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**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: WM  
ODR #7975/07-08 KE

Date of Birth:  
Xx/xx/xx

Dates of Hearing:  
October 26, 2007  
November 9, 2007

CLOSED HEARING

Parties to the Hearing:

Ms.

Interboro School District  
900 Washington Avenue  
Prospect Park, Pennsylvania 19076

Date Transcript Received:  
Date Closing Arguments Received:  
Date of Decision:

Hearing Officer:

Representative:

Jennifer Bradley, Esquire  
McAndrews Law Offices  
30 Cassatt Avenue  
Berwyn, Pennsylvania 19312

Amy Brooks, Esquire  
Wisler, Pearlstine, Talone, et al  
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484 Norristown Road – Suite 100  
Blue Bell, Pennsylvania 19422-2326

November 14, 2007  
December 1, 2007  
December 10, 2007

Linda M. Valentini, Psy.D.

## Background

Student is a xx year old eligible student, classified as having a specific learning disability in spelling and an other health impairment, who resides in the Interboro School District (hereinafter District) and is currently placed at an alternative educational facility, the [redacted Facility] (hereinafter Facility) pursuant to an incident in school. His mother, Ms. (hereinafter Parent) maintains the District failed in its Child Find responsibilities toward her son by not evaluating and identifying him in a timely manner, and seeks separate orders under the IDEIA and under Section 504 of the Rehabilitation Act for compensatory education from the time that Student was enrolled in the District on September 5, 2005 through the time that he was identified as a student with a disability in March 2007. The Parent is not raising any issue with regard to the appropriateness of the placement at Facility.

## Issues

1. Did the Interboro School District fail in its Child Find obligations toward Student and in so doing deprive him of a free appropriate public education (FAPE)?
2. If the Interboro School District failed in its Child Find obligations toward Student and in so doing deprived him of a free appropriate public education (FAPE) is he entitled to compensatory education services, and of what kind and amount?

## Findings of Fact

### Background

1. Student is a xx-year-old student residing in the Interboro School District.
2. Student attended the [redacted] School District (hereinafter First School District) from the beginning of the 1999-2000 school year through the end of the 2004-2005 school year. (NT 27)
3. Having obtained full custody of her son in April 2005 (spring of 6<sup>th</sup> grade), the Parent enrolled Student in 7<sup>th</sup> grade in the Interboro School District on September 5, 2005. (NT 26; S-10)
4. Upon registration, the Parent checked that Student was in "Regular" education on the Registration Form, circled "Emotional Problems" on the Health History Form, and signed a sworn statement pursuant to Act 26 of 1995 relating to previous suspensions without circling either "has" or "has not". (NT 478-479; S-10)
5. The Parent did not indicate any psychiatric diagnosis, including ADD or ADHD anywhere on the registration forms. She did not indicate that Student was, or had

- been, receiving psychological services addressing his history of alleged abuse by his father. (S-10)
6. The District obtained records regarding Student from First School District. (NT 135-136)
  7. The Principal of Student's school and the Dean of Student Affairs reviewed his records when they arrived from First School District. (NT 136-137, 474-479)

#### Academics

8. Although Student's Scholastic and Attendance Record from First School District shows that he received "learning support" (however, not special education) in 1<sup>st</sup> grade (1999-2000), his 5<sup>th</sup> grade (2003-2004) final grades showed A's in language, spelling and math and B's in science and social studies. Notably, he was absent 19 days in 5<sup>th</sup> grade. (S-8)
9. Student's April 2003 (4<sup>th</sup> grade) Terra Nova Scores from First School District yielded national percentile ranks of 99 in reading, 58 in language and 96 in math. (S-8)
10. Student's 5<sup>th</sup> grade PSSA scores were Proficient on both Reading and Mathematics. (S-4)
11. Student's 6<sup>th</sup> grade final grades at First School District were A- in language arts, C- in math, and C's in science and social studies. Notably, he was absent 21 days in 6<sup>th</sup> grade. (S-8)
12. In the District in 7<sup>th</sup> grade Student received the following grades, with the District's grading system being 100-91= A; 90-84= B; 83-77= C; 76-70= D; 69-0=F: (S-13)

