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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

File No. 7154/06-07 KE
ZS and the Pittston Area School District
Closed Hearing

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Due Process Hearing Request Date:	November 20, 2006
Resolution Meeting Date:	Waived
Hearing Dates:	February 23, April 3, 2007
Date Record Closed:	April 20, 2007
Decision Date:	April 25, 2007
Hearing Officer:	Daniel J. Myers

Background

Student contends that he has been denied a free and appropriate public education (FAPE) since November 20, 2006. He requests compensatory education and an independent evaluation at public expense. The School District disputes any denial of FAPE and further contends that Student is not entitled to special education services and/or accommodations because he does not need special education and related services. For the reasons described below, I find for Student.

Issues

Whether the School District has provided Student with a free and appropriate public education since November 20, 2006?

Whether Student is entitled to independent evaluations at public expense?

Whether Student is eligible for special education and/or accommodations?

Findings of Fact

1. Student, whose date of birth is xx/xx/xx, is a 9th grade resident of the Pittston Area School District (School District). (N.T. 12)¹
2. The record includes numerous medical, psychological and psychiatric evaluations of Student since before kindergarten. At various times, Student has been diagnosed with seizure disorder, mild cerebral palsy, asthma, allergies, encopresis, cardiac arrhythmia, attention deficit hyperactivity disorder (ADHD), adjustment disorder, provisional PDD, and Aspergers Syndrome. (N.T. 13, 15; P1; P2, pp.1-2; P4, p.2; SD31; SD38, pp.1-2)
3. Through 7th grade, Student did not live in the School District, but rather in a neighboring school district. During those years, he received early intervention services in preschool that included physical therapy, speech and language therapy, and occupational therapy. During his school age years, Student received Section 504 accommodations that included nursing services related to his seizure medications, a homework notebook that was initialed by teachers and parent, and breaks as needed during extensive writing, projects and assignments. (P1, p.1; SD32; SD 33, p.11; SD42, p.4; SD44, p.4; SD49; SD52; SD53; SD54; SD66, p.1; N.T. 14, 64, 71-74, 76-78, 81, 86-87)

¹ References to "N.T." are to the transcripts of the February 23 and April 3, 2007 hearing sessions. References to "P," "SD," and "HO" are to Parent, School District, and Hearing Officer exhibits, respectively.

4. Through 7th grade, Student also received behavioral support services from his local mental health/mental retardation (MH/MR) agency, including mobile therapy and therapeutic staff support (TSS) services to address anxiety, frustration, and panic attacks related to being bullied by peers. (P1; P2; P3, p.11; SD 40; SD41; N.T. 13-14, 79, 81, 83-84, 102)
5. Until 6th grade, Student's former school district considered Student to be ineligible for special education services even though Student had always received accommodations and TSS services in school. (SD32; SD33,p.11; N.T. 15-16, 20)
6. In March or April 2004, toward the end of 6th grade, Student reported that he was so frustrated by bullying that he felt capable of hurting his teacher or a peer. This prompted police intervention, a psychiatric evaluation, an educational evaluation, and an ultimate conclusion by Student's former school district that Student was eligible for special education services as a child with an emotional disturbance. (P5; P6; P15; SD26; SD27; SD28; SD29; N.T. 15-21, 87-90)
7. For his 7th grade, 2004-2005 school year, Student was placed in a fulltime emotional support classroom. Because Student's former school district did not have such a classroom for children who were Student's age, the former school District sent Student to the Pittston Area School District's fulltime emotional support classroom. (P9; P10; N.T. 22-23, 335) Student's IEP contained goals for social skills, homework completion, study skills, and staying on task. (P8; P10; SD22; N.T. 23, 25)
8. By February 2005, Student's educational placement was changed because the other students in his fulltime emotional support classroom were much more aggressive than Student and he was not dealing well with that class. (N.T. 29-30, 34) Student began receiving "full time emotional support" services in a learning support classroom. (P11; P12; SD18; SD19; N.T. 26)
9. At the end of that 7th grade school year, Student's math computation skills were reported as below grade level, while his reading decoding and reading comprehension skills were reported as above grade level. (P13, pp.3-4, 8; SD17, pp.3-4; SD16; SD17, pp.4-5; N.T. 27, 29)
10. On September 14, 2005, Student's 8th grade IEP contained goals for English grammar, reading decoding, reading comprehension, computational and functional math, science and American history. (P16, pp.2,6,7,9; SD 13, pp.5,6,8-9; N.T. 32)
11. In April 2006, Student's family moved into the School District. (N.T. 12, 27, 39, 92, 335; P17; P18; P19; SD8; SD10)
12. On May 3, 2006, the School District developed a new IEP for Student.

