

This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

MJ
Name of Child

Xx/xx/xx
Date of Birth

8069/07-08 KE
ODR File Number

November 14, 2007, December 10, 2007, January 16, 2008, February 7, 2008,
February 8, 2008, February 14, 2008, March 6, 2008, March 12, 2008,
March 27, 2008
Dates of Hearings

Closed Hearing

Parties to Hearing
Parents

Dates Transcripts Received
November 26, 2007, December
10, 2007, January 31, 2008,
February 15, 2008, February 28,
2008, March 14, 2008, March 21,
2008, April 2, 2008

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Date of Decision
April 24, 2008

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Background

The student is a xx year-old resident of the school district. He is an eligible student with Autism Spectrum Disorder. He receives Autistic Support (AS), Speech/Language Therapy (S/L) and Occupational Therapy (OT). He has gluten and chemical allergies. He is severely language impaired. The student started first grade in the school district in September 1999. After one month the parents removed the student and home-schooled him. He returned to the school district in September 2002.

By way of a settlement agreement the parents agreed that the Individualized Education Plan (IEP) for the start of the 2005-2006 school year provided FAPE for the student.

The time frame for this due process hearing is August 27, 2004 to November 20, 2007.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the school district.

Findings of Fact

1. The father of the student is a [profession redacted]. (NT-301)

2. In the April 29, 1999 Comprehensive Evaluation Report (CER), it was noted the student's reading comprehension was weaker than word recognition. The student was entering school. A history of delayed language development was mentioned as well as a history of auditory processing problems. The student was easily distracted by noise.

The full Wechsler Scales could not be administered due to the student's lack of concentration. Due to this, his IQ was approximated at 72. It was stated that this probably under-estimated his potential and he was within the average range. He had trouble with "why" and "how" questions.

Small class size, individualized instruction, social skills training and language therapy were recommended.

The parents agreed with the April 29, 1999 CER. (NT-44, 45, 47, 50, 52, 53, 73; P-1)

3. The parents removed the student one month into first grade and home-schooled the student. The parents felt the student's needs were not being met and he needed a quieter environment. He returned to the school district in September 2002 for

grade four. The student was home-schooled in school years 1999-2000, 2000-2001, 2001-2002. That would be grades one through three. (NT-46, 55, 57, 58, 1520)

4. When the student reentered the school district in 2003, his reading comprehension level was below first grade using the Qualitative Reading Inventory (QRI). The Woodcock Johnson showed a grade level of 1.7. A little over a year later it had increased to 2.7. (NT-75, 1214, 1215, 1310-1312)

5. An Evaluation Report (ER) was done by the school district February 28, 2002 (the revised ER date). The parents identified the student's problems as auditory processing, reading and listening comprehension, memory, study skills, organization, focus, attention, speech and language, vision tracking and coordination.

The ER of February 28, 2002 indicated Letter-Word Identification at 32%ile, Reading Passage Comprehension at 7%ile, Math Fluency at 29%ile, Math Calculation at 83%ile, Math Applied Problems at 17%ile, Math Quantitative Concepts at 68%ile, Spelling at 74%ile and Written Expression at 58%ile. Math was the strong area and reading comprehension was weak.

The ER of February 2002 calls for Speech/Language support in articulation, expressive and receptive language and pragmatic/social language skills.

In the Functional Behavioral Assessment (FBA), contained in the ER of February 2002, behaviors observed included looking away, staring blankly, talking about unrelated topics, fidgeting in seat, rhyming, whining, whimpering, screaming, shutting book, crying, tantruming, leaving seat, leaving room, requesting to use bathroom, repetition of preferred task, rigid thinking and self-stimulation.

The ER of February 28, 2002 was done to prepare for the student's return to the school district. He was age appropriate for grade three. (NT-60, 74-75, 78, 80, 1520, 1521, 1570; P-3)

6. In grades four and five, the student was in an AS classroom and integrated into regular education for morning arrival, social studies, science, lunch, recess and assemblies. (NT-85, 86; P-7)

7. A reevaluation of the student was conducted and an ER issued March 21, 2005. This was at school district's request. The student's reading comprehension was a significant weakness. Rhyming behaviors, perseveration and self-stimulation continues. Math reasoning was at 1%ile and Reading Comprehension was at .2%ile. The student's sub-test scores on the WISC IV in March of 2005 were very scattered with a total IQ of 71. (NT-87, 88, 93, 1317-1319; P-9)

8. The IEP of June 21, 2005 found the student's reading comprehension to be GE 2 (it was GE 1.7 in February 2002). Placement was AS for reading, math, writing and social skills. Social studies and science in regular education was to be decided on a

unit by unit basis. All other areas were in regular education. (NT-101, 102, 110, 111; P-3; S-3)

9. Over time the student has had private OT, Auditory Integration Therapy (AIT), Fast Forward, Interactive Metronome, Lindamood Bell and Neuro-Feedback training. The parents did not communicate with the school district about many of the therapies the student had. (NT-106-108, 1051, 1052, 1521, 1522; S-21)

10. The student has a chemical sensitivity to certain odors including white board markers and highlighters. It caused distractability and headaches. The parents examined art supplies to be certain they were safe. The student has a gluten allergy (NT-240, 241-245, 257, 258, 943; S-43).

11. When distracted by noise it is difficult to get him back on task. When distracted he doodles, hums, uses nonsense words, rhymes, sub-vocalizations and sighs. (NT-48, 49)

12. At home the student's best friend is his twin brother who is one year ahead of him in school. He has difficulty interacting with peers. (NT-137, 138, 296)

13. The student works with his parents on homework an hour or an hour and a half a day. (NT-296)

14. The parents agreed, by way of a settlement agreement, that the IEP of May 2, 2005 for the 2005-2006 school year provided FAPE and signed a Notice of Recommended Educational Placement (NOREP) approving implementation. The ER of March 21, 2005 was not challenged at that time.

The May 2, 2005 IEP addresses the student's behavior through Specially Designed Instruction (SDIs) including concrete reinforcement, praise and positive feedback. Social skills are addressed through goals and objectives. No counseling services were included.

ESY was offered but the parents opted for their own program. (NT-308-310, 314, 317-319, 320, 341, 342; S-1, S-3)

15. At the end of grade five the student was in math operations and at fourth grade plus nine months in math applications. (NT-1404-1405; S-3)

16. The student attended a Visualization and Verbalization (V and V program, from the end of February to the beginning of May 2005 and the V and V ESY program in the summer of 2005. The program was at Lindamood Bell Learning Processes. The program was for reading. They emphasize visual imaging while reading to increase comprehension.

The fifth grade Lindamood Bell program was in lieu of attending school. It was six hours a day for about eight weeks. During this time the student showed more interest in reading. During the summer of 2005 he spent four hours a day in the program for five weeks. The Lindamood Bell program the student participated in for the spring and summer of 2005 was six and a half hours a day, one-on-one for twelve weeks. Reading comprehension in the May 19, 2005 re-test showed a regression to less than first grade over a nine month period. The area of word opposites, vocabulary, spelling and arithmetic were areas of growth or strength. These patterns remained in the post-summer program. (NT-114-121, 209-212, 459, 460, 845, 877, 1116, 1120, 1529-1549, 1579, 1580; P-13)

17. The parents are frustrated by the student not progressing past second grade reading level in the past two years and its effect on other education areas. (NT-420, 421)

Grade 6

18. The May 2, 2005/June 21, 2005 IEP was the IEP implemented at the start of sixth grade. This had its annual revision March 31 and June 6, 2006. (NT-1974, 1975; S-3, S-800)

19. An IEP was revised June 6, 2006. The parents declined to approve or disapprove it pending evaluations they were having done. The IEP was implemented for the start of the 2006-2007 school year as a “gentleman’s agreement.” (NT-351, 354, 355, 358, 359; S-3, S-5, S-8)

20. The IEP of June 6, 2006 reflects the parents’ desire for less emphasis on social skill training and more on academics. (NT-2072, 2073; S-8)

21. In grade six there were SDIs that related to the student’s social skills goals. The AS teacher used a structured classroom management plan which met the student’s social/behavioral needs. This involved verbal redirection, rewards and praise. (NT-2005, 2010-2013; S-3)

22. The student’s sixth grade teacher frequently communicated with the parents from prior to the start of school onward via telephone and the communication log. (NT-1561)

23. The sixth grade AS teacher taught the student reading, writing, mathematics and social skills. She also supported him in the areas of inclusion. The student had lunch, special subjects, science and social studies in regular education classes. An Educational Assistant (EA) went with the student in his inclusion classes. The EA supported him socially and academically. (NT-1963-1967)

24. The student’s sixth grade teacher was trained in the Lindamood Bell V and V program. She was trained twice. She is well trained and experienced in working with Autistic students. (NT-1957, 1962)

25. The student's sixth grade AS class had eight students. There were a maximum of five students at one time. There was the AS teacher and the EA. (NT-1963)

26. In grade six a FBA was conducted by the school district at the request of the parents. Only two distractions were noted in seventeen to twenty days. It did not recommend a Behavior Plan (BP). Recommendations were made for classroom strategies. These were included in IEP goals and the classroom management system. (NT-96, 340, 1371, 2013-2016, 2082, 2083; P-10)

27. In sixth grade the EA could assist the student in initiating peer interaction. (NT-2077, 2078)

28. The sixth grade reading program was Reading Milestones. This was supplemented with teacher designed worksheets. There was some one-on-one instruction. He progressed from Level 3 (GE 1.5) to Level 4 (GE 2.0). The sixth grade AS teacher opines the student made steady, slow progress. (NT-1978, 1981, 1982, 1989)

29. The sixth grade AS teacher used V and V strategies in her reading instruction. These were included in SDIs. These were successful. (NT-1987, 1988)

30. The school district maintains the student's sixth grade reading program, Reading Milestones, was appropriate for the student. It is designed for students with reading delays.