Subject	MP 1	MP 2	MP 3	MP 4	Final Grade
English	81/C	82/C	80/C	73/D	79/C
Reading	78/C	80/C	76/D	77/C	78/C
Math	85/B	73/D	77/C	84/B	80/C
Social Studies	76/D	83/C	86/B	80/C	81/C
Science	70/D	80/C	71/D	77/C	75/D

13. From First School District in 6<sup>th</sup> grade to the District's 7<sup>th</sup> grade there was a definite decline from an A- to a C in the language arts/English/reading area, and a decline from a C to a D in science. Math and social studies remained constant at C. As First School District's Scholastic Record does not provide the numerical equivalents for the letter grades, there may or may not have been a qualitative decline in science. (S-8, S-13)

14. Every district has a different system of assigning letter grades to numerical grades. (NT 508-509)
15. Notably, in 7<sup>th</sup> grade, Student was absent 27 days. (S-13)
16. Student's 7<sup>th</sup> grade PSSA scores were Proficient in Reading<sup>1</sup> and in Math. (S-19)
17. In the District in 8<sup>th</sup> grade Student received the following grades: (S-13)

Subject	MP 1	MP 2 <sup>2</sup>
English	85/B	84/B
Reading	89/B	85B
Math	84/B	80/C
Science	73/D	89/B
Social Studies	55/F	89/B

#### Behavior

18. The District received only four discipline records<sup>3</sup> from First School District: a letter from April 2003 related to possible altercations with two students in 4<sup>th</sup> grade, a letter from March 2004 related to a one-day suspension in 5<sup>th</sup> grade for fighting, a letter from April 2005 related to a one-day suspension for harassing another student in 6<sup>th</sup> grade, and a letter from June 2005 regarding a three-day suspension for bullying another student in 6<sup>th</sup> grade. (S-2, S-3, S-5, S-6)

Grade	Date	Incident
4 <sup>th</sup>	April 2003	Observed possibly having altercations with two students
5 <sup>th</sup>	March 2004	Fighting
6 <sup>th</sup>	April 2005	Harassing another student
6 <sup>th</sup>	June 2005	Bullying

19. The Parent produced a number of disciplinary slips from First School District for the due process hearing, but these were not available to the District upon Student's enrollment or at any time prior to his leaving the District. Although the point is moot, as they were not available to the District, a careful review of the First School District slips provided failed to suggest a pattern of behavior that rose to the level of being indicative of the need for an evaluation<sup>4</sup>. (P-3)

<sup>1</sup> Considering the standard error of measurement he could be Advanced in Reading. (NT 491-492)

<sup>2</sup> Part of this grade factored in the several weeks of homebound instruction he received while awaiting FACILITY placement.

<sup>3</sup> The Dean of Student Affairs denied seeing these records. The Principal saw at least one but was not questioned about the other three.

<sup>4</sup> Although a number of Detention Slips and Dean's Office Student Appointment were reviewed at the hearing at P-3, many were duplicative (Detention Slip matching up with follow-up Dean's Appointment), some were for non-disruptive behaviors (late for class – three slips, owes signed classroom rules, progress

20. The Parent testified that Student received roughly thirty suspensions and/or detentions in the District during the 2005-2006 school year, and at least ten detentions between September and December 2006, but did not produce any paperwork of her own<sup>5</sup> to this effect despite having produced First School District slips back to November 2004. (NT 45, 51)
21. Two incidents are recorded in Student's file in the District for 7<sup>th</sup> grade. In December 2005 he was suspended in-school for spraying Listerine Pocket Mist towards a student's face, with Mist going directly into the student's eye. In May 2006 he was suspended in-school for taking a teacher's nametag from her desk.
22. Computer-documented disciplinary incidents from September to December 2006 include: 9-11-06 Talking to another student during a test, was warned three times; 10-6-06 Extremely disrespectful to a teacher; laughed in the teacher's face; 10-12-06 Threw a pretzel at a teacher while his back was turned. (S-16, P-4)

