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# Pennsylvania Special Education Hearing Officer

## DECISION

Child's Name: DJ

Date of Birth: xx/xx/xx

Dates of Hearing:  
11-21-07, 12-21-07, 2-07-08, 2-08-08  
CLOSED HEARING  
ODR #8123/07-08 AS

Parties to the Hearing:

Ms.

Agora Cyber Charter School  
P.O. Box 51254  
Philadelphia, PA 19115

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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February 29, 2008

March 15, 2008

William F. Culleton, Jr., Esquire

## INTRODUCTION AND PROCEDURAL HISTORY

Student is a xx year old resident of the School District of Philadelphia and is enrolled in the seventh grade of the Agora Cyber Charter School (School). The Student is identified with specific learning disability and emotional disturbance. (NT 9-11.) The Student has a history of diagnoses including Adjustment Disorder, Mixed Anxiety and Depression, Disruptive Behavior Disorder, Learning Disorder NOS and vision deficits including farsightedness, visual efficiency problems and visual perceptual problems. (P-1, P-16 p. 3.)

Ms. (Parent), the Student's mother, withdrew him from the School District of Philadelphia in 2005 and, in August 2006, enrolled him in the School. (P-1, P-2, P-7.) The School offered IEPs in August 2006 and August 2007. (P-2, P-12, S-11.) The Parent requested due process in September 2007, seeking compensatory education for the 2006-2007 school year to the date of the first hearing, and an order that the IEP and amendments offered by the School for the 2007-2008 school year did not constitute an offer of FAPE. (NT 13-33; P-12 p. 26.)<sup>1</sup>

The School asserted that the IEPs in question were adequate, and that the online context of the Cyber School education must be considered when determining whether or not the School's offers were "reasonably calculated" to provide meaningful benefit. (NT 20-29.)

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<sup>1</sup> The IDEIA requires parties to plead their requests for relief, 20 U.S.C. § 1415(f)(3)(C). The Parent received the District's latest offer in October 2007. She filed her request for due process in September 2007; thus, she did not plead any facts or proposed resolutions concerning the subsequent October 2007 IEP offer. Nevertheless, Parent's counsel included this issue in his opening statement, (NT 31-33), requesting relief, the District's counsel acquiesced in this request, and the facts were tried accordingly. Therefore, the hearing officer considers it to be the parties' intention to have the hearing encompass the period after the Parent requested due process. The IDEIA permits issues not included in the due process request to be addressed in a due process hearing by consent of counsel. *Ibid.* The hearing officer thus includes that issue, and infers that the parties were in agreement that the end date for the compensatory education claim would be the first day of the hearing. The hearing officer believes that there should be an end date to the award of compensatory education; therefore, he fixes that date as of the first hearing session, November 21, 2007.

## ISSUES

1. In the 2006-2007 school year, did the School offer to the Student a program that was reasonably calculated to provide meaningful educational benefit?
2. For the 2007-2008 school year, did School offer to the Student a program that was reasonably calculated to provide meaningful educational benefit?
3. Should the hearing officer award compensatory education to the Student for the period from the first day of school in 2007 to November 21, 2007?

## FINDINGS OF FACT

1. Before being enrolled in the School, the Student had attended six schools in seven years. These included public, parochial, private and charter school settings. In fifth grade, he was also taught at home for three to four months. (NT 176-177; P-16 p. 3.)
2. The Student's educational program during this period was chaotic, inconsistent and often neglectful of his educational needs. (NT 54; P-16 p. 3-5.)
3. The Student has significant concerns with anger that affect his interactions in most aspects of daily life. (P-9 p. 13.)
4. The Student had exhibited numerous behavioral deficits including oppositional behavior and disruptiveness in classes, as well as fighting and assaulting both peers and adults school staff. These included multiple assaults and an incident in which the Student was restrained by five adults. (P-16 p. 3, 5, 16-17, P-18 p. 10, S-1.)
5. The Student has significant farsightedness, which makes close work like reading uncomfortable, but he refuses to wear his glasses. (P-16 p. 3, 6, 16.)

6. The Student's cognitive functioning has been measured in the Borderline Range, with wide variation among subtest scores, and in the low average range. These scores may under-represent the Student's true capacity. (NT 181-183; P-9 p. 4, 13, P-16 p. 16.)
7. Both language and perceptual reasoning skills are significantly impacted by a learning disability involving information processing deficits. (P-9 p. 7, P-16, p. 16, P-18 p. 4.)
8. As measured by standardized tests in June 2007, broad measures of the Student's academic skills, fluency and applications skills were in a range between the 11<sup>th</sup> and 15<sup>th</sup> percentile. (P-9 p. 7.)
9. Attention and concentration problems have been noted. (P-18 p. 2.)
10. The Student consistently has functioned well below grade level, with significant weaknesses in reading, writing and mathematics. (P-16 p. 17, P-18 p. 3.)

#### EDUCATIONAL NEEDS

11. The Student needs to learn appropriate coping strategies for dealing with others and managing his anger. He requires a opportunities to interact with peers, in order to gain independent functioning in social skills and anger management, and he needs authority figures other than his mother to provide guidance. (NT 70-72, 73-74, 89-90; P-9 p. 14.)
12. The Student needs a greater than average number of opportunities to practice new skills to the point of mastery. (P-9 p. 14.)
13. The student needs to participate in sports as a way of learning to deal with others and control his anger. (P-9 p. 14.)

14. In reading, the Student needs a sequential, research based reading program that addresses decoding, fluency and comprehension strategies, beginning at his independent reading level. (P-9 p. 14-15.)
15. The Student needs goals and objectives in mathematics that address gaps in his basic math skills. (P-9 p. 15.)
16. The Student needs to use text books at his independent reading level, which is third grade. (P-9 p. 15.)
17. The Student needs therapy for social skills and emotional and anger management. (NT 70-71; P-9 p. 15.)
18. The Student needs strategies and specially designed instruction that addresses his needs with regard to memory. (P-9 p. 15.)
19. Due to his emotional needs, the Student needs a program that begins at his independent skill level and carefully adds new learning experiences to avoid as much as possible the Student's proclivity to feel embarrassed or stupid when he does not know something. (P-9 p. 15.)

#### INTERVENTIONS PRIOR TO ENROLLMENT IN THE SCHOOL

20. Previous interventions have included IEPs, behavioral support plans and a learning support classroom. (P-18.)
21. The Student's last placement in the School District of Philadelphia was full time emotional support in a District School Special Class, with one-to-one assistance in the classroom, in the form of Therapeutic Support Services. (P-1 p. 3, S-1.)