In grade six using QRIs, the student's reading comprehension was less than GE 2 in April 2005 and GE 2 for narrative comprehension. (NT-1060, 1061, 1178; S-92)

31. In grade six, writing instruction occurred. This was tied in with reading. Some were tied into the five-six regular education curriculum. Significant progress was made. (NT-1992-1994; P-11)

32. The student's sixth grade math program focused on his splintered skills. Due to language needs, word problems were difficult for the student. The school district's fifth-sixth grade math curriculum (Everyday Math) was used along with teacher designed materials. This was daily for about two hours. Fifth and sixth grade math books were sent home to the parents. (NT-1997-2001, 2045, 2046)

33. Prior to the March 31, 2006 IEP meeting, the parents expressed concern over the student's progress in reading, math word problems and auditory processing.

On March 31, 2006 an IEP was developed for end of sixth grade and seventh grade. It called for speech/language therapy to continue, with one thirty minute individual session and one thirty minute group session. His placement was AS support for reading, math, English and social skills. The IEP of March 31, 2006, revised June 6,

2006, has social skills goals. Science and social studies were a co-taught regular education class. He was in regular education setting when not in AS classroom. (NT-140, 142, 143, 1438-1444; S-8)

34. The student was an eager learner in grade six. (NT-2004)

35. In sixth grade there was a daily communication log. The student's work was sent home twice weekly. The AS teacher observed the student in all his settings. (NT-1967, 1972, 1973)

36. Skills learned in the sixth grade AS class generalized into the student's regular education classes. (NT-2061)

37. Sixth grade progress monitoring on IEP goals show the reading comprehension goals were met in nine of fourteen objectives with progress being made in other five objectives. He made progress on his writing objectives. Math goals for computation and fractions were met. Math goals for mathematical reasoning showed progress. (NT-1498, 1499, 1983-1985, 1993-2003, 2061, 2065; P-11)

38. The present levels on the March 31/June 6, 2006 IEP were for math a GE of 5.7, reading a QRI level of 1 for nonfiction and level 2 for fiction (literal understanding). These show progress from the start of the school year. (NT-1977, 1978; S-8)

39. The student's language deficits hold back his reading progress. (NT-1981)

40. The parents opine that the student did not make progress in reading comprehension in the 2005-2006 school year. Written expression and math word problems remained a problem. Social interacts and Auditory processing remained problems. (NT-126-134)

41. The parents believed that the V and V program would be carried out by the school district through the goals in the June 21, 2005 IEP. (NT-124, 125)

42. On April 28, 2006 the parents requested an Independent Educational Evaluation (IEE). They were concerned over lack of progress. The parents were told by the school district that they would have to pay for it. They hired Dr. R, a Neuropsychologist, to do the evaluation.

The school district stated to the parents that funds from a previous settlement could be used to reimburse the parents for the IEE. (NT-145-147; S-10, S-11)

43. In grade six the parents wanted the student removed from a "buddy" program to promote social skills. They wanted a concentration on academics. Socialization was worked on in other areas of the school day. (NT-2006-2009, 2074, 2075)

44. The sixth grade AS teacher and parents had a tense relationship. The AS teacher always had a person with her when she met with the parents because she did not feel comfortable meeting with them alone. She felt she had a good relationship with the student. (NT-1969, 1970)

45. The student received S/L services as ESY in 2006. It was three hours one day a week. The student received biofeedback training privately. The parents did some tutoring. (NT-332, 333, 336; S-43, S-56)

Dr. R Evaluation

46. Dr. R is a trained Neuropsychologist with extensive experience in the field. She is a Certified School Psychologist and a Licensed Psychologist. (NT-646-648)

47. Dr. R views her evaluation as a neuropsychological evaluation, not as a diagnostic evaluation or a review of current programming. She is evaluating the student not the program. Dr. R was not aware if any recommendations were being addressed by the school district. (NT-922-926)

48. Dr. R's evaluation was conducted May 15, 2006, May 22, 2006, May 30, 2006 and June 2, 2006. The parents received the report in late summer. The parents gave it to the school district in the fall of 2006. They waited for the M and H reports. They were given to the school district October 19, 2006. (NT-401, 402; S-20)

49. Dr. R evaluated the student because of the parents' concern over transitioning to middle school, concerns over educational program, concerns over reading comprehension, concerns over educational progress and socialization concerns. The parents went to Dr. R to get a comprehensive evaluation of the student's cognitive development and recommendations that might emerge. The parents provided school records. (NT-650, 651, 652, 968; S-20)

50. Dr. R did not seek updated information from the school district to cover the more than one year gap between the ER of March 2005 and her evaluation of June 2006. She did not observe the student in the school setting. Dr. R did not secure behavior information from the school in preparing the Behavior Assessment System for Children (BASC). The BASC allows for this. Dr. R sees her role as answering to the person(s) who hire her for an evaluation. She relied on the parents for relative information. (NT-916-918, 920, 957)

51. The parents did not request that Dr. R talk with school district people as part of her evaluation. (NT-407)

52. Dr. R opines that the low Verbal (VC1) ability score of 57 is due to language problems. The student's Perceptual (PRI) score was 87. The Full Scale IQ was 71. Dr. R opines these scores should not be used as predictors of progress.

Dr. R opines that the severity of the student's disability impacts on his rate of acquisition of reading math word problems, expressive language and receptive language. He is a child with both Autism and language deficits. (NT-658-663, 932-935; P-9)

53. Dr. R recommended consistency across all settings; extensive use of visual cues, schedules and routines; teachers well versed in the student's goals; a low stimulus environment; exposure to verbal children with whom he can practice social interaction skills; targeting of acquisition of meaningful academic skills; and many other specific instructional and organizational goals. She opines that not all Autistic children can reach grade level in reading. She opines that the student's rate of reading acquisition cannot be predicted; (NT-644, 940-942, 955, 956; S-20)

54. Dr. R used the Kaufman Assessment Battery for Children Second Edition (KABC-II) to measure cognitive ability because she thinks it is a good instrument to use with Autistic children. The student's Fluid/Crystallized Index (FCI) of 97 (27thile) she described as average. Overall he scored in average to low average on the KABC-II except for knowledge (below average).

On Delis-Kaplan Executive Function System (D-KEFS) the student scored 37th to 95th percentile.

Dr. R saw areas of language impairment and recommended a speech/language evaluation.

On memory functions there was marked variability. He was low in recalling narrative stories. In other areas he scored average.

On the Kaufman test of Educational Achievement-2nd Edition (KTEA) the student's word decoding, math and spelling were average. Application of the skills is weak, much as in reading comprehension, math reasoning and written expression. Reading comprehension was 2.6 GE.

On the Gray Oral Reading Test (GORT-II) the student's reading comprehension was below the first percentile.

On the BASC-2 completed by the student's father, the student showed significant behaviors such as unusual behaviors, mannerisms and repetitive behaviors; lack of reciprocal peer interaction; concerns over social skills. Daily living skills were a strength.

Dr. R opined that lack of progress in reading comprehension and math application calls for use of alternative curricula or methodology.

There were severe discrepancies in the sub-tests of the KABC-II. (NT-540, 884-912, 932; S-20)

55. Dr. R has not seen the student since her evaluation of him or reviewed his records. (NT-913, 914)

56. At the suggestion of Dr. R, the parents had an auditory processing evaluation done by Ms. H, an Audiologist, and a speech/language evaluation by Ms. M. (NT-158, 159)

57. Dr. R's findings of severe expressive and receptive language problems, reading comprehension problems, math reasoning and global behaviors are consistent with previous school district evaluations. (NT-927-930)

Grade 7

[Redacted] Evaluation

58. Ms. M is a speech/language pathologist in private practice who is well qualified by training and experience. She has worked with school districts as a consultant. She has no teaching certifications. (NT-696-703, 790, 791)

59. On August 29, 2006, Ms. M issued a Communication Evaluation of the student. Dr. R recommended the evaluation. She felt she needed more information than provided by the summary of the Comprehensive Assessment of Spoken Language (CASL), especially in the area of pragmatic language and imaging. Ms. M opines that imaging impacts reading, math reasoning, written expression and socialization. Ms. M did not have the entire CASL, she had only Dr. R summary of it. She also had a parent data form. She did not have the school district's ER.

