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EH
Name of Child

Xx/xx/xx
Date of Birth

7392/06-07LS
ODR File Number

May 10, 2007, May 22, 2007, May 25, 2007, June 8, 2007
Dates of Hearing

June 26, 2007
File Closed

Closed Hearing

Parties to Hearing

Parents
Mr. and Mrs.

Dates Transcripts Received:
May 18, 2007, May 28, 2007,
June 5, 2007, June 14, 2007

Parent Representative
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Date of Decision:
July 5, 2007

School District
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Kenneth Rose
Hearing Officer

District Representative
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Background

The student is a xx year-old resident of the school district. In third grade he was identified as in need of Section 504 services due to a fine motor skill deficit. Later issues of attention, organization and written expression were included in Section 504 Accommodation Plans. Evaluations conducted by the school district in 2001 and 2004 found the student not eligible under IDEA. The evaluations of 2004 relied heavily on Independent Educational Evaluations (IEE) conducted by Dr. L the parents' selected Pediatric Neuropsychologist/School Psychologist. In September 2005 the parents requested an Individualized Education Program (IEP). The school district, at parents' request, paid Dr. L for an evaluation. An Evaluation Report (ER), prepared in May 2006, found the student to be an eligible student under IDEIA.

The parents claim there are child find issues, a denial of FAPE, denial of Extended School Year (ESY) for 2005 and 2006, inappropriate ESY for 2007, reimbursement for therapies and a laptop computer, an IEE at school district expense and an appropriate IEP.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the school district.

Findings of Fact

Service under Section 504 Accommodation Plan

1. The student has had a series of Section 504 service plans over the years. They addressed fine motor skills, visual perception, handwriting, Occupational Therapy (OT) needs, homework, organization, motivation and attention. The parents participated in and approved all plans.

Special Education (IDEIA) was not seen as needed during Section 504 reviews. (N.T.-282-285; S-24, S-29, S-34)

2. The comprehensive evaluation of August 29, 2001 conducted by the school district did not find the student to be an eligible student. Achievement was found to be within expectations for his grade and ability. The school district's Comprehensive Evaluation Report (CER) of August 29, 2001 (grade 3) indicates an IQ of 123. The parents agreed with this. He was recommended for a Section 504 Accommodation Plan due to issues with fine motor skills. An OT evaluation was recommended. The parents agreed with the report. (N.T.-102, 103, 445, 447, 448; S-3)

3. In December 2003, the parents requested an evaluation of the student because of writing and behavior issues. The parents requested it be done privately by Dr. L. They did not have confidence in the school district. Also, they felt a neuropsychological would be more complete. (N.T.-365, 367, 431; S-4)

4. On April 24, 2004 the school district issued an ER based largely on Dr. L's report. The ER found the student not eligible under IDEA. It recommended continued service under Section 504. The parents agreed by way of a Notice of Recommended Educational Placement (NOREP). (N.T.-297, 370, 449, 450, 451; S-5, S-6, S-7)

5. The Section 504 Coordinator reviewed, at least, the April 29, 2004 ER which incorporated the February 2004 Dr. L evaluation when she prepared the 504 Accommodation Plan. The file included reviews of 504 Accommodation Plans, evaluations, teacher feedback, report cards, correspondence, conference reports, 504 evaluation data, PSSA test scores and standardized tests. (N.T.-644-648)

6. The Section 504 teams included the parent. (N.T.-527)

7. The school district's 504 Accommodation Plans are based on data from counselors, teachers, related services people, anyone working with the student and psychologists. This includes pre-school records, school history, current school and information. (N.T. 635)

8. At the start of sixth grade the student's visual perception and visual motor integration problems caused problems copying information from far and near. He had organization problems, attention problems and motivation problems. (N.T.-508-510; P-5)

9. The sixth and seventh grade reading and math teacher provided the accommodations listed on the 504 Accommodation Plan. (N.T.-613-617)

10. In spring of 2005 it was noted the student needed more OT time because of handwriting. (N.T.-545; S-27)

11. In February 2004 Dr. L identified the student as having Attention Deficit/Hyperactivity Disorder (ADHD). (S-6)

12. Task and homework completion was a problem in sixth grade reading. His grade was a C. (N.T.-512, 513; S-46)

13. The student received full credit for extended time assignments in sixth/seventh grade reading and spelling. (N.T.-628)

14. When the sixth/seventh grade reading/math teacher used overhead projector notes he usually provided a skeletal outline or complete notes to the student. (N.T.-522, 523, 536)