- A. His present education levels were described as failure to return homework assignments in Reading, satisfactory progress in math, capable of writing a 5 paragraph essay with little prompting in English, writing fluency of 39 words per three minutes, and 2005 Kaufman Test of Educational Achievement scores indicating 8th grade level reading comprehension, 11th grade level spelling and reading decoding, and 5th grade level math. (SD8, pp.4,7)
- B. One IEP goal was written. In expressive writing, Student's goal was to increase his writing fluency by two words per week from his baseline of 39 words per three minutes. (SD8, p.7; N.T. 397-398)
- C. A second, potential written expression goal was written on the IEP as "Convention and Content goal to be written." That goal has never been written. (SD8, p.7; N.T. 277-278, 397-398)
- D. No math goals were developed because Student's math teacher reported that Student was doing fine in his regular education math class. (N.T. 375) Inexplicably, however, this IEP's present education levels indicate that Student's math skills are at a 4th grade level. (SD8, p.3; N.T. 376)
- E. Student's Parent did not attend this IEP meeting. (N.T. 96) Student's regular education and special education teachers did not believe Student required social work services any longer. (N.T. 385) It is unclear in the record what was the opinion of the school district's social worker regarding Student's need for social work services. The 4th member of the IEP team, the School District's special education director, wanted to assess whether or not Student needed social work services any longer. (N.T. 384-388, 420) This desire was reinforced in Fall 2006 when Student appeared on TV complaining of being bullied at school. (N.T. 385-386, 388)
13. At some time after the May 3, 2006 IEP meeting, Student's parent learned, for the first time, that Student was receiving social work services. Student's parent then informed the School District that she did not want Student receiving social work services. The School District stopped providing social work services to Student in response to parental request. (N.T. 92-93, 386)
14. Student missed 52 days of school during his 8th grade, 2005-2006 school year. The School District produced no written progress monitoring on Student's IEP goals, other than those data listed in the present education levels of the May 6, 2006 IEP. (N.T. 370) Student's final grades were (SD2, p.10):

Language Arts	A
Science	B
Reading	C
Social Studies	C
Integrated Algebra	C

15. On August 30, 2006, the School District requested permission to reevaluate Student, which permission was granted on September 6, 2006. (SD6)
16. For his current, 9th grade year (2006-2007), Student spends ½ day at the School District's high school, and ½ day in career exploration classes at [a] nearby [redacted] Vo-Tech. At the high school, Student takes Algebra I, Science, and learning support English. At the Vo-Tech, Student took diesel mechanics for the first quarter, and law enforcement for second and third quarters. (N.T. 46, 49, 210)
17. Student's 2nd and 3rd quarter law enforcement career exploration teacher has never seen Student's IEP. (N.T. 204)
- A. In the law enforcement class, Student is withdrawn, keeps to himself, and speaks to only a few peers. (N.T. 202) In the beginning of the class, Student instigated physical confrontations with peers three times. (N.T. 212) This no longer occurs because Student's teacher has moved Student's desk and provides much closer supervision over Student. (N.T. 194-195, 200)
 - B. Student has been absent from the class 43 times. (N.T. 207)
 - C. When he attends, Student is an active participant in class discussion, answering questions in class correctly 90% of the time. (N.T. 217)
18. Student received a C for his 1st quarter Algebra I class.
- A. Student's teacher does not know what Student's baseline in algebra was at the beginning of the school year. (N.T. 249-250)
 - B. Student had a number of problems in this class with time on task, poor organization and inattentiveness. (N.T. 244-245, 261)
 - C. Student sometimes interacts with his peers in this class, and his teacher reports no socialization or behavioral problems in class. (N.T. 250, 259)
 - D. When he attends, Student is an active participant in class discussion, answering questions in class correctly 80-90% of the time. (N.T. 257) Student's absences negatively impact his performance in class, however. (N.T. 253-254) Although Student is permitted to make up missed work, he only makes up 30-40% of missed work. (N.T. 254) Student has lost two assignment notebooks that his math teacher has given him. (N.T. 256-257)
 - E. Student's 3rd quarter Algebra I grade is failing. (N.T. 245-246) His teacher plans to assist Student in remediation by grouping him with an adult classroom aide who has recently been added to the class. (N.T. 247, 259-262)
19. Student received an A for his 1st quarter 9th grade special education learning support English class. (N.T. 267-268, 298)
- A. That class has 12-13 students. (N.T. 284) Student has no socialization or attention problems in class. (N.T. 290) Student is very participatory in class. (N.T. 299-300)

