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PENNSYLVANIA  
**SPECIAL EDUCATION HEARING OFFICER**

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ODR File Number : 7271/06-07 LS  
Student: Student  
School District: Coatesville Area  
Type of Hearing: Closed

For the Student:

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For the School District:

Due Process Hearing Request Date: January 7, 2007  
Hearing Dates: May 7 and June 7, 2007  
Date of Receipt of Transcript: June 13, 2007  
Decision Date: June 22, 2007  
Hearing Officer: Daniel J. Myers

## **BACKGROUND**

Student is a xx year old child who was a student of the School District from September 1998 (pre-first grade) through January 13, 2006 (seventh grade). Student seeks compensatory education, alleging that the School District failed to timely evaluate Student, inaccurately identified his disability, and subsequently programmed inappropriately for Student's special education needs. For the reasons described below, I award compensatory education, but I conclude that Student's recovery of compensatory education is limited by the applicable statute of limitations and reasonable rectification period.

## **ISSUE**

Whether or not the School District has provided Student with appropriate educational programming and placement since his first grade, 1999-2000, school year?

## **FINDINGS OF FACT**

1. Student whose date of birth is xx/xx/xx, is a xx year old former student of the Coatesville Area School District. (N.T. 117)<sup>1</sup> He attended the School District's pre-1<sup>st</sup> grade in 1998-1999. (N.T. 59, 109) He is sensitive, eager to please, conversational and very social with adults, has a good sense of humor, and feels remorse for poor behavior. He has significant difficulty with appropriate peer relationships, impulse control, anger management and self-soothing. When he feels confronted, Student will exhibit anger and become combative and oppositional, refusing to comply with teacher direction, fighting peers, and throwing furniture. He is relatively thin-skinned, feeling confronted or challenged rather easily and frequently. (J13, p.5; N.T. 262, 268, 281, 312, 344, 365-366, 409) His teachers have found that they can sometimes forestall or avert his negative behaviors by preparing Student for transitions and by giving him directions casually and unemotionally, rather than directly and forcefully. (N.T. 242, 312, 334-335, 365)
  
2. Student's cognitive abilities are not clearly established in the record. A 1998 Kaufman Brief Intelligence Test (K-BIT) indicated solidly average verbal, nonverbal and overall standard scores of 100, 104 and 102, respectively. (J19, p.2) An August 9, 2001 Wechsler Intelligence Scale for Children, Third Edition (WISC-III) was administered by the School District, but the scores were not recorded, apparently because they were inconsistent with the K-BIT scores and because Student exhibited fatigue during testing. (J19, p.4) An undated WISC-III that was administered apparently as part of the criminal justice system's assessment of Student resulted in verbal, performance and full scale standard

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<sup>1</sup> References to "J" and "HO" are to the Joint and hearing officer exhibits, respectively. References to "N.T." are to the transcripts of the May 7 and June 7, 2007 hearing sessions.

