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Pennsylvania Special Education Hearing Officer

DECISION

Child's Name: P.W.

Date of Birth: xx/xx/xx

Dates of Hearing:

9-27-07, 10-15-07, 11-05-07 11-20-07, 11-27-07, 1-15-08, 1-22-08, 1-30-08

CLOSED HEARING

ODR #7905/07-08 AS

Parties to the Hearing:

Parents

Delaware Valley School District
Routes 206 & 6
Milford, PA 18337-9454

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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February 21, 2008

March 6, 2008

William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a xx year old eligible resident of the Delaware Valley School District (District). (NT 48-49; S-14 p. 7.) He is in eighth grade presently. (NT 11; S-14 p. 7.) He is identified with the exceptionality of autism. (S-5 p. 15.) His parents, (Parents), requested due process in July 2007, seeking compensatory education and reimbursement for two independent educational evaluations. The District asserts that at all relevant times it provided FAPE, that its evaluations were appropriate, and that no relief is due.

A total of eight hearing sessions were conducted between September 27, 2007 and January 30, 2008. Counsel submitted written summations and findings of fact on February 20 and 21, 2008¹ and the record closed on February 21, 2008.

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 in all areas of educational need?
2. In the 2006 to 2007 school year, did the District fail to offer or provide educational services that were reasonably calculated to provide meaningful educational benefit, including ESY services, in all areas of educational need?
3. Are the Parents entitled to reimbursement for the cost of an Independent Educational Evaluation?
4. Should the hearing officer order an independent functional behavioral assessment?
5. Is the Student entitled to an award of compensatory education for all or part of the period beginning on July 16, 2005 until July 16, 2007?

FINDINGS OF FACT

1. The Parents have consistently requested that the District educate the Student in the general education environment. (S-6.)
2. The District's identification with autism adequately addresses the Student's developmental and behavioral characteristics. (S-6.)

¹ The District's counsel attempted but failed to send a readable copy of her summation on February 20, the deadline in the matter. This was due to a computer anomaly. Consequently, the record was held open until February 21.

3. The Student's cognitive full scale IQ is at the 1st percentile, the extremely low range of functioning. (S-6.) .
4. The Student experiences significant deficits in attention. (NT 457; S-6.)
5. The Student experiences significant deficiencies in language, including pragmatic language. (NT 403-406; S-6.)
6. The Student's receptive oral language and working memory deficits significantly limit his ability to understand incoming complex verbal information, including more than two step instructions. (NT 373-382; S-6.)
7. The Student needs substantial supports to access the general education curriculum. (NT 1063-1069, 1114-1117.)
8. The District, at the request of the Parents, implemented an inclusive program that sought to maximize inclusive special education services. This was provided through consultation with a State-provided specialist in inclusion. This program provided extensive training and supervision to the District's special education and teaching staff. The state-provided specialist assessed the program through personal observation and discussion with staff for two years. (NT 687-688, 689, 691-692-693, 857-858, 1619-1623, 1634-1636, 1676-1677.)
9. From 2000 until April 2007, normative data show a significant decline in the Student's performance in reading, mathematics, and spelling. (S-6 p. 10.)
10. As of March 2007, the Student's language and academic skills were insufficiently developed to enable him to access grade level curriculum without considerable adaptations and accommodations. (S-6.)
11. The District was aware of the Student's disabilities as described above during the relevant period. (NT 50-51, 602-603, 716-720; S-2, S-7 p. 12, P-1, P-6, P-8, P-9, P-10, P-11, P-15 p. 4, P-17 p. 6, P-23 p. 5, P-26, P-37, P-39 p. 4.)

Program Offered In 2005-2006 And 2006-2007 Ieps

12. In the 2005-2006 school year, the Student's IEP lacked adequate baselines for progress monitoring purposes. (S-6.)
13. In the 2005-2006 school year, the District failed to provide adequate progress monitoring of the Student's IEP goals and objectives. (S-6.)
14. In the 2005-2006 and 2006-2007 school years, the Student received substantial support from the Parents and assigned aides, and this support may

have distorted the validity of the curriculum based or criterion referenced testing that showed his progress academically. (NT 1697; S-6.)

15. The State-provided specialist did not review previous IEPs so as to establish goals for the 2005-2006 school year with reference to the Student's previous goals and progress as set forth in the Student's 2004-2005 IEP. (NT 837, 1686-1687, 1703-1706, 1708-1709, 1716-1717, 1727.)

Mathematics

16. The Student's mathematics skills as measured by norm referenced testing are significantly below the range expected for persons with his level of cognitive ability and persons of his age. The Student has educational needs in mathematics for which he needs specially designed instruction. (NT 389-390, 434-440; S-6.)
17. The Student is significantly dependent upon the use of a calculator to perform all mathematics problems. (S-6.)
18. In the 2006-2007 school year, the Student's functional mathematics skills were below the range expected for persons with his level of cognitive ability. (S-6.)
19. The August 2005 IEP PLAA and goals sections did not reflect progress data from the Woodcock-Johnson III Test of Achievement, as required in the previous IEP for the 2004-2005 school year. (NT 1686, 1727; P-1, P-9.)
20. The August 2005 IEP did not provide measurable goals in basic math skills. (NT 522; P- 9.)
21. The August 2005 IEP did not provide measurable goals in basic practical mathematics skills. (NT 522, 1708-1709; P- 9.)
22. The February 2006 IEP added a measurable goal for mathematics numbers and operations, proceeding from a baseline. (P-15.)
23. The February 2006 IEP PLAA section described the Student's imperfect attainment in counting money and making change, but there was no goal continuing the Student's special education in that area. (P-15.)
24. The February 2006 IEP added a measurable goal for practical mathematics, in measurement. The new goal is measurable, but does not proceed from a baseline. (P-15.)