- B. Student's writing fluency baseline at the beginning of the class was 39 words per three minutes. (SD8, p.7; N.T. 271, 273) Although the IEP does not contain an ultimate fluency goal, his teacher reports that he has been working toward a goal of 55 wpm. (N.T. 273)
 - C. Student's English teacher contradicted himself at the hearing by testifying that Student's progress rate close to the expected rate, while simultaneously admitting that Student took twice as long as the IEP expected to meet his fluency goal. (N.T. 291-293)
 - D. On March 1, 2007, Student had reached a written fluency rate of 58 wp3m. (N.T. 289) No progress report has ever been written for this goal. (N.T. 277, 289) Student's teacher charts Student's progress "in a way" by "keeping an eye on it." (N.T. 293) Student's teacher guessed that Student's absences could have accounted for his slower than expected rate of progress to date. (N.T. 294)
 - E. Although Student's IEP indicates that he should have an English convention and content goal, his English teacher does not collect data regarding capitalization, punctuation, parts of speech, spelling in context, sentence writing, editing, or subject-verb agreement. (N.T. 286-287) Student's progress in English conventions and content is assessed when the teacher talks about them with Student. (N.T. 295, 302)
 - F. Student's English teacher does not believe that Student needs learning support in language arts. (N.T. 300)
20. Student has been absent 29 days this school year (13 at the time of the December 2006 evaluation). (N.T. 418; SD2, p.33) He testified that he stays home for doctor's appointments, or when he is sick, or if he is stressed out from peer harassment the day before. (N.T. 311) Student's parent attributes Student's absences to his seizure disorder, stomach disorder and cardiac arrhythmia checkups in [redacted city and state]. (N.T. 61) School District records indicate that only 6 of Student's 29 absences were for medical reasons, and the School District's special education director would like to investigate the reasons for Student's medical absences. (N.T. 418)
21. Student and his parent believe that other students bully student daily. (N.T. 44, 55, 97, 314, 323-324, 327-328) They also believe that Student's VoTech teachers are not friendly and have called Student an "asshole" and a "retard." (N.T. 52, 54, 314-315) Student's reports of excessive bullying are suspect because they are so excessive and because a 2002 MH/MR psychological evaluation indicated that Student had a problem telling the truth. (N.T. 85; SD40, p.2) On the other hand, during Fall 2006, the School District's high school principal arranged for alternative transportation to and from the VoTech in response to reports that Student was harassed on the bus. (N.T. 57, 98) Student also spoke on local television regarding bullying, which led the School District's board of directors to adopt a bullying policy and which also reinforced the School District's special education director's desire to assess Student's need for social work services. (N.T. 385-386, 388, 435) In addition, Student appeared before a district magistrate in

connection with a physical interaction with another student. (N.T. 45-46) From this I conclude that, although Student's reports of daily bullying are not credible because they are so excessive and because his veracity has been questioned formally in a past evaluation, Student does indeed have significant difficulty with peer interactions, as demonstrated by School District responses to particular Student-peer incidents.

