Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: LC

Date of Birth: xx/xx/xx

Dates of Hearing:
February 25, 2008, March 12, 2008, April 7, 2008
CLOSED HEARING
ODR #7783/06-07 AS

Parties to the Hearing:	Representative:
Ms.	Robert B. Gidding, Esquire 2 Bala Plaza, Suite 300 Bala Cynwyd, PA 19004
North Penn School District 401 East Hancock Street Lansdale, PA 19446-3961	Jane M. Williams, Esquire Sweet, Stevens, Katz & Williams 331 East Butler Avenue P.O. Box 5069 New Britain, PA 18901
Date Record Closed:	April 23, 2008
Date of Decision:	May 8, 2008
Hearing Officer:	William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a xx year old resident of the North Penn School District (District). (NT 13; S-5, S-6, S-7.) The Student is identified with emotional disturbance and specific learning disability. (NT 13.) The Parent requested due process to determine the appropriateness of the Student's placement and program from January 3, 2007 to the last day of school in 2007. The Parent asserted that the placement in a learning support classroom was not reasonably calculated to provide the Student with adequate support for her emotional disturbance, and that the IEP offered to the Parent in January 2007, as amended in February 2007, (S-7, S-9), was inadequate. The District asserted that it had offered an adequate program and placement based upon the information available to it at the time.

The Student was placed in a residential mental health program and attended a public school program out of the District until December 2006. (NT 168- 169.) The Student re-registered in the District on January 2, 2007. (S-6.) On January 10, 2007, the District offered to place the Student in a full time learning support class in its [redacted] High School (High School). (S-6, S-7, S-8.) In June 2007, the Parent, through counsel, requested due process. (S-22.) The hearing took place in three sessions, from February 25, 2008 until April 7, 2008. By request of the Parents' counsel, the parties submitted written summations, and the record closed upon receipt of the summations on April 23, 2008.

ISSUES

1. For the period January 10, 2007 to the end of the 2006-2007 school year, did the District offer an appropriate program and placement in light of the Student's serious emotional disturbance?

2. Should the hearing officer award compensatory education for the period January 10, 2007 to the end of the 2006-2007 school year?

FINDINGS OF FACT

1. From February 2006 to December 2006, the Student was placed in a full time emotional support classroom operated by the [redacted] Intermediate Unit and located in a public high school. The Student's program included a one-to-one aide and the Student was in a supervised living situation outside the home. (NT 168-169, 219-220, S-3.)

2. The Student received all academic subjects in a self-contained emotional support classroom, and was mainstreamed increasingly for special courses. (NT 294-297; S-3, P-22.)

3. The Parent expressed a desire for more inclusive education, and in October 2006, IU increased the Student's time in general education in an amended IEP. (NT 294-297; S-3, P-22.)

4. The Student was successful in the placement offered by IU 13. (S-9 p.10.)

5. The Parent was in possession of a document entitled Discharge Instructions, which contained a history of the Student's medical and educational placements in the 2006-2007 school year. The Parent did not provide this document to the District. (NT 253-256, 298; P-7.)

6. The Parent repeatedly restricted the District's access to the Student's psychiatric history and present information about her psychiatric functioning. (NT 464-465; S-4 p. 1.)

7. The Discharge Instructions indicated that the educational placement was intended to be changed to increase the number of mainstream classes attended, and that the Student achieved stability and safe behavior while in supervised living. (P-7.)

8. Prior to the Student's discharge and return home in December 2006, the District's Director of Special Education reviewed a psychological evaluation dated May 2006, a reevaluation report from IU dated May

2006, and the IEP offered by IU and accepted by the Parent dated June 2006. (NT 291-294; S-1, S-2, S-3.)

9. These documents disclosed that Student's history of major mental disorder with multiple prior hospitalizations, her symptoms including distortions and disorganization of thoughts, her Specific Learning Disability, and the services she had received while under the jurisdiction of IU, including the need for redirection and prompting, abbreviated school days, behavior management and a one-to one aide. These documents also indicated that the Student was able to be placed in some mainstreamed classes. (S-1 through S-3.)