25. The June 2006 IEP provided a measurable goal for mathematics numbers and operations; however, the goal, based upon accuracy measures, did not proceed clearly from the baseline stated in the PLAA, which was based upon percentiles. (NT 546-547, 1193-1194; P-17.)
26. The June 2006 IEP provided a measurable goal for display of data; however, the goal did not proceed from the baseline data. (P-17.)
27. The June 2006 IEP did not provide a practical mathematics goal regarding measurement, which was provided in the February 2006 IEP, and there was no indication in the PLAA section that the February IEP goal in practical mathematics was reached. (NT 558; P-17.)
28. The December 2006 IEP did not provide a measurable goal in mathematics operations. It did provide new measurable goals in understanding numbers, geometric shapes, patterns, and data displays, none of which proceeded from a baseline. (P-23.)
29. The December 2006 IEP provided a measurable goal in measurement that did not proceed from a baseline. (P-23.)
30. In the 2005-2006 school year, the Student's progress was minimal in mathematics. (S-6 p. 41, P-9 p. 5, P-17 p. 6.)
31. In the 2006-2007 school year, the Student made insignificant progress in mathematics, as measured by successive administration of District benchmarks in September 2006 and January 2007. (S-6.)
32. In the 2006-2007 school year, the Student was unable to access the mathematics curriculum to a significant degree due to severe gaps in his understanding of mathematics. (S-6.)
33. The District provided less than one period per day of remedial instruction in basic mathematics. (NT 1651-1652.)
34. District progress monitoring was conducted with the use of a calculator and with other unstated supports; therefore, it did not measure the extent to which the Student could perform basic mathematics operations independently. (NT 546-547.)

Reading

35. The Student's reading comprehension skills as measured by norm referenced testing are very low, but within the range expected for persons with his level of cognitive ability. The Student's inferential ability is so low that he may not

be able to master this skill. (NT 422-429, 445, 570-572, 1063-1069, 1114-1117; S-6.)

36. The August 2005 IEP did not provide measurable goals in reading comprehension skills. (NT 512, 522; P- 9.)
37. The February 2006 IEP added a measurable goal for reading comprehension, proceeding from a baseline. Reading materials were chosen based upon a subjective judgment as to the Student's instructional level. (NT 735-736, 864-865, 1258-1259, 1269-1274; P-15 p. 5, 14.)
38. The June 2006 IEP provided measurable goals for reading comprehension; however, the goals did not proceed from the baseline data, and the progress monitoring did not specify the probes used in previous progress monitoring on this goal. (P-17.)
39. The June 2006 IEP did not provide a measurable goal for decoding and reading fluency, and there was no indication in the PLAA section that the Student had attained the previous goal in this area or had no need for further specially designed instruction in this area. The IEP substituted a goal for vocabulary improvement. (P-17.) .)
40. The December 2006 reading goals were identical to those in the June 2006 IEP. (P-23.)
41. The Student's reading scores in the Kauffman Test of Educational Achievement declined as he advanced in grade level. (NT 411-412.)
42. As measured by the QRI instrument, the Student's comprehension improved one level between February 2005 and November 2005, but did not improve thereafter. (NT 417; P-6 p. 11, P-17, S-8.)
43. The Student has demonstrated higher reading comprehension with substantial supports, including selection of high-interest reading topics, pre-reading and text-specific vocabulary teaching, look backs, and prompting. (NT 481-486, 542-546, 570-572, 751-756, 1269-1270, 1679-1680, 1698-1699; S-31².)

² S-31 is a video tape of a single class in which the Student was shown demonstrating reading comprehension with support. The Student audibly answered content questions about a silent reading passage with prompting to utilize the look back method. This occurred at time clock 7:03 to 18:44 on the tape. The hearing officer accepts this evidence with caution, recognizing that it is but one instance of performance, was under the unusual circumstance of video taping, and was prepared for the purpose of being part of a demonstration of inclusion techniques to be shown statewide. (NT 1677.) The hearing officer gives his observation of the Student's performance on this tape some credence only because his impression of the identified passage was corroborated by more than one witness' testimony that the Student could indeed demonstrate comprehension with extensive supports.

44. In the 2006-2007 school year, the Student made insignificant progress in reading comprehension, as measured by successive administrations of the QRI curriculum based instrument, especially in expository materials. (S-6.)

Written Expression And Spelling

45. The Student's writing and spelling skills as measured by norm referenced testing are very low, but within the range expected for persons with his level of cognitive ability. (NT 422-429, 445, 570-572, 1063-1069, 1114-1117; S-6.)
46. The Student has educational needs in writing for which he needs specially designed instruction. (NT 434; S-6.)
47. The August 2005 IEP did not provide measurable baseline data or goals for writing, and inadequately addressed spelling. (NT 486, 513-514, 522; P-9.)
48. The February 2006 IEP did not provide measurable baseline data for writing and spelling. It measured the new goal in sentence structure with fluency probes. (NT 532-537, 548-550; P-15.)
49. The District addressed both written expression and spelling through goals and progress monitoring. (NT 1800-1801; S-25.)
50. The June 2006 IEP did not provide measurable baseline data or goals for writing a multi-paragraph informational piece. (NT 556; P-17.)
51. The December 2006 writing goals were identical to those in the June 2006 IEP. (P-23.)
52. In the 2005-2006 school year, the Student's progress was minimal in writing fluency. (NT 548-550, 556; S-6.)
53. Normative testing placed the Student at a low average range in written expression, and his spelling was significantly deficient. (NT 429-434; P-6 p. 25.)
54. The Student's tested performance in written expression, including spelling, was commensurate with his ability. (NT 434; P-6 p. 25.)

Adaptive Skills

55. The Student exhibits significant deficits in adaptive behavior, but his adaptive functioning is within the range expected for persons with his level of cognitive ability. (NT 445-450; S-6.)

- 56. The August 2005 IEP did not offer regarding the Student's deficits in adaptive skills. (NT 464-466, 492-495, 515-521; P- 9.)
- 57. The February 2006 IEP did not offer goals regarding the Student's deficits in adaptive skills. (NT 464-466, 492-495, 515-521, 538-539; P- 15.)
- 58. The June 2006 IEP did not offer goals regarding the Student's deficits in adaptive skills. (NT 550-551, 554- 555; P- 17.)
- 59. The December 2006 IEP did not offer goals regarding the Student's deficits in adaptive skills. (P- 23.)