Grade	Date	Incident
7 <sup>th</sup>	December 2005	Sprayed Listerine Mist towards another student's face
7 <sup>th</sup>	May 2006	Took a teacher's nametag from her desk
8 <sup>th</sup>	September 2006	Talked to another student during a test; warned x3
8 <sup>th</sup>	October 2006	Extremely disrespectful of a teacher; laughed in her face
8 <sup>th</sup>	October 2006	Threw piece of pretzel at teacher when back was turned <sup>6</sup>

23. In a final incident which occasioned his being placed at Facility, Student wrote "BomB 12/13/06" on a bathroom stall on December 13, 2006. He admitted this act to his mother on December 14<sup>th</sup> or December 15, 2007, the school was informed of his admission on December 15<sup>th</sup>, and he was suspended. (S-14)
24. On January 2, 2007 the District referred Student to the DCIU for placement assistance; on January 8, 2007 the DCIU forwarded the referral to Facility; Student began the program on January 25, 2007. (S-21, S-23, S-24, S-39)

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report not returned). Seven slips issued in the 2004-2005 (6<sup>th</sup> grade) school year were worthy of notice, however even if the District had been given access to them upon Student's enrollment they do not constitute a pattern of behavior in a 6<sup>th</sup> grader that would raise red flags suggesting a need for evaluation: "11-8-04 Disruptive (note that the parent signature is the stepmother's, not the Parent's); 1-3-05 Throwing candy on school bus during field trip; 1-21-05 Disruptive; 3-8-05 Disruptive; 4-26-05 Slipped rolling around floor in hallway chasing [Redacted] around classroom after he spilled water." Two additional slips are most likely related to the letters found at S-6 (5-2-05 Disruptive) and S-7 (6-1-05 Damaged another student's property). Notably the escalation of behaviors coincides with the time when the mother obtained full custody and Student stopped visiting with/living with his father. There were three undated detention notices that did not have an infraction listed and could match some of the unmatched Dean's Appointments, and there was one very odd First School District Dean's Appointment slip dated 5-3-07 (long after Student left First School District and in fact five months after he left the District).

<sup>5</sup> The mother did attempt to retrieve disciplinary records from the District, but the 2005-2006 records were purged. She did receive the 2006-2007 computerized records but maintains that they are incomplete. (NT 163-164)

<sup>6</sup> The small piece of Philadelphia soft pretzel did not hit the teacher, it went over him. (NT 285-287)

25. Student received homebound instruction starting on Monday, January 8th (after his 10-day suspension) until he began attending Facility. He was able to make up work so as to receive a grade for the second marking period of 2006-2007. ((NT 501-509, 519-523; S-26; S-13)
26. Student could have begun the Facility program on January 11, 2007 but the Parent did not agree to the placement until January 22, 2007 because she was concerned about the types of students at Facility. (NT 402-404)
27. Student received a psychiatric evaluation on the day he began at Facility. The psychiatrist assigned the diagnoses of Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder<sup>7</sup>, Rule Out Depressive Disorder, Rule Out Social Anxiety Disorder, with a V-Code of past physical and emotional abuse. (NT 439-441; S-40)
28. The Delaware County Intermediate Unit (DCIU) initiated a psychological evaluation of Student pursuant to the Parent's signing a Permission to Evaluate on January 23, 2007. The DCIU's evaluation was completed on March 29, 2007. (S-37, S-42)
29. The Parent did not tell the DCIU psychologist that Student had a previous evaluation and subsequent treatment by four therapists. (NT 249-250, 253-254)
30. On the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) Student attained a Full Scale IQ score of 108 (average range), with a Verbal Comprehension Index of 106 (average range), A Working Memory Index of 97 (average range), A Perceptual Reasoning Index of 112 (high average range), and a Processing Speed Index of 103 (average range). (S-42)
31. On the Wechsler Individual Achievement Test – Second Edition (WIAT-II) Student achieved as follows: Word Reading 104 (average range), Reading Comprehension 105 (average range), Pseudoword Decoding 110 (high average range), Spelling 87 (low average range), Listening Comprehension 97 (average range), Oral Expression 99 (average range), Numerical Operations 102 (average range) and Math Reasoning 108 (average range). (S-42)
32. The evaluator found Student eligible for special education on the basis of a Specific Learning Disability in Spelling and an Other Health Impairment (ADD/ADHD)<sup>8</sup>. The evaluator opined that Student also met the criteria for a classification of Emotional Disturbance, but he was not so classified because the

