Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: Student

Date of Birth
xx/xx/xx

Dates of Hearing:
April 24, 2007, April 25, 2007
CLOSED HEARING
ODR #7536/ 06-07 KE

Parties to the Hearing:	Representative:
Ms.	Franca Palumbo, Esquire 1831 Chestnut Street Su. 300 Phiiladelphia, PA 19103
Franklin Towne Charter School 5301 Tacony Street, Box 310 Philadelphia, PA 19137	James Rocco, Esquire Rocco Law Offices, LLC 200 South Broad St., Su. 1140 Philadelphia, PA 19102
Date Record Closed:	April 25, 2007
Date of Decision:	May 9, 2007
Hearing Officer:	William F. Culleton, Jr., Esquire

INTRODUCTION

Student is a xx year old, 10th grade student at the Franklin Towne Charter High School (School), an LEA operating within the School District of Philadelphia. (NT 8-17 to 9-7; P-9.) The Student is diagnosed with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder, (NT 30-3 to 10); however, she has not been identified as a child with a disability. Her Grandmother, (Parent) requested due process to challenge the Student's expulsion from the School without a manifestation determination. The Parent contends that the behavior leading to the Student's expulsion was a manifestation of her disability, that the School knew this, and that the expulsion was contrary to the IDEA and Section 504.

The School counters that the Student is not in need of special education, that it had no "basis of knowledge" that the student was disabled at the time of her behavior, and that its evaluation subsequent to the behavior but before the expulsion finds the Student not to be a student with a disability within the meaning of the Act. Thus, it argues that it had no obligation to conduct a manifestation determination before imposing discipline.

PROCEDURAL HISTORY

On February 12, 2007, the School issued a Notice of Suspension with Intent to Expel the Student. (P-13 p. 2.) On February 14, 2007, the Parent attended an "informal hearing" with regard to the suspension. (P-13 p. 2.) At this meeting, the School Principal requested permission to evaluate the Student. (P-14.) On February 16, 2007, the Parent made a written request for an educational evaluation. (P-15.) The School produced a document entitled Evaluation Report dated February 22. (NT 229-7 to 10; P-9.) On February 23, 2007, the School conducted a hearing as a result of which the Student was expelled on February 26. 2007. (NT 229-11 to 13; P-8.)

ISSUES

1. Did the School have a basis of knowledge that the Student was a child with a disability prior to the conduct which precipitated her expulsion on February 26, 2007?

2. Did the February 22, 2007 Evaluation Report negate the School's basis of knowledge that the Student was a child with a disability?

3. Should the School be ordered to reinstate the Student to attend classes?

4. Should the School be ordered to provide an independent educational evaluation at School expense?

5. Should the School be ordered to perform a manifestation review?

FINDINGS OF FACT

1. The School was aware as of November 3, 2005, which was prior to the conduct that precipitated the expulsion in February 2007, that the Student was diagnosed with Attention Deficit Disorder. (NT 41-7 to 10, 222-9 to 223-25; P-3 p. 4.)
2. Prior to the conduct that precipitated the expulsion, the School was aware that the Student had seen a psychiatrist. (NT 56-24 to 57-2; P-25 p. 2, 3, 5, 6, P-42.)
3. Prior to the conduct that precipitated the expulsion, the School was aware that the Student had received medications to address her Attention Deficit Disorder. (P-3 p. 4, P-7, P-25 p. 1, 3, 7, 9, 12.)
4. The Student failed five of seven courses in the 2005-2006 school year, and received a "D" in one of the two passing courses. (NT 42-18 to 43-1; P-29.)
5. In the 2006-2007 school year, the Student received failing grades in most of her subjects, and she was at risk of failing all her subjects by February 2007, when she was expelled. (NT 103-6 to 23, 122-21 to 123-18; P-1 p. 1, P-16.)
6. During the 2005-2006 and 2006-2007 school years, the Student was disciplined for numerous incidents of behavior that were barriers to her learning, including lateness and uniform violations, as well as cutting detention and disorderly conduct. (NT 43-2 to 45-1, 48-19 to 23, 53-25 to 56-2; P-3, P-13, P-42.)
7. During the 2005-2006 school year, teachers reported a pattern of behavior to the school counselor or her supervisor, including disorganization, being off task, not following class routine unless specifically directed, and not completing class work. (NT 45-1 to 4, 46-4 to 48-7, 50-15 to 52-14, 52-19 to 53-11, 72-9 to 15, 106-6 to 9, 109-13 to 110-3, 216-13 to 218-7; P-2 p. 34 to 36, P-21, P-45.)
8. In the spring of 2006, the school counselor informed her supervisor of these behaviors. (NT 58-4 to 21.)
9. In 2006, School staff advised the School's Coordinator of Special Education that the Student was being considered for participation in the School's Alternative Education Program. (NT 182-19 to 184-13, 186-6 to 187-1.)