Social Skills And Speech Pragmatics

- 60. The Student exhibits significant deficits in social skills, especially in pragmatic language skills and recognizing the effect of his behavior on others. (NT 402-406, 685, 841, 857, 1099, 1125-1126, 1350, 1353, 1410, 1420-1421; S-6, p. 27-28, 40, P-1 p. 10, S-6.)
- 61. The August 2005 IEP social skills goals were not measurable and did not proceed from measurable baseline data. (NT 464-466, 492-497, 520-522, 1005-1007, 1435-1440, 1730; P- 9.)
- 62. The February 2006 IEP did not provide any goals or measurable baseline data regarding the Student's deficits in social skills. (NT 464-466, 492-495, 515-523, 1740-1742; P-15.)
- 63. The June 2006 IEP did not provide measurable baseline data or goals regarding the Student's deficits in social skills. (NT 554- 555, 1775-1777; P- 17.)
- 64. The December 2006 IEP did not provide measurable baseline data or goals regarding the Student's deficits in social skills. (P-23.)
- 65. There were no goals in social skills and speech pragmatics because the District did not allocate enough supportive services time to provide adequate, measurable, explicit services. (NT 1357-1360, 1629, 1632, 1710, 1720, 1776-1777.)
- 66. The State-provided expert advised the IEP team that goals in social skills development were not required because explicit teaching of such skills was not necessary in light of the Student's response to cueing and prompting. However, it was recognized that the Student had ongoing educational needs in that area. (NT 841, 847, 1341-1343, 1711, 1715.)

67. The Parents preferred that social skills be taught in groups with typical children. (NT 870.)
68. In November 2005, the District changed the focus of speech therapy sessions to eliminate speech pragmatics and focus upon articulation. Pragmatics were to be addressed through classroom observation and intervention, one class per week. (NT 1341-1346; S-5 p. 9.)
69. The District did not provide data driven progress monitoring addressing social skills and pragmatic language skills. (NT 1802; P-12, S-25.)

Behavior

70. The Student at all relevant times presented with recurrent behaviors that are stereotypical of children with autistic spectrum disorders. These include self stimulation, such as shaking or flapping his hands, drumming on the table or desk, grimacing, rocking, and making vocalizations, and picking at or rubbing his skin and scalp. They also include perseverating on ideas or areas of interest, and perfectionism. Another recurrent behavior was turning away from the teacher. (NT 455, 685, 686-687, 716-720, 818-823, 966-968, 1410-1413; S-5, S-6 p. 12-13, 30, S-31, P-27.)
71. This behavior tends to interfere with the Student's ability to benefit from instruction, as recognized in the majority of the Student's IEPs during the relevant period. These behaviors increase whenever the Student's school material becomes difficult, complex or highly stimulating, or when he is bored or unmotivated. (NT 688, 1406-1407; S-5 p. 10, S-6 p. 12-13, 31, 35, P-9, P-10, P-15, P-17, P-23, P-27, P-47, P-48.)
72. These behaviors also tend to inhibit the Student's opportunities for positive social relationships with his peers, and therefore his ability to learn and practice social skills. (S-5, S-6 p. 30-31.)
73. Since fifth grade, the Student has exhibited an overt adverse reaction to girls, including refraining from entering the school with them, objecting to their presence in physical education and group activities, insisting on not being seated near them, and angry reactions after accidental touchings in crowded areas. In June 2006, the Student drew a picture which was interpreted as expressing homicidal thoughts about girls. He is reported to have struck a girl once. (NT 458-459, 695-696, 716-717, 823-827, 1415; S-6 p. 30-31, P-27.)
74. Frequently, the District reacts to the Student's behavior toward girls by separating him from them; often this is not possible. (NT 824-827, 1586; S-5 p. 11.)

75. The Student is socially isolated in school to a great extent, and his behaviors interfere with his ability to socialize with peers. (S-6.)
76. The Student is in need of a behavior intervention plan. (NT 715, 1420-1421; S-5, p. 11.)
77. The August 2005 IEP did not provide measurable baseline data or goals regarding the Student's self stimulating behavior. (NT 464-466, 525, 700-701, 725-734; P- 9.)
78. In August 2005, the District implemented a Behavior Support Plan that included progress monitoring by means of "communication logs". The plan did not set measurable goals or proceed from a baseline and was designed only to support the Student's transition to a new school. (NT 713-714, 1462, 1465; P-11.)
79. The February 2006 IEP did not provide measurable baseline data or goals regarding the Student's behaviors that interfere with his education, including self-stimulating. (NT 539-540, 725-734; P- 15.)
80. The June 2006 IEP did not provide measurable baseline data or goals regarding the Student's behaviors that interfere with his education, including self-stimulating. (NT 554- 555, 725-734, 757; P- 17.)
81. The December 2006 IEP did not provide measurable baseline data or goals regarding the Student's behaviors that interfere with his education, including self-stimulating. (NT 725-734, 757; P- 23.)
82. In September 2006, the District conducted a Functional Behavioral Assessment. This did not recommend measurable goals or progress monitoring. (NT 748; P-27.)
83. The District did not provide a Behavior Intervention Plan as a result of the Functional Behavioral Assessment. (NT 757.)
84. The District's Educational Consultant recommended social skills training to address the Student's aversion to girls, but changed her recommendation after an outside consultant advised against further action, on the assumption that the interventions in place in the inclusive setting were adequate to prevent aggressive behavior. (NT 918-922.)
85. The District's Educational Consultant believed that it was not possible to develop a behavioral intervention plan that would eliminate or cure the Student's self- stimulatory behavior, and she did not think that the Student's behaviors interfered with the Student's academic functioning. (NT 949-952.)

86. The Student's teachers encouraged his interaction with girls in the general education setting. (NT 1586.)
87. The District did not provide a systematic, measurable program to deal with the Student's problematic behaviors. (NT 1472, 1485-1486.)
88. It is feasible and beneficial to address self stimulatory behavior through a behavior intervention plan. (NT 1454-1455, 1461, 1502-1506.)