15. The student sat in the first row near an outlet for his computer. (N.T.-524)
16. The student was instructed academically in sixth/seventh grade by a team of teachers he has had for two years. The team meets daily to discuss students. (N.T.-478, 479, 480)
17. In grade six, the student took regular sixth grade math and earned a grade of C. He could do grade level work. The student did not avail himself with the opportunity to retake math tests. This could have improved his grade. He was inconsistent with completing assignments. (N.T.-537, 581, 582, 585, 586, 596; S-6, S-46)
18. In sixth grade the student had regular math that included basic math operations, fractions, decimals, integers and factoring. (N.T.-526, 527)
19. Due to concerns of the amount of time it took the student to do homework, homework was reduced. A planner was utilized to help with this. The student did not bring his planner to the teachers on a regular basis. It was not signed consistently by the parents. (N.T.-310, 311, 591, 593)
20. Progress on the Section 504 Plan was monitored regularly. Staff regularly tracked the student's progress by way of a rating sheet that listed the accommodations. Comments could be written. (N.T.-592; S-27, S-33)
21. During sixth and seventh grades the student had difficulty with completing assignments, organization and math. The parent reports he often worked on homework for five hours. He got upset on the amount of homework. Section 504 meetings were called to revise the Accommodation Plans. (N.T.-383-393)
22. The school district tried to help with the student's organization needs and tracking homework by way of communication with the parents and a laptop computer. It didn't work because of difficulty getting it back and forth to home. (N.T.-176, 177)
23. On February 9, 2005 the Section 504 Plan was changed to address concerns. The parents approved it. (N.T.-395, 396; S-26)
24. At the February 9, 2005 504 Accommodation Plan meeting a reward system to help motivate the student's organization and independence was developed. In grade six the student had a behavior contract that used a reward system. It included task completion. It didn't work well. Also, he was involved in the Learning to Learn Program that addressed these areas.
- The behavior contract was developed to get work finished. A planner was used. (N.T.-542, 544, 659, 660-664, 666, 670, 671; S-11, S-26, S-27)
25. On March 3, 2005, in a phone conversation with the school, the parent questioned the 504 Accommodation Plan and expressed concern about the student being

overwhelmed and spending five hours on homework. Questions were raised about motivation and organization.

The school district made a homework time accommodation to lessen frustration. Strategies to lessen frustration at home were rejected by the parents.

No assessment was done at school to measure frustration, motivation or self-esteem. (N.T.-141-147; P-11)

26. On May 4, 2005 the parent expressed, by phone, concerns about the student crying and not wanting to go to school. He felt overwhelmed with taking notes, visual processing and attention. (P-11)

27. The 504 Accommodation Plan was revised April 18, 2005 because of parent's concerns over motivation and incentive plan not working. It was decided to do a Functional Behavior Assessment (FBA). (Cue the student on his posture was added.) (N.T.-673-675; S-29, S-30)

28. Before the school psychologist did the FBA in 2005, she reviewed the student's file. This included the evaluation of 2004 and Section 504 Accommodation Plans. She is trained and experienced in writing FBAs. (N.T.-40, 41, 44, 46-50, 55, 56, 287, 288; S-6, S-24, S-32; P-5)

29. The 504 coordinator did not personally do a formal observation of the student prior to the May 23, 2005 FBA. (N.T.-724)

30. May 23, 2005 an FBA was developed by the 504 team, including the parent. Special note was given to reduce homework time and getting an assistive technology consultation.

No consequences were listed because of parent's concerns about negative consequences. The school district acquiesced to the parent's concern. (N.T. 677-680; S-30)

31. On June 6, 2005 the 504 Accommodation Plan was revised to incorporate the FBA. Also, changes were made to break down assignments into smaller segments and a check list was to be used to help in this. Many adjustments were made to help with assignment completion.

OT was adjusted.

The Accommodation Plan was to be revised early the next school year. (N.T.-683-688; S-34)

32. On November 11, 2005 the 504 Accommodation Plan was revised. This was to help while the school district was waiting for the IEE. Progress on use of the Co-Writer was reviewed. Assignment completion remained a problem. (N.T.-705, 706, 708; S-43)

33. Teachers expressed concerns in the fall of 2005 that the student showed signs of depression. He was not doing well in math at this time. (This was prior to the change in math classes.) (N.T.-230-232; P-20)

34. In seventh grade the student had pre-algebra. In November he moved to a smaller class that used different methods. The curriculum was still the seventh grade pre-algebra. It was designed for students who could use a different approach, not for students doing poorly. More manipulative and hands on instruction was used. The Discover Pre-Algebra followed a different version of the Fundamentals of Pre-Algebra book, but covered the seventh grade material. (N.T.-178, 179, 182, 402, 558, 559, 562-565, 700)