10. On May 19, 2006, and again on June 1, 2006, the School's Director of Counseling and Pupil Services, a supervisor, and the School's Special Education Coordinator, a supervisor, attended meetings at which the Student's guidance counselor described the Student's behavior, including her inability to stay on task. (NT 62-21 to 64-1, 67-19 to 70-20, 74-7 to 78-11, 80-11 to 82-25, 160-2 to 24, 162-22 to 24, 164-164-16, 165-13 to 17, 168-22 to 169-16; P-31, 38.)
11. The Parent repeatedly asked the School staff about an educational evaluation for special education purposes. In the summer before the 2005-2006 school year, she raised the subject with the Coordinator of Special Education twice, and indicated that the Student was having difficulties. As early as May 17, 2006, the Parent asked the counselor if the Student should have an evaluation for an IEP. On May 31, 2006, the Parent expressed in writing on a permission form for assessment in the SAP program that she was willing to have the Student evaluated as part of the School's Student Assistance Program. (NT 65-6 to 66-25, 73-24 to 74-3, 85-3 to 87-9, 88-9 to 23, 190-4 to 195-9; P-25 p. 1, 3, 5, P-31, P-36.)
12. The counselor discussed the Parent's questions about an evaluation for IEP purposes with her supervisor. (NT 87-10 to 19, 91-15 to 20; P-25 p. 5.)
13. The School did not refer the Student for an educational evaluation at any time from November 2005 to February 2007. (NT 70-21 to 71-1, 94-21 to 95-17, 121-10 to 20, 151-5 to 9, 187-2 to 8, 224-22 to 25.)
14. The School did not offer a 504 plan to the Student. (NT 95-10 to 13, 121-10 to 20, 173-16 to 22.)
15. The Parent at all times expressed a willingness and a desire to have the Student receive any appropriate special education services, although she questioned the appropriateness of the Alternative Education Program offered by the School. (NT 65-6 to 66-25, 104-1 to 10, 106-14 to 107-24, 178-9 to 180-2; P-24, P-26, P-27, P-14, P-15.)
16. During the 2006-2007 school year, teachers reported to the counselor and the Director of Pupil Services and Guidance that the Student was exhibiting a pattern of behavior that included being disengaged in class and distractible, as well as refusing to attend planned after school homework sessions, and the counselor reported this to her supervisor. (NT 98-6 to 99-20, 105-14 to 106-13, 132-9 to 14, 150-2 to 25, 197-2 to 198-22.)
17. The Student's pattern of behavior was reported by the counselor and teachers directly to the Director of Pupil Services and Guidance and to the Vice Principal during a meeting on November 17, 2006. (NT 95-22 to 99-20, 101-7 to 103-23, 110-4 to 113-5, 225-1 to 226-20; P-1 p. 3, 4, 5, P-21, P-27.)

18. At the November 17, 2006 meeting, the Parent reported her belief that the Student was depressed. (NT 113-17 to 20; P-21.)
19. On February 16, 2007, the Parent submitted to the District a written request for an educational evaluation. (P-15.)
20. During a meeting regarding the Student's final suspension on February 14, 2007, the School's Principal advised the Parent that the Student would be evaluated within nine days. (P-13 p. 2.)
21. On February 20, 2007, the District issued to the Parent a notice of expulsion hearing for the Student. (P-13.)
22. The District refused to postpone the expulsion hearing scheduled for February 23, 2007, and insisted that the Student be evaluated before the expulsion hearing. (P-14.)
23. On February 21, the Parent filled out a Background Questionnaire form and submitted it to the School's psychologist. The psychologist did not interview the Parent as part of the evaluation. (NT 230-25 to 231-8, 230-25 to 231-8; P-11.)
24. The School's psychologist tested the Student for four hours between February 14 and February 22, and drafted the Evaluation Report on February 22, 2007, one day before the expulsion hearing. (NT 230-3 to 6, 230-15 to 19.)
25. The School's psychologist was not aware that the Student had been diagnosed with Oppositional Defiant Disorder until February 21, 2007, one day before she drafted and published the ER. (NT 231-9 to 232-18, 227-5 to 12; P-11.)
26. The School psychologist received information concerning the Student's behavior in the 2005-2006 school year; however, the bulk of this information was provided through conversations with the Director of Counseling and Pupil Services, because the psychologist had not been employed by the School during the previous school year. (NT 196-11 to 17, 198-8 to 22, 199-18 to 200-8, 201-21 to 204-25.)
27. The psychologist did not interview the Student's teachers from the 2005-2006 school year or review the Student's disciplinary records for that year, even though she was told that the Student had been distractible, disengaged from the learning process and noncompliant during the 2005-2006 school year. (NT 202-13 to 203-12, 205-1 to 7, 207-15 to 208-10, 218-7.)
28. The psychologist did not interview the Student's counselor about the Student's behavior. (NT 208-18 to 209-10.)
29. The Student's teachers had observed the Student's classroom behavior for only five months when they were interviewed by the psychologist. (NT 202-16 to 24; P-9 p. 2.)