ESY

89. In October 2004, the District considered all of the eligibility factors and determined that the Student was not eligible for ESY services because such services were not necessary to provide him with meaningful educational benefit during the school year. (NT 837; P-1 p. 18-19.)
90. In November 2006, the District considered all of the eligibility factors and determined that the Student was not eligible for ESY services because such services were not necessary to provide him with meaningful educational benefit during the school year. (NT 881-882; S-9 p. 24.)
91. The Parents failed in both years to send the Student to a summer enrichment program offered to them by the District, which is a program that concentrates on maintaining and building math, reading, writing and social skills. (NT 837-38, 882.)

Independent Educational Evaluation And Functional Behavioral Analysis

92. The Parents did not disagree with the District's evaluation in 2004 with regard to any issues raised in this due process proceeding. (NT 171-179, 202-211.)
93. The Parents did object to the OT evaluation contained in the report, and this evaluation was reconsidered by the District. The Parents sought no further relief. (NT 171-179: S-2, S-3.)
94. The Parents did not disagree with the District's evaluation in 2007. (NT 202-211, 205-210, 274-277.)
95. The Parents waived their request for an independent functional behavioral analysis after the District provided one in September 2007. (NT 274-277; P-21, P-22, P-23, S-30.)

96. The Parents' expert in behavioral analysis did not provide a report, but was retained solely for purposes of testimony in the due process hearing. (NT 1513.)

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). 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).

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).

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). In the present matter, the District provided a fully inclusive program and placement to the Student, in accordance with his Parents' wishes. (FF 1, 8, 67, 86.)

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).

Credibility

The hearing officer has not relied upon the testimony of the Student's Mother. The Mother's testimony and demeanor, as well as the record of her behavior, disclose material contradictions. (NT 204-211, 273-277; S-5, S-12.) The record reflects an animus toward the special education staff of the District. (NT 887.) Similarly, the Parents criticized Mr. D, the PATTAN specialist, because he was not sufficiently sympathetic and was "allied with the District", as their expert school psychologist put it. (S-6 p. 7.)

The hearing officer finds that the Parents' expert psychologist was credible and her opinion testimony was reliable, with some exceptions. The psychologist is associated with a reputable clinical and academic program and has a Ph.D. in Education and Child Development. (NT 354-356.) She has twenty years' experience in school psychology in a public school setting. (NT 354-356.) The psychologist's report is extensive, and reveals both an adequate review of the documents in this matter and a thorough attempt in most cases to base her findings on both parental and teacher input. (S-6.) She also relied upon a variety of instruments of different kinds, including both norm referenced and criterion referenced tests, and inventories. (NT 359.) She personally observed the Student during over ten hours of testing on three different occasions, as well as in his daily school schedule for a day. (NT 359-362.) She talked with 1:1 aides and teachers. Her analysis of the testing scores included scores obtained by the District, and she noted areas of both corroboration and discrepancy in the scores. She described her clinical observations and interpretations of the Student's testing behavior, and also noted instances in which standard testing procedures had to be violated in order to get any useful response from the Student. (NT 368-369, 387-389; S-6 p. 19.) These disclosures and the overall tone of her report suggest that the expert utilizes a reliable methodology, rather than basing everything on a single measure, and is open about the weaknesses of her data, while showing clearly how she reached her conclusions.

On the other hand, it was clear from the testimony that the expert was less well prepared to critique the various IEP documents. Cross examination revealed some weaknesses and contradictions in her testimony regarding these offers by the District. While the hearing officer does not conclude that these weaknesses contradict the expert's basic credibility, the hearing officer gives less weight to the expert's critique of the IEP documents and school program based upon his observation of the examinations concerning this subject.

Another area in which the hearing officer does not credit the expert's testimony is the need for special education services in adaptive skills. To assess need, the expert scored an Adaptive Behavior Assessment System inventory based solely upon the responses of the Mother. (NT 1080; S-6 p. 27.) She found that the Mother had responded in such a way as to call into question her responses in some categories, thus showing that she was a less than reliable informant. (NT 447-448; S-6 p. 27.) Even more problematic as to the reliability of the expert's findings of educational need, the expert did not request that any school staff fill out the ABAS inventory. (NT 1080-1082.) She

did not even informally inquire as to the Student's adaptive functioning in the school setting. (NT 1081-1082.) While she asserted that educational records corroborated some of her findings, she did not identify any, and the hearing officer has not read any that substantially corroborate the educational needs that the expert identified. (NT 1081.) When asked to specify adaptive behaviors that were in fact problematic in the school setting, the expert could only identify one – dressing and undressing for gym classes. (NT 1083-1084.) She was unaware of the Student's level of attainment in this skill. (NT 1083.) Based upon these flaws in the factual basis for the expert's opinion, the hearing officer finds that the evidence provided by the expert regarding a need for special education in adaptive skills was unreliable.

Mathematics

The IEP documents from the years 2004-2005 through 2006-2007 reveal a program in mathematics calculation, concepts and practical application that was in constant flux. There was a lack of sequence and continuity from one IEP or IEP revision to the next. (FF 19-29.) There was not a clear baseline from one document to the next. (FF 19-29.) Progress monitoring instruments were abandoned and new methods were not clearly defined. (FF 13, 15, 19, 23, 25, 27, 28.) Goals were not stated in measurable terms. (FF 20, 21.) Goals were discontinued without any evidence that the Student had mastered them or their benchmarks. (FF 19, 23, 27, 28.) On its face, this program was not reasonably calculated to provide the Student with an opportunity to derive meaningful educational benefit in mathematics.

The preponderance of the evidence compels the conclusion that the Student failed to derive meaningful educational benefit in mathematics. Norm referenced testing by a credible and reliable independent evaluator indicates that the Student by March 2007 was performing at a level below the first percentile of his peers, a level that was palpably below that expected for a student with his level of ability. (FF 9, 10, 14.) District benchmark testing indicated that he had made negligible progress in mathematics. (FF 14, 17, 30, 31, 32, 34.) His seventh grade regular education teacher had admitted to the evaluator that the Student's deficits in basic mathematics skills were impeding his ability to access the seventh grade curriculum. (FF 32.) The Student had not mastered basic practical applications like making change, yet his goal in this area was replaced with a different goal altogether. (FF 23.)