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<sup>7</sup> As of the hearing the Parent was hesitant to consider psychopharmacological treatment for Student, although medical research has established that medication is the required treatment for ADHD. (NT 120, 123-126, 463-466)

<sup>8</sup> There was some disagreement among the MDT members about whether or not Student actually has ADD/ADHD. (NT 238-239)

- Parent and some District staff disagreed, and the label itself is unfortunate. (NT 226-229, 238-239, 252, 254-255; S-42, P-5)
33. The Principal/Special Education Director of Facility questioned why Student was at Facility. He has no outbursts, no difficulties with academics that the other students there display. He is polite, does not curse, does not walk angrily out of class. The most he does is to throw things around the room if the class is not structured. (NT 407-408)
  34. Student's reading comprehension is at a 12<sup>th</sup> grade level. Without good role models for Student, and no siblings at home, the Principal/Special Education Director is concerned that Facility may not be appropriate for him on a long-term basis. (NT 412-413)
  35. By professional and personal experience the Principal/Special Education Director at Facility is very familiar with ADHD. She sees focusing problems with Student, but describes him as "an under-the-radar type of kid" who adapts to the environment he is in so it is difficult to discern whether the problem is endogenous or a function of an environment he is in. (NT 417, 429)
  36. When Student was reviewed in March 2007 the team decided that he should stay at Facility until the end of the year. When placement for the fall was discussed, the Parent was very much against his leaving Facility and returning to Interboro because he was doing so well in the Facility program. He could have gone back to the District as of the beginning of the current (2007-2008) school year with supports. (NT 426-428, 430-431, 559, 562)
  37. The DCIU publishes an extensive Child Find Notice in the Delaware County Daily Times on behalf of all school districts in the county. (NT 528-530; S-45)
  38. The Parent does not purchase the Delaware County Daily Times. (NT 569-570)

#### Credibility of Witnesses

Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. The decision shall be based solely upon the substantial evidence presented at the hearing.<sup>9</sup> Quite often, testimony – or documentary evidence – conflicts; this is to be expected as, had the parties been in full accord, there would have been no need for a hearing. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses".

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<sup>9</sup> Spec. Educ. Op. No. 1528 (11/1/04), quoting 22 PA Code, Sec. 14.162(f). See also, Carlisle Area School District v. Scott P., 62 F.3d 520, 524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

Blount v. Lancaster-Lebanon Intermediate Unit, 2003 LEXIS 21639 at \*28 (2003). This is a particularly important function, as in many cases the hearing officer level is the only forum in which the witnesses Student be appearing in person.

This hearing officer has made the following determinations of the witnesses' credibility, presented in the order of their testimony:

The Parent: This mother was admirable for her steadfast support of her son, and is to be commended for obtaining full custody from an allegedly abusive father, for keeping in regular contact with the school staff, for facilitating her son's admission to writing on the bathroom stall, for obtaining legal counsel regarding the planned expulsion hearing, for her concern regarding the kinds of classmates Student would encounter at Facility, for her desire to keep him at Facility where he seems to be doing satisfactorily, for her caution regarding psychotropic medication given her not having researched the pros and cons as of yet, and for her courteous and attentive participation in the due process hearing. As regards credibility, this hearing officer believes that the mother testified to the best of her recollection about events that were occurring during a difficult time period in her son's life including a transition to her having full custody and his changing schools. This hearing officer, as noted in the record, appreciated her absolute candor when she answered that she was not sure if she would have requested an evaluation for special education for Student had she read a Child Find notice (NT 570-571).

The Dean of Student Affairs: This witness did not come across as credible. Perhaps he was nervous, and tried to cope with the situation by being defensive, somewhat sarcastic, and verbally jousting with the Parent's attorney. His testimony was given little weight by this hearing officer.

