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SPECIAL EDUCATION HEARING OFFICER

Hearing Officer Decision

Hearing for ST
ODR Number 8133/07-08 AS
Birthdate: xx/xx/xx

Hearing Dates: November 1, 2007 February 1, 2008
January 3, 2008 February 15, 2008
January 4, 2008 February 18, 2008
January 7, 2008 February 21, 2008
January 8, 2008 March 27, 2008
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Final Closings received. May 10, 2008

Closed Hearing

Parties to the Hearing:

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Final Closings Received : May 10, 2008
Date of Decision : June 9, 2008
Hearing Officer : Joseph G. Rosenfeld, Ph.D.

I. Background

Student was born on xx/xx/xx and lives within the boundaries of the Central Bucks School District (SD). Age wise, she would be considered the equivalent to an eighth grade student who had repeated one grade. Student entered the SD in the second half of the 2002-2003 school year. She had been in parochial school placements prior to that time and entered the SD as a nonreader. She had no mathematic skills and minimal language skills. In the fourth and fifth grade years she attended the [redacted] Elementary School where she also repeated the fifth grade. She started the 2006-2007 school year in the special education program at the [redacted] Middle School (MS) but in February of 2007 the parents removed her from that school and placed her in the Academy in [town redacted], Pennsylvania where she remained until almost the end of this hearing.

Student has been diagnosed as having Williams Syndrome, a rare genetic disorder characterized by a complex pattern of cognitive strengths and deficiencies. She has also been diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD). Student began attending classes in the SD in the 2002-2003 school year. At that time, the parents shared information about Student and Williams Syndrome with the SD. They stressed to the district their strong desire that Student learn to read. The parents repeatedly requested that Student be provided with a scientifically based intensive reading program. They shared with the SD the evaluations of their own experts. After 5 years in the district the parents believed that Student did not make even minimal progress in reading and therefore removed her from the school and unilaterally placed her in the Academy.

The SD claims that Student did make progress, albeit slowly based on her profile. While at Elementary School she received direct reading instruction, more than an hour a day one-on-one from Mr. B, her special education teacher and received a scientifically based reading program. She made progress and was reading at a second to third grade reading level. Scientifically based reading instruction was continued at the MS. The SD program included mathematics, social studies, science, independent living and functional skills that they considered important in addition to reading.

The parents are requesting reimbursement for their tuition payments to the Academy, the cost of transportation and the payment of their experts because they believe that FAPE¹ was not provided. The SD believes the opposite. The parents have limited their claim from the 2005-2006 school year to the present² (NT 12)³

II. Findings of Fact

1. Student is a xx year old student who lives within the boundaries of the Central Bucks School District. Since approximately 15 months of age, Student has been diagnosed with Williams Syndrome, a rare genetic disorder characterized by a complex pattern of cognitive strengths and deficiencies. The Syndrome's characteristics includes small stature, a range of intelligences, perseverative behaviors, learning disabilities (particularly math) visual spatial difficulties, sensory integration and fine motor difficulties (NT 34-44, P-16, p.1, P-28).

¹ Free Appropriate Public Education

² This is consistent with 34 CFR § 300.507(2).

³ NT = note transcript page(s); SD-# = School District Exhibit, P-# = Parent exhibit.