SETTING AND PROGRAM OFFERED BY THE SCHOOL

22. The School requires the Student to work at home for five hours per day on a curriculum designed to be taught utilizing text books, work books, manipulatives and a computer with internet linkage to the School's instructional software, including live interactive virtual classrooms conducted by qualified elementary school teachers. (NT 176-177; P-9 p. 1, P-14.)
23. Direct instruction is delivered by the Student's Parent on a one-to-one basis. (P-9 p. 2.)
24. The School provides study guides to guide the parent or Learning Coach in how to instruct the student. (NT 369-371.)
25. The School also provides work assignments and cover sheets that are returned to the teacher so that the teacher can review and give feedback on the student's work. Feedback is by email or telephone conference. (NT 371-380; S-12.)
26. Assignments were returned by mail monthly at a minimum. (NT 375, 380.)
27. The level and rate of instruction can be designed to be individualized and sequential. Students can proceed at an individualized pace, with opportunities for remediation of gaps in learning. Assessments are provided for each lesson, and the School has a system under which mastery as tested is required before a student is allowed to advance to the next lesson. (NT 95, 105-106, 119-123, 374-375, 716-720, 738-741; P-9 p. 2, S-12.)
28. Assessments are recorded and the School's system allows error analysis. (NT 418-421, 482-483, 499-503.)
29. The School has no system for determining whether or not assessments are prompted or coached. (NT 407-409.)

30. The School offers special tutorial sessions on line, called "Elluminate" sessions. These are voluntary only, and are conducted by the teachers using technology that allows students to ask questions and have the teachers instruct them directly and privately. (NT 382-383, 396-399, 479-495, 720-722.)
31. The School offers a supplemental online program called "Study Island", which addresses state standards for reading and mathematics. With or without teacher direction, students can select their own grade level and work within the program to remediate or review. The program includes benchmark testing, tracks progress and generates progress reports. (NT 363-366, 401-402, 422-423, 428-430.)
32. The School also offers outings and social occasions. (P-14.)
33. The School holds itself out as providing close, individualized supervision of students who are having difficulty advancing through the curriculum, including a Response to Intervention program, tutorial services, crisis intervention, and "other special services of either a temporary or permanent nature." (P-14 p. 3, 8.)
34. The School offered an IEP in August 2006 that provided for special education services for language arts and mathematics, and placement in the general education curriculum with supports for all other subjects. The IEP provided assistive technology addressed to the Student's needs. (P-9 p. 2.)

#### 2006-2007 IEP - STUDENT'S PROGRAM

35. The School conducted all IEP conferences by telephone conference call during the 2006-2007 school year. (NT 444-445; P-2.)
36. The August 2006 IEP offered placement in itinerant learning support, which was a significant reduction in support from the previous Philadelphia School District placement. (P-1, P-2.)

37. The August 2006 IEP offered specially designed instruction in mathematics and language arts, but none in other subjects. This was a substantial reduction in support from the previous Philadelphia School District placement. (P-1, P-2.)
38. The August 2006 IEP PLAA section did not set forth any data from the previous Philadelphia School District Evaluation Report or IEP concerning the Student's cognitive functioning, even though the accompanying NOREP. (P-2.)
39. The August 2006 IEP did not identify any of the Student's deficits in vision or visual processing and did not identify any educational needs regarding these deficits. (P-2.)
40. The August 2006 IEP set forth vague goals that were not measurable. (P-9 p. 14.)
41. The 2006-2007 school year IEP provided no objectives or strategies for special education services for the Student. (P-9 p. 14.)
42. The August 2006 IEP Program Modification and Specially Designed Instruction section contained no specially designed instruction, no research-based methodology, no sequential design, and no modifications to the general education curriculum for reading, written expression, behavior and emotional needs or social skills needs. (NT 452-453; P-2.)
43. Progress Monitoring in the first quarter of the 2006-2007 school year was not measurable, but consisted of nothing more than the handwritten phrases, "In Progress" and "Continuing Progress." (NT 464-465; P-5 p. 2-3.)
44. The School assigned a special education teacher who was inadequately qualified and experienced for that role. The School relied upon this teacher during the 2006-2007 school year to accommodate the Student's program, and write his IEP with supervision. (NT 431-433, 436-437, 439, 460-462.)



45. The August 2006 IEP offered one hour per week of special education services, but there was no record kept by which the special education teacher tracked whether or not she delivered that hour every week, and it is not clear that she did. (NT 443-444.)
46. The special education teacher never observed or met the Student. (NT 465.)
47. The special education teacher provided instruction by sending lists of techniques by email to the parents of her students without individualizing those lists to the students' needs. (NT 454-456; P-7 p. 22.)
48. The Parent did not have the training or experience needed to manage special education services and the School did not provide adequate support to her in light of her level of skill and experience. (NT 93-94; S-10 p. 5.)
49. The Student did not use the supplementary Study Island program frequently. (NT 402.)
50. By the beginning of October 2006, the School was aware that the Student was struggling in history, science and language arts, and the Parent needed further explanations of the need for mastery before moving to a new lesson. The School's staff responded by directing the Parent to create essentially a block schedule, staying with one subject at a time, and agreed to review the matter in three weeks. (NT 386-392, 449-450; S-4, p.19-20, S-5 p. 24-25.)
51. As implemented by the School's teachers through the Parent as Learning Coach, the instructional materials were too advanced to allow the Student to access them. This was brought to the School's attention in October 2006. (NT 62, 67-68, 386-392; P-9 p. 2-3, S-5 p. 19-21.)
52. In November 2006, the School started the Student on texts at a lower grade level, grade 4. They anticipated that the Student would have difficulty even at this level, based upon his tested reading levels. (NT 386-392; S-5 p. 22-23.)

53. As implemented by the Parent, the pace of instruction was too fast, so that the Student was not mastering each lesson before moving ahead to the next. (S-5 p. 19-21.)
54. Changes made to teaching strategies for the Student during the 2006-2007 school year were not incorporated into his IEP. (NT 416-417.)
55. In February 2007, the Parent requested in writing a reevaluation of the Student and revision of his IEP to address the needs that were not addressed in the previous IEP. The School received the letter on February 27 and on or about March 6, 2007 sent a Permission to Evaluate. (S-6 p. 3-4.)
56. In February 2007, the assigned special education teacher resigned and a new special education teacher was assigned. This teacher had just been hired, and she was in training during the remainder of the school year. She did not significantly alter the quantity or quality of the services provided during that year. (NT 457-458, 471-475.)
57. In March 2007, the Parent became ill and was unable to implement the Student's program effectively for several weeks. (NT 392-393, 406; S-5 p. 17.)
58. The School did not provide a substitute when the Parent became ill. (NT 393-394, 559-560.)
59. In August 2007, the School offered an IEP for the 2007-2008 school year that was the product of face to face meetings. (P-12.)
60. The August 2007 offered IEP provided baselines in overall grade level, written expression, spelling, reading comprehension, literature, language skills, mathematics, science, history, and art. There were no baselines in emotional functioning, or behavioral or social skills. (P-12 p. 4.)
61. The August 2007 offered IEP identified needs in reading, mathematics and social skills. (P-12 p. 5.)

