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## Pennsylvania Special Education Hearing Officer

### DECISION

Child's Name: PM

Date of Birth: xx/xx/xx

Dates of Hearing:  
September 21, 2007, October 12, 2007, November 16, 2007  
CLOSED HEARING  
ODR #7964/07-08 LS

Parties to the Hearing:    Representative:

Frederick M. Stanczak, Esq.  
179 North Broad Street  
Doylestown, PA 18901

Northampton Area S. District  
2014 Laubach Avenue  
Northampton, PA 18067

Brian J. Ford, Esq.  
King, Spry, Herman, Freund & Faul,  
One Bethlehem Plaza, Suite 700  
Bethlehem, PA 18018-5756

Date Record Closed: December 10, 2007

Date of Decision: December 22, 2007

Hearing Officer: William F. Culleton, Jr., Esq.

## INTRODUCTION

Student (Student) is a xxx year old, (NT 9-20), eligible resident of the Northampton Area School District, assigned to the third grade. (NT 10-5 to 8.) He is identified as Other Health Impaired. (NT 10-22 to 11-3.) His Parents, Jeffrey and Coleen , requested due process, asserting that the District failed in its Child Find obligation, failed to evaluate all of his suspected areas of disability, and failed to offer an IEP that was reasonably calculated to provide meaningful educational benefit. They seek compensatory education for two school years, reimbursement for private educational evaluations, and tuition reimbursement for a unilateral placement in a private school.

The District argues that it adequately intervened through a screening program, that it did not evaluate immediately because of a meaningful response to intervention, and that it provided meaningful educational benefit notwithstanding any flaws in its IEP. It opposes equitable relief and reimbursement for both evaluation costs and tuition.

## PROCEDURAL HISTORY

The Student was referred to the District's screening intervention, known as the IST program, in March 2005, during his kindergarten year. (FF 15.) He was referred again to IST in January 2006, during his first grade year. (FF 27.) He was evaluated and an evaluation report was sent to the Parents in October 2006, during his second grade year. (FF 47.) An IEP was instituted in December 2006, and amended in February 2007 and May 2007. (FF 69, 83-84.) An evaluation report was sent to the Parents in July 2007. (FF 94.) The Parents filed a request for due process on July 29, 2007. (FF 101.) Hearings were held on September 21, 2007, October 12, 2007 and November 16, 2007. Written summations and briefs<sup>1</sup> were received on December 10, 2007, at which time the record closed.

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<sup>1</sup> These are marked and included in the record as follows: HO-1 - Parents' Closing Argument; HO-2 - Closing Brief, Northampton Area School District.

## **ISSUES**

1. Did the District fail to identify the student as a child with a disability, during the period from July 31, 2005 until October 11, 2006, contrary to its Child Find obligations under the IDEA?
2. Did the District fail to evaluate the Student in all suspected areas of disability, during the period from October 11, 2006 until July 31, 2007, contrary to its obligations under the IDEA?
3. Was the District's Individual Education Plan of December 2006, as amended in February and May 2007, reasonably calculated to provide meaningful educational benefit?
4. Did the District fail to offer an IEP reasonably calculated to provide meaningful educational benefit for the 2007 - 2008 school year?
5. Is the Student entitled to compensatory education for the period from the first day of school in the 2005-2006 school year until the last day of school in the 2006-2007 school year?
6. Are the parents entitled to reimbursement for the cost of private evaluations they obtained during the period between July 31, 2005 and July 31, 2007?
7. Are the parents entitled to tuition reimbursement for the Student's private school placement during the 2007-2008 school year?

## **FINDINGS OF FACT**

### **CHILD FIND**

1. The Student was evaluated through early intervention services in November 2002 and an IEP was provided to the Student in January 2003. (P-1, 2.)

2. The Parents consented to both the evaluation and the early intervention services offered. (P-1.)
3. The November 2002 CER identified significant needs for behavior control and social interaction skills. It identified the Student with Developmental Delay and Speech/Language Impairment. (P-2.)
4. The January 2003 IEP provided goals and teaching strategies for behavioral and social needs. Speech and Language support was offered. (P-1.)
5. Before he entered kindergarten, the Student had a Therapeutic Support Services worker (TSS) assigned to him for 15 hours per week. (NT 3814 to 39-11.)
6. At the time of the Student's admission into the District's kindergarten class in the [redacted] Elementary School, the Parents did not want the Student to be identified for special education services, because they feared that identification would stigmatize the Student. (NT 42-2 to 44-11; S-51.)
7. Prior to the beginning of the 2004-2005 school year, the Parents met with the principal of the District's [redacted] Elementary School to seek permission for the TSS to attend the Student while he was in class for several weeks during the beginning of his kindergarten year. (NT 39-8 to 17.)
8. The Parents notified the Principal that the Student had a history of early intervention and needed extra assistance in the classroom. (NT 41-9 to 42-23; P-1.)
9. The Parents expressed the desire that the Student not be identified and provided with special education at that point in time. (NT 41-24 to 42-1, 43-3 to 44-11.)
10. The Parents also met with the kindergarten teacher to whom the Student was being assigned, and communicated to the kindergarten teacher that

the Student was diagnosed with ADHD, was distractible, had trouble dealing with loud noises and needed supports in the classroom. (NT 44-12 to 45-13.)

11. The Student was attended by a TSS worker in the beginning of his kindergarten year. (NT 46-1 to 11.)
12. The kindergarten teacher provided interventions during the school year, including one-on-one assistance, self evaluation exercises, preferential seating and a behavior chart. (S-1.)
13. The Student's behavior and his ability to stay focused remained a concern throughout his kindergarten year. (NT 49-20 to S-47 p. 1, 2.)
14. The Student's behavior was manageable from September 2004 until the second half of the 2004-2005 school year, when his behaviors escalated. By the middle of his kindergarten year, the Student's self control, listening, attention and organizational skills were rated as needing improvement. These remained areas of concern even though some progress was noted by the end of the year. (NT 45-22 to 47-21; P-1, 2.)
15. District personnel referred the Student to the District's Instructional Support program on March 18, 2005, during his kindergarten year. The reasons for referral included difficult behavior, staying on task, paying attention, following oral directions and interacting with others. (NT 47-1 to 50-11; S-2.)
16. By April 2005, the Student's behavioral control was deteriorating. He was distracted during most of his class time, fidgeting and playing with objects. His social interactions were dysfunctional. (NT 46-25 to 50-9, 179-10 to 23, S-1. 2.)

