October 8, 2006, Student's parent filed a consumer complaint with PDE, which informed Student's parent that it lacked the authority to order the School District to provide compensatory education to Student. (N.T. 19-20; P2)
16. On October 30, 2006, Student's parent filed a due process hearing request with the Office for Dispute Resolution.
- The parties waived a resolution meeting. A due process hearing was conducted in this matter on December 22, 2006.
 - As described in the chart below, Exhibits SD1-SD 25 were admitted into the record without objection. Exhibits P16 and P18-P20 were not admitted into the record. Exhibits P2, P5-P7, P9, P13 and P15 were admitted into the record over the School District's objection. Exhibits P1, P3-P4, P8, P10-P12, P14 and P17 were admitted into the record without objection.
 - I sustained the School District's objection to the testimony of Student's former, 2003 TSS regarding Student's skills in 2003 because it concerned a time period beyond the maximum look-back period for compensatory education.

(N.T. 41, 43, 45-47, N.T. 74, 77-79, 126-127)

Exhibits	Admitted without objection	Admitted over objection	Not admitted
H01-H02	✓		
SD1-SD 25	✓		
P1	✓		
P2		✓	
P3-P4	✓		
P5-P7		✓	
P8	✓		
P9		✓	
P10-P12	✓		
P13		✓	
P14	✓		
P15		✓	
P16			✓
P17	✓		
P18-P20			✓
P21	✓		

DECISION

The Individuals with Disabilities Education Improvement Act (IDEIA) requires states to provide a free appropriate public education (FAPE) to all students who qualify for special education services. In Pennsylvania, the state has delegated that responsibility to, among others, its public school districts. A school district offers FAPE by providing personalized instruction and support services pursuant to an IEP that need not provide the maximum possible benefit, but that must be reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or *de minimis* educational benefit. Whether an IEP is reasonably calculated to afford a child educational benefit can only be determined as of the time it is offered to the student and not at some later date. 20 U.S.C. §1412; Board of Education v. Rowley, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999); Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988) Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993); Daniel G. v. Delaware Valley School District, 813 A.2d 36 (Pa. Cmwlth. 2002)

Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. The period of compensatory education is equal to the period of deprivation, excluding the time reasonably required for the district to act accordingly. Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999); M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)

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 party is the disabled child or the school district. Schaffer v. Weast, ___ U.S. ___, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); In Re J.L. and the Ambridge Area School District, Special Education Opinion No. 1763 (2006) The U.S. Supreme Court has also indicated that, if the evidence produced by the parties is completely balanced, or in equipoise, the party seeking relief must lose because the party seeking relief bears the burden of persuasion. Schaffer v. Weast, *supra*; L.E. v. Ramsey Board of Education, 435 F.2d 384 (3d Cir. 2006) Where the evidence is not in equipoise, the trier of fact simply decides which party's evidence is more persuasive. Because Student seeks relief, I shall require that Student bear the burden of persuasion in this case.

Student's claim is constrained by the two year statute of limitations

Requests for an impartial due process hearing to resolve disputes regarding the provision of FAPE must be made within two years of the date the requestor knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C.A. §1415(f)(3)(C) While it is within a hearing officer's discretion to accept

evidence that existed more than two years before the due process hearing was requested, the hearing officer acts ultra vires when she rules on an issue that was not timely raised, i.e., that existed more than two years prior to the date of the due process hearing request. In Re J.N. and the Pittsburgh School District, Special Education Opinion No. 1780 (2006); In Re C.H. and the Souderton Area School District, Special Education Opinion No. 1750 (2006); In Re J.L. and the Ambridge School District, Special Education Opinion No. 1763 (2006)

When Student's parent wrote to the School District in June 2006, he argued generally that Student had been denied FAPE for four years. (P4; P6) In October 2006, Student filed a compliance complaint with PDE, and on October 30, 2006, he filed the due process hearing request that initiated this particular matter. The School District argues that Student is limited to a maximum of only one year of compensatory education pursuant to the Commonwealth Court opinion in Montour School District v. S.T., 802 A.2d 29 (Pa. Commonw. 2002), appeal denied, 820 A.2d 163 (Pa. 2003) According to the School District, then, Student cannot recover compensatory education for any period prior to October 30, 2005.

