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## Pennsylvania Special Education Hearing Officer

### DECISION

Child's Name: BB

Date of Birth: xx/xx/xx

Dates of Hearing:

9-25-07, 9-26-07, 10-16-07, 10-22-07, 11-07-07, 11-29-07

CLOSED HEARING

ODR #7665/06-07 LS; 7780/06-07 LS

Parties to the Hearing:

Parents

Penns Valley Area School District  
4528 Penns Valley Road  
Spring Mills, PA 16875-9403

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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January 11, 2008

January 26, 2008

William F. Culleton, Jr., Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student is a xx year old resident of the Penns Valley Area School District (District). (NT 22-18 to 23-5.) He is in ninth grade presently. (NT 24-15 to 20.) He is identified with the exceptionality of autism, and Parents assert that the Student suffers from specific learning disabilities in reading comprehension and written and oral expression. (NT 23-7 to 24-7.) His parents, (Parents), requested in 2007 that the District pay for an independent educational evaluation, and tuition reimbursement for a summer program, which the District denied.

The District requested due process in Number 7665, seeking an order that its evaluation and offer of ESY services were appropriate, and that the summer placement selected by the Parents was too restrictive and failed to address the Student's needs. The District indicated that the Parents were requesting expedited treatment of their request. The Parents contested the District's request for due process, seeking reimbursement for both the IEE and the summer school tuition on grounds that the District's evaluation of the Student and its offer of ESY services were inadequate.

Shortly after the District requested due process, the Parents requested due process in Number 7780, seeking compensatory education for the 2005-2006 and 2006-2007 school years. The Parents asserted that the District's evaluations failed to address all of the Student's needs, the IEPs failed to offer FAPE, and the District failed to implement the IEPs appropriately. The Parents waived any claim for expedited treatment of their ESY claim. The District contends that its services were appropriate and that the Parents had agreed with its offers of services.

Both due process requests, numbers 7665 and 7780, were heard together and this decision will be final for both of the matters. Shortly before the hearing commenced, the Parents sought to expand the scope of the due process hearing to include whether or not the District had offered an appropriate program and placement for the 2007-2008 school year, and seeking an order of placement at a private school. In colloquy with the hearing officer, the parties agreed that the scope of the hearing would be expanded to include the appropriateness of the District's offer of services for the 2007-2008 school year and whether or not the hearing officer should order placement in a private school.

The hearing comprised six sessions between September 25, 2007 and November 29, 2007. Written summations were to be submitted on December 30, 2007, and that deadline was continued to January 9, 2008 at the request of counsel. On January 9, the record closed.

## **ISSUES**

1. In the 2005 to 2006 school year, did the District fail to offer or provide educational services that were reasonably calculated to provide meaningful educational benefit?
2. Did the reevaluation of November 2006 fail to address all of the Student's educational needs?
3. In the 2006 to 2007 school year, and from the first day of the 2007-2008 school year until September 25, 2007, did the District fail to offer or provide educational services that were reasonably calculated to provide meaningful educational benefit?
4. Did the District fail to offer ESY services for the summer of 2007 that were necessary to the provision of a free appropriate public education?
5. Are the Parents entitled to reimbursement for the cost of the Student's participation in a summer program at [redacted]?
6. Are the Parents entitled to reimbursement for the cost of an Independent Educational Evaluation and the participation of the independent evaluator at IEP meetings?
7. Is the Student entitled to an award of compensatory education for all or part of the period beginning on the first day of school, 2005 and ending on the date of the first hearing session in these matters, September 25, 2007?
8. What is the appropriate placement for the Student for the 2007-2008 school year?

## **FINDINGS OF FACT**

### **HISTORY AND KNOWLEDGE OF DISTRICT**

1. The Parents requested a CER for the Student in 2001, when he was in second grade, after he had been hospitalized briefly for physical aggression and threats toward his family. (S-1.)
2. The District's CER dated May 2001 noted school behaviors including disruptive behavior, social difficulties, difficulty transitioning, and aggression. (S-1 p. 2-4, S-4 p. 7.)

3. The District's May 2001 CER concluded that the Student's problematic behaviors were substantially more severe than they were at school and that there was no need for specially designed instruction. (S-1.)
4. In December 2001, the Parents obtained a psychiatric report that diagnosed the Student with Asperger's Disorder. (S-2.)
5. In February 2002, the District obtained a consultation report from the Intermediate Unit that contained observations in the school setting. These noted behaviors including making inappropriate comments, loss of attention and perseverance in tasks, and obsessive behaviors, including lining up things on his desk, lining up and straightening chairs at the end of the day, hitting himself in the head with a book, and inability to locate an assignment. Teachers reported that these and similar behaviors were typical, even somewhat more prominent on other days. A teacher reported that she routinely dealt with other students' comments about these behaviors. (S-3.)
6. The IU consultant recommended against specially designed instruction, finding that these behaviors did not interfere with the Student's progress in school. The consultant recommended that the District provide interventions in the general educational setting, including breaking assignments into smaller pieces, use of visual cues, time limits for tasks, use of stories to teach socially appropriate behavior, and monitoring the Student's behavior. (S-3.)
7. In March 2002, the Parents obtained an independent educational evaluation at public expense by a licensed school psychologist. (S-4.)
8. The independent evaluator found that the Student exhibited weaknesses in interpersonal relations, higher level reading comprehension, written expression, and oral expression, attention and visual-spatial organization. (S-4.)
9. The independent evaluator recommended learning support for language comprehension, social skills and pragmatics, written expression and oral expression, and subject areas requiring higher level visual, spatial and organizational skills, as well as specially designed instruction in the general education classroom. (S-4.)
10. In January 2004, the District issued a Reevaluation Report and NOREP that recommended continuing the Student in itinerant learning support and continuing his specially designed instruction, while recommending changes to the prevailing behavior plan and refocusing of the specially designed instruction requirements of the IEP. (S-5.)
11. The January 2004 reevaluation report included District testing showing that the Student performed at the Below Basic level in comprehension and the Basic level in written expression and oral expression. The Student needed graphic organizers

- for writing and a behavior plan. The student met some IEP goals in small supported settings, but did not generalize this performance or his behavioral improvements to the general education setting. (S-5.)
12. The Student's scores on PSSA testing in 2004 were satisfactory or above in reading and mathematics. In 2006, the Student's score in reading was unsatisfactory. In 2007, the Student's score in reading and writing was proficient. (S-6, S-18, S-61, S-62, S-63.)
  13. The Student's PSSA scores were all achieved with supports, including separate location, extended time, use of graphic organizer, clarification of directions and breaks as requested. (S-33, S-37, S-47 p. 13.)