35. The student did come in for some extra math tutoring in sixth grade. (N.T.-557)

36. The June 6, 2005 Accommodation Plan called for the student to work on homework for only one hour a day. This was done to determine how much he could accomplish in an hour. This didn't work because the parents did not furnish the information to the school. The student continued to miss assignments. (N.T.-734-738)

37. The parents chose to purchase a laptop computer for the student even though the school provided one for use at school. (N.T.-740, 741, 742)

38. The behavior management plan for the student was intertwined in the 504 Accommodation Plan. (N.T.-725, 726)

39. The student was to bring his planner to the teacher to be signed. He did not always do this. (N.T.-732, 733)

40. On September 9, 2005 the Accommodation Plan was revised. An assistive technology consultation was discussed. Current technology use was reviewed. A laptop with Co-Writer was in his English class to alleviate carrying laptop to and from school. (N.T.-690, 691, 692, 694; S-36, S-37)

41. The parent was present at all the 504 Accommodation Plan meetings. The student's progress was discussed. Parents' concerns were discussed. (N.T.-444)

42. On January 26, 2005, the parents wrote to the school district stating they did not feel the student was making progress in his education program. They asked to have the 504 Accommodation Plan examined to see if it is being implemented or needs to be revised. (N.T.-136, 157, 158; P-7)

43. The 504 coordinator got regular feedback from the teachers on progress on the Accommodation Plan. Lack of being prepared was a common theme. There was frequent contact with the parents. (N.T. 669, 680, 689, 707; S-27, S-33, S-38, S-39, S-40, S-42)

44. The school counselor was involved with each 504 Accommodation Plan. (N.T.-757)

45. The behavior contract was not consistently successful. Changes were continually made. (N.T.-718, 719)

46. The parent often did not sign off on completed homework as called for in the June 6, 2005 Accommodation Plan. (N.T.-684, 703, 704, 733; S-42)

47. Written expression, including spelling, was addressed in the Section 504 plans. (N.T.-433, 434; S-24)

48. The Section 504 plans were monitored by the 504 coordinator(s). (N.T.-316, 317)

2006 Evaluation/Identification

49. On September 7, 2005 the parents requested an IEP because of the student's difficulty with organization and self-regulation and other areas of difficulties which impacted on the student's performance. They felt previous Section 504 Accommodation Plans had been sufficient, but would be inadequate as he progressed into higher grades. (N.T.-157, 158; P-19, P-20)

50. In the past the student's parents have expressed concern over his written expression and math computation. The school psychologist was aware of this. (N.T.-191-194)

51. On October 12, 2005 the school district requested Permission to Evaluate the student. Assessments to be done included standardized cognitive achievement, social/emotional behavioral assessments or memory assessments, review of records and classroom observation. The parent signed the Permission to Evaluate form October 21, 2005 and requested that her private evaluator do the evaluation at school district expense.

The Permission to Evaluate check list, in the fall of 2005, did not list social, emotional or behavior issues as concerns. Neither were math concepts, written expression, attention, spelling, writing or memory checked as concerns. (N.T.-158, 230, 231; S-8; P-20)

52. The district responded with a Permission to Evaluate form on October 12, 2005. The parents responded October 31, 2005 and requested the evaluation be an IEE

by Dr. L. The parents had confidence in Dr. L because she had evaluated the student previously. (N.T.-453, 454; S-8; P-19)

53. The parents did not want the school district to test the student. Dr. L and the school district discussed assessments to be used. The parents didn't want the student to have tests repeated. (N.T.-293, 294, 344; S-8)

54. The parents wanted Dr. L to conduct the evaluation of the student because they had confidence in her and she was familiar with the student. (N.T.-293, 294; S-8)

55. The school district agreed to fund an IEE by Dr. L. The school district waited for Dr. L's IEE to prepare its ER. (N.T.-159; S-9)

56. The school district received Dr. L's IEE March 8, 2006. The school issued a Permission to Evaluate on March 9, 2006. The evaluation was to be based on a review of records and classroom observation. The school district received the parent's permission March 30, 2006. The parents did not necessarily want the district to do additional testing. (N.T.-160, 230, 456, 458; S-9, S-10, S-11)

57. The March 8, 2006 report of Dr. L stated: "Results of the present evaluation indicated that the student was functioning at the boundaries of the Average/High Average ranges on measures of verbal comprehension and perceptual reasoning. His visual/motor processing speed (simple tasks) and working memory skills were Average, as before. On other evaluation, he again demonstrated generally better verbal than visual skills. Weaknesses were observed in his immediate capacity for new visual information, short-term and delayed memory for complex visual material, fine motor control (handwriting), and higher-order visual organization/planning. The student also displayed limited math calculation skills (particularly with multiplication) and written expressive skills (both at the sentence and essay levels). His most significant deficit, though, was again noted in the areas of sustained attention, ability to withstand distraction, and speed/efficiency of information processing." (N.T.-240, 242, 243; S-9)

58. The school district's ER of May 25, 2006 includes a review of the student's records including Dr. L's reports. The school district psychologist balanced Dr. L's findings with his school performance.