The evaluation found below average scores on the Peabody Picture Vocabulary Test (PPVT-II) and below average scores on the Expressive One-Word Picture Vocabulary Test (EOWPVT). Sentence utterances were difficult to judge. Type Token Ratio (TTR) showed weak total word usage. The Test of Written Language (TOWL-3) had a spread of scores with spelling average and weak in vocabulary, logical sentences and sentence combining.

Ms. M strongly recommended imaging as a goal for the student. This would improve his pragmatic language skills. The student has trouble separating fantasy from reality. S/L therapy was recommended two and a half to three hours a week coordinated with the reading specialist and special education teacher to work on expressive and receptive language. Visual supports are needed. Ms. M recommended the V and V curriculum to work on imaging and it should improve reading comprehension. The student needs perspective taking. Pragmatic training is recommended. Inclusion in lunch, specials and homeroom is recommended to help with social skills development. A FM Device is recommended.

Ms. M did not know how the IEP goals had been implemented.
Ms. M diagnosed the student with Autism and severe auditory processing deficits. (NT-213, 219, 706-751, 808, 819-821; S-21; P-9)

60. Ms. M did not observe the student in the school setting. She did not review data on the student's progress on IEP goals before doing her evaluation; nor did she do so after the evaluation. (NT-794, 807, 808)

61. Ms. M was not aware of the previous use or effectiveness of the Lindamood Bell program on visualization and verbalization with the student when she made her recommendations. (NT-839, 840, 1244, 1245)

62. Ms. M opines that having imaging in SDIs is not the way to do it. It should be an IEP goal. (NT-855, 856)

63. Ms. M opines the student should be able to progress in reading comprehension and written expression and math word problems. (NT-786, 787)

64. Ms. M opines that reading level of an Autistic child may not equal non-handicapped peers, but should grow gradually over time. (NT-880)

65. According to Ms. M, to implement V and V one team member would have to be trained and that person could monitor the others providing it. (NT-744)

66. Ms. M has not seen the student since her evaluation. She does not know the student's current level of imaging. (NT-791, 792, 875)

67. The M evaluation was sent to the parents sometime in September of 2006. The parents sent it and the evaluations of Ms. H and Dr. R to the school district October 19, 2006. (NT-800; S-18)

68. The communication evaluation by Ms. M and the Central Auditory Evaluation by Ms. H provided the IEP team with information used in program planning for the student. (NT-1063, 1064)

69. The Special Education Supervisor opines that Ms. M's conclusion that the student could not engage in imaging or visualization was based on too brief an experience with the student.

The school district does not think a goal of imaging would be measurable, but an expressive and receptive language goal would be.

The Special Education supervisor reviewed Ms. M's suggested goals with the school district's S/L specialist. (NT-1024, 1121, 1122, 1474-1476)

Grade 7 Program

70. After the parents presented the R, H and M reports to the school district, they reevaluated the student and a Reevaluation Report (RR) was issued November 15, 2006. A revised IEP was developed starting November 15, 2006 and finishing December 9, 2006. Social studies was changed from regular education due to lecture type instruction and complexity of the subject matter. Math was changed to Saxon Math. Math word problems, written expression and socialization remained problems. (NT-182-187; S-22, S-25)

71. The June 6, 2006 IEP was in effect for the start of grade seven. (NT-1057, S-8)

72. Ms. P, the speech therapist, in-serviced the seventh grade AS teacher on V and V. The teacher utilized V and V in her reading instruction. (NT-1284, 1285, 1917, 1953)

73. The seventh grade AS teacher was trained in verbal therapy. (NT-1620)

74. Prior to teaching the student, the seventh grade AS teacher reviewed his records, talked with the previous teacher and talked with the parents. (NT-1751-1753)

75. The seventh grade AS teacher conducted a school assembly to help the student body understand autistic students. (NT-1660, 1661)

76. The EA during most of the student's seventh grade year had training by the school district and by the AS teacher. (NT-1745-1750)

77. The student's seventh grade AS class had five students, one teacher and one EA. There was a range in severity among the students. Some students could role model social behavior. (NT-1038, 1622-1625)

78. In grade seven a daily journal went home as well as an assignment book. (NT-1154)

79. In the student's seventh grade AS class, there were other students with reading comprehension on a second grade level. (NT-1908)

80. In grade seven, at the parents' request, the student had preferential seating so that instruction came from the right side. (NT-1647, 1648)

81. The student's day in grade seven started in the AS class, then he went to regular education homeroom, then reading in AS class, then regular education science (co-taught), then AS class for reading, followed by lunch, then two periods of regular education special subjects and the day ended with AS reading class using non-fiction. At the start of the year the student would leave class to take enzymes four times a day.

At parental request the student could use the bathroom upon request. He also snacked twice during the day. (NT-1626-1633)

82. The EA accompanied the student in the regular education classes. The EA was trained by the seventh grade AS teacher on what to do including social skills and data collection. (NT-1635, 1636)

83. In grade seven, the student was included in general education for lunch, special subjects and science. (NT-1375, 1376)

84. The seventh grade AS teacher visited all the student's special classes on occasion. (NT-1637)

85. The seventh grade AS teacher co-taught the science class and assisted the student. The EA was also in the science class. (NT-1633, 1634, 1635)

86. The seventh grade AS teacher instructed the student in "short bursts" which was a recommendation by Ms. H. This was done by providing breaks. The parents objected to the student being able to choose an activity of his liking during the second period break. They wanted reading instruction. The teacher complied. (NT-1640-1643; S-19)

87. During grade seven, the student's reading program was SRA (Language for Thinkers and later Corrective Reading). This continued through to eighth grade. (NT-1086-1090)

88. The seventh grade AS teacher utilized hands on experience that enhanced the teaching of reading comprehension. (NT-1645-1647; S-19)

89. The seventh grade teacher supplemented the Language for Thinkers reading program with other reading material. Non-fiction reading took place at the end of the day. (NT-1826, 1827)

90. In grade seven the student's reading level was measured quarterly using the Developmental Reading Inventory (DRA). (NT-1850, 1851)

91. The student's expressive language program in seventh grade was based on guidelines from the Pennsylvania Writing Project as well as the reading program. (NT-1452, 1453)

92. The student used Saxon Math in grade seven. He started the year in the 5/6 book. The math included direct instruction and individual practice. Word problems were included. (NT-1674)

93. In class, math word problems were sometimes read to the student. (NT-1865, 1866)

94. The seventh grade teacher communicated behaviors to the parents by way of a log so that the parents could communicate with the student's private biofeedback therapist. Some log entries were three or four pages long. (NT-1876-1879, 1921)

95. The seventh grade teacher used a classroom-wide behavior management system based on self-reflection. Modifications in it were made at parents' request. The teacher saw no need for a Behavior Management Plan (BMP); her system worked for the student when it was in place. (NT-1714-1718)

96. In grade seven some of the student's misbehaviors were inappropriate ways to get peer attention, some were to avoid class work and some expressed frustration. (NT-1890-1897)

97. Visualizing strategies were used in the AS class and in general education classes in grade seven. General educations are involved in a collaborative process with the AS teachers to use visualization or other strategies needed by the student. Also, an instructional assistant accompanies the student. (NT-1376-1385, 1392, 1393, 1397)

98. The seventh grade AS teacher consulted with the S/L therapist on meeting the student's auditory processing needs. The teacher also had formal training in the area of auditory processing. (NT-1942-1944)

99. In February of 2007, at parents' request, the school district changed the scheduling of OT, S/L therapies so that academic time would not be missed. (NT-1139, 1140; S-45)

100. Making friends was difficult for the student. He had difficulty reading social cues. The seventh grade AS teacher and EA worked on this throughout the year in all areas.

A peer buddy program was started, but the parents requested that the student end his participation and receive academic instruction instead. During seventh grade the student had no friends at home, except his brother. (NT-188, 1651-1660)

101. An ER was issued November 15, 2006 in which levels of performance were updated and the Neuropsychological Evaluation, Communication Evaluation and Central Auditory Evaluation were reviewed.

After the ER of November 15, 2006, an IEP meeting was held on November 20, 2006 that started a series of IEP meetings which continued through to February 2007.