#### PROVISION OF FAPE: 2005-2006, 2006-2007, 2007-2008 SCHOOL YEARS

##### JANUARY 2005 IEP

14. In January 2005, the District issued an evaluation report that identified the Student with Autism, and recommended continued specially designed instruction for organization, social and behavioral issues, and reading comprehension. The ER recommended frequent "comprehension checks", as well as training of teaching staff in Autism so that they would be better able to recognize behaviors and needs related to Asperger's Disorder. (S-7.)
15. In January 2005, the District offered an IEP with itinerant autistic support, one-half hour per week, for social skills, organizational issues and support for regular education assignments, and three thirty minute sessions per month of guidance counseling for social skills needs. (S-8.)
16. The January 2005 IEP offered goals and objectives in reading comprehension, written expression, organization, and social skills, along with a behavioral improvement plan addressing disruptive behavior. (S-8.)
17. The January 2005 IEP offered more than thirty regular education program modifications, including support for attention and organization, learning support within the classroom for comprehension and written expression, support for behavioral issues, support for comprehending instructions, information sharing among and training for staff, and computer software to support written expression. The IEP also offered regular meetings among IEP team members for monitoring purposes. (S-8.)
18. The January 2005 IEP found the Student eligible for ESY and offered services one hour per week for 2 months, addressing social skills and transition skills. (S-8.)

19. The January 2005 IEP provided for extended time and graphic organizers for PSSA testing. (S-8.)
20. The January 2005 IEP set forth base line data in reading comprehension and written expression in the PLEP statement; these were not used in formulating the IEP goals for these needs. The goals were not formulated to measure progress in light of the achievement testing reported in the January 2004 ER. (S-8.)
21. The January 2005 IEP did not offer the Student a reasonable opportunity to receive meaningful educational benefit, because it did not provide for a systematic measurement of progress proceeding from a baseline addressed in the stated goals. (S-8.)
22. Insufficient progress monitoring data was collected in the 2005-2006 school year to implement the January 2005 IEP adequately. The District failed to provide all progress monitoring data to the Parents. (NT 81, 97-98, 1513-23 to 1522-17; S-44.)
23. The Student's mainstreamed program was coordinated by a learning support teacher, because the District had no autistic support teacher. The teacher had a high case load. (NT 70, 1484-1498; P-96.)
24. The District did not implement all of the program modifications and specially designed instruction required under the January 2005 IEP. (NT 90 to 98.)

#### JANUARY 2006 IEP

25. In January 2006, the District offered an IEP with itinerant autistic support for an unspecified amount of time, for social skills, organizational issues and support for regular education assignments, and two thirty minute sessions per month of guidance counseling for social skills needs. (S-13.)
26. The January 2006 IEP offered goals and objectives in reading comprehension, written expression, utilizing assistive technology in writing, organization, word retrieval and social skills, along with a behavioral improvement plan addressing disruptive behavior. New goals and objectives were offered in all of these areas. (S-13.)
27. The January 2006 IEP offered more than thirty regular education program modifications, including support for attention and organization, support for comprehension and written expression, support for social skills and behavioral issues, support for comprehending instructions, school time for completion of homework, curriculum adaptations, information sharing among and training for

- staff, and computer software to support written expression. The IEP also offered regular meetings among IEP team members for monitoring purposes. (S-13.)
28. The January 2006 IEP included new supports including a daily planner for organization and time in school for completing homework and class assignments. (S-13.)
  29. The January 2006 IEP found the Student eligible for ESY and offered services one hour per week for 2 months, addressing social skills, and one-half hour per week for instruction in assistive technology. (S-13.)
  30. The January 2006 IEP provided for extended time, clarification of directions and graphic organizers for PSSA testing. (S-13.)
  31. The January 2006 IEP Present Levels of Academic Achievement statement set forth base line performance measures for the goals in the January 2005 IEP in use of an assignment book and “travel cards” for self-organization, reading comprehension, utilization of strategies for written expression, utilization of organizational supports, and social skills. (S-13.)
  32. School administration and staff resisted compliance with the January 2006 IEP, indicating a disbelief that the Student had many of the educational needs specified in the IEP and that compliance in the regular education setting was excessively burdensome for them. (NT 47, 370 to 371.)
  33. In February 2006, the District found the Student eligible for ESY and offered ESY services one hour per week for social skills, and one week of instruction in assistive technology. (S-15 p. 3, S-16.)

#### JANUARY, APRIL AND AUGUST 2007 IEP AND NOREP OFFERS

34. In June 2006, the Parents filed a complaint with the Bureau of Special Education, alleging failure to implement the prevailing IEP in five respects. (S-19.)
35. In August 2006, the Bureau issued a report, sustaining three of the Parents’ complaints, and ordering compensatory education. (S-19.)
36. In November 2006, the District issued an evaluation report that identified the Student with Autism, and recommended continued specially designed instruction, but at a reduced level. The ER recommended that many of the program modifications and accommodations in the previous IEP be eliminated, but that the option for consulting with the District’s special education teacher be continued, for assistance with social situations, clarification of assignments, and support for regular education assignments. Also recommended was continued counseling and the provision of an AlphaSmart assistive technology device for writing. (S-29.)

37. In January 2007, the District offered an IEP providing four goals related to organization and behavior. Placement in general education with itinerant autistic support was continued, and the IEP offered two half hour sessions of counseling per month. The IEP offered 23 program modifications or specially designed instructional techniques. It found the Student ineligible for ESY services; however, this was an error based upon limitations of the District's software program. (NT 1553-1554; S-33.)
38. In addition to the IEP, the District provided teachers with a checklist of "needs/concerns/accommodations" to be used by designated staff in providing educational services to the Student. (S-35.)
39. In April 2007, the District offered a revised IEP that offered placement in regular education with itinerant autistic support, and three goals in behavior and social skills and organization, but not in reading comprehension. Two half hour counseling sessions per month were offered. Twenty -six program modifications and specially designed instructional techniques were offered. (S-47.)
40. In August 2007, the District offered a revised IEP that offered placement in regular education with itinerant autistic support. It offered two goals related to behavior and social skills, one goal related to reading comprehension and one goal related to written expression. Two half hour counseling sessions per month were offered. Twenty -seven program modifications and specially designed instructional techniques were offered. (S-55.)
41. In August 2007, the District offered a NOREP that would have provided resource level autistic support to the Student. (S-56.)
42. In the 2006-2007 school year, the learning support coordinator provided answers to test questions to the Student in advance of a significant number of tests. (NT 1195-8, 1531-1538; P-79-95.)
43. The Student's longstanding practice is to make an effort to mask his functioning deficits in the school setting. (NT 60.)
44. The District's school psychologist trained the Student's 7<sup>th</sup> grade teachers on autism in 2006. (NT 707-16 to 708-19; S-10.)

#### READING COMPREHENSION

45. From 2002 to 2007, the Student's percentile rank in reading comprehension dropped from the 37<sup>th</sup> percentile to the 16<sup>th</sup> percentile, as measured on the WIAT - II. (NT 158-159; P-18 p. 18, P-24 p. 19.)