The DCIU School Psychologist: This witness was exceptionally credible. He was modest when stating his work experience. His responses to questions were thoughtful and exact and he was respectful to both attorneys. He did not go beyond the information of which he was certain, and did not speculate, indicating when he did not know certain information. At one point he criticized a line in his own report as "a little unfortunate turn of phrase" when he was reporting his speculation about why Student wrote the phrase on the bathroom wall. He discussed the diagnosis of ADD/ADHD and the classification of Emotional Disturbance knowledgeably and in a way that conveyed clinical and interpersonal wisdom.

The 7<sup>th</sup> and 8<sup>th</sup> Grade Math Teacher: This witness taught Student one period a day for a full school year and the first half of another. He was very credible and served to delineate the District's Child Find procedures and his own training in/awareness of Child Find. He credibly established that Student's academics or behaviors did not present red flags to him that suggested an evaluation for special education was warranted. He testified credibly that although as a new 7<sup>th</sup> grade student Student was reluctant to participate initially, started participating in the spring of 7<sup>th</sup> grade, and by the time he began 8<sup>th</sup> grade he was actively participating quite well. (NT 266-267, 272, 320-321) He testified credibly that he seated Student in the front of the class as he would do for any student



who is new and needs to “come out of their shell”. (NT 269-270) He testified credibly that Student paid attention in class, evidenced by the fact that he could answer questions when he was called upon. (NT 267) He credibly established that the Parent was experiencing homework resistance from Student in 7<sup>th</sup> grade with regard to some subjects, and that the agreed upon response after the first quarter was for him to stay after school a few days a week to work on assignments. (NT 276-277, 298, 305, 308, 321) He established that about 35 to 40 percent of 7<sup>th</sup> grade boys have difficulty organizing their book bags. (NT 317) Although he has referred students to the IST, the counselor or the psychologist, he testified convincingly that at no point in his dealings with Student would he have thought of a disability...”there were no signs of it”. (NT 280-281)

The 8<sup>th</sup> Grade Language Arts Teacher: This witness has been employed at the District for 39 years, and is a very seasoned and experienced teacher. She taught Student for two periods per day (reading and English) and was also the teacher assigned to his homeroom where he went at the beginning and at the end of the school day, as well as at lunchtime. (NT 331-332, 360-361) She was absolutely credible and testified with confidence. It was clear that she liked Student very much. She is the type of teacher whom students tend to trust and with whom they are comfortable sharing things. (NT 338, 370) Student told her he threw the pretzel piece in the math teacher’s class before he admitted it to the math teacher. (NT 336-337) She credibly established that Student was at grade level and participated in her class. (NT 338, 342-343) She established that Student had no more spelling difficulties than any of her other students, and met the State standard of being able to spell commonly used words. (NT 344) She taught many students with ADHD, and did not see that Student had characteristics of that disorder. (NT 350-351) She is familiar with emotionally disturbed students and did not see any signs of this in Student. (NT 356-357) She conveyed a clear understanding of how Child Find works, referred about 100 students in her teaching career, and was clear that Student was not a student who needed to be referred for a special education evaluation. (NT 348-349)

The Principal/Supervisor of Special Education at Facility: This was a very credible witness who spoke exactly, knowledgeably and confidently, in a low-keyed simple manner. She showed a comprehensive grasp of the difficulty in identifying Student as a student with ADHD, and approached the issue from the biological and social perspectives, taking Student’s history of alleged abuse into account. (429-430) She provided an overview of possibilities for Student’s school and home programming when he leaves Facility. (NT 422-426, 430-431)

The Evaluating Psychiatrist: This witness provided valuable information regarding Student’s perception of the incident and the District’s response (NT 444-445), cogently explained the diagnoses he assigned to Student (445-449, 453, 457), established that Student meets diagnostic criteria for ADHD (NT 449, 458-459) , and explained the importance of considering medication to address this condition (NT 463-466). His testimony was credible and highly instructive, and should provide the District and the Parent with insight that will be useful for assisting Student as he transitions from Facility.