- scores of 76, 60, and 66, respectively. (J13, p.3) A March 2007 WISC-IV, also apparently administered as part of a criminal justice assessment, does not list subtest scores, but resulted in a full scale IQ standard score of 67. (J14) Finally, the School District's psychologist testified that Student's cognitive abilities were much higher than the criminal justice WISC scores would suggest. (N.T. 367, 407-408)
3. Student was first suspended from school in first grade. (N.T. 111) His first police incident outside of school occurred in second grade when he was nine years old. (N.T. 117; J15, p.2) At some time during 1<sup>st</sup> or 2<sup>nd</sup> grade, Student was diagnosed by a physician with absence seizures, for which he was prescribed first neurontin and then depakote. (N.T. 120) During 1<sup>st</sup> and 2<sup>nd</sup> grades, Student received instructional support team (IST) services from the school district. (N.T. 398; J19)
  4. Student has been suspended from school every year since first grade. (N.T. 111)
  5. On August 23, 2001, just before 3<sup>rd</sup> grade, the School District issued an evaluation report (ER). (N.T. 61, 109, 399; J19) WISC-III scores were not recorded, apparently because they were inconsistent with previous K-BIT scores and because Student exhibited fatigue during testing. (J19, p.4) The ER apparently assumed, therefore, based upon the earlier K-BIT, that Student's IQ was in the average range. Woodcock Johnson III tests of achievement were in the average range. The ER noted that Student exhibited inefficient work habits, including poor focus and attention and a tendency to perform poorly unless prompted. (J19, p.6) The ER noted needs for a behavior management plan and visual-motor integration accommodations in math and written expression. (J19, p.7) It recommended visual and occupational therapy evaluations, as well as a psychiatric consultation. (J19, p.7) Ultimately, the ER concluded that Student was not a child with a disability. (J19; N.T. 62, 400)
  6. Consistent with the School District's ER recommendation, Student attended a regular education 3<sup>rd</sup> grade class for the 2001-2002 school year. (J21)
  7. Also consistent with the School District's ER, Dr. N issued a psychiatric evaluation of Student on September 27, 2001. (N.T. 61; J12; 122; J17) He noted poor impulse control, attention issues, lack of focus, anger issues, poor self-esteem and poor interactions with peers, family and staff. (N.T. 404) He diagnosed attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder, dysthymic disorder (depression), and that visual motor and fine motor deficits should be monitored and ruled out. (J12, p.8) He recommended an EEG for Student's seizure disorder, Concerta for the ADHD and impulse control issues, and outpatient group social skills training for behavior management purposes. (J12; N.T. 401, 404, 417-418)
  8. No specific action was taken by the School District following Dr. N's evaluation. The School District continued providing IST services to Student, including the

- presence of an instructional aide during the most frustrating part of Student's academic day. (N.T. 64, 403-404, 417-421, 439-440, 442; J20; J21)
9. On December 6, 2001, and on January 11, 2002, Student left the school building in reaction to assigned classwork and a confrontation with a lunchroom aide, respectively. (J20, p.2) On January 16, 2002, Student went into a rage, swinging and shouting names at a teacher after a conflict with a peer during a bathroom break. (J20, p.2)
  10. On or about January 28, 2002, the School District and Student's parent agreed that Student was in crisis. (N.T. 403, 419-420) They amended the School District's August 23, 2001 ER with information from Dr. N's psychiatric evaluation, and they included a functional behavioral assessment (FBA) that documented Student's recent crisis behaviors. They concluded that Student had an emotional disturbance and required an IEP with a behavior plan. The School District proposed part-time emotional support services for Student. (J20, p.3; J22)
  11. On January 31, 2002, Student was transferred to a different elementary school within the School District because his neighborhood elementary school did not have offer any emotional support services. (J22; N.T. 67, 110, 112, 439, 441-442) The record does not contain Student's early IEPs. Although Student's IEP team recommended that Student received therapeutic support staff (TSS) services, it did not provide for a one-to-one aide. (N.T. 72-73) Student's parent applied to the local mental health agency for wrap-around behavioral support services, but was told that Student could not receive them because there was a waiting list. (N.T. 68, 75-78, 128)
  12. Sometime between January 31 and May 29, 2002, Student was suspended from his new elementary school. After he threatened to cut off the head of the school's principal, Student spent four days in psychiatric hospitalization. (N.T. 70, 112, J15, p.1)
  13. On May 29, 2002, the School District recommended that Student receive full time emotional support services at an Intermediate Unit (IU) facility called the Child and Career Development Center (CDC.) (J23, p.1; J24; N.T. 93, 440)
  14. CDC provides educational services for 525 children, ages 5 to 21, with emotional/behavioral disorders, learning disabilities, multiple disabilities, and autism. (N.T. 152, 200) All CDC students have disabilities. (N.T. 182) The lower level of CDC operates like an elementary school, with children remaining in one classroom for most of the day, while the upper level operates like a middle/high school, with children switching classes during the day. (N.T. 166) CDC's curriculum is a composite of the curricula of all 12 school districts within the IU. (N.T. 177) Disruptive children are sent to CDC's "restorative center" or cool-down room, where staff help children calm down. (N.T. 156, 296) CDC calls for police assistance when an incident involves drugs, weapons, and/or