10. In November and December 2006, the District sought three private school placements for the Student. The Supervisor notified the Parent orally that she had received the private school's acceptance in December. The Student was not placed because the Parent did not want the Student placed at the particular private school that accepted the Student at that time. (NT 173-175, 301-304; S-4.)

11. In January 2007, the Parent re-registered the Student with the District. (S-6.)

12. In January 2007, the District offered placement in a full time learning support class in the High School, with a behavior support plan and a one-to-one aide. (NT 223; S-7.)

13. At an IEP meeting on January 10, 2007, the Student was present and expressed a desire not to return to the High School. Mental health professionals at the meeting encouraged the Student to begin school at the High School. (NT 235-238; S-9 p. 10.)

14. The Parent objected to the IEP offered in January 2007 on grounds that the Student was placed in a full time learning support classroom rather than an emotional support classroom. (NT 208-222.)

15. The Parent declined the District's offer because the Student's private psychiatrist at [redacted]

Hospital advised her that the placement would be dangerous. (NT 177-180.)

16. In February 2007, the District convened a second IEP team meeting at the Parent's request, to discuss her concerns. The IEP was amended to provide additional teaching accommodations; lunch outside the regular lunchroom in a special education classroom; leaving class five minutes early to allow for less stressful transition from one classroom to another; and a reduced school day. (NT 227- 239; S-9.)

17. As amended in February 2007, the January 2007 IEP offered a program and placement that addressed the Student's needs for emotional support by providing a small, self contained classroom setting for all classes except specials, on-to-one attendant for prompting and redirecting, a behavior support plan, specially designed instruction and program modifications that addressed the Student's needs with regard to attention, learning disabilities and behavioral needs. The program would be implemented through staff trained in crisis intervention and prevention and the symptoms of mental illness. (NT 452-456, 491-492, 495-497; S-9.)

18. Symptoms of schizophrenia are rare at the High School and students with such symptoms usually are placed at private schools. (NT 456.)

19. On January 25, 2007, the Parent obtained a note from a private psychiatrist calling for "homebound tutoring." The Parent presented this to the District on February 23, 2007, but the IEP team was not aware of it at the time of the IEP team meeting held on the same day. (NT181-185, 241-245; S-11.)

20. The District concluded that this note was insufficient to permit homebound instruction, based upon District policies. The District requested further information by a letter dated February 26, 2007. (S-12, S-39.)

21. The Parent kept the Student home due to her own fear regarding safety as well as the advice of the two psychiatrists. (NT 186-187.)

22. On March 8, 2007, the Parent provided the District with a District form for homebound instruction, filled out by the Student's psychiatrist at [Hospital]. The note recommended "placement in an emotionally supportive and academically appropriate class." (NT 187-189; S-13.)

23. On April 4, the Parent presented to the District a one page report of a second psychiatrist, the Student's psychiatrist at [Hospital]. The report recommended "a more structured class and school setting with full time emotional support." (NT 190-191; P-2.)

24. At a meeting on April 4, 2007, the Parent agreed to obtain a full report from the Student's psychiatrist at [Hospital] and the District agreed to consider it in reviewing and amending the Student's IEP. (NT 245-247; S-16.)

25. The Parent provided an additional report from the Student's psychiatrist at [Hospital] in July 2007. (NT 247-251; S-20, S-21.)

DISCUSSION AND CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations: the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact.[1] The United States Supreme Court has addressed this issue in the case of an administrative hearing challenging a special education IEP. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). There, the Court held that the IDEA does not alter the traditional rule that allocates the burden of persuasion to the party that requests relief from the tribunal. The Court noted that the burden of persuasion determines the outcome only where the evidence is closely balanced, which the Court termed "equipoise" – that is, where neither party

[1] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

has introduced a preponderance of evidence[2] to support its contentions. In such unusual circumstances, the burden of persuasion provides the rule for decision, and the party with the burden of persuasion will lose. On the other hand, whenever the evidence is clearly preponderant in favor of one party, that party will prevail.

FREE APPROPRIATE PUBLIC EDUCATION

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 (IEP) 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). Under the IDEA, an IEP must include goals, "including academic and functional goals designed to … meet each of the child's other educational needs that result from the child's disability … ." 34 C.F.R.§ 200.320(a). See, M.C. v. Central Regional School District, 81 F. 3d 389, 393-394 (3rd Cir. 1996). These needs include behavioral, social and emotional skills. Ibid.