The Special Education Appeals Panel has analyzed the different windows of recovery for compensatory education claims that are found in Montour, supra and in the IDEIA. In Re C.H. and the Souderton Area School District, Special Education Opinion No. 1750 (2006) This analysis included a review of the legislative intent behind 20 U.S.C.A. §1415(f)(3)(C) (2005). The Panel noted that U.S. Senate Committee Report 108-185 gives the language of §1415(f)(3)(C) a gloss, such that the statute's reference to any alternative statute of limitations is intended to refer to a state statute or regulation, and not common law determinations of statutes of limitations, such as court decisions. Thus, with legislative history stressing only a statute or regulation as the vehicle to apply some other limitations period, and with Pennsylvania lacking such statute or regulation, the Appeals Panel has concluded that IDEIA's two year limitation controls over Montour's one year period. In Re C.H. and the Souderton Area School District, Special Education Opinion No. 1750 (2006) Accordingly, I reject the School District's argument that Student is limited to a maximum of only one year of compensatory education, and instead I conclude that Student may seek compensatory education for the period of time beginning two years prior to his due process hearing request, i.e., since October 30, 2004.

Student's parent also argues that he was delayed in filing his October 30, 2006 due process hearing complaint as a result of advice that he received from the "Pennsylvania Law Center" to file a compliance complaint with PDE. PDE ultimately informed Student's parent that it lacked the authority to order the School District to provide compensatory education to Student. Student's parent then requested due process. (N.T. 19-20, 139-140; P2) I reject this argument of Student's for two reasons. First, a party's reliance upon legal advice is not one of the statutory bases for extending the two year limitations period. Second, it was not raised in advance, and so there was no opportunity to develop the facts regarding this argument, such as who provided the advice, what the specific advice was, and whether it was reasonably relied upon.

Accordingly, having considered and rejected the arguments of both parties regarding the appropriate time period for a potential compensatory education award, I conclude that Student's claim for compensatory education shall be limited to the period beginning October 30, 2004, which is two years prior to his October 30, 2006 due process hearing request.

Student is entitled to 50 days, or 250 hours, of compensatory education

There is no dispute regarding the appropriateness of Student's program and placement at [Center] since February 1, 2006. Thus, the maximum period for compensatory education is for the period between October 30, 2004 and January 31, 2006. I will review the record to determine whether Student received FAPE during that period of time.

Student's parent agrees that School District officials were trying hard to help Student, but that they should have known more about how to program for Student. (N.T. 68) I agree. Student was certainly not an easy child to understand and program for. An October 13, 2004 psychiatric evaluation indicated that Student's behaviors had unclear origins – he might have been experiencing a psychotic process that drove him to act with aggression and self-injury, or he might have been seeking to escape/avoid school and social interaction demands. (N.T. 29; P12, p.4) Medical, behavioral and educational professionals reasonably believed that Student required heavy sedation – at least for a short time – to prevent him from harming himself and others. (N.T. 17, 32-33, 53-54, 59)

Unfortunately, Student remained at home, under heavy sedation and without educational programming for a very long time and for reasons that were not related to an acute need to stabilize his behaviors. These other reasons related to professional competence, public funding, and bureaucratic authorizations. Specifically, Student's wrap-around service providers stopped providing services when they felt that Student had exceeded their competence levels. (P5, p.2; P9; P13; SD21, p.2; SD 22; SD23; N.T. 27, 34, 42, 64-65, 124) Apparently, no public agencies would fund a necessary functional behavioral assessment. (N.T. 27, 30, 66, 124; P5, p.2; P9; SD21, p.2) And although an appropriate placement for Student had been located in [state redacted] as early as mid-October 2004, Student endured 3 ½ months of heavy sedation and no programming while everyone danced through the bureaucratic hoops that were imposed before sending Student to [state redacted]. (N.T. 18, 32, 58, 68, 104-105; P12; P13, p.1)