46. Progress monitoring data in 2005 regarding reading comprehension indicated that the Student made progress, but did not document that the Student attained any of his goals and objectives. (S-8 p.14, S-44.)
47. The January 2006 IEP Present Levels of Academic Achievement statement asserts that the Student has met the goals of his previous IEP in reading comprehension. (S-13.)
48. The January 2006 IEP Present Levels of Academic Achievement statement recognized that the Student still had significant difficulties in reading comprehension that impacted his ability to perform adequately in all areas of the District's curriculum that require an understanding of narrative information. It found a need for accommodations and strategies for reading comprehension. (S-13.)
49. In the January 2006 IEP, the goals for reading comprehension were not based upon base line data in the PLAA statement. (S-13.)
50. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student attained the objective of utilizing pre-reading strategies with and without prompting. (S-13 p. 19, S-45 p.15.)
51. Progress monitoring data for the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of utilizing paraphrasing from that date until April 2007. While average scores were provided suggesting progress, there was no data showing 90% scores over five consecutive trials as required in the IEP objective. (S-13 p. 18, S-45 p.6, S-55 p. 7.)
52. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of making inferences and drawing conclusions from personal experiences and story details, from that date until April 2007. (S-13 p. 18, S-45 p.7, 9-10.)
53. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of using context clues and inferences, and drawing conclusions as written in the IEP. Instead, the Student's teacher stated that the Student had demonstrated the skills called for in this objective, citing averages rather than scores on trials. (S-13 p. 19, S-45 p. 8.)
54. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student learned some

- idiomatic expressions, from that date until April 2007. However, there was insufficient data to show attainment of the objective of an average of 80% correct response over ten attempts involving ten idiomatic expressions, as required in the IEP objective. (S-13 p. 20, S-45 p.7, 9-10.)
55. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of correctly choosing meanings for idiomatic expressions in a multiple choice test, from that date until April 2007. (S-13 p. 20, S-45 p. 15, 16.)
  56. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of demonstrating understanding of story elements as written in the IEP, from that date until April 2007. Instead, the Student's teacher stated that the Student had demonstrated the skills called for in this objective. (S-13 p. 25, S-45 p. 11.)
  57. Progress monitoring data for the year following the January 2006 reading comprehension goals and objectives indicated that the Student did not attain the objective of demonstrating comprehension of "where and who questions" as written in the IEP, from that date until April 2007. Instead, the Student's teacher stated that the Student had demonstrated the skills called for in this objective. (S-13 p. 25, S-45 p. 12.)
  58. No progress data was collected on the January 2006 IEP reading comprehension goal and objectives regarding understanding multiple meanings. (S-13 p. 21, S-45.)
  59. The Student' percentile rank in reading comprehension dropped from October 2005 to May 2006 on the District's GRADE assessment. (P-97 p. 1-4.)
  60. In reading comprehension, the January 2007 PLAA section presented incomplete data on the Student's progress on his goals and objectives. It provided data indicating mastery of one objective related to the Student's first goal, but characterized it as compliance with the goal itself, without a presenting supporting data. Data were presented on one other objective related to this goal but in the form of an average score, not in the form set forth in the objective. Neither data nor anecdotal information were presented regarding attainment of any of the Student's four reading comprehension goals, nor was data presented regarding attainment of five reading comprehension objectives. (S-33 p. 7-8.)
  61. The January 2007 IEP provided no goals in reading comprehension. (S-33.)
  62. In the August 2007 NOREP, the District asserted that the Student needs specially designed instruction in reading comprehension. (S-56.)

63. The Student presently exhibits educational weaknesses in reading comprehension. (S-33, S-37, S-47 p. 10, 11.)

64. The Student failed tests requiring reading comprehension in English and other subjects. (NT 396-397, 1540-1543; P-70, 75-76.)

#### WRITTEN EXPRESSION

65. From 2002 to 2007, the Student's percentile rank in written expression dropped from the 19<sup>th</sup> percentile to the 13<sup>th</sup> percentile, as measured on the WIAT - II. (P-18 p. 19, P-24 p. 20.)

66. The January 2006 IEP Present Levels of Academic Achievement statement asserts that the Student has met the goal of his previous IEP in varying his sentence structures in written expression. (S-13.)

67. The January 2006 IEP Present Levels of Academic Achievement statement recognized that the Student had significant difficulty in written expression and that he had not generalized his progress in this skill to areas of coursework beyond the direct teaching he had received under the IEP. It found needs in the area of written expression. (S-13.)

68. The Student failed general education tests involving written expression, despite extraordinary support with rewriting exercises. (NT 110, 340-341.)

69. In the January 2006 IEP, the base line data in written expression in the PLAA statement were not used in formulating the IEP goals for these needs. (S-13.)

70. The January 2006 IEP continued provision of assistive technology. (P-13.)

71. Progress monitoring data for January 2006 to June 2006 regarding the January 2006 IEP written expression goals and objectives indicated that the Student did not attain the objective of utilizing graphic organizers for writing. (S-13 p. 23, S-45 p.18.)

72. Progress monitoring data for September 2006 to January 2007 regarding the January 2006 IEP written expression goals and objectives indicated that the Student attained the objective of utilizing graphic organizers for writing. (S-13 p. 23, S-45 p.18.)

73. Progress monitoring data for the year following the January 2006 written expression goals and objectives indicated that the Student attained the objective of using adjectives and descriptive phrases. (S-13 p. 23, S-45 p.18, 20.)

74. Progress monitoring data for the year following the January 2006 written expression goals and objectives indicated that the Student attained the objective of identifying and correcting run-on sentences. (S-13 p. 23, S-45 p.18, 20.)
75. Progress monitoring data for the year following the January 2006 written expression goals and objectives indicated that the Student attained the objective of proofreading and correcting his written work. (S-13 p. 23, S-45 p.18, 20.)
76. Progress monitoring data for the year following the January 2006 written expression goals and objectives indicated that the Student attained the objective of utilizing assistive technology at least once per week. (S-13 p. 24, S-45 p.19.)
77. No progress data was collected on the January 2006 IEP written expression goal regarding writing a multiple paragraph essay. (S-13 p. 23, S-45.)
78. No progress data was collected on the January 2006 IEP comprehension and written expression goal and objective regarding word retrieval. (S-13 p. 27, S-45.)
79. In February 2006, the District offered ESY services including one week of instruction in assistive technology, specifically the use of the AlphaSmart keyboard for written expression. (S-15 p. 3, S-16.)
80. In written expression, the January 2007 PLAA section presented no data on the Student's progress on his goals and objectives. (S-33 p. 7-8.)
81. The January 2007 PLAA section presented no data on the Student's progress on his goal and objective in word retrieval. (S-33 p. 7-8.)
82. The January 2007 IEP provided no goals in written expression, but continued provision of assistive technology. (S-33.)
83. In the August 2007 NOREP, the District asserted that the Student needs specially designed instruction in reading comprehension and written expression. (S-56.)
84. The Student presently exhibits educational weaknesses in written expression. (S-33, S-37, S-47 p. 10, 11.)

## ORAL EXPRESSION

85. From 2002 to 2007, the Student's percentile rank in oral expression dropped from the 30<sup>th</sup> percentile to the 27<sup>th</sup> percentile, as measured on the WIAT - II. (P-18 p. 21, P-24 p. 21.)

86. The January 2005 IEP did not identify or address any needs in oral expression. (S-8.)
87. The January 2006 IEP Present Levels of Academic Achievement statement recognized that the Student had difficulty with word retrieval in demanding moments, and that this made it difficult for the Student to start writing projects or to answer written questions in all his subjects. (S-13.)
88. The January 2006 IEP does not identify or address any needs in oral expression. (S-13.)
89. The January 2007 IEP provided no goals in oral expression. (S-33.)
90. The Student presently exhibits educational weaknesses in oral expression. (S-33, S-37, S-47 p. 10, 11.)