17. The IST team held its first meeting on April 19, 2005, and it met again on May 25, 2005. (S-2.)
18. The IST team instituted interventions in the general education setting, including one-on-one assistance, self evaluation exercises, organizing his take-home papers into a pile, covering part of work papers to slow the student down, preferential seating, reminders and a behavior chart. (NT 170-25 to 173-15; S-2.)
19. These interventions were only intermittently effective. (NT 174-25 to 175-24, 182-16 to 21; S-2.)
20. By the end of the school year, the Student was suspected of having a disability. (NT 181-20 to 183-10, 185-2 to 11.)
21. On May 25, 2005, the team rated IST interventions as "mostly successful.", and reported that the Student had shown "some improvement in behavior." It decided to continue IST interventions instead of referral for special education evaluation. (NT 50-18 to 52-1; S-2.)
22. The team's decision was substantially based upon the Student's grades, although the Student's social learning had been impacted adversely. (NT 182-3 to 15, 186-17 to 187-2.)
23. The Student was not considered to be in IST status at the beginning of his first grade year, although his Father thought he was in IST status. (NT 53-5 to 11, 187-11 to 188-15.)
24. From the beginning of the year, the Student's behavioral control deteriorated. (NT 53-20 to 54-24, 191-24 to 192-14, 207-16 to 212-22, 216-14 to 22.)
25. In the first half of the year, the teacher employed interventions similar to those that were prescribed in the IST process. (NT 253-23 to 256-19.)

26. The interventions carried over from kindergarten, as well as others attempted by the first grade teacher, were ineffective. (NT 53-20 to 54-24, 190-12 to 191-13.)
27. The first grade teacher referred the Student for a second time to IST in January 2006. A meeting was held pursuant to this referral on February 15, 2006. (NT 188-22 to 189-23; S-4.)
28. The teacher was instructed that it was District policy not to refer a student for evaluation before first referring to IST. (NT 192-15 to 21, 230-19 to 25.)
29. In January 2006, the teacher noted signs of disability but did not refer for evaluation because the Student was still on grade level. (NT 193-3 to 7.)
30. Throughout the Student's first grade year, his teacher reported frequent instances of arguing with peers and teachers, loud and disruptive behavior, verbally annoying peers and showing hostility, throwing and damaging objects, punching, pushing, spitting, kicking, noncompliance with teachers' directions, attention seeking behavior. The Student showed anger when he did not understand the academic subjects. (NT 258-1 to 259-18; S-46 p. 62 to 83.)
31. The Student's teacher and mother responded in part by punishing the Student through withdrawal of privileges. (NT 213-7 to 215-10, 228-8 to 229-230-14, 258-6 to ; S-46 p. 62 to 83, S-46 p. 82.)
32. By the middle of his first grade year, the Student had not been able to form effective friendships. (NT 297-8 to 19.)
33. In February and April of the Student's first grade year, the Instructional Support Team noted continuing problems with behavior, attention, work completion, written expression and social skills. (S-4, 5.)

34. In first grade, the Student's performance in reading, writing and math was assessed as at or above grade level, while his behavior was assessed at lower than grade level; however, his report card showed unsatisfactory work in writing and inconsistent work in mathematics, and his standardized testing showed educational deficits in written expression and some mathematics skills. (NT 74-3 to 74-18; S-8, 46 p. 84, 85, S-47 p. 1, 2.)
35. The interventions provided by the District in first grade, and the Student's response to those interventions, were not sufficient. (NT 279-22 to 280-3, 281-14 to 18.)
36. In February 2006, the District's school psychologist chaired an "initial line of inquiry" with staff to develop behavioral hypotheses as a predicate for a Functional Behavioral Assessment, which the psychologist produced on February 10, 2006. This was a meeting that lasted from one to one and one-half hours. (NT 269-11 to 270-16, 297-20 to 23; P-4.)
37. It was the practice of the school psychologist to develop an FBA and assess response to behavioral intervention in the general education setting before referring a student for evaluation for special education. (NT 279-22 to 281-22.)
38. During the initial line of inquiry, no factors other than cognitive-behavioral dynamics were considered. (NT 288-14 to 292-25.)
39. The District did not plan to refer the Student for evaluation until it had exhausted all possible interventions in the general education setting before referring the Student for evaluation. (NT 293-1 to 295-3, 298-15 to 300-25.)
40. Only a complete breakdown of the IST process would have led the District to refer the Student for evaluation before completing a functional



behavioral assessment and subsequently assessing the Student's response to intervention. (NT 300-3 to 10.)

41. In April 2006 the Instructional Support Team noted that FBA strategies had been inconsistently successful regarding these behaviors and referred the Student for evaluation. (S-5.)
42. The District requested permission to evaluate on April 27, 2006 and the Parents signed the Request for Permission form on May 5, 2006. (S-9.)
43. The Student demonstrated poor on-task behavior from the start of second grade. (P-3 p. 3, P-8.)
44. Throughout the Student's second grade year, his teacher reported frequent instances of arguing with peers and teachers, loud and disruptive behavior, shouting, verbally annoying peers and showing hostility, throwing objects, punching, pushing and threatening other children, spitting, hiding unfinished work, noncompliance with teacher's directions, attention seeking behavior. (NT 69-4 to 70-6, 754-9 to 18; S-46 p. 1 to 60, S-46 p. 8.)
45. The Student's teacher and mother responded in part by punishing the Student through withdrawal of privileges. (S-46 p. 62 to 83, S-46 p. 82.)
46. The Student's grades in second grade were substantially worse than his scores in first grade. His reading comprehension was rated unsatisfactory and his writing and mathematics scores were unsatisfactory. His behavior scores were less than satisfactory, as were his scores in class work, attentive listening, organization, staying on task, and self control. His scores on following directions were mixed. (S-47 p. 5.)

EVALUATION - FAILURE TO IDENTIFY ALL OF STUDENT'S NEEDS

47. The District provided an ER in October 2006 that identified the Student with Other Health Impairment and Specific Learning Disability. (P-3.)
48. The October 2006 ER noted a history of diagnoses with Attention Deficit Disorder, Oppositional Defiant Disorder and Intermittent Explosive Disorder. (P-3.)
49. Parental input indicated the possibility of an autistic spectrum disorder. (P-3.)
50. The evaluation noted below-benchmark math fluency and computation, difficulties with auditory working memory, poor word knowledge, decreased processing speed, decreased motor speed, poor achievement in reading comprehension and auditory comprehension and complaints of fatigue when writing. (P-3.)
51. The October 2006 ER found educational needs in attention, social skills, compliance with teacher directives, resiliency skills, and written language skills. (P-3.)
52. The October 2006 ER did not make a finding regarding developmental disorder, mathematics computation and fluency, reading and auditory comprehension and physical fine motor weaknesses. (P-3.)
53. The October 2006 ER identified the Student with Other Health Impairment (ADHD) and a Specific Learning Disability in written expression. (P-3.)
54. At the time of the evaluation, the District's school psychologist suspected a possible developmental social disorder. (NT 312-10 to 316-22, 341-18 to 343-5.)