For some reason, our culture (including the state and federal governments) creates such a distinction between home and school that two distinctly separate public systems exist for providing services to meet the complex needs of the same child. See Kruelle v. New Castle County School District, 642 F.2d 687 (3rd Cir. 1981); Bloomfield Board of Education v S.C. ex rel T.M., 2005 U.S.District LEXIS 21424, 44 IDELR 128 (D.N.J. 2005); In Re J.K. and the Susquenita School District, Special Education Opinion No. 1150 (2001) Each system appears to apply distinctly separate quality, supervisory and due process standards, and incredibly, MH/MR wrap-around standards apparently permit their professionals to simply stop providing services either when they believe that a

child's needs have exceeded their professional limits and competence, or when they believe they simply don't have the funds for the necessary services. (N.T. 27, 30, 34, 42, 64-66, 124; P5, p.2; P9; P13; SD21, p.2; SD22; SD23)

While Student was undoubtedly a conundrum in 2004, there were services and procedures in place to ensure more timely and appropriate programming and placement than he ultimately received. In a 2001 case very similar to this one, an autistic child with difficult behaviors was attending a residential approved private school (APS) when his behavior declined significantly and he began to continually display severe self-injurious behaviors, both at the APS and on home visits. He was hospitalized as a result, and the APS requested that the child be discharged into an alternative placement as soon as possible because he posed a danger to himself and to others. The School District made some effort to investigate other placements, and the child's multidisciplinary team noted that the child's educational needs were not being met nor even addressed as a result of his behaviors, but the child remained at the APS and his IEP remained virtually unchanged for nearly a year until the child's parents secured a placement in a [redacted] neurobehavioral program that specializes in the treatment of children with high rates of self-injury. That facility provided a high staff-to-student ratio, a thorough functional analysis of the child's behavior, development of an intensive individual treatment plan, transition services, and a special education teacher on staff who provided social and educational activities for the children in the facility. A hearing officer and Appeals Panel concluded that the [state redacted] neurobehavioral facility was an appropriate placement, and that the child was entitled to compensatory education because the school district had been notified of the dramatic increase in the child's self-abusive behavior that resulted in hospitalization, it had notice from the APS that an alternative placement was recommended, the MDT unambiguously noted that the child was not receiving any educational benefit from his current placement, and yet the school district continued to offer virtually the same APS program as before. In Re J.K. and the Susquenita School District, Special Education Opinion No 1150 (2001)

Obviously, then, since at least 2001, programming options have been known and available for autistic children in Pennsylvania whose severe and dangerous behaviors have posed a programming challenge to the professionals charged with helping him. With respect to funding and bureaucratic authorizations, the State Departments of Education, Public Welfare, Labor and Industry, and Health, entered into a memorandum of understanding in May 2002, establishing, among many things, that in the event of funding disputes of necessary services, school districts shall provide or pay for necessary services to the child and then claim reimbursement from the appropriate agency. ([www.pde.state.pa.us/special edu/lib/special edu/semou.pdf](http://www.pde.state.pa.us/special%20edu/lib/special%20edu/semou.pdf)) In addition, at least as early as December 2002, the State Department of Education had issued a Basic Education Circular (BEC) providing for a system of intensive interagency coordination for children who have waited, or are at risk of waiting, more than 30 days for an appropriate educational placement. BEC 20 USC§1412(a)(12), Intensive Interagency Coordination

Thus, there are plenty of reasons, but no excuses, why Student remained at home, heavily sedated and without any programming, from October 30, 2004 (the earliest date

from which compensatory education may be awarded in this case) to February 15, 2005 (the date he began attending Unit.) Student's BSC had recommended in October 2004 that Student receive a functional behavioral analysis (FBA.) Apparently, however, because the BSC had recommended a specific professional, and because someone had decided that this particular professional's services were too expensive, no FBA was attempted at all – by anyone – until Student began attending Unit 3.5 months later! Also in October 2004, CASSP meeting officials had concluded that Student needed to be residentially placed at the Unit in [town, state redacted], but they were unable to secure immediate public funding, because they had not yet exhausted the possibilities for in-state residential placements. Yet, the School District did not contact its Cordero RIC until December 6, 2004. (P21; N.T. 48) It is not good enough for the School District to note that it offered on November 11, 2004 to send a teacher to Student's home, which offer was rejected by Student's parents because Student was so heavily medicated. Student's parents made clear to the School District, however, that they (parents) did not believe Student's behaviors were related to an acute "medical condition," and they requested an IEP meeting. (N.T. 28, 55-56, 102; P 10; P11; P19; SD 19; SD20) There is no reason why the School District could not, at the very least, have funded and initiated the FBA that had been recommended earlier, let alone have called its Cordero RIC earlier, found an appropriate placement sooner, or even requested a due process hearing to insist that Student receive some educational programming while he waited at home.