The District pointed to progress monitoring data for the years in question to contradict the import of the above facts. (S-24, 25.) This data showed an apparent modest increase in the Student's calculation and problem solving achievement, using a curriculum based measure. However, performance was measured with supports, including the use of a calculator, even though the scores were advanced to show gains in basic mathematics operations. (FF 14, 34.) Other supports in the form of prompting were also allowed in these probes. (FF 14.) Therefore, these progress monitoring scores do not measure the Student's abilities in basic mathematics operations at all, and they address his problem solving skills only with the intervention of prompting to an unknown degree.

The seventh grade regular education teacher did testify that the Student could indeed access the curriculum. Thus, the hearing officer must weigh the conflicting statements of this witness. In the hearing setting, he professed a belief in inclusion, a certainty that the Student could learn some seventh grade material, and a conclusion that the Student did so. (NT 1183-1184.) However, the independent evaluator credibly testified that the same individual had confided his concern to her that the Student's basic mathematics deficits prevented access to the seventh grade curriculum. (FF 32.) The hearing officer concludes that the suggestion of substantial progress in the seventh grade mathematics curriculum is unreliable.

The record shows that the District was aware or should have been aware that the Student's basic and practical mathematics skills were severely below grade level, and that the offered specially designed instruction was not addressing these needs adequately. (FF 11.) Therefore, compensatory education will be awarded for the entire period at issue in this matter, on the basis of one hour per school day.

In a gifted education case, the Commonwealth Court rejected the M.C. standard for compensatory education, holding that the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE. B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006). Regardless of whether or not this gifted case applies in an IDEA setting, the hearing officer will not apply the B.C. standard here. It is not possible on this record to determine what position Student would have occupied had he received FAPE when it was due him. Cf. In Re A.Z. and the Warwick School District, Special Education Opinion No. 1783 (2006) (compensatory education awards would be the same whether Appeals Panel used the M.C. analysis or the B.C. analysis). Therefore, the Student will be made whole with an order structured under the traditional test set forth in M.C.

Reading

The Parents point to a number of inadequacies in the IEPs and assert some failures in implementation of the Student's education in reading. (FF 36-40.) They assert a failure to provide appropriate instruction in both word reading/fluency as well as comprehension.

Denial of an appropriate IEP is not sufficient to award compensatory education; there must also be proof of denial of FAPE. Board of Education v. Rowley, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999). Therefore, if the evidence proved that the Student failed to make meaningful progress, these deficiencies would have deprived him of FAPE.

Their own expert discounted the Student's needs with regard to word reading and fluency. (NT 422-423, 1071, 1118; P-6.) Thus, the hearing officer finds that there was

no deprivation of FAPE in word reading and fluency. As to whether the Student made meaningful progress in reading comprehension, the evidence was mixed.

Norm referenced testing and the criterion referenced QRI both indicated that the Student made no meaningful progress in reading comprehension in the relevant period, with the exception of a gain of one QRI level in the first part of 2005, a result that is questionable in light of the Student's overall lack of movement over the two year period in question. (FF 35, 41, 42, 44.) One test showed the Student's comprehension achievement deteriorating substantially as he progressed through the grades. (FF 41.) At the same time, there was substantial credible evidence that the Student was able to access reading materials above his tested comprehension level, even materials at a seventh grade level, with the substantial support provided through his inclusion program. (FF 43.) Subjectively, his teachers found that he did make substantial progress in reading comprehension. (FF 43.)

The hearing officer weighs this evidence in light of the Parents' expert's repeated testimony that the Student's linguistic skills, including reading comprehension, were at a level commensurate with his ability, and that it was likely, though not certain, that the Student would never master the inferential and abstract thinking skills that are needed to reach higher levels of reading comprehension independently. (FF 2-6, 35, 41.) The expert opined that the Student presently needs substantial supports to enable him to access the higher grade level curriculum in which he is included. (FF 7, 10, 35, 43.) This is consistent with the District's approach to reading comprehension, and his teachers' conclusions, in which the Student was expected to – and did – comprehend tests at a higher grade level than his tested ability, with substantial supports. (FF 43.)

In determining whether or not progress was meaningful, the hearing officer is guided by the principle that meaningful benefit is to be gauged in relationship to the student's intellectual potential. In re Educational Assignment of M.P., Spec. Educ. Op. 1812 at 7 n. 51 (April 12, 2007). Here, the hearing officer finds that the evidence preponderates in favor of the District. Given the mixed evidence of record, that the estimation that the Student may lack the ability to score any higher on standardized and criterion referenced testing, the Parents have failed to prove that the District did not provide the Student with a reasonable opportunity for meaningful benefit in reading comprehension.

Written Expression and Spelling

While the Parents' expert addressed written expression and spelling, there was not extensive development of this issue. The Parents showed that the Student was functioning at a below-grade level, and at best at a low average level in writing, when provided with supports. (FF 5, 6, 7, 9, 10, 45, 46, 53.) The IEPs were not systematic and sequential. (FF 47, 48, 50, 51.) They were not data driven. (FF 47, 48, 50.) On the other hand, the District did provide goals and did do progress monitoring. (FF 49.) Thus, the evidence was mixed, as with reading comprehension, and did not clearly prove a neglect of the Student's need for special education in written expression and spelling.

Again, the hearing officer finds determinative the Parents' expert's finding that the Student's tested and observed performance was commensurate with his tested ability. (FF 45, 54.) M.P., supra. Given this finding, the Parents did not prove that the Student received no educational benefit. Thus, even though the District's written program was inadequate, there was no proof that this inadequacy denied the Student FAPE. Therefore, the hearing officer finds that the Parents failed to carry their burden of proof on this issue.

Adaptive Skills

While the Parents raised a number of adaptive skills that they claimed the Student did not have, they failed to prove that these deficits in fact interfered with the Student's ability to receive a meaningful education. (FF 55.) It is clear that the District did not offer special education services in this area. (FF 56-59.) However, such an offer is required only when there is an educational need. Here, the Parents relied upon expert evidence to show that the Student needed special education services in adaptive skills. However, as set forth above, the hearing officer finds the expert's methodology unreliable for purposes of this hearing and therefore the expert's opinion in this regard is unreliable. All of the evidence is based upon parental perceptions of the Student's functioning at home. This does not establish by a preponderance that the Student's functioning deficits were interfering with his educational opportunity. Weighing all of the evidence on this subject, the hearing officer concludes that the Parents have failed to prove by a preponderance of evidence that the District failed to address educational needs in this area. Thus, its failure to offer goals directed to this area is not a failure to provide FAPE.

