

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

**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: HL  
ODR #7374/06-07 AS

Date of Birth: xx/xx/xx

Dates of Hearing:  
May 18, 2007  
June 1, 2007  
June 5, 2007

CLOSED HEARING

Parties to the Hearing:  
Mr. and Mrs.

Haverford Township School District  
1801 Darby Road  
Havertown, Pennsylvania 19083

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Robert Lear, Esquire  
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June 20, 2007

June 27, 2007

Linda M. Valentini, Psy.D.

## Background

Student is a xx-year-old eligible student who resides in the Haverford Township School District (hereinafter District) and currently attends Private School, a private school for children with learning disabilities. Mr. and Mrs., (hereinafter Parents), assert that the District failed to offer Student a free, appropriate public education (hereinafter FAPE), including an appropriate extended school year (hereinafter ESY) program for summer 2005, when she was enrolled in the District's elementary school, and that she is therefore entitled to compensatory education. Additionally, the Parents are seeking tuition reimbursement for their unilateral placement of Student at Private School for the 2005-2006 and the 2006-2007 school years, including the program for summer 2006, and reimbursement for several evaluations, tutoring and counseling services. Finally the Parents assert that the IEP offered for the coming year (2007-2008) is inappropriate and that Student's placement should be continued at Private School at District expense.

## Issues

1. Are the Parents entitled to reimbursement for one or more evaluations they obtained for Student?
2. Did the District provide Student with a free, appropriate public education for the period from February 2005 through April 2005 and from the beginning of May 2005 through the end of the school year in June 2005? If the District did not provide Student with FAPE for the specified period, is she entitled to compensatory education, in what amount and in what kind?
3. Did the District offer Student an appropriate IEP for the 2005-2006 school year? If the District did not offer Student an appropriate IEP, was the placement unilaterally chosen by the Parents appropriate, and if so, do equitable considerations reduce or remove the District's responsibility for tuition reimbursement?
4. Was Student eligible for an Extended School Year (ESY) program during the summer of 2006, and if so did the District's failure to offer her an ESY program constitute a denial of FAPE? If Student was eligible for ESY during the specified summer, and the District was incorrect in its decision not to offer her an ESY program, was the summer program obtained by the Parents appropriate and are they entitled to reimbursement?
5. Did the District's decision not to offer Student an IEP for part of the 2006-2007 school year constitute a denial of FAPE? If the District's not offering Student an IEP for part of the 2006-2007 school year constituted a denial of FAPE, was the placement unilaterally chosen by the Parents appropriate, and if so, do equitable considerations reduce or remove the District's responsibility for tuition reimbursement?

6. Did the District offer Student an appropriate IEP for part of the 2006-2007 school year and for the 2007-2008 school year? If the District did not offer Student an appropriate IEP for these periods, is the placement unilaterally chosen by the Parents appropriate, and if so, do equitable considerations reduce or remove the District's responsibility for tuition reimbursement?
7. Was Student in need of tutoring<sup>1</sup> and/or counseling services during the period from fall 2004 through August 2005? If Student was in need of tutoring and/or counseling services, was the District responsible for providing them, and are the Parents entitled to reimbursement for these services?
8. Was Student eligible for an Extended School Year (ESY) program during the summer of 2005, and if so did the District offer her an appropriate program? If Student was eligible for ESY during the specified summer, and the District did not offer an appropriate program, was the summer program obtained by the Parents appropriate and are they entitled to reimbursement?

#### Findings of Fact

#### Evaluations

1. The District's school counselor spoke with the Parent<sup>2</sup> several years previously in response to a query about how to have Student's brother evaluated. The Parent was informed of the process, including the requirement to put an evaluation request into writing. (NT 576)
2. The Parent told the first grade teacher that she felt it important to have Student privately tested because of the patterns she had seen in her son, making sure that if any of the patterns were seen in Student they could be addressed in a timely manner. The Parent told the teacher that although private testing was costly, she wanted to do the best thing for her child. (NT 517-518)
3. The Parents never communicated a request for a District evaluation to the first grade teacher; the teacher never saw a note from the Parents requesting an evaluation. (NT 518-521)
4. In February of first grade, the Parent told the school counselor that she had requested testing by the District "a while ago" and had heard nothing further. After checking with the first grade teacher and the principal and being told that they had not received any such request, the school counselor called the Parent and

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<sup>1</sup> Counsel for the Parents referenced a request for reimbursement for private reading tutoring in his opening statement but it was inadvertently omitted from the formal restatement of issues after the opening statements. (NT 21)

<sup>2</sup> Student's mother is the "Parent" referenced throughout as she acted on behalf of both herself and her husband.

- told her that she should write a letter to the director of special education requesting testing. (NT 588-589)
5. During that phone call the Parent indicated to the counselor that she was thinking about having the testing done privately through the same facility that had previously evaluated her son. (NT 590)
  6. The second grade teacher never received a request from the Parent for the District to provide testing for Student. (NT 658)
  7. Contemporaneous notes of the District's reading specialist's mid-September 2004 conversation with the Parent indicate that the Parent identified dates in late September 2004 on which it had already been arranged that Student was going to receive a private psychoeducational evaluation. The reading specialist received the "distinct impression" that the Parent wanted only private testing. (NT 61, 94-95; S-9)
  8. The private evaluation was performed at the end of September 2004; the cost for the evaluation was \$2300. (S-44, P-2)
  9. At some point prior to November 10, 2004 the Parents received a copy of the private evaluation. On November 10, 2004 in preparation for a November 16<sup>th</sup> meeting the Parent shared her synopsis of the private evaluation in a "Thumbnail Review of the Results from Student's Psych-educational (sic) Testing". A copy of the private report was not shared with the District at that time. (NT 61-62, 475-476; P-4)
  10. On November 20, 2004 the Parent notified the principal by email that Student had received a private evaluation and asked that an IEP meeting be scheduled. (NT 274-275; P5)
  11. On December 5, 2004 the Parent made a written request for an evaluation from the District. The Parent was not sure if she made a copy of the private evaluation available around this time. The private evaluation had not been shared previously with either the reading specialist or the classroom teacher. The District produced an ER dated February 3, 2005. (NT 123, 478-479; S-16, S-20, S-22)
  12. The private evaluator recommended that Student receive a comprehensive assessment by a pediatric optometrist because Student had demonstrated some visual discrimination and processing issues. (NT 209; S-20)
  13. The Parents obtained such an evaluation for Student on July 11, 2006 and paid \$210.00 for it. The Parents submitted the bill for reimbursement. (NT 209-210; P-18)

14. The District denied the request for payment for the optometric evaluation since the District did not believe that the evaluation would offer a crucial piece of information for continuing to recommend and offer special education to Student. (NT 210)
15. The Parents obtained an Audiometric Evaluation and Central Auditory Processing Evaluation for Student on April 20, 2007 in order to see what progress Student had made. The Parents did not submit the report to the District. It was not used in Student's reevaluation. (NT 467, 872-873; P-29)

FAPE – February 2005 through April 2005

16. On her end of year report card for first grade, although her reading was at the expected grade level and she showed no signs of a reading disability at the time, Student's teacher wrote, "Make sure to keep Student reading [double underline] at her independent level over the summer to build reading confidence and fluency". (NT 93-94, 507-508; S-7)
17. The teacher added this comment because of the gaps in homework Student had demonstrated during the year and because of concerns that the growth in her skills and her confidence needed reinforcement over the summer to prevent regression. (NT 508-512)
18. Student did not read over the summer, but her mother read to her at times. Student told her mother that she could not read the books. (NT 45, 263-264; S-10)
19. Regression occurs over the summer and the number one summer for regression in reading is the summer between first and second grades. (NT 106-107)
20. Based on the Parent's noting reading difficulties on a beginning of the year questionnaire, the second grade classroom teacher conducted an assessment and noticed that Student was struggling on a directed reading task and asked the reading specialist to test her (NT 39, 614-619; S-7, S-82)
21. The reading specialist administered a Qualitative Reading Inventory III to Student in September of Student's second grade year (September 9, 2004). (NT 39; S-10)
22. On the QRI III, Student was struggling with word recognition and an instructional level could not be established. She did not meet satisfactory criteria at the Pre-Primer level. She was classified as being "significantly" below her expected reading level (which should have been 2/1, i.e. the first part of second grade) and was deemed to need reading support and began to receive reading services. (NT 40-45, 52, 359-360; S-10)

