

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.

SPECIAL EDUCATION HEARING OFFICER

DECISION

Child's Name: HF

Date of Birth: xx/xx/xx

Date(s) of Hearing December 4, 2007; December 5, 2007;
December 13, 2007; April 10, 2008*

CLOSED HEARING

ODR NO. 8131/2007-08 KE

Parents

Parents' Representative:

Mr. and Mrs.

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School District:

District Representative:

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Date Final Transcript Received: April 13, 2008

Date Record Closed: April 30, 2008

Date of Decision: June 5, 2008**

Hearing Officer: Margaret Drayden, Esq.

*Parties waived the 45-day time period.

**Decision was delayed due to a medical emergency.

Précis

Student is currently a 10th grade student attending [redacted] Academy, a private, residential school. He has a history of diagnoses, including ADHD, executive dysfunction, nonverbal learning disorder, Asperger's Syndrome, and depression. Student began school in the District as a regular education 5th grade student, was identified in September 2004 as OHI. He continued to have difficulties with behavior through November 9, 2005, when Parents withdrew Student. Student completed the 8th grade in the Cyber Charter School. He briefly attended a private residential school but was unsuccessful there. He returned home, Parents sought another placement and notified the District that they would be seeking tuition reimbursement for the future placement. The District assessed Student, offered an IEP and NOREP with Resource Learning Support. Parents rejected the IEP as not offering FAPE.

Stipulations

1. 11/26/06 correspondence from Parents' attorney to District requesting tuition reimbursement. (P-19.)¹
2. 7/30/07 correspondence from Parents' attorney to District forwarding Psycho-Educational Evaluation by Dr. P. (P-26.)
3. 8/27/07 correspondence from Parents' attorney to District restating parents' position, requesting dates for a Resolution Session and restating request for tuition reimbursement. (P-27.)
4. 9/17/07 Due Process Complaint Notice and cover letter from Parents' attorney. (SD-N.)
5. 9/27/07 Answer to Due Process Complaint. (SD-O.)
6. 1/07 Academy Service Plan. (SD-P.)

Findings of Fact

1. Student was born on xx/xx/xx and is currently in 10th grade in a private residential school which specializes in educating students with Attention Deficit Disorder ("ADD"), Attention Deficit Hyperactivity Disorder ("ADHD"), Asperger's Syndrome ("AS") and Nonverbal Learning Disorder ("NLD"). (NT at 23; HO-4.)

¹Parents' exhibits are noted as "P-"; District exhibits are noted as "SD-"; Hearing Officer exhibits are referenced as "HO-"; Noted Transcript is referenced as "NT"; Findings of Fact are noted as "FF".

2. Student has a history of experiencing obsessions; at 2 years of age he was focused on apples, at another period he was obsessed with dinosaurs and robots. More recently, he obsesses about his weight, Calculus, and string theory (which is a subset of math). Obsessions are consistent with the autistic spectrum. (NT at 120, 190, 191, 214, 215; HO-4.)
3. Student experienced significant delays in fine motor skills. He had difficulty tying his shoelaces, coloring within lines, and using scissors until he was out of elementary school. (NT at 24; HO-4.)
4. Student exhibited difficulties with social issues in Kindergarten. (NT at 24.)
5. Student attended [redacted] S.D. in 1st grade where he had difficulties which Parents felt was due to the District's large size. (NT at 24.)
6. Parents moved Student to a small, private Catholic school for 2d – 4th grades. (Id.)
7. During 2d – 4th grades, Student had difficulties making friends, had fine motor issues and was “known as the clumsy kid”, never had the right books for class. (NT at 24-25.)
8. Due to poor handwriting, Parents sent him to the [redacted] Center for “handwriting without tears” at their expense, but it wasn't successful. (Id.)
9. Student entered the District as a regular education student for 5th grade [2002-03 School Year (“SY”)]. (NT at 26.)
10. Student immediately encountered problems – he came home crying due to lack of friends, got detentions, was unorganized and never presented his homework. Parents received numerous telephone calls from his teachers. (Id.; SD-F.)
11. Parents expressed concerns to teachers and stated they wanted him tested but were told that would take a long time and should consider having Student privately tested. (NT at 27.)
12. In January 2003, Dr. B issued a psychological evaluation which reported Student was impulsive, obtained a FSIQ of 104 but a Verbal IQ of 118; had a “severe academic disparity ...between [his] high average verbal intellectual ability and his current functioning levels in basic reading, decoding and spelling skills, had a statistically significant discrepancy between his verbal and performance scales on the WISC – 3d Ed.; scored 2 standard deviations above the mean on the subscales measuring Anhedonia on the Child Depression Inventory, which placed him in the depressed range compared to other children his age; tested more than 2 years below his chronological age on the Bender Visual Motor Gestalt Test, which indicated a visual perceptual motor weakness. Dr. B described Student as having an executive dysfunction. (NT at 27-28; P-1.)
13. Parents shared Dr. B's report with the District. (NT at 28.)
14. In March 2003, Student began taking medication for ADHD but it was discontinued due to complications and side effects. (P-6.)
15. On 3/18/03 the District's Instructional Support Team (“IST”) implemented 5 interventions: (1) Cueing system for focus, attention; (2) Preferential seating; (3) Having student restate directions; (4) Signing his assignment book daily; and (5) Parent conference, phone contact.. Concerns were noted as: “Behavior: [Student] has peer-relationship issues. He is very disruptive both during transition

and class times. He [sic] actions are impulsive and he has demonstrated defiant/non-compliant behaviors. *[Student's] behaviors are interfering with his learning to a high degree. They can occur anytime during the day, both during structured and unstructured times. These problems have been happening since beginning of the school year.* Organization: [Student] has very poor organizational skills. His homework is incomplete, late or nonexistent.” [Emphasis in original.] (P-2.)

16. On 5/20/03 the IST Information Sheet Progress Review rated the first 3 interventions as having shown an initial improvement “then fell off”; the 4th intervention was rated as “moderate improvement; gains inconsistently held”. (There was no rating for the parent contact.) The Music teacher reported Student “is easily distracted by other students and has trouble listening to directions. There are some behavior problems with other students and he seems to have trouble interacting with them appropriately.” The Art teacher reported Student “is very disorganized in art class. He seldom listens to directions and is often not on task. He often verbally fights with other students.” (P-2.)

17. Parents observed Student’s behavior deteriorating – he had temper tantrums and became physically violent with siblings. Parent testified Student was bullied every day and teased, his glasses were thrown off in the hallways, he was the butt of jokes, that he didn’t know how to socialize. (NT at 31-32.)

18. Parent was concerned that the 6th grade would be difficult for Student because of the size – Student gets lost easily, he doesn’t “navigate well to begin with” and “he gets frustrated very, very easily.” (NT at 33.)

19. Student’s 5th grade PSSA scores reflected proficient levels of performance in both reading and mathematics. His mathematics scaled score was 1347 and his reading scaled score was 1385. (P-6.)

20. In September 2003, Parents signed a waiver allowing Student to be placed in a fast paced language arts and mathematics class. (P-21 at 11.)

21. On 9/8/03, Student met with Dr. B2 of the [redacted] Center2 who diagnosed Student with ADHD, Combined Type, and Adjustment Disorder with mixed disturbance of emotions and conduct. The District did not receive notice of these diagnoses until provided by Academy on 12/20/06. However, Parents informed the District of the ADHD diagnosis. (NT at 258; SD-B, SD-D.)

22. At the beginning of the 2003-04 SY, Parent verbally requested the District test Student but was told it would take a while. Parents were not advised requests for testing must be in writing. (NT at 34.)

23. In the 2003-04 SY (6th grade), Student received 14 discipline reports and detentions for misbehavior. This included the 3/1/04 out-of-school suspension for writing a “Death and Hate List” (he received several counseling sessions for this behavior); on 3/29/04 he punched another student in the stomach; and he’d been disciplined for physically harming other students, using profanity in class, refusing to follow classroom rules/directives and harassment/teasing. (P-3, P-12; SD-A.)

24. On 4/14/04, the District issued the results of a Screening Evaluation which was reported as a referral “at the request of his teaching team in order to assess current behavior and to determine appropriate levels of intervention and

educational programming.” (P-3.)

25. The Screening Evaluation noted, inter alia, that Student had received instructional support services the previous school year, that ADHD was a concern and Parents were discussing that with their pediatrician; it incorporated information from Dr. B’s IEE; it noted that Student’s grades declined in 6th grade for failure to complete class work and poor performance on tests and quizzes; and it included the results of the Conners’ Parent and Teacher Rating Scale-Revised which showed elevated scores associated with ADHD and issues with anxiety, oppositional behaviors. Clinically significant behaviors were seen both at school and home. Recommendations included Student’s medication dosage “may need to be adjusted or another medication may be appropriate at this time; that intervention appeared necessary due to his behavior impacting his learning and that “[t]he teaching team should meet to discuss various options (regular ed plan, chapter 15 service agreement, implementation of a behavior plan, chapter 14 evaluation).” It was also recommended that Student have seating which would keep distractions to a minimum and help him to focus, and that because teachers reported Student “often loses things necessary for tasks” that he be encouraged “to keep essential items in a designated space in his classes...” (NT at 259-61; P-3.)

26. On 5/12/04, the District held a Team Meeting where it was agreed that a Chapter 15 Service Agreement would be implemented “to take him into next year” and would “enable [Student] to better access his educational environment more immediately.” Parent requested an evaluation in writing at this meeting according to the Team Meeting minutes; however, the District’s copy of Parent’s written request is file-stamped as received on 5/17/04. (NT at 260-3; P-4; SD-H.)