The school district issued an ER on May 25, 2006. The student was found to have high average ability; visual/motor processing was average. Weakness was found in short-term and delayed memory, handwriting, higher-order visual organization and planning. Academic weaknesses were found in math computation and written expression.

The student was identified as having a learning disability in fine motor skills, math, written expression, focus, task completion and organization. Some of these are viewed as weaknesses rather than disabilities. Basic math facts and written expression are the disabilities.

The ER contains school information and information from Section 504 plans. The parents agreed with the report. (N.T.-64, 67, 114, 250-256, 261, 262, 275-277, 291, 295, 305, 460; S-9, S-11, S-16)

59. In the 2006 Dr. L report, there are discrepancies between WIAT achievement scores and ability scores (IQ). In math these were within the average range. Other discrepancies were not determined in the record as to being within or outside of average range. (N.T. 246, 247, 299; S-9)

60. The school psychologist did not feel assessment beyond Dr. L's report received March 8, 2006 was needed. The school psychologist sought input from teachers, observations and progress reports. She did not see further spelling, math or written expression assessments were needed. No further measures of social, emotional or behavioral needs were needed. (N.T.-163-166, 171, 172)

61. When the school psychologist did her evaluation of May 25, 2006 she was not aware of weaknesses reported in the September 29, 2001 CER. She was aware of issues with visual closure and occupational therapy needs. She did not review writing or spelling samples. (N.T.-81-89, 95; P-1, P-2)

62. The school psychologist relied in part on the Response to Intervention (RTI) model in reaching her eligibility decision for Learning Disability (LD). He requires specially designed instruction (SDI) to support grade level response. The school psychologist viewed the Section 504 Accommodations as a group valid for RTI use.

She understood the parents did not want the school district to test the student beyond Dr. L's testing. (N.T.-303, 304, 321, 322, 333-338; S-11, S-43)

63. The school psychologist opines the decline in IQ scores between Dr. L's report in 2001 (IQ 123) and her 2006 report (IQ 108) is due to the first using the WISC III and the later WISC IV. (N.T.-245)

64. The school psychologist feels the student's additional needs were documented through Dr. L's report and the numerous meetings she attended with his teachers. (N.T.-118, 119)

IEP

65. On June 5, 2006 an IEP was developed to be implemented for the 2006-2007 school year. The IEP was based on the ER and input from IEP team members, including the parent, input. This was revised September 28, 2006. The parent had an advocate with her at the IEP meeting. The parent approved the IEP by way of a NOREP. (N.T.-305, 312, 461, 462; S-13, S-14, S-16)

66. The student's special education teacher reviewed the ER of May 25, 2006 prior to participating in and developing the IEP of June 5, 2006. The student's needs

were identified as fine motor needs, basic math facts, focus, task completion, organization and written expression. Present levels were listed from Dr. L's evaluation of January 2006. High average achievement was noted in all areas except arithmetic computation which was low average. OT needs were noted. Attention and executive weaknesses were noted as well as ADHD. Reading was on grade level. Strengths and needs were listed.

Goals were developed for writing, self-advocacy, task completion, manuscript writing (OT) and keyboarding (OT). All the goals are measurable. Reports on progress were to be done quarterly.

Program modifications and SDI's were developed for written expression (use of skeletal outlines, study guides); using multimodality instruction; provide preferential seating to allow cueing and monitoring behavior; breaking tasks down into smaller components; activities to insure the student understands assignments; use of the learning support room for assignment and written task completion; use of monitored assignment book; use of a word processor; student assigned to a core teacher; prompting to use planner; spelling assistance by word processor, spell check, edit partner, etc.; use of computer for writing of more than three sentences; set of text books at home; weekly e-mail reporting by LS teacher; extended time for task completion; enlarge tests and quizzes; no required use of cursive writing or penalty for neatness; and permitting use of a calculator.