62. The August 2007 offered IEP offered goals in management of feelings, reading, mathematics, and writing. (P-12 p. 11.)
63. The August 2007 offered IEP contained inadequate training or supervision for the Parent as Learning Coach. (NT 93-94; P-12.)
64. The August 2007 offered IEP provided inadequate on-site, face to face direct instruction from qualified instructors. (NT 95-100; P-12.)
65. In October 2007, the School offered an IEP for the remainder of the 2007-2008 school year that was the product of face to face meetings. (S-11.)
66. The October 2007 offered IEP provided baselines in written expression, spelling, reading comprehension, literature, language skills, mathematics, science, history, and art. There were no measurable baselines in emotional functioning, or behavioral or social skills; however the PLFP section contained a narrative description regarding the Student's emotional functioning and behavior. (S-11 p. 4-6.)
67. The October 2007 offered IEP identified needs in reading and mathematics. Needs in emotional functioning and behavior were identified in the PLFP section. While social skills needs were not identified explicitly, specially designed instruction was provided in the form of on-line social opportunities and face-to-face interactions every two weeks. (S-11 p. 6-7.)
68. The October 2007 offered IEP offered goals in management of feelings, reading, mathematics, and writing. (P-12 p. 11.)
69. The October 2007 offered IEP contained inadequate training or supervision for the Parent as Learning Coach. (NT 93-94; P-12.)
70. The October 2007 offered IEP provided inadequate on-site, face to face direct instruction from qualified instructors. (NT 95-100; P-12.)

2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - READING

71. The August 2006 IEP did not set forth any data from the previous Philadelphia School District Evaluation Report or IEP concerning the Student's reading achievement levels. This data showed achievement in reading ranging from the second to the fourth grade levels. The School's PLAA section simply stated that the Student would begin at a fourth grade level in language arts. This was based upon admission testing alone. (NT 463-464, 289; P-1, P-2, P-18.)
72. The August 2006 IEP did not state a measurable baseline that could be used to measure progress over the course of the year. (NT 286-289; P-2, P-10.)
73. The August 2006 IEP listed reading comprehension as a strength, elaborating that the Student had a strength in "using context clues to decode unknown words . . . ." (P-2 p. 6.)
74. The August 2006 IEP offered one goal in "reading literacy skills" that did not contain a measurable baseline or measurable end point. It did not articulate the aspects of reading skill that were to be targeted and contained no indication of what data would be gathered to measure progress. (P-2.)
75. While the August 2006 IEP called for a specially designed program in Language Arts, and referenced "instructional adaptations and accommodations", it did not specify what those special services would be. (P-2 p. 14.)
76. The Student's sixth grade teacher listened to the Student's reading over the telephone and found that it was adequate; however, she did not measure fluency utilizing a research based instrument, nor was she aware of any such measurement. (NT 403.)
77. The Student scored below basic in reading in the PSSA test taken in the Spring of 2007. (NT 290-291; P-8.)

78. The Student's end of year progress report showed that he completed 57% of the fourth grade language arts curriculum and 56% of the fourth grade literature curriculum. (NT 282-283; P-10.)
79. The Student's end of year progress report showed that he required some level of support for almost all academic skills graded in reading and writing, based upon a sixth grade standard. (NT 280-282; P-10.)
80. In the beginning of the 2007-2008 school year, the Student was working in the Literature and Language Skills fourth grade curriculum. (NT 514; S-15 p. 1.)
81. As measured by standardized tests in July 2005 and June 2007, the Student's broad reading scores advanced from the 8<sup>th</sup> to the 12<sup>th</sup> percentile, and one grade level, from 2.9 to 3.9. (P-9 p. 8.)
82. As measured by standardized tests in July 2005 and June 2007, the Student's basic reading scores advanced from a range of grade level 2.4-3.3 to a range of 2.9-4.0.) This represents one year's growth in two years. (P-9 p. 8, 10.)
83. As measured by standardized tests in July 2005 and June 2007, the Student's reading comprehension scores advanced from a grade level of 2.1 to 2.7, with the same standard score. This was not significant progress. (P-9 p. 8, 10, 13.)
84. The August 2007 offered IEP goal in reading was measurable, because there was a baseline in the PLAA section based upon the curriculum and the grade level progress was measurable through the School's assessment program. However, objectives were not measurable and were not congruent with the goal. (P-17 p.11.)
85. The IEP offered in October 2007 proposes several goals in reading that would address the Student's identified needs. The goals are measurable, because there is a baseline in the PLAA section based upon the curriculum and the grade level progress and proposed trials are measurable through the School's

assessment program. Specially designed instruction is offered through online programs available through the School's system. (S-11 p. 20-24.)

86. The IEP offered in October 2007 offered additional reading instruction through Title I services. (S-11 p. 27.)
87. As of October 2007, the Student had not made significant progress in reading or literature. (S-11 p. 5-6.)

#### 2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - MATHEMATICS

88. The August 2006 IEP did not set forth any data from the previous Philadelphia School District Evaluation Report or IEP concerning the Student's mathematics achievement levels. This data showed achievement in mathematics at a high third grade level. The School's PLAA section simply stated that the Student would begin at the second grade level in mathematics. (P-1, P-2, P-18.)
89. The 2005-2006 school year IEP set forth a mathematics goal that aimed at a level of skill the Student had already attained. (P-9 p. 14.)
90. The August 2006 IEP offered one goal in mathematics skills that did not contain a measurable baseline or measurable end point. It did not articulate the aspects of basic mathematics skills that were to be targeted and contained no indication of what data would be gathered to measure progress. (P-2.)
91. The Student scored below basic in mathematics in the PSSA test taken in the Spring of 2007. (NT 290-291; P-8.)
92. The Student's end of year progress report showed that he completed 73% of the second grade mathematics curriculum. (P-10.)