22. On November 20, 2006, Student's parent filed a due process hearing request complaining that the May 3, 2006 IEP is inappropriate, and requesting an independent educational evaluation of Student. (SD1, p.4)
23. On December 5, 2006, the School District issued its reevaluation report concluding that Student is no longer eligible for special education. (P23; SD2, p.37; SD3; N.T. 47)
 - A. The evaluator has been a school psychologist for seven years and has assessed 200-300 children. (N.T. 104-105, 153) She noted at the due process hearing that the reason for referral was simply to establish Student's present education levels and to test for a math deficit. (N.T. 155, 183) She testified that, if the reason for the reevaluation referral had been broader, she would have administered different tests. (N.T. 185)
 - B. Student's overall IQ score was 94, with scores indicating some difficulty processing information. (N.T. 160-161) Wechsler Individual Achievement Test subscores were within expected ranges, except in math reasoning where the results were lower than expected. (SD2, p.26; N.T. 161) Seventeen of 45 scores on the Key Math Assessment were clinically significant. (SD2, p29-30; N.T. 145)
 - C. The reevaluation did not include any IEP progress reports. This did not concern the evaluator. (N.T. 122, 124)
 - D. On the first day of the evaluation testing, Student informed the evaluator that another student had stomped on Student's chest, which a teacher had witnessed and done nothing about. (SD2, p.32) The evaluator was unaware of the special transportation that the principal had arranged for Student due to peer harassment, and the evaluator would have considered such information significant if she had known about it. (N.T. 131-133) The evaluator admitted at the hearing that the VoTech teacher's report that Student is unable to make friends and has difficulty with peers during transitions is typical of Aspergers Syndrome. (N.T. 133-134) The evaluator does think that Student would benefit from social worker services. (N.T. 181) The evaluator believes that any social skills deficits, socialization problems, and/or need for social worker services does not negatively affect Student's classroom performance. (N.T. 136-137)
 - E. At the time of evaluation, Student had missed 16 days from the VoTech and 13 from the high school. Of the 13 high school absences, 6 were excused. (SD2, p.33) The evaluator was aware of Student's large number of absences, but it did not occur to her that this could have anything to do with Student's need for special education services. (N.T. 149)

- F. The evaluator believes that all of the modifications and specially designed instruction (SDI) on Student's May 2006 IEP, including small group instruction, extra testing time, note taking assistance, and social worker services, are simply good teaching practices, and not specially designed instruction. (N.T. 118-119, 164, 172, 178; P13, p5) In fact, the evaluator was unable to think of a single accommodation or SDI that the School District provides that is not simply good teaching practice, including a slower pace and lower level instructional materials. (N.T. 172, 178)
- G. At the time of the reevaluation report, Student's first quarter grades were (SD2, p.33):

Algebra I	C
English	A
Science	D
Career Exploration	B

24. On December 5, 2006, the School District issued a Notice of Recommended Educational Placement (NOREP) proposing to exit Student from special education services. (N.T. 50-51, 350; P22; SD4)
25. The School District's special education director had wanted to offer, prior to the December 5, 2006 reevaluation report and NOREP, that Student attend a special education learning strategies class. (N.T. 332) That class teaches self-advocacy, organization, study skills, test taking skills, and career examination. (N.T. 332, 341) That class provides the School District with an excellent opportunity for additional data collection before exiting a student from special education services. (N.T. 417, 440) The School District's special education director also would like to investigate the medical nature of Student's absences and, while she does not believe that a functional behavioral assessment is necessary, she would like to see the results of one. (N.T. 418, 435)
26. Student's first and second quarter grades for his current, 2006-2007 9th grade school year are (P24):

	Q1	Q2
Algebra I	C	F
English	A	B
Science	D	D
Career Exploration	B	C

27. The parties waived their right to a resolution meeting prior to due process hearing. (N.T. 363) A due process hearing was conducted in this matter on February 23 and April 3, 2007. On April 20, 2007, the parties submitted written closing statements, and the record was closed. Parent exhibits P1-P22, and P24-P29, are admitted into the record. School District exhibits SD1-SD69 are admitted into the record.