On the June 5, 2006 IEP the student was not found eligible for ESY for the summer of 2006. It is unclear whether an ESY check list was used. It was stated there was not enough information. Neither the parent nor the advocate questioned this. (N.T.-759-771, 842, 860-863, 885-887, 902-905; S-11, S-13)

67. The student's IEP of June 5, 2006 called for itinerant LS in his neighborhood school. LS study hall was scheduled four of every six days. LS for forty-five minutes would occur twice weekly. These provided help with assignments and homework. (N.T.-773; S-13)

68. The parent had an advocate at the IEP meeting of June 5, 2006. (N.T.-761)

69. By way of a NOREP the parents approved the June 5, 2006 IEP on August 10, 2006. (N.T.-775; S-14)

70. On June 20, 2006 the June 5, 2006 IEP was revised to add an SDI to inform parents of missed assignments. (N.T.-772)

71. On September 28, 2006 the IEP was revised to include assistive technology. The use of a laptop computer was added to help with written expression. A computer is available to the student at school. An advocate for the parent was present. The parent did not return the NOREP on advice of her advocate because the ending date for learning support was before the end of the school year. (N.T.-464, 695, 740-742, 776; S-16, S-17)

72. On January 4, 2007 the IEP was revised. The January 4, 2007 IEP meeting was called due to concerns by the parents and the LS teacher. Assignment completion was a problem especially in English class. Also, writing skills were a problem. Present levels were revised. Goals were revised in organization. SDI's were reformatted. He was assigned to LS for English instruction. The LS English class concentrated on specific skills based on the Pennsylvania Writing Rubric.

Based on the school district's ESY Eligibility Worksheet, the student was eligible for ESY for the summer of 2007. This was to maintain continued progress in written expression. ESY was for June 25 to July 26, four days a week, for two and a half hours daily (except July 4, 2007). Provision is made for summer reading and some math. (N.T.-308, 465, 467, 781-789, 853, 868, 869; S-19, S-20, S-21)

73. On April 5, 2007 an IEP was drafted for ninth grade. It was made final in May. The IEP calls for the student to be in a regular education class that is co-taught by a special education teacher and a regular education teacher.

The present levels were updated. Academic progress was satisfactory and progress was noted in all areas. Spelling and reading were on grade level. In math he was able to perform the calculation, showing difficulty with multi-step problems. The difficulty was overcome with model cards. Overall grade was 88%. In writing progress was demonstrated.

Measurable goals were written for OT, writing, attention, focus, organization, multiple step calculations, organization structure, writing process, writing style, writing conventions and task completion. These are supported by nine program modifications and SDI's.

OT is provided twice a month for thirty minutes.

The ESY stated in the January 2007 IEP is carried forward. (N.T.-309, 468-470, 792-805; S-59; P-38)

74. By way of a NOREP, the parents did not approve the ESY IEP of April 19, 2007 because they felt it did not meet all of the student's needs. Math was not included, only written expression. (N.T.-421, 422; P-38)

75. The eighth grade LS teacher would daily organize the student for the day. (N.T.-774)

76. The goals, modifications and SDI's found in the IEPs were carried out in the regular education classes as well as the LS class. (N.T.-865-867)

77. IEP progress was reported quarterly to the parents. Additionally weekly or more frequent communications were done by the LS teacher. These included

assignments due. The teacher channeled information through the LS teacher. (N.T.-806, 807; S-47, S-50; P-35)

78. The student's English performance improved in the LS English class. (N.T.-785, 786)

79. In grade eight the student did some homework with the LS teacher. (N.T.-415, 810)

80. The LS teacher reports that the student has stated to her difficulty getting homework done due to demands from home like babysitting and outside activities. (N.T.-808, 810)

81. The LS teacher opines that direct instruction is not needed for spelling or math. (N.T.-808, 809)

82. During eighth grade the student scored at the edge of instructional level in reading and in math, especially when using model cards. (N.T.-890-896; S-50; P-38)

83. During the 2006-2007 school year the parent and learning support teacher communicated regularly by e-mail on progress, assignments and school work. (N.T.-474; P-35)

84. The eighth grade math teacher communicates weekly with the student's learning support teacher. He also sends reports regularly to the parents. (N.T.-817)

85. The eighth grade math teacher reviewed the June 5, 2006 IEP prior to teaching the student. He reviewed all the IEPs. He opines the IEPs meet the student's math needs. (N.T.-835, 836; S-13, S-14)

86. Basic math calculations are taught in the eighth grade math class in various forms. (N.T.-829, 830)

87. The student did not complete his eighth grade homework. There is no penalty for late or missing homework.

He is showing understanding of the eighth grade math. He does not choose to take retests. The teacher refocuses the student when he is off task. (N.T.-819-822)

Other

88. The student's sixth and seventh grade math books were on grade level. (N.T.-601, 602)

89. In sixth and seventh grade math, not all incomplete or late assignments were penalized. At times extended time was given. (N.T.-571, 572)

90. The student did not always bring his word processor to class. Writing assignments were better with it. (N.T.-592, 593)