2. Student received early intervention services through the Bucks County Intermediate Unit. A CER dated September 25, 1997 found her eligible for early intervention services due to moderate developmental delays in the areas of cognitive-development, receptive and expressive language, social-behavioral skill, fine motor skills and gross motor skills (NT 165-167, P-16, p.4).
3. In February of 1997, the parents discontinued the IU early intervention services and enrolled Student privately with the Institute [redacted]. They discontinued services with that institute and sought the services of the National Association of Child Development which provided them with an intervention plan to carry out at home for 3 to 4 hours a day. The parents also enrolled her in the preschool at the [redacted] parochial school in [town redacted] and from there she transferred to [redacted], a parochial school in [town redacted], PA. On the April 15, 1998, CER Mr. D, the SD certified school psychologist reported a Kaufman Brief Intelligence Test IQ of 80 (P-15) which delighted the mother who expected a lower score (NT p. 173). He classified Student as having a specific learning disability and other health impairment because of her ADHD and considered her eligible for special education services.(NT 1449)
4. While Student was still a student in a self-contained special education class in [the second] parochial school, an evaluation report dated January 10, 2003 by the SD, indicated a variation in cognitive standard scores from 48 to 61. Mr. D, the school psychologist examined her, and observed her at the parochial school and spoke with her teachers. He utilized the more comprehensive WISC III, the Central Bucks Literacy Screening, the Bracken Basic Concept Scale revised, the Wide Range Achievement Test, 3rd Edition, the Peabody Picture Vocabulary Test, III, Developmental Test of Visual Motor Integration and the Vineland Adaptive Behavior Scales. Although her full scale IQ on the WISC III was 48, he concluded that IQ 61 was likely the level of Student's functioning at that time. Reading, Spelling and Arithmetic test scores were minimal and at the kindergarten level (below the first percentile for her age) (NT 1483-1484, P-11, pp.3-4). Because there was not a severe discrepancy between ability level and achievement, she was no longer considered learning disabled and was classified as mentally retarded (P-11, p.10).
5. The program at [the second parochial school] was a mixture of religious education, academic skills, reading, math, and writing, along with functional daily living skills which included self-help skills, cooking, cleaning, and shopping (NT 1455-1456).
6. After her first communion, in the middle of fourth grade, the parents felt that she was progressing in reading and applied back to the SD. This was during the 2002-2003 school year (NT 54-55, 123, P-11).
7. At the end of the 2003-2004 school year, the parents requested that Student be retained in fifth grade for an additional year because they felt that she was not ready for a junior high school both socially and academically. They were hoping that she would learn to read and their main focus was on reading (NT 63-67, 188-189). The SD recognized this concern (P-24).
8. Mr. D opined that for a child with Student's profile, reading and language arts instruction total should be an hour and a half to two hours a day. In addition to becoming a more fluent

reader, she needs to be able to go to a grocery store to select food and read the cans and be able to read signs that tell her what is dangerous. (NT 1569, 1573-1574).

9. The results of the ER of 12-3-04 were consistent with the ER of 1/10/03. While some of the standard scores may be slightly lower it does not indicate that Student has not learned, but that she is progressing slower than her chronological age (SD-2, NT 1497-1500).
10. Mr. D, the school psychologist, opined that Student has needs in multiple areas. She definitely has reading needs, math and spelling needs and functional behavioral needs as well as transition needs. She has socialization needs and visual-motor needs. To focus solely on reading neglects other important areas (NT 1517).
11. Beginning in September of the 2003/04 school year, Student attended the full time learning support class taught by Mr. B, a certified special education teacher. This was the first of two fifth grade years (NT 1582-1583).
12. Mr. B has a Master's Degree in special education, is a certified special education supervisor and has been teaching special education in the full time learning support classroom at Elementary School for approximately eight years. (NT 1578- 1580)
13. Mr. B has been trained in the Multisensory Reading Instruction ("MRI") program and the Reading Mastery Program. Both the MRI and Reading Mastery programs are research based. (NT 1580-1581)
14. Prior to working with Student, Mr. B researched Williams Syndrome and reviewed a teacher's guide published by the Williams Syndrome Association. He also reviewed information provided by the parent and utilized the teaching strategies recommended by the Williams Syndrome Association (NT 1583-1585, SD-27)
15. Student was one of ten children in Mr. B's class during the 2003/04 school year and her educational level placed her in the middle of the class (NT 1606). There were four adults including Mr. B in the classroom daily. (NT 1609)
16. Student attended homeroom, specials, recess, lunch and assemblies with her regular education peers. (NT 1610-1612)
17. Mr. B did not develop an educational program for Student based on her IQ but developed and implemented a program designed to address Student's educational needs. He had high expectations that she would make progress despite the fact that it might be a laborious process (NT 1585-86).
18. At the outset of the 2003/04 school year, Student had difficulty transitioning. Mr. B reported that Student attempted to avoid tasks that were frustrating by crying, informing him that she was going to throw up and requesting to go to the nurse (NT 1600-1601, 514-515).
19. Mr. B worked with the mother to address the avoidance behaviors and implemented a reward system for Student to act as a reinforcer for appropriate and on-task behavior (NT 514-515, 1601-1603).