Once Student began attending Unit, he started receiving FAPE. Student's parent argues that even at Unit Student was not receiving FAPE because his educational goals were placed "on the back burner" for the first six months while his aggressive behaviors were brought under control. (N.T. 24-26, 32, 32, 70, 107, 125; P8; P14, pp.7-8; SD9) He also argues that the Unit educational goals involved skills that Student had already mastered. I reject these arguments.

This particular Student has always been unpredictable. An October 2004 psychiatric report was unsure of the origin of Student's behaviors, and the February 2006 Unit discharge summary does not shed additional light on the origins of those behaviors. The Unit plans are, however, exceptionally thorough and competent in addressing the complex needs that Student presented. (SD11; SD12) Unit professionals assessed Student's preferences and analyzed the functions of his problem behaviors. (SD11, p.7; SD12) The School District paid for the educational component of Student's placement at Unit, and that educational plan was calculated to yield meaningful benefit in light of the Student's circumstances at that time. (SD13; SD15, p.5) I conclude therefore, that once Student started attending Unit, he began receiving FAPE.

It is well settled that compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school district to correct the deficiency. M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996) In a gifted education case, the Commonwealth Court rejected the

M.C. standard for compensatory education, holding that the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE. B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006)

I am not certain that B.C. applies to this special education case, because B.C. was decided pursuant to the gifted education regulations of Chapter 16, not the special education regulations of Chapter 14. (22 Pa. Code Chapters 14, 16) In addition, the record in this case was not sufficiently developed for me to determine what position Student would have occupied had the school district provided a FAPE between October 30, 2004 and February 15, 2005. This Student's progress vacillates, and his behavioral changes are unpredictable. While it is easy to determine from this record that Student was denied FAPE because he should have received something more than he was offered between October 30, 2004 and February 15, 2005, I cannot determine from this record what position Student would have occupied had he received FAPE during that time period. Cf. In Re A.Z. and the Warwick School District, Special Education Opinion No. 1783 (2006) (compensatory education awards would be the same whether Appeals Panel used the M.C. analysis or the B.C. analysis)

Accordingly, I will follow M.C. and calculate the amount of services that should have been provided, less a deduction for the time it reasonably should have taken the School District to provide FAPE. In this case, the maximum compensatory education period is October 30, 2004 to January 31, 2006, based upon the two year look-back period from the October 30, 2006 filing date, and the fact that Student's program and placement since February 1, 2006 is not in dispute. I have already found that Student received FAPE when he entered Unit on February 15, 2005. Thus, Student was denied FAPE for the 3.5 period from October 30, 2004 to February 15, 2005. Under the circumstances in this case, 30 calendar days is an equitable period of time within which the School District reasonably should have rectified its FAPE denial. Thus, I will award 2.5 months (3.5 – 30 days) of compensatory education, which is the equivalent of 50 school days (20 school days x 2.5), or 250 hours (5 hours x 50 school days.)

CONCLUSION

Student alleges that he was denied FAPE for up to four years prior to February 1, 2006. Student's educational program and placement since February 1, 2006 are not at issue. For the reasons described above, I find that Student was denied FAPE, and that he is entitled to 2 ½ months, or 250 hours, of compensatory education.

ORDER

- Student was denied a free and appropriate public education from October 30, 2004 to February 15, 2005.
- The School District shall provide to Student 250 hours of compensatory education.

Daniel J. Myers

Hearing Officer
January 9, 2007

Re: 7094/06-07 AS
Student
Lake-Lehman