The District Principal: This witness testified credibly, and presented as a straightforward individual. He established that the District had not received the Kindergarten progress report<sup>10</sup> as part of the records sent from First School District (NT 476-477). He established credibly that frequently he spoke to the Parent, and that she did not mention Student's history of abuse or his seeing therapists (NT 480-481). He clearly explained the Child Find procedures in place at his school (NT 483-485). He explained Student's homebound program, and impressed this hearing officer with his testimony that he himself provided a portion of this instruction. He conveyed the impression of being a very competent educational administrator who cares about his students.

The District's Director of Pupil Services and Special Education: This witness' testimony provided factual background information regarding the Child Find Notice promulgated by the DCIU, and explained the process of referring Student to Facility. He was candid and open regarding his concerns about whether the Facility placement, which the Parent prefers, remains appropriate for Student, despite its having been an appropriate placement for the second half of last year following the incident. (NT 559-562)

## Discussion and Conclusions of Law

### Legal Basis

#### Burden of Proof

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). As the District asked for this hearing, the District bears the burden of persuasion. However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. In this matter that is not the case.

#### Entitlement to FAPE

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA" or "IDEA 2004" or "IDEA"), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004). When a child has been found eligible for special education, the child is entitled under the IDEIA and Pennsylvania Special

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<sup>10</sup> Even if this document (P-1) had been received by the District it would have been given little weight by this hearing officer, given that Student was entering 7<sup>th</sup> grade at the time of his enrollment.

Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP).

### Child Find

IDEA’s Child Find provision requires that states ensure that:

“...All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services.” 20 U.S.C. § 1412(a)(3).

### Evaluations

A district’s (or LEA’s) obligation to serve a student commences within a “reasonable time” after the district should have suspected the child to be disabled, the “reasonable time” being allowed to the district to conduct an evaluation, identify the student as disabled, and formulate an appropriate program for the child. See Puxatawney Area School District v. Kanouff and Dean; Ridgewood; W.B. v. Matula; Palmyra Board of Education v. F.C.; T.B. v. School District of Philadelphia; In Re: The Educational Assignment of R.A. Special Education Opinion No.1431 (Jan. 5, 2004

### Discussion<sup>11</sup>

As is most often the case in matters involving Child Find, the central question is, “What did the District know and when did it know it?” Specifically, as put forth in the District’s closing argument, the inquiry is into “when the District had actual or constructive knowledge that the Student may have been eligible in terms of the two-part definition of a disability under the IDEA. . . . the question is not what the District now knows or has reason to know as a result of the ER and . . . psychiatric evaluation, but rather what the District knew or had reason to know at each of the successive snapshot points during the year in question. In as much as it is the ultimate basis for compensatory education, the burden of persuasion is on the Parent.” *Oxford Area School District*, Spec. Educ. Op. No. 1744, (2006) (citing *Fuhrman v. E. Hanover Bd. Of Educ.*, 933 F.2d 1031, 1041 (3<sup>rd</sup> Cir. 1993).

Upon his enrollment in September 2005, the District did not know: that Student had a background of physical abuse, that the previous April his mother had his father’s shared parental rights terminated, that Student had been seen by four or five therapists over the

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<sup>11</sup> The reader should note that in this discussion, as in the Findings of Fact and Credibility Determinations above, this hearing officer has not included information about the expulsion hearing, or lack thereof, as it is a district’s prerogative to expel regular education students, Student was not expelled, and this matter, upon reflection, appears to have been a red herring in this case.

years (information which was not even shared with the DCIU psychologist who tested him or with the evaluating psychiatrist and for which no records were produced), that a number of detention slips from the former district were in his mother's possession, and that he had engaged in several inappropriate acts in the community. Student had not been diagnosed with any psychiatric disorder to the District's knowledge, and was taking no psychotropic medication. The Parent indicated on the health form that he had no illnesses or health problems. The District did know that there had been one, possibly two disciplinary incidents in 5<sup>th</sup> grade, and two disciplinary incidents in 6<sup>th</sup> grade and that the mother had circled "emotional problems" on the health form. Upon his enrollment the District had scholastic records showing good achievement, and high Terra Nova and PSSA scores.