20. When Student entered Mr. B's class for her first year of 5th grade in 2003/04, she did not know all of her upper or lower case letters, was unable to point to specific letters on demand, could not count at all, had no one to one correspondence with letters or numbers, was unable to write her name or any letter except "S", was unable to match like pictures or match pictures to a word, nor a letter to a letter. She had no "return sweep" when looking at text, did not know letter sounds, and had no measurable sight vocabulary (NT 1586-1590, 521, 2406-07). In essence, Student had no reading, writing or mathematics skills whatsoever.
21. In addition, Student had difficulty sustaining attention. Mr. B implemented strategies designed to keep Student focused so that she would be available for learning. (NT 1600-1603)
22. During the 2003/04 school year, Mr. B worked 1:1 with Student on reading for two forty minute periods each day, five days each week. (NT 1591-92) A reinforcement program was used. It was dedicated to developing Student's ability to read (NT 1601-1604).
23. In addition to the individual instruction, Student participated in small group instruction with others in the class (NT 1606).
24. Student had no math or counting skills when she entered Mr. B's class during the 2003/04 school year. (NT 518-519) Mr. B worked with Student daily to teach her numbers and one to one correspondence with numbers. (NT 1613-14)
25. Mr. B worked with Student on handwriting. (NT 1613) She made progress in this area writing her name during the 2003/04 school year (P-29; NT 1614-1616, 1618-19)
26. The parent discussed reading programs with Mr. B and requested that a multi-sensory approach to reading be used. (NT 526)
27. The Reading Mastery program was the primary program used for Student's instruction (NT 2358) in Mr. B's classroom. This program is a sequential direct instruction approach that begins its first level, Reading Mastery I, by teaching phonics and phonemic awareness. (NT 1592-1600) Reading Mastery consists of a series of lessons each building upon the prior lesson and beginning with the most basic of sounds. (NT 1596-98) Besides vision and hearing, it uses kinesthetic approaches as well (NT 1633-1634).
28. The Reading Mastery program sequences sounds, sound combinations and letter combinations. It is a scripted program that begins with the most basic of sounds and letters and builds words and sentences from there. It is a direct, sequential, systematic and multisensory reading program (NT 2390-2392, 2427-28).
29. A data collection method is also provided which utilizes curriculum based charts and later, running records (NT 2392).
30. Mr. B used the stories that were contained within the Reading Mastery program and analyzed the grade level of the passages and stories by using Intervention Central, a web-site that assesses readability (NT 2393-2394).

31. Mr. B re-typed the passages and stories in the Reading Mastery program so that Student would not be distracted by the pictures but would be required to read the passages and stories. He used the materials recommended by the Reading Mastery program, and added to them. He created the "word deck" to reinforce sounds and words (NT 2397-2399, 2400, 2420-2424, 2427-28; SD-32, p. 9-10).
32. There were also workbooks designed to be completed at home as reinforcement. As Student completed these workbooks, they were sent home for her to keep (NT 2426).
33. Mr. B is also trained to implement the MRI reading program; a program based on the alphabetic phonics program. He used techniques from that program with Student (NT 2401-2402).
34. Mr. B asserted that during the 04-05 school year, Student was receiving approximately an hour and 40 minutes of reading instruction per day although the IEP of 1/21/04 which would cover the first part of the 04-05 school year indicated that she would be receiving one hour per day of intensive reading instruction (NT 1642-1644,1661, SD-7 p.2).
35. In the January 2005 IEP,(SD-12-B) the one hour of intensive reading instruction did not appear but Mr. B again asserted that Student still received on hour per day of intensive reading instruction, followed later in the day with 40 minutes of additional reading instruction (NT 1660-1661).
36. Student was exposed to some computer activities and instruction. She also was receiving arithmetic instruction (NT 1663-1671).
37. On May 12, 2004, the parents had Student evaluated at the Academy program (AP) and reevaluated on October 12, 2006 in an attempt to decide if a placement at that program would significantly benefit Student since they did not perceive significant improvement in Student's reading (NT 72-73, P-5, p. 5).
38. The parents requested an [Academy method] program from the SD or in the alternative a multi-sensory reading program similar to AP (NT 397-398). The parents considered reading as their number one priority (NT 470).
39. Since the fee at Academy was \$2000.00 per week, plus Student would have to be transported to that program that was 30 miles each way from their home, they sought an independent school neuropsychological evaluation from Dr. G to determine if Student had the potential for improvement (NT 74-76, 97).
40. According to the parent, Dr. G's examination as well as the Academy results was presented to the SD for the purpose of receiving a change in the SD reading program but the district refused (NT 84). Dr. G opined that Student had the potential for appropriate improvement in reading (NT p. 78-79), whereas an independent school psychology consultant and a measurement specialist, Dr. M, opined that the reasons for lack of skill development are based on the very real constraints on development that Student's genetic condition have imposed. Thereby implying that there would likely not be significant improvement in many academic skills (P-8, p.5). The parents agreed with Dr. G's opinion (NT 92-95).