In determining the appropriateness of an IEP, the legal standard is whether or not the IEP was "reasonably calculated" to provide meaningful educational benefit. Board of Education v. Rowley, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed. 2d 690 (1982); Ridgewood Board of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. (1999). In making this determination, the IEP is to be judged as of the time it was written, not in hindsight. Roland M. v. Concord School Committee, 910 F.2d 983, 992 (1st Cir. 1990); cert. den., 499 U.S. 912, 111 S.Ct. 1122, 133 L.Ed.2d 230 (1991); Fuhrman v. East Hanover Board of Educ., 993 F.2d 1031, 1040 (3d Cir. 1993).

[2] A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810 (please note that the Manual was promulgated before the Supreme Court ruled in Schaffer v. Weast, at a time when the Local Educational Agency had the burden of persuasion in Pennsylvania and elsewhere in the federal Third Judicial Circuit. Thus, the first sentence of section 810, indicating that the LEA has the burden in most cases, is outdated and was effectively overturned by Schaffer).

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).

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 (3rd Cir. 1996); Lester H. v. Gilhool, 916 F.2d 865 (3rd 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 (3rd Cir. 1999).

OFFER OF LEARNING SUPPORT CLASSROOM WITHIN THE PUBLIC HIGH SCHOOL

The District's Supervisor of Special Education made it clear that, in light of the Student's fragility due to her major mental illness, it would be better to place her in a small school setting, rather than the High School, where she would come into contact with thousands of other students every day. (FF 10.) The District applied to three private schools in December 2006, before the Student re-enrolled in the District. (FF 10-11.) Two of these declined to accept the Student, but one accepted. (FF 10.) The Student was not placed in this one remaining school. (FF 12.)

The Parent suggests that the District's search for private placement proves that any less restrictive placement - such as that offered to the Student in the

January/February 2007 amended IEPs - was not sufficiently tailored to the Student's psychiatric needs. While the Supervisor's opinion as to the relative appropriateness of private versus public placement has weight, the hearing officer does not consider it to be conclusive of the question, whether a FAPE was eventually offered. The IDEA standard does not demand that local education agencies provide the optimal setting; rather, an adequate setting is sufficient. If a setting offers a reasonable opportunity for meaningful educational benefit, then it is adequate under the IDEA. Thus, the private setting, if considered optimal, was not necessarily the only way to provide FAPE as defined by law.

The Supervisor had recommended private placement as a temporary measure, not as an ideal permanent setting for education. (FF 10.) Thus, too much can be made of this recommendation, as it relates to the adequacy of the public placement eventually offered by the District. The Supervisor recommended private placement because the Student was transitioning, not only from one educational program to another, but also from a high degree of clinical support to a lower level of support – from the more protective supervised living setting to the Parent's home in the community. (FF 1, 2, 8, 9, 10, 18.) Anticipating that this step-down in clinical supervision would be stressful, the Supervisor thought that a private setting would be more protective and reduce the risk of clinical regression. Indeed, the Supervisor's recommendation had more to do with clinical planning than with educational planning. This reasoning does not easily lead to a conclusion that the Student could not receive meaningful educational benefit outside of a private setting.

The Parent's argument is too simplistic. It seems to be premised on the suggestion that the Student's diagnosis per se precludes consideration of placement in a public setting, as evidenced by the Supervisor's recommendation. The record is far too nuanced to support such a theory. The Student's condition was dynamic, and her functioning was capable of both high and low levels, as the reports made clear. (FF 7, 8.) She had done well in the protective setting offered by IU. (FF 1-4, 8, 9.) The educational plan was for further inclusion. (FF 2, 9.) The Student had demonstrated stable emotional functioning and impulse control, and safe behavior. (FF 7.) Indeed, the record shows preponderantly that, at the time the

District offered its placement in the High School, the Parent and the Student desired a more inclusive setting. (FF 3, 4, 9.) The preponderant weight of the evidence before this hearing officer shows that the Student was capable of making progress in the High School, as long as she was placed in a small, special education classroom.