- assaults on staff. (N.T. 159) Police are called 4-5 times per year. (N.T. 201) Once a School District student is assigned to CDC, the School District delegates educational programming decisions to CDC staff. (N.T. 153, 196, 437; J3, p.25)
15. Student began his 4<sup>th</sup> grade, 2002-2003, school year at CDC. (N.T. 113)
  16. Student's mid-5<sup>th</sup> grade, February 26, 2004 IEP, indicates that he was being instructed at 4.5 reading and math grade levels. (J2, p.3; N.T. 228, 231) He received daily social skills lessons, with goals to adhere to school and classroom rules. (N.T. 239-240) His teacher could not explain at the due process hearing why his February 2004 IEP did not include a behavior management plan. (N.T. 241; J2) Although this IEP appears to require a personal care attendant (PCA) for 5.5 hours per day, Student's teachers have no idea why the letters "PCA" are handwritten on this document, and Student never had a PCA or TSS while at CDC. (J2, p.9; N.T. 203-207, 244, 315, 385)
  17. In March 2004, Student may have been hospitalized for five days for reasons that are not explained in the record. (J15, p.23)
  18. On October 8, 2004, while in 6<sup>th</sup> grade at CDC, Student was charged with simple assault, harassment and disorderly conduct after throwing a desk at his teacher. (J11, pp.8-10; N.T. 160, 162, 215-216, 274) He was placed on probation and sentenced to provide community service. (N.T. 85, 277; J14, p.1; J15, p.2) A few months later, in February 2005, Student received a one-day in-school suspension for knocking a student on the floor, breaking a fire extinguisher glass door, use of profane language, walking out of class, and knocking over a chair. (J8, p.1)
  19. On January 21, 2005, the School District issued a reevaluation report. (J1) School District officials cannot explain why the reevaluation report lacks a psychologist's signature. (J1, p.9; N.T. 380-381) The reevaluation report indicates that Student is being instructed at a 4<sup>th</sup> grade reading level. (J1, p.1)
  20. On February 22, 2005, Student's IEP team developed his mid-6<sup>th</sup> grade IEP (J3)
    - a. This IEP included a behavior management plan because student had not mastered his previous, February 2004 IEP's (J2) social and behavioral goal. (N.T. 300-302) The 2004 social/behavioral goal was to communicate, negotiate and cooperate in all situations across all environments with 90% accuracy, as measured by the daily classroom behavioral system. (J2, p.8) The 2005 IEP goal remained the same, but was reduced to 80% accuracy. While Student obviously had not reached either 80 or 90% accuracy on this goal by February 2005, the February 2005 IEP does not indicate Student's present educational level regarding this goal, and his teacher did not chart Student's behavioral goals systematically. (N.T. 308, 311; J3)