Decision

Student contends that he has been denied a free and appropriate public education (FAPE) since November 20, 2006. (HO 2; N.T. 6) He requests compensatory education for the FAPE denial. He also seeks an independent evaluation at public expense. The School District disputes any denial of FAPE and further contends that Student is not entitled to special education services and/or accommodations because he does not meet the second element of eligibility under the Individuals with Disabilities Education Improvement Act (IDEIA), i.e., he does not, by reason of his disability, need special education and related services. 20 USCA §1401(3)(A); 34 CFR §300.8(a)(1) For the reasons described below, I find for Student.

FAPE means special education and related services that are provided at public expense, that meet the standards of the state educational agency, and that are provided in conformity with an individualized education program (IEP). Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998) In order to be appropriate, an IEP must be reasonably calculated to confer meaningful educational benefit that is neither trivial nor de minimis. Board of Education v. Rowley, 458 U.S. 176, 73 L.Ed.2d 690, 107 S.Ct. 3034 (1983); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir., 1988), cert. denied, 488 U.S. 1030 (1989) Whether an IEP is reasonably calculated to afford a child meaningful educational benefit can only be determined as of the time it is offered to the student and not at some later date. 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); Susan N. v. Wilson School District, 70 F.3d 751 (3rd Cir., 1995); Oberti v. Board of Education of the Borough of Clementon, 995 F.2d 1204 (3rd Cir., 1993); 20 U.S.C. 1412(a)(5); 34 C.F.R. 300.550

A key to an appropriate IEP is an appropriate evaluation. In addition, IDEIA regulations specifically require appropriate evaluation before a child's eligibility for special education services is changed. 34 CFR §300.305(e) Such an evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. 34 CFR §300.304(b)(1) These tools must assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 CFR §300.304(b)(3) In addition, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §300.304(c)(6) Finally, in interpreting evaluation data for the purpose of determining if a child is a child with a disability, school districts must ensure that information obtained from all required sources is documented and carefully considered. 34 CFR §300.306(c)(1)

There is no precise standard for determining whether a student is in need of special education. In In Re JMH and the Garnet Valley School District, Special Education Opinion No. 1671 (2005), the record was replete with evidence that Student

was performing quite well academically, was making above average progress in the classroom, was outgoing and friendly in the classroom, had positive peer relationships, and even after the teacher was informed of the parents' concerns and began looking for signs of any symptoms of emotional difficulty, Student was not displaying anxiety at school. In that case, the Student was not eligible for special education under the IDEA. Further, the mere use of accommodations and modifications in the regular education classroom does not automatically demonstrate that a child needs specially designed instruction. In Re K. J. and the Fox Chapel School District, Special Education Opinion No. 1302 (2002) (extended time for tests and books on tape)

On the other hand, a child's purportedly satisfactory performance in regular education classes does not warrant an automatic conclusion that the child can be exited from special education. In Re V.D. and the Pittston Area School District, Special Education Opinion No. 1704 (2006) Grades alone cannot serve as an IDEIA litmus test for determining whether or not a Student with a disability is "in need of" special education services. West Chester Area School District v. Bruce and Suzanne C., 194 F. Supp. 2d 417 (E.D. Pa. 2002) In addition, the mere fact that all accommodations and modifications provided to a child occur in his regular education classroom, or that such accommodations and modifications are provided to all regular education students, does not establish that a particular child does not need special education. See In Re P.M. and the Bristol Twp. School District, Special Education Opinion No. 1749 (2006) (Appeals Panel rejects, in dicta, school district assertion that its provision of accommodations to the general student body at large relieves the school district of a duty to provide for such accommodations in a 504 plan.) See also In Re J.L. and the Western Wayne School District, Special Education Opinion No. 1707 (2006) (School district's provision of accommodations in reading, writing, mathematics, examinations, study skills, and homework in the regular classroom amounted to specially designed instruction.) Procedurally, an IEP or 504 plan guarantees certain rights to disabled children that might not be guaranteed to regular education students, such as parental involvement in devising the child's educational plan, notice of that written plan to teachers, mandatory implementation of the plan, and due process.