41. As a result of instruction at Academy, the parents found that Student was more interested in reading now where before she had no interest (NT 100).
42. The parents approved the IEPs of 03-04, 04-05, and 05-06 school years (NT 138). An ESY program had been offered but the parents declined it because they felt that Student needed a break (NT 513-514).
43. In the Academy program, Student does not receive a math program , social studies or science. There is no physical education, music, or art. She is in school six hours a day with mostly reading instruction. She does not have the opportunity to interact with non-handicapped peers. (NT 148-149).
44. The ER dated November 20, 2006 while a student at the Middle School, considered her eligible for special education under the category of Mental Retardation (SD-20, p.4).
45. Mrs. F was one of Student's classroom teachers for the 2006/07 school year in the middle school. Student had different teachers for language arts, mathematics, social studies and science, physical education, music and art.
46. Mrs. F is a certified special education teacher who has almost completed her Master's Degree in special education. (NT 2463) She was the teacher of the full time learning support class at Middle School during Student's 2006/07 school year. (NT 2464)
47. Prior to Student's entry into the Middle School, Mrs. F consulted with Mr. B and reviewed Student's records. (NT 2465) In addition, she reviewed the Williams Syndrome teachers' guide and implemented the strategies it recommended (NT 2538-39; SD-27)
48. At the beginning of the 2006/07 school year, Student experienced a period of transition from the self-contained elementary school setting to a middle school setting where Student was expected to make changes between classrooms and teachers more often. In addition, Student had three different certified special education teachers for reading, writing and mathematics. (NT2465-66)
49. Mrs. F testified about the transition activities that were implemented for Student. (NT 2466-2468) Mrs. F and the other special education teachers and teacher assistants took Student on multiple tours of the building, introduced her to other adults in the school setting such as the nurse, guidance counselor and principal, and introduced her to her classmates.
50. There were three special education teachers who worked with Student as well as four instructional assistants between the three classrooms. (NT 2468)
51. There were between five (5) and eight (8) students in each of Student's classes during the 2006/07 school year.
52. Mrs. F was Student's teacher during the 2006/07 school year for Language Arts and Reading. Mr. T was Student's teacher for mathematics and Mrs. K was Student's teacher for science and social studies (NT 2469).

53. Student had the opportunity to and did interact with non-handicapped peers. She attended a regular education homeroom, lunch and specials such as chorus, art, computers, home economics, and gym with her regular education peers. (NT 2469-70)
54. Each period of Student's day lasted 45 minutes. The first period of the day (after homeroom) was for Language Arts with Mrs. F. Student then stayed with Mrs. F for a community topics class. She then went to math class. After a thirty (30) minute lunch, Student had the science and social studies class, two periods of specials and finally, reading class. (NT 2470-71).
55. Reading was a 45 minute class as was the language arts class. Thus, Student received 90 minutes of reading and language arts programming each day (NT 2470-2471).
56. Student had a difficult time transitioning to the middle school. She had difficulty completing homework and would become upset when it was not done. Sometimes, even when Student had completed her homework, she was unable to locate it. To address this issue, Student was given time to do her homework during the school day (NT 2472-2473).
57. Mrs. F communicated with the mother via e-mail and advised the parent of the difficulty that Student was having with homework completion and the fact that Student often complained that she was sick to avoid working. (NT 2473-74).
58. Mrs. F did not believe that Student had become comfortable with the middle school setting by the time she was withdrawn from school by her parents. To facilitate Student's transition and to assist her with becoming more independent in the middle school setting, the District had a teacher's assistant shadow her through the hallways (NT 2474-5, 2476).
59. In addition, Mrs. F established a set routine for Student so that Student would learn what the expectations were for her. (NT 2475-2476) A teacher's assistant was assigned to help Student organize her books and materials at the outset of each school day.
60. Mrs. F used the News 2 – U to work on language arts skills with Student. News – 2- U is a weekly newspaper written for children with disabilities but containing topics of interest to middle school students. Student worked on decoding words in the stories, writing activities and reading comprehension activities (NT 2476-2478).
61. Student had daily access to the computer and used it most every day for English and reading activities. (NT 2478) Because Student had so much difficulty physically writing even her name, she was permitted to use the computer to do any writing activity.
62. Initially, during the first several months of school, Mrs. F worked with Student on the Edmark Functional Words Program, a sight word vocabulary program. Mrs. F created flash cards and the students wrote a story each week (NT 2479, 2484-2488).
63. Student received reading instruction from Mrs. F 1:1 every other day for ninety minutes in the Edmark Program. The days that Student did not receive the 1:1 instruction in the program, Mrs. F would work with Student practicing the lessons she was learning (NT 2486).