During his time in the District Student achieved average grades, had two disciplinary incidents in 7<sup>th</sup> grade, and two in 8<sup>th</sup>, along with one foolish schoolboy prank (throwing a small piece of soft pretzel at/over his math teacher on a dare). Student achieved high PSSA scores. Student sought out daily conversation with his homeroom/English teacher. Student cooperated with the daily after-school homework program his mother requested be put in place because he was resistant to doing work at home. Student showed appropriate remorse and owned up to the pretzel-throwing incident. Student had issues in some of his classes with not seeming to try hard enough and with not completing assignments.

It is the conclusion of this hearing officer that until the day the District learned of Student's having committed the offense there was no reason whatsoever for anyone in the school to suspect that the boy was anything other than a sometimes lazy, sometimes forgetful, occasionally thoughtlessly impulsive young adolescent male of average intellectual abilities. Student presented to several of his teachers, who were very experienced and who had regular contact with him, as an academically and interpersonally engaged pupil, albeit one who was finding his way into the social structure of a school where the other students had known one another for years. Overall Student presented, in 7<sup>th</sup> and 8<sup>th</sup> grades, as an average student with a work ethic that needed some prodding, and a nice boy. The Parent did not present sufficient evidence to conclude that the District had actual or constructive knowledge that Student could have been eligible under the IDEA until he admitted on December 15, 2006 to having written "BomB 12-13-06" on the bathroom stall. The District did not fail in its Child Find duties toward Student.

Following suspension for the incident, Student was provided with homebound instruction that permitted him to finish out his class work and receive a completed grade for the second marking period. He was immediately referred to and accepted by an alternative program, Facility, and could have started there on January 11<sup>th</sup>, save for the Parent's deferring scheduling an intake meeting and her hesitation about enrolling him. He was given a psychiatric evaluation on his first day of Facility, and a psychological evaluation was completed before the end of the regulatory timeline; both evaluators were exceptionally competent and thorough, the evaluations resulted in a finding that Student is an eligible student, and an IEP was constructed. Student did very well at Facility, his

Parent is not alleging any denial of FAPE for the period he has been at Facility, and in fact his Parent has been insistent that he stay there, although Facility and District staff believe that the placement may no longer be appropriate or necessary.

Compensatory education may only be awarded where there is determined to be a deprivation of a free appropriate public education (FAPE), and a school district is not required to provide compensatory education to a student unless the district failed to act within a reasonable time to rectify a situation in which the district knew or should have known that a child was not receiving FAPE. *M.C. ex. Rel. J.C. v. Central Regional School District*, 81 F. 3d. 389, 391,392 (3d Cir. 1996). There is no evidence in this case that Student was deprived of FAPE during the time he was a regular education student in the District, and therefore no compensatory education is due him.

Dicta:

This hearing officer feels compelled to comment that throughout the testimony of the witnesses she received the very strong impression that Student presented at school as a very likeable and genuinely nice boy. Given his history of alleged abuse, and his having to transfer to and adjust within a new close-knit school in 7<sup>th</sup> grade, it is remarkable that he did not present with more behavioral and personality problems. Clearly his devoted mother provided him with a great deal of support, involved his teachers in assisting with structuring his homework, and checked up on him regularly. He was able to establish strong and trusting relationships with his math and his English teachers in the District and presents no remarkable behavior problems at Facility. It is most unfortunate that he chose to write a phrase on the bathroom wall that, clearly in this post-Columbine/post 9-11 environment, required a strong response. It is hoped that Student has benefited from the experience of the last year, and it is strongly recommended that the Parent and the District seriously and carefully consider returning him to a regular high school in the District, which seems to be a possibility (NT 567-568), and build sufficient appropriate supportive services into his IEP and into his life outside school so that he can get back on track educationally, socially and emotionally.

## Order

It is hereby ordered that:

1. The Interboro School District did not fail in its Child Find obligations toward Student, and did not deprive him of a free appropriate public education (FAPE).
2. As the Interboro School District did not fail in its Child Find obligations toward Student, and did not deprive him of a free appropriate public education (FAPE) he is not entitled to compensatory education services.

December 10, 2007

Date

*Linda M. Valentini, Psy.D.*

Linda M. Valentini, Psy.D.

Hearing Officer