The reports by Dr. R, Ms. M and Ms. H were attached to the November 15, 2006 ER. These reports were discussed at the ER meeting of November 15, 2006 and at

other points. The Neuropsychological Evaluation provided no new information to the IEP team useful to the IEP team. (NT-219, 344-346, 1064, 1065, 1066; S-22)

102. An IEP was issued November 20, 2006. There were follow-up revisions on December 8, 2006, December 29, 2006, January 19, 2007 and February 7, 2007. At the parents' request on December 3, 2006, Ms. M authored three goals for the consideration of the IEP team. The school district modified the goals for the next IEP and took out the imaging terminology. A reason for placing visualization in SDIs instead of S/L goal was to insure its utilization across the curriculum. Ms. M disagrees with the baseline data gathering. Ms. M actively participated in the IEP meeting. (NT-162-170, 195, 196, 220, 226, 800, 801, 809, 811-819, 1399, 1400; S-29, S-30, S-36)

103. The big issues for the November 20, 2006 IEP meeting were reading comprehension, math reasoning and S/L. The DRA reading level was established as level 20. Since the student's learning profile has remained consistent over time, SDIs were not changed much. Use of graphic organizer, FM system and the Saxon Math program were added. Behavior goals were included. Expressive and receptive language was addressed. At the IEP meeting of November 20, 2006 it was decided to end inclusion in social studies due to the student's reading difficulties. (NT-225, 353, 354, 1069-1079, 1083, 1084, 1085, 1098; S-3, S-8, S-25, S-26, S-34, S-43)

104. Ms. M took part in the IEP meeting of November 20, 2006. Pragmatic skills were addressed in the goals. Her evaluation was reviewed. Ms. M opines the school district goal on the November 20, 2006 IEP in the areas of anger, frustration, anxiety, etc. management is not appropriate because the student does not have the verbalizing skills. She views the goal on pragmatic/social communication skills as inappropriate due to lack of skills needed. The IEP of November 20, 2006 and goals exchanged between Ms. M and the school district were drafts. (NT-222, 223, 224, 681, 682, 757-760, 857, 858; S-25, S-26, S-30, S-32)

105. The November 20, 2006 IEP was implemented and revised over time as the speech goals were being developed. The academic part of the November 20, 2006 IEP was implemented in early December. The speech part was implemented in January 2007. There were continuing revisions through December 29, 2006. (NT-1649-1651, 1812, 1814; S-25, S-32, S-34, S-43, S-76)

106. At the December 8, 2006 IEP meeting S/L issues were addressed with Ms. M. The baselines were adjusted. S/L therapy was increased by one group session a week. This brought S/L to three thirty minute sessions a week. A fourth session was offered prior to November 20, 2006, but the parents did not accept it. There is consultation with the teacher once a month for fifteen minutes.

Ms. M and Ms. P, school district S/L therapist, exchanged drafts of S/L goals during this time from November to January 2007.

Discussion and changes in the IEP continued through January 2007. The visualizing issue remained. On January 27, 2007 the parents approved, in part and rejected in part, the IEP because of the visualization issue.

Ms. M participated in the December 2006 IEP meeting. There was later contact with the school district over goal development. The school district was cooperative. (NT-796, 797, 798, 1098-1110, 1129-1138, 1140; S-25, S-28, S-29, S-30, S-31, S-34, S-40, S-41, S-42, S-44)

107. On December 8, 2006, the IEP was amended to change expected reading achievement to progress from DRA level 20 to level 28 in early eighth grade. This was done at the request of the parents. (NT-1460, 1461; S-34)

108. Ms. M continued her opinion on inappropriateness of some goals in the Draft IEP of December 29, 2006. (NT-770-772; S-34)

109. Throughout the IEP process from March 2006, Ms. M opines her recommendation for imaging was lost in the IEPs. Further, she feels the behavior goals continue to be inappropriate because of the student's lack of underpinning skills. By February 2007 a couple of behavior goals were deemed appropriate.

Ms. M opines that the school district's goals in the IEPs of March 31, 2006 and June 6, 2006 that address vocabulary, language and listening do not address imaging. She does not see the SDI on visualization as appropriate because he needs to be taught the skill. (NT-750-757, 772-781, 825, 826; S-8, S-36, S-37, S-43, S-87, S-97)

110. The IEP development process resulted in a series of IEPs on November 20, 2006, December 29, 2006, January 19, 2007 and February 7, 2007. (S-43)

111. On January 19, 2007 the school district issued a revised IEP incorporating input from Ms. M on visualizing in present levels and goals on using non-verbal information to locate objects. They asserted the IEP incorporates Ms. M's suggested goals. The parents disagreed that imaging problems were being adequately addressed. (NT-233-235; S-40, S-41)

112. The parents felt the January 19, 2007 IEP did not adequately address the student's mathematics needs. (NT-235-239; S-41)

113. In a January 27, 2007 letter to the school district, the parents stated they wanted some parts of the developing IEP enacted while other parts stayed under review. These other parts were visualization, vocabulary, monitoring math progress and language used in parts of the IEP. There is no mention for a behavior support plan (BSP).

The accompanying NOREP approves the January 19, 2007 IEP in part and disapproves in part. (NT-364-367, 373, 378; S-41, S-42)

114. The school district responded to the parents' letter of January 27, 2007 on February 9, 2007. It pointed out where the February 7, 2007 IEP revisions address the parents' concerns. (NT-381; S-44)

115. The February 7, 2007 IEP revision includes visualization strategies for visualization comprehension. The IEP was implemented. (NT-373, 374; S-43)

116. Under the Feb. 16/March 20, 2007 IEP, V and V was implemented as a SDI across the school day using visualization strategies and visual aids. (NT-1712-1713; S-26)

117. In February 2007 the schedule for delivering S/L services was changed to end interruption of math instruction. (NT-247, 248; S-5)

118. On May 21, 2007 the parents returned the NOREP issued February 9, 2007. The parents accepted what they approved and rejected in part what they felt did not address the student's needs. This was the continuing feeling that visualization was not being adequately addressed. They also rejected ESY and asked for reimbursement for a program of their choice. (NT-1144-1146; S-46, S-71)

119. At first the school district rejected Ms. H's recommendation for a FM system in favor of a sound field system. The school district instituted a FM system in February 2007. It was discontinued by the parents as being too stimulating; plus the student did not want to use it. (NT-167-170)

120. The classroom teacher implemented a trial of the Edulink (FM System) System. The trial started on February 8, 2007 and ended April 5, 2007. The teacher was trained in the use of the system. The student did not like wearing the head phones. He said the system made noises. Use was then limited to a couple of early morning periods. During the trial the system was monitored by a technology person, Ms. P. At one point the ear piece battery went dead and was replaced. Also, the microphone was once on the wrong channel. (NT-254, 1230-1233; S-63)

121. During the trial of the FM system, the student attempted to pull a fire alarm at school and fled the building. This was done in the middle of the day. This was not during the time of day he used the FM system. (NT-464-467)

122. The seventh grade teacher did not think the FM system was effective for the student. (NT-1918)

123. The parents opine there were increased behavior problems during the Edulink trial. The parents requested an end to the trial because they felt it was harming the student. (NT-256)

124. At parental request, the FM system was sent home for use by the parents where it still resides. The parents have not reported back on its use. (NT-1234-1236)

125. On February 16, 2007 the IEP team met to discuss ESY for 2007. It was to be a center based program. The school district used an ESY checklist to explore ESY. The parents wanted to explore other options. ESY was to go from July 2, 2007 to Aug. 8, 2007, 9AM to 2:30PM in the school district. IEP goals were to be worked on, S/L therapy was scheduled as well as OT.

The parents requested reimbursement for a program of their choice.

The IEP of February 16, 2007 contained dietary medical information provided by the parents. (NT-279, 1215-1224; S-54, S-55, S-56, S-69, S-71, S-76)

126. The parents did not want the 2006-2007 ESY for the student because it was what was happening throughout the school year and they were looking for something that better addressed his needs. (NT-673-675)

127. After the parents rejected the school district's ESY offer, other offers were made including itinerant academic tutoring on S/L services. These were also rejected. (NT-1225-1227; S-73, S-74, S-80)

128. The student missed three weeks of school in the latter part of seventh grade due to chicken pox. (NT-1476, 1477, 1567)

129. As of December 5, 2006 the student tested at level 20 on the DRA. This is grade level 2. As of June 14, 2007 his reading was at level 24 on the DRA. This is middle of grade two. By the end of the third marking period he reached 2.5 on a domain writing score. The yearly goal was three of four. For mathematics word problems he reached 73% accuracy by the end of the third marking period. The goal was 80%. For written geometry problems it was 77% accuracy with a goal of 80%.

In the goal for work habits the goal was 80%. His progress at the end of the third marking period ranged from 11% to 62%.

In the goal for handling anger, frustration, disappointment, anxiety, etc. the goal was 80%. His progress ranged from 11% to 46%.

In the area of speech he progressed by the end of the year to describing characteristics in a picture to 5.1 out of 12; the goal was 6. For describing the image of a passage he scored 2.95 out of 12; the goal was 4. For the goal on identifying body parts the goal was 80%; he progressed to between 42% and 82% accuracy. For the goal stating what characters would say he exceeded the goal of 80% accuracy. For the goal of finding out of sight items he achieved 13.4% on one objective and 86.6% on another with an expected achievement of 80%.