27. On 5/12/04, the District offered accommodations through a Service Agreement, which stated Student demonstrated ADHD and was not eligible for Chapter 14 services. Accommodations included, inter alia, that Student would “work with [Mr.] C the district behavior specialist”, that additional sets of books would be provided, he would be given preferential seating, additional time to organize his materials, additional time to turn in assignments, that he could come in early, he would be “hand scheduled” for his classes, that directions “should be provided verbally in addition to auditorally”, given an open pass to leave the classroom when he felt the need, and that he would be “required to clean out his locker weekly.” (P-5.)

28. On 5/18/04 the District issued a Permission to Evaluate. It was not returned. (NT at 263.)

29. Student took the PSSA writing assessment as a 6th grade pupil and obtained a proficient score of 1288, which was at or higher than 51% of other 6th grade students. (P-6.)

30. On 6/3/04, Student was seen at the [redacted] Clinic3, which noted: poor academic performance; suspension – due to making list of people he hates; detentions – for swearing at teachers, laying on floor in class, “5-6x usually acts out end of day” were noted under “school problems”; being easily distracted, having difficulty listening/following directions, short attention span, talks excessively, interrupts and provokes others were listed under “attention

problems”; oppositional/defiant and lying were listed as conduct problems; depressed mood – mood swings – anger, negative self-image/low self esteem, forgetfulness, and irritability/anger were noted under the heading of “depressive symptoms”. Strattera – 80 mg. was listed with the notation “after increased anxiety on Concerta.” The DSM-IV diagnostic reported: Axis I – ADD by history and depressive disorder; Axis II and III were deferred; Axis IV listed “educational problems” and “other psychosocial or environmental problems”; Axis V listed a current Global Assessment of Functioning score of 58 with the highest GAF in past year as 69.² The District did not receive this information until it was provided by Academy on 12/20/06, but this was due to the District’s lack of follow-through. [See F/F No. 35.] (P-32; SD-B.)

31. On 7/1/04, the District mailed Parents a second Permission to Evaluate, which was signed by Parents on 7/17/04 and file-stamped by the District as received on 7/26/04. (NT at 263-65; SD-I.)

32. On 7/17/04, Parents completed a “Developmental History”, which was file-stamped by the District as received on 7/26/04. Parents report that student was “very late” in learning to tie his shoes – which is at variance with the District’s school psychologist who testified the document indicated this skill was learned by the end of 1st grade. (NT at 265-66; SD-K.)³

33. On 8/9/04, Student was seen at Clinic3 and records note an Axis I of Mood Disorder NOS and ADHD; a GAF score of 61; a medication review showed Student has tried Strattera, Concerta and other medications. (P-32.)

34. In September 2004 (beginning of 7th grade) Parent informed District that Student required additional organizational time at the end of the day and the District complied. (P-21 at 11.)

35. On 9/15/04, Parent signed an Authorization for Exchange of Information allowing the District to receive information from the Clinic3 but the District never asked for any records because the School Psychologist didn’t “feel the need” because the 2004 evaluation and teachers’ input did not indicate a clinically significant issue with depression. Instead, they spoke with a counselor at the

² The Diagnostic and Statistical Manual of Mental Disorders (“DSM-IV”), published by the American Psychiatric Association, uses a multi-axial approach. Axis I lists clinical (mental) disorders; Axis II – developmental disorders and personality disorders; Axis III – physical conditions; Axis IV – severity of psychosocial stressors; and Axis V – global assessment of functioning, which is the level of functioning at the present time and the highest level within the past year. Axis IV represented the clinician’s estimation of the client’s overall severity of life stress in the past year. There are six categories/scores associated with this Axis: 1. No stress; 2. Mild stress; 3. Moderate stress; 4. Severe stress; 5. Extreme stress; and 6. Catastrophic stress. That information was not noted on the report. Axis V (Global Assessment of Functioning) has scores ranging from 1 to 100, with 100 being optimal. A score in the 91-100 range shows no symptoms impairing functioning. The DSM-IV lists a score of 51-60 as Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupations, or school functioning (e.g., no friends, unable to keep a job). Scores of 61-70 are considered as Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.

³ The District’s exhibits – “K” and “M” are both Development History documents. “K” is dated by Parent on 7/14/04 while “M” is dated by Parent on 12/20/06. However, this Hearing Officer questions the second document, in which pages 3, 4, 7 and 8 are clearly duplicates from the earlier document.

clinic but did not include any information from those conversation(s) in the 9/24/04 Evaluation. (NT at 332-36; SD-J.)

36. Although Parent testified that Student received counseling at the Clinic3 during 6th – 8th grades, records provided show he was seen on a regular basis through 11/20/07. Initially he was seen once every two weeks but when his behaviors worsened, he was seen weekly. Medication checks continue on what appear to be monthly appointments, with the last entry in P-32 dated 11/20/07.⁴ (NT at 94-5; P-32.)

37. On 9/24/04, an ER issued wherein the school psychologist found Student “is a child that has been demonstrating both behavioral difficulties and inattentive/hyperactive behaviors. Assessment results suggest that [Student’s] needs can best be met under the disability category of other health impaired. His diagnosis of ADHD and ‘executive function’ disorder appear to be impacting his ability to learn as his cognitive and achievement testing results are not commensurate with current classroom performance. Additionally, [Student] does demonstrate a learning disability in the area of written language. Using the predicted achievement method, his full scale IQ score of 109 is significantly different from his written language score of 85 on the WIAT-II.” The ER concluded with a finding that Student was a child with a disability – the primary category of OHI for ADHD and a secondary category of Specific Learning Disability (“SLD”). (NT at 267; P-6; SD-B.)

38. On 9/27/04, Student stabbed another student twice with a pencil. (SD-F.)

39. On 10/14/04, Student punched another student in the stomach and repeatedly “flicked” 2 students with his pencil. (SD-F.)

40. In October 2004, the District sent home a set of books and Student was provided space in the classroom to keep extra pencils, books and materials; Student was provided weekly locker clean outs. (P-21 at 11.)

41. On 11/8/04, the District sent Parents a copy of the ER and indicated that a team meeting would be held within 30 calendar days. (P-30.)

42. On 11/15/04, the District sent Parents an Invitation to Participate in the IEP Team Meeting scheduled for 12/6/04. (P-31.)

43. In December 2004, Student refused to attend school. (P-21 at 11.)

44. On 12/6/04, the IEP team met and considered the IEP which contained 2 annual goals. The 1st goal [(Student) will demonstrate the understanding of written expression from basic sentence formation to paragraphs dealing with proper subject, predicate, and a main idea with 5-7 supporting details by working w/grade level materials.] contained 3 short term objectives, 2 of which measured achievement as a score of “3 or higher on the PSSA writing rubric.” The 2d annual goal [(Student) will improve his organization and assignment completion by using a daily assignment book 95% of the time.] had 2 short term objectives: (1) [Student] will record his daily homework in his assignment book, and (2) [Student] will have materials ready at the beginning of each class and at days (sic) end to go home. Although the Present Levels of Educational Performance (PELs) noted that Student had “a history of behavioral difficulties” which included 14 discipline referrals for disruptive behavior, violence toward other

⁴ Clinic3 records report at least 50 appointments for medication check-ups.

students, harassment/teasing and verbal outbursts”, there was no reflection of this in the annual goals. The IEP contained no functional behavior analysis (FBA) or behavior management plan (BMP). The Related Services did contain a weekly meeting with the behavior specialist, however. The District issued a NOREP for Itinerant Learning Support, which was agreed to by Parents. (NT at 44; P-7, P-8.)

45. On or about 12/8/04, Student told the guidance counselor he had plans to commit suicide. (NT at 45.)

46. On 12/9/04, Student attended the [redacted] Program from 12/9/04 through 12/23/04 in their inpatient day program. During that time, he received “A’s” in classes as a Pittsburgh Public School student. Program suggested Student stay longer but Student refused. Student further refused to attend District school for a brief period. (NT at 45-46; P-9, P-21 at 11.)

47. Parent called District and told the school guidance counselor that Student had been diagnosed with an anxiety disorder by Program. The school counselor received confirmation of this diagnosis. (P-21 at 11.)

48. On 1/24/05, the IEP team met to discuss Parent’s request that Student be removed from Spanish so he could have “extra time just to work on the basics.” The only change to the IEP was a determination that Student did not qualify for ESY and he would “be exempt from Spanish for an additional resource period.” No change was made in the frequency Student would see the behavior specialist which remained at once per week for a 30 minute session. (NT at 50, 57; P-7.)

49. On 1/27/05, the District sent a Consent for an OT Evaluation by the Allegheny IU to Parents because Student’s fine motor skills (handwriting) were weak. The form was never signed and returned. (NT at 268-270; SD-L.)

50. On 2/14/05, Student took a pair of scissors and cut another student’s hair. (P-7.)

51. On 2/28/05 Student hit 2 other students after they taunted him. (Id.)

52. On 5/19/05, Student was denied cafeteria privileges after throwing food and calling an adult “a retard.” (Id.)

53. Student’s 7th grade report card indicates Student was absent 18 days, had 26 tardies, and a cumulative GPA of 2.04. Grades ranged from one “B” in Music to an “F” in PE. This grade is explained by Parent’s testimony that Student was embarrassed to dress for PE. (NT at 42; P-10.)