55. The October 2006 ER noted that the school should consult with a physician regarding a possible Autistic Spectrum Disorder. (P-3.)
56. The District sent a request for information to the Student's physician, but received no response. (NT 314-27 to 315-5, 317-5 to 11, 318-17 to 319-4.)
57. The District did not seek another physician or other qualified professional to determine whether or not the Student should be diagnosed on the autistic spectrum. The school psychologist determined that it was not necessary to evaluate whether or not the Student should be diagnosed on the autistic spectrum. (NT 319-5 to 323-12.)
58. The school psychologist obtained a social skills evaluation by a Certified Occupational Therapy Assistant, which was not designed to identify Autism. The COTA found substantial deficits in classroom attention and behavior and social skills, including interpretation of social cues. (NT 314-18 to 19; P-8, 10.)
59. The October 2006 ER recommended that District personnel closely monitor the Student's emotional status and report any changes immediately. (P-3.)
60. The October 2006 ER did not identify a need in oral expression, nor did it recommend a speech and language evaluation. (P-3.)
61. The school psychologist obtained a speech and language screening, performed by a speech and language support teacher, which was negative for speech and language problems. There was no written report of this screening, except for an email message sent to the school psychologist, nor were the results shared with the Parents. (NT 322-20 to 323-1, 404-14 to 407-1.)
62. The school psychologist did not consider it necessary to obtain a speech and language evaluation, and did not do so. (NT 387-1 to 388-19.)

63. Although the Student's test results pointed toward difficulties with processing speed, the October 2006 ER did not recommend any special education services to address auditory processing. (P-3.)
64. The October 2006 ER did not specify needs in the area of sensory processing, because at the time of the evaluation a sensory processing disorder was not suspected. (NT 324-18 to 22; P-3.)
65. The October 2006 ER did not recommend an occupational therapy evaluation. (P-3.)
66. The October 2006 ER did not recommend further evaluation of the Student's needs regarding mathematics calculation. (P-3.)

DECEMBER - MAY 2006 IEP FAILURE TO OFFER MEANINGFUL OPPORTUNITY

67. The District offered an IEP dated November 2006 that provided itinerant learning support for written expression, and set forth goals for written expression and time on task. (P-5.)
68. The November 2006 draft, while recognizing needs in behavior, social skills, and resiliency, did not set forth goals for these skills. It called for a social skills assessment in January 2007, and for the institution of a positive behavior support plan after receipt of the report. (P-5.)
69. The District offered a revised draft IEP in December 2006, with itinerant learning support for written expression, counseling services, and one goal each for written expression, time on task, aggressive behavior, and oppositional behavior. A behavioral improvement plan was attached. (P-7.)

70. The Student had mastered already the ability to combine sentences called for in the written expression goal. (NT 737-19 to 738-6.)
71. The December IEP goals did not address the Student's performance in mathematics. (P-7.)
72. The December IEP goals did not address the Student's needs related to autism, receptive and expressive language and auditory processing. (P-7.)
73. The December IEP goals did not address the Student's needs related to resiliency and social skills. (P-7.)
74. The December IEP goals were not related to measured baselines, and did not specify a method of measurement and data collection. ((NT 740-8; P-7.)
75. In December 2006, a Certified Occupational Therapy Assistant from the IU conducted a social skills evaluation, including three separate observations in different school settings on different days. The COTA reported that the Student was highly distractible, hyperactive and disorganized in regular education class, but was better focused and redirectible in special education settings with one to one instruction, and in physical education classes involving physical activity. (P-8.)
76. The COTA issued a report on February 5, 2007, identifying needs in social emotional skills, conversation skills and appropriate peer/adult interaction. Proposed goals included appropriate body language, eye contact, proximity, manners, voice volume, friendship skills, defensiveness, conflict resolution, and self organization. (P-10.)
77. The behavioral goals in the December 2006 IEP were inadequate to provide effective intervention because they were not accompanied by specially designed instruction to address the

Student's auditory processing deficits. (NT 700-4 to 704-14.)

78. The December 2006 IEP provided itinerant support to the Student in the learning support classroom, rather than in the general education classroom, four days per week, 20 minutes each day. (NT 734-9 to 735-17.)
79. The Student's time on task did not change from December 2006 until February 2007 in the general education classroom. (NT 380-4 to 21, 383-3 to 17; S-52 p. 9.)
80. The Student's production of written words increased variably from December 2006 to March 2007 in a small group setting. (NT 521-3 to 24, 549-3 to 18, 555-5 to 25, 739-3 to 742-3, 746-16 to 747-3, 754-2 to 7, 764-23 to 765-16; S-53 p. 3.)
81. The Student's aggressive behaviors did not decrease materially from January 2007 to April 2007. (S-53 p. 1.)
82. The Student's negative or aggressive comments increased slightly from January 2007 to May 2007. (S-53 p. 2.)
83. The District amended the IEP in February, 2007 to add counseling for the Student. (NT 511-7 to 512-24, 549-6 to 550-1; P-9.)
84. On May 4, 2007, the District proposed an amendment to the December 2006 IEP that added reading fluency and comprehension goals and increased the level of intervention from itinerant to resource learning support, transferring the Student's language arts instruction to the learning support resource room. (NT 749-17 to 21, 761-9 to 762-2; P-12.)

#### INDEPENDENT EDUCATIONAL EVALUATION

85. The Parents obtained an independent psychoeducational evaluation report dated May 14,

2007, which found that the Student experiences deficits in visual and auditory processing that interfere with all aspects of learning, and which lead to the Student's behavioral difficulties. The independent evaluator diagnosed the Student with Asperger's Disorder and Attention Deficit Hyperactivity Disorder. (NT 657-4 to 658-18, 672-22 to 673-17; P-13.)