The student's progress on IEP goals through the three quarters of grade seven the IEP covered were:

- In mathematics he progressed doing word problems to 73 to 88% accuracy.
- In reading comprehension he progressed from level 20 (GE 2.1) to level 24. This shows progress. Both expository and fiction tests were used.
- He progressed in reading fluency and accuracy.
- In written language he showed progress using the Central Bucks Domain Scoring Guide. He scored 2.5 to 3 out of 4 points in areas measured.
- On the goal of developing appropriate work habits progress was shown from the first to third quarter.
- On his behavior goal dealing with anger, frustration, disappointment anxiety, etc., the student showed progress from the first through fourth marking period. (NT-261-274, 1147-1154, 1681-1712; S-76)

130. The student's mother thinks the seventh grade teacher "gave up" on the student as the year progressed. The teacher provided some after school tutoring. Most communication was through the communication log. (NT-1561, 1562)

131. The seventh grade teacher opines that due to parental demands she spent a disproportionate amount of time on the student. She viewed the demands as bullying. (NT-1929, 1930)

132. The seventh grade AS teacher took a leave of absence from February 28, 2007 to April 12, 2007. She attributed the need for the leave to be her anxieties created by dealing with the parents. She opined she could not satisfy their demands. She felt that no matter how much effort she put into the student, the parents were not satisfied and wanted more. (NT-1622, 1665, 1718-1725)

133. The parents concern over OT prior to grade eight was over the frequency or amount. (NT-1605)

134. In seventh grade the student spent about an hour and a half on homework each school night. (NT-190, 191)

135. The parents saw some incidental educational progress in the 2006-2007 school year, but opine it was not meaningful progress. (NT-413, 414)

Dr. P Evaluation

136. Dr. P is a Certified School Psychologist, Licensed Psychologist and a Certified Reading Specialist. Dr. P evaluated the student's reading on May 3, 2007 at the parents' expense. (NT-280, 480-482; S-82)

137. The parents did not request that the school district pay for Dr. P's reading evaluation until they filed for the due process hearing. (NT-1185, 1186)

138. Dr. P observed the student in his AS classroom for two periods in the morning that involved reading and writing. She also reviewed his school records. She was not familiar with some of the tests the school district used in its March 21, 2005 reevaluation. She was not certain how the WISC-IV sub-test scores were obtained.

Dr. P reviewed the reports of Dr. R and Ms. H.

During Dr. P's observation of the student in his LS class, he did not participate much and needed to be coaxed. His facility with language was less than his classmates.

Dr. P opines that the IQ of 71 in the March 21, 2005 reevaluation is not valid because of the wide range of sub scores. (NT-487, 489-492, 503, 504, 506, 517, 519, 521, 582; P-9)

139. Dr. P evaluated the student on May 3, 2007 and issued her report July 2, 2007. Dr. P sees the start of the student's language problem as a listening problem/receptive language. On the Burns Roe Informal Reading Inventory (IRI), the student's sight word reading was adequate at the fifth grade level. The student reads aloud quietly when asked to read silently. This is a trait found in younger readers. The student's reading comprehension was not adequate at any grade level. Dr. P recommends using a graphic organizer to help with comprehension. She recommends training the general education teachers in reading techniques used by LS and S/L teachers. Expository reading is recommended as well as DRA.

The only test administered by Dr. P to the student was the Burns-Roe IRI which is a test of sight vocabulary, word analysis and reading comprehension. The results were ambiguous as to the student's reading level. The student's greatest area of weakness is reading comprehension. (NT-510, 525, 526, 539, 540, 542, 544, 578, 594, 595, 596; S-82, S-87)

140. Dr. P did not attempt to measure reading above the fourth grade. (NT-599; S-87)

141. The school records Dr. P reviewed were ones provided by the parents. Dr. P reviewed IEPs, but did not comment on them in her report. (NT-579)

142. Dr. P did not provide a copy of her July 2, 2007 report to the school district. The parents did on August 23, 2007. (NT-572, 573)

143. On August 23, 2007 the parents sent the Dr. P evaluation to the school district. The school district was not permitted to contact Dr. P individually or talk with

her unless the parents were present. The school district gave Dr. P a list of questions about her report and went over them in a conference call with the parents present. Dr. P participated in the parent's office (NT-390, 391-394, 1191; S-81)

144. Dr. P expressed that the student's teacher, Miss F did a good job during the lessons observed. (NT-547, 548, 586, 587)

145. During Dr. P's interview with the student, he became frustrated and shouted. This behavior did not occur during the classroom observation. The student stated he liked school. (NT-593, 594; S-87)

146. What Dr. P viewed as separate reading programs used by the school district are supplementary reading materials. (NT-616)

147. Dr. P feels the school district was cooperative in arranging her observation. (NT-632, 633)

148. Dr. P does not agree with the ordering of the objectives for reading comprehension in the March 3, 2006 IEP. She further opines the Present Levels do not give an adequate baseline for reading. Dr. P does not think using fiction along with non-fiction is the proper reading comprehension approach. (NT-563; S-8)

149. Dr. P opines that all autistic students cannot be taught to read on grade level. She cannot predict the student's reading potential. (NT-644, 645)

150. Dr. P was not aware that the parents declined more S/L time for the student. (NT- 602-603)

151. Dr. P thinks using expository reading with the student is best because the student has trouble telling what is true versus untrue and the expository reading is better preparation for adult life. (NT-622, 623)

152. Dr. P opines that the school district's reading approach of using several reading methods is not the best approach. (NT-536, 537, 538)

153. An IEP was issued November 20, 2006. There were follow-up revisions on December 8, 2006, December 29, 2006, January 19, 2007 and February 7, 2007. Dr. P opines the reading comprehension goal in the November 20, 2006 IEP is not appropriate because fiction (narrative) is done along with non-fiction (expository). This goal varies only a little from the previous IEP. (NT-563, 565, 566; S-25, S-31, S-43)

154. The school district thinks their information about the student is about the same as Dr. P found in her evaluation. Much that she suggests the school district was already doing. The school district disagrees that only expository reading be done. (NT-1192, 1204)

Grade 8

155. The parents did not provide the school district with information from the student's summer program for 2007. (NT-1165, 1166)

156. On October 15, 2007 an IEP was developed because the student had reached his S/L goals and reading goal. It was proposed to increase S/L to four sessions a week. Present levels were updated. The student was able to draw mental pictures. There was higher focus on pragmatic language. The reading goal was increased.

By way of a NOREP the parents approved the IEP although they disagreed with it pending results of the due process hearing. The October 2007 IEP was implemented. (NT-1203-1208, 1214; S-95, S-103)

157. The reading comprehension goal in the October 17, 2007 IEP is similar to the previous goals, but further delineates narrative and expository readings. (NT-567-570; S-97)

158. The student's eighth grade AS teacher is trained in behavior management, crisis prevention intervention, autism methodology, SRA decoding, SRA Comprehension Plus, and V and V training through Lindamood Bell. (NT-2161, 2162, 2189, 2191, 2192)

159. At the start of eighth grade, the student was in an AS classroom and in regular education for science and special subjects. The AS class has a teacher and two EAs. An EA accompanies the student to general education classes. (NT-1036, 1037, 1038, 2178)

160. The IEPs of September 12, 2007 and October 15, 2007 were implemented in early 2007-2008 school year. The parents, by way of a NOREP, agreed to its implementation with a note that all needs were not addressed and pending the due process hearing results.

The IEPs were viewed by the AS teacher as evolving. (NT-2200-2205; S-87, S-97, S-99, S-103)

161. The eighth grade AS teacher communicated with the parents by way of a period by period daily journal (at parents' insistence), as well as, E-notes, e-mail, assignment book and phone. The parents' desire for detailed communication caused incidents to be reported which would not normally be reported by the teacher to parents. (NT-2165-2168, 2293, 2295, 2326, 2327)

162. In eighth grade, the AS teacher utilized SRA corrective reading. It is a research based program. It addresses comprehension, fluency, phonics, decoding and vocabulary. Fiction and non-fiction (social studies and science) were used in reading comprehension. Comprehension Plus is used to improve the skills needed for reading comprehension. (NT-2205-2214)

163. Written language needs are addressed in eighth grade during directed reading and Comprehension Plus activities. The school district uses the national Writing Project. Writing is addressed three times a day. (NT-2229-2234)

164. The student is a fluent reader. He does not track with his finger. (NT-2226)

165. In eighth grade the student does Saxon math a period, reading decoding a period and reading comprehension a period. English, writing and social studies are in the AS class. Social skills is at the end of the day. Science and special subjects are in the general education program. The student participates in the school's activity program. (NT-2192-2200)

166. In eighth grade the student sometimes chose to wear Bose headphones in noisy situations such as the lunch room. He self-monitored this. (NT-2304, 2305)

167. IEP revision meetings occurred September 21, 2007 and October 15, 2007. Present levels were updated. A new reading goal page was added and new S/L goals were added.

The proposed IEP of October 15, 2007 increased S/L services to two thirty minute individual sessions and two thirty minute group sessions. The S/L goals are similar to Ms. M's recommendations. The previous IEP S/L goals were mastered.

Many IEP goals remained the same, with level modifications, through the evolving IEP process from November 20, 2006 through October 15, 2008. Some goals were updated. The November 20, 2006 IEP had not reached the annual review date.