23. Student's reading specialist from September 2004 until the end of February 2005 is a PA certified reading specialist, holds a Master of Science in the Psychology of Reading degree from [redacted] University (1975), since 1975 has served as a reading specialist in the District, and has taken and taught a course on DIBELS (Dynamic Indicators of Basic Emerging Literacy Skills. Among other post-graduate trainings, she has been trained in the Guided Reading, Four Blocks Instruction, and Reading Recovery programs, and currently is receiving Differentiated Instruction training. (NT 36-39, 91)
24. The reading specialist's reading training at [redacted]University focused on the VAKT method (visual, auditory tactile kinesthetic), a multisensory method based on the Orton-Gillingham model. (NT 92)
25. Multisensory Reading Instruction, the Parents' preferred method, is one of the "multitude" of different reading programs based on the Orton-Gillingham method involving multisensory techniques, guided discovery learning and daily introduction of and review of concepts. (NT 358, 479-480; S-84)
26. Student received reading instruction from the reading specialist three times a week (two 30-minute periods and one 40-minute period) in a small group of two students. The reading instruction consisted of systematically going through decoding strategies, systematic teaching of phonics skills (sounding, blending, segmenting), developing a sight vocabulary, and proceeding through guided reading levels. (NT 52, 100-103)
27. The reading specialist was supporting the working-with-words block of the Houghton-Mifflin Balanced Literacy Program, a Four Block approach which was being used in the regular education classroom. The working-with-words block is the intensive decoding block. The reading specialist was presenting the same skills and strategies the classroom teacher was presenting, but in a remedial mode, more intensively and using a variety of multisensory approaches – visual, auditory, tactile, kinesthetic (VAKT). (NT 52-55, 103, 121)
28. The reading specialist administered a second QRI III in mid-December 2004. The results placed Student at the end of first grade level,<sup>3</sup> representing a year's progress in four months, as she had been below pre-primer in September. The classroom teacher also believed that Student was progressing very well. (NT 73-74, 109; S-11)
29. The reading specialist administered a third QRI III at the end of January 2005 since Student had been handling some beginning chapter books and the reading specialist was curious to see how she would do on the test. Student scored beyond the previous end of first grade level (1/2) but not quite at the beginning second grade level (2/1). (NT 75-77; S-12)

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<sup>3</sup> First grade is divided into thirds – pre-primer, primer and ½, which is the end of first grade. (NT 72)

30. A Houghton-Mifflin Phonics/Decoding Screening Test was administered to Student at the end of January 2005. The second grade teacher gave Student the assistance allowed by the test publisher. The items were administered at Student's actual grade level (mid second grade) and she scored at grade level in decoding real words and pseudowords using the CVC configuration, short vowels, long vowels, diagraphs, and R and L controlled vowels. She fell below grade level on variant spellings and diphthongs, and these were the two areas that had not yet been completely addressed with the reading specialist. She was decoding using what she had been taught. These results were consistent with the improvements from September 2004 found through the QRI III's administered in December 2004 and January 2005. (NT 110-113, 124, 168, 638-646; S-22)
31. Student was having difficulty with completing homework assigned by the reading specialist and by the classroom teacher. The reading specialist's homework was to re-read guided reading books to a parent for about fifteen minutes a night, and work on sight-word flashcards. Student's total homework including the regular classroom homework was totaling about an hour<sup>4</sup> a night. (NT 80-83, 96-97, 269)
32. The private reading tutor also assigned Student homework. (NT 280, 365)
33. On at least one occasion Student had read a book chapter with the reading specialist in school but reportedly became frustrated when reading the same material to the Parent at home. On that occasion the reading specialist suggested to the Parent that Student might just be wanting to avoid doing the homework. (NT 97-99)
34. Based on parental report that Student was having a very hard time with certain math homework, the second grade teacher arranged for Student to work briefly on the practice assignments in school and also arranged the help of an older peer tutor. Student did not show difficulty with these assignments in school. The teacher encouraged the Parents to have Student try to complete the math practice assignments. (NT 650-653, 662-671; P-6)
35. The Parent asked the school to reduce or manage the amount of homework Student was assigned. (NT 281-282)
36. In late February or early March 2005 the Parent abruptly withdrew Student from the reading specialist's services following a discussion about Student's homework. (NT 84-85, 195-196)

FAPE – May through June 2005/ Offered 2005-2006 School Year

37. The evaluation completed in early February 2005 resulted in the conclusion that Student was eligible for special education as a student with a specific learning

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<sup>4</sup> Later the Parent testified that homework was taking an hour and a half a night, and she "had in mind that second graders should do homework for about 15 minutes". (NT 282)

- disability and required specially designed instruction in the area of language arts. The private evaluator had also found Student to have a reading disorder. The Parent crossed out her checkmark under “Yes” (indicating initial agreement with the District’s ER) but did not check under “No” (indicating disagreement). (S-20)
38. The ER was revised to include the Parent’s written response. The Parent and the director of special education had some discussions on April 8, 2005 because the Parent was questioning the special education teacher’s qualifications to present a language arts program to Student and because the Parent was concerned that Student was further along in the MRI program than the other children in the special education group. (NT 212-213; S-25)
  39. The director of special education told the Parent that Student’s IEP would be individualized and begin where she was instructionally, and move her forward. (NT 214)
  40. On April 21 or 22, 2005 (the record is contradictory) the IEP team prepared an IEP for Student. An earlier date was proposed (3-15-05), the Parents received the Invitation to Participate, but did not respond. A second Invitation was sent and the Parents did not respond. A third Invitation was given verbally by telephone and the Parents indicated they would attend. (NT 156, 160-162, 180-182; S-23, S-26)
  41. The IEP noted that a speech/language evaluation was in process. (NT 221-222; S-26)
  42. The speech/language evaluation was done on April 25 and May 6, 2005. The evaluator administered the Clinical Evaluation of Language Fundamentals - Fourth Edition (CELF –4), the Test of Auditory Perceptual Skills – Revised (TAPS-R), the Peabody Picture Vocabulary Test – Third Edition Form B (PPVT-III B), and the Expressive Vocabulary Test (EVT). (S-30)
  43. The speech/language evaluation found Student to be functioning in the average to high average range on all expressive and receptive language tasks, and in the average to high average range in auditory perceptual skills, with highly intelligible speech. She displayed age-appropriate social skills. Speech/language services were not recommended. (S-30)
  44. The IEP of April 2005 called for Student to participate in a learning support resource room for an hour in the morning from Monday through Thursday, and for 35 minutes in the afternoon from Monday through Friday. The learning support setting had a special education teacher and an instructional aide, and 10 to 12 students. (NT 146-147)
  45. Student’s schedule for coming to the special education setting was different from the other students in her group because the Parent requested specific scheduling



- for Student. The other students were with the special education teacher twice as long as Student was. (NT 153-154)
46. The special education teacher to whom Student was assigned for learning support holds undergraduate and graduate degrees in special education, held various teaching positions, and had a private practice as a reading tutor. She attended a program on Multisensory Reading Instruction at Private School, completing it in the summer of 2004, prior to teaching Student<sup>5</sup>, and receiving her Instructional A certification. (NT 129-134, 174-175)
  47. The Instructional A certification program taught a phonetically-based approach to teaching word attack skills to children who have difficulty in reading. (NT 134-135)
  48. The special education teacher, as part of her certification program for MRI through Private School, was observed using the program at the District's elementary school five or six times by the same individual who eventually tutored Student. This individual worked at Private School. This individual liked the way the special education teacher was delivering the MRI program. (NT 158-159, 354)
  49. The special education teacher was instructing the students in reading using the MRI, the reading instruction approach in which she had been certified by Private School. Student was sometimes instructed with the MRI one-to-one and sometimes in a group to practice and reinforce strategies. (NT 150-151, 155, 159)
  50. The special education teacher was instructing the students in writing using the Four Blocks of Writing. (NT 150)
  51. The special education teacher was instructing the students in spelling using the Houghton-Mifflin speller. (NT 151)
  52. Student was ahead of the other students in the MRI program so the teacher, using differentiated instruction, focused in on the areas she needed – developing sight vocabulary, spelling, written expression writing mechanics, and other reading areas. (NT 152-153, 157-158)
  53. The special education teacher was addressing each of the Needs identified in Student's IEP, except that difficulties in maintaining "attention-on task behavior" were not present and so did not need to be addressed. (NT 168-169)
  54. The special education teacher did not see any anxiety or emotional difficulties with Student. She appeared to be happy and always willing to do what was asked

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<sup>5</sup> The private reading tutor testified that the special education teacher was certified in MRI in Summer 2005. It is more likely that the person receiving the certification would know the correct date. (NT 366)

- and she tried her best. Student did not exhibit any off-task behavior in the special education room. (NT 156, 167)
55. The special education teacher did not see any difficulties with Student transitioning into and out of the special education room. (NT 166-167)
  56. The special education teacher did not assign any homework to Student, at the Parent's request. (NT 174)
  57. Student's IEP carried the annual Reading Goal for her to progress from a beginning second grade level to a beginning third grade level (from 2/1 to 3/1) as measured by the QRI and class assessments. (S-26)
  58. The first overall objective related to the goal was to read 150 sight words 9 out of 10 times with 90% accuracy (from a baseline of 75 sight words she knew). (NT 145; S-26)
  59. A contributing benchmark was to use decoding strategies, word patterns, picture clues, context clues, and sound blending 9 out of 10 times with 85% to 100% accuracy. (S-26)
  60. Another contributing benchmark was to identify consonant blends and diagraphs in the initial position 9 out of 10 times with 85% to 100% accuracy. (S-26)
  61. Another contributing benchmark was to read and identify variant vowel sounds in words (oi, ow, r-controlled, for example) 9 out of 10 times with 85% to 100% accuracy. (S-26)
  62. The final contributing benchmark was to identify root words 9 out of 10 times with 100% accuracy. (S-26)
  63. The second overall objective relating to the goal was to read words containing short and long vowel sounds 9 out of 10 times with 85% to 100% accuracy. (S-26)
  64. A contributing benchmark was to look for chunks or phonemes to help read multisyllable words 9 out of 10 times with 85 to 100% accuracy. (S-26)
  65. Another contributing benchmark was, given second grade material, to read orally at 90 wpm with no more than 2 errors with 75 to 84% accuracy. (S-26)
  66. Another contributing benchmark was to answer factual questions about a selection 9 out of 10 times with 85% accuracy. (S-26)
  67. The final contributing benchmark was to answer interpretive questions about a selection 9 out of 10 times with 75% to 84% accuracy.