## ORGANIZATION

91. The January 2005 IEP Present Levels of Educational Performance statement set forth no base line performance measures in organization. (S-8.)
92. Progress monitoring data regarding organization indicated that the Student did not attain either the objective or goal in his January 2005 IEP, because he did not utilize organizational tools with the specified number of prompts. (S-8 p.17, S-13 p. 13, S-44 p. 17.)
93. The January 2006 IEP Present Levels of Academic Achievement statement recognized that the Student's organization skills were below expectations for his grade level. It found needs in the area of organization. (S-13.)
94. The January 2006 IEP Present Levels of Academic Achievement statement set forth base line performance measures for use of an assignment book and "travel cards" for self-organization. (S-13.)
95. Progress monitoring data for the year following the January 2006 organization goals and objectives provided no data on the Student's attainment of the objective of monitoring materials and assignments across all academic subjects. (S-13 p. 26, S-45 p.22, 23.)
96. Progress monitoring data for the year following the January 2006 organization goals and objectives indicated that the Student attained the objective regarding utilizing an assignment book and travel card. (S-13 p. 26, S-45 p.22, 23.)

97. In February 2006, the District found the Student eligible for ESY services in organization. It based this finding on the failure of the Student to make meaningful progress in his annual goals. (S-15 p. 3, S-16.)
98. In organization, the January 2007 PLAA section presented no data on the Student's progress on his goals and objectives. It did indicate 100% use of the assignment sheet and travel card with repeated prompting, but provided no data on the frequency of prompting as required in the goal and objectives. (S-33 p.7-8.)
99. The January 2007 IEP provided one new goal in organization. (S-33 .)
100. The Student presently exhibits educational weaknesses in organization. (S-33, S-37, S-47 p. 10, 11.)

#### BEHAVIOR, SOCIAL SKILLS AND LANGUAGE PRAGMATICS

101. The January 2005 IEP Present Levels of Educational Performance statement set forth no base line performance measures in social skills. (S-8.)
102. There was no progress monitoring data regarding the Student's progress in his social skills goals and objectives. (S-13 p. 13, S-44.)
103. The January 2006 IEP Present Levels of Academic Achievement statement asserts that the Student has met the goals of his previous IEP in two of his social skills goals. (S-13.)
104. The January 2006 IEP Present Levels of Academic Achievement statement recognized that the Student's social skills were below expectations for his grade level. It found needs in the area of social skills. (S-13.)
105. No progress data was collected on the January 2006 IEP behavior and social skills goals regarding understanding the reasons for school rules, participating in group activities, and requesting help when confused. (S-13 p. 28, S-45.)
106. No progress data was collected on the January 2006 IEP behavior and social skills goal regarding making mirror statements in group sessions; mirror statements were counted but not tabulated in contacts other than group sessions. (S-13 p. 29, S-45.)
107. The Student experienced significant behavioral issues and social skills problems in the period from January 2006 to January 2007. (S-45 p.27, 48-51, S-47 p. 11.)

108. Some regular education teachers did not comply with the Student's behavior plans. (NT 350-355, 38-381, 387, 1592-1602; P-28 p. 21.)

109. The January 2007 PLAA section presented no data on the Student's progress on his goal and objectives in responsible behavior. (S-33 p. 7-8.)

#### ADEQUACY OF OFFERED ESY FOR SUMMER 2007

110. In February 2007, the District found the Student eligible for ESY services of autistic support for four hours per week for two weeks. (S-36.)

111. The District offered ESY services four hours per week for four weeks in a proposed amended IEP in April 2007. (S-47 p. 23.)

112. In April 2007, the Parents notified the District that they had enrolled the Student in a private school for the summer, and requested reimbursement by the District. (S-48.)

113. From February to April 2007, the Parents had been present at IEP meetings where ESY was discussed, but there had not been adequate collaborative planning about the goals of the ESY services, nor was it clear what IEP was being used as guidance about the Student's needs. (NT 1438-1444, 1710-1711; S-38 p. 5, S-41, S-42, S-47.)

114. The Parents unilaterally placed the Student in the Summer Treatment Block of [redacted program], a private, residential summer program designed to remediate learning disabilities and licensed to use the Lindamood Bell approach for reading disabilities. Tuition was billed at over \$17,000.00, including diagnostic testing before and after the programming. (NT 444-446, 1438-1444; P-62, P-63.)

115. The Student attended for 6 ½ weeks, four hours per day. (P-62.)

#### APPROPRIATE PLACEMENT – 2007-2008 SCHOOL YEAR

116. Academy is a private boarding school in [town redacted, state redacted], accredited by the New England Association of Schools and Colleges. (NT 285, 291-292.)

117. The school is established exclusively as a college preparatory school to serve children who are considered to suffer from "nonverbal learning disorders," which the school defines as "an auditory learning style preference." Forty percent

of its students are diagnosed with Asperger's Disorder. It is not the school's mission to specialize in education children with Asperger's Disorder or autism. (NT 293, 295-301, 323-323.)

118. The school does not admit typical children, or educate its students with typical children. The student population is such that it is not possible to form a football team. (NT 324-326, 337.)

119. The school and its teachers are not certified or licensed by the state of [redacted]. (NT 327-328.)

120. The school does not adhere to the mandates of the IDEA. (NT 329.)

121. Tuition and boarding fee for the 2007-2008 school year are 65,800.00.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The District was and is obligated to provide the Student with a free and appropriate public education ("FAPE"), in accordance with an Individualized Education Plan reasonably calculated to enable the child to receive meaningful educational benefit. Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982). "The education provided must be sufficient to confer some educational benefit upon the handicapped child." L. E. v. Ramsey Bd. of Educ., 435 F.3d 384, 390 (3d Cir. 2006). Since the Parents here are challenging the provision of FAPE, they are the moving party and they bear the burden of persuasion in the administrative hearing. Schaffer v. Weast, 546 U.S. 49, 62 (2005). Since the District here seeks an order that its evaluation and offer of ES/ services were appropriate, it bears the burden off persuasion with regard to that issue. Ibid.

The IDEA requires the states to educate children with disabilities "with children who are not disabled" and this must be done "to the maximum extent appropriate ... ." 20 U.S.C. §1412(a)(5)(A). The intent of Congress was to "ensure, to the maximum extent possible, that children with disabilities are educated with children who are not disabled." Jonathan G. v. Lower Merion School District, 955 Fed. Supp. 413 (E.D. Pa. 1997). Each disabled child must be placed in the least restrictive environment that will provide him or her with meaningful educational benefit. T.R. v. Kingwood Twp. Board of Education, 205 F.3d 572 (3d Cir. 2000).

### **CREDIBILITY AND WEIGHT OF THE EVIDENCE**

#### **SCHOOL DISTRICT PSYCHOLOGIST**



The hearing officer finds that the testimony of the District's psychologist is not reliable, particularly as to her opinions on the ultimate factual questions in this case. The psychologist's demeanor evidenced exceptional emotional investment in defending her decisions in this matter, bias against identifying children for special education, and an overt hostility to due process procedures. She also contradicted herself repeatedly while under oath.