By way of a NOREP the parents approved implementing the IEP while maintaining it is inappropriate. It was noted this was done pending the outcome of the due process hearing. (NT-397, 398, 1479, 1480, 1481, 2256-2270, 2287, 2338, 2339; S-25, S-87, S-95, S-97, S-99, S-103)

168. The student's regular education science class is adapted for him through outlines, limited testing and modified assignments. (NT-2248)

169. Elements of V and V are utilized by the eighth grade AS teacher. This is especially so in non-fiction guided reading. (NT-2190, 2191, 2218, 2310-2315)

170. The student's eighth grade IEPs have behavior goals. (NT-2176; S-87)

171. In grade eight a classroom behavior management plan based on a token system is used. On task good behavior is rewarded. This system is in place in all settings. The system has been effective for the student. The AS teacher opines a FBA or BMP were not needed. (NT-2169-2171, 2175, 2177, 2181, 2337)

172. Progress monitoring for the first quarter of eighth grade shows progress in most areas but not end of year goal attainment. (NT-2269-2287; P-15)

173. The eighth grade AS teacher opines that the student is making progress in reading. He indicates that currently the student is a DRA level 30. He also opines that the student is making progress in writing skills. (NT-2219, 2220, 2234-2235)

174. The eighth grade AS teacher opines the student is making progress in math. Computational skills are at grade level. On the Group Math Assessment Diagnosis Evaluation (GMADE) the student scored average or above for his grade across the board, including applications (word problems). There was a weakness in some math specific vocabulary. He took the GMADE in the proscribed time limit. (NT-2237-2245, 2285)

175. Early in the eighth grade school year the student was tested out of Language for Learners to Comprehension Plus and then was jumped over level B-1 in his reading program to level B-2. (NT-2213, 2222)

176. During the parent's classroom observation of the student in grade eight, the student was distracted by the parent's presence. (NT-2248)

177. In grade eight, V and V was included in the students S/L goal. (NT-1467)

178. The student informed the eighth grade AS teacher that his parents told him not to discuss with the teacher what happened at home. (NT-2334, 2345)

179. The student's mother thinks the eighth grade teacher is rude, disrespectful and does not want to talk with her. (NT-1562-1566)

180. The eighth grade AS teacher disputes the parent's allegation that he was "rude" to her. The teacher views the parents' and the school's relationship as "contentious." (NT-2183, 2187, 2188)

181. The parents do not feel the student has made meaningful progress in the 2007-2008 school year. (NT-432)

Visual Tracking

182. The student started private vision therapy with Dr. S, a vision specialist, in October 2007. An evaluation report was issued November 6, 2007. The parents gave the report to their attorney, not directly to the school district. The vision report was done after the due process was requested. Questions of vision therapy and visual training were not raised in the due process complaint. The student is working on tracking, getting his eyes to work together. (NT-66-68, 294, 446, 448, 691, 692; P-12)

183. Dr. S's report was given to the school district in November 2007. (NT-1244; P-12)

184. The school district's OT is contracted from Kinetics Rehabilitation Services. The parents also used them for private OT. The student receives OT at school once a week for thirty minutes. (NT-2096, 2101-2103)

185. The Occupational Therapist contracted by the school district does not see visual tracking issues by the student. He can track and throw a ball, copy from the board and copy on a flat surface.

The Occupational Therapist consults with the student's teachers and has observed him in gym class. (NT-2105, 2107, 2111, 2121, 2143)

186. Visual strategies have been in all of the student's IEPs. Visual supports provided to the student in AS and regular classes included outlines, notes, pictures and visual maps to help reading comprehension. The school district does not see visual tracking problems with the student. (NT-1045, 1046, 1047, 1489, 1490)

187. The student does not demonstrate visual needs at school. He tracks words well, copies from the board and reading fluency is good. He is average in visual motor skills. (NT-1041)

188. Vision was not raised as an issue by the parents or other IEP team members in grades seven or eight. Vision, visual memory, visual fluency and reading fluency are viewed as strengths. (NT-1499, 1500)

189. The Due Process Request does not list visual tracking as an issue. The parents did not have a concern at that time. (NT-1543, 1548, 1591; P-14)

190. The school district never offered a vision therapy evaluation. (NT-677)

191. The parents did not raise their visual tracking concerns at the time evaluations were reviewed or at IEP revision meetings. (NT-1549, 1550, 1553)

Other

192. The school district and the parents have a "tense" relationship. (NT-1049)

193. The parents believe FAPE was not provided in 2005-2006, 2006-2007 or 2007-2008 school years. (NT-368, 369)

194. Throughout the student's career in the school district, the parents continually discussed the student's behavior with the school district. This was especially

so when the student was getting biofeedback training in seventh grade. (NT-679, 680, 694)

195. The parents' partial disagreements with IEPs through the NOREPs did not mean they did not want the IEPs to be implemented, even the parts with which they disagreed. (NT-389, 390; S-71)

196. Over the years, classroom management techniques have met the student's behavioral needs. (NT-1079-1082)

197. DRA Scores – Grade 7

12/05/06 – Level 18 (100%) – Gr. 1

Level 20 (98%) – Gr. 2

02/15/07 – Level 20 (100%) – Gr. 2

Level 24 (98%) – Gr. 2

04/17/07 – Level 24 (100%) – Gr. 2

Level 28 (98%) – Gr. 2

06/13/07 – Level 24 (98%) – Gr. 2

Level 28 (98%) – Gr. 2

DRA Scores – Grade 8

10/12/07 – Level 24 (100%) – Gr. 2

Reading scores were similar for expository and narrative text. The student became more comfortable with reading comprehension. (NT-1160-1168; S-91)

198. Due to his many needs, the school district opines the student's rate of reading growth will be slow. (NT-1172-1174)

199. The student's AS social studies is reading instruction on expository text. It was small group in grade seven and one-to-one in grade eight. (NT-1180)

200. The special education supervisor has had extensive communication with the parents; more than with any other parents. This is, in part, due to the student's chemical sensitivities and dietary needs. (NT-1048)

201. The special education supervisor is trained in basal reading approach and guided reading. She has trained staff in these. She was trained by Lindamood Bell in V and V, in the summer of 2007, and Talk Ease. She has also attended conferences on Autism. (NT-1016-1021, 1114)

202. The school district's special education supervisor is the chairperson of the Bucks County Autism Support Coalition. (NT-1014, 1015)

203. The special education supervisor has experience teaching students with Autism. She also developed a curriculum to teach social skills to students with Autism. (NT-1254, 1260-1264)

204. The student is graded on reaching his IEP goals. In special area subjects the student is graded based on accommodations and modifications made.

In grade seven the student received A's and B's with a C+ in Family Consumer Science. (NT-1180, 1181; S-102)

205. The school district opines that due to the severity of the student's language needs, a program is needed throughout the school day not one in isolation for three hours a week. (NT-1240-1242)

206. The special education supervisor opines that for students with language disability the rate of language growth slows once you hit grade 2-3 because of increased complexity of language. The student's progress is expected to be slow and steady. (NT-1322, 1482, 1483)

207. In the student's AS classrooms there were behavior management programs for the class with modifications for individual students. The student has responded well to this. (NT-1302, 1332)

208. The school district thinks that improving peer interaction is better done through social skills training than through a FBA. (NT-1364, 1365)

209. ESY goals are the IEP goals to be worked on in the ESY program. (NT-1406)

210. Reading fluency and vocabulary are relative strengths for the student. (NT-1795, 1796)

Issues

1. Are the parents due reimbursement for a privately provided program in the summer of 2007?

2. Are the parents due reimbursement for a June 2006 neuropsychological evaluation by Dr. R?

3. Are the parents due reimbursement for a July 2, 2007 reading evaluation by Dr. P?

4. Are the school district's evaluation of March 21, 2005 and reevaluation of November 15, 2006 appropriate?

5. Is the student's education program appropriate from August 25, 2005 to the present (November 20, 2008)?

6. Did the school district fail to provide the needed ESY program for the summers of 2006, 2007?

Discussion and Conclusions of Law

The student entered the school district as a first grader in September of 1999 under an ER and IEP developed in the spring of 1999 (FF 2). After about one month the parents removed the student from school and home-schooled him because they felt his needs were not being met (FF 3). The student reentered the school district in September of 2003 and started to receive special education as a student in need of AS and related services (FF 4, 5). The student at that time had deficiencies in reading comprehension, fluency and math application. Math calculation, math concepts, spelling and written expression were average or above (FF 5). S/L needs were established (FF 5). The student has had OT both privately and at school (FF 9). The student has a history of gluten and chemical allergies (FF 10).

There is a long history of a "tense relationship" between the parents and the school district. By way of a written settlement, the parents agreed the IEP that started the 2005-2006 school year provided FAPE (FF 14).

Issue 1. Are the parents due reimbursement for a privately provided program in the summer of 2007?

34 CFR §300.106 states:

(a) General.