86. The report found that the Student is likely to be missing much of the general verbal instruction that occurs in the classroom, leading to constant frustration and anger, due to his inability to process sensory input in that setting. (NT 689-4 to 692-1; P-8, 13.)
87. The evaluator found that the Student's inability to focus attention, process spoken language and complete writing assignments directly impact on his ability to effectively participate in the general education curriculum, and interact effectively with other students. (NT 666-7 to 16, P-13.)
88. The report recommended placement in a setting designed specifically for students diagnosed with autistic spectrum disorders. (NT 704-18 to 707-14; P-13.)
89. The report recommended small class size, one to one instruction, modified written work requirements, verbal feedback opportunities, multisensory instruction, assistive technology for writing, special accommodations for testing, and specially designed instruction for both verbal and written expression, and teacher directions. (P-13.)
90. The report also recommended assessment for verbal and visual retraining, sensory integration training, a structured writing program, individual math instruction with accommodations for handwriting deficits, social skills training, organizational skills training, individual and family counseling, individual tutoring, and occupational therapy services. (P-13.)

91. Speech and language and occupational therapy evaluations are necessary to comprehensively evaluate the Student's disorders. (NT 707-12 to 713-8, 717-1 to 7.)
92. The Parents obtained an independent speech and language evaluation, which found a moderate to severe mixed expressive and receptive language disorder with poor pragmatic skills. This was found to be a possible primary reason for the Student's behavioral problems. The speech - language pathologist who evaluated the Student recommended individual language therapy and a central auditory processing evaluation. (P-15.)
93. The Parents obtained an Occupational therapy report dated May 11, 2007, which reported a disorder of sensory modulation, recommending one hour per week of Occupational Therapy services, including interventions to decrease inappropriate behaviors related to the Student's need to modulate his level of sensory arousal, small classroom size with frequent breaks for providing a sensory diet, speech and language evaluation, and participation in a social skills group. (P-14.)
94. On July 31, 2007, the District issued a reevaluation report noting the independent psychoeducational, occupational therapy and speech and language reports, and calling for further data collection. The report called for speech and language and occupational therapy reports by District or IU staff. (P-16.)
95. On July 17, the Parents obtained the report of an evaluation for central auditory processing problems. The report concluded that the Student experiences severe intolerance for environmental noises, moderately severe deficit in central auditory processing, and deficits in auditory sequencing and auditory organizational skills. (P-17.)
96. In the Spring of 2007, the Parents asked the District to convene an IEP meeting at the end of the year to review the Student's programming for



third grade. The District declined to do so on the grounds that the Parents had engaged private evaluators and that it would be better to wait until August to incorporate the private evaluations into the IEP. (NT 150-14 to 152-2; P-9.)

97. The Parents explored various options for private placement in June 2007. (NT 116-2 to 177-1.)
98. As part of their search, the Parents visited an emotional support class in a District school that the school psychologist held out as a possible placement for the Student. (NT 117-2 to 118-3, 157-18 to 158-11.)
99. The District did not offer the placement to the Student. (NT 118-4 to 13.)
100. The Parents felt that to enroll him in private school was a last resort after exhausting all public school options. (NT 118-20 to 120-22.)
101. On July 31, 2007, by letter of counsel, the Parents gave the District notice of their intention to withdraw the Student from the District and enroll him in a private school at District expense, and to seek tuition reimbursement, at least ten days in advance of withdrawing the Student from the District. (NT 158-18 to 163-6; P-19, 20.)
102. The Parents enrolled the Student in the Private School, a program that would adequately address the Student's needs. (NT 727-18 to 24.)
103. The Private School provides all of the services that the Student needs to address his needs as identified in the private psychoeducational evaluation. (NT 566-16 to 569-18, 573-15 to 575-14, 577-11 to 578-18, 618-16 to 636-5.)

## DISCUSSION AND CONCLUSIONS OF LAW

### BURDEN OF PROOF

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging a special education IEP is upon the party seeking relief, whether that party is the disabled child or the school district. Schaffer v. Weast, \_\_\_ U.S. \_\_\_, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005).

### WHAT CONSTITUTES A FREE APPROPRIATE PUBLIC EDUCATION

A school district offers FAPE by providing personalized instruction and support services pursuant to an IEP that need not provide the maximum possible benefit, but that must be reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or de minimis educational benefit. Whether an IEP is reasonably calculated to afford a child educational benefit can only be determined as of the time it is offered to the student and not at some later date. 20 U.S.C. §1412; 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); Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988) Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993); Daniel G. v. Delaware Valley School District, 813 A.2d 36 (Pa. Cmwlth. 2002)

### CHILD FIND

The District has an affirmative duty under the IDEA to identify, locate and evaluate all children residing within its boundaries who are in need of special education and related services. 20 U.S.C. § 1412(a)(3). This obligation obtains "regardless of the severity of [the child's] disability", 34 C.F.R. § 300.111(a)(1)(i), and extends to children "suspected" of being disabled and in need of special education, regardless of whether or not the child is advancing from grade to grade. 34 C.F.R. §300.111(c)(1).

The District is obligated to find and evaluate disabled children within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. W.B. v. Matula, 67 F.3d 484, 500-501 (3d Cir. 1995); O.F. ex rel. N.S. v. Chester Upland School District, 246 F.Supp. 409, 417-18 (E.D. Pa. 2002). The issue here is whether the District, in placing the Student in regular education for his entire first grade year before evaluating him, complied with its Child Find obligations within a reasonable time after it was on notice that the Student's behavior suggested a disability that was interfering with his learning. The hearing officer finds that it did not do so.

The Commonwealth of Pennsylvania, in its regulations applying the IDEA, provides some authority for determining what is a reasonable time in these circumstances. In 22 Pa. Code §14.121, the regulations provide that each school district must have a screening process for identifying children with disabilities; such programs are required, among other things, to identify students "who may need special education services and programs", assess a student's functioning within the regular education curriculum, intervene as appropriate, and assess the student's response to the intervention. 22 Pa. Code §14.122(a)(4), (c)(1) - (4). The district must make a determination as to "whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level." 22 Pa. Code §14.122(c)(6). The regulation then provides:

If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be referred for evaluation ... .

22 Pa. Code §14.122(d). The hearing officer finds that this language is an appropriate guide for determining the reasonableness of the District's response to the Student's learning difficulties in kindergarten.