54. In the 6th and 7th grades, District records reflect Student’s misconduct included: throwing food, hitting other students, cutting another student’s hair, punching, stabbing with a pencil, spraying a student with board cleaner, and writing a death and hate list. (P-21, p. 10.)

55. Student received monthly medication updates at Clinic3. Medications included, but were not limited to, Zoloft, Depakote, Risperdal, Cloradine, Abilify, Luvox, and Melatonin. Many of these medications were prescribed and used concurrently, not serially. (P-32.)

56. In the 2005-06 SY (8th grade), Student continued to experience difficulties and Parents continued to receive complaints from teachers. Student’s 8th grade special education teacher suggested Parents “put him in military school.” (NT at 59-61.)

57. Student started the 2005-06 SY on Abilify, Luvox and Topomax, as scripted

by doctors at the Clinic3. (P-32.)

58. Student's locker was disorganized and messy, and Student was given no help in cleaning or organizing it. Student was upset and cried a lot, didn't want to attend school. Parent testified that Student still could not tie his shoes properly so she would tie them for him; he would lose jackets and other things. His appearance was disheveled and his Parents battled to get him to shower and brush his teeth. (NT at 63-64, 101-02.)

59. Parent received multiple complaints from the school cafeteria due to Student's manner of eating. (NT at 64-65.)

60. The District never conducted a functional behavior analysis. (NT at 67.)

61. Student's grades for the 1st grading period ("Term 1") were: B- in Language Arts, B- in U.S. History, C- in Algebra 1, C- in Physical Science, C in Healthy Living, F in P.E. (P-11.)

62. The District's records note that Student's misbehaviors from 9/27/05 through 11/3/05 (which would be a maximum of 28 possible school days) included 8 days of detention and 1 day of out-of-school suspension for discipline infractions for inappropriate language, disrespect toward teachers, failing to follow rules and missing detention. At least 2 detentions were for multiple infractions – on 9/27/05, detention was imposed due to 4 days of repeated failure to take his seat in the auditorium; on 10/18/05, Student was assigned detention after the 4th time of disrespectful behavior in Language Arts class. The School Psychologist noted that Student's misconduct was more verbal in 8th grade, which was an improvement over 6th and 7th grades. (NT at 291; P-21 at 10.)

63. On 11/9/05, Parents withdrew Student from the District in the midst of the 2d grading period. The District recorded Student's Term 2 as: F in Language Arts, B in U.S. History, F in Algebra 1, F in Physical Science, B in Healthy Living, and F in P.E. (NT at 287-290; P-11; SD-B.)

64. Prior to leaving the District, Student took the Stanford Achievement Test-10 in Reading and Math, a local assessment used in the District, and percentile scores were both within average range. (NT at 287.)

65. On 11/30/05, Student's IEP team developed an IEP for him for the Cyber Charter School as a student with ADHD and a SLD in the area of written expression. It contained 3 annual goals and included an OT for related services (pending evaluation). (NT at 67-69; P-12.)

66. The occupational therapist came to Student's home and laminated cards for various activities of daily living (such as brushing his teeth, showering, etc.). She also laminated pages and created checklists to help Student organize school work; she also worked on fine motor activities and helped Student learn to tie his shoes. (NT at 104-05.)

67. On 12/7/05, Clinic3 adjusted Student's medication regimen by increasing the Abilify, starting Lexapro and first lowering and then discontinuing Luvox. (P-32.)

68. On 1/11/06, Clinic3 also added Wellbutrin to Student's medication regimen. Every month Student's medications were adjusted and on 5/10/06, Topamax was added. (Id.)

69. Student remained in the Cyber Charter School from 11/8/05 – 6/2/06, which was the balance of 8th grade. Student was successful academically. Student

earned 'A's in Algebra I, English 8, Fine Arts 8, PE, and Social Studies 8, and earned a 'B' in Science 8. Additionally, Student had no disciplinary infractions, but Parents were concerned about the lack of socialization. Student was still crying and upset regarding his lack of friends. (NT at 69; SD-B.)

70. On 6/28/06, Clinic3 started Student on Adderall and discontinued Lexapro and on 8/11/06 discontinued Topamax. (P-32.)

71. On 8/23/06, (9th grade – 2006-07 SY) Student began attending [redacted] School ("School"),⁵ a small, residential school until 11/13/06. Student was very depressed, failing his classes, Student lost his temper with the dorm head on 1 occasion, and the dean of the school found him in bed under the covers refusing to attend class. (NT at 69-72, 95-96; P-13, P-14; SD-B.)

72. School's school nurse reported Student had frequent anxiety and exhibited worry/nervousness, referenced an anxiety disorder and OCD, and Student experienced weight gain due to medication. (SD-B.)

73. Student's report card from School contained comments from his teachers, including: "[Student] finds it very difficult to see me for extra help. Either he has an excuse or he promises to come in and then does not show up;" "I have never seen a more irresponsible and disorganized student in my 22 years teaching at School. I know he can do much better if he applied himself. However, I am not very optimistic about his ability to pull it all together enough so that he can pass;" "When [Student] is present he has participated in class activities, however, he has struggled with being on time, dressing appropriately, and having all of his clothes to participate. He needs to find the motivation to want to be at every class, to be successful." His French teacher noted: "[Student] unfortunately did not receive a passing grade for this grading period. His actual grade was a 56% but I am recording a 65% in order for him to be able to recover mathematically. His low grade is due largely to the fact that he rarely came to class with his book and workbook, and did not turn in all of his assignments, even after repeated opportunities to do so. ...[H]is homework grade was very low (40%), and he was not able to succeed on tests (57% average) and quizzes (65% average)...he was often distracted during class. I am available for extra help, but [Student] only came once." (P-13; SD-B.)

74. School teachers described Student as immature when compared to similarly-aged peers, that Student would lie or make comments to draw attention to himself, that he was disrespectful, highly disorganized, sloppy, often distracted, late for classes, struggled to develop friendships, irresponsible, and struggled to dress appropriately. (SD-B.)

75. Student failed all his classes at School. (P-14.)

76. Parents were advised by School administrators to hire an educational consultant to evaluate Student and find a placement. One of the suggested schools was Academy ("Academy"). (NT at 72-73.)

77. 11/13/06 – 12/9/06, Student returned home and stayed there until enrolling in Academy. (NT at 97-98.)

⁵ This Hearing Officer took judicial notice of School's information on its website (www.School.org) that there are approximately 400 students enrolled (grades 5-12) with approximately 100 attending as residential students.

78. On 11/27/06, Parents' attorney provided the District a 10-day notice that Parents were seeking tuition reimbursement at an appropriate private placement, would make Student available for an evaluation, and would provide whatever records the District required. (P-19.)

79. On 12/10/06, Student was admitted to Academy which has 33 employees and approximately 38-40 students. (NT at 221, 223; P-15.)

80. On 12/10/06, Academy crafted an Individualized Learning Plan ("ILP") with 1 goal for writing skills, 1 goal for organizational skills, and 1 goal for following directions and rules. The directions/needs goal, under "Interventions for Success", required Student to work on social skills with the aid of staff and a copy of the Student Handbook; and with guidance and directions from adults, Student was to develop goals to achieve each week. (P-15.)

81. Academy also provided Student with a "Service Plan". Service Plans change every 3 months and contain goals for Student's particular needs. The 1/07 Plan listed 6 areas: "Health" (with 4 goals which included increasing muscle tone and maintaining proper weight; methods to obtain those goals; and various evaluation methods), "Social Skills/Peer Relations" (with 5 goals along with methods and evaluation methods), "Education" (which contained 3 goals including better note taking and organizational skills for class work and homework, along with methods for doing so and evaluation methods); "Recreation" (3 goals, including 1 for developing good sportsmanship); "Family Relationships" (with 2 goals, one of which was to "generalize organizational skills to home, helping in decreasing family frustration"); and "Discharge Needs" (with 3 goals, including one for completing 9th grade). (SD-P.)

82. On 12/13/06, the District issued a Permission to Evaluate. It was signed and dated 12/20/06 and received by the District on 12/20/06. Student was seen by the school psychologist for testing only 2-1/2 weeks after starting school at Academy. (NT at 75, 275; P-20.)