68. Student's IEP carried the annual Writing Goal for her to improve her written expression to a competency level (rubric core of 3) at a second grade level as measured by the PA writing rubric, district writing samples, and class assignments. (S-26)
69. The overall objective relating to the goal was, given a story starter, Student will write a story that contains at least 6 sentences with no more than 10 errors of spelling, punctuation, or grammar 9 out of 10 times. (S-26)
70. The contributing benchmark was to use and apply 5 to 7 weekly spelling words in her personal writing journal with correct usage 9 out of 10 times with 75 to 84% accuracy. (S-26)
71. The IEP team determined that the special education teacher would implement portions of the MRI program as it would support the language arts curriculum in the regular education classroom. The special education teacher was to support Student in the areas of fluency, phonemic awareness and writing. (NT 218-219)
72. The District offered a Notice of Recommended Educational placement (NOREP) on May 3, 2005. The Parents signed it on an illegible date, but the District received it back on May 25, 2005. A revised NOREP was mailed to the Parents on June 8, 2005 (correcting an error) and was not received back by the District. (S-29, P-12)
73. On the NOREP the Parents indicated that their approval of the proposed program/placement was only for the end of the 2004-2005 school year and they expressly stated that it was not for the 2005-2006 school year. (S-29)
74. Nevertheless, Student began participating in the special education program shortly after the IEP meeting date, before the NOREP was signed<sup>6</sup>. (NT 177, 180)
75. At the end of the second grade year Student was reading at her independent reading level (beginning second grade) at a fluency level expected of a second grade reader at that time in the school year. (NT 681, 697; S-13)
76. At the end of the second grade year Student was performing at the expected level in math. (NT 681; S-13)
77. At the end of the second grade year Student was at the level expected of second graders in writing at the end of the school year. (NT 682; S-13)

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<sup>6</sup> Since the Parent had removed Student from the reading specialist's services at the end of February, Student had received only the reading instruction given in the second grade classroom until the special education reading services were initiated. She did receive the private tutoring during this time, however.

78. Student was absent a total of 14 school days during the 2003-2004 school year. Although the document is difficult to read and lateness is also recorded, it appears that Student missed a total of 20 days of school during 2005-2006, four of these days being after she was placed in special education. (S-8, S-14)
79. In second grade Student was many times coming in late and leaving ten or twenty minutes early once or twice a week for reading tutoring. (NT 654-655, 662-664)
80. The family removed Student from school a week before it ended to go on a family vacation at the end of her second grade year. (NT 167, 655)
81. On the NOREP the Parents had signed and returned on May 25<sup>th</sup> they had written, “2005-2006 school placement is not yet being approved by [mother’s first name] and [father’s first name] as Student is receiving intensive interventions over the summer in an appropriate multisensory program” and “Student needs to be looked at in the Fall of 2005 as she is attending a multisensory summer program” and “the appropriateness of Student’s placement for 2005-2006 is not yet approved by us”. (NT 308-309; S-29)
82. The same revised NOREP that had been sent to the Parents on June 8<sup>th</sup> and not returned was mailed again to the Parents on August 19, 2006 and the Parents did not return it. The cover letter from the District to the Parent noted, “In order to continue Student’s special education services this fall, we need your signature on the enclosed NOREP”. (S-39, P-12)
83. On August 21 the Parent wrote an email to the director of special education asking, “What are you recommending for the placement for this year? I cannot accept or deny the placement without knowing what you are offering”. Further, “This in short is what the appropriate placement for Student is: MRI program at the approximate lesson she is currently at. She can repeat a few lessons to syn (sic) up with the class if needed. The teacher must be certified in the MRI program. Low student/teacher ratio in all subjects because of her ADD<sup>7</sup>”. (NT 442-445, 488-489; S-40)
84. In a letter dated August 24, 2005 the director of special education wrote regarding Student’s special education placement for 2005-2006: “At this time Student is scheduled for regular education classes at [elementary school] with no special education services in her schedule”. The director of special education testified that this was the District’s clarification of its position that the placement being offered is that of [elementary school] for the fall. (NT 227; P-12)

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<sup>7</sup> The Parent notes attention issues without hyperactivity “based on the feedback from [Student’s second grade teacher], the teacher of Student’s summer school program, and a doctor’s visit”. On August 4, 2005 the Parent noted in an email “FYI – Student appears to have previously unidentified attention issues. We are currently pursuing this issue”. (S-35, S-40)

85. By letter dated August 25, 2005 but mailed on September 12, 2005 and received at the District on September 13, 2005, the Parents informed the Principal that Student would be attending Private School for the 2005-2006 school year. (NT 198; S-44)
86. Although there were some false starts and stops regarding setting up a meeting between the Parents and the District in the fall of 2005, a meeting never occurred. Student remained in Private School through the 2005-2006 school year. (NT 228-230, 247-250, 446-447; S-44, S-45, S-46, S-47)

2006-2007 School Year/ 2007-2008 School Year

87. A meeting was held in September 2006 at the request of the Parents. The Parents were requesting tuition reimbursement and payment for outside evaluations. The District requested that the Parents give permission for a re-evaluation of Student. (NT 230-233, 454-455; S-51, P-19)
88. The District issued a Permission to Evaluate on September 19, 2006 and the Parents signed it on September 21, 2006. (S-53, S-54)
89. The District issued its Evaluation Report on December 18, 2006. (S-64)
90. An IEP meeting was conducted on January 27, 2007 and a copy of the IEP was sent to the Parents on January 31, 2007. (NT 465; S-67, S-68)
91. The January 2007 IEP has a comprehensive account of Student's present levels of educational and emotional functioning. (S-67)
92. The January 2007 IEP carries a comprehensive listing of Student's strengths and her needs. (S-67)
93. The January 2007 IEP contains annual goals and corresponding objectives for math, reading and writing. (S-67)
94. The January 2007 IEP goals are measurable and call for appropriate progress. (S-67)
95. The January 2007 IEP carries appropriate specially designed instruction. (S-67)
96. The January 2007 IEP contains supports for Student's regular education teachers and consultation with the guidance counselor as well as specially designed instruction to support the emotional fragility reported by the Parent. (NT 873-874, S-67)
97. The Parent and some of Student's teachers (reading, math, writing) responded to questions on a behavior rating system (BASC) for the reevaluation in the middle

- of the 2006-2007 school year. The BASC is designed to screen for social, behavioral and emotional concerns over the three-month period prior to administration. (NT 854, 876-877)
98. According to the Parent's responses, Student was still manifesting symptoms of somatization, that is, expressing feelings through physical complaints such as headaches and stomachaches. (NT 856)
99. The teachers' ratings revealed some concerns about hyperactivity, distractibility and impulsivity and one teacher also noted some concern about inappropriate classroom behaviors. (NT 860; S-64)
100. The findings of the BASC indicated that a behavior plan was not necessary for Student at the time. (NT 871-872)
101. A NOREP was sent to the Parents on January 31, 2007. The Parents did not approve the proposed placement, and asked that their attorney file for a due process hearing. (NT 465-466; S-1, S-68)
102. Student remained at Private School for the remainder of the 2006-2007 school year. (NT 456)
103. In disapproving the NOREP offered in January 2007 for the remainder of the 2006-007 school year and the 2007-2008 school year, the Parent did not think that the supports to be offered for Student were adequate. (NT 490)
104. In addition to the learning support teacher, in the learning support classroom Student would have had if she were in the District for the 2006-2007 school year and the 2007-2008 school year, there was an additional certified teacher. (NT 713)
105. During the current year there are nine students in the math special education classroom and eleven students in the language arts classroom. (NT 713, 723)
106. The numbers of children and the staff composition of Student's learning support classroom would be approximately the same for the 2007-2008 school year as for the 2006-2007 school year. (NT 724)
107. In the fourth grade learning support program (2006-2007) Student would have had a full 90-minute block daily for Language Arts, and an additional 30 minutes two afternoons a week for Language Arts. Math is scheduled for 70 minutes daily. (NT 731)
108. In the fifth grade learning support program (2007-2008) Student would have 120 minutes daily for Language Arts. (NT 738)