93. In the beginning of the 2007-2008 school year, the Student was working in the Mathematics Second grade curriculum. (S-15 p. 1.)
94. As measured by standardized tests in July 2005 and June 2007, the Student's broad mathematics scores declined from 20<sup>th</sup> to 10<sup>th</sup> percentile, but advanced from grade level 3.7 to 4.2. This represented no advance in skills. (P-9 p. 9.)
95. As measured by standardized tests in July 2005 and June 2007, the Student's mathematics calculation scores declined from 12<sup>th</sup> to 4<sup>th</sup> percentile, and advanced from grade level 3.5 to 3.8. This represented no advance in skills. (P-9 p. 9, 10.)
96. As measured by standardized tests in July 2005 and June 2007, the Student's mathematics reasoning scores declined from 20<sup>th</sup> to 17<sup>th</sup> percentile, advancing in grade level from 3.6 to 4.5. This represented no advance in skills. (P-9 p. 9.)
97. The August 2007 offered IEP proposed goals in mathematics that were measurable, because there was a baseline in the PLAA section based upon the curriculum and progress was measurable through the School's assessment program. However, objectives were not measurable and were not congruent with the goal. (P-17 p.12-16.)
98. The October 2007 offered IEP proposed several goals in mathematics, all of which address educational needs, and all of which are measurable given the School's system. They are based upon the Student's "instructional level", which is set forth in the PLAA section of the IEP. (S-11 p. 13-19.)\
99. The Student completed the second grade mathematics curriculum during the 2007-2008 school year and currently is working in the third grade curriculum. (NT 504; S-11 p. 5-6.)

2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - WRITTEN  
EXPRESSION

100. The August 2006 IEP did not set forth any data regarding the Student's performance levels in written expression. It merely stated that the Student would begin at the fourth grade level in language arts, and indicated that his written expression was below grade level "due to his learning and emotional disability" without elaboration. There was no goal in written expression. (P-2.)
101. As measured by standardized tests in July 2005 and June 2007, the Student's broad written language scores advanced from tenth to twenty-first percentile, grade level 3.2 to 4.9. This was significant progress. (P-9 p. 8, 13.)
102. As measured by standardized tests in July 2005 and June 2007, the Student's written expression scores advanced from 9<sup>th</sup> to 27<sup>th</sup> percentile, grade level 3.1 to 5.6. This was significant progress. (P-9 p. 9, 13.)
103. As measured by standardized tests in July 2005 and June 2007, the Student's writing fluency scores advanced from grade level 3.0 to 5.3. This was significant progress. (P-9 p. 9, 13.)
104. The August 2007 offered IEP goal and objectives in written expression were not measurable. (P-17 p.17.)
105. The IEP offered in October 2007 proposes a goal in written expression that is measurable and proceeds from a baseline set forth in the PLAA section of the IEP. Assistive technology is provided in the form of utilizing a word processing program. (S-11 p. 25.)



2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - GENERAL EDUCATION

106. The August 2006 IEP lists a need for "accommodation and modifications" for all academic areas, without elaboration. (P-2 p. 6.)
107. In the beginning of the 2006-2007 school year, the School provided text books that were at a sixth grade reading level that was above the Student's reading level and that he could not access. When the Parent complained, the School sent books that were on a fourth grade reading level. (NT 405; P-9 p. 2.)
108. The Student's end of year progress report showed that he completed 2% of the fourth grade history curriculum, 2% of the fourth grade science curriculum and 0% of the fourth grade art curriculum. (P-10.)

2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - BEHAVIOR AND EMOTIONS

109. The August 2006 IEP did not set forth any data from the previous Philadelphia School District Evaluation Report or IEP concerning the Student's emotional and behavioral needs. These documents showed his history of clinical diagnoses, dysfunctional and oppositional behavior, and the need for specially designed instruction regarding these needs. The School's PLFA section simply referred to the Student's "social skills" as problematic without elaboration, and the "Needs" section referred to the Student's "emotional disability" without elaboration. (NT 49-50; P-1, P-2, P-18.)
110. The August 2006 IEP offered one goal for "time on task and ... levels of frustration" that did not contain a measurable baseline or measurable end point. It did not reference the Student's needs with regard to oppositional, angry, violent or disruptive behavior and contained no indication of what data would be gathered to measure progress. (NT 60-61, 82; P-2.)

111. The August 2006 IEP recognized that the Student had needs with regard to "socio emotional skills" that interfered with his learning. (P-2 p. 5, 6.)
112. The Student's history indicated a dramatic deterioration of his in-school behavior in the absence of structure and organization. (NT 53-55.)
113. The August 2006 IEP indicated a need for a TSS worker, but did not provide for how that worker would be incorporated into the program and placement offered in the IEP. (P-2.)
114. In the beginning of the 2006-2007 school year, the Student exhibited oppositional behavior toward his Parent, who was in the role of Learning Coach. This continued throughout the year and impeded his academic progress significantly. (NT 62, 76, 117-119; S-5 p. 16, P-11 p. 2.)
115. By beginning at a level that was too advanced, the School's program activated the Student's tendency to feel embarrassed or stupid when he does not know something, a tendency for which he is receiving therapy, thus contributing to the Student's resistance to learning. (NT 412-413, 62, 73-74; P-9 p. 16.)
116. The Student did not attend Elluminate sessions. (NT 413-414; S-5, 6.)
117. The physical setting of the School, with instruction at home, provided inadequate opportunities for the Student to learn anger management skills in ordinary day to day interactions. (P-9 p. 14.)
118. In the Fall of 2006, the Parent privately retained the Parents' expert therapist<sup>2</sup> to address the conflict that had arisen between herself and the Student as she tried to teach the Student according

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<sup>2</sup> The Parents presented the testimony of two expert school psychologists. One (referred to as the Parents' "expert school psychologist" was engaged to provide a comprehensive psychoeducational evaluation, P-9, P-16, and one testified as to his ongoing therapy with the Student, NT 44—169. The latter will be referred to as the "expert therapist", although he, like the "expert school psychologist" is a certified school psychologist. (NT 45.)

to the School's program. At first on an occasional basis, these therapy sessions became weekly sometime in the Fall of 2006. (NT 46-48; P-9 p. 2.)

119. The expert therapist, after attempting to identify the underlying causes of the conflict and the Student's antagonistic behavior toward the Parent, attempted to teach the Student and his Parent the skills needed to manage the Student's emotions of anxiety and frustration and to manage their interpersonal interactions. (NT 48.)
120. In December 2006, the School engaged the expert therapist to provide weekly therapy for the Student and consultation to the School concerning the Student's educational needs and programming at public expense. (NT 56-58.)
121. There was some partial alleviation of the antagonism between the Student and his Parent during the 2006-2007 school year, but those problems continued to interfere with the Student's education, and there was no opportunity to generalize any new skills to other authority figures. (NT 68-69, 75-76; P-11, P-9 p. 13-14.)
122. After March 1, 2007, the Student's behaviors were significantly improved. (NT 117-119, 151-152; P-7.)
123. By November 2007, the Student had improved his skills "dramatically." (NT 49.)
124. The August 2007 offered IEP contained one goal regarding emotional functioning and behavior. Neither the goal nor its objectives were measurable, nor was a baseline provided. (NT 78-82, 89-90; P-12 p. 9.)
125. The October 2007 offered IEP did not contain baseline information regarding emotional functioning and behavior. It was not based upon a functional behavior assessment or any formal assessment of the Student's functioning, or a formal behavior plan. (NT 85-86, 89-91; S-11 p. 6-7.)