Student remains eligible for special education and/or accommodations

In this case, the School District's December 2006 reevaluation report is not sufficiently comprehensive to support the School District's conclusion that Student is not in need of special education services. The School District psychologist, noting that the reason for referral was simply to establish Student's present education levels and to test for a math deficit, admitted that, if the reason for referral had been broader, she would have administered different tests. (N.T. 155, 183, 185) I think the discontinuance of special education services is sufficiently broader than a referral for present education levels and a math deficit, and thus, additional and/or different testing might have been in order. In addition, the December 2006 reevaluation did not consider any IEP progress reports, which was not of concern to the evaluator. (N.T. 122, 124) I believe, however, that Student's progress on his IEP goals is so intricately related to the question of his

need for special education that the lack of such reports renders this reevaluation report not credible as a basis for exiting Student from special education.

Further, the evaluator was unaware of the special transportation that the principal had arranged for Student due to peer harassment, and she would have considered such information significant if she had known about it. (N.T. 131-133) She also admitted at the hearing that the VoTech teacher's report that Student is unable to make friends and has difficulty with peers during transitions is typical of Aspergers Syndrome (N.T. 133-134), and she does think that Student would benefit from social worker services. (N.T. 181) Finally, it did not occur to the evaluator that Student's large number of absences could have anything to do with Student's need for special education services. (N.T. 149) All of these factors, i.e., lack of knowledge about special transportation, failure to consider Aspergers symptomology, Student's need for social worker services, and the lack of any clear understanding behind Student's absences, render the December 2006 reevaluation report to be insufficiently comprehensive for the purposes intended by the School District.

In addition, since Student's May 3, 2006 IEP team meeting, the School District's special education director has wanted to assess Student's need for social work services. (N.T. 384-388, 420) This desire was reinforced in Fall 2006 when Student appeared on TV complaining of being bullied at school. (N.T. 385-386, 388, 435) That special education director has also wanted to offer, at least since December 2006, a special education learning strategies class that teaches self-advocacy, organization, study skills, test taking skills, and career examination, and that provides the School District with an excellent opportunity for additional data collection before exiting a student from special education services. (N.T. 332, 341, 417, 440) Finally, the special education director would like to investigate the medical nature of Student's absences and, while she does not believe that a functional behavioral assessment is necessary, she would like to see the results of one. (N.T. 418, 435) These are additional reasons why the December 2006 reevaluation report is not sufficiently comprehensive to support a School District conclusion that Student is no longer in need of special education.

The School District appears to contend that none of Student's attention and social skills deficits, socialization problems, and/or need for social worker services negatively affect Student's classroom performance. (N.T. 136-137) The School District further appears to contend that any classroom performance issues are due to Student's non-disability-based excessive absences, which are not at all uncommon among junior high school students. See In Re V.D. and the Riverside School District, Special Education Opinion No. 1413 (2003)

I reject the School District's arguments because they are speculative. The record does not contain any systematic analysis of Student's attentional and social skills problems, or of his absences from school, nor is there any data-based analysis of the impact of these problems upon his academic performance. The record does contain, however, the testimony of Student's Algebra I teacher that Student had a number of problems with time on task, poor organization and inattentiveness, and that his absences

negatively impacted his performance in class. (N.T. 244-245, 253-254, 261) I also note that Student has an extensive history of MH/MR services designed to address anxiety, frustration, and panic attacks related to being bullied by peers (P1; P2; P3, p.11; SD 40; SD41; N.T. 13-14, 79, 81, 83-84, 102), as well as IEP goals for social skills, homework completion, study skills, and staying on task. (P8; P10; SD22; N.T. 23, 25) Even the School District's special education director would like to see a functional behavioral assessment and investigate the medical nature of Student's absences. (N.T. 418, 435) Accordingly, I conclude that Student shall not be exited from special education.

Student is entitled to an independent educational evaluation at public expense

A parent may be entitled to an independent educational evaluation at public expense if she disagrees with the School District's evaluation, and the School District's evaluation is determined by a hearing officer not to be appropriate. 34 CFR §300.502(b) I have concluded that the School District's December 2006 reevaluation report is an insufficient basis for finding that Student is no longer in need of special education services. I also find, expressly, that the December 2006 reevaluation report is insufficient for understanding, and appropriately programming for, Student's needs. See In Re R.T. and the North Pocono School District, Special Education Opinion No. 1634 (2005) There are simply too many unanswered questions about the nature and extent of Student's attentional, social/emotional, and attendance needs, as well as his written expression and math needs.