83. On 12/18/06, Student's medications were Abilify, Adderall, Lexepro, and Wellbutrin. (P-32.)

84. On 1/8/07, the District's ER issued. Student was administered numerous assessment instruments, including the WISC-IV, where he earned a FSIQ score of 99. Student's composite scores in the areas of verbal comprehension, perceptual reasoning, working memory and processing speed all fell within the average range. To assess academic achievement, Student was administered the Kaufman Test of Educational Achievement – 2d Ed. (KTEA-II); Student's scores were within the average range for reading and math. On the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), average scores range from 85-115, but Student earned a standard score (SS) of 58, which showed the need for further assessment and possibly OT services. Student was administered the Behavior Assessment System for Children – 2d Ed. (BASC-II) where he scored at the "clinically significant" range for Atypicality, Anxiety, Attention problems, and Hyperactivity, Inattention/Hyperactivity. Student scored in the "at risk" range for Sense of Inadequacy, Somatization - internalizing problems, Self-reliance, and Emotional Symptoms Index. Student reported he "sees weird things" and "feels like others are watching him when he is alone and reports

hearing voices (in his head) that others cannot hear.” Further, he worries and cannot seem to relax, “is afraid of a lot of things” and “reports an inability to stand or sit still when asked....talks while others are talking and sometimes others tell him he is too noisy.” The BASC-II Parent and Teacher Report Forms were completed and Student was rated “at risk” or “clinically significant” in externalizing problems, internalizing problems, school problems and adaptive skills. Parent completed the Behavior Rating Profile (BRP-2) and the Behavioral & Emotional Rating Scale -2d Ed. (BERS-2). On the BRP-2, Student earned a score which was within the poor range; the BERS-2 Strength Index score of 88 suggested a high probability of an emotional or behavioral disorder. The School Psychologist noted that Student’s affect was flat and his behavior “ranged from compliant to disrespectful to atypical.” Atypical behaviors included eating an orange “in a less than desirable fashion. He tended to suck the juice from a hole made in the orange and made quite a mess on the table. Additionally, [Student] was also provided a pencil with an eraser during portions of the assessment. He tended to twirl the eraser in his ear, examine the ear wax on the pencil and then place it on his finger and examine it or flick it. Overall, [Student’s] behavior and affect was highly variable.” Student was identified as presenting with a diagnosis of ADHD, which was identified as the primary exceptionality, and a secondary exceptionality based on severe emotional disturbance due to Student’s diagnosis of anxiety disorder, depression (depressive disorder NOS), and an adjustment disorder with mixed disturbance of emotions and conduct. It was also noted that Student had a relative weakness in written language and continues to require OT services (NT at 276-286, 292-309; SD-B.)

85. On 1/17/07, Student’s 2d Quarter report card included: B- for Basic Skills Resource; B- in Geometry; C+ in Biology; D in American Literature; A- in Art; B in Social Studies; and a C in PE. Teachers noted that Student’s behavior was poor or marginal. (P-18; SD-B.)

86. At this same time, the School Nurse noted that Student’s medication regimen was: Ability (5 mg.); Adderall XR (30 mg.); Wellbutrin (300 mg), and Lexapro (10 mg). Additional notation indicated Student “cannot function in a typical classroom and needs smaller individualized attention.” (SD-B.)

87. On 3/23/07 Student’s 3d Quarter report card grades were: A in Culinary; Pass in Study Skills; B in American Literature; A- in Social Studies; A in biology; B in PE/Health; A in Geometry. (P-18.)

88. On 3/26/07, the District sent a copy of the 1/8/07 ER to Parents. The School Psychologist reported the delay was due to sending the report to Academy and School to ensure it accurately reflected data and have those entities sign off on the ER. Two administrators from Academy signed as agreeing with the evaluation. (NT at 310; SD-B.)

89. The District’s high school learning support teacher drafted the proposed IEP for Student by taking information from the ER and writing a basic template with the thought that the IEP team would convene after 1-2 months of implementation. This would allow time for behaviors to manifest themselves and opportunity to see if the goals are relevant. (NT at 380-81.)

90. The proposed IEP offered 6 annual goals. The 1st goal addresses writing

needs: “[Student] will independently write essays and reports for all final drafts of writing assignments with the end result of a score of Proficient or higher, as graded using the PSSA rubric.” Measurement of this goal is described as “classroom assignments” and “IEP goal review sheets sent home every 6 weeks.” The 2d goal addresses self advocacy skills “by demonstrating compliance and productivity when engaged in academic tasks as evidenced by completing 90% of all assigned work.” Progress would be measured by teacher reports and data from “PowerSchool”. The 3d goal dealt with organizational skills and proposed that Student would be “prepared for class 100% of the time.” This would include weekly bag and locker checks, use of an agenda book and a folder system, and having the necessary books, pencils and notebooks. Progress would be measured by teacher reports. The 4th goal also addressed assignment completion with Student reaching 70% completion of assignments by the due date. This also listed teacher reporting as the manner for measuring progress. Goal 5 addressed Student’s anxiety and proposed Student recognize and act on his feelings of distress that interfere with learning by initiating his Anxiety Plan 100% of the time. The stated purpose of the Anxiety Plan was the development of independent coping skills. Progress would be measured by teacher reporting. The 6th goal was “[Student] will develop an ABC list of contacts for his Anxiety Plan.” Progress was to be measured by Student developing the list within 2 weeks of enrollment. Modifications and SDI offered access to the resource room for testing; extended time for assignments and exams when teachers deemed necessary; “chunking” of assignments; preferential seating; use of the Anxiety and Behavior Plan; and adapted tests and homework as necessary. An extra set of books were to be available, weekly bag checks, an agenda book, tests read orally; read and clarified directions; manipulatives for math; and graphic organizers for writing assignments. Under related services were the behavior specialist – to be seen 4 times a month for 30 minute sessions, and an OT referral. A behavior plan would be developed once Student was enrolled and his needs were observed. There was no goal specifically for social skills. (NT at 383 – 408, 428-29; P-22.)

91. On 5/3/07, members of the IEP team met and the District offered a proposed IEP and NOREP to Parents which Parents rejected. The IEP team contained no one from the middle school who had knowledge of Student. The District’s proposed educational placement is Resource Learning Support, with Student in regular education classes for the entire school day. Student would have access to the resource room for support for 2 periods per day. (NT at 85, 381-82, 418; P-21, P-22, P-23.)

92. On 5/31/07, Student’s 4th Quarter report card grades were: Pass in Study skills; A+ in US History with a year end grade of A; Pass in Culinary; C in PE/Health with a C+ for a year end grade; C in American Literature with a C for his year end grade; C in Biology with a B for his year end grade; and a C in Geometry with a C+ for his year end grade. (P-18.)

93. Summer Semester report card – August 2007 – Student earned a B in Civil War Art; a B in Geometry Application; a B in Exp. Spanish; a C in English Writing Process; a B+ in Social Studies; and a B in PE. (P-18.)

94. 11/07⁶ Student's 10th grade 1st Quarter report card grades were a 90 in US History II; 95 in Pre-Calculus; 92 in Algebra II; 93 in Chemistry; and 85 in American Literature. (P-18.)
95. Student was seen at Clinic3 throughout 2007 – with medication rechecks and adjustments. On 8/21/07, Student was reported to have poor eye contact, limited verbal output and slightly angry. No changes in meds were ordered. On 11/20/07, Student was reported to have a “brighter affect” with no changes in meds ordered. (P-32.)
96. In June 2007, Dr. P, issued a neuropsychological evaluation. The instruments administered were the WISC –IV, Woodcock-Johnson Tests of Achievement – 3d Ed., Rorschach Inkblot Test, Sentence Completion Test, Rey Complex Figure Test, Delis-Kaplan Executive Function System – Trail Making Tests, Minnesota Multiphasic Personality Inventory – Adolescent Ed., Million Adolescent Clinical Inventory, Gilliam Asperger's Disorders Scale, and Asperger's Syndrome Disorders Scale. Student's achievement testing fell within the average range Dr. P testified that she would not have administered the WISC-IV had she known it had been administered 5 months previously and that the practice effect could have inflated the perceptual reasoning index score, which would tend to rule out Nonverbal Learning Disorder. (NT at 133-35; P-24.)
97. Dr. P's Evaluation included DSM-IV diagnoses under Axis I of ADHD, Combined Type, Oppositional Defiant Disorder, Learning Disorder (Nonverbal Learning Disorder), and Asperger's; the Axis V current GAF score was 55. Student doesn't read social cues well and does not understand how to display anger; his obsessions and unusual interests are indicative of autistic spectrum disorder but Student's social interests indicate a diagnosis of Asperger's. (NT at 110, 119, 123; P-24.)
98. ADHD and Asperger's can have behaviors in common such as attentional difficulties, poor judgment, difficulties in cause/effect reasoning, impulsivity, and maintaining friendships. Differences would include obsessions which are seen with Asperger's but not ADHD because in ADHD there is the lack of attention span necessary to obsess. (NT at 162.)
99. Nonverbal Learning Disorder does not exist in the DSM-IV as a diagnosis and is not a criteria for special education. (NT at 140.)
100. Dr. P opined that the District's proposed IEP provided goals and accommodations which Student needs but that there was not enough support for his emotional issues to remain in school; that Student needed a therapeutic-type boarding school educational placement with small class size which would address both his academic and emotional needs. Student “is very fragile emotionally and needs placement in a highly structured special education classroom.” She found Academy to be an appropriate placement. (NT at 111, 124-26, 164; P-24 at 15, 22.)
101. Dr. P opined that although not noted in her report that occupational therapy is a very good idea. (NT at 136.)

⁶ The date is approximate due to the poor quality of the copy included in the exhibits, but as report cards issued approximately every 2 months, it appears the report card date would be toward the end of October or the beginning of November.

102. As of May, 2007, Student had explosive outbursts – verbal outbursts at least 1-2 a week and physical outbursts 2-3 times/month, including putting his hands on peers and adults, throwing shoes, trying to punch a wall, punching and kicking, grabbing an adult’s wrists; he experienced rapid changes of emotions – from smiling and laughing to crying and then back to laughing. These emotional issues were throughout his day but he has not been physical aggressive since summer of 2007 and verbal outbursts are now 2-3 times a month. (NT at 188-190, 213-17.)

103. Student is seen in an individual therapy session 45-60 minutes weekly; in group therapy once a week for anger management and again for social skills, each session is 1 hour. Additionally, Student sees his regular therapist 3-4 times weekly for 15-20 minutes each time as well as other behavior specialists as needed. Further, he has a mentor and he has an advisor who provide support and counseling. His needs are immediate and he often shuts down and cries. (NT at 191-93, 206-07.)