- b. Although CDC's guidance counselor interacted with Student almost daily, the February 2005 IEP did not include actual counseling goals. (N.T. 385-386, 390; J3)
  - c. This IEP states that Student is being instructed at a 5<sup>th</sup> grade reading level, rather than the 4<sup>th</sup> grade reading level listed in the previous month's reevaluation report. (J3, p.3; J1, p.1)
21. Student's teachers observed that Student's behavior improved significantly for second half of the 2004-2005 school year. (N.T. 87, 129, 243, 253; J4) Student had fewer physical outbursts, he would ask for help immediately, he remained in the classroom more often, he calmly requested breaks when needed, and he returned from breaks appropriately. (N.T. 243, 301) CDC and School District personnel cannot explain why Student's behavior improved, although three possible explanations were offered at the due process hearing:
- a. During this time, Student was living with his grandmother. There is no evidence in the record, however, that actually connects Student's improved school behavior with his living arrangements. (N.T. 117-118, 133, 145, 165, 190-191, 226, 246)
  - b. Student might have wanted to transfer back to his home school district to play organized sports. (N.T. 303)
  - c. For the first time, Student's annual IEP included a behavior management plan, and it is possible that this behavior management plan had a positive impact upon Student's behavior. (J3; N.T. 250, 300-302, 304)
22. By the end of his 6<sup>th</sup> grade, 2004-2005 school year, Student's teachers thought he might be ready to move back to his School District's public schools. (N.T. 158, 163) They wanted to try transitioning Student to the CDC middle school environment, however, before sending him back to the School District's middle school. (N.T. 87, 136, 258)
23. Student started his 7<sup>th</sup> grade, 2005-2006 school year with good behavior for the first quarter. (N.T. 89, 135, 138, 253; J5, p.1) During that quarter, he moved upstairs to the middle/high school environment where the school day includes multiple transitions between classes. (N.T. 331) On November 21, 2005, Student received an out-of-school suspension for punching another student. (N.T. 216-217, 342; J9; J11, p.9) On December 19, 2005, Student received another out-of-school suspension for use of profanity directed to staff, use of sexually inappropriate language directed at staff, refusal to follow staff directions, refusal to go to lunch detention, and violently throwing a food tray. (J10) By December 16, 2005, Student had assaulted other students five times. (J11)
24. On January 13, 2006, following an incident at school in which Student threw another desk at staff, a criminal probation hearing was conducted, after which Student was ordered to a juvenile detention center. (N.T. 67, 97, 114, 162) Over the next year, Student alternately escaped from, and was transferred to, various

- juvenile detention centers in Pennsylvania. (J13; J14, p.1-2; J15, p.2; N.T. 101, 105-108, 115)
25. On January 7, 2007, Student's parent requested a due process hearing. (J16)
26. On March 21, 2007, Dr. D conducted a neuropsychological assessment of Student, apparently as part of the juvenile criminal justice system. (J14) Dr. D is not a school psychologist, but rather a neuropsychologist with 20 years experience. (N.T. 41) His current case load is 400 patients per year, with 90-95% of those patients being children between the ages of 3 and 21. (N.T. 25) A WISC-IV resulted in a full scale IQ of 67, which was consistent with an earlier WISC-III FSIQ standard score of 66. (J14, p.6) Dr. D's Wide Range Achievement Test (WRAT) indicated average range academic skills. (N.T. 27, 31; J14, p.7) He noted a significant discrepancy between Student's auditory-verbal and visual-spatial processing abilities, and a breakdown in integration of visual and motor information, suggesting a non-verbal learning disorder in which Student has difficulty decoding the non-verbal elements of his social environments. (N.T. 27, 29, 36; J14, p.6) He also noted a significant level of child distress, with anxiety disorder. (N.T. 32-33) Dr. D does not believe that behavioral modification goals based upon consequences and outcomes will be effective for Student, but rather he recommends more effective management of Student's environment to reduce antecedent activities that tend to trigger Student's problem behavioral reactions. (N.T. 52) He also recommended goals designed to improve Student's problem-solving abilities so as to help him better manage his distress levels, and he recommended moderate exposure of Student to appropriate peers to enable social skills modeling. (N.T. 36-37)
27. The parties conducted an unsuccessful resolution meeting on April 19, 2007. (N.T. 220) I conducted due process hearings on May 7 and June 7, 2007, during which joint exhibits J1 through J24 were admitted into the record. (N.T. 57, 447)
28. The School District contends that it did everything it could to ensure that Student was instructed in the least restrictive environment (LRE) that was appropriate. (N.T. 434) Although CDC officials assumed that Student had received itinerant special education services and the services of a one-to-one aide prior to the transfer to CDC, Student did not, in fact, receive such services. (N.T. 188, 200) The School District contends, however, that it provided to Student emotional support services, behavior management services, and social skills training – all in the regular education environment through the IST process. (N.T. 64, 403-404, 417-421, 439-440, 442; J20; J21) The School District contends that, despite this alleged continuum of services, Student's behavior escalated through a series of crisis incidents exhausting regular education supports and necessitating the more restrictive placements provided by the School District. (N.T. 403, 419-421, 434, 440; J23)