30. The school psychologist did not interview the Student's psychiatrist or private therapist although she was aware that the Student had been diagnosed with ADH and ODD, and the School did not have a full written report from either the psychiatrist or the therapist. (NT 227-13 to 228-25.)
31. The psychologist alone drafted an evaluation report concluding that the Student was not eligible because she was not in need of specially designed instruction. The draft was not signed. The Parent did not see it until after the exclusion hearing on February 23. The Parent had no opportunity to respond to the draft report or collaborate with the psychologist in revising it. The draft was not created by a team of professionals; it was the product of the psychologist. (P-9.)
32. The ER reported testing scores indicating very low ability on tests of verbal reasoning, high ability in nonverbal reasoning, "Extremely Low" performance on a test of reasoning with previously learned information, and Borderline performance in a test of ability to fluently and automatically perform cognitive tasks under pressure to maintain focused attention and concentration. (P-9 p. 3, 4, 5, 6.)
33. The ER reported scores in the BASC and Connors scales showing the Student by self report to be at risk or clinically significant in Locus of Control, Somatization, Attention Problems, Hyperactivity, Attitude Toward School, Sense of Inadequacy, Attitude Toward Teachers, ADHD, and Hyperactivity. (P-9 p. 8.)

34. Teacher scores on the BASC and Connors Scales place the Student at risk or clinically significant in Learning Problems, Study Skills, Adaptability, Functional Communication, Social Skills, Leadership, Study Skills, Oppositional and ADHD. (P-9 p. 10, 11, 12, 13.)

35. The psychologist did not request or receive a behavior rating scale from the Parent. (P-9.)

36. The ER in its interpretation reported the Student's strengths and weaknesses, but concluded, without addressing the weaknesses revealed by testing, that the Student's academic difficulties were due to lack of consistent attendance, homework completion and cooperation with teachers. It made no attempt to explain how the tested weaknesses and the Student's diagnosed disabilities were ruled out as a cause of these deficiencies in behavior. (P-9 p. 14.)
37. The School expelled the Student without conducting a manifestation review. (NT 121-21 to 122-1.)

CREDIBILITY

The hearing officer finds that the Parent was credible in her testimony. The School's Counselor was credible in general; however, there was a noticeable reluctance to make statements that contradicted her employer's interests, as demonstrated by demeanor and guarded responses to questions. Consequently, the hearing officer concludes that her testimony understates the degree of information conveyed to her superiors. The School's Coordinator of Special Education was found to be credible. The School Psychologist was found to be honest and forthright about the factual underpinnings of her report, but her testimony was wedded to the conclusion of her report, and the hearing officer therefore gives reduced weight to her opinions and observations.

LEGAL CONCLUSIONS AND DISCUSSION

Under specific circumstances, the IDEA provides protections for a child who has not been identified as a child with a disability. The statute specifies that such protections will apply if the LEA "had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." 20 U.S.C. §1415(k)(5)(A). The key terms to be applied in this matter are "knowledge" and "before the behavior that precipitated … ."

The record is clear that the School had knowledge of the Student's disabilities before the behavior in question. (FF 1-3, 7, 8, 12.) Moreover, the statute's test for deeming the School to have had knowledge are also met. The School is deemed to have knowledge if the child's teacher or other personnel of the LEA expressed specific concerns about a pattern of behavior of the child "directly to the director of special education of the agency or to other supervisory personnel." 34 C.F.R. §300.533(b)(3). Here, there were at least two meetings at which the teachers' reports of the Student's behavior were made directly to the director of special education and to the director of counseling and pupil services, also a supervisor. (FF 10, 16, 17,18.) Moreover, the teachers reported their concerns about the Student's behavior directly to the Director of Guidance and Pupil Services. (FF 9, 16, 17.) In sum, the District had a basis of knowledge that the Student was a child with a disability.