#### NOTICE TO DISTRICT OF POSSIBLE DISABILITY

Here, the District was on notice, soon after the Student's admission to the District's kindergarten class in the Elementary School, that the Student had a disability that could interfere with his learning. (FF 1-8, 10-13.) Moreover, the Student did exhibit behaviors of concern that placed him at risk. (FF 13-16.) Nevertheless, both the

Parents and the school personnel agreed to try to address those needs in the general education context, in part because of the Parents' concern with the potential for stigma and labeling that might accompany identification for special education. (FF 6, 9.) Thus, for more than half of the Student's kindergarten year, the District properly provided accommodations in the general education setting, and the Student at first was able to participate satisfactorily. (FF 15-18.)

However, the Student's behaviors escalated and the kindergarten teacher referred him to the District's Instructional Support program. (FF 15-18.) The record shows that this program is the District's equivalent of the Screening service provided for in 22 Pa. Code §14.121 et seq. The strategy for this child was therefore to test his response to general education interventions before referring him for special education evaluation. (FF 15-18.)

#### IMPLEMENTATION OF RESPONSE TO INTERVENTION MODEL

Neither party found fault with this decision, nor does the hearing officer. However, the hearing officer finds that the process as implemented was not consistent with the IDEA, because the Student was not referred for evaluation within a reasonable time. The Parents proved three factual bases for this conclusion.

First, it took the District a full month after the initial referral to convene the initial IST meeting to plan for interventions to address behaviors that by that time were at least beginning to "downslide" in his father's words. (FF 15, 17.) The District's IST program was not the equivalent of an evaluation; nothing in the record suggests that it requires similar extensive preparation. Especially in light of the sixty school day timeframe for IST "screening" set forth in the state regulation, a thirty day wait for the first IST meeting is unreasonable.

Second, the District's first evaluation of response to its interventions in May 2005 concluded that the interventions were successful enough to merit continued observation in its IST program. (FF 21, 22.) This conclusion flies in the teeth of evidence just one month earlier showing that the Student was losing behavioral control during the majority of his class time. (FF 14 - 16, 19 - 20.) Nor is it plausible to think that the interventions instituted at the April 2005 IST meeting turned the Student around in a month. They did not

materially differ from those that the kindergarten teacher had followed all year long. (FF 12, 18.)

Third, the District referred the Student to IST twice. He was referred in March of his kindergarten year, (FF 15), and again in January of his first grade year. (FF 27.) Nothing in the IDEA or the state regulations suggests that a district can defer evaluation of a student who repeatedly demonstrates a need for intervention by repeatedly referring the student to IST services. At the very least, such a practice raises serious concerns in this hearing officer, concerns borne out by the record in this case.

The District points out that the Parents acquiesced in the IST decision not to refer the Student for evaluation at this point in time. However, the father evidenced a lack of clear understanding of his or the Student's rights at that point in time, and the hearing officer finds that he did not knowingly waive any rights under the IDEA. (FF 8-9; NT 50-9 to 52-1.)

The District's child find obligations are not contingent upon parental consent. 20 U.S.C. § 1412(a)(3); 22 Pa. Code §14.121. Indeed, a district can obtain a due process order to evaluate over a parent's objection. 20 U.S.C. §1414(a)(1)(D)(ii)(I). A student's rights under IDEA do not depend upon parental vigilance. *M.C. v. Central Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir.1996). Thus, any acquiescence by the Parents did not absolve the District of its legal obligation to refer for evaluation within a reasonable time.

Here, the hearing officer finds that sixty school days after initial referral to IST was a reasonable time. Thus, the Student should have been referred for evaluation by approximately the end of the Student's kindergarten year.

#### FURTHER DELAY DURING FIRST GRADE

However, the District did not refer the Student. In fact, he was taken out of IST status at the beginning of the school year in first grade, unbeknownst to his father. (FF 23.) From the beginning of the year, the Student's behavioral control deteriorated. (FF 24, 26, 30-34.) The interventions carried over from kindergarten were ineffective. (FF 26, 35.) Not once during the sixty days after the beginning of the school year did the District's personnel consider referring the Student for evaluation. (FF 29.) Rather, nothing was done until January, when he was referred for the second time to IST.

This referral led, not to evaluation, but to a Functional Behavior Analysis in February 2006, based solely

upon a meeting for at most one and one-half hours called an Initial Line of Inquiry. (FF 36-40.) Meanwhile, the Student's behavior continued to be episodically uncontrolled, while the teachers employed discipline and various other interventions throughout the year, many of which were the same as those that had been utilized in kindergarten. As the April referral to evaluation shows, ultimately these interventions were not successful, despite days on which the Student's behavior was controlled. (FF 41-42.)

#### EFFECTIVENESS OF INTERVENTIONS IN GENERAL EDUCATION SETTING

The District's defense seemed to center around the theory that its IST program was effective to allow the Student meaningful educational benefit. It argued that its interventions were effective, because the Student's negative behaviors decreased inconsistently and he remained on grade level academically. However, no evaluation was done during this whole period to verify that episodic changes in the Student's behavior were due to the interventions. There was no effort to differentiate behavioral outbursts from any underlying cause of this behavior, nor were intervening causes, such as medication changes, assessed as alternate causes of any short-lived changes in behavior. Indeed, the daily notes between the first grade teacher and the mother indicated that a medication change may have been the cause of a notable - but temporary - lessening of the Student's behavioral problems in February and March. (NT 134-21 to 135-21; S-46 p. 14.)

Taken as a whole, the documents in the record, and the ultimate referral for evaluation, contradict the first grade teacher's assertion that her interventions were effective. Thus, the hearing officer does not accept the District's claim that it was justified in not referring the Student earlier because there was meaningful response to intervention.

This finding is based in part upon the hearing officer's assessment of the credibility of the witnesses. The hearing officer finds the father to be credible. His demeanor and body language communicated sincerity to this hearing officer, although his tension rose markedly as the testimony wore on. He continually took pains to compliment District personnel for the good things they did. He repeatedly answered questions in a way that was calculated to be careful about what he did and did not remember. There was no detectable embellishment or dissembling. He

admitted points not in his favor - even volunteering such information at times.

His overall testimony impressed one as being a serious effort to be fair with District staff despite an underlying frustration and anger with the slow pace of the District's approach to his son's problems. In most respects, his account was consistent with the documentary evidence, and that of other witnesses. Thus, the hearing officer gives weight to the father's assertion that his son's behavior and learning difficulties were on a "downslide" from the end of kindergarten to the date on which his attorney filed for due process.