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child

(3) In implementing the requirements of this section, a public agency may not-

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that-

(1) Are provided to a child with a disability-

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

- (iii) At no cost to the parents of the child; and*
- (2) Meet the standards of the SEA.*

Further, 22 Pa. Code §14.132 governs the issue of eligibility for extended school year services. Subsection (1) requires the school district, *at each IEP meeting, to determine whether the student is eligible for ESY services, and if so, to make subsequent determinations about the services to be provided.*

The remaining subsections provide:

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor will be considered determinative:

(i) Regression – whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

(ii) Recoupment – whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

(iii) Whether the student’s difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student’s withdrawal from the learning process.

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

(3) Reliable sources of information regarding a student’s educational needs propensity to progress, recoupment potential and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(4) The need for ESY services will not be based on any of the following:

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education. (Emphasis supplied.)

However, for a child to be eligible for ESY services, it is not necessary for the child to have first regressed. Evidence demonstrating the likelihood of regression is sufficient. See **Johnson v. Independent School District No. 4**, 921 F2d 1022 (10th Cir. 1990), cert. denied, 500 U.S. 905 (1991); **Armstrong v. Kline**, No. 78-172 (E.D. Pa. Sept. 5, 1979) (Remedial Order #2)

At the February 16, 2007 IEP meeting, ESY was discussed (FF 125). The parents were actively involved (FF 125). A checklist was used to properly explore the need for ESY (FF 125). A program was offered that met the student's needs and followed the IEP (FF 125). The parents rejected the proposed ESY for 2007 in favor of one of their choosing and sought reimbursement (FF 125, 126). The school district continued to offer revised programs (FF 127). The parents did accept three hours per week of S/L services from the school district during the summer of 2006.

From February to May 2005 and during the summer of 2005, the student attended the Lindamood Bell V and V program in lieu of school district programming (FF 16). During this time the student's reading regressed to less than grade one (FF 16).

A preponderance of the evidence shows the school district's proposed ESY proposal was appropriate and properly proposed..

Issue 2. Are the parents due reimbursement for a June 2006 neuropsychological evaluation by Dr. R?

On April 28, 2006 the parents requested an IEE at school district expense (FF 42). This was requested because they felt current evaluations did not fully evaluate the student's needs or address them (FF 42). On May 3, 2006 the school district denied the request and asserted their evaluations were comprehensive and addressed the student's needs (FF 42). The school district noted that there was money available through a 2002 settlement agreement that could be used for this (FF 42). 34 CFR §300.502(b)(2)(i) states:

- (b) Parent right to evaluation at public expense*
 - (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.*
 - (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either –*
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or*
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.*
 - (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.*
 - (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.*
 - (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.*

The school district had the obligation to seek a due process hearing since they denied the parents' request. The school district failed to follow IDEA regulations and is ordered to reimburse the parents for Dr. R's evaluation at a rate that reflects the cost of

neuropsychological evaluations in the area and upon presentation of a receipt by the parents for the IEE.

Issue 3. Are the parents due reimbursement for a July 2, 2007 reading evaluation by Dr. P?

The parents hired Dr. P, a Certified School Psychologist, Licensed Psychologist and Certified Reading Specialist, to conduct a reading evaluation of the student (FF 136, 137). The student was evaluated May 3, 2007 (FF 136). As part of the evaluation, the reports of Dr. R and Ms. H were reviewed; only school records provided by the family were reviewed; a school observation was done; and one reading inventory was administered (FF 138, 139, 141). The student's sight word reading was at the fifth grade level and reading comprehension was not adequate at any grade level (FF 139). She recommended use of graphic organizers, training of regular education teachers, Directed Reading Activity and using expository reading only (FF 139, 151).

The parents provided a copy of Dr. P's report to the school district on August 23, 2007 (FF 143). The school district was not permitted to talk with Dr. P without the parents being present (FF 143). By way of a phone conference with parents present, the school district conferred with Dr. P about her report (FF 143). The school district considered Dr. P's report at future IEP meetings (FF 143).

The parents did not request that the school district pay for the P evaluation when they sought it.

A parent is entitled to reimbursement for an IEE if the school district's evaluation is inappropriate: **Holmes v. Millcreek Township Sch. Dist.**, 205 F.3d 583 (3d. Cir. 2000); **Warren G. v. Cumberland Co. Sch. Dist.**, 190 F3d. 80 (3d. Cir. 1999); **Kovak v. Hampton Township Sch. Dist.** 655 A2d. 641 (Pa. Commw. Ct. 1995). 34 CFR §300.502 (b) (1) states a parent has a right to request an IEE if it disagrees with the school district's evaluation. It then falls on the school district to demonstrate that its evaluation is appropriate.

The school district's previous evaluation of the student was appropriate. The P report did not provide the school district with information that was not already known nor did it contribute to programming for the student (FF 154).

The Hearing Officer denies the parents request for reimbursement for Dr P's evaluation.

Issue 4. Are the school district's evaluation of March 21, 2005 and reevaluation of November 15, 2006 appropriate?

The March 21, 2005 ER is outside of the time frame for this due process hearing and falls under discussions that led to the settlement agreement of June 2005.

The ER of November 15, 2006 was a reevaluation conducted after receipt of the reports from Dr. R, Ms. M and Ms. H. 34 CFR §300.303, 304 and 305 provide for reevaluations and defines its scope and content. The ER of November 15, 2006 incorporates the evaluations obtained by the parents (FF 101). On its face, new and previous data are included; there is a current classroom observation; all areas of the student's disabilities are discussed; conclusions are included (S-22). The parents were active participants in the process. The school district did not feel Dr. R's report provided information new to them. (FF 101)

A preponderance of the evidence shows the ER of November 15, 2006 was appropriate.

Issue 5. Is the student's education program appropriate from August 25, 2005 the present?

The IDEA requires that FAPE be provided to all students qualifying for special education services. The Supreme Court, in *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), held FAPE is met by complying with IDEA's procedural requirements and by providing individualized instruction and support services to permit a child to benefit educationally from the instruction. This is further delineated in *Rose by Rose v. Chester County Intermediate Unit*, 25 IDELR 61 (ED. PA. 1996); *Board of Education v. Diamond*, 808 F. 2d 987(3rd Cir.) and *Polk v. Central Susquehanna I.U. #16*, 853 F.2d 171, 183(3rd Cir.) While the law does not require school districts to offer optimal educational programs to maximize the child's potential, this standard is met only when the child's program provides more than a de minimus educational benefit.

What constitutes "meaningful educational benefit" has been addressed by the Third Circuit in *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, (3d Cir. 1988). For the provision of a FAPE, the IDEA (IDEIA) requires that a disabled student receive more than just trivial educational benefit. The Act's use of the phrase "full educational opportunity" and its legislative history indicate an intent to afford more than a trivial amount of educational benefit, and heavy emphasis in the legislative history on self-sufficiency as one goal of education suggests that "benefit" conferred by Act must be more than de minimus. However, Congress did not intend that an IEP provide an "optimal" benefit. See *Polk*, 853 F.2d at 181; *Brett S. v. West Chester Area School District*, 2006 WL 680936 at 10 (E.D. 2006)("However, the IDEA does not require that a school district create the ideal IEP or provide the best possible education to the disabled child.")

As of August 27, 2005 the student was starting in grade six and under an IEP that the parents recognized as providing FAPE (FF 18). The student's social skills and behavioral needs were met through SDIs and classroom management (FF 20). The student was in an AS class with eight students with a maximum of six students in the AS classroom at one time (FF 25). There was an EA in the AS classroom (FF 2). The student had reading, writing, mathematics and social skills in the AS class; social studies,

science, lunch and special subjects were in regular education (FF 23). The sixth grade AS teacher was trained in Lindamood Bell V and V.

The sixth grade reading program was Reading Milestones supported by teacher designed materials (FF 26). V and V strategies were utilized (FF 29). The student progressed from level 3 (GE 1.5) to level 4 (GE 2.0) (FF 28) (If we were to use the previous year's Lindamood Bell scores, progress was from less than GE 1.) The student's language deficits hold back his reading progress (FF 39). Writing was tied in with reading instruction and regular education subjects (FF 31).

The student's math program was Everyday Math (FF 32). It focused on his splintered math skills. Language problems made word problems difficult (FF 32). Mathematics computation was a strong point for the student.

Behavior and social skills were addressed through SDIs and the classroom management plan (FF 20). A FBA that was conducted did not indicate a need for a BP; recommendations were included in the next IEP (FF 26). Peer interactions were assisted by the EA (FF 27). There was a daily communication log sent home (FF 34). A "buddy" system initiated by the school district was ended at parents' request so that more time could be used on academics (FF 43).

Progress monitoring shows that reading comprehension goals met nine of fourteen objectives with progress being made in the other five (FF 37). Progress was made in writing (FF 37). Math goals in computation and fractions were met, with progress being made in mathematical reasoning (FF 37). Math GE was at 5.7, reading QRI for nonfiction was level 1 and fiction at level 2 (FF 38).