The psychologist's behaviors and body language evidenced strong emotions under the surface. The witness was overtly nervous. At one point the witness began scratching one arm vigorously with the fingernails. The witness constantly digressed from the direct answer to the question posed, and seemed to relish enhancing the description of her qualifications. The psychologist's demeanor changed with the subject matter, becoming more spontaneous and animated when discussing the crux of her decisions in this case: that it would be inappropriate to place the Student outside the general education setting, even part – time, because the Student would feel stigmatized by association with other students whom he regarded as “retards.”

The hearing officer concludes that the witness was personally invested in her own handling of the case. She felt personally slighted that the Parents had sought an independent evaluation. (NT 958-959; P- 28 p. 91-95.) This was the first time one of her evaluations had been questioned. (NT 960-961.) She repeatedly expressed personal frustration that the matter had been brought to due process. (NT 965-9 to 13) The hearing officer finds that the District psychologist's personal feelings impacted her professional judgment and consequently assigns substantially lower weight to the psychologist's findings and recommendations, as well as to her testimony.

The psychologist also took an adversarial stance, rather than the dispassionate and objective stance of an expert witness upon whose judgments a trier of fact can rely confidently. Repeatedly, the witness chose to argue and joust with the questioner on cross examination, sometimes contradicting herself, sometimes attempting to avoid answering the question. She repeatedly evidenced that this hearing was a personal matter with her, showing a personal stake in the outcome of this due process matter that substantially reduces any weight that would otherwise attach to her opinions.

The psychologist revealed a bias against identifying children as children with disabilities under the IDEA. Repeatedly, the psychologist expressed the opinion that identifying a student for special education can be stigmatizing and therefore harmful. (NT 962; P-28 p. 95.) The psychologist also revealed her hostility to due process, opining that only the lawyers benefit from due process, and that the student would not benefit.

The witness contradicted herself repeatedly. When challenged about an unusually lengthy and personal email she had written to the parents, (P-29 p. 91-95), the psychologist seemed to indicate that she was influenced by medications at the time she wrote the email, then retracted that inference, indicating that she had been “joking” when she made the statement. (NT 956-985; P-28.)

The influence of the psychologist's personalization of this situation extends to the evaluation reports that she wrote. The psychologist mischaracterized a Compliance Officer's findings in her November 2006 ER, by suggesting that the Officer's recommendations supported the retrenchment she was recommending there. While the Officer's report had criticized both the prevailing ER and IEP at the time of the investigation, it said nothing about cutting back on goals and program modifications, as the ER implied. Rather, it suggested a reevaluation solely for the purpose of adding an OT evaluation that had been omitted inappropriately. (S-19 p. 7, S-29 p. 15.)<sup>1</sup> Consequently, the hearing officer reads the ER's in this matter with caution as to the assertions of fact contained therein. The psychologist chose to measure achievement through two instruments over time – the Wechsler Individual Achievement Test, Second Edition (WIAT II) in 2004, (NT 729-7), and the Woodcock-Johnson Achievement Test, (NT 736-15), in 2006. The WIAT – II had detected evidence of deficient functioning in reading comprehension, written expression and organization. The psychologist's explanation for changing test instruments was sparse: she wanted to measure "different components of achievement." (NT 736-13.) This methodology did not permit the psychologist to measure achievement over time on the same test measuring the same skills.

Woodcock Johnson yielded scores that directly contradicted those obtained in the WIAT – II, obtained previously. (FF 7-11.) Yet, the psychologist made no reference to the previous scores, and made no effort to explain these substantial differences in achievement test results. This choice of instruments, in light of the other facts relating to credibility and weight in this matter, raises doubt in the hearing officer's mind as to the comprehensiveness and reliability of the District's ER.

## INDEPENDENT PSYCHOLOGIST

The hearing officer finds gives weight to corroborated parts of the Parents' expert evaluator's testimony, but gives less weight to her discrepancy analysis, her interpretations and her opinions, due to questions about her credibility. The Appeals panel in In re Educational Assignment of G.T., Spec. Educ. Op. 1808 at 4, 12 (March 19, 2007), found that this expert had provided reports in that and other cases that raised doubts about her objectivity. Moreover, they found that the expert had "cherry-picked" her data to bolster the Parents' case in that matter. They also criticized the expert for

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<sup>1</sup> The BSE report criticized the ER for failing to include a requested Occupational Therapy evaluation; however, the psychologist characterized it as having suggested that the evaluation was "for the development of a new IEP to address [the Student's] school related needs for specially designed instruction." It was implied that the Officer had found the IEP too long, a false implication that the learning disabilities coordinator erroneously accepted as fact. (NT 1402.). On the contrary, the Officer's report made no mention of the IEP being too long and the only suggestion was to reevaluate to add an OT evaluation. (S-19.)

criticizing a school district without obtaining any data from the district itself through teacher interviews, and that she had skewed the information she reviewed by requesting behavior inventories for the Parents, but not from the teachers.

These findings are applicable to the credibility determination in this case. To a finder of fact, an expert witness's reliability is of the essence, and anything in the expert's history that casts doubt on that reliability should be weighed. Here, the hearing officer takes notice of a published Appeals Panel decision finding that the witness was unreliable. While the hearing officer makes his own findings regarding credibility in this matter, the Appeals Panel decision is an appropriate fact to take into consideration.

The Panel's decision does not call into question directly the expert's reliability in the mechanics of her testing and scoring of instruments. In this matter, moreover, the expert's objective achievement scores in 2002 (long before any questions were raised as to the expert's reliability) were corroborated over several years of District testing and documents acknowledging the existence of serious functioning deficits. (FF 7-9.) Nor was there serious question about the scores she obtained on the WIATT II in 2007, which even the District's school psychologist accepted, (NT 904-906, 940-943, 944-945; P-24 p. 2, P-18 p. 4), even though she attempted to impeach the independent expert's scoring in other areas. (NT 807-821.) Therefore, weighing the evidence of record as a whole, in light of the concerns raised in G.T., the hearing officer will rely upon the expert's scores in the WISC-II and WIAT- II.

However, the expert's interpretation of her scores, particularly her use of discrepancy analysis, is placed in doubt by the Panel's decision. Under these circumstances, the hearing officer gives less weight to the discrepancy analysis and other opinions expressed by the expert. This finding is buttressed by the fact that the expert sought little data from the District concerning the Student's behavior in school. (NT 237-238, 261-263.) She sent informal questionnaires to teachers, which asked how the Student performed on his worst day and best day, without any information about how often the "worst" days occurred. Her report reflected the "worst day" reports, without indicating their frequency. (NT 238-242, 248-249; P-42.) Thus, the anecdotal information in her report was potentially skewed.

### LEARNING DISABILITY

Much of the hearing was devoted to a contest between the psychologists as to whether or not the Student should have been identified as learning disabled. The hearing officer does not deem it essential to resolve this essentially legal controversy, especially where the District has identified the Student as suffering from Asperger's Disorder on the autistic spectrum, and for years has recognized and provided specially designed instruction for deficits in reading comprehension and written expression and other needs as manifestations of this disability. (FF 5-14, 25, 36, 41.)