126. The October 2007 offered IEP contained one goal regarding emotional functioning and behavior. The goal combines steps in emotional and behavioral control that should be separated. Neither the goal nor its objectives were measurable as written, because they do not specify sufficiently the actions to be measured, nor do they identify how data is to be taken, or by whom. The IEP offers to be guided by the Parent's expert therapist in formulating the goals and objectives into measurable form. (NT 87-91; S-11 p. 11-12, 28.)

127. The October 2007 offered IEP contained one objective in time on task that was measurable, though there was no baseline from which it could proceed. It was placed incongruously within a goal regarding management of feelings. (S-11 p. 12.)

#### 2006-2007 IEP - PROGRAM AND STUDENT PROGRESS - SOCIAL SKILLS

128. The August 2006 IEP identifies an educational need in social skills. (P-2.)

129. The Student's need to learn social skills is significant because his lack of such skills has in the past resulted in hostile, aggressive and violent behaviors. (NT 49-50, 53-55; P-16.)

130. The August 2006 IEP contains no goals to address social skills. (P-2.)

131. The Parents' expert therapist, during the summer of 2007, proposed to the School a plan to teach the Student social skills to make it possible for him to interact with peers without increasing his anxiety and anger to the point of engaging in hostile and aggressive behaviors. (NT 77-78; P-11.)

132. The physical setting of the School, with instruction at home, provided inadequate opportunities for the Student to learn social skills in ordinary day to day interactions, so that he can function appropriately and independently with peers. (NT 49, 89, 129-132, 161-162; P-9 p. 14.)

133. The Student's sixth grade teacher did not observe his social skills in interaction with other students during the 2006-2007 school year. (NT 403-404.)
134. The August 2007 offered IEP contained no goals or objectives regarding social skills. (P-12.)
135. The August 2007 offered IEP contained no research-based specially designed instruction for social skills needs. (NT 90-93; P-12.)
136. The October 2007 offered IEP contained no goals or objectives regarding social skills, and no research-based specially designed instruction for social skills needs. (NT 90-93; S-11.)
137. The October 2007 offered IEP provides biweekly opportunities for interpersonal interaction with peers, and four hours per week of direct service from a trained paraprofessional on site in the home. (S-11.)

#### DISCUSSION AND CONCLUSIONS OF LAW

It is undisputed that the School is a Public Charter School within the meaning of the state's Charter School Law as implemented by Chapter 711 of the Pennsylvania Code. 22 Pa. Code Chapter 711. It is also undisputed that the School is obligated under Chapter 711 to provide a free appropriate public education to any enrolled student. 22 Pa. Code §711.3. When a child with an IEP transfers to a charter school, the charter school is "responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP ... in conformity with the requirements of the IDEA." 22 Pa. Code §711.41. If the school's IEP team "places a child in another public agency, private school, or private agency," the school is obligated to pay for that placement. 22 Pa. Code §711.43.

The School's obligation to provide a FAPE is defined by federal law. 22 Pa. Code §711.3. Under the IDEA, the School was and is obligated to provide the Student with a

free and appropriate public education ("FAPE"), in accordance with an Individualized Education Plan that is reasonably calculated to enable the child to receive meaningful educational benefit. Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982). "The education provided must be sufficient to confer some educational benefit upon the handicapped child." L. E. v. Ramsey Bd. of Educ., 435 F.3d 384, 390 (3d Cir. 2006).

The IEP must meet the procedural requirements of IDEA and be reasonably calculated to confer meaningful educational benefit. Fuhrmann v. East Hanover Bd. Of Educ., 993 F. 2d 1031, 1034 (3d Cir. 1993). In re Educational Assignment of A.R., Spec. Educ. Op. 1867 at 12 (March 10, 2008)

The adequacy of the IEP is to be determined as of the time it was offered, not in hindsight. Fuhrmann, 993 F. 2d at 1040. Although actual progress can demonstrate that an IEP provided FAPE; the inverse of this - that a lack of progress necessarily implies an IEP's inadequacy - contradicts the fundamental concept that "[a]n IEP is a snapshot, not a retrospective." Rowland M., 910 F 2d at 992 (1<sup>st</sup> Cir. 1990); In re Educational Assignment of A.R., Spec. Educ. Op. 1867 at 12 (March 10, 2008). So, the test the hearing officer will apply is whether or not the IEPs were reasonably calculated to confer meaningful benefit at the time they were offered. In making such a determination, the hearing officer will defer to the educational agency's choices among professionally accepted and scientifically based methodologies. Rowland M., 910 F 2d at 992 (1<sup>st</sup> Cir. 1990).

Compensatory education is an appropriate remedy where an educational agency has failed to provide a student with FAPE under the IDEA. M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996); Lester H. v. Gilhool, 916 F.2d 865 (3<sup>rd</sup> Cir. 1990), cert. denied, 488 U.S. 923 (1991). Where an IEP confers only trivial or de minimis educational benefit, the student has been denied FAPE and is entitled to compensatory education. M.C., supra. The period of compensatory education is equal to the period of deprivation, and accrues when the District knows, or has reason to know, that the student is not receiving an appropriate education. Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

Since the Parents here are challenging the provision of FAPE, they are the moving party and they bear the burden of persuasion in the administrative hearing. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

#### THE CYBER SCHOOL MODEL

This hearing officer, based upon his review of the entire record, observation of the demeanor of the witnesses, and consideration of the testimony, concludes that the School's novel approach to education offers benefits to the Student by its inherent design. Its design inherently offers the opportunity for individualized, sequential instruction at the Student's own pace, with processes to address gaps in learning achievement. (FF 27-31.) Also based upon the above considerations, the hearing officer was left with strong impressions regarding the degree of commitment of the School's administration and staff to making their model work for the Student in particular. Unfortunately, he concludes that in the years in question, the School failed to offer the student FAPE.

For the 2006-2007 school year, the School did not offer a program or placement reasonably calculated to provide meaningful educational benefit. Despite the Student's lengthy history of cognitive deficits, emotional disturbance and sometimes violent behavior, (FF 1-10), due to serious anger problems that interfered with his social functioning and showed that he lacked appropriate social skills, (FF 3-4), the School offered an IEP that changed his placement - from full time emotional support class with one-to-one TSS support during the entire school day - to itinerant learning support. (FF 20-21, 36-37.) The record is devoid of any explanation of the rationale for this change of placement.