104. Academy provides a highly structured and supervised environment for students with ADHD, OCD, ODD, bipolar, executive functioning difficulties, nonverbal learning disabilities, and Asperger’s Syndrome. It provides small class size (averaging 7 students). There are approximately 38-45 students and 33 adults. Student is within eye contact of an adult at all times. The school has a social skills curriculum and an academic curriculum. Each student is assigned a therapist and receives therapeutic interventions. Student’s therapist uses Cognitive Behavior Therapy with Student. (NT 193-94, 223, 237, 478, 480-482, 488, 506-07.)

105. Academy uses the Glenco textbooks and abides by the [redacted] State standards for grades, but individualize the curriculum to meet the needs of its students. (NT at 239.)

106. The Director of Academy testified that Student was “one of the most anxious young men that [he] had ever met” and when Student arrived, he worked with him once or twice a day; that Student’s outbursts have decreased from twice a day to once every 2 weeks. The Director opined that Student continues to need the intensive program provided at Academy and is not currently ready to leave but could be ready to transition to a day program by the end of the school year or the end of the summer session. The average length of stay at Academy is about 18 months. (NT at 482-84, 486-493, 511-12, 518.)

107. The Director of Academy agrees with the Asperger’s diagnosis due to Student’s obsessions

108. Student’s behaviors have improved since September 2007; Student is currently at the “highest level of behavior” at Academy, and while he continues to have outbursts, they are getting better. Student is very strictly supervised at all times so that he is not victimized and is not aggressive with others (NT at 116, 242-43, 247.)

109. The District’s School Psychologist does not believe Student fits the criteria for Asperger’s Syndrome as she doesn’t think his social skill weaknesses are significant or pervasive enough, she did not observe any perseverative behavior, difficulty with eye contact, or obsessions. (NT at 218-320.)

110. As of the 2007-08 SY, Clinic3 provides mental health counseling on campus at the District. (NT at 416, 468-69.)

111. District regular education classes can have up to 25 students. (NT at 421.)

112. Student was never reenrolled in the District after he was withdrawn in 2005. (NT at 464.)

113. On 9/17/07, Parents requested a due process hearing. (SD-N.)

114. On 1/23/08, an IEE issued; Dr. T administered the WJ-III – Tests of Cognitive Abilities (WJ-III: Cog.) and Tests of Achievement (WJ-III: Ach.), which are selected subtests. Student earned a General Intellectual Ability (GIA) quotient of 95, which is within the average range. He displayed a rather consistent cognitive profile with average range overall in verbal reasoning skills (SS=102, 56th %), nonverbal reasoning skills (SS=95, 38th %), and visuo-spatial reasoning abilities (SS=104, 61st %); his working memory (SS=96, 40th %) and processing speed (SS=95, 36th %) were also within average range. Significant weaknesses were noted in long-term retrieval, which fell within the lower portion of the well-below average range (SS=71, 3d %). Student’s achievement scores were within the average range – letter word identification (SS=96, 39th %), reading fluency (SS=108, 70th %), math calculation skills (SS=110, 74th %), calculation (SS=112, 78th %), math fluency (SS=104, 61st%), writing samples (SS=110, 74th %) although Student’s handwriting was noted to be “very poor and at times illegible”. Dr. T found his writing difficulties “are often observed in individuals with impaired executive functions and AS”. Selected subtests on the Delis-Kaplan Executive Function System (D-KEFS) were administered: color-word interference test (performance indicated executive function deficits), verbal fluency subtest (repetition error scaled score of 1 was in the deficit range and is the lowest score possible, suggested poor use of self-monitoring and/or working memory), and trail making test [Student committed more errors than 85-95% of his age peers, made more impulsive-type (commission) errors than 95% of his peers and more inattentive-type (omission) errors than 85% of his age peers, suggestive of deficits related to impulse inhibition as well as in sustained attention and self-monitoring]. On the WJ-III pair cancellation, Student’s scores indicated inattention, impulsivity and/or poor self-monitoring skills (SS=81, 10th%); on the untimed WJ-III concept formation subtest (SS=108, 71st%), Student scored in the upper portion of the average range. Dr. T found that Student’s tendency to ask how he was doing and seek feedback was indicative of his difficulties in monitoring his own performance (counteracting deficits in executive function). Student earned scores in the average range for auditory attention and working memory skills (Numbers Reversed SS=100, 49th %) and in Auditory Working Memory (SS=93, 31st %). Parents, 2 teachers and Student each completed the Behavior Rating Inventory of Executive Functions (BRIEF) and scores were indicative of “clinically-significant levels of impairment in all areas of executive functions ... and signify both behavioral and cognitive manifestations of executive function deficits...The areas in which [Student’s] ratings did NOT yield clinically-significant scores may reflect, in part, the high degree of structure and organization that he experiences in his current educational program at Academy. Overall, the results ... [are] consistent with [Student’s] prior diagnoses of AS and

ADHD.” Student earned scores in the average range for verbal comprehension (SS=102, 56th%), rapid picture naming (SS=113, 81st%), story recall (SS=94, 34th %) and sound blending (SS=87, 20th %). In the NEPSY-2, Dr. T found that Student showed “attention to detail versus his attention to the ‘bigger picture’ than is observed in the performance of over 99.9 percent of his age peers. This is consistent with strengths and weaknesses among individuals with disorders of the right hemisphere (such as AS) who typically exhibit a strength in attention to details but have impairments in seeing the ‘big picture.’” Student earned an average score on the WJ-III story recall subtest (SS=94, 34th %) but was well below average on story recall-delayed (SS=71, 3d %). The BASC-2 suggest Student manifests more behaviors associated with hyperactivity, depression, atypicality and withdrawal than over 99% of his age peers. At risk scores were noted on the aggression, conduct problems, anxiety, and attention problems scales of the BASC-2. Student’s scores with regard to adaptability an activities of daily living are lower than 99% of his age peers; the “low scores on the adaptability scale are highly consistent with deficits in the aspect of executive functions referred to as ‘set-shifting’ (e.g., mental flexibility) that often manifests in excessive rigidity and dependence on restricted routines and behaviors that is observed in children with Autism Spectrum disorders (such as AS)... Based on the results of the BASC-2:PRS, [Student] displays fewer overall adaptive skills and behaviors than 98-99% of his age peers.” The Asperger’s Syndrome Diagnostic Scale (ASDS) “is a norm-referenced behavior rating scale that yields standard scores meant to represent the likelihood that the rated subject meets diagnostic criteria” for AS and the overall quotient suggests Student “displays as many symptoms of AS as approximately 97-99% of individuals who have been diagnosed with AS.” Dr. T’s DSM-IV diagnoses were: Axis I: Asperger’s Syndrome; Cognitive Disorder, NOS (Nonverbal Learning Disability). Dr. T found that Student’s desire to develop personal relationships is not at variance with an AS diagnosis and that “the core symptoms that comprise each of [Student’s] former diagnoses [such as ADHD, OCD, and ODD] are symptoms that are known to co-exist as components of the syndrome of Asperger’s Disorder and also the Nonverbal Learning Disability Syndrome. Thus, this examiner concurs with the diagnostic impressions of Asperger’s Syndrome and Nonverbal Learning Disorder as offered by Dr. P in May of 2007.” (NT at 539-560; HO-4.)

115. Dr. T opined that children with AS often have hyperactivity as their predominant initial symptom and he found Student’s history of less appropriate diagnoses not at all unusual and that students are often not diagnosed until as late as 17 or 18 years of age. (NT at 528-529, 634-636.)

116. Dr. T found Student had social difficulties, including less than average eye contact, picking his nose, stuffing his mouth full of blueberries and talking with his mouth still full. Also noted was Student’s difficulty interpreting humor and that he took statements very literally. (NT at 531; HO-4.)

117. Dr. T opined that the 3 disability categories appropriate for Student were OHI, SED, and Autism. (NT at 561-62.)

118. Dr. T opined that Student’s placement in a residential setting is unnecessary (although his assessment was 13 months after Student entered

Academy); that Student could be successful in the public school setting with a combination of learning and emotional supports, that autistic support placements are more typical in an elementary school setting and is associated with lower cognitive functioning and language impairment. He further opined that he would look to a residential setting for Student only after progressing through many other interventions and finding they didn't work. He recommended starting with Dr. P's recommendations, including "a lot of social skills, direct instruction...anger management, coping skills instruction, and the ability to get out of situations where he is stressful and know a safe place or places to go." (NT at 564-70, 596.)