The important question is whether or not the District has adequately addressed all of the Student's educational needs. The battle of experts in this matter is most pertinent to the latter issue, because the District withdrew specially designed instruction that had been intended to address the needs previously addressed through the IEP. (FF 36, 37, 38.)

In 2002, the Parents' independent psychologist had identified substantial needs in three important areas of learning: reading comprehension, written expression and oral expression. (FF 7-9.) The District addressed these needs with goals and specially designed instruction from 2001 to 2007, when it proposed to delete the goals and address any residual needs in the general education classroom through teaching accommodations. (FF 10-14, 25, 36, 37, 38, 39, 40.) In 2007, the same independent psychologist retested the Student in achievement, and found a substantial drop in the Student's percentile ranking in reading comprehension and a decline of concern in written expression. (FF 45, 65, 85.) On this adequate basis, the independent psychologist credibly concluded that the Student had lost ground in the area of reading comprehension. (FF 45.) The credibility of this conclusion is bolstered by the District's own findings. The District repeatedly concluded that the Student had functioning deficits in reading comprehension, and the record shows preponderantly that the Student made no meaningful progress in this area. (FF 11, 14, 25, 46-48, 59, 60, 62.)

The District's program for this Student in the 2005-2006 and 2006-2007 school years was poorly designed and poorly executed. It was a mainstreamed program, coordinated by a learning support teacher who had a high caseload. (FF 23.) The IEPs did not proceed from clear baseline data. (FF 20, 60, 69, 80, 81, 91, 105, 106, 109.) Progress monitoring was not systematic. (FF 46-58, 60, 71-81, 92-98, 102-106.) Regarding several of these goals and objectives, progress monitoring reports indicate that the general education teachers believed that data collection was unnecessary because the Student was performing well in their classes and succeeding in their curriculum based assessments. (FF 46-58, 60, 71-81, 92-98, 102-106.) In some of these instances, the teachers plainly misunderstood the skill to be addressed by the objective or goal. (FF 46-58, 60, 71-81, 92-98, 102-106.) In several instances, progress data were not even available, or were not counted in the form specified in the IEP. (FF 46-58, 60, 71-81, 92-98, 102-106.) In these cases, the lack of progress monitoring constituted a de facto alteration of the IEP outside the parental participation and quality standards specified in the IDEA, based upon the judgments of general education teachers who are by definition least qualified to alter an IEP. These data were deficient due to non-measurement of entire areas, (FF 58, 61, 80, 81, 82, 98, 105, 106.), and due to measurement that did not conform to the progress monitoring specifications of the IEP. (FF 51, 53, 54, 56, 57, 60.) In some cases, the data show that general education teachers failed to provide the interventions prescribed in the IEP or to provide a sufficient number of repetitions of evaluative trials – this was not simply a matter of failure to collect or tabulate data. (FF 32, 53, 56, 57, 60, 98.) cf. in In re Educational Assignment of J.H., Spec. Educ. Op. 1651 at 4 (September 30, 2005).

The District's psychologist found no learning disability and no need for specially designed instruction in these areas. (FF 36.) She argued that the determination of learning disability cannot be based upon one norm referenced test alone, but must be informed by classroom observation, teacher ratings, curriculum based assessments and test results. (NT 905-20 to 907-16.) She found that the latter subjective factors militated against following the independent psychologist's testing scores. (NT 781-4 to 25.)

The Student's grades are unreliable evidence of progress in reading comprehension. The coordinator of the Student's program provided answers to test questions to the Student in advance of a significant number of tests. (FF 42.) While the hearing officer makes no judgment about the educational validity of this practice, it is clear that the practice affected the reliability of the grades, because it gave the Student an opportunity to compensate for his poor reading comprehension by memorizing the answers that were given to him.

The District also points to the Student's PSSA scores as proof of his attainment in reading comprehension and writing. While these scores were in the proficient range, the tests were taken with supports, and there was substantial preparation. (FF 12, 13.) Without questioning the merits of these techniques, the hearing officer finds that they are not reliable enough as measures of reading comprehension to outweigh the evidence in the record indicating that the Student continues to have a severe deficit in reading comprehension.

The hearing officer does not credit the assertions (some of which are to the contrary) in the PLAA section of the August 2007 IEP, which was offered but not accepted by the Parents. In light of the above credibility concerns, the hearing officer finds that these unsupported assertions should not be given weight, because they were prepared in obvious anticipation of litigation, with the participation of a psychologist who was personally invested in the outcome to the point of reduced credibility.

The District also argues that any discrepancy does not demand identification because the Student responded to intervention and was able with support to function well in the general education setting. This is contradicted by the weight of the evidence of record, including evidence that the Student had yet to learn to generalize skills that he learned in one setting to all other settings. (NT 782-23 to 25, 785-2 to 4.)

#### APPROPRIATENESS OF NOVEMBER 2006 EVALUATION

The hearing officer finds no cogent reason for the District's decision in November 2006 to eliminate the Student's goals in reading comprehension, written expression and oral expression, while simultaneously maintaining an informal system of supports and monitoring in the same areas of educational need. The net effect of this was to simply bypass the requirements of the law for this identified Student. Informal goals were recognized. Informal monitoring was attempted. Informal "supports" were instituted, and the regular education teachers were directed to implement them. (FF 36, 37, 38.) The

District's special education teacher monitored the process. (FF 23.) The District thus implemented some of the mechanisms required by IDEA, but not within its auspices. The effect of this was to free the District of the quality assurance and procedural requirements of the IDEA, and to remove the District's program from the scrutiny of the parents and of the due process system that are guaranteed by the IDEA.

## READING COMPREHENSION

In reading comprehension, the Student did not make meaningful educational progress in the 2005-2006 and 2006-2007 school years. His percentile rank in reading comprehension from 2002 until March 2007 fell 21 points. (FF 45.) IEP goals were not based upon a baseline. (FF 21, 22, 49, 60.) Progress monitoring was not appropriately implemented. (FF 51-58.) He attained only one objective of his January 2006 IEP, based upon progress data. (FF 50.) He failed to attain eight objectives as defined in the January 2006 IEP. (FF 51-57.) In two of these there was no data or the data indicated no progress. (FF 56, 58.) In four, the data indicated some progress, but the data did not measure the criteria established by the IEP. (FF 51, 53, 54, 56.) This disability interfered with the Student's performance across the board in school; his adequate grades were made possible only with accommodation provided by his teachers and special education coordinator. (FF 15, 17, 25, 27, 37, 40.)

## WRITTEN EXPRESSION

Regarding written expression, the District did not provide a reasonable opportunity for meaningful educational advancement in the 2005-2006 school year. Data in the second half of that school year indicate continuing substantial need. (FF 71.)