Here, the Supervisor testified that the program and placement offered in January 2007 was adequate and appropriately addressed all of the Student's needs. (FF 17.) It offered a small, self-contained classroom, thus addressing the Student's psychiatric need to be separated from large classrooms and repeated demands to navigate among crowds. (FF 12, 16.) It provided a one-to-one aide, thus addressing the Student's prominent need to be redirected when distracted by either external or internal stimuli.[3] (FF 9.) It offered a behavior support plan to address the Student's need to learn appropriate behavioral controls and appropriate social skills.[4] (FF 9.) Thus, the fact that a private placement was explored does not prove that the public placement eventually offered was inadequate.

The Parent argued that the placement was inadequate because it was in a "learning support" classroom, rather than an "emotional support" classroom. (FF 14.) The hearing officer, based upon the weight of the evidence in this record, finds that this distinction is not determinative. The District did not offer an "emotional support" classroom, but it was fully able to tailor an IEP to meet the emotional needs of students, while placing them within its available "learning support" classroom. (FF 9.) Both the parties and the hearing officer went to great lengths to parse out what could be the difference, and found that the label "emotional support" simply had no substantive importance in this District. The record preponderantly shows that in this District, the "learning

[3] One of the key objections to placement in High School was its size – the student body numbered in the thousands. The record supports the Parent's argument that having to encounter and navigate within a school of such size would likely be a stressor for the Student. However, the record does not support the argument that this stressor could not be reduced sufficiently through the assistance of a one-to-one aide to help the Student navigate and to both redirect and prompt the Student throughout the day. This is what was offered, that the record preponderates that this offer was adequate.

[4] The January/February 2007 IEP also addressed the Student's identified learning disabilities on its face. The main thrust of the Parent's complaint is that the IEP failed to address the Student's needs arising out of her major mental illness; there was no evidence concerning the adequacy of the District's offered goals and SDI regarding academics. Therefore, the hearing officer reaches no conclusions regarding these aspects of the appropriateness of the District's offer. These were not at issue in the matter at hand.

support" placement provided all of the elements that the Student needed to address her educational needs arising from her psychiatric condition.

The Parent offered two expert witnesses to bolster her claim that the offer was indeed inadequate. One was a school psychologist who was familiar with the Student, but had insufficient knowledge of the District's High School and its programs. (NT 46-49, 51-57, 61-62.) This expert's testimony was consequently highly circumscribed and was nothing more than second guessing the District, months after the facts in issue here. It is a basic rule in IDEA due process proceedings that an IEP is judged, not in hindsight, but in light of what was known at the time of the decision at issue. Fuhrman v. East Hanover, supra. The Parent's school psychologist was not in a position to make such an evaluation.

The Parent also offered the testimony of the Student's psychiatrist. This expert, again, was able to speak to the dynamic of the Student's psychiatric illness in detail, but she knew nothing of the District's program. (NT 114, 116-120, 127-128.) The hearing officer finds that the psychiatrist's opinions were not sufficiently grounded in relevant factual information about the Student's educational program to provide a reliable basis upon which to find the District's offered program inappropriate. Thus, the Parent's proofs were insufficient to create a preponderance of evidence to that effect.

Here, the District's Supervisor was highly qualified to offer a reliable opinion as to whether or not the District's offer was adequate. She had extensive experience in providing educational services to children suffering from mental illness, including major mental disorders similar to that with which the Student is afflicted. (NT 275-283.) In her testimony, she showed herself to be well familiar with the changeable nature of major mental illnesses, and the tendency of some persons to progress and regress from full remission of symptoms to active psychosis. She was also familiar with the varying degrees of fragility presented by children with such illnesses. Thus, the hearing officer gives great weight to this Supervisor's judgment of the Student's psychiatric needs, based upon the information that she had available.

The Supervisor testified that she had deemed a private setting advisable because of the Student's likely fragility, based upon the Student's diagnosis and history. (NT 355-356.) Contrary to the Parent's argument that the Supervisor had inadequate information upon which to make such a judgment, the hearing officer finds that the Supervisor had adequate information upon which to base her educational recommendations. (FF 8, 9.) She reviewed a psychological report, a re-evaluation report, and an IEP, all of which provided clinical history as well as educational present levels of functioning. (FF 8.) All of these reports were of recent origin; thus, there is no basis to suggest that they provided outdated information.[5] (FF 8.)