The hearing officer concludes that the reason was an absence of any other placement within the School. It is plain to this hearing officer that, contrary to its annual report to the State, the Cyber School at that time was organized to provide special education services only by way of consultation between special education professionals on staff and the general education teachers, with staff consultations provided to the Learning Coach as well. (FF 22-34.) This, of course, is consistent with itinerant services, but inconsistent with the Student's previous,

highly structured classroom placement. In short, the placement set forth in this IEP was not individualized, as required by law.

The IEP contained almost none of the information available to the School concerning the Student's needs as they were demonstrated in the years immediately prior to the date of the IEP. (FF 38-39.) There was no reference to previous test results establishing the Student's cognitive functioning, his academic achievement levels, or his emotional, behavioral or social functioning. (FF 6-9.) The Present Levels contained no measurable baselines, and no data at all, despite the availability of such baselines and data to the School. (FF 38-39, 71-72, 88, 100, 109.) Nor was there any decision to do a new evaluation.

Instead, there was a simple statement of the Student's grade level placements, based upon the School's admission testing, of which there is little mention in this matter. (FF 36.) The grade level placements were inconsistent with the Student's previous achievement levels in mathematics, (FF 88-89), and it was not clear whether or not they were consistent with his achievement in language arts, since his test scores had varied over a range of grade levels. (FF 6-10.) At any rate, there is no way to tell at what point in the fourth grade curriculum the Student was functioning independently when he began at the School; thus, there is no reliable, objective evidence that his curriculum based achievement level at the end of the 2006-2007 school year, (FF 40, 43, 71-72, 88, 100, 109), represented meaningful progress in reading and writing.<sup>3</sup>

In any event, the IEP was devoid of meaningful goals or objectives in reading and mathematics. (FF 74, 89-90.) It had no goals regarding written expression, emotional and behavioral functioning, or social skills. (FF 100, 110, 130.) The meager goals it did contain were vague, and not measureable. Ibid. There was no prescription for meaningful progress monitoring or reporting to the Parent.

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<sup>3</sup> In making this finding, the hearing officer relies more heavily upon the testimony of the Parent's expert school psychologist than upon her expert therapist, whose views apparently differed. (NT 106-108; P-9.) This is because, based upon demeanor and the course of the testimony, the hearing officer finds that the expert therapist had not focused upon the details of academic functioning and planning; rather, he was most knowledgeable regarding the Student's emotional functioning and its impact upon his learning needs. In contrast, the expert school psychologist based her opinions credibly upon a full battery of testing, observations and parent input.



There was no offer of individualized specially designed instruction. (FF 41-43.)

The IEP was thus completely deficient and contrary to both the IDEA and the common practice in Pennsylvania, by more than a preponderance of evidence. It clearly was not reasonably calculated to provide meaningful benefit.

The evidence is also more than preponderant that the School failed to administer its poorly designed program adequately during the 2006-2007 school year. Its staffing of this IEP was especially improvident: it assigned an inexperienced, minimally trained special education teacher to be the liaison and control for the delivery of special education services to a family that had a long and chaotic history, and a student who was exhibiting serious behavioral problems. (FF 44-48.) The testimony of this teacher showed that the Student and his Parent were essentially on their own during the tenure of this teacher. The teacher never met or observed the student. (FF 46.) The teacher provided minimal special education services and there was no record of the quantity of any services. (FF 45.) Early on it became apparent that the program was not working for the Student, but the teacher addressed these warning signs only by sending lists of techniques that the parent could try in order to accommodate the School's program to the diagnosed learning deficits and emotional difficulties of the Student. (FF 47.)

No consideration was given to the role of the Parent in this situation. The Parent was in a role that had some of the characteristics of a special education teacher and some characteristics of an educational aide. While she was supervised and supported by - for the most part - qualified teachers, she was the only person providing direct, hands on instruction. Thus, the School's system vested substantial responsibility in her, and the record shows that she had neither the skills nor the experience needed to succeed in that role. (FF 48, 51, 53.) Yet, the special education teacher never went to the home, nor did any other member of the teaching staff. There was no consideration of finding another Learning Coach for the Student. (FF 57-58.) Even when the Parent became to ill to function as a Learning Coach, there was no substitute. Ibid.

It is not enough for the Parent to establish that the program and placement were inadequate. She also must show that its deficiencies constituted a denial of FAPE. In this case, the Parent has shown such a denial for the 2006-2007 school year. The Parent's expert school psychologist testified that her normative testing showed insignificant gains or actual regression in reading and mathematics skills for the two year periods between July 2005 and June 2007. (FF 81-83, 94-96.) Various normative measures showed at most one year's growth in two years, and in reading comprehension, growth was less than half a year in that period. Ibid. In mathematics achievement, percentile scores declined across the board. Ibid. The Student scored below basic in both reading and mathematics in the PSSA in Spring of 2007. (FF 77, 91.)

Criterion referenced testing showed minimal gains. The Student's achievement in reading was measured in the School's fourth grade curriculum, two years behind his age-appropriate grade level. He failed to complete that grade level. (FF 78-80.) In mathematics, the Student reached a higher level of achievement, but this was in a second grade curriculum, and he did not finish that either. (FF 92-93.) The record shows that he had previously tested at a third grade level on standardized tests. (FF 88.) Thus, the Student was unable to advance a full grade in one year despite the fact that he was placed in a grade level that was below his previous level of achievement.

The one area in which the Student showed some advancement was in written expression. (FF 101-103.) The Student demonstrated significant gains in tests of written language, written expression and writing fluency, both as expressed in percentile rank and as expressed in grade equivalent increases of two years and over. There was little evidence of objective achievement measurement in the written expression portions of the School's curriculum, but subjective evidence was consistent with the standard scores.

With regard to behavior, the record shows preponderantly that the Student's emotional needs and behavioral problems continued in the 2006-2007 school year. (FF 109, 111-116.) He did not act violently, but his oppositional behavior was manifest. He resisted his lessons, as reported by his Parent; he never made use of the supplemental programming available to remediate gaps in

his mathematics knowledge and reading skills. The Parent's expert therapist credibly found severe deficiencies in the Student's ability to deal with his emotions, especially anger, and serious deficiencies in his social skills. (FF 118-121.) Yet, the School offered no programming or opportunity to apply the skills he learned in therapy to the real world. (FF 117.)

The record also shows that the Student's difficulties in reading and mathematics severely impacted his ability to access the general curriculum, yet no specially designed instruction was provided to help him in this regard. (FF 106-108.) His progress reports showed that he was unable to complete more than a tiny fraction of his lessons in history, science, art and music. Thus, the record is preponderant that the School failed to provide the Student with meaningful educational benefit as defined by law.