109. The learning support classroom Student would have entered for the end of the 2006-2007 school year and in which she would continue for the 2007-2008 school year offers a quiet environment with a structured daily routine. (NT 724)
110. The learning support teacher and the aide (certified teacher) go into various regular education classes to provide extra support for the students in the learning support class. (NT 724-725)
111. The learning support teacher offers lunchtime study groups for tests to the learning support students. (NT 725)
112. The learning support teacher works with the regular education teachers and adapts their curricula to meet the specific needs of the students. (NT 725)
113. The learning support teacher assists the regular education teachers in implementing the specially designed instruction and the strategies set forth in the IEPs. (NT 725-726)
114. In disapproving the NOREP offered in January 2007 for the remainder of the 2006-007 school year and the 2007-2008 school year, the Parents disagreed with the IEP because there was no specific mention of reading instruction using the MRI method. (NT 489-490)
115. The primary curriculum for the delivery of language arts to Student would be the Houghton-Mifflin Literacy for Legacy program, a balanced literacy program, and the Write Source program, both modified as necessary, within the structure of the Four Block program. (NT 722-723, 786)
116. The Houghton-Mifflin Literacy for Legacy program provides daily specific strategies for decoding. The program provides a systematic, explicit teaching of phonics instruction. (NT 735-736)
117. The expert in reading instruction who testified on behalf of the District has 40 years experience in reading instruction, published research on reading, and is the author of the Critical Reading Inventory, the second edition of which will be published in July 2007. She has taught graduate reading teachers at [redacted] University and now teaches graduate reading teachers at [another redacted] University who are pursuing a reading specialist certification. (NT 744-748, 754-760, 770; S-87)
118. The District's expert in reading formerly supervised a reading clinic at [redacted] University and now supervises a reading clinic at [another redacted] University. The reading clinic provides instruction to struggling readers, mostly in the early grades, many of whom had a specific learning disability in reading. The expert has modeled teaching in public school second, third and fourth grade

- classrooms for teachers in the districts and for her graduate students. Many of the children in the public schools in whose classrooms she teaches have specific learning disabilities in reading. (NT 752-754, 760)
119. The District's expert in reading instruction is familiar with the Houghton-Mifflin program, a Balanced Literacy program, and the research underlying the program. (NT 764)
120. The District's expert in reading instruction is familiar with Patricia Cunningham and her Four Block Structure used by the District. (NT 765)
121. The District's expert in reading instruction is familiar with the philosophical assumptions as well as the focus of instruction of the Orton-Gillingham method and programs based upon it such as the MRI. (NT 765)
122. The Balanced Literacy approach integrates the bottom up (or linear) approach to reading with the top down (meaning based with less emphasis on words). The Balanced Literacy program integrates phonics, comprehension and fluency simultaneously. (NT 766)
123. The current research on struggling readers supports the Balanced Literacy approach. (NT 790-792)
124. Based on a study of the data regarding Student, and in particular the data from the administrations of the QRI's, the District's expert in reading has concluded that because Student does well when presented with tasks that are meaningful to her, as opposed to tasks that are isolated, she requires the Balanced Literacy approach and may actually do less well with an approach to reading or even to writing that is primarily an Orton-Gillingham based model. (NT 766-770, 774, 783, 792-799, 813-818; S-63, S-64)
125. At the IEP meeting held on January 17, 2007 the District discussed that Student would be offered the Houghton-Mifflin Balanced Literacy program in the resource setting so that it would be adapted and modified to meet Student's needs. (NT 884)
126. The Resolution Meeting discussion included implementing the Soar to Success reading program to supplement the Balanced Literacy program. (NT 885)
127. The Soar to Success program is a subcategory of the Houghton-Mifflin program. It is often used by the resource teachers to supplement the Balanced Literacy program. (NT 739, 884-885)
128. In disapproving the NOREP offered in January 2007 for the remainder of the 2006-007 school year and the 2007-2008 school year, the Parents disagreed



- with the IEP because having done research on the Internet the Parent believed that Everyday Math did not work well with low achievers. (NT 490)
129. The District's fourth grade special education teacher who would have instructed Student during the 2006-2007 school year testified that she has used the Everyday Math program for "at least ten years and love(s) it". She has worked with students with reading disabilities and has "seen students think like they've never thought before mathematically". She provides an adapted version of the Everyday Math program with additional supplemental support in specific areas of need: computation, word problems and number facts. (NT 710-711)
130. The District's fourth grade special education teacher was part of the District team that researched the Everyday Math program prior to its adoption for the elementary math curriculum. The two most common criticisms of the program vis a vis students with reading disabilities are pacing and practice, two aspects which the teacher who would have instructed Student controls in her classroom. (NT 712-713)

#### Private School

131. The Parents would like Student to remain at Private School. (NT 468)
132. Alternatively, the Parents would like the District to duplicate what Student receives at Private School. (NT 491-492)
133. Private School enrolls 70 children, with 5 to 6 children in each classroom. Student's classroom for the 2006-2007 year had five or six children. (NT 333, 397)
134. All the students in Private School have a learning disability. (NT 334, 342, 428)
135. Student has a mild disability in reading. (NT 822-823, 834-836)
136. When Student left the District she did not have a disability in writing or math as evaluated by the WIAT II. (NT 836; S-22)
137. After approximately a year and a half at Private School, Student's scores on the WIAT II indicated a significant discrepancy between ability and achievement in writing and math. (NT 843)
138. The manner in which reading comprehension is taught at Private School with the MRI is actually listening comprehension; the teacher reads a selection to the students, who do not have books to follow along, and then questions and answers are done orally. (NT 171-173)

139. During the 2005-2006 school year at Private School Student was in a reading group that was a high functioning group and there were times when she felt as if the work was very challenging for her. (NT 386-387)
140. A QRI IV administered through Private School in mid-April 2006 after Student had been at Private School for summer school and for 7 ½ months of the 2005-2006 school year placed her instructional level at the 2<sup>nd</sup> grade in reading accuracy and her instructional level at first grade for Comprehension. This represents regression from the score obtained in January 2005. (NT 88; P-15)
141. It is not possible that the scores from the January 2005 QRI III were inflated as Student gave verbatim answers and comprehension was a strength for Student at that time. Good background knowledge would not help her because the questions were text-driven. (NT 89-90, 104)
142. The QRI III and the QRI IV are comparable. (NT 385)
143. In January and February 2007 Student was readministered the QRI IV in preparation for the hearing<sup>8</sup>. Her reading accuracy and reading comprehension were not reported. Her fluency ranged from 48 wpm to 79 wpm at her instructional level. By national standards at her grade level Student should be reading 120 wpm. (NT 394, 406, 417; P-30)
144. In the Spring (of 2007) Student was also given a portion of the Woodcock Reading Mastery test. She scored at the 3.1 grade level in word identification (sight words) and at the 9.3 grade level for word attack (nonsense words). (S-30)
145. Although Student's fluency when she actually reads real text is about half of what it should be, she has learned the systematic rules of approaching decoding at a high level as demonstrated by the high score on reading nonsense words. (NT 396)
146. Reading and writing overlap in literacy and Balanced Literacy does not separate them. After being in Private School for approximately a year and a half and receiving primarily an Orton-Gillingham based reading program (MRI) her scores were as follows below. Although some score sets were in the same range, across reading, math and writing all percentiles dropped<sup>9</sup>:

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<sup>8</sup> Ordinarily testing would have been done at the end of the year. (NT 416)

<sup>9</sup> Chart taken directly from the District's closing argument; this hearing officer finds that this comports with the weight of the evidence.

	<b>WJ-III (9/21/04)</b>		<b>WJ-III (12/6-13/06)</b>	
<u>Cluster</u>	<u>Standard S.</u>	<u>Percentile</u>	<u>Standard S.</u>	<u>Percentile</u>
Broad Reading	91	27	86	17
<u>Subtests</u>	<u>Standard S.</u>	<u>Percentile</u>	<u>Standard S.</u>	<u>Percentile</u>
Letter Word Id.	92	30	86	18
Reading Fluency	95	37	89	24
Writing Samples	114	83	89	22
Applied Problems	103	59	91	28
	<b>WIAT-II (2/3-4/05)</b>		<b>WIAT-II (12/6-13/06)</b>	
<u>Subtests</u>	<u>Standard S.</u>	<u>Percentile</u>	<u>Standard S.</u>	<u>Percentile</u>
Numerical Op.	102	55	85	16
Math Reason.	101	53	96	39
Math Composite	100	50	88	21
Spelling	96	39	85	16
Written Expression	105	63	79	8
Written Lang. Comp. (NT 800-803; S-64)	99	47	81	10

### Tutoring

147. Contemporaneous notes made by the District's reading specialist of a September 2004 conversation with the Parent indicate that the Parent said that Student was going to be receiving private reading tutoring with someone who "knew Orton-Gillingham [method]". (NT 94-95; S-9)
148. The reading specialist's contemporaneous notes of a conversation in early October 2004 indicate that the Parent told her that Student would be privately tutored twice a week at the end of the school day, and the Parent asked the school to "lighten up on homework". The reading specialist told the Parent that pulling Student out of school for afternoon tutoring was not a good idea. (NT 96; S-9)
149. The private reading tutor began working with Student in October 2004, meeting with her for an hour twice a week. The reading tutor worked with Student until the spring of 2005. The District's reading specialist had begun working with Student in the beginning of September and had already been seeing progress. (NT 120, 270, 355, 357, 369, 408)
150. The private reading tutor noted that Student did little reading on her own other than highly controlled texts. Although her testimony was confusing it appeared that the reading tutor read to Student and was working on listening comprehension skills. (NT 372-373S-33)

151. The private reading tutor supervises reading instruction at Private School, is certified and specializes in Orton-Gillingham, and is a qualified instructor in MRI. (NT 271, 350-351, 353, 407)
152. Student was resistant with the private reading tutor and found it difficult to stay focused. She was resistant to practicing a concept to mastery. The reading tutor had to constantly pull her back to give attention to where they were, and the tutor described Student's difficulty paying attention as "marked". The reading specialist at the District did not experience this type of behavior from Student. (NT 126, 370-371, 397; S-33)
153. Because of "scheduling and conflicts" and several other (unspecified) things (that were) happening, the private reading tutor did not test Student, and testified that she was reluctant to estimate her reading level. (NT 371)
154. The reading tutor's testimony that the Balanced Literacy program is a whole language program was credibly refuted by the District's expert witness in reading. (NT 787-790)