FAILURE TO PLACE IN PRIVATE DAY SCHOOL

As noted above, The District applied to three private schools in December 2006, before the Student re-enrolled in the District. (FF 10-11.) Two of these declined to accept the Student, but one accepted. (FF 10.) The Student was not placed in this one remaining school. (FF 12.)

One salient fact known only to the parties, and concerning which the Parents' experts had no opinion, was whether or not the District ever actually offered the available private school placement to the Parent. The record was contradictory on this issue, raising questions of credibility regarding two principal witnesses. The Supervisor testified that she had received the private school's acceptance in December, and had notified the Parent in conversation. (FF 10.) The Parent denied that this had happened. (NT 220-221.) The Supervisor testified that the Student was not placed because the Parent did not want the Student placed at the particular private school that accepted the Student at that time. (FF 10.)

[5] The Parent's argument in her written summation emphasizes that the District did not know enough and therefore should have done further evaluation. The hearing officer rejects this argument for three reasons. First, the Parent is raising the issue for the first time in summation; the matter was not tried in light of this assertion and the hearing officer will not expand the issues that were before him as of the commencement of the matter. Second, the hearing officer, in assessing the Supervisor's expert opinion, finds that she had adequate information before her, as discussed above. Third, the record makes clear that the District was not questioning the Student's psychiatric needs; it was accepting all of the clinical assertions found in the documents provided to it. Therefore, it did not need to evaluate to rediscover facts that it was already assuming to be true. An evaluation was not needed. An appropriate IEP was needed, and this is what the District provided.

At first blush, the hearing officer questioned the veracity of the respective witnesses. However, there was considerable evidence that both parties were testifying honestly. This finding is based upon the demeanor of the witnesses – such as their eye contact when making a point – and the way they answered questions – such as the tendency of each of them to be careful about what they did not know, to correct possible misimpressions, and to refuse to be led by sometimes zealous questioning into misstatements of fact. Thus, the hearing officer concludes that there is another explanation for the direct contradiction between the Supervisor's testimony and that of the Parent.

After careful review of the Parent's testimony, the hearing officer concludes that the Parent's version of events is less reliable and therefore entitled to less weight, because her memory of events is imperfect. While the parent initially volunteered that she was unaware that a private placement was available in December 2006, she later admitted that the best she could say was that she did not remember such a conversation. NT 220-221, 224, 532, 537.)

On the other hand, the District's Supervisor of Special Education testified clearly and concisely that the Parent opposed the Supervisor's efforts to place the Student in a private school. (FF 10.) Her testimony is corroborated by the record, which shows that the Parent had disagreed with most private placements that had been recommended for the Student. (FF 3, 5, 7.) In particular, she had disagreed with the placement recommended by IU–13, stating on the NOREP that she wanted greater time in the general curriculum. (FF 3, 7, 13.) Even after that IEP was put in place, the Parent obtained a revision that increased the Student's time in general education. (FF 2, 3.) Thus, weighing all of the evidence, the hearing officer finds that the evidence is preponderant that the Parent opposed placement at the private schools as recommended by the Supervisor.

The Parent made much of the fact that she did not remember receiving notice that the Student had been admitted to one of the private schools that the Supervisor had recommended and applied for. However, it is notable that the Parent did not deny that she had opposed such a placement in general. Weighing all of this evidence, the hearing officer concludes that the Parent simply does not

remember being notified of the availability of a private placement, most likely because she did not place much value upon the referral to begin with.

FAILURE TO PROVIDE HOMEBOUND INSTRUCTION

When it became apparent that the Student would not be placed in a private school, the District's supervisor offered the placement discussed above, in the January 2007. (FF 12.) The Parent rejected this offer, even after a subsequent IEP meeting in February in which the program was further modified based upon the Parent's suggestions. (FF 14-16.) At the same time, though the District repeatedly urged the Parent to bring the Student to school, the Student remained at home without educational services. (FF 19-25.)[6] The Parent argues that the District should have provided homebound services to the Student during the period from the Parent's first rejection of the District's offer in January 2007, until the end of the school year.