The School argues, with regard to academic achievement, that it appropriately placed the Student in the grade levels indicated by its admissions testing, and that it had no reason to believe that the Student would have the same problems in learning that he had exhibited in the Philadelphia and other schools during his first six years of educational perambulation. The hearing officer rejects this argument. The School was on notice from admission that the Student's needs were profound and acute, and that the complexity of his needs merited a careful transition from the highly supported services in the brick and mortar world to the individualized world of home teaching and cyber-space. Moreover, placing the Student in a sixth grade curriculum for science and history, when every objective test at its disposal showed that the Student's reading comprehension was two to three grade levels lower, can hardly be justified on grounds of hope or the benefit of the doubt; the hearing officer finds that it was so illogical that it bespeaks an inattention to the data in the School's possession. Without the benefit of hindsight, the hearing officer concludes that the School's offering was unreasonable under those circumstances.

Rather than provide careful assessment of the Student's cognitive and academic needs, with a full array of supportive services, the School simply fit the Student into its pre-determined system, on the theory that the student would do better on all fronts with the protected physical location of home and the individualization that a

cyber school curriculum provides. Rather than recognize that the Parent was unskilled and inexperienced in accommodating education to a child with a learning disability, and providing close supervision and hands-on direct teaching services, the School assigned a callow young teacher to oversee an ill-designed special education program, with negligible educational results.

The School argues that the Parent's illness in March 2007 was a substantial cause of the Student's lack of progress from then until the end of the school year. The hearing officer disagrees. The evidence was preponderant that there was no one "minding the store" of the Student's program during this time. (FF 56-58.) The new teacher hired to replace the original special education teacher was in training, and the program director was ill, (NT 58-60), and the record shows clearly that the new teacher did not make any memorable intervention until the following school year. Moreover, the School should have provided for an approach to finding an alternative to the Parent when she became sick; this they did not do. (Thus, the Parent's illness did not absolve the School of equitable responsibility for the inadequacy of its program during this time.

However, the school did seek to rectify the deficiencies in their program regarding the Student's emotional and behavioral needs by seeking to retain the Parents' expert therapist to provide weekly therapy session at public expense. (FF 120.) In December 2006, the School took steps to retain the therapist, and it retained him at the end of February 2007 for that purpose, with publicly paid sessions beginning in March. (FF 120.) The therapist reported that there was some improvement in the interactions between the Student and his Parent as Learning Coach. (FF 122; P-9 p. 12-13.) While the Student still needed opportunities to practice his emotional and behavioral skills in a "real life" setting outside the home, the hearing officer concludes that by March 1, 2007, the School was providing adequate related services to address the Student's emotional and behavioral needs. (FF 122-123.)

The School argues that the Student's behaviors were brought under control by the very nature of its design. That is, they suggest that the Student's behaviors were manifest only in the presence of other students, and that

the most severe negative behaviors disappeared when the Student enrolled in the School, because he was separated from his peers. The hearing officer rejects this reasoning. The Student is presently in an artificial social "bubble" that will burst, sooner than later. His education must include independent social functioning. Rowland M., 910 F 2d at 991-992. Thus, separating the Student, while it may have temporarily stabilized a chaotic educational situation, (NT 143), is not an adequate solution to the Student's behavioral problems. It does not teach him necessary skills to the level of independence.

The record is preponderant that, in consequence of the inadequate 2006-2007 program and placement, the Student failed to make meaningful gains during the 2006-2007 school year in all areas except written expression and behavior. Therefore, compensatory education will be ordered on a full day basis from the beginning of the school year until March 1, 2007. Compensatory education will not be offset for a reasonable rectification period, because the School was on notice from admission of the Student's serious history of unaddressed educational needs.

While there may have been some palpable improvements in behavior due to private therapy sessions, these were not due to the School's efforts, for they were not at public expense until March 1, 2007. Moreover, the record is unclear whether any such gains rose to the level of meaningfulness before March 1, 2007.

From March 1, 2007 until the end of the school year, compensatory education will be awarded on a half day basis, to account for the fact that, although his behavioral symptoms persisted, they were at a significantly lower level during this period, and that he made significant gains in written expression.

#### 2007-2008 SCHOOL YEAR

Regarding reading, the IEPs offered in August and October 2007 proposed measurable goals. (FF 84-85.) The hearing officer finds based upon the entire record that the School's system is able to implement these goals in a systematic, effective way, proceeding in an individualized and sequential manner from the Student's instructional level, with adequate assessment and progress monitoring. Although there may be flaws in the editorial placement of

the objectives, and in their measurability, the hearing officer does not regard such flaws as substantive. In addition to the goal, the School offered Title I reading instruction to the Student. (FF 86.) Therefore, these IEPs were appropriate in reading.

Regarding written expression, the School offered an IEP in August 2006 that was not measurable, and thus was inadequate. However, the IEP offered in October 2007 proceeded from a baseline in the PLAA section that was both measurable from a grade level curriculum rubric, and also identified specific deficits in writing. The goal itself was measurable as well. (FF 103-104.) Thus, the goal offered in October 2007 in written expression was appropriate.

Regarding mathematics, the IEPs offered in August and October 2007 proposed measurable goals. (FF 97-98.) The hearing officer finds based upon the entire record that the School's system is particularly well suited to implement these goals in a systematic, effective way, proceeding in an individualized and sequential manner from the Student's instructional level, with adequate assessment and progress monitoring. Although there may be flaws in the editorial placement of the objectives, and in their measurability, the hearing officer does not regard such flaws as substantive.<sup>4</sup> Therefore, these IEPs were appropriate in mathematics.

Regarding behavior and emotional functioning, the August 2007 offered IEP was inadequate, since it contained no baseline information nor any meaningful present levels of performance, and its single goal was not measurable. It was not based upon adequate assessment, because it was not preceded by a functional behavioral assessment or other systematic assessment, nor is it based upon a behavior plan already developed. (FF 124.) However, the October 2007 offered IEP demonstrates a commitment to formulating a coherent behavior plan and meaningful goals and objectives, in consultation with the Parents' expert therapist. (FF 125-126.) While the offered services are therefore inappropriate, the School's collaboration with the Parent's

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<sup>4</sup> The IEP offered in October 2007, at page 20, contains the surprising statement that a second grade instructional level for mathematics is appropriate. (S-11 p. 20.) The hearing officer assumes that this is an error, since the Student reportedly has completed second grade level mathematics, and is now working through the third grade curriculum. (FF ; S-11 p. 6.)

expert therapist promises that these flaws can be remedied in a reasonably short time.