On March 31, 2006 an IEP process started to develop an IEP for the next year. The process continued through June 6, 2006. The IEP meets all requirements in 34 CFR §300.320-327 (S-8). The parents neither approved nor disapproved the proposed IEP and placement by way of a NOREP (S-15). They permitted implementation to go forward until after the evaluations they were having done were completed and an IEP meeting could be held (S-15). This started a long procession of IEPs neither approved nor disapproved.

The sixth grade teacher felt that there was a "tense" relationship with the parents and she always had another person with her at meetings with the parents (FF 44).

Dr. R, as stated earlier, evaluated the student in May and June 2006 (FF 48). Her report, along with those of Ms. M and Ms. H, was provided to the school district on October 19, 2006 (FF 48). For her report, she did not seek information from the school district other than what the parents provided (FF 50). In her report Dr. R found the severity of the student's disability impacts on his learning of math word problems and expressive and receptive language; he has language deficits; he was low in recalling narrative stories; reading was GE 2.6 with comprehension below the first percentile; and his knowledge was average (FF 53, 54). She made program recommendations (FF 53,

54). According to Dr. R, not all autistic students can reach grade level in reading (FF 53). The school district opines Dr. R's findings are consistent with previous school district evaluations (FF 57).

At Dr. R's recommendation the parents obtained a Communication Evaluation of the student (FF 58). In her thorough evaluation, Ms. M recommended S/L therapy two and a half to three hours a week, V and V curriculum, inclusion in lunch and homeroom for social skills development and use of a FM device (FF 59). Ms. M was unaware of the current IEP goals (FF 59). The school district and Ms. M disagree on whether V and V needs a separate goal(s) or can be implemented by SDIs (FF 62, 69). Ms. M opines that reading levels of Autistic students may not equal that of non-handicapped students, but can grow gradually over time (FF 69).

After receiving the reports from Dr. R, Ms. M and Ms. H, the school district conducted a reevaluation of the student on November 15, 2006. This is addressed earlier. After reevaluation was received the process of revising the student's IEP was started. This led to a series of revisions that resulted in the parents continuing to neither accept nor disapprove the IEPs.

An IEP meeting was held November 20, 2006; this led to revisions on December 29, 2006, January 19, 2007 and February 7, 2007 (FF 102). Ms. M authored proposed goals that were modified (FF 102). V and V were placed in SDIs (FF 102). At the November 20, 2006 IEP meeting the big issues were reading comprehension, math reasoning and S/L (FF 103). Graphic organizers, FM system, behavior goals, Saxon math, expressive and receptive language were added (FF 103). Regular education social studies was discontinued (FF 103). The November 20, 2006 IEP was implemented with revisions over time (FF 105, 106, 110, 111). Parents concerns were addressed at all IEP meetings. The February 9, 2007 NOREP was not returned to the school district until May 21, 2007 (FF 118).

The seventh grade AS teacher was in-serviced on V and V by the speech therapist (FF 72). The AS teacher was trained in verbal therapy (FF 73). The seventh grade AS class had five students with one EA (FF 77). The AS teacher did a school assembly to help other students understand autistic students (FF 75). A daily journal was sent home each day, as well as the assignment book (FF 78). The student's seventh grade schedule included regular education science, homeroom and special subjects (FF 81). Each day he had reading using nonfiction (FF 81, 83). An EA accompanied the student in the regular education environment (FF 82). The AS teacher instructed the student in "short bursts", as recommended by Ms. H (FF 80).

During seventh grade the student's reading was SRA's Language for Thinkers followed by Creative Reading (FF 87). This was supplemented by other material (FF 89). Nonfiction reading occurred at the end of each day (FF 89). V and V strategies were used in the AS classroom and in regular education (FF 97).

The student's expressive language program was based on the Pennsylvania Writing Project (FF 91).

The Saxon Math level 5/6 was used in grade seven (FF 92). Word problems were sometimes read to the student (FF 93).

The AS teacher used a classroom-wide behavior management program; no need was seen for a BP (FF 95). Making friends was difficult for the student; the AS teacher and EA worked on this (FF 100). The parents ended the student's participation in a "buddy" program to increase academic time (FF 100). The student's behavior was communicated to the parents daily by way of the journal (FF 97).

At the suggestion of Ms. H a FM system was tried with the student. It proved to be too stimulating and was discontinued (FF 119, 120). It was not judged to be effective (FF 122).

The student showed progress in his seventh grade IEP goals (FF 129). This included doing math word problems with 88% accuracy; reading increased to level 24; reading fluency increased; written language improved to 2.5 to 3 out of 4 points using the Central Bucks Domain Scoring Guide; progress was shown on work habits; progress was made in the behavior goals and progress was made in S/L goals (FF 129).

The student's mother thinks the seventh grade teacher "gave up" on the student (FF 130). The AS teacher felt parental demands caused her to spend a disproportionate amount of time on the student (FF 131). The AS teacher took a leave of absence that she attributes to anxiety over parental demands (FF 132).

The eighth grade AS teacher is trained in behavior management, crisis intervention, Autism methodology, SRA decoding, SRA Comprehension Plus and V and V through Lindamood Bell (FF 158). The eighth grade AS class has two EAs (FF 159). The student is in regular education for science and special subjects.

The student's IEP was further revised September 12, 2007 and October 15, 2007 (FF 160). As usual, the parents agreed to implementations with a note that they did not agree that all needs were being met and pending the outcome of the due process hearing (FF 160).

During eighth grade the teacher communicated with the parents by way of a period by period daily journal (at parents' insistence), e-mail, E-notes, assignment book and phone (FF 161).

For reading, SRA is used. It addresses comprehension, fluency, phonics, decoding and vocabulary (FF 162). V and V is utilized across the curriculum (FF 169).

Written expression is addressed in directed reading and Comprehension Plus (FF 163). The student is a fluent reader (FF 164).

The behavior goals are addressed through the classroom management program (FF 170, 171).

The scope of this hearing is only up to November 20, 2007. Progress to date shows a reading level of 30 (taken after the close date), writing skills are progressing, computational skills are at grade level, he scored average on the math GMADE for word problems and he jumped a level in Comprehension Plus (FF 172, 173, 174, 175).

The parent views the eighth grade AS teacher as rude, disrespectful and doesn't want to speak with her (FF 179). The teacher disputes these allegations (FF 180).

The parents feel the student has visual tracking needs and have the student in private vision therapy (FF 182). This is an issue which is not contained in the due process complaint (FF 189). The school district, through its evaluation, testimony of teachers and the OT do not see a visual tracking need. Since this was not raised in the complaint, it will not be considered further.

The heart of this issue of FAPE being provided rests with is meaningful progress being made by the student on his IEP goals. First, the IEPs are all appropriate as defined in 34 CFR §300.320-324. No procedural flaws rise to the level of fatal flaws. Since IEP development in this hearing is an evolving process never pinned down to specific fully agreed upon documents, they must be taken as a whole. Looking at FF 197 and the record as a whole, slow steady progress is being made. It is painfully slow. Over the two year time period covered by this hearing, the student has reading comprehension progress from the start of GE 1 to level end of GE 2 or start of GE 3. The October 2007 score of level 24 can be attributed to natural regression over the summer. The parents chose to do their own summer program and did not report anything about it to the school district. Although after the time period for the hearing, the current AS teacher reports a level 30 DRA which indicates the October 2007 level 24 was not a permanent unnatural regression. Math word problems are hindered by the student's reading comprehension and language problems. The totality of each year's progress is positive and if the last GMADE holds up, math word problems may be up to grade level. Math computation has always been a strength. Social skills/behavior are meaningfully addressed in the IEPs as measured by progress reports. The debate over how to implement V and V may rage, but the school district's implementation is being made. Parents have the burden of proof, Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). There is insufficient evidence from which the hearing officer can conclude that they have met their burden. To the contrary, the student's progress though slow and steady is meaningful progress. The parents' experts could not provide a prediction or projection of what the student's progress should be. (FF 53,149)

The school district provided FAPE from August 30, 2005 to November 20, 2007.

Issue 6. Did the school district fail to provide the needed ESY program for the summers of 2006, 2007?

Regulations covering ESY are listed in Issue #1. The question of ESY for 2007 was addressed there also.

On February 16, 2006 a meeting was held to discuss ESY for 2006 (S-23). The school district used the Chapter 14.132(2) guidelines for making the ESY determination (S-73). IEP goals to be addressed in ESY were listed (S-73). Two options were presented to the parents (S-73). The parents rejected the ESY proposed and requested compensation for an ESY of their choice (FF 118).

The school district's ESY offer for 2006 was appropriate.

Throughout this hearing it was obvious that there is acrimony between the parties. It is hoped that this decision can put to rest the "tenseness" that has developed and that both sides can develop some trust and work together for the best interest of the student.

The LEA is ordered to take the following action

1. The school district failed to follow IDEA regulations and is ordered to reimburse the parents for Dr. R's evaluation at a rate that reflects the cost of neuropsychological evaluations in the area and upon presentation of a receipt by the parents for the IEE.

Date

Kenneth Rose
Hearing Officer