## DISCUSSION

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide a free appropriate public education (FAPE) to all Students who qualify for special education services. 20 U.S.C. § 1412 The School District program will meet its FAPE obligation if it provides special education and related services 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)

The cornerstone of FAPE analysis is an IEP that need not provide the maximum possible benefit, but must be reasonably calculated to enable the child to achieve meaningful educational benefit. 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) 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) It is rare, if ever, that an IEP document can be deemed perfect. In Re R.B. and the Eastern Lancaster County School District, Special Education Opinion No. 1802 (2007)

Special education regulations require school districts to ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and that removal of such children from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114 School districts also must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, and the continuum must make provision for supplementary services such as resource room or itinerant instruction provided in conjunction with regular class placement. 34 CFR §300.115 Courts have long recognized the tension within IDEA between the strong preference for mainstreaming/inclusion, and the requirement that schools provide appropriate individualized programs tailored to the specific needs of each disabled child. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)

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) Because Student's parent seeks relief in this administrative hearing, she bears the burden of proof in this matter, i.e., she must ensure that the evidence in the record proves each of the elements of her case. The U.S. Supreme Court has also indicated that, if the evidence produced by the parties is completely balanced, or in equipoise, then the party seeking relief (i.e., Student's parent) must lose because the party seeking relief bears the burden of



persuasion. Schaffer v. Weast, supra. Of course, where one party has produced more persuasive evidence than the other party, the evidence is not in equipoise.

**Student's claim is limited to the period of January 7, 2005 to January 13, 2006**

Section 615(f)(3)(C) of the IDEIA expressly establishes a two-year limitation period within which to file a due process hearing request, i.e., two years from the date when the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 USC §1415(f)(3)(c) Thus, it is the intent of Congress to limit such claims and to require parents to file such claims in a timely manner. In Re P.P. and the West Chester Area School District, Special Education Opinion No. 1757 (2006)

There are only two exceptions to this two year limitations period: 1) when the parent was prevented from requesting a hearing due to specific misrepresentations by the School District that it had resolved the problem forming the basis of the complaint, 20 USCS §1415(f)(3)(D)(i); and 2) when the parent was prevented from requesting a hearing due to the School District's withholding of information from the parent that was required to be provided to the parent. 20 USCS §1415(f)(3)(D)(ii) For purposes of the limited exceptions to the statute of limitations, the question is not whether or not an ER and/or IEP were appropriate in terms of FAPE, but rather whether they demonstrate the requisite misrepresentation or withheld information necessary to qualify as an exception to the statute of limitations. In Re S.C. and the Lake Lehman School District, Special Education Opinion No. 1800 (2007)

Unfortunately, neither Congress nor the U.S. Department of Education has defined the critical phrases: 1) "specific misrepresentations...that it had resolved the problem"; and 2) "withholding of information...that was required...to be provided to the parents." I conclude, however, that Congress must have meant something more than just professional errors and misjudgments. Both phrases imply that there must be some sort of intentional action or knowing omission by a local education agency. Thus, I believe that "specific misrepresentation" must mean something similar to a lie, falsification, pretense, forgery, falsehood, deceit, dishonesty, deception, sham, fraud, ruse, hoax, subterfuge or trick. Similarly, I believe that "withholding of information" must mean something similar to shredding, burying, intentionally ignoring, concealing, covering up, hushing up, keeping secret, censoring or suppressing information.

Student does not allege that the School District intentionally behaved in a manner that prevented Student's parent from knowing about the alleged action(s) that form(s) the basis of the complaint. Student's argument is, essentially, that the professional errors and misjudgments that form the bases for his complaint also serve as the necessary "specific misrepresentations" and "withholding of information." I find that this is not sufficient to trigger either of the exceptions to the applicable statute of limitations.