The School argues that the Student's behavior that led to the expulsion occurred over a period of months encompassing almost the entire tenure of the Student at the School. It argues that it could not have been deemed to have knowledge of the Student's disabilities "before" such behavior occurred, since the behavior began almost upon admission. However, the language of the Act does not admit of such a broad construction of the phrase "behavior that precipitated." Congress chose the word "precipitated", a word connoting something going shortly before and causing the initiation of an event. The Oxford American Dictionary defines "precipitate" to mean: "to send rapidly into a certain state or condition, *precipitated the country into war"* , or "to cause to happen suddenly or soon, *this action precipitated a crisis.*" Oxford American Dictionary (Avon, 1980).

Thus, the Congressional term refers to behavior that caused discipline immediately or soon thereafter. It cannot reasonably be interpreted to encompass the entire course of conduct that led up to an imposition of discipline. In the matter at hand, the hearing officer will consider the conduct immediately preceding the discipline as the "behavior that precipitated" the expulsion. Thus, the Parent is required to prove that the District "had knowledge" that the Student was a child with a disability before the Student's behavior in January 2006 that "precipitated" her expulsion. This is clearly proved on this record.

The School also argues that it evaluated the Student, producing an evaluation report on the day before the student's expulsion, and found that the student is not in need of special education. Therefore, the School claims that its authority to expel is protected by the exception to the "basis of knowledge" provisions of the Act. Reading the Act as a whole, the hearing officer finds that this exception does not apply where the evaluation is performed after the behavior in question.

Both the Act and the new regulations emphasize that the relevant time for a determination of the LEA's "basis of knowledge" is the time before the behavior that precipitated the discipline. The Student may assert the protections of the Act "if the local education agency had knowledge … before the behavior that precipitated the disciplinary action occurred." 20 U.S.C. §1415(k)(5)(A). The LEA's deemed "basis of knowledge" is defined to include three kinds of communication that have taken place "before the behavior that precipitated … ." 20 U.S.C. §1415(k)(5)(B). The exception to the "basis of knowledge" deeming rule must be read in the temporal context in which the entire "thought to be" rule is placed.

This is made clear in the language of the exception itself, and in the regulations that apply it. Expressly, the exception is to the "deeming" rule of the previous subsection (B), which defines the circumstances under which an LEA has a "basis of knowledge". Thus, the exception explicitly modifies the legal grounds for finding that an LEA had knowledge "before the behavior … ." The regulations make this even more explicit, referring expressly to the subsection containing the "deemed to have knowledge" tests that are applicable only before the behavior in question. 34 C.F.R §300.534(c). Thus, the evaluation referred to in the exception is considered only insofar as it bears on whether or not the LEA may be deemed under subsection "(B)" to have had knowledge prior to the behavior in question.

This is reinforced by the following section of the Act, which provides the rule for situations in which "a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C) … . " 20 U.S.C. §1415(k)(5)(D)(i). In these situations, determined according to subparagraphs (B) and (C) at a time prior to the behavior in question, the agency is authorized to apply its ordinary disciplinary sanctions. Implicitly, therefore, it is not so authorized if there have occurred any of the conditions of deemed knowledge.

Research discloses one federal district court that has reached this question in dicta. In S.W. v. Holbrook Public Schools, 221 F.Supp.2d 222 (D. Mass. 2002), the court was construing the 1997 IDEA discipline provisions, which have similar language regarding the application of the "evaluation" exception, and which, like the present amendments to the Act, did not expressly state the time period in which the evaluation was sufficient to form an exception to the "basis of knowledge" deeming rules. In S.W., the court held that an evaluation conducted after imposition of discipline does not comply with the statutory exception to the deeming rule in the "basis of knowledge" subsection. S.W, 221 F.Supp.2d at 228. The court went on to state:

> The exception is phrased in the past tense; literally, it only refers to cases where the school had conducted an evaluation before the student engaged in the behavior that occasioned the disciplinary action.

Ibid. While dicta, this court reads the exception in context as referring only to evaluations conducted before the behavior in question.