In contrast, the hearing officer gives less weight to the District witnesses' assertions that their interventions were effective during the Student's year in first grade, for two reasons. First, the same negative behaviors continued over two years - and even escalated, undercutting any claim of effectiveness of interventions. (FF 24-35, 41.) Second, perhaps in an effort to harmonize the claim of effectiveness with the fact that the Student was referred for enhanced intervention three times, the witnesses contradicted one another about the efficacy of these interventions, with the school psychologist stating that the interventions and Student's response to them were unsatisfactory, while the teachers spoke vaguely about positive effects - but not as much as they would have wished.

The District argues that its clear failure to evaluate the Student within a reasonable time was due to the fact that he was able to function within the regular education curriculum. Some of the Student's grades suggested progress, especially in reading. (FF 34.) The District argues that its teachers were correct in concluding that the Student's academic performance indicated no need for special education.

The hearing officer finds that this Student needed special education from at least the end of kindergarten, to deal with behaviors that were caused, not by cognitive-behavioral factors, but by a serious learning disability that interfered with his cognitive functioning, and therefore with both his academic and social functioning. (FF 3, 20, 29, 42, 50, 54, 63, 75-77, 85-95.) The IDEA does not absolve school districts from their child find obligations solely because a student advances from grade to grade, 34 C.F.R. §300.111(c)(1).

The Student demonstrated behavioral and social problems over a long period of time, 34 C.F.R.

§300.8(c)(4)(i), and his educational performance was affected adversely, 34 C.F.R. §300.8(c)(4), because his grades for behavior were below satisfactory, and he was unable to form appropriate social relationships. (FF 16, 22, 30, 32-33, 44, 58, 75-76.) The daily notes of the Student's aggressive and disruptive behavior, (FF 30, 44), and the fact that he was referred to IST twice before being evaluated, convince this hearing officer that the District was on notice that the Student should be evaluated for a determination as to whether the Student was a student with a disability in need of special education services.

#### APPROPRIATENESS OF EVALUATION IN 2006

The October 2006 evaluation failed to evaluate the Student in all areas of suspected disability, as required by the IDEA. 34 C.F.R. 300.304(c)(4). The most glaring deficiency was in the failure to assess whether the Student was suffering from a disorder on the autistic spectrum. (FF 49, 52, 54-65.) The evaluation also failed to evaluate the Student's speech and language functioning, (FF 60), and whether his writing problems were related to fine motor skills deficiencies, (FF 65). There was no evaluation of the Student's auditory processing, his mathematics computation and fluency problems. (FF 60-64.)

All of these problems had been identified in the ER as areas of suspected disability. (FF 47-51.) However, the District's recommendations simply omitted to address some of them without explanation. (FF 52, 57, 61-65.) However, the District's school psychologist attempted to explain her failure to evaluate the Student in three key areas: autism, speech and language, and occupational therapy. The hearing officer finds her explanations lacking in overall credibility.

The school psychologist argued that her failure to obtain an evaluation of the Student's suspected autistic spectrum disorder was because she did not think it necessary for devising specially designed instruction for the Student. This assertion is implausible on its face. It was refuted by the Parents' expert witness, who testified credibly that the identification of an autistic spectrum disorder is important to help the IEP team devise systematic and research based educational strategies to address the associated behaviors. (NT 694-13 to 695-13.)

The school psychologist attempted a different, but equally implausible explanation: that she had asked the Student's physician to consult with the team on this issue, but had received no response; consequently, she asserted,



she had concluded that the physician had determined not to embrace the diagnosis of autistic spectrum disorder. (NT 319-14 to 320-2.) If this indeed was the judgment of the school psychologist in this situation, especially given the magnitude of the issue - whether or not a student has an autistic spectrum disorder - then the hearing officer can give her judgments little weight. If on the other hand the evaluation of autism was not pursued through inadvertence - a more plausible explanation in this hearing officer's mind - then the witness' credibility is suspect.

In sum, the District failed to counter the weight of the evidence that it should have pursued a definitive resolution of what everyone, including the school psychologist, suspected: that the Student was suffering from some kind of autistic spectrum disorder. (FF 54.) Thus, the hearing officer finds that the District failed to evaluate the Student in this important area of suspected disability.

The school psychologist's explanation of her failure to evaluate the Student's communication problems is similarly implausible. The ER had identified attention, social skills and auditory comprehension as problems for the Student in the general education setting. (FF 47-51.) His reading comprehension was below grade level. (FF 50.) His resiliency and compliance with teacher directives were problematic. (FF 51.) A social skills assessment had found numerous social problems including interpreting social cues. (FF 58.) Thus, there was a constellation of problems that pointed to possible speech and language deficits. Still, the school psychologist did not pursue these issues through a comprehensive speech and language evaluation. (FF 60.) The suspicion of autism itself suggests associated language processing difficulties. (NT 678-679.)

The school psychologist's explanation was that she had consulted with a speech and language support teacher, who advised her by email that she had performed a screening that was negative, precluding the need for further evaluation. (FF 61.) There was no evidence of this individual's qualifications, no description of the instrument used and its validity, no consideration of the setting in which it was used. Thus, the explanation again raises questions about the school psychologist's credibility, in that she does not seem to have assessed the quality of the empirical data that led her to forego what could have been a pivotal part of the evaluation - a speech and language evaluation.

Finally, the school psychologist did not request an Occupational Therapy evaluation, even though the Student had a longstanding deficit in writing, and there was evidence that he might have problems in fine motor coordination. She seemed to suggest an explanation that there was a history of progress in writing issues, which negated the need for OT evaluation. (NT 336-9 to 16.) This was simply not supported by the record. (FF 33-34, 47, 50, 51, 53.)

In sum, the evidence, as weighed by this hearing officer, supports the finding that the District failed without good reason to pursue essential evaluations in several areas of suspected disability. Thus, its October 2006 evaluation report was not appropriate based upon IDEA standards.

#### APPROPRIATENESS OF THE DECEMBER 2006 IEP AND THE AMENDMENTS IN FEBRUARY AND MAY 2007

The December 2006 IEP was not reasonably calculated to provide the Student with a meaningful opportunity to receive educational benefit. It did not address all of the Student's needs. Its goals were inadequate in purpose and in design. It did not offer adequate related services.

The IEP failed to address all of the Student's needs in part because it was based upon an inadequate ER, as determined above. Because there had been no evaluation of the Student's autism, the IEP did not draw on scientific and peer reviewed programs designed to address the needs of Students on the autistic spectrum. (NT 694-13 to 695-13.) Because there had been no evaluation of the Student's auditory processing needs, it did not offer specially designed instruction or related services to address these areas of need. Because there had been no assessment of the Student's fine motor skills, there was no specially designed instruction or related service to address the Student's physical ability to write. The IEP offered no assistive technology to deal with these needs.