#### Counseling

155. Student's first grade teacher testified that Student was a very normal first grade child who appeared to enjoy school and appeared to enjoy interacting with her peers. This was very much the same way Student was perceived to be in kindergarten. (NT 504-505)
156. Because the Parent told her that Student was experiencing anxiety about coming to school, the first grade teacher referred Student to the school counselor. When asked, Student told the teacher that she did not like school because of math. The teacher did not note any anxiety or emotional distress in school. (NT 513-514, 516-517)
157. Although the Parent reported that Student was chewing the inside of her mouth, the first grade teacher did not notice any behavior of this type in school. (NT 523-526; S-70)
158. During first and second grades the school counselor had contact with Student as part of a guidance course she taught to all students in first through fifth grades. She did not observe Student to be anxious during the every other week guidance lessons and did not observe Student chewing on the side of her mouth. This would have been something that the counselor "absolutely" would have noticed. (NT 577-578, 588, 591)
159. The school counselor observed Student to be a happy, socially well adjusted, attentive and participatory first and second grader. (NT 578)
160. Based on Parent report about Student's crying before school in the

- morning the first grade teacher referred Student to the school counselor. Student told the counselor that she was not crying in the morning but that she did miss her mom. She also said that she was “mad” because her brother was staying at home (while he transitioned from one school to another). She said that sometimes when she copied from the board she had trouble remembering what she was copying. The school counselor had her copy a sentence or two and no problems were noted. (NT 580-583, 586; S-5, S-69)
161. The school counselor met Student at the classroom door for about two weeks to make sure she was okay, based on the Parent’s report that mornings were difficult. The school counselor did not see any signs that Student was having difficulty coming to school in the morning. (NT 584)
162. The school counselor suggested that the Parent set up a behavior plan for mornings to help Student cope with the separation from her mother, as the school counselor concluded that Student’s difficulty was leaving her mother, not coming to school. The school counselor believed that Student’s separation anxiety with her mother continued into second grade. (NT 583-586, 596)
163. For part of the time that Student was in the District, sometime in her first grade year, her brother was home-schooled while a placement was being located for him<sup>10</sup>. There was also a new puppy at home at the time. (NT 481, 484, 510, 515-516)
164. At an early point in the second grade school year, the Parent wrote the teacher to say that Student was crying at night because school was too hard and complaining of stomachaches. The second grade teacher did not notice Student’s being in any distress in school.<sup>11</sup> (NT 649)
165. The second grade teacher testified that she observed Student to be an easy-going well-adjusted child who followed directions well and usually asked for assistance if she didn’t understand something. (NT 612)
166. During second grade, the reading specialist saw a dichotomy between Student at school, where she was a happy, confident, functioning child and Student at home, where the Parent’s description painted the picture of an anxious can’t-do child who cried in the morning because she had to go to school. Student never appeared anxious at school in the reading specialist’s presence. In December 2004 when the reading specialist asked Student why she still saw herself as a poor reader despite her significant progress Student commented that she was “just like (her) brother, he hates school and has trouble in reading”. (NT 98-99, 105, 109; S-11)

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<sup>10</sup> He now attends Private School, having started there before Student.

<sup>11</sup> Notably, the second grade teacher is a former registered nurse. (NT 609)

167. According to the Parent, Student chronically complained about school, crying when her mother picked her up at the end of the day. (NT 266, 279, 480)
168. The private counselor chosen by the Parents worked at Private School where Student's brother attended school, and also had a private practice treating children and adolescents. (NT 324-325)
169. The private counselor holds a master's degree in social work and is a licensed social worker. She is a graduate of the three-year postgraduate institute in psychotherapy. (NT 323)
170. Private counseling services began in February 2005 in mid second grade. Student was referred by her parents because of reported difficulties Student was having at home in anticipation of going to school in the morning and because of her behaviors at home after school. Getting in the car in the morning was reportedly painful for Student and for her mother. Doing homework at night was reportedly a "nightmare" because Student did not want to do the homework. This information was gathered from the Parents. (NT 326-327, 341)
171. After the first session the private counselor called the school counselor and suggested that she check in periodically with Student in school and also speak to Student and offer her the morning check-in at the classroom door that she had done during first grade, as reportedly mornings were difficult. Student declined the offer of the morning greeting. (NT 591-592; S-71)
172. Student told the school counselor that she did not have any concerns about school at the time, but that she still missed her mom and the school counselor observed that Student became "a little teary" when talking about that. (NT 593)
173. Student repeatedly pleaded with the private counselor to convince her parents to home school her instead of her having to go to school every day. (NT 328)
174. The private counselor taught Student breathing exercises and relaxation techniques. She talked with Student about some of her testing results to dispel Student's inaccurate idea that she was not very smart. (NT 328, 344-345)
175. The private counselor also worked with the Parents on how to support Student at home and manage her daily issues. (NT 329)
176. Student complained of somatic symptoms (e.g. stomachaches) that were not present on weekends or in the summer. (NT 327)
177. Student's symptoms abated at the beginning of the 2005 summer. (NT 329)

178. The private counselor did not see any anxiety issues or emotional distress at Private School, as similarly the teachers at [elementary school] had not seen such. (NT 343)
179. In July 2005 the private counselor suggested to the Parents that they apply for admission to Private School as the summer school was going well, and they did apply. (NT 330-331)
180. The private counselor continued seeing Student during the summer, tapering to every other week, and Student reported that she was not feeling scared to go to summer school in the morning. Treatment stopped in August 2005. (NT 330, 331)
181. Student and her parents gave the private counselor the impression that there was an atmosphere of caring for Student at Elementary School, and the private counselor was aware that the school counselor had met with Student when she was in first grade. (NT 332)
182. The private counselor wrote a treatment summary in March 2006, about seven months after she had stopped seeing Student. (NT 341; P-14)

#### ESY

183. Prior to the IEP meeting, the District offered Student a summer research-based reading program which it offered to regular and special education students – “anyone who is deemed to be in need” for summer 2005. The program ran two hours a day for five-weeks, and had a teacher and an aide in classes of 15 to 18 students. The students were required to do nightly reading. The program was designed to prevent summer regression in reading skills. The district’s humanities curriculum coordinator did not recall whether the research for the program, Great Source, included students with learning disabilities. There is no evidence that the program utilized specially designed reading instruction or was taught by a certified special education teacher. (NT 114-117, 125, 556, 562, 571-572; S-24)
184. Prior to a determination of ESY being made the Parents were already planning Student’s summer program and noted such on the form the District sent declining the proffered summer reading program, writing that Student would be attending “ESY at Private School” instead. (NT 117, 307, 440-441; S-24)
185. On or about April 8<sup>th</sup> the director of special education told the Parent that since Student had not yet been in special education the District could not determine at that time whether or not she was eligible for ESY. A determination was to be made after the Memorial Day weekend. (NT 214-216)
186. On April 18, 2005, prior to the IEP meeting, and prior to Student’s beginning special education, the special education teacher who had not yet taught Student completed an ESY Determination of Eligibility and Student was found

- not to be eligible. The District used the regression/recoupment model and despite the significant regression in reading skills over the previous summer the teacher checked 'No' to the relevant questions. (NT 163-164; S-27)
187. The learning support teacher did not consult with the regular education teacher about Student's eligibility for ESY. (NT 682-683)
188. The director of special education testified that doing the ESY determination before the IEP meeting "made no sense" and "hoped" that the date on the ESY Eligibility Determination Sheet was incorrect. (NT 220; S-27)
189. Student's April 2005 IEP notes that Student was not eligible for ESY at the time but that it would be determined, and such a determination did not happen in a systematic or formal manner and was not done by the IEP team. (NT 164-165; S-26)
190. Student attended a 5-week program at Private School during the summer of 2005. The Parent wanted this to be the ESY program for Student. The cost of the program was \$1050. (NT 440; S-35)
191. The Parents requested reimbursement for the summer 2005 ESY program they had obtained for Student at Private School. By letter dated July 25, 2005 the District denied reimbursement, writing, as "the time for direct instruction (by the special education teacher) was relatively brief...(there was) no break in program that would allow (the special education teacher) to gather regression data if any were evident". (NT 225;S-34)
192. The District did not give consideration to Student's "significant" regression during the summer of 2004. (NT 225-226)

#### Credibility of Witnesses

A Pennsylvania Special Education Hearing Officer is specifically charged with making credibility determinations regarding the witnesses' testimony, as in the great majority of cases the hearing officer level is the only level at which direct testimony is taken.

The District's reading specialist's testimony was given considerable weight; she was a very credible witness. She was well trained, having been in her master's program when the Orton-Gillingham-based VAKT was gaining prominence. She has stayed current in her field. She gave detailed information about reading strategies, and knew the literature. She gave a very credible answer defending the validity of the January 2005 administration of the QRI III. She had a clear memory of events. Her testimony established that Student received FAPE from the time she began working with Student in



September 2004 until the Parent pulled Student from her services at the end of February 2005.