Social Skills and Pragmatic Language

The testimony clearly established by more than a preponderance that the Student had significant social skills deficits, deriving from his autistic spectrum disorder, and that he had significant educational need for social skills training, including speech pragmatics. (FF 2, 5, 6, 60, 66.) Prior to the relevant period, the District provided goals and speech therapy services to address these needs. (FF 65, 68.) The August 2005 IEP contained goals addressing this need, but the goals were not adequately measurable. (FF 61.) In November, these goals were deleted and not replaced; explicit teaching services in these areas were terminated. (FF 68.) The District provided for addressing these issues in the general education environment by offering to train teachers to intervene in the general education setting, and by having the speech and language therapist observe one class per week. (FF 66.) There was no data-driven progress monitoring. (FF 69.) The evidence is preponderant that this was not due to any diminution of need. (FF 65, 66, 67.)

The District argued that it was appropriate to delete these goals and discontinue the attendant services because the state-provided inclusion consultant advised the IEP team that explicit teaching was unnecessary. (FF 66.) It was the consultant's advice that social skills and speech pragmatics could be taught in the inclusive setting. (FF 66, 67.) However, this advice was contrary to the judgment of both the speech therapist, who had

worked with the Student for years, and the District's special education coordinator. (FF 66.) It was also colored by the consultant's admission at the hearing that it would have been good if there were enough time for explicit teaching, but that there simply was not enough time in the school day to provide that in addition to addressing all of the Student's other needs. (FF 65.)

The hearing officer concludes that the District failed to provide a reasonable opportunity for meaningful educational benefit in the area of social skills and speech pragmatics. The preponderance of the evidence is that the District's offered program during the time in question was not adequate. There was no evidence that the general education teachers and speech and language therapist coordinated their services adequately to deliver data driven educational services, and there was no data indicating that the Student made significant progress in these skills during the time in question. Because the offered program was facially inappropriate, and there is not evidence of provision of FAPE in spite of this deficiency, the program is found to be inadequate.

While the District is entitled to deference regarding the method by which it chooses to deliver needed services, (FF 8, 66, 67, 68), the need for inclusive service delivery does not exempt the District from its legal obligation to offer and implement meaningful IEP goals addressing the Student's significant needs for social skills teaching and pragmatic language teaching. Moreover, the lack of time in the schedule is not a warrant for simply dropping needed IEP goals and services. Therefore, the hearing officer will award compensatory education for the deprivation of adequate services in social skills and pragmatic language.

In making the above findings, the hearing officer relies in part upon the testimony of the District's Speech and Language Therapist, who taught the Student for several years. ((N.T. 1338, 1353.) This therapist made it clear that she was particularly disturbed by the decisions made by the IEP team in changing the focus of the Student's speech and language therapy in 2005, (N.T. 1343, 1356); she also was disturbed by a remark made to her by the Parents, (NT 1364). While these personal feelings provide possible motivation to embellish, the hearing officer carefully observed the witness' demeanor during the testimony. Based upon that and the overall circumstances, the hearing officer concludes that the witness' testimony was straightforward and not embellished. Since the therapist knew the Student's speech therapy needs far better than any other witness, the hearing officer gives weight to her testimony and relies upon it.

In their written summation, Parents address speech and language services separately under the rubric of "expressive language, receptive language and pragmatics." The record was developed substantially with regard to the Student's needs in speech pragmatics, but was not developed substantially regarding his needs for specially designed instruction or supportive services specifically addressing "expressive" and "receptive" language. The hearing officer considers these functioning deficits to be subsumed in his discussion of speech pragmatics, for this was the most prominent area of educational need addressed in the record. Thus, no separate compensatory education

services will be ordered to address these other functioning deficits, except as they are addressed through speech and language services directed to speech pragmatics.

The record shows that the District was aware or should have been aware that the Student was in need of specially designed instruction in social skills before July 2005. (FF 11.) From the beginning of the 2005-2006 school year until November 2005, the District was providing pragmatic speech training through related services provided by the speech and language therapist, two thirty minute group sessions and one thirty minute individual session per week. (NT 1340- 1341, 1353; S-8 p. 21.) After that, the speech pragmatics and social skills training in these speech classes was terminated. (NT 1340-1341.) The record shows that during this period, the Student was making some progress. (NT 1346; S-8 p. 21.) Therefore, compensatory education will be awarded beginning November 1, 2005 and for the remainder of the relevant period. (NT 1344-1345.) The speech and language therapist recommended continuing two one-half hour sessions per week to teach social skills and pragmatics. (NT 1353-1354.) Therefore, one hour per week of compensatory education will be awarded for the above period.

Behavior

The evidence on this issue was close, but not in equipoise. The hearing officer finds by a preponderance of the evidence that the District failed to address the Student's problematic classroom behavior appropriately.

The evidence was clear that, during the relevant period, the Student engaged in—and still engages in – inappropriate behaviors that interfere with his ability to learn, and with the social opportunities that he otherwise would profit by in the inclusive setting. (FF 70-73.) These include stereotypical behaviors associated with autism, odd behaviors associated with his obsessive and compulsive tendencies, and avoidant behaviors when faced with educational tasks. (FF 70.) The behaviors increase when greater demands are placed on the Student at school. (FF 71.) The preponderance of the evidence proves that the Student was and is in need of special education services to deal with these behaviors. (FF 76.) 20 U.S.C. §1414(d)(1)(A)(i)(II), 20 U.S.C. §1414(d)(3)(B)(i).