91. The average grade in the school district is C to B. That was also true of the student's sixth and seventh grade math class. For reading, most students received an A or B. (N.T.-549, 552, 553, 554)

92. The student's work is consistent, attention varies and homework completion varies. (N.T.-271, 272)

93. ADHD is the student's most significant issue. The school district suggested the parents consider medication for the student's ADHD, but the parents do not like the idea. They prefer regulation through diet. (N.T.-300, 304, 399-400)

94. The student did not take advantage of the opportunity to retake tests. (N.T.-699, 700)

95. The student often did not use his laptop computer in class as called for in the Accommodation Plans. Teachers' cued him on laptop use. The laptop had a planner installed. A Co-Writer program was installed to help with spelling, note taking and writing. The OT trained the student on the Co-Writer. (N.T.-685, 693, 695; S-34)

96. The student did not bring his planner in signed by his parents on a regular basis. (N.T.-682)

97. The parent used an advocate starting in grade six and ended in May 2007. (N.T.-488)

98. The student saw a private therapist due to his "meltdowns" especially over homework. The therapy ended in early seventh grade (fall of 2005). (N.T.-373, 374)

99. The student's PSSA for seventh grade found him advanced in reading and proficient in math. His numbers and operations part of the math section were just outside of target range (grade level). (N.T.-416; S-53)

100. The student could use a calculator in math class in sixth and seventh grade depending on the assignment. (N.T.-570)

101. In grade six the student's final grades were all C's, B's, A's and P's (pass).

In grade seven the student's final grades were similar to sixth, but with a D in health and English.

In grade eight the student's grades through the third quarter averaged C's, B's and A's. (N.T.-302, 303; S-46)

Issues

1. Was the student properly identified as an eligible student?
2. Was the student denied FAPE under 504 from February 2005 to the present and under IDEA from May 2006 to the present?
3. Was the student entitled to ESY for 2005 and 2006? And is the ESY being offered for 2007 appropriate?
4. Are the parents due reimbursement for therapies and a laptop computer?
5. Is the student entitled to an IEE including an FBA?
6. The Hearing Officer is being requested to order an appropriate program for the 2007-2008 school year that includes: direct instruction in numerical operations, direct instruction in spelling, direct instruction in written expression, teaching of organizational and study skills; next, direct instruction to compensate for memory needs and, last, counseling services.

Discussion and Conclusions of Law

Prior to the hearing the Hearing Officer ruled that the claims by the parents and issues of the hearing would be limited to a two year statute of limitations (HO 1, HO 2). This takes the scope of the hearing from February 21, 2005 forward.

For the sake of efficiency consideration of issues one and two will be combined.

Issue 1 – Was the student properly identified as an eligible student? **Issue 2** – Was the student denied FAPE under 504 from February 2005 to the present and under IDEA from May 2006 to the present?

The school district evaluated the student in 2001 and did not find him eligible under IDEA. They did recommend a Section 504 Accommodation Plan for fine motor skills issues (FF 2). In 2004 the parents had the student evaluated by Dr. L. In her IEE she did not find the student eligible for services under IDEA (FF 4). The school district did an ER based largely on Dr. L's report (FF 4). Section 504 services were continued. The Accommodation Plans were revised over the years to attempt to meet the needs of the student (FF 5, 10, 19, 23, 24, 27, 31, 32, 36, 40). Accommodation Plan revisions involved a team of teachers, counselor, parents and others (FF 6, 7). Student records and reports of team members were used (FF 5). Problems continued with task/homework completion, motivation and visual motor integration (FF 8, 12, 19). OT time was added (FF 10). ADHD was added to the diagnosis by Dr. L in February of 2004. The record shows the flow of Accommodation Plans was continually adjusted to meet the student's

identified needs. Progress on the Section 504 Accommodation Plans was monitored regularly.

Planners were utilized to help with organization (FF 19, 24). They had limited success. They did not always get from home to school (FF 19, 22). Concerns over length of time to complete assignments were addressed (FF 19, 21).

In February 2005 the Section 504 Accommodation Plan was revised to address continued concerns (FF 23). The parents approved it (FF 23). In March 2005 the parents expressed concern over homework, organization, frustration and motivation (FF 26). The concerns were addressed (FF 25). In April 2004 the Section 504 Accommodation Plan was revised due to parents concerns (FF 27). It was decided to do an FBA (FF 27). In May of 2005 an FBA was conducted (FF 30). As part of the FBA, the 2004 ER and files were reviewed and prior Accommodation Plans were reviewed (FF 28). The FBA called for reduced homework time and an assistive technology review (FF 30). The student's final grades in sixth grade were C's, B's, A's and P's (Passing)(FF 101). The Section 504 Accommodation Plan was revised in June 2005 to include the FBA (FF 31).