Student's special education teacher's testimony was given considerable weight in regard to the reading instruction Student received for the approximately six weeks she was in the learning support class. This individual was trained by Private School in the MRI program and used it with Student. She addressed Student's goals in reading and written expression in the daily time allowed her by parental choice. However, on the issue of ESY determination, the witness was not credible. She either did not check the past records, or checked and failed to recognize the significance of Student's regression in reading over the summer between first and second grades. Her claim that there was no time period by which to assess Student's regression/recoupment while she was in special education was reasonable, but she should have looked at the previous summer as the data was readily available. Offering the regular education summer reading program was not an acceptable substitute for an IEP-driven special education ESY program for the summer after second grade

The principal was fuzzy in his recollection of some events, not surprising since he was peripherally involved in this matter. However, his testimony that he received neither a written nor a verbal parental request for an evaluation of Student was credible.

The director of special education seemed to be certain of the information she offered and she was able to provide detailed testimony, which was credible as it related to facts. It is of some concern, however, that she notified the Parents that in the absence of an approved NOREP Student would be placed in regular education for the 2005-2006 school year. Clearly she was responding to the Parents' not approving the NOREP for that year, but she did not take the "stay-put" provision of the IDEA into account whereby the District should have planned to continue the last agreed-upon program and placement that had been in effect at the end of the previous school year and filed for due process to defend its IEP for 2005-2006 if it chose. Simply declaring that Student would be in regular education, when she had been found eligible for special education and not later been found ineligible, was a potential denial of FAPE had Student continued in the District.

The Parent is an intensely committed mother, and invested a great deal of attention and effort on Student's education and, from the brief testimony elicited regarding her son, on his as well. Given a family history of learning difficulties, the Parent's level of deep concern and her desire to be pro-active is entirely understandable, although it is possible that her own intensity contributed to Student's resistance and anxiety at home. (NT 517) With regard to the request for a psychoeducational evaluation from the District, the Parent's credibility was diminished. Although she was a vigorous email correspondent and note/letter writer, the copy of the letter offered as proof that she asked for an evaluation of Student prior to December 5, 2004 was undated and informal, even though she had previously gone through requesting an evaluation for her son. Further this copy of the letter was not produced before the hearing although the District asked for it on several occasions in writing. (NT 496, e.g.) Additionally, although the Parent wrote

detailed descriptions of her memory of events on many occasions, on cross-examination she was strikingly uncertain on many of her responses. (NT 475, 476, 477, 478, 479, 480, 485, 486) Finally, although the proffered IEP of January 2007 was done recently, and the Parents had filed for due process concerning it, when asked her objections the Parent gave two methodology examples, vaguely mentioned “supports” and then said, “I’m not certain. I wasn’t – but there were a number of things that I had looked up that suggested that this wouldn’t work for Student”. (NT 491)

Student’s private counselor who also works at Private School is well trained and experienced. She was candid in her testimony, did not overstate her points and was willing to give the District credit when appropriate. She was very credible, and as she was presenting in a balanced and professional manner her testimony supported various aspects of both parties’ cases.

The private reading tutor’s testimony was disappointingly imprecise. Paid by the Parents, she did not initiate contact with the reading specialist who was also working with Student at school (NT 364). She did not test Student before she began tutoring her or at the end of the tutoring cycle (NT 371). Asked about improvements in phonics and fluency she commented on Student’s confidence (NT 371). She apparently read to Student for a part of, if not all, the tutoring period (NT 372-373). She was not familiar with the widely used Houghton-Mifflin reading program (NT 373). She relied on an Internet search to look up a particular phonics program with which she was not familiar rather than consulting a primary source (NT 375-376).

The first grade teacher’s testimony established that Student was on grade level at the end of the year, that she showed no untoward emotional distress in school, and that the Parent discussed having Student tested privately during the first grade year. On these points she was credible.

The District’s humanities curriculum coordinator provided some factual information relevant to the summer school program offered to Student. It was surprising that she did not know the populations on which the research-based reading programs used in the District were based, given that she was called by the District, presumably to discuss the reading instruction offered.

The school counselor’s testimony was persuasive in establishing that she told the Parent how to request an evaluation in February of Student’s first grade, and her hypothesis that Student’s reported difficulty in the morning had more to do with separation from home than with coming to school was reasonable.

The second grade teacher’s testimony was credible insofar as it supported Student’s progress in school and supported other witnesses’ observations that Student did not demonstrate anxiety in the school setting and was capable of doing in school what her Parent said she could not do at home.

The testimony of the special education teacher who would have provided Student with learning support services during the 2006-2007 and 2007-2008 school years was credible and she added particular specialized information about the Everyday Math program as well as clearly explaining the structure, composition and schedule of the learning support program and its interface with the regular education program.

The District's reading expert witness' solid education, experience, publications and current endeavors combined to support her high credibility. Her testimony was instructive and clear, and her application of her review of Student's records to the known research provided a convincing endorsement of the District's plan for instructing Student in reading as well as raised serious questions about the efficacy of Private School's approach for Student.

The District's school psychologist based her testimony on objective scores from researched normed instruments. Her interpretation was consistent with standard interpretations of the tests she used. Although it did not diminish her credibility in the hearing, her listing of a degree she had not yet attained on her resume was a breach of professional protocol, and had her testimony gone into areas not supported by objective data there may have been a question of credibility. (NT 825)

The District's coordinator of elementary special programs was credible; she stated her responses simply and assuredly with no doubt or hesitation and established the reading programs that were to be offered to Student under the January 2007 IEP.

## Discussion and Conclusions of Law

### Burden of Proof

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. In this matter that is not the case.

### Evaluations

A district's (or LEA's) obligation to serve a student commences within a "reasonable time" after the district should have suspected the child to be disabled, the "reasonable time" being allowed to the district to conduct an evaluation, identify the student as disabled, and formulate an appropriate program for the child. See Puxatawny Area School District v. Kanouff and Dean; Ridgewood; W.B. v. Matula; Palmyra Board of

Education v. F.C.; T.B. v. School District of Philadelphia; In Re: The Educational Assignment of R.A. Special Education Opinion No.1431 (Jan. 5, 2004).

The IDEA regulations at 34 C.F.R §300.301 (c)(d) provide, regarding Procedures for Initial Evaluation, that:

The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe<sup>12</sup>.

A parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must either initiate a hearing and at that hearing show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. 34 CFR §300.502(b)(1)(2)(3).

The Parent testified that she made a written request for an evaluation of Student in February or March 2004, and another request in September 2004. There is an undated handwritten note from the Parent to the principal asking for Student to be tested "for disabilities". The principal did not receive this note. The principal also did not receive a verbal request from the Parents that Student be tested. The director of special education did not receive a request for evaluation of Student prior to the Parents' written request in December 2004. The Parents were asked in mid-August, in writing, to provide a copy of their earlier letters requesting testing and they did not provide this until much later. (NT 185, 197, 203-204, 247-248, 258-259, 495-496; S-36, P-1) This hearing officer has reached the conclusion that although the Parent wrote the note found at P-1, and may have written it within the time frame she specified, it was not delivered to the District during Student's first grade year. This may have been inadvertent, but as it goes toward credibility, this hearing officer must comment that 1) It is odd that a handwritten note on a piece of lined paper torn out from a spiral-bound book would still be in the Parent's possession well over two years after the time it allegedly was written, as the note was designed to be given to the District; 2) Although it may have been that the Parent made a Xerox copy of the note before she took it to the school, and saved the copy, the form of the request is atypical for this parent given her exactitude in providing fairly long and detailed handwritten and emailed communications to the District; and 3) The Parents had already been through the process of requesting and obtaining an evaluation of Student's brother, and had some familiarity with the procedures, such that it does not seem likely that they would have allowed a request to go without a response. The Parents have not proven that they requested an evaluation from the District prior to December 2004.

The Parent testified that the second day of school in second grade Student came home in tears, so she (the Parent) called to arrange the private testing. It may be possible, but not highly likely, that the facility where the private testing was done would be able to give

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<sup>12</sup> Pennsylvania has established the timeframe as 60 school days as opposed to the federal 60 calendar days.

several days of appointments on such short notice. It is more likely that the IEE had been set up in advance of the first few days of the school year. A District has the right to conduct its own evaluation of a student for whom it will be responsible for delivering FAPE. Parents may use private sources when public resources are inappropriate or unavailable, and under those circumstances may be entitled to receive reimbursement. Parents are otherwise free to use private sources, but without the support of public funds. The Parents did not commission an IEE to challenge an ER produced by the District; they scheduled and obtained the IEE well before they submitted a written request for an evaluation to the District. Reimbursement for the private psychoeducational evaluation is not due Student's Parents.

The ophthalmologic evaluation was recommended by the private evaluator pursuant to the September IEE. In Watson v. Kingston City School District, 325 F.Supp.2d 141 (July 2004) the court held, "The mere fact that a separately hired expert has recommended different programming does nothing to change this [that the district's IEP was appropriate], as deference is paid to the District, not a third party". The Watson court cites Pascoe v. Washingtonville Cent. Sch. Dist., No. 96 Civ. 4926 (holding that recommendation that a student be given private O-G [Orton-Gillingham] instruction did not, in itself, invalidate substantive recommendations in IEP). The IEP team must consider, but does not have to adopt, recommendations from a private evaluation. In this case the District determined that results of the visual evaluation recommended by a private evaluator would not contribute substantially to the design or delivery of a reading program for Student and therefore did not provide or procure such an evaluation. The Parents obtained the evaluation privately in July 2006 and did not submit this evaluation as part of the District's reevaluation process in January 2007. This hearing officer concludes that reimbursement for the ophthalmologic evaluation is not due Student's Parents.