Prominent among the Student's dysfunctional behaviors is an unusual aversion to girls. (FF 73.) This is expressed frequently in school, and the District has a crisis plan in place as well as a plan for interventions by teachers in the general education environment. The hearing officer finds that frequently the District accommodates this behavior by separating the Student from girls so that he will not become upset. (FF 74.) However, the District has no systematic approach to educating the Student on how to coexist and work with girls in the educational setting, and with women in the community when he leaves school. (FF 78, 82, 83, 84, 86, 87.) His IEPs have no goals or objectives to address this behavior. (FF 77-81.) There is no behavior management plan to address it. (FF 83.)

The Parents' expert impressed this hearing officer as fully experienced in observing and addressing the behavior of children with autistic spectrum disorders in the

educational setting. Thus, he gives substantial weight to the expert's observations of the Student, and her assessments of the severity of his behaviors. The hearing officer also gives weight to the expert's testimony, contrary to that of the District's Educational Consultant, that it is possible and appropriate to address the Student's behavior in the educational setting. (FF 88.) In this regard, the hearing officer gives greater weight to the expert's testimony over that of the Educational Consultant, (FF 85), taking into consideration the Parents' expert's familiarity with the literature, and the overall testimony and circumstances.

The Parent asserted that the District's behavioral analysis in its Functional Behavioral Assessment was inconsistent with orthodox ABA practice. The Parent's expert in ABA testified at great length to this effect. The hearing officer gives little weight to this testimony. Although the expert was highly qualified to address the subject of orthodoxy and best practice, and though she was able to recite extensively the literature on the subject, the hearing officer gave more weight to two other considerations. First, the expert was not a trained educator, although she has extensive experience consulting in educational settings. Thus she was not in a position to speak to the best way to implement ABA practices in an educational setting – especially an inclusive one. Second, the District's Educational Consultant credibly testified that there are differing schools of thought among ABA practitioners, and so, one expert's orthodoxy might very well be another's heresy.

The District argued that it was appropriate to omit baselines, measurable goals and systematic data collection from the Student's IEPs in part because they had been advised by a consultant from the IU that there was no need. The consultant's advice was introduced through a hearsay statement by the District's Educational Consultant. The IU consultant did not testify, and thus was not subjected to cross examination. As an opinion, the hearsay about the IU consultant's advice was not capable of being verified. Therefore, the hearing officer cannot rely upon it. Dispute Resolution Manual §909. .

Moreover, this hearing officer declines to rely upon hearsay opinion testimony because it is in his opinion fundamentally unfair to the adverse party to deprive the party of the opportunity for cross examination on such testimony. Such opinion testimony, when introduced through hearsay, is also highly unreliable, in this hearing officer's experience. Here, there is no evidence of the qualifications of the individual to make judgments about the specific situation, his or her base of information or data, or the reasoning process leading to the opinion. Consequently, this evidence will be given no weight.

Likewise, the hearing officer gives no weight to the content of advice given in a consultation with asserted experts in behavior management, concerning the best way to approach the Student's pronounced and overt aversion to girls. (FF 84.) The District's Educational Consultant testified that she was moved to intervene regarding this behavior, but decided to check with these consultants, with whom she had a professional relationship. (NT 806-807, 918-921.) She was concerned that intervening by putting the Student together with girls could be counterproductive or even dangerous, and she sought

advice on this. Ibid. She testified that the experts advised against further intervention, on the premise that “why mess with it if it’s not broken?” Ibid. The content of the consultants’ advice is given no weight for the reasons stated above.

The hearing officer is persuaded that the IEP teams’ decision to do no more was improvident. As the Consultant described her reasoning for not intervening more explicitly, it was driven entirely by concerns about safety and the low number of incidents of actual assault upon girls (two in three years.) (NT 918-921.) While this is a baseline consideration, it devalues the importance of teaching the Student to be able to get along with girls on a day to day basis, for his future education, his life in the community, and his ultimate vocational success. What was “not broken” was the low incidence of aggression. Yet the Student’s inner attitudes and overt expressions toward girls were certainly “broken,” and the record shows that the non-systematic interventions in place were not addressing this need of the Student.³ (FF 70-76.)

The hearing officer is not persuaded by the testimony of the state-provided consultant that there is no need for special education regarding the Student’s aversion to girls. (NT 1586-1591.) The consultant admitted that he was “at a little distance” from the District’s planning regarding the Student’s behavior, and he did not know of all the facts regarding the Student’s behavior. (NT 1735-1738.) The consultant’s opinion was based, not on whether or not the Student’s behavior was interfering with his education, but on two other factors. First, the consultant argued that the Student’s aversion was not unusual among boys of his age, and he minimized the importance of the most extreme expression of the Student’s aversion, a possibly homicidal drawing. (NT 1586, 1742-1743.) Second, he argued that the Student had more important needs to address. As to the first argument, the hearing officer concludes that the Student’s behavior was markedly atypical, and damaging to his social and future educational and vocational opportunities. As to the second argument, the legal standard, as discussed above, is that the IEP must address all of a student’s educational needs; a prioritizing of needs violates this mandate.

The consultant also testified that he was seeing progress with regard to behavior. (NT 1672.) However, he did not offer any record of these observations, and no data was available. This subjective judgment, without any systematic program or data collection, is unpersuasive to this hearing officer. Moreover, the consultant testified that the only circumstance in which a behavior plan would be needed for a student is where the behavior interferes with the classroom. The hearing officer considers this underlying belief to be too cramped a view of the mandates of the IDEA.

The hearing officer is persuaded by the testimony of the Parents’ two experts that it is essential that the Student be taught to deal with his adverse feelings about girls. Considering the record as a whole, the hearing officer concludes that the Student’s behavior regarding girls has not improved with the interventions now in place. (FF 73,

³ The hearing officer does not intend by this finding to criticize the District’s judgment that experimenting with proximity to girls was inappropriate. The Parents’ expert suggested other approaches, including using video tapes and explicit teaching, that could have been explored.

74.) The primary response of the District has been to accommodate the environment by separating the Student from girls whenever he expresses concern. (FF 74.) As the record shows, this cannot always be done in a coeducational environment. (FF 74.) Moreover, the Student's unusual aversion to girls will seriously impede his growth in social skills and his opportunities in the future. (FF 73-74.) The world will not accommodate to this particular behavior. The Student needs a creative, systematic and data driven effort to teach him different behaviors toward girls.