64. At the middle school, the mother saw Student coming home with the same homework from the Edmark program that she had in the 2003-2004 school year. The mother was convinced that Student needed a change in the reading program since she was still unable to read (NT 2541-2543).
65. After the parents discussed the reading program with Mrs. F, the special education teacher who taught reading, the teacher attempted to begin instruction in the Corrective Reading Program, a multi-sensory program. Before that, Mrs. F was using the Edmark Program because Student had not tested into the Corrective Reading Program (NT 2486, 2543). After discussion with the mother, Mrs. F thought that she would be able to start Student into the Corrective Reading Program (NT 2572). The mother did not wish to wait any longer to see if progress would be made in this program and started instruction at Academy (NT 206).
66. Dr. L is a Professor of Cognitive Science at [redacted] University and the Department Chairperson. She has been conducting research on people with Williams Syndrome since 1996. (NT 218). She is primarily a psychologist researcher in this area and has worked with approximately 100 persons with Williams Syndrome. She is not engaged in clinical practice and hence is neither a certified school psychologist nor a licensed psychologist and has not worked in a school system. (NT 218, 223, 229, 254; P-33).
67. From 1997-2000, Student participated in the research that was conducted by Dr. L when she was a professor at the University of [redacted] (NT p. 222). Dr. L uses only two standardized tests when assessing individuals with Williams Syndrome; the Kaufman Brief Intelligence Test (KBIT) and two subtests from Differential Abilities Scale (NT 225, 244, 260).
68. The purpose of the study that Student participated in was to do basic research in the area of cognition and not with educational programming per se (NT 338).
69. Dr. L indicated that students with Williams Syndrome may show a drop in IQ over the years. Individuals, like Student, who increase very slowly in mental age, would demonstrate a drop in IQ scores over the years because of the comparison with their more rapidly developing age peers (NT 266-268).
70. Dr. L commented that it was not surprising to find very poor performance on many of the tests that one administers to a person with Williams Syndrome because the results are compared to age mates. The student with William Syndrome might show a personal strength in language and be at the sixth percentile instead of the first percentile but still low in comparison to age mates (NT 368).
71. When comparing Student's profile to other individuals with Williams Syndrome, Dr. L believed that not all, but many could benefit from reading instruction. Some could learn up to a second grade level and others might go to the eighth grade level. She believed that Student could benefit from reading instruction and could learn to read but no estimate was made as to the level she could attain (NT 255).
72. Dr. L asserted that Dr. G's findings were broad based and were not selected specifically for Williams Syndrome but the findings are essentially consistent with the profile of persons with Williams Syndrome (NT 271-274, 286).