An auditory processing evaluation was conducted long after the District produced its first ER and several months after it produced its reevaluation. The report was not in any way connected to the preparation of the reevaluation or to the design of the last IEP offered to Student, rather it was obtained because the Parents were "curious" about what the results would be. The Parents are not due reimbursement for the auditory processing evaluation.

#### February 2005 through April 2005; May and June 2005: Compensatory Education

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004). Having been found eligible for special education, Student is entitled under the IDEIA and Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP). The IDEIA requires that a child's IEP be provided in settings which are

staffed with “appropriately and adequately prepared and trained...personnel [with] content knowledge and skills to serve children with disabilities”. §612(a)(14)(A).

As per the IDEA regulations, the IEP for each child with a disability must include a statement of the child’s present levels of academic achievement and functional performance, a statement of measurable annual goals including academic and functional goals designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum and meet the child’s other educational needs that result from the child’s disability; a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals (and) to be involved and progress in the general curriculum...and to be educated and participate with other children with disabilities and nondisabled children; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class... CFR §300.320(1-4)

A student’s special education program must be reasonably calculated to enable the child to receive meaningful educational benefit at the time that it was developed. (Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. PA. 1996)). The IEP must be likely to produce progress, not regression or trivial educational advancement [Board of Educ. v. Diamond, 808 F.2d 987 (3d Cir. 1986)]. Polk v. Central Susquehanna IU #16, 853 F.2d 171, 183 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing Board of Education v. Diamond, 808 F.2d 987 (3<sup>rd</sup> Cir. 1986) held that “Rowley makes it perfectly clear that the Act requires a plan of instruction under which educational *progress* is likely.” (Emphasis in the original). The IEP must afford the child with special needs an education that would confer meaningful benefit. The court in Polk held that educational benefit “must be gauged in relation to the child’s potential.” This was reiterated in later decisions that held that meaningful educational benefit must relate to the child’s potential. See T.R. v. Kingwood Township Board of Education, 205 F.3d 572 (3<sup>rd</sup> Cir. 2000); Ridgewood Bd. of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999); S.H. v. Newark, 336 F.3d 260 (3<sup>rd</sup> Cir. 2003) (district must show that its proposed IEP will provide a child with meaningful educational benefit). The appropriateness of an IEP must be based upon information available at the time a district offers it; subsequently obtained information cannot be considered in judging whether an IEP is appropriate. Delaware County Intermediate Unit v. Martin K., 831 F. Supp. 1206 (E.D. Pa. 1993); Adams v. State of Oregon, 195 F.3d 1141 (9<sup>th</sup> Cir. 1999); Rose supra.

Districts need not provide the optimal level of service, maximize a child’s opportunity, or even offer a level of service that would confer additional benefits, since the IEP as required by the IDEA represents only a basic floor of opportunity. Carlisle Area School

District v. Scott P., 62 F. 3d at 533-534; Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1998). In creating a legally appropriate IEP, a School District is not required to provide an optimal program, nor is it required to “close the gap,” either between the child’s performance and his untapped potential, or between his performance and that of non-disabled peers. In Re A.L., Spec. Educ. Opinion No. 1451 (2004) ; See In Re J.B., Spec. Educ. Opinion No. 1281 (2002)

What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” Tucker v. Bayshore Union Free School District, 873 F.2d 563, 567 (2d Cir. 1989). Under the IDEA parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student. M.M. v. School Board of Miami - Dade County, Florida, 437 F.3d 1085 (11<sup>th</sup> Cir. 2006); Lachman v. Illinois Bd. of Educ., 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988) If personalized instruction is being provided with sufficient supportive services to permit the student to benefit from the instruction the child is receiving a “free appropriate public education as defined by the Act.” Polk, Rowley. The purpose of the IEP is not to provide the “best” education. The IEP simply must propose an appropriate education for the child. Fuhrman v. East Hanover Bd. of Educ., 993 F. 2d 1031 (3d Cir. 1993).

Compensatory education is a remedy designed to provide a student with the services she should have received pursuant to a free appropriate public education (FAPE). When a student has been denied the due process rights or an appropriate educational program that she should have received, compensatory education is an in-kind remedy. Lester H. v. Gilhool, 916 F. 2d 865 (3d Cir. 1990), cert. denied 499 U.S. 923, 111 S.Ct. 317 (1991) A child is entitled to compensatory education services if the child is exceptional and in need of services and/or accommodations and if through some action or inaction of the District the child was denied FAPE. The standard for determining whether and to what extent compensatory education should be awarded was summarized by the Third Circuit in M.C. v. Central Regional School District, 81 F. 3d 389, (3d Cir. 1996). As the Court in M.C. observed, when a school district fails to deliver that to which a student is entitled, an award of compensatory education is justified.

Although the Parents had Student evaluated privately in late September 2004 they did not immediately share the report of this evaluation with the District. They made their written request for an evaluation in December 2004, and the District produced its evaluation report in early February 2005. Up until the District conducted its evaluation, Student was a regular education student. Within the boundaries of regular education Student was given intensive reading instruction with a reading specialist, and the emotional concerns reported by the Parent were appropriately addressed in the school setting. Student made a significant amount of progress in reading prior to her being identified, and it was the Parent’s decision, not the District’s, to remove her from the reading specialist’s service. After Student was found to be eligible by the District she began receiving special education services under an IEP that was reasonably calculated to provide her with FAPE. The District only had the opportunity to implement Student’s first IEP for a brief period before school ended for the year. The District afforded Student with FAPE during

the time periods in question, therefore she is not entitled to compensatory education.

#### 2005-2006 School Year: Tuition Reimbursement

Parents who believe that a district's proposed program is inappropriate may unilaterally choose to place their child in an appropriate placement. The IDEA's implementing regulations at 34 C.F.R. §300.148 ( c ), which are identical to the regulations in effect earlier, make it clear that tuition reimbursement can be considered only under a specific condition:

“If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency enroll the child in a private...school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment...”

The right to consideration of tuition reimbursement for students placed unilaterally by their parents was first clearly established by the United States Supreme Court in Burlington School Committee v. Department of Education, 471 U.S. 359, 374 (1985). A court may grant “such relief as it determines is appropriate”. “Whether to order reimbursement and at what amount is a question determined by balancing the equities.” Burlington, 736 F.2d 773, 801 (1<sup>st</sup> Cir. 1984), *affirmed on other grounds*, 471 U.S. 359 (1985).

In 1997, a dozen years after Burlington the Individuals with Disabilities Education Act (IDEA) specifically authorized tuition reimbursement for private school placement. The IDEIA, effective July 1, 2005, is the reauthorized version of the IDEA and contains the same provision:

(i)In General. – Subject to subparagraph (A) this part does not require a local education agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such a private school or facility.

(ii)Reimbursement for private school placement. -If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii)



Florence County Sch. Dist. Four V. Carter, 114 S. Ct. 361 (1993) had earlier outlined the Supreme Court's test for determining whether parents may receive reimbursement when they place their child in a private special education school. The criteria are: 1) whether the district's proposed program was appropriate; 2) if not, whether the parents' unilateral placement was appropriate, and; 3) if so, whether the equities reduce or remove the requested reimbursement amount.

As noted above, the April 2005 IEP was appropriate in that it was reasonably calculated to provide Student with meaningful educational benefit. The April 2005 IEP was written to cover Student's special education program through most of the 2005-2006 school year. As the District's program was appropriate, the Parents are not entitled to tuition reimbursement.

#### First half of 2006-2007 School Year

Decisions of the federal courts and Appeals Panels provide persuasive authority that Districts are not obligated to offer annual IEPs to Students placed in private schools unilaterally by their parents. *Gregory R. v. The Penn Delco School District*, 262 F.Supp.2d 488 (E.D. Pa. 2003); *G. R.*, Spec. Educ. Opin. No. 1301 (2002); *M. F. v. The William Penn School District*, 2005 U.S. Dist. LEXIS 20636 (E.D. Pa. 2005); *M. F.*, Spec. Educ. Opin. No. 1372 (2003). Therefore the Parents' request for tuition reimbursement for the first half of the 2006-2007 school year is denied.

#### Second half of 2006-2007 School Year; 2007-2008 School Year

FAPE is written on paper and delivered by people. A child's special education program is governed by the IEP, and hearing officers, appeals panels and courts look at the IEP to see if, "within its four corners" there is a plan "reasonably calculated to confer meaningful educational benefit". Although little to no tolerance for imperfection in an IEP is sometimes demonstrated in hearing officer decisions and appeals panel opinions, this hearing officer adopts the practice of looking for a reasonable plan, based on defined needs and carrying sensible outcome measures. Generally this hearing officer, while looking carefully at what is written in an IEP also looks to the record as a whole to determine whether or not there is evidence that a child has actually received FAPE substantively and procedurally.

The January 2007 IEP contains all the elements required by the IDEIA. Although there was considerable discussion on the record about the measurement of the goals and objectives, some of it generated by the hearing officer, a more focused and careful reading of the IEP resulted in the conclusion that, although not presented in a crystal clear manner, the goals and objectives were appropriate to Student's needs and were intrinsically reasonable.