Separately, the Act also provides for situations in which the request for evaluation is made when the student is already subject to disciplinary sanctions. 20 U.S.C. §1415(k)(5)(D)(ii). In such a case, the evaluation must be expedited and special education services must be provided if the student is found to be in need. Ibid. It is notable that this section does not provide for the situation presented in the matter at hand: where the sanctions have not been applied, but an evaluation is completed after the behavior giving rise to the sanctions. In light of this silence, the more general terms of the discipline provisions apply, which protect non-identified students based upon the LEA's deemed knowledge at the time before the conduct in question.

The IDEA provides that an LEA will not be considered to have a "basis of knowledge" if the child "has been evaluated and it was determined that the child was not a child with a disability … ." 20 U.S.C. §1415(k)(5)(C). The School argues that this occurred in the matter at hand, since the School provided an Evaluation Report dated the day before the date of the expulsion hearing. (FF .) However, the regulations make clear that the evaluation must be performed "in accordance with 300.300 through 300.311" – the regulation's standards for an adequate educational evaluation and for the determination whether or not the child is a child with a disability. 34 C.F.R §300.534(c)(2). In this case, the evaluation and identification decision not to identify the Student failed to comply with a number of these minimum requirements.

Although the Parent requested the evaluation in writing on February 16, the District decided not to postpone the expulsion hearing in order to allow time for a proper evaluation compliant with the standards of the regulations. (FF 20, 22.) The Student's behavior was not appreciably changed from the behavior she had demonstrated for over a year, and there was no dangerous behavior. Thus,

this hearing officer finds little reason to consider the expulsion to be so emergent that it could not have been postponed to permit a careful initial evaluation with full review of existing records and thorough interviewing of persons who knew the Student throughout her problematic tenure at the School.

The record demonstrates that it was this rush to judgment on the disciplinary action that created an unreasonable rush to evaluate and determine the eligibility of the Student. In this unnecessary rush, the evaluation proceeded along various short cuts that precluded the careful consideration of data that the law requires. The result was an ill considered report, without even minimally adequate input from the Parent, that merely confirmed the facially circular prejudgment of the School's officials that the Student's massive academic failures were solely due to her refusal to do homework. It is this tendency to self fulfilling prophecy that the IDEA seeks to curb, by requiring an objective, thorough and individualized evaluation.

The IDEA, as applied through the regulations of the Department of Education, requires that an initial evaluation be "full and individual … ." 34 C.F.R. §300.301(a). The child must be "assessed in all areas related to the suspected disability, including … social and emotional status … ." 34 C.F.R §300.304(c)(4). The evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." 34 C.F.R §300.304(c)(6). After the child has been evaluated according to these standards, eligibility is to be determined by "[a] group of qualified professionals and the parent of the child … ." 34 C.F.R §300.306(a)(1). Evaluation data must be interpreted by "draw[ing] upon a variety of sources, including … parent input … ." The LEA must "[e]nsure that information obtained from all of these sources is documented and carefully considered." 34 C.F.R §300.306(c)(1)(i), (ii).

In the matter at hand, the School did not give "full" or "careful[l]" consideration to the Parent's input regarding the Student's oppositional behavior, her diagnosis of ODD, or her diagnosis of ADHD. (FF 19, 23, 25, 30.) Although the School's psychologist was aware that the Parent had received diagnoses of ADHD and ODD from a private evaluator, the psychologist did not interview the Parent. Ibid. She relied solely upon a form entitled "Background Questionnaire", filled out on the day before the evaluation was drafted, that contains only general questions and does not call for a detailed description of the child's problematic behavior – in short, a form that is no substitute for a an interview, or a behavior inventory. (FF 23, 35.) The Parent was not asked to fill out a behavior inventory. (FF 23; P-9.) Although the Questionnaire indicated that the Student was seeing a psychiatrist and taking Concerta, a psychotherapeutic medication, and although the form indicated that the Student was argumentative and defiant with the family, as well as having trouble concentrating, the psychologist did not attempt to ask any follow-up questions. (FF 23, 28, 30.) Although the Parent had contacted the School's counselor numerous times, and the counselor could have provided information on the Parent's reports of the Student's behavior, the School's psychologist did not interview the counselor. (FF 28.)