73. Dr. L indicated that in classification by IQ, Student would be considered to be mentally retarded (NT 287).
74. In Williams Syndrome, visual-spatial functions are usually impaired and that leads to difficulties in reading. An adolescent may have the vocabulary of a typical child of six to eight, but the typical visual-spatial functioning may be that of a four or five year old child. (NT 278). However, Dr. L does not believe that the genetic condition necessarily imposes constraints that would lead to never moving beyond the elementary levels for math or reading (NT 296).
75. According to Dr. L, Student's performance in reading would need to be compared to a five or six year old child who was just learning to read rather than to her age peers and her performance should be judged from that vantage point (NT 315).
76. Dr. L testified that on mathematics tests, adults with Williams Syndrome usually only test up to a third grade level even after much instruction. However, more research needs to be done in this area (NT 312-313).
77. Dr. L administered a K-Bit to Student. Student scored at the IQ 50 level, a score similar to that obtained by Dr. M and Dr. G. (NT 347-348). The K-Bit is a screening instrument for intelligence. It is a quick version of an IQ test (NT 387).
78. Dr. L testified that it was not her task to recommend specific educational programs (NT 338). Her task was to review Student's cognitive profile and not to discuss social or emotional issues. She did not review any school records (NT 342, 351-352.).
79. Dr. L agreed that Student's skills may develop "very, very slowly" (NT 356).
80. Issues concerning attention are also part of the profile of students with Williams Syndrome. The diagnosis of ADHD⁴ is not uncommon with concomitant prescriptions for medication (NT 362).
81. Student was diagnosed with ADHD and by age six she was receiving Ritalin. Currently she is receiving Concerta (NT 49, 498-499, P-15, p.1).
82. It is difficult for people with Williams Syndrome to hold jobs and to live independently. Some work in day care centers, grocery stores, libraries or post offices (NT 371).
83. Starting in October of 2004 Student was to receive one hour per day of intensive one to one reading instruction according to her then IEP and Mr. B contacted the parent at least once every six weeks and sent quarterly progress reports. Student did make some progress on her IEP goals (P-11, p.4, P-26, p. 9, NT 401, 524-525, 534).

⁴ Attention Deficit Hyperactivity Disorder

84. On the ER of 12-3-04, there were a variety of test scores that were at the standard score 40 to 60 range, but two screening instruments, the Peabody Picture Vocabulary Test, and the Expressive One Word Picture Vocabulary Test scores were in the average range (P-10 p.9).
85. The IEP of January 05 indicated small group direct instruction in reading with individualized instruction as needed. The sentence one hour per day of intensive reading instruction was not included in this IEP (P-22, p. 12, NT 410).
86. The mother asserted that if the SD had offered a scientifically based multisensory reading approach or one similar to Academy method instead of saying that Student was not eligible, she would likely have accepted the program (NT p.484).
87. The IEP of 1/3/06 indicated paragraph reading at the 2.2 grade level and progress in other areas besides reading (SD-17, p.3).
88. The amended IEP of 11/20/06 indicated that Student was participating in a one on one direct reading program, Edmark. She received instruction in both the functional Word Series and the High Frequency Series. Level 1, every other day. After reading first grade material she was asked questions of the who, what, where, and when type. The intensity of the reading program or if other materials were used was not mentioned in this IEP (SD 21, pp. 3, 13, NT 611-612).
89. In the revised IEP of 2/8/07, the Edmark series was again mentioned, with one on one direct instruction every other day. Some goals were changed slightly in the nonsense word fluency assessment. In addition a social-emotional technique to allay Student becoming upset was added. The intensity of the reading program or if other materials were to be used was not mentioned (SD-22, pp. 5, 10, 15, NT 613). The mother understood the instruction to be 45 minutes every other day (NT 617).
90. At Academy Student attended from 8:00 AM until 2:50 PM. There was an hour break for lunch, and five minute breaks between each session. Student received six sessions per day, from six different instructors. The mother received progress reports and observed every two weeks. (NT 583-584).
91. Dr. G holds a doctorate in school psychology. He conducted an independent school neuropsychological examination. Dr. G is a licensed psychologist in PA, NJ and NY. He is certified as a school psychologist in NJ and PA. He has had experience as a public school psychologist and an administrator in New Jersey and has had training in school neuropsychology and holds a Diplomate from the American Board of School Neuropsychology. He also maintains a private practice (P-34). He has examined from 800 to 1000 students (NT 655). He does not consider himself an expert on Williams Syndrome but has a basic understanding of the typical psychological symptoms as well as the “neurologic sub-states affiliated with Williams Syndrome”. Prior to Student, he had never examined a child with Williams Syndrome (NT 669-670). Dr. G has expertise in conducting psychological and neuropsychological examinations on a variety of students with a variety of problems. He is experienced in aiding in the development of remedial strategies to better educate students.