The Section 504 Accommodation Plan was revised again in November 2005 (FF 32). This was developed to use while awaiting the IEE from Dr. L. During grade seven the student's math class was changed to one that was smaller and used manipulatives (FF 34). The new class followed the same curriculum as the old one (FF 34).

Again in September 2006 the Section 504 Accommodation Plan was revised to incorporate assistive technology in his program (FF 40).

The parent was present at all Section 504 Accommodation Plan meetings (FF 41). Student progress and parent concerns were always discussed (FF 41). Written expression was part of the Accommodation Plans (FF 47). The parent allowed in her January 26, 2005 letter that the Section 504 Accommodation Plans had been sufficient for the Student (FF 49)

On January 26, 2005 the parents requested an IEP because of the student's difficulty with organization and self-regulation (FF 49). The district issued a Permission to Evaluate on October 12, 2005 (FF 52). The Permission listed a full array of evaluation methods (FF 51). On October 21, 2005 the parents requested the evaluation be done by Dr. L because of their confidence in her (FF 52). The school district funded the IEE. The school district did not receive Dr. L's report until March 8, 2006, at which time they reissued a Permission to Evaluate based on a review of records and classroom observations (FF 56). This was signed by the parents March 30, 2006.

The school district's ER relied heavily on Dr. L's evaluation (FF 56, 57, 58, 59, 60). On May 25, 2006 the school district issued its ER (FF 58). It found the student to be of high average ability and visual motor processing was average (FF 58). Weaknesses were found in short term and delayed memory, handwriting, higher order visual organization and planning. Academic weaknesses were found in math calculation

and written expression (FF 58). The student was found to have a learning disability or weakness in written expression, focus, task completion, math and organization (FF 58). The school psychologist based part of her analysis on the student's response to the Section 504 Accommodation Plans (FF 58). The parents agreed with the ER.

As outlined above, the school district identified the student in third grade as needing services under Section 504. The school district relied on its ER and on Dr. L's evaluation as well as frequent input from the parents and staff. 22 PA Code §15.7 establishes procedures and rules for service agreements (Accommodation Plans). The history of the development and revision of Section 504 Accommodation Plans shows the school district properly attempted to meet the needs of the student. They even made adjustments while awaiting the evaluation.

By September 2005 the parents desired service through an IEP. The school district concurred and started the process. That the evaluation process dragged on can't be denied, but the delay was due to waiting for the IEE requested by the parents. The failure to meet the timeline found in 34 CFR § 300.301(c)(2)(i)(ii) is a harmless error due to an eagerness by the school district to accommodate the parents.

The ER of May 25, 2006 was properly developed as outlined in 34 CFR § 300.305. The student was identified as an eligible student; his needs were identified. A preponderance of the evidence shows there was no "Child Find" failure. The ER of May 25, 2006 was appropriate.

The Individuals with Disabilities Education Act (IDEA) requires that states receiving federal funds for education must provide every student with a disability with a FAPE. This entitlement is delivered by way of the IEP, a detailed written statement arrived at by the IEP team, which summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. **Oberti v. Board of Education**, 995 F 2d 1204 (3d Cir. 1993) School districts are not required to provide the optimal level of services. **Carlisle Area School District v. Scott P.**, supra However, a program that confers only trivial or minimal benefit is not appropriate. **Polk v. Central Susquehanna Intermediate Unit 16**, 853 F 2d 171 (3d Cir. 1988) The appropriateness of the IEP is judged based on information known at the time it is drafted. **Fuhrman v. East Hanover Board of Education**, 993 F 2d 1031 (3d Cir. 1993) A school district bears the burden of proving the appropriateness of the program it has developed.

On June 5, 2006 an IEP was developed for the student. It was to be implemented at the start of the 2006-2007 school year. The IEP was based on findings of the May 25, 2006 ER with input from the IEP team (FF 65). The needs identified were fine motor needs, basic math facts, focus, task completion, organization and written expression (FF 66). Present levels were identified, using Dr. L's findings (FF 66). Five measurable goals were developed and twenty program modifications and SDI's were developed (FF 66). The student's recommended placement was itinerant learning support in his neighborhood school. The parents approved the IEP. The parents had an advocate at the

meeting (FF 68). The IEP was slightly modified on June 20, 2006 to include an SDI for written assignments (FF 70).

The IEP was revised September 28, 2006 to include assistive technology by providing use of a laptop computer to help with written expression (FF 71). The parents' advocate was present. On January 4, 2007 the IEP was revised again to address assignment completion and writing skills (FF 72). Present levels, goals and SDI's were revised (FF 72). The student was transferred to a LS English class (FF 72). The parents had an advocate at the meeting (FF 72).