While the Parents' closing statement notes that this case was not about methodology, from the Parent's testimony and her contemporaneous writings it does appear that

methodology was at least partially<sup>13</sup> at the root of the Parents' decision to place Student at Private School and their rejection of the IEP for the end of the 2006-2007 school year into the 2007-2008 school year. The courts have made clear that decisions related to methodology lie with districts *See e.g.*, *Watson v. Kingston City Sch. Dist.*, 325 F. Supp. 2d 141 (N.D.N.Y. 2004, *aff'd*. 142 Fed. Appx. 9 (2d Cir. 2005); *Johnson v. Olathe Dist. Sch.*, 316 F. Supp. 2d 960 (D. Kan. 2003). It is well established that the choice of which educational methodology will be used to meet a student's needs is within the School District's discretion, unless the IEP specifically prescribes a particular methodology. In Re the Educational Assignment of D.S., Spec. Educ. Op. 1584 (2005); In Re the Educational Assignment of N.K., Spec. Educ. Op. 1424 (2003); In Re the Educational Assignment of R.C., Spec. Educ. Op. 1417 (2003)

The District's choice of methodology, staff and other such core academic matters is entitled to deference just as long as it is reasonably calculated to provide meaningful benefit in light of the child's abilities. In re: The Educational Assignment of A.G., a Student in the Wissahickon School District, Spec. Educ. Op. No. 1455 at 6 (2004).

The leading case on methodology is *Lachman v. Illinois State Bd. of Educ.*, 852 F. 2d 290 (7<sup>th</sup> Cir. 1988), *cert. denied* 488 U.S. 925 (1998) wherein the Court recognized, "Once it is shown that the Act's requirements have been met, questions of methodology are for resolution by the responsible authorities." *Lachman* at 292. Thus, *Lachman* holds that an IEP meeting the substantive requirements of the IDEA cannot be defeated merely because the Parents believe a better educational program exists for their child.

### Private School

Although the District supports placement for some students at Private School and considers it an appropriate placement in some circumstances (NT 237), the evidence from testing and the expert testimony lead to the conclusion that for Student the private school was not appropriate. Although this hearing officer has found that the District offered FAPE in both the April 2005 IEP and the January 2007 IEP, had that not been the case an examination of the appropriateness of the Parents' unilateral placement would result in a finding that it was not appropriate for Student. Should such an inquiry have needed to be made, it would start with the question of whether Student's rights to be educated with nondisabled peers were justifiably superseded by any benefit of the Private School program. A major factor in the analysis would be the finding that Student regressed significantly in the area of mathematics and written expression while at Private School. Likewise, although an examination of the equities does not have to be conducted, if it did it would start with the Parents' removing the child from the District when she had received only six or seven weeks of special education under her first IEP. "Where the parents have predetermined that they will place their child in a private school regardless of the district's ability to program for the child, the equities favor the district". In re the Educational Assignment of C.S., Special Ed. Op. No. 1658 (2005). Similarly, when

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<sup>13</sup> Additional possible factors may include, among other things, having both children at the same school, a preference for private education, and an investment in the MRI methodology in which the mother has taken courses.

“[t]he parents have become so singularly focused on the [private school in which they have already enrolled their child] that they appear unwilling to consider the District’s proposals in good faith,” tuition reimbursement should be denied. *In re the Educational Assignment of P. J.*, Special. Ed. Op. No. 1271 (2002) (J. Cautilli, concurring opinion).

Based on all the evidence in the record, this hearing officer cannot find for the Parents on the issue of reimbursement for the Private School placement for any of the years in question and cannot decide in the Parents’ favor on Student’s placement for the upcoming 2007-2008 school year. It is fortunate that the hearing and decision come at the end of a natural school year break. Unless the Parents choose to pay Student’s tuition privately she will be re-entering the District which has offered an appropriate program and placement at a natural point in the school year.

#### Tutoring/Counseling

Related services are defined as “supportive services including ... counseling services...required to assist a child with a disability to benefit from special education.” 20 U.S.C. §1402(26)(A). In this case, neither tutoring nor counseling were required to allow Student to benefit from special education. Therefore the District is not required to reimburse the Parents for these services.

#### ESY

Extended school year services must be provided if a child’s IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. 34 C.F.R. 300.309 (a)(2).

ESY services are special education and related services that -  
 are provided to a child with a disability -  
 (i) Beyond the normal school year;  
 (ii) In accordance with the child’s IEP  
 (iii) At no cost to the parents; and  
 meet the standards of the SEA. 34 C.F.R. 300.309 (b).

A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. 34 C.F.R. 300.309 (a)(3). A child with disabilities is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment capacity, or other factors, makes it unlikely that the student will maintain skills and behavior relevant to established IEP goals and objectives. 22 Pa. Code 711.44 (1) (implementing 34 C.F.R. 300.309); *see also* 22 Pa. Code 14.132 (setting forth standards for determining whether a student is eligible for ESY services).<sup>63</sup> Regression does not necessarily have to be linked

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<sup>63</sup> “Regression” is a “lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occur as the result of an interruption in educational programming.” 22 Pa. Code 711.44 (1); 22 Pa. Code 14.132 (1)(i). “Recoupment” is “recovery of skills or behavioral patterns, or both, specified on an IEP to a level demonstrated prior to the interruption of educational programming.” 22 Pa.

to academics, if the child's area of need is in another area such as emotional support. Prediction of regression in emotional development qualifies as a need for ESY. Bucks County Public Schools v. Commonwealth, (Pa. Commw.)(1987). Consideration of the need for ESY services shall occur at every IEP team meeting. Notice of ESY designed to fully explain such services must be provided to parents of disabled children in a timely fashion before annual review meetings. The notice must not disguise or downplay the true nature of ESY or attempt to confuse parents between free extended school year services and tuition-charging summer enrichment programs. *Reusch v. Dr. Hiawatha Fountain*, 872 F. Supp. 1421, 1424, 1430 (D. Md. 1994).

Failing to take into account Student's significant regression during the summer of 2004, the District improperly decided that Student was not entitled to ESY for summer 2005, making its determination prior to the first IEP meeting. Even the District's director of special education found that to have been procedurally inappropriate, and "hoped" that the notification form was misdated. Moreover, the Parents properly rejected the generic summer reading program offered by the District. The summer reading program at Private School provided a focused intensive reading experience geared toward assisting a learning disabled student to maintain acquired skills. The District's failure to offer Student an ESY program for summer 2005 denied her FAPE and the Parents must be reimbursed for the replacement program they obtained for her.

During summer 2006 Student was no longer enrolled in the District, she was not receiving services under the auspices of the District, and she had no IEP team. She had been unilaterally enrolled in a private placement, had no IEP and there was no determination of eligibility for ESY under the IDEIA. The Parents had not asked the District to determine ESY eligibility or to provide or fund an ESY program for the summer of 2006. Student's Parents are not entitled to reimbursement for any programming she may have received during summer 2006.

## Order

It is hereby ordered that:

1. The Parents are not entitled to reimbursement for one or more private evaluations they obtained for Student.
2. The Haverford Township School District did provide Student with a free, appropriate public education for the period from February 2005 through the end of the school year in June 2005. As the District provided Student with FAPE for the specified period, she is not entitled to compensatory education.
3. The District did offer Student an appropriate IEP for the 2005-2006 school year. As the District did offer Student an appropriate IEP, it is not necessary to evaluate whether the placement unilaterally chosen by the Parents was appropriate, or if equitable considerations reduced or removed the District's responsibility for tuition reimbursement, as the Parents are not entitled to tuition reimbursement for the 2005-2006 school year.
4. Whether or not Student was eligible for an Extended School Year (ESY) program during the summer of 2006, the District's failure to offer her an ESY program did not constitute a denial of FAPE as the District was under no obligation to offer her an ESY program. She was withdrawn from the District and unilaterally placed outside the District by the Parents. The Parents are not entitled to reimbursement for the ESY program for summer of 2006.
5. The District was under no obligation to offer Student an IEP for part of the 2006-2007 school year as she had been withdrawn from the District, therefore the District did not deny Student FAPE. As the District did not deny Student FAPE, it is not necessary to examine the appropriateness of the parents' unilateral placement or to examine the equities.
6. The District did offer Student an appropriate IEP for part of the 2006-2007 school year and for the 2007-2008 school year. As the District did offer Student an appropriate IEP for both these periods, it is not necessary to examine the appropriateness of the parents' unilateral placement or the equities, as no tuition reimbursement is due.
7. The tutoring services obtained by the Parents from October 2004 to April 2005 were not necessary to the provision of FAPE, the District neither agreed to nor assumed responsibility for providing them, and the Parents are not entitled to reimbursement for these services. Student was not in need of counseling services to access her educational program from February 2005 through August 2005. As Student was not in need of counseling services to access her educational program, the District was not responsible for providing them, and the Parents are not entitled to reimbursement for these services.

8. Student was eligible for an Extended School Year (ESY) program during the summer of 2005, and the District did not offer her an appropriate program. As Student was eligible for ESY during the specified summer, and the District did not offer an appropriate program, and the summer program obtained by the Parents was appropriate, they are therefore entitled to reimbursement for the summer 2005 ESY program they obtained unilaterally.

June 27, 2007

Date

*Linda M. Valentini, Psy.D.*

Linda M. Valentini, Psy.D.

Hearing Officer