The IEP goals were inadequate. The writing goal in particular was inappropriate, because the Student had already mastered it - his teacher found that he could put two sentences together. (FF 70.)<sup>2</sup> All of the goals

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<sup>2</sup> As a result, the learning support teacher and the school psychologist substituted their own goal, increasing the number of words the Student could write during the learning support classes. (NT 738-8 to 740-2.) This was done unilaterally, without amending the IEP or consulting the Parents. Ibid. It was measured by data gathering - simply counting

suffered from the lack of measured baselines. (FF 74.) During the period in which the IEP was in effect, the Student's behavior continued to deteriorate. (FF 44.)

Neither the February nor the May 2007 amendments of this IEP were able to cure its most glaring defects. While they added counseling and goals related to reading fluency and comprehension, and changed the placement from itinerant to resource learning support, these changes were not based upon an adequate evaluation, did not proceed from measured baselines, and were not based upon research based methodologies. The hearing officer finds that these amendments did not cure the deficiencies in the rest of the IEP.

#### COMPENSATORY EDUCATION

As noted above, Parents, in light of the IDEA's limitations period, have stipulated that there is no claim for compensatory education for the period before July 31, 2005. Since school was out at that time, the Student would not have received educational services until the first day of the 2005-2006 school year, the Student's first grade year. Therefore the hearing officer must determine whether, in light of the above deficiencies in educational programming, he will award compensatory education from the first day of school in the 2005-2006 school year until the last day of the 2006-2007 school year, after which the Parents requested due process.

Compensatory education may be awarded when a district identifies a student belatedly, in violation of its Child Find obligations, as a result of which the student makes de minimis educational progress. In the Matter of the Educational Assignment of R.M., A Student in the Pocono Mountain School District, Spec. Ed. Opinion 1714 (April 2006); In the Matter of the Educational Assignment of F.M., A Student in the North Penn School District, Spec. Ed. Opinion 1503A (January 2006). The hearing officer finds that the Student made de minimis educational progress during his first grade year, as a result of the District's failure to refer him timely for evaluation for special

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the words in the journal entries the Student was writing. (NT 744-19 to 746-4.) The counts were charted, and trend line was calculated, but the teacher indicated that the exercises were not consistently timed. (NT 750-5 to 8, 751-2 to 752-22.) No research based methodology was used, nor was the second grade curriculum followed. (NT 747-4 to 749-20.) At the end of the school year, the Student still had needs in written expression. (NT 752-24 to 753-2.)

education. Although there was evidence that the Student did well in reading during first grade, even these were of limited benefit: later evaluations showed that he had fallen behind in reading comprehension. Thus any partial gains in reading skills did not somehow transform the Student's downward slide throughout the full spectrum of his behavior and social skills into meaningful educational gain.

Compensatory education may be awarded for the period of deprivation of FAPE, with an offset for the period of time reasonably needed to discover and remedy the deficiencies in the district's services to the student. Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999); M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996). Here, there is no suggestion that the District was at fault for attempting its IST interventions during kindergarten before evaluating the Student; however, the hearing officer concludes that the Student should have been referred for evaluation after his kindergarten year. Therefore, a sixty day evaluation period will be offset from the compensatory education award, beginning on the first day of the 2005-2006 school year. The hours of compensatory education will be full school days, five hours per day. In the Matter of the Educational Assignment of D.H., A Student in the Kiski School District, Spec. Ed. Opinion 1672 at 13 n. 86 (December 2005).

Regarding the Student's second grade year, the hearing officer finds that the Student did not receive an opportunity for meaningful educational benefit, with some exceptions. This finding requires a weighing of the evidence, because the evidence was mixed somewhat with regard to the second half of the second grade year. 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)

Despite its deficiencies, the IEP did provide some new services in the second half of the year, and there is some evidence of change in the Student's behaviors. The evidence shows that the Student performed better in the learning support classroom with one-to-one instruction. (FF 80.) This appears to have contributed to an increase in the number of words he could write during this period of time. Although the data were highly unreliable on their

face, because the writing tasks were inconsistently timed, the teacher's testimony depicted a credible observation of this Student's real progress over time in written expression. The teacher depicted a process in which she was able to draw out the Student orally, then motivate him to write down his thoughts in increasing volume, and with increased independence. (FF 80.)

Thus, despite the serious flaws in the District's offer of services, compensatory education will not be awarded for the hours during which the Student benefited from one - to - one instruction in the learning support classroom. Compensatory education will be reduced by the number of hours in learning support that the District offered the Student from January 1, 2007 to the end of the 2006-2007 school year.

#### REIMBURSEMENT FOR PRIVATE EVALUATIONS

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

In this matter, the District's evaluation was plainly deficient, as discussed above. The Parents did not immediately seek an independent evaluation, but did so only after numerous delays left them with the feeling that they must act on their own. Under these circumstances, the hearing officer will award reimbursement for the cost of the psychoeducational evaluation, the speech and language evaluation, and the occupational therapy evaluation. All these were necessary in light of the District's failure to evaluate important areas of need, and their importance is confirmed by the subsequent finding that the Student suffers from auditory processing deficits that seriously impact upon his educational performance and behavior. (FF 85-95.)

In reaching this equitable conclusion, as well as in assessing the adequacy of the District's October 2006 ER, the hearing officer relies in part on the testimony of the Parents' independent evaluator. The hearing officer finds this evaluator's testimony to be credible and pertinent, though the hearing officer weighs it in consideration of its limited record review and investigation. The

evaluator, a licensed school psychologist with a doctorate from a reputable early childhood program, has years of clinical experience in the public school setting. (NT 647-1 to 649-1.) She had reviewed the principal documents pertaining to the Student and testified that she accepted the observations of the District staff as part of the basis for her evaluation and recommendations. (NT 650-25 to 651-9, 723-9 to 725-7; P-13.)

While this limitation on the factual basis for the private evaluation is problematic, it is counterbalanced by other strengths. The hearing officer finds that the evaluator's conclusions are well supported by the record and by the evaluator's professional expertise and experience. It was apparent to the hearing officer that the evaluator did not exaggerate or embellish, and did not harbor a bias toward the public school system or the District. Therefore, on the whole the hearing officer finds the evaluation reliable for its pertinent observations, interpretations and recommendations.