Similarly, the psychologist did not develop full information regarding teacher observations, either, contrary to 34 C.F.R §300.305(a)(1)(iii) . Although the Student had failed almost all her courses in the 2005-2006 school year, the counselor made no effort to interview any of the Student's teachers from that school year. (FF 26, 27, 28, 29.) Instead, she relied upon a single source of second and third hand information for her data on the Student's performance in that year – the Director of Counseling and Pupil Services. (FF 26.) Thus, the psychologist failed to use a "variety" of strategies to obtain relevant information from the previous year. 34 C.F.R §300.304(b)(1). Nor did she "draw upon a variety of sources" in this regard. 34 C.F.R §300.306(c)(1)(i), (ii).

The determination of non-eligibility was not made by a group of qualified professionals including the Parent, as required by law. 34 C.F.R §300.306(a)(1). It was made by the psychologist alone, without any review or feedback on the draft by the Parent. (FF 31.) It was not drawn from a variety of sources, but depended heavily upon the Director of Guidance and Pupil Services' recounting of the Student's problems in the 2005-2006 school year, and upon the teachers' complaints that the Student was not doing her homework and was not cooperating with their corrective measures. (FF 29, 36.) It failed to provide reasons why the Student's difficulties were not attributable to her disability. (FF 32, 33, 34, 36.) For this reason and for the reasons set forth above, this was not an evaluation "in accordance with 300.300 through 300.311" of the governing regulations. Consequently, the School is found to have had a "basis of knowledge" that the Student was a child with a disability, notwithstanding the draft Evaluation Report upon which it relies to justify its expulsion of the Student without a manifestation determination.

Similarly, the hearing officer rejects the School's claim that the Parent refused to allow evaluation or services, 34 C.F.R §300.533(c)(1). The record shows that the parent was requesting evaluation and services for her child and cooperated with services that were offered. (FF 11, 15.)

It remains for the hearing officer to devise a remedial order for this Student. This hearing officer has two primary concerns in light of the finding that the School failed to comply with the protections afforded this Student by the IDEA.

First is the concern with the draft evaluation report, which the hearing officer finds to have been devised without full compliance with the requirements of the IDEA, and to have determined non-eligibility without compliance with its procedural requirement of a group decision with participation – meaningful participation is implied – of the Parent. The Parent has requested an independent educational evaluation, and the hearing officer agrees. Therefore, the hearing officer will order the District to provide an independent educational evaluation.

The second concern is the practical issue of how the Student is to be educated while the evaluation is being performed. Although the Student was not thriving educationally at the School, it is still her last known place of developmentally appropriate work, the locus of a social network for her, and a place where she has a superior opportunity for educational benefit as contrasted

with her present status at home. Therefore, the School will be ordered to accept the Student back into her classes pending evaluation. The School will provide all supportive services that it has previously provided, including preferential seating, extended time, homework tutoring after school, and coordination of these services with the Parent.

The Parent and School are urged to sit down together and devise a way of providing the Parent with immediate, direct feedback when the Student fails or refuses to comply with the School's rules and educational programming decisions. The Parent is urged to take an active role in responding to the Student's refusals and failures to attend offered programs. It is expected that the success or failure of these efforts will be considered in the educational evaluation.

In light of the decision above, there is no need to address the Parent's argument as to the applicability of Section 504.

ORDER

1. The School had a basis of knowledge that the Student was a child with a disability prior to the conduct which precipitated her expulsion on February 26, 2007, and therefore violated the procedural protections of the IDEA by expelling the Student without a manifestation determination.

2. The February 22, 2007 Evaluation Report, and the District's determination that the Student is not a child with a disability, did not comply with the requirements of the IDEA and therefore did not negate the School's basis of knowledge that the Student was a child with a disability.

3. The School will reinstate the Student within five school days to the curriculum and classes that she was attending when expelled. The School will provide all supportive services that it has previously provided, including preferential seating, extended time, homework tutoring after school, and coordination of these services with the Parent.

4. The School will provide the Parent with an independent educational evaluation at public expense within sixty calendar days. The evaluation will be provided by a certified school psychologist selected from a list of at least three names provided to the Parent by the School in accordance with the School's policies regarding independent educational evaluations. This list will be presented to the Parent within ten days; if the District does not provide a list within ten days, the Parent will present a list of at least three certified school psychologists to the School from which the School will select a person to perform the evaluation within twenty days. The fee for the evaluation will not exceed $2,500.00. The District will make available to the evaluator all educational records of the Student and all personnel within its control.

5. Any further disciplinary proceedings will be taken in light of the findings of the independent educational evaluation and the requirements of the IDEA.

Dated: May 9, 2007

William F. Culleton, Jr.
Hearing Officer