A child's social/emotional needs and anxieties regarding peer relationships are not necessarily easy to assess, but they are nevertheless very important to understand for educational programming purposes. Sometimes the educational impact of emotional problems are not blatant. See In Re M.P.. and the Lower Merion School District, Special Education Opinion No. 1350 (2003)

It is undisputed that Student is absent from school for an excessive number of days each year. Student testified that he stays home if he is stressed out from a really bad day the day before. (N.T. 311) Student is withdrawn, keeps to himself, and speaks to only a few peers. (N.T. 202) He receives special van transportation due to peer conflict problems (N.T. 57, 98), and he has, in the past, reported that he was so frustrated by bullying that he felt capable of hurting his teacher or a peer. (P5; P6; P15; SD26; SD27; SD28; SD29; N.T. 15-21, 87-90) His absences negatively impact his Algebra I class performance. (N.T. 253-254) Yet, it never occurred to the School District's psychologist that Student's absenteeism could have anything to do with Student's need for special education services. (N.T. 149) I conclude that there is reason to further evaluate whether Student's social/emotional needs, his peer-related anxieties, and his absences are negatively affecting his education.

The School District argues that the incredible number of evaluations in the record that were conducted at parental request, as well as the lack of foundation for the variety of diagnoses that appear to be based upon unverified parental report, indicate that Student's parent has been searching for a diagnosis since Student was an infant, and that

she appears to have a desire to have Student stand out in a crowd. This is quite possible. But such a conclusion requires more than speculation, incomplete evaluation, and unreliable data. What is needed by all parties is a truly comprehensive, systematic, and independent evaluation.

Accordingly, I will order an independent educational evaluation at public expense. I will leave it to an independent evaluator to determine what to evaluate, and how.

Student shall be awarded compensatory education since November 20, 2006

The School District has blatantly failed to comply with basic IEP responsibilities. Since Student's enrollment into the School District in April 2006, the School District has produced no written progress monitoring reports regarding Student's IEP goals. Although the School District alleges that the data listed in the present education levels of the May 6, 2006 IEP constitute progress monitoring reports (N.T. 370), even that information was inaccurate and unreliable with respect to math. (SD8, p.3; N.T. 375-376) Student's English teacher charts Student's progress "in a way" by "keeping an eye on it." (N.T. 293) A written expression goal was supposed to be written into Student's May 3, 2006, IEP, but it never was. (SD8, p.7; N.T. 277-278, 397-398) Student's law enforcement career exploration teacher has never seen Student's IEP. (N.T. 204) These constitute denials of FAPE.

Unfortunately, Student provided no assistance either at the hearing or in his written closing statement regarding the appropriate calculation of compensatory education. Further, the amount of compensatory education that is due to Student for the FAPE denials in this case is not obvious to me. The Commonwealth Court recently set forth the standard for calculating compensatory education as "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. Commw. 2006); In Re A.H. and the Haverford Township School District, Special Education Opinion No. 1787 (2006) This standard may involve more – or less – than one-for-one compensatory education time. In this case, I find that appropriate compensatory education to bring Student to the position that he would have occupied but for the District's failure to provide FAPE is one hour for every day that student has attended the high school since November 20, 2006.

Conclusion

Student contends that he has been denied a free and appropriate public education (FAPE) since November 20, 2006. He requests compensatory education and an independent evaluation at public expense. The School District disputes any denial of FAPE and further contends that Student is not entitled to special education services and/or accommodations because he does not meet the second element of eligibility, i.e., he does not, by reason of his disability, need special education and related services. For the reasons described above, I find for Student.

Order

- Student shall not be exited from special education services;
- The School District shall provide to Student an independent educational evaluation at public expense;
- The School District shall provide to Student one hour of compensatory education for every day that student has attended the high school since November 20, 2006.

Daniel J. Myers
Hearing Officer

Re: Due Process Hearing
File No. 7154/06-07 KE
Pittston Area School District