The District argues that it offered to provide homebound services if there was evidence that the Student could not participate in the offered program and placement due to exacerbation of her symptoms. It further asserts that the Parent failed to provide such evidence. (FF 19-25.) In effect, the District is arguing that the Student did not receive educational services through not fault of its own, simply because the Parent refused to send the Student to school or provide justification for homebound services. (FF 15, 21.)

The hearing officer finds that the preponderance of the evidence supports the District on this issue. Homebound services are not special education. Basic Education Circular, "Instruction in the Home" (October 31, 2001). They are instructional services that are provided to help a student keep up with classes when illness or injury forces the student to remain at home. 22 Pa. Code §11.25. They are defined by law as a "temporary" excuse for illness or other urgent reasons. Ibid. Thus, the District was required by law to reasonably ascertain whether or not the Student was being kept from school for a

[6] Pursuant to an agreement, the Student was placed in a private school in August 2007, and she was enrolled in the private school at the time of the hearing. (NT 363-365; S-30-34.)

"temporary" reason, when it was requested to provide homebound services.

Here, the District promptly and appropriately endeavored to ascertain whether or not the Student was being retained at home due to a temporary illness or other urgent reason. The Parent first requested homebound services on February 23, 2007, the day of the IEP meeting to amend the offered program. (FF 19.) However, the Parent did not raise this issue at the IEP meeting; instead, either before or after the meeting, she presented a note from a psychiatrist to the office of the Supervisor. (FF 19.) This was the first request for educational services in the home.

The District responded with a request for more specific information. (FF 20.) It specified the need for medical information indicating that the Student was suffering from a temporary disability that prevented her from attending school. (FF 20.) While the psychiatrist's notes in response discussed the Student's clinical and educational needs, they never addressed the issue of temporary prevention of attendance, even though the District clearly communicated the need for the psychiatrist to address this issue. (FF 22, 23.) As a result, the Parent and her psychiatrist never "answered the question" that would have enabled the District to legally provide homebound services. (NT 113-114.) Moreover, the psychiatrist's notes reinforced the appropriateness of the IEP offered by the District. (FF 22, 23.) Thus, the District's refusal to provide homebound instruction was appropriate.

The Parent makes much of the fact that the District, after receiving notes from the Student's physicians, did not call them to clarify when the notes themselves were unclear or inadequate. The hearing officer at first reacted with the same concern. However, this fact does not rise to the level of preponderant proof of a failure to provide FAPE with regard to homebound instruction. To begin with, homebound instruction is not special education, so a failure to provide it is not related to a denial of FAPE. Moreover, to talk to the physician, the District would have needed to obtain a release from the Student, who was of age to sign her own releases. That this may have been an insurmountable impediment is evidenced by the instances in the record in which the Parent failed to

respond within a reasonable time to reasonable suggestions and requests by the District, and evidence that the Parent had been restrictive about the psychiatric information that would be released to the District. (FF 5, 7, 24, 25.)

It might be argued that the District, knowing that the Student was not receiving education for months due to the dispute between the parties over the IEP, should have taken a broader view, and worked something out with the Parent. The difficulty with this argument is that it may well have been harmful to this Student at age xx to have been effectively placed in the most restrictive possible setting – the home. The District had an obligation to provide the least restrictive setting, and there are sound educational reasons for insisting that a student get out of the home and enter a communal setting for education, because inclusion fosters emotional growth and social skills development – needs that had been identified for this Student. Thus, the District's choice not to offer instruction in the home during the months of impasse in this case is not inappropriate on this record.

CONCLUSION

Based upon the entire record, the hearing officer finds that the District's offer of placement in its learning support classroom in the High School, with one-to-one aide and a behavior support plan, was appropriate. Consequently, no compensatory education will be awarded for the period between January 10, 2007 and the last day of school of the 2006-2007 school year.

ORDER

1. For the period January 10, 2007 to the end of the 2006-2007 school year, the District offered an appropriate program and placement in light of the Student's serious emotional disturbance.

2. The hearing officer will not award compensatory education for the period January 10, 2007 to the end of the 2006-2007 school year.

William F. Culleton, Jr. Esq.

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

May 8, 2008