Regarding social skills, the August 2007 offered IEP is inadequate. It is not based upon any systematic evaluation or functional behavioral analysis. It offers no goals or objectives. It refers to no behavior support plan. (FF 134-135.) On the other hand, it offers direct services to address this area of need. It offers continued consultation with the Parents' expert therapist. It offers biweekly organized social events with the Student's peers. It offers four hours per week of direct services by a trained paraprofessional in the home. Both the peer interaction and the direct services by a paraprofessional promise the Student meaningful opportunities to practice the social skills that he has learned in therapy.

In this regard, the hearing officer is cognizant of the expert therapist's testimony that these levels are not enough. (NT 96-100.) However, when asked what is enough, the therapist stated that the student would need five hours per day just to practice social skills. (NT 98.) The hearing officer is hard pressed to understand how this could be accomplished within a normal brick and mortar public school day, unless all class time were considered part of the practice time. In designing a remedial program in the cyber setting, this simply cannot be replicated.

To this extent, the hearing officer is swayed by the School's argument that some recognition must be given to the Parent's choice to utilize a cyber school setting. As with all choices of placement, there are benefits, (FF 22-33), and costs, and one of the costs of this setting is the absence of peers during the hours of the day devoted to instruction. On the other hand, the cyber setting frees extra time during the day for a student to engage in extracurricular activities of a social nature. Thus, the therapist's suggestion of five practice hours per day, while it cannot be provided by the School, can be provided by thoughtful planning of the Student's leisure time.

The law, as we are reminded, does not require an ideal program; rather one that is reasonably calculated to confer meaningful benefit. The hearing officer concludes that the therapist is positing a much more ideal program for social skills than a hearing officer ought to demand. The level of services offered - in terms of social opportunities and

in-home instruction by a trained paraprofessional - appears to this hearing officer to be legally adequate for social skills training purposes, assuming that they will be organized and directed to measurable goals in an adequate IEP. Overall, however, the IEP offered in October 2007 is inappropriate in the area of social skills.

The IEP offered in October 2007 is a signal improvement over the previous year's program for this Student. It offers substantially increased services, better oversight of the home situation, and goals that address all but one of the Student's identified needs, social skills. The offered IEP devotes substantial resources to emotional function and behavior in such a way as to hold out hope that a properly designed IEP will be forthcoming within a reasonable time, even though the document is inappropriate as written for reasons stated above.

Nevertheless, under the IDEA, an IEP must address appropriately all of the child's educational needs. It must include "academic and functional goals designed to ... meet each of the child's other educational needs that result from the child's disability ... ." 34 C.F.R. § 300.320(a). "Meaningful educational benefit" means that the IEP is based upon a thorough evaluation and addresses all of the child's needs. In re Educational Assignment of A.R., Spec. Educ. Op. 1867 at 12 (March 10, 2008). Among the related services which must be included as integral parts of an appropriate education are "such developmental, corrective, and other supportive services (including . . . psychological services . . . and counseling services ...) as may be required to assist a child with a disability to benefit from special education ... ." 20 U.S.C. §1402 (26). Thus, purely academic progress -- maximizing academic potential -- is not the only measure of educational benefit. Rowland M. v. Concord Sch. Comm., 910 F 2d 983, 991-992 (1<sup>st</sup> Cir. 1990), cert. denied, 499 U.S. 912, 111 S.Ct. 1122, 113 L.Ed. 2d 230 (1991). Because the IEP offered in October 2007 fails to appropriately address all of the Student's educational needs, it is not reasonably calculated to confer meaningful educational benefit as defined by law.



## COMPENSATORY EDUCATION

The August 2006 IEP governed the Student's program for the period from the beginning of the 2007-2008 school year to the first day of hearings in this matter. It has been found inappropriate. However, the Parent must also prove a denial of FAPE. Here, the record is mixed regarding progress in the first half of the 2007-2008 school year.

The Student has made significant progress since the end of the previous school year in June 2007 in the areas of emotional functioning, behavior, written expression and mathematics. (FF 99, 101-103, 122-123.) He has not made meaningful progress in reading, as to which his disabilities are profound. (FF 76-87.) His social skills are untested in a sufficient number of peer interactions; thus, the record is preponderant that the student has not received meaningful benefit in that area.

Thus, some compensatory education is due because of the failure of the School to provide a program and placement that appropriately addresses all of the Student's needs in reading and social skills, which led to his lack of meaningful progress during the beginning of the 2007-2008 school year. Although the School offered an appropriate program in reading in October 2007, its complete IEP offer failed to appropriately address all of the Student's needs and the Parent was within her rights to not accept it. Therefore, the October 2007 offer does not cap the School's responsibility.

Compensatory education will be awarded, but not on a full day basis, because the School provided services that helped the Student make significant progress in written expression, mathematics, emotional functioning and behavior. Thus, the Student's unaddressed deficits did not pervade his school day, as they had in the 2006-2007 school year. Therefore, one hour per day of compensatory education will be awarded for each school day, in compensation for the deprivation of meaningful educational services in reading, from the beginning of the 2007-2008 school year until November 21, 2007.

The Parent's expert therapist testified that the standard practice for evidence based social skills teaching is to provide three half-period sessions of direct instruction per week. (NT 98.) Therefore, one and one half hours of compensatory education will be awarded per week from the beginning of the 2007-2008 school year until November 21, 2007.

ORDER

1. In the 2006-2007 school year, the School failed to offer to the Student a program that was reasonably calculated to provide meaningful educational benefit.
2. For the 2007-2008 school year, the School failed to offer to the Student a program that was reasonably calculated to provide meaningful educational benefit.
3. Compensatory education is awarded to the Student in the amount of five hours per day<sup>5</sup> for every school day in the School's 2006-2007 school year.
4. Compensatory education is awarded in the amount of one hour per day of compensatory education for every school day in the School's 2007-2008 school year until November 21, 2007.
5. Compensatory education is awarded in the amount of one and one half hours per week from the beginning of the 2007-2008 school year until November 21, 2007.

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<sup>5</sup> The School's mandatory day for sixth grade was five hours long. (P-13 p. 9.)

6. The compensatory education ordered above shall not be used in place of services that are offered in the current IEP or any future IEP. The form of the services shall be decided by the Parent, and may include any appropriate developmental, remedial, or enriching instruction that furthers the goals of the Student's current or future IEP. The services may be used after school, on weekends, or during the summer, and may be used after the Student reaches 21 years of age. The services may be used hourly or in blocks of hours. The costs to the District of providing the awarded hours of compensatory education shall not exceed the full cost of the services that were denied. Full costs are the salaries and fringe benefits that would have been paid to the actual professionals who should have provided the District services and the actual costs for salaries, tuition and transportation for any contracted services. The District has the right to challenge the reasonableness of the hourly cost of the services.

*William F. Culleton, Jr. Esq.*

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

March 15, 2008