On April 5, 2007 a meeting was held to revise the IEP for starting ninth grade (FF 73). This IEP placed the student in a regular education class co-taught by a regular education teacher and a special education teacher (FF 73). The present levels indicated spelling and reading were on grade level (FF 73). Math was satisfactory with the use of model cards (FF 73). Progress was being made in writing (FF 73). Measurable goals and modifications and SDI's were listed (FF 73). The parents requested the IEP (FF 73).

By a preponderance of the evidence the IEP of June 5, 2006, except for ESY as stated in Issue 3, is found to be appropriate. 34 CFR §300.220, 300.221, 300.222, 300.223 and 300.224 proves for the development and implementation of IEPs. The IEP of June 5, 2006 was properly developed. It was based on the ER of May 25, 2006. It contains measurable goals and program modifications/SDI's to address the identified needs of the student. It was implemented in the least restrictive environment. Much was made of the student's weakness in basic math calculations. The IEP makes accommodations for this (FF 73). Further, the regular math class the student participated in for eighth grade taught basic math calculations. An IEP must be adequate at the time of development. (**Fuhrman v. East Hanover Board of Education**, 993 F 2d, 1031 (3rd Cir. 1993) The IEP was appropriate and the parent, with her advocate, approved it.

The IEP of June 5, 2006 became a living document and was revised a couple of times to meet emerging needs of the student. The April 5, 2007 IEP revision was properly developed and continues to meet the needs of the student.

The student has made progress under his IEPs. His grades are C and above on average (FF 101). On his PSSA test he was proficient in reading and math, although he missed proficiency in the calculation sub-test by one point (FF 99).

Any procedural flaws are minimal and do not rise to the level of a fatal flaw. The delay in completing the ER and developing the IEP were due to accommodating the parents in using the evaluator of their choice.

Issue 3 – Was the student entitled to ESY for 2005 and 2006? And is the ESY being offered for 2007 appropriate?

Under 20 CFR § 300.106, ESY is to be considered by the IEP team to deliver FAPE. It is further delineated by 22 PA Code § 14.132. Let us start with the ESY for

2007. The IEP of January 4, 2007 used an ESY Eligibility Worksheet and determined the student was eligible for ESY for the summer of 2007 (FF 72). This was done to maintain continual progress in written expression (FF 72). Reading and math are part of the ESY program. The program runs from June 25, 2007 to July 26, 2007, except for July 4, 2007 (FF 72). It is four days a week at two and a half hours a day (FF 72). By a preponderance of the evidence the proposed ESY is appropriate.

No ESY was offered for the summer of 2006 (FF 66). The school district states there was not enough information available (FF 66). There is no ESY Eligibility Worksheet in evidence (FF 66). Given the new eligibility of the student with needs as addressed in the 2006-2007 school year and the fact that ESY was found appropriate for the following summer, it is logical to suppose the student would have been found eligible for ESY in 2006 had the information been available.

Since the student was not eligible under IDEIA in the summer of 2005, no ESY would apply. 22 PA Code Chapter 15 does not require ESY consideration.

Issue 4 – Are the parents due reimbursement for therapies and a laptop computer?

All of the IEPs provide for the use of a computer (FF S-13,S-16, S-19, S-59). As IEPs were developed, assistive technology through school district utilized computer was added (FF 71). Computers are available at school for student use (FF 71).

The claim for reimbursement for therapies was not pursued by the parents at the due process hearing. There is no compelling testimony by the parents to require the school district to reimburse the parents for either a computer or therapies. The evidence is preponderant that the student's computer needs can be met at school.

Issue 5 – Is the student entitled to an IEE including an FBA?

A preponderance of the evidence shows that the ER of May 25, 2006 is appropriate. The student's ADHD and other needs are being met through the IEP. See discussions and conclusions above. This claim is rejected.

Issue 6 – The Hearing Officer is being requested to order an appropriate program for the 2007-2008 school year that includes; direct instruction in numerical operations, direct instruction in spelling, direct instruction in written expression, teaching of organizational and study skills; next, direct instruction to compensate for memory needs and, last, counseling services.

This issue is also moot since the evaluation, program and placement of the student are found to be appropriate.

The LEA is ordered to take the following action

1. The parents are entitled to forty-seven and one-half hours of compensatory education for the failure to provide ESY in the summer of 2006. This is calculated on nineteen days of ESY from June 28, 2006 to July 28, 2006 (four days a week, excluding July 4, 2006, at two and a half hours a day).

2. The compensatory education is to be used by the parents to further stated IEP goals as determined by the IEP team with the parents having the final say.

Date

Kenneth Rose
Hearing Officer