While the Parents referenced the Student's anxiety and obsessive and compulsive tendencies, the record was not sufficiently developed to show that these emotional needs were interfering with the Student's educational opportunity. To the extent that these emotional needs contributed to the behaviors discussed above, the findings above encompass them. However, the hearing officer finds that there is insufficient evidence of educational need for special education services directed to emotional needs independent of the behaviors discussed above.

The record shows that the District was aware or should have been aware that the Student was in need of special education and related services for his behaviors before July 2005. (FF 11; NT 719-720, 726; P-11, S-8 p. 22.) Therefore, compensatory education will be awarded for the entire period at issue in this matter. The record provides no expert recommendations as to the amount of therapy time needed to address the Student's behaviors. Therefore, the hearing officer will award one hour per week of therapy to address the Student's behaviors, including his behaviors toward girls.

ESY

ESY is defined as special education and related services that are provided to a child with a disability, beyond the normal school year of the public agency; in accordance with the child's IEP; at no cost to the parents of the child; and meet the standards of the SEA. 34 C.F.R. Sec. 300.309.

IDEA's implementing regulations provide that extended school year services must be available as necessary to provide FAPE. 22 Pa. Code §14.132 sets forth criteria to be considered by the public agency, including consideration of regression and recoupment, and:

- (vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

22 Pa. Code Sec. 14.132(2).

Here, the evidence is uncontested that the District considered the above criteria and determined that the Student did not need ESY services in order to receive or preserve the educational benefit provided to him in the regular school year. (FF 89-91.) Since the Parents provided no evidence to the contrary, the evidence is preponderant that the

Student was not entitled to ESY services, and compensatory education will not be awarded in this regard.

Assistive Technology

The Parents argued that the District failed to provide needed assistive technology. However, the record is scant in this regard, and the only credible evidence in the record suggests that the District utilized such technology appropriately. The Parents' experts made suggestions about possible uses of assistive technology, but neither offered an opinion that the Student was deprived of FAPE due to a failure to provide it. (NT 1448-1451, 1534-1542; S-6.) Therefore, the record is preponderant that the District did not deprive the Student of assistive technology required in order to provide FAPE.

Independent Educational Evaluation

Parents are entitled to an independent educational evaluation if they disagree with the district's evaluation. 34 C.F.R. §502(b)(1). Here, the Parents failed to prove that they disagreed with the District's evaluations. On cross examination concerning the 2004 evaluation, the Mother's testimony was so contradictory, and so often at odds with the record, that it was not credible. (FF 92-94.) Nevertheless, she repeatedly admitted that she had not raised most of her concerns with the District concerning the District's evaluations. *Ibid.* There was no documented objection or request for an independent educational evaluation. Thus, the Parents did not provide credible evidence that they disagreed with the District's 2004 evaluation.

For the same reasons, the Parents also failed to prove that they disagreed with the District's 2007 evaluation. (FF 94.) Nevertheless, they did request an independent Functional Behavioral analysis. (FF 95.) The District responded by promising to provide an FBA through District staff, and asking the Parents to attend a resolution session, which they failed to do. (FF 95.) They never provided an independent FBA report to the District; their expert observed the Student and attended due process hearing sessions solely for purposes of testifying in the present due process proceedings. (FF 96.)

Under these circumstances the Parents are not entitled to reimbursement for the evaluation of their expert school psychologist or their behavior analysis specialist. The record is preponderant that they did not disagree with the District's evaluations, a prerequisite to reimbursement under the IDEA. They requested an independent FBA only, thus making it clear that they did not challenge the rest of the 2007 evaluation. Moreover, they abandoned their request for an independent FBA by failing to attend a resolution meeting requested by the District, and by participating in the FBA process subsequently without further discussion of either their desire for an independent FBA or any credible evidence of disagreement with the District's FBA. (FF 95.)

The Parents argue that the District never followed through with their intention to request due process as required by the IDEA; this they argue constitutes a violation of the IDEA and ipso facto requires this hearing officer to order an independent FBA. The

hearing officer declines to accept this argument on the face of this record. The Mother's testimony and the documents in this case demonstrate that the Parents' demands were multitudinous and constantly shifting throughout the period in question. It was therefore not unreasonable for the District to conclude that their failure to follow up on the District's request for a resolution session, coupled with the Parents' participation later in the FBA process conducted by the District, was evidence of yet another shift in their demands. The District's failure to proceed with due process was therefore a procedural violation that did not in fact deprive the parents of participation in the planning of the Student's educational programming, because they waived their request for an independent evaluation by their own actions.

ORDER

1. In the 2005 to 2006 school year, the District failed to offer or provide education and related services that were reasonably calculated to provide meaningful educational benefit to the Student with regard to mathematics, social skills and behavior.
2. In the 2006 to 2007 school year, the District failed to offer or provide education and related services that were reasonably calculated to provide meaningful educational benefit to the Student with regard to mathematics, social skills and behavior.
3. The Student was not eligible for ESY services in the 2005-2006 and 2006-2007 school years.
4. The Parents are not entitled to reimbursement for the cost of the Independent Educational Evaluation provided by their expert school psychologist, and they are not entitled to an order that their behavior specialist conduct a functional behavior assessment.
5. The District will provide compensatory education to the Student in the amount of one hour per day for all school days from the first day of school in the 2005-2006 school year until July 16, 2007, to provide educational services in basic and practical mathematics.
6. The District will provide compensatory education to the Student in the amount of one hour per week for all weeks in which school was in session from November 1, 2005 until July 16, 2007, to provide educational services in social skills and pragmatic language.
7. The District will provide compensatory education to the Student in the amount of one hour per week of therapy to address his behaviors, including his behaviors

toward girls, for all weeks in which school was in session from the first day of school in the 2005-2006 school year until July 16, 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, or therapy, as long as they are directed to mathematics, social skills, speech pragmatics and therapy for behavior as set forth above. 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 usual and customary costs to the District for any contracted services. The District has the right to challenge the reasonableness of the cost of the services.

William F. Culleton, Jr. Esq.

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

March 6, 2008