However, the hearing officer finds that the Student in fact did make significant educational gains in written expression in the beginning of the 2006-2007 school year. (FF 72, 76.) Although the Student's norm referenced scores fell somewhat from 2002 to 2007, taking into account the confidence interval, this modest drop may not indicate anything less than five years' gain in five years. (FF 65.) Progress monitoring data indicated that the Student made gains from September 2006 to January 2007. Thus, in written expression, the Student received a FAPE in the period of September 2006 to January 2007.

The January 2007 IEP did not identify written expression as a need, and offered no goals or objectives in written expression. (FF 80-82.) There was no systematic progress monitoring. (FF 80-82.) The record indicates preponderantly that there was no meaningful progress after that date, and the District failed to provide FAPE from January 2007 until the date of the first hearing in this matter.<sup>2</sup>

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<sup>2</sup> Counsel stipulated that the scope of the hearing would extend from the beginning of the 2005-2006 school year to the first day of hearings. (NT 42-43.)

Despite these flaws in the program for written expression, the District continued to make assistive technology available to the Student to address his handwriting; the Parents failed to prove that the District was in default in this regard. (FF 17, 19, 26, 27, 36, 70, 79, 94.) Although the Parent desired a full Occupational Therapy assessment, the District performed a screening instead and found no cause to suspect the need for more complete testing. (NT 1736-1740.) The Parents failed to present sufficient evidence to rebut the inference that the District satisfied its obligations as to OT evaluation.<sup>3</sup>

Therefore, compensatory education in written expression will be awarded for the 2005-2006 school year and from January 2007 to September 25, 2007.

## ORAL EXPRESSION

Although the Parents' expert witness found weaknesses in the Student's oral expression, her own norm referenced testing showed significant yearly gains, since the Student's percentile rank fell very little over the five years measured by the expert's testing with the WIAT II. (FF 85-90.) The record does not disclose substantial subjective concerns with the Student's oral expression *per se*. While it was recognized as a weakness, the Parents have not presented preponderant evidence that this weakness interfered with the Student's educational advancement. Therefore, no compensatory education will be awarded regarding this need.

## BEHAVIOR AND SOCIAL SKILLS

Regarding behavior and social skills, the IEP goals did not proceed from baseline data. (FF 101-109.) By January 2006, the District found that the Student's behavior and social skills were below grade level expectations. The goals and objectives of the January 2006 IEP were not monitored. The Student experienced continuing behavioral problems and was dismissed from some of his classes due to his behavior. (FF 101-109.) What progress monitoring data there is indicates that substantial progress has not been made. (S-45 p.27, 48-51.) There are anecdotal indications of progress, but there is no systematic, empirical data to put substance on the bones of the subjective statements of District staff in this regard. And this is due to a failure to implement the IEP's requirements for progress monitoring. Therefore, the hearing officer finds that the District failed to provide the Student with meaningful educational benefit in the area of behavior and social skills from September 2005 to September 25, 2007.

## ORGANIZATION

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<sup>3</sup> The Parents argued that this hearing officer should order OT evaluation because the District had been ordered to do so previously by the Bureau of Special Education. (P-51.) The hearing officer does not find it within his jurisdiction to enforce a BSE order, and declines to do so.

The preponderance of the evidence shows that the Student did not receive meaningful educational benefit from September 2005 to September 2007. The January 2005 IEP Present Levels of Educational Performance statement set forth no base line performance measures in organization. (FF 91-100.) The Student did not attain his goal and objective in 2005. (FF 92.) By January 2006, the District acknowledged that the Student's achievement in organization was below grade level expectations. (FF 93.) The Student attained one of his two goals, but that goal was achieved with an extraordinary level of prompting; teachers almost literally took the Student's hand to make him comply with two daily logs addressing his self organization skills. (FF 96.) In February 2006, the District found the Student eligible for ESY services in organization. It based this finding on the failure of the Student to make meaningful progress in his annual goals. (S-15 p. 3, S-16.) The January 2007 IEP contained no data on compliance, and the hearing officer concludes that this was because there was no intelligible data. (FF 98.) By January 2007, the District was again offering a new goal in organization in its new IEP proposal. (S-33 .)

#### ADEQUACY OF OFFERED ESY FOR SUMMER 2007; REIMBURSEMENT FOR ALPS ROGRAM

In accord with its decision in November 2006 to pare back the special education services available to the Student in the District in 2007, the District offered a minimal ESY program for the summer of 2007. (FF 110.) Given the Student's persistent reading comprehension, written expression and social problems, the level of service – two hours over two weeks, increased to four hours per week for four weeks – was clearly inadequate. Moreover, the ESY services would not have addressed the Student's needs in reading comprehension and written expression. There was no issue about the Student's eligibility for ESY services; rather, the question in this matter is the appropriate extent of services, and the appropriate remedy for failure to provide adequate services. (FF 111-113.)

As to the extent of appropriate ESY services, the Special Education Appeals Panel has established an analysis for determining the school districts' obligations to provide ESY services:

[T]he applicable standard for ESY, once eligibility is established, is whether the services are necessary for the individual child's FAPE, as established by the rest of the child's IEP. In other words, analogous to the subordinate, necessity-based nature of related services, the key question is whether the extent, in terms of duration and scope, of the proposed ESY services is required to ensure the meaningful benefit of the IEP. ... [T]he component criteria include 1) whether the District designed the ESY individually, and 2) what is the child's severity on the predominantly regression-recoupment eligibility, with both criteria in relation to the child's IEP.

In re Educational Assignment of K.R., Spec. Educ. Op. 1506 at 7 (July26, 2004).



In determining what would be an appropriate compensatory education award for denial of ESY, the Panel in In re Educational Assignment of A.A., Spec. Educ. Op. 1713 at 4, 12 (March 19, 2007), imported the FAPE standard, implicitly reasoning that what is necessary to FAPE depends upon the definition of FAPE, and that definition requires the IEP to address all educational needs of the child. The Panel held that a district's offer that was based upon a conversation between teachers, where the underlying IEP did not address all educational needs of the child, was inadequate. Consequently, the Panel affirmed an order for compensatory education.

The facts in this case similarly compel the conclusion that the District's offer was inadequate, requiring compensatory education. In early 2007, there was confusion within the IEP team as to the applicable IEP, and there were several offered IEP documents and meetings to discuss various aspects of the Student's programming. However, the background of these discussions was the District's decision to abandon special education services in several key areas of need, as discussed above, including reading comprehension and written expression.

Under these circumstances, the ESY offer was not reasonably calibrated to address all areas in which summer programming would be necessary to ensure the provision of meaningful educational benefit. The offer plainly was based upon, not the prevailing IEP, but the IEP offered but not accepted in January 2007. That document was inadequate in that it did not address the Student's needs in reading comprehension and written expression. While there were meetings, there were not focused discussions on the ESY planning. The hearing officer finds, moreover, that it was necessary that the ESY address reading comprehension and written expression, because the Student's disability is severe, 22 Pa. Code Section 14.132(2)(vii), and the Student was far behind, 22 Pa. Code Section 14.132(4).