Witness Credibility

1. [Mother]Parent – Parent was highly credible. She answered questions in an honest and straightforward manner and presented herself as a concerned parent.
2. Dr. P – Parent's Expert. Dr. P was admitted as an expert in educational psychology and neuropsychology with a Bachelor's in psychology in 1976 from [redacted] University and a Master's/Ph.D. in child clinical psychology with a minor in neuropsychology from [redacted] State University in 1983. In 1983-84, she completed a post-doctoral residency at [redacted] Children's Medical Center in pediatric neuropsychology. She is a licensed psychologist and a certified school psychologist in [state redacted]; she has over 24 years of experience, is a professor at the University of [redacted] in the Dept. of Educational Psychology where she teaches neuropsychological assessment and neuropsychological basis of behavior, and she is the director of their psychoeducational clinic for children and adolescents. Dr. P testified via telephone, so this Hearing Officer was unable to observe her, but she willingly answered all questions and acknowledged that she would not have administered the WISC-IV had she known the District had administered the same test 5 months previously. She was highly credible.
3. [Father]Parent – Parent's testimony was very brief and limited to testimony regarding tuition payments. His testimony was credible.
4. Ms. S – Academy therapist. Admitted as an expert in clinical social work. Ms. S earned a Bachelor's in psychology and a Master's in social work from [redacted] State University in 1998. She is a licensed clinical social worker with 10 years' experience working with adults with severe and chronic mental illness, adjudicated youths who committed sexual offenses, and with children with various diagnoses including ADHD, autism and Asperger's. She provides individual and group therapy to Student and has worked with him since May 2007. Her testimony was given via telephone so this Hearing Officer was unable to personally observe her, but her testimony was clear and she answered questions fully, carefully, and knowledgeably. Answers were well-reasoned and without bias. Her concern for Student was apparent. This witness was very credible.
5. Mr. D – Academy Program Coordinator. Mr. D is currently working on his Bachelor's in psychology, although a degree is not required for his position. He supervises the residential life coaches and program counselors and coordinates activities in both residential houses. He had been at Academy for 5 months at the time of his testimony and he observed Student daily. His overall testimony was

- rather brief. To the extent that he testified regarding diagnoses and he has no educational or professional background for doing so, this Hearing Officer discounted his testimony. However, his personal observations on Student's behaviors and activities as well as the program at Academy were described without hesitation. The witness was credible.
6. Ms. S2 –Academy Director of Special Education. Ms. S has a Bachelor's degree in special education from the University of [redacted] and is certified in general education, general curriculum, and special education in the State of [redacted]. She is in the process of transferring her certifications to [state redacted]. She has 8 years' experience working with youths with learning disabilities and was a math teacher for students with emotional and behavioral needs in [state redacted] for 2 years. She has worked at Academy since June 2007 and her responsibilities include working with teachers to develop individualized learning plans for each student and monitor students' progress. Her testimony was also via telephone and was brief – she answered forthrightly and without hesitation. Her testimony was very credible.
 7. Ms. W – District school psychologist. Ms. W was admitted as an expert in school psychology and neuropsychology. Ms. W has a B.S. degree in psychology from the University of [redacted] and a Master's and certification in school psychology as well as a specialist degree in school psychology from [redacted] University in PA. She has completed all of her doctoral work in neuropsychology except for the dissertation and doctoral level internship. She is a nationally certified school psychologist and also a state certified school psychologist. Ms. W presented herself in a professional manner; she was calm and assured, spoke knowledgeably and without hesitation. She was very credible.
 8. Mr. S – District high school learning support teacher. Mr. S has a Bachelor's in economics from the U. of [redacted] and a Master's degree from [redacted] University and is certified in special education and secondary English. Mr. S has been the learning support teacher in the District for 6 years; prior to that he taught for 2 years at the [redacted] Center, which is a residential treatment facility for students which had, primarily, emotional disturbances. He also taught at a teacher's college and two schools in [nation redacted]. Mr. S was honest and open, presented himself in a professional manner and did not hedge his answers. He was very credible.
 9. Dr. H – District Director of Pupil Services. Admitted as an expert in school psychology. She earned a Bachelor's degree in special education from [redacted]University, a Master's and a Ph.D. in school psychology from [redacted] State University. She holds certifications as a school psychologist, a supervisor of pupil personnel services, and is a licensed psychologist. Dr. H has over 20 years' experience. Her testimony was brief but very credible. She presented herself professionally and without hesitation. Her answers were well reasoned and articulate
 10. Mr. S2 – Academy Executive Director. Mr. S2 has a Bachelor's and a Master's in education and is in his 3rd year doctoral residency in educational leadership at the University of [redacted]. He is a licensed school principal and is certified as a middle and high school teacher in Language, History and Science in [redacted]

state]. He has 11 years' experience as a school administrator and a teacher for 5-6 years. He has worked at Academy since May 2006. His testimony was via telephone but his testimony was clear and understandable and he testified persuasively and knowledgeably. This Hearing Officer found him very credible.

11. Dr. T – IEE Psychologist. Dr. T is an expert in neuropsychology. He has a Bachelor's degree in psychology from [redacted] University (1994); a Master's in school psychology from [redacted] (1995), and a Ph.D. from [redacted] University (2001) and is certified in clinical neuropsychology from the [redacted] Graduate University (2002). Dr. T has 14 years' experience, including employment at 2 districts as a school psychologist. He presented himself as a very capable and knowledgeable professional. His answers were well reasoned and even-handed; he obviously had no bias toward or against the District or Student. His explanations were clear and understandable and he testified persuasively. This Hearing Officer found Dr. T very credible.

Discussion and Conclusions of Law

Jurisdiction

A due process hearing is a hearing authorized through special education laws of both federal and state legislation. The jurisdiction of such a hearing is highly circumscribed. A hearing officer cannot decide any issue – no matter how significant – which is outside those narrowly defined parameters. Thus, any concerns parents may have regarding education services which concern matters beyond those parameters are beyond the purview of this process and this Hearing Officer.

Witness Credibility

Within the context of the special education arena, however, “Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision wherein the hearing officer has included ‘findings of fact, discussion and conclusions of law. . . [and] the decision shall be based solely upon the substantial evidence presented at the hearing.’”⁷ Quite often, testimony – or documentary evidence – conflicts; this is to be expected for, had the parties been in full accord, there would have been no need for a hearing. Thus, as stated, part of the responsibility of the Hearing Officer is to assign weight to the testimony and documentary evidence of facts which concern a child's special education experience.

Hearing Officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses” and “give some reason for discounting”⁸ or crediting evidence. Further, Hearing Officers’

⁷ Spec. Educ. Op. No. 1528 (11/1/04), quoting 22 PA Code, Sec. 14.162(f). See also, Carlisle Area School District v. Scott P., 62 F.3d 520, 524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

⁸ Blount v. Lancaster-Lebanon Intermediate Unit, 2003 LEXIS 21639 at *28 (2003).

decisions are to “specifically mak[e] credibility determinations among the various witnesses and contrary expert opinions”.⁹ The Third Circuit, in Shore Regional High School Bd. Of Educ. v. P.S., 381 F.3d 194 (3d Cir. 2004), held that “if a state administrative agency has heard live testimony and has found the testimony of one witness to be more worthy of belief than the contradictory testimony of another witness, that determination is due special weight. Id.;¹⁰ Carlisle Area School v. Scott P., 62 F.3d 520, 527-29 (3d Cir. 1995). Specifically, this means that a District Court must accept the state agency’s credibility determinations ‘unless the non-testimonial, extrinsic evidence in the record would *justify* a contrary conclusion.’ Carlisle, 62 F.3d at 592 (emphasis added). In this context the word ‘justify’ demands essentially the same standard of review by a federal appellate court. See Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 574 (1985).”¹¹ This court further held that “the task of evaluating [witnesses’] conflicting opinions lay in the first instance with the ALJ in whose presence they testified.”¹²

Similarly, credibility has been addressed in various jurisdictions. Looking to California, Stevens v. Parke Davis & Co., 9 Cal.3d 51, 67-68 (1973) held that a trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted...[and also] reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” Further, a fact finder may reject the testimony of even an expert witness, although not contradicted. Foreman & Clark Corp. v. Fallon, 3 Cal.3d 875, 890 (1971) And California courts have also found that “one credible witness may constitute substantial evidence”. Kearl v. Bd. Of Medical Quality Assurance, 189 Cal.App.3d 1040, 1052. (1986).

Burden of Proof

The burden of proof consists of both the burden of production and the burden of persuasion. Neither the IDEA nor the IDEIA¹³ addressed the subject of burden of proof and therefore the question of which party bore the burden was handled on a state-by-state basis with only a handful of states passing any laws or regulations on the matter. In Pennsylvania, the burden in an administrative hearing challenging an Individualized Education Program (“IEP”) generally fell to the LEA. Recently, however, the United States Supreme Court addressed this issue in Schaffer v. Weast, 126 S. Ct. 528 (2005). In the concluding paragraph of the Opinion of the Court, Justice O’Connor held: “The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.”¹⁴ In Antoine M. v. Chester Upland School District, Civ. Action

⁹ *Id.* at *34.

¹⁰ Citing S.H. v. State-Operated School Dist. of City of Newark, 336 F.3d 260, 271 (3d Cir. 2003)

¹¹ Shore Regional at 199.

¹² *Id.* at 201.

¹³ The IDEIA is variously referred to in case law as the IDEIA or IDEA 2004. In either event, it is one and the same.

¹⁴ 126 S.Ct. at 537.

No 05-3384, (E.D.Pa. Mar. 14, 2006), the Court held that even where the challenge is not to the sufficiency or appropriateness of an IEP, but rather for the failure to find a child eligible for one, “the overarching logic of *Schaffer* – that, in the context of the IDEA, the party bringing the challenge bears the burden of proof...[and] [a] student’s challenge to a district’s determination that he or she is not eligible for an IEP should not be treated any differently than a challenge to the adequacy of an IEP.” Thus, where a “case is brought solely under the IDEA and arises in a state lacking a statutory or regulatory provision purporting to define the burden of proof in administrative hearings assessing IEPs, *Schaffer* controls.”¹⁵

The burden of persuasion in an administrative proceeding lies with the party seeking relief.¹⁶ This requires the Hearing Officer to make a determination of whether or not the evidence is “equipoise” rather than preponderant. Preponderance of the evidence is defined as evidence presented by one party that is of greater weight or more convincing than the evidence offered by the other party. In other words, where there is evidence which tips the scales, the party which presented that evidence prevails. However, where the Hearing Officer finds the evidence is equally balanced on an issue, the non-moving party prevails.