In this case, Student was first suspended from school in first grade and he has been suspended from school every year since. (N.T. 111) His first evaluation report was

issued on August 23, 2001, just before 3<sup>rd</sup> grade. (N.T. 61, 109, 399; J19) His first IEP was issued January 31, 2002, when he was transferred to a different elementary school within the School District because his neighborhood elementary school did not have offer any emotional support services. (J22; N.T. 67, 110, 112, 439, 441-442) He was hospitalized sometime between January 31 and May 29, 2002, after threatening to cut off the head of his new school's principal. (N.T. 70, 112, J15, p.1) He was reassigned to the CDC on or about May 29, 2002. (J23, p.1; J24; N.T. 93, 440)

Certainly, by May 29, 2002, Student's parent was aware of Student's behavior problems at school, and she was aware of the increasingly restrictive special education environments to which the School District was assigning Student. Consequently, for purposes of IDEIA's 2 year statute of limitations, the time clock had started ticking at least by May 29, 2002.<sup>2</sup>

Accordingly, at least by May 29, 2002, Student's parent knew, or should have known, of the actions forming the basis of this due process hearing complaint. For each day of alleged FAPE denial after May 29, 2003, she had two years within which to file a due process hearing request to complain of that day's FAPE denial. Thus, on January 7, 2005, she had two years within which to file a due process complaint regarding FAPE denial for that day forward. On January 7, 2007, Student's parent did, indeed, file a timely due process hearing complaint for January 7, 2005 forward. (J16) Thus, I conclude that the maximum time period for which Student might obtain a remedy in this matter is from January 7, 2005, until the date that he was transferred out of the School District by the courts on January 13, 2006.

### **Student was denied FAPE from January 7, 2005 through January 13, 2006**

When a child's behavior impedes his or her own learning or that of others, the IEP team must consider what behavioral interventions are appropriate. 34 CFR 300.324(a)(2) Behavior support programs should include a variety of techniques which permit a student to develop and maintain skills which address problem behaviors. 22 Pa. Code 14.133 A behavioral intervention plan can include, when appropriate: (1) strategies, including positive behavioral interventions, strategies, and supports; (2) program modifications; and (3) supplementary aids and services that may be required to address the behavior.

Further, as noted earlier, school districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, and the continuum must make provision for supplementary services such as resource room or itinerant instruction provided in conjunction with regular class placement. 34 CFR §300.115; Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993); In Re L-M.B. and the East Penn School District, Special Education Opinion No. 1795 (2007)

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<sup>2</sup> Of course, because IDEIA did not become effective until July 1, 2005 (118 STAT. 2803), Student's parent arguably would not have known in May 2002 of any statute of limitations. She must be considered to have known of the two year statute of limitations, however, by the effective date of IDEIA, i.e., by July 1, 2005.

The School District contends that it did everything it could to ensure that Student was instructed in the least restrictive environment (LRE) that was appropriate. (N.T. 434) I disagree. Admittedly, it is a fuzzy line between regular education interventions and the need for special education (In Re J.S. and the Southeastern School District, Special Education Opinion No. 1804 (2007)), but the School District's contention, that it satisfied its LRE obligations by providing emotional support services in the regular education environment through the IST process, is not credible. (N.T. 64, 403-404, 417-421, 439-440, 442; J20; J21) First, although CDC officials assumed that Student had received itinerant special education services and the services of a one-to-one aide at some point prior to his transfer to CDC, Student never, in fact, received such services. (N.T. 188, 200) In addition, this School District has never had a clear understanding of Student's cognitive abilities (J19, pp.2,4; J13, p.3; J14; N.T. 367, 407-408); it regularly suspended Student every year (N.T. 111); and it took no specific action following Dr. N's psychiatric evaluation until after Student started escaping the school building several months later. (N.T. 64, 403-404, 417-421, 439-440, 442; J20, p.2; J21) I do not believe that the School District tried to ensure that Student received appropriate educational programming in the least restrictive environment.