The Parents unilaterally placed the Student in the Summer Treatment Block of Program, a private, residential summer program designed to remediate learning disabilities and licensed to use the Lindamood Bell approach for reading disabilities. (FF 114-115.) The hearing officer finds that it was necessary to place the Student in ALPS in order to provide him with FAPE for the 2007-2008 school year. It utilized research based LindaMood Bell methodology for the purpose of remediation, which districts are not required to provide in ESY programs unless it is necessary to the provision of FAPE. 22 Pa. Code Section 14.132(4). In this matter, the hearing officer finds that it was necessary, and will award compensatory education for reading comprehension from 2005 to 2007. Although, there was scant evidence of the reliability of this program, it was established credibly that the program utilizes LindaMood Bell training methods, which are research based. There was no evidence to the contrary. Thus, the Parents have proved by a preponderance of evidence that the placement was necessary and reimbursement will be awarded.

TUITION REIMBURSEMENT –ACADEMY

Here, the hearing officer has found that the District's offered program was inappropriate. The Parents argue that this finding compels a conclusion that the Student should be placed in a private boarding school at the District's expense. They propose Academy, a private "college preparatory" school exclusively for children thought to be suffering from "nonverbal learning disorder." (FF 116-117.) The school is highly restrictive; it is self contained and offers no inclusion with typical students. (FF 118.) Nothing in the record credibly attests to the qualifications of its teachers. (FF 119.) The school does not follow the substance of the procedures of the IDEA. (FF 120.)

The Parents' expert testified that the school is appropriate for the Student. This opinion was first propounded in testimony. (NT 205-209.) The hearing officer gives little weight to the Parents' expert's recommendation of the School. It was really a referral made tentatively, not a carefully considered endorsement of the quality of the program. From the expert's testimony it appears that the expert based her referral largely upon reputation and the fact that she had visited the facility once, before it opened. (NT 206.) However, on cross examination, it appeared that the expert had not investigated the School's curriculum and its congruence with [redacted state's] standards, had not toured the facility, had not observed programming. (NT 225-22 to 227-9.)

The Parents have not satisfied their burden to persuade this hearing officer by a preponderance of evidence that the Student needs placement at Academy in order to receive meaningful educational benefit. The Student does not need a boarding school environment for this purpose. The school is self contained and highly restrictive, and it does not offer football, which the Student likes and in which he participates with typical peers. (NT 60.) There was insufficient evidence that the staff at Academy meet minimum standards applicable to programs for teaching students with Asperger's disorder.

The question of appropriate relief remains.

#### REIMBURSEMENT FOR IEE AND INDEPENDENT EXPERT'S PARTICIPATION IN IEP MEETINGS

Parents are entitled to an independent educational evaluation if they disagree with the district's evaluation. 34 C.F.R. §502(b)(1). For a parent-initiated evaluation, parents are entitled to reimbursement if a hearing officer finds the district's evaluation inappropriate,. In the Matter of the Educational Assignment of J.B., Spec. Ed. Opinion 1341 (April 2003).

The hearing officer finds that the November 2006 evaluation was inappropriate, because it failed to address all of the Student's needs for special education. Conversely, the Parents' independent evaluation of March 2, 2007 was appropriate, because it identified the Student's continuing, substantial needs in reading comprehension, written expression and social skills. Therefore, reimbursement will be ordered for the evaluation dated March 2, 2007. This order will not extend to additional supplemental evaluations and participation in program planning, because the Parents obtained them well after the

November 2006 evaluation, and the record is insufficient that these services were obtained as a remedy for the inadequacies of the November 2006 ER itself.

## COMPENSATORY EDUCATION

Compensatory education is an appropriate remedy where a district has failed to provide a student with FAPE under the IDEA. M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996); Lester H. v. Gilhool, 916 F.2d 865 (3<sup>rd</sup> Cir. 1990), cert. denied, 488 U.S. 923 (1991). Where an IEP confers only trivial or de minimis educational benefit, the student has been denied FAPE and is entitled to compensatory education. M.C., supra. The period of compensatory education is equal to the period of deprivation, and accrues when the District knows, or has reason to know, that the student is not receiving an appropriate education. Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

The hearing officer will award compensatory education for the failure of the District to provide adequate services in reading comprehension, written expression, behavior management and social skills as set forth above. The Parents have requested three hours per school day and the hearing officer finds that this amount is equitable. The award will not be reduced for the time needed to discover that the District's program was inadequate. The January 2005 IEP was facially inadequate because it did not proceed from baseline data and its goals and objectives were not measurable. The District should have known this and corrected it before the beginning of the 2005-2006 school year.

The award will be reduced by one hour per school day for the time in which the Student did receive FAPE in written expression.

## **ORDER**

1. In the 2005 to 2006 school year, the District failed to offer or provide educational services to the Student that were reasonably calculated to provide meaningful educational benefit.
2. The reevaluation of November 2006 was inappropriate because it failed to address adequately all of the Student's educational needs.
3. In the 2006 to 2007 school year, and from the first day of the 2007-2008 school year until September 25, 2007, the District failed to offer or provide educational services to the Student that were reasonably calculated to provide meaningful educational benefit.

4. The District failed to offer ESY services for the summer of 2007 that were necessary to the provision of a free appropriate public education.
5. The District will reimburse the Parents for the cost of the Student's participation in the summer program at [redacted].
6. The District will reimburse the Parents for the cost of the March 7, 2007 Independent Educational Evaluation.
7. The District will provide compensatory education to the Student in the amount of three hours per day for all school days from the first day of school in the 2005-2006 school year until September 25, 2007. This amount will be reduced by one hour per school day for every school day from the beginning of the 2006-2007 school year until January 1, 2007.
8. The compensatory education ordered above shall not be used in place of services that are offered in the current IEP or any future IEP. The form of the services shall be decided by the Parent, and may include any appropriate developmental, remedial, or enriching instruction that furthers the goals of the Student's current or future IEP. The services may be used after school, on weekends, or during the summer, and may be used after the Student reaches 21 years of age. The services may be used hourly or in blocks of hours. The costs to the District of providing the awarded hours of compensatory education shall not exceed the full cost of the services that were denied. Full costs are the salaries and fringe benefits that would have been paid to the actual professionals who should have provided the District services and the actual costs for salaries, tuition and transportation for any contracted services. The District has the right to challenge the reasonableness of the hourly cost of the services.
9. The District will convene an IEP team meeting within 15 days to plan an educational program and IEP for the Student that is located in a regular education school building. The IEP shall provide accessible learning support as needed, with appropriately modified curriculum, and appropriately trained staff.
10. The IEP shall further provide for a learning support teacher who is experienced and properly qualified to teach children with Asperger's disorder.
11. The IEP shall provide research-based goals, program modifications, specially designed instruction and supportive and related services, to address the Student's educational needs in reading comprehension and written expression.
12. The IEP shall include an appropriate, research-based behavior support plan and appropriate, research-based goals, program modifications, specially designed instruction and supportive and related services to address the Student's educational needs in social skills, including pragmatic speech and language.

13. The IEP shall contain appropriate, research-based goals, program modifications, specially designed instruction and supportive and related services to address the Student's educational needs in organization of himself and his materials.
14. The IEP shall address appropriate modification of general education curricula.

*William F. Culleton, Jr. Esq.*

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WILLIAM F. CULLETON, JR., ESQ.  
HEARING OFFICER

January 26, 2007