After a close examination and analysis of all of the evidence and the testimony, this Hearing Officer did not find “equipoise”. Thus, the burden of persuasion was not at issue in this case.

Issues

1. Should Parents’ claim for tuition reimbursement be directed to the District or to the Cyber Charter School?
2. Was Student provided FAPE while a student in the District?
3. Does the District’s proposed 5/3/07 IEP provide FAPE? And, if not, is tuition reimbursement warranted?
4. Are Student’s needs met in his current educational setting?
5. Is Academy the appropriate placement for Student?

¹⁵ *L.E. v Ramsey Bd. Of Educ.*, 435 F.3d 384, 391 (3d Cir. 2006).

¹⁶ *Greenwood v. Wissahickon Sch. Dist.*, Civ. Action No. 04-3880 (E.D. Pa. Feb. 3, 2006) (“Hence, because there is no Pennsylvania law imposing the burden on the district, *Schaffer* applies and the burden of persuasion at the administrative level in Pennsylvania is now on the party contesting the IEP”.)

Issue No. 1: Should Parents' claim for tuition reimbursement be directed to the District or to the Cyber Charter School?

School districts of residence are required to provide special education payments to charter schools when the child begins attending the charter school or when the school district is advised that the child has enrolled in the charter school.¹⁷ Charter school responsibilities are not based upon residence but hinge upon attendance or enrollment.¹⁸ When an identified student enrolls in another public agency, private school or private agency, the charter school informs the school district that payment obligations have ceased.¹⁹

A child is considered a resident of the school district in his which parents or the guardian of his person resides.²⁰ Both state and federal law link an identified child's right to a FAPE to the child's residency.²¹

Claims for tuition reimbursement may be reduced or denied if parents (1) did not inform the IEP team at the most recent IEP meeting of their intent to enroll their child in a private school at district expense; or (2) did not give written notice of their intent at least 10 business days prior to removal.²² An exception to the notice requirement exists where compliance would likely result in serious emotional harm to the child.²³

Parents removed Student from the District on 11/9/05 and enrolled Student in the Cyber Charter School. Student remained in this placement through the balance of the 2005-06 SY. Subsequently, Parents enrolled Student in the first of two private placements; Student has not been re-enrolled in the District but Parents continue to reside in the District and notified the District, through their attorney, 10 business days prior to enrolling Student in Academy that they were seeking tuition reimbursement.

Based on the foregoing, I find the District is the LEA of parents and therefore responsible for reimbursement.

Issue No. 2: Was Student provided FAPE while a student in the District?

Evidence is clear that Student experienced behavior difficulties from the time he entered the District at the beginning of the 2002-03 SY. The District's 3/18/03 Intervention included the statement that Student's behaviors interfered with his learning "to a high degree", that the occurred "anytime" throughout the day, and had been ongoing

¹⁷ 22 Pa. Code §711.9(a).

¹⁸ 22 Pa. Code §711.7.

¹⁹ 22 Pa. Code §711.9(b).

²⁰ 24 Pa. C.S. §13-1302.

²¹ 20 U.S.C.A. §1412(a)(1)(A) and (a)(3)(A); 34 C.F.R. §300.101(a); 24 P.S. §24-1302; 22 Pa. Code §14.121.

²² 34 C.F.R. §300.148(d)(1).

²³ 34 C.F.R. §300.148(e)(2)(ii).

from the beginning of the school year. The District did not initiate any testing until Parents requested it in writing. The District's ER issued on 9/24/04 with a recommendation that Student qualified for special education due to ADHD and a SLD.

The resulting 12/8/04 IEP contained 2 annual goals; one addressed organizational needs and the other addressed Student's need in written expression. This goal utilized the PSSA writing rubric, which lacks the requirement of objective measurement.²⁴ The document lacked a behavior plan and the District never reconvened the IEP team to determine the necessity for a FBA, despite Student's violence, verbal aggression, suicide threat, and a range of other misbehaviors.

Further, although Student's grades, other than his ongoing failure in P.E., were, for the most part, low average, the Supreme Court held that merely passing from grade to grade and achieving passing grades is not dispositive that a student has received a FAPE.²⁵ That is true in this instance. Student's grades while enrolled in the Cyber Charter School as well as grades earned at Academy indicate Student's abilities to excel academically when social/emotional stressors are either eliminated or addressed satisfactorily.

In light of the totality of the evidence, it is clear that Student's needs were not satisfactorily addressed even when the District knew or should have known the nature and intensity of those needs and to have Student continue in the same program and placement when changes were needed deprived Student of FAPE.²⁶

Compensatory Education Awards

A student is entitled to compensatory education starting when the District knew or should have known that it had not provided FAPE. The period of compensatory education is equal to the period of deprivation, excluding the time reasonably required for the District to rectify the deprivation.²⁷

The law does not require a finding of bad faith or egregious circumstances in order to award compensatory education; neither does it depend upon the vigilance of the parents. M.C. v. Central Regional Sch. Dist., 81 F.2d 389 (3d Cir. 1996). Compensatory education is an appropriate remedy to cure the violation of statutory rights while the child

²⁴ "The [Appeals] Panel has held previously, and we reiterate here, that the state rubric does not meet the requirements of objective measurement required by IDEA and special education regulations. R.U., Special Education Opinion No. 1492 (2004). The Pennsylvania rubric is general and subjective, and is designed for general education; reference to a level of the rubric as the expected level of progress or achievement does not enable one to tell what a student is expected to accomplish in one year's time." Spec. Educ. Op. No. 1603 (May 18, 2005.) See also, Spec. Educ. Op. Nos. 1851, 1828, and 1492.

²⁵ Board of Educ. v. Rowley, 458 U. S. 176, 203, n.25 (1982). Also, 34 C.F.R. §300.101(c)(1) provides: "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade."

²⁶ M.C. v. Central Regional Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996).

²⁷ M.C. v. Central Regional Sch. Dist., supra.

is entitled to those rights. Big Beaver Falls Area Sch. Dist. V. Jackson, 615 A.2d 910 (1992); M.C. v. Central Regional Sch. Dist., *supra*. Courts have found that compensatory education is the appropriate remedy where there is a finding of denial of a FAPE, even where the student maintained good grades and made educational progress. Punxsutawney Area Sch. Dist. v. Kanouff, 719 A.2d 198 (1999). Obviously, then, a program which confers only trivial or minimal benefit is not appropriate. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988).

Nature of Compensatory Education Award

Compensatory education “is an in-kind remedy designed to provide additional future educational services to compensate a student for denial of educational programming that he should have received.”²⁸ The following Appeal Panel decisions are particularly helpful in elucidating the nature of compensatory education awards and provide guidance for this decision.

First, Spec. Educ. Op. No. 1481, p. 13, explains:

The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that assists him in overcoming the effects of having been denied FAPE. To that end, the compensatory education shall be in addition to, and not supplant, educational services and/or products/devices that should appropriately be provided by the district through student’s IEP, to assure meaningful educational progress. These compensatory education services may occur after school hours, on weekends and/or during summer months when convenient for STUDENT and his parents. The hours and nature of compensatory education created by this paragraph may be implemented at any time from the present to student’s 21st birthday, as determined by the IEP team.

Second, Spec. Educ. Op. No. 1431 (2004), pages 10-13, clarifies the award should meet the present need of Student, rather than provide a simple replacement of services denied through lack of FAPE:

“Compensatory”, and court interpretations of it in education, continue to suggest to this Panel, as they have in the past, a preferred remedy that replaces precisely what was denied. In a strict sense, compensating for educational deprivation entails, to the extent possible, providing those specific services that should have been a part of FAPE in the first place. Otherwise, the relationship between conduct resulting in denial of services and the remedy, likely necessary to prevent the latter from becoming punitive, can be tenuous.

Nevertheless, service-for-service remedial replacement may not always be “compensatory”, particularly where a student can no longer derive “meaningful educational benefit” from them. Failing to provide that benefit, and in turn an

²⁸ Spec. Edu. Op. No. 1876. (Apr. 17, 2008.)

appropriate education, is what we believe compensatory education seeks to address, and not the simple absence of a particular service. Conversely, awarding the identical service later, from which obtaining such benefit has become impossible, is not compensatory and emphasizes the service rather than the benefit.

Consequently, we believe the equitable nature of this remedy permits, when previously denied services are no longer appropriate, discretionary substitution of others. In the first instance, the latter should be directed towards achieving what was or should have been the goals of the deprived services, but this too may fall victim to the deleterious effect time can have on appropriateness. Where that too is the case, then we see a substituted service in furtherance or enrichment of the student's then current IEP documented educational goals generally as "compensatory".

Decisions as to the form, location, scheduling, and costs, so long as they remain roughly equivalent to the public costs of these substituted services, can rest with no other than the parent. These controversies incept in district failure to provide "meaningful educational benefit", and if they then influence substituted services to remedy that, the rule prohibiting their profit therefrom is besmirched. It is, in fairness, parents who expend the due process proof and remedy seeking effort, and who must likely deal with making the student available for compensatory services. We see no impropriety, therefore, in parental fashioning of the delivery vehicle for substituted services, if the services are developmental, remedial, or enriching instruction in furtherance of the then pending or a future IEP. See In Re the Educational Assignment of B.R., Special Education Opinion 1102 (2001). Obviously, then parents' discretion is not complete, and a district is not faced with a fait accompli, as it may challenge parental selections in the proper forum. It was, then, completely acceptable for this District not to have a role in determining the nature of the compensatory education remedy.