#### TUITION REIMBURSEMENT

Under the IDEA, a hearing officer is authorized to reimburse parents for tuition costs incurred where the parents place their children in private schools without the consent of the home school district, under certain circumstances defined in the law. 20 U.S.C. §1412(a)(10)(C). The necessary condition is that the school district has failed to offer a free appropriate public education to the Student "in a timely manner prior to [the child's] enrollment." A second required finding is that the proposed placement is appropriate. *School Committee of Burlington v. Department of Educ.*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985); *Montgomery Tp. Bd. Of Educ. v. S.C.*, 2005 WL 1432466 (3d Cir. 2005).

The hearing officer has discretion to reduce or deny reimbursement if the parents failed to give notice at the last IEP meeting or at least 10 business days prior to removing the child from public school. 20 U.S.C. §1412(a)(10)(C)(iii). Such notice must include rejection of the offered IEP, a statement of reasons, and declaration of intent to enroll the child in private school at public expense. *Ibid.* Here, the above tests are satisfied and the hearing officer will award tuition reimbursement.

The hearing officer has fully explained his finding above as to the inappropriateness of the IEP offered in

December 2006 and amended in February and May of 2007. It simply did not address the Student's needs, largely because it was not based upon an adequate evaluation. Moreover, the offer was not timely, in that it came after years of delay, which was why the Parents finally decided to remove the Student to a private school. (FF 96-100.)

There is substantial evidence of record that the Parents' choice of placement is fully capable of offering the Student an appropriate education. (FF 102-103.) The hearing officer so finds.

The Parents' complaint Notice, drafted by their attorney and filed on July 31, 2007, adequately notifies the District of the Parents' disagreement with the IEP, their reasons, and their intention to enroll the Student at private school at public expense. (P- 20.) It was delivered in the middle of summer, far more than ten business days before the Parents withdrew the Student from the District, as demonstrated by the invitation to attend an IEP meeting issued by the District to the Parents on August 10, 2007. (FF 101.) Although the Parents did not provide such notice at the time of the last IEP meeting, the hearing officer in the exercise of his discretion does not find this to be cause to deny tuition reimbursement. On the contrary, it is evidence of the Parents' good faith, in that they had not yet decided to seek a private placement, and were willing to consider the District's promises, albeit promises that were not reduced to a formal offer through the IEP process. (FF 94-99.)

The District argues that the District was willing to provide placement in an emotional support class virtually full time, with new speech and language and occupational therapy evaluations. (FF 94.) This suggestion was conveyed in an Evaluation Report drafted by the school psychologist and delivered on the same day as the filing of the Parents' complaint notice. (FF 94.) Any such promises in the ER could not under the IDEA be considered an offer of services.

Moreover, any such promises were not comprehensive. The District deferred most programming decisions to another round of evaluations and IEP decision making, a process that could have taken another half school year. (FF 94.) The Parents were not obligated in fairness to further delay recognition of their child's needs stemming from the diagnosis that the District had failed to discover on its own for three years, while they held three credible evaluations in their hands that set forth those needs in detail.

The District argues that the private placement should be found inappropriate, because it is not the least restrictive environment. (HO-2 at 14-16.) The District does not come with clean hands. Nowhere in the record is there any evidence that the District made an effort to provide the full continuum of services that would be needed to provide inclusion for a student on the autistic spectrum who has severe sensory processing needs. The record discloses no autistic support setting in the District. There is no evidence that any specialized autistic services at the IU were engaged. The District insisted for three years to deal with the Student's behaviors only, without evaluating their cause. It cannot credibly claim now that its failure to address this child's autistic spectrum disorder was in support of state inclusion policy.

The legal criteria for tuition reimbursement are met. The equities balance clearly in favor of the Parents in this matter. The hearing officer will order tuition reimbursement for the entire 2007-2008 school year. Because the Parents have privately transported the Student to the school in connection with the Mother's employment, the hearing officer declines to order reimbursement of transportation costs from the beginning of the school year to the date of this decision, by way of equitable reduction of reimbursement. The hearing officer will order transportation costs prospectively from the date of this order.

#### **ORDER**

1. The District failed to identify the Student as a child with a disability, during the period from July 31, 2005 until October 11, 2006, contrary to its Child Find obligations under the IDEA.
2. The District failed to evaluate the Student in all suspected areas of disability, during the period from October 11, 2006 until July 31, 2007, contrary to its obligations under the IDEA.
3. The District's Individual Education Plan of December 11, 2006, as amended in February 2007 and May 2007, was not reasonably calculated to provide meaningful educational benefit.



4. The District failed to offer an IEP reasonably calculated to provide meaningful educational benefit for the 2007 - 2008 school year.
5. The District shall provide compensatory education for all school days from the first day of school in the 2005-2006 school year until the last day of school in the 2006-2007 school year, as reduced below. The number of hours awarded shall be calculated on the basis of five hours for each day of compensation awarded.
6. The total amount of compensatory education shall be reduced equitably as follows:
  - a. Sixty days shall be deducted from the total days of compensatory education to provide for a reasonable period of correction.
  - b. The total hours of compensatory education shall be reduced further by the number of hours during which the Student was provided with or had available to him learning support in the learning support resource room from January 1, 2007 until the last day of the 2006-2007 school year.
7. The compensatory education ordered above shall not be used in place of services that are provided in the current school year pursuant to an IEP. The form of the services shall be decided by the Parent, and may include any appropriate developmental, remedial, or enriching instruction that furthers the goals of the student's current or future IEP. The services may be used after school, on weekends, or during the summer, and may be used after the Student reaches 21 years of age. The services may be used hourly or in blocks of hours. The hourly cost to the District shall not exceed the reasonable and customary average cost of one hour's salary for a special education teacher hired by the District. The District has the right to challenge the reasonableness of the hourly cost of the services.
8. The District shall reimburse the Parents for the actual cost to them of the psychoeducational evaluation, as reported at Parents' Exhibit 13; the speech and language evaluation, as reported at

Parents' Exhibit 15; and the occupational therapy evaluation, as reported at Parents' Exhibit 14.

9. The District shall reimburse the Parents for the full cost of tuition at the Private School for the 2007-2008 school year, along with any transportation costs incurred by the Parents for transporting the Student to and from school from the date of this decision until the last day of the regular school year at Private School, 2008. Costs of Parents' mileage shall be assessed at the prevailing IRS rate for mileage. Other transportation costs shall be actual reasonable costs of transportation as used.

*William F. Culleton, Jr. Esq.*  
WILLIAM F. CULLETON, JR., ESQ.  
HEARING OFFICER

December 22, 2007