As noted earlier, however, this case is limited to the time period of January 7, 2005 forward. By that time, Student had been attending CDC for 2 ½ years. Thus, for purposes of this case, any issue of FAPE denial concerns the appropriateness of the education provided to Student at CDC, from January 7, 2005 through January 13, 2006. As described below, I find that Student was denied FAPE for this entire time.

The time period at issue was Student's 6<sup>th</sup> and 7<sup>th</sup> grade school years, during which he moved upstairs to the middle/high school environment in anticipation of moving back into the School District's middle school. (N.T. 87, 89, 135-136, 138, 158, 163, 253, 258; J5, p.1) By December 16, 2005, however, Student had assaulted other students five times. (J11) By January 13, 2006, Student had thrown another desk at staff and sent to a juvenile detention center via a criminal probation hearing. (N.T. 67, 97, 114, 162) To say that Student's 7<sup>th</sup> grade experience was disastrous is an understatement.

I am not suggesting that either CDC or the School District could have prevented Student from ultimately ending up at juvenile detention centers. What I do conclude is that Student's educational programming from January 7, 2005 through January 16, 2006 was so haphazard and unsystematic as to constitute a denial of FAPE. There should not have been a full grade-level discrepancy between the January 2005 reevaluation report and the February 2005 IEP regarding Student's present education reading level. (J3, p.3; J1, p.1) Nor was it appropriate, when Student failed to meet his 2004 social/behavioral goal, for the 2005 IEP team to simply have reduced expectations from 90% compliance to 80% compliance, without any further analysis. (N.T. 300-302; J2, p.8) Had CDC engaged in more systematic charting and analysis of Student's behaviors, it might have changed his social/behavioral goal more substantively. Certainly, CDC officials would not have been in the position of having to guess at the due process hearing as to why Student's behavior had improved so dramatically during the second half of the 2004-2005

school year. (N.T. 300-304) Another example of the unsystematic and haphazard nature of Student's programming was the fact that, although CDC's guidance counselor interacted with Student almost daily, apparently in response to Student's social and behavioral needs, the February 2005 IEP did not include any actual counseling goals. (N.T. 385-386, 390; J3)

The lack of reliable present education levels, the lack of systematic progress monitoring, and the lack of complete and reasoned IEP goal development, denied a free and appropriate public education to Student for the entire time at issue in this case, i.e., from January 7, 2005 through January 13, 2006.

The School District is entitled to a reduction of the compensatory education award for a period of reasonable rectification. M.C v. Cent. Regional School District, 81 F.3d 389 (3d Cir. 1999); See In Re L.C. and the Philadelphia School District, Special Education Opinion No. 1809 (2007) In this case, a reevaluation report was issued in January 2005, and a follow up IEP was issued on February 22, 2005. I conclude that, under those circumstances, 60 calendar days after January 7, 2005 is sufficient time within which the School District could have rectified any FAPE denial and developed a more complete and reasoned IEP. Thus, I will award six hours of compensatory education for every day that Student attended school between March 7, 2005 through January 13, 2006.<sup>3</sup>

### CONCLUSION

Student is a xx year old child who was a student of the School District from September 1998 (pre-first grade) through January 13, 2006 (seventh grade). Student seeks compensatory education, alleging that the School District failed to timely evaluate Student, inaccurately identified his disability, and subsequently programmed inappropriately for Student's special education needs. For the reasons described below, I award compensatory education, but I conclude that Student's recovery of compensatory education is limited by the applicable statute of limitations and reasonable rectification period.

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<sup>3</sup> Student will be assumed to have attended school unless the School District has specific documentation of absence on particular days.

**ORDER**

- The School District denied a free and appropriate public education to Student from January 7, 2005 through January 13, 2006;
- The School District shall provide to Student 6 hours of compensatory education for every day that Student attended school between March 7, 2005 and January 13, 2006;
- Student will be assumed to have attended school unless the School District has documentation of his absence on specific days.

*Daniel J. Myers*

Hearing Officer  
June 22, 2007

Re:	Due Process Hearing
File Number:	7271/06-07 LS
Student:	Student
School District:	Coatesville Area