...

It is insignificant that the goals and services student is recognized as needing are not documented in an IEP, since the focus of compensatory education is and should be that which was denied and not where its need is memorialized.

Further, in its Exceptions, the District seeks a limit on the rate for compensatory education services selected by parents. In fact, B. R. and too numerous to cite cases following it, in some instances, support limiting such costs to what the district would have incurred, since the services are in the nature of compensation rather than damages. We believe the line of demarcation for applying this limitation can only rest in the fact that this remedy is equitable, and facts such as parental inability to secure properly selected services at the district's rate or cost may justify not applying it. Nonetheless, on this record no factual basis is established for not applying the limitation....

Lastly, further discussion regarding the cost to the District for providing services and the Hearing Officer's authority to order specific services or programs is discussed in Spec. Educ. Op. No. 1122 (2001), p. 9:

.... Except in unusual circumstances, the cost to a district of providing the awarded hours of compensatory education should 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 and paraprofessionals who should have provided the District services and costs for salaries, tuition and transportation, etc. for contracted services. This principle sets the maximum cost of all of the hours or days of compensatory education awarded. Parents may balance expensive and inexpensive instruction or services so that the average cost is below the maximum amount. Parents may also use fewer hours of expensive services as long as the maximum amount is not exceeded. Finally, parents may not be required to make co-payments or use personal insurance to pay for these services.

....

By way of dicta, we inform the District (and other interested parties) that this rationale does not preclude a Hearing Officer from ordering specific services or programs as compensatory education in some cases.

I hereby adopt the rationale of these Appeal Panel decisions and award compensatory education in accord with the following calculus:

1. The District's IEP was dated 12/8/04. Certainly a rectification period of 3 months is sufficient to have allowed the District to see the IEP did not meet Student's needs and make the requisite changes. Therefore, by no later than 3/8/05 the District should have had an IEP in place which provided FAPE.
2. Parents withdrew Student on 11/9/05.
3. Parents filed for a due process hearing on 9/5/07 alleging a lack of FAPE.
4. The IDEA implementing regulations allow a 2-year period for alleging violations.²⁹ Therefore, any claim for failure to provide FAPE prior to 9/5/05 is forfeit.

In light of the foregoing, and due to the pervasiveness of Student's need for a behavior plan, Student is awarded a full day of compensatory education for each school day from 9/5/05 to 11/9/05, less any holidays or days he was absent from school.

Issue No. 3: Does the District's proposed 5/3/07 IEP provide FAPE? And, if not,

²⁹ 34 C.F. R. § 300.507(a)(2).

is tuition reimbursement warranted?

Issue No. 4: Are Student's needs met in his current educational setting?

Issue No. 5: Is Cedar's Academy the appropriate placement for Student?

These 3 issues are considered together because they are so closely intertwined.

The IDEA and its implementing regulations require an IEP include, *inter alia*, present levels of educational performance; a statement of appropriate and measurable goals; appropriate objective criteria to enable the IEP team to determine, on at least an annual basis, whether or not the student is making progress; and the specially designed instruction (SDI), related services and supplementary aids and services which will be provided.³⁰ Further, the IEP must be responsive to the student's most recent educational evaluation.³¹

The proposed IEP offers 6 annual goals. The first states: "[Student] will independently write essays and reports for all final drafts of writing assignments with the end result of a score of Proficient or higher, as graded using the PSSA rubric." Measurement of this goal is described as "classroom assignments" and "IEP goal review sheets sent home every 6 weeks." Not only is the measurement impermissibly vague, use of the PSSA writing rubric, upon which this goal is based, lacks the requisite requirement of objective measurement.³²

The 2d goal reads: "[Student] will display self-advocacy skills by demonstrating compliance and productivity when engaged in academic tasks as evidenced by completing 90% of all assigned work." However, there is no clarification as to what is meant by "self-advocacy skills", "compliance" and "productivity" nor is there a standard of measurement against which to measure this goal. All that is listed is "teacher reports." Further, this goal appears in direct conflict with goal number 4, which only requires 70% completion.

The 4th goal may pass muster, but is questionable. It reads: "[Student] will complete 70% of all assignments by the due date." If this were a short term objective, certainly 70% could be reasonable for a 3 or 4 month period but it appears to be woefully lacking as an annual goal. Additionally, there is no information as to how Student will attain this goal or how "completion" is judged.

The 5th goal is also vague and incapable of measurement, except perhaps by Student himself [(Student) will recognize and act on feelings of distress that interfere with learning by initiating his Anxiety Plan 100% of the time. The purpose of the Anxiety Plan is for the development of independent coping skills.] Progress toward this goal is measured by "teacher reporting," only unless Student informs the teacher that he is feeling distressed, there is no certainty that his teachers will know Student's feelings.

³⁰ 34 C.F.R. § 300.320.

³¹ 34 C.F.R. § 300.324.

³² See Footnote No. 24.

Additionally, the ER determined that Student has a history of social emotional behaviors which include anger management, hyperactivity, inattentiveness, impulsivity, aggression, following directions, irresponsibility, and failing to show respect for his teachers and peers. There are no annual goals for these needs. While the District's position is, apparently, that all of these issues will be addressed in the Anxiety Plan, that is insufficient. Further, the ER noted "[Student] continues to require occupational therapy services." There is no annual goal or evaluation included in the proposed IEP addressing this need.

I am well aware that Student was absent from the District for approximately 1-1/2 years when the proposed IEP was drafted and that it would be an interim IEP to have in place if Student returns. However, it must still meet federal guidelines and this IEP as currently crafted does not. The proposed IEP fails to offer FAPE. The District's position is that it offered FAPE and therefore it did not attempt to modify the IEP in any manner after the 5/3/07 IEP meeting.

Parents are entitled to tuition reimbursement if a determination is made that (1) the District's IEP was inappropriate; (2) the private placement was appropriate. At that juncture, because reimbursement is discretionary, a third step, that of determining "equitable considerations" concerning the reasonableness of Parents actions is relevant.³³ As set forth above, there is ample reason to find that the District did not offer FAPE to Student. Therefore, the first prong of the test is satisfied.

The second prong is the appropriateness of Academy. Clearly, a private, residential school where all students are identified and without interaction with typical peers is a highly restricted placement. However, the least restrictive environment does not control when evaluating unilateral placements.³⁴ Also, a private placement need not satisfy all of the procedural and substantive requirements of the IDEIA but it must be at least reasonably calculated to provide the child with educational benefit.³⁵

Student attends a very small residential school with approximately 40 students with a variety of educational needs. Student's average class size is 7 and he has around-the-clock intensive supervision with adult to student ratio almost 1:1. He receives intensive individual and group therapy sessions with numerous short-term counseling interactions. The school provides the highly structured environment that Student currently requires to be successful. His behavior continues to improve and his grades are climbing steadily.³⁶ The weight of the evidence supports a conclusion that the private placement appropriate for Student.

³³ Sch. Comm. Of Burlington v. Dept. of Educ., 471 U.S. 359, 370, 374 (1985); Florence County Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 12-13 (1993); 20 U.S.C. §1412(a)(10)(C)(iii)III).

³⁴ Ridgewood Bd. Of Educ. v. N.E., 172 F.3d. 238, 249 (3d Cir. 1999).

³⁵ Carter, 510 U.S. 7 (1993).

³⁶ Despite years of a rigorous medication regimen, Student's emotional and attentional needs are such that he has experienced success only in a small school setting with small class size together with this level of intensive therapy and supervision. Comparing Student's educational experiences in the District and at School, where the student population is only some 400 students, Student is overwhelmed.

However, while I believe that Student has benefited from the residential portion of the placement and it may be the optimal situation, I do not find a nexus proving Student's at-home behaviors and needs impacted his educational program or were such that they could not be satisfactorily addressed through the assistance of a TSS and parental supervision. Understandably, Parents are concerned with Student's behaviors and the manner in which he interacts with his siblings. However, removing him from the family home – which is within Parents' right - does not warrant the District incurring the boarding fees for such a decision. Absent that issue, there were no equities which would reduce the award for tuition reimbursement.

Tuition reimbursement is awarded from 5/3/07, the date the District offered an inappropriate IEP which failed to provide Student with FAPE. I am denying District the usual period for rectification because (1) Student never received an appropriate IEP while in the District and (2) the District was granted a 3 month rectification period for the prior inappropriate IEP. Further, it appeared that the learning support teacher might well have referenced language from the earlier IEP (at least to the extent of the goal which referenced the PSSA rubric) to create the proposed IEP, which perpetuated the failure to offer FAPE.

Dicta

While it should be evident, the legal responsibility for identifying children with special education needs and then providing a FAPE lies squarely with the District; the duty does not lie with Parents. Fortunately for this Student, Parents were, and are, dedicated advocates, working diligently to provide their son with an educational program which meets his needs. Although not statutorily required, the District should inform its teachers and administrators that upon a parent's expressing concern or asking for an evaluation, the correct response is to advise the parent that they should put their request in writing.

ORDER

1. The District is the entity responsible for payment of tuition reimbursement.

2. Student did not receive FAPE while enrolled in the District and compensatory education is awarded as provided in this Decision.

3. Student's private placement meets his educational/emotional/social needs and is an appropriate placement, absent the residential component.

4. Tuition reimbursement, less boarding fees, is awarded from 5/3/07.

Margaret Drayden
Hearing Officer

June 5, 2008.