92. The primary reason that the parents contacted Dr. G, in early January of 2007, was to obtain his opinion as to whether Student would benefit from a scientifically based sequential reading program such as the Academy method (NT 446, P 7 p. 1).
93. Dr. G's fee for the examination was \$4000.00 and he received a retainer of \$4000.00 for appearing to testify. His fee for his appearance is \$3000 to \$4000 per day and \$300 per hour for preparation. (NT 947-948).
94. The formal report of Dr. G, "Partial School Neuropsychological Evaluation" was produced in March, 2007, and provided to the District. This evaluation found that Student's skills were very low, consistent with the findings of Academy. Ex P-7. Dr. G stated that Student tested overall approximately in the mild range of mental retardation but he believed that the test scatter showed that she had more potential (NT 675-678). He concluded that despite her impairments, it should be expected that she would benefit from scientifically based sequential reading instruction (NT 683-684, P-7). At the time of the evaluation Dr. G was not aware that the parents were considering a full time reading program. He thought they were going to take Student to an after-school program (NT 681-682, 776-777).
95. Dr. G evaluated Student on eleven different occasions and saw her on two occasions where no formal tests were given for a total of 13 times (NT 970). During the time that Dr. G drafted his first report (P-7) Student still attended the SD. He did no classroom observations nor communicated with her teachers (NT 971-972). He was not familiar with the reading instruction or programs being used at the SD (NT 1043). He also did not review any of the materials being used with Student at Middle School in her regular education classrooms (NT 1090).
96. According to Dr. G, to be a fully functional reader you need good phonological awareness skills and you need to be able to recognize the autography of words (the outline of words). Student has trouble with the latter. She has difficulty recognizing the overall gestalt or global autography of a word and has to sound out almost every word every single time she sees it. That makes her dysfluent and does interfere with reading comprehension. The location of her lack of neurologic integrity is primarily in the right parietal area of the brain. (NT 700).
97. Student is a very slow reader. Fluency will be extremely difficult for her because of her surface dyslexia. She will always be a very slow word by word reader (NT 756, 786-787).
98. Dr. G believed that an intensive phonics based remedial reading program was worth trying at this point for Student (NT 791-792).
99. Dr. G's recommendation was not specifically for Academy method. It included programs such as Project Read⁵ and the Wilson Reading Program (NT 798).
100. Dr. G recommends an IT assessment or an assistive technology assessment to find an alternative to her writing. He finds that to continue with written communication is a waste of time for Student (NT 872-873).

⁵ It is interesting to note that Project Read required 45 minutes a day of reading and 45 minutes a day of writing over a two year period (NT 791).

101. On Dr. G's Comprehensive School Neuropsychological Examination most categories are reported as "very limited," "very low" and "significantly impaired" especially in the executive function areas, attentional areas, achievement areas, and many of the intellectual subtests. Since there were some sub-tests with standard scores of 70 or above, he concluded that global IQs that were in the 48-49 range were an underestimate of her ability that her intellectual potential was in the IQ 80-90 range, (NT 1075-1076).
102. Dr. M disagreed about the IQ 80 to 90 range being her intellectual or learning potential. He argued that these indicate certain minor splinter skills and cannot be substituted for global estimates of learning capacity (NT 1779-1780).
103. In social situations Student can be overly friendly. She needs to be watched when she goes into social situations (NT 1084-1085).
104. Dr. G has never recommended a full time reading program, five days a week, 6 hours a day. He would recommend 2 hours per day for students having major reading problems in a public school setting (NT 898, 1152-1153).
105. A letter to the SD dated December 18, 2006, from the parents' counsel to the District's Director of Student Services, Ms. S, advised of the parents' intention to place Student at Academy because they did not believe Student had made adequate progress. (P-29, p.2-3).
106. Academy never contacted any of the SD's teachers to find out what strategies may have worked for them or for information about Student (NT1331).
107. Student attended the Academy program for two weeks as a trial in January 2007. On February 12, 2007, the parents removed Student from the District and placed her at Academy. (SD-40).
108. Evidence was presented concerning the Academy program from the Director of the [Program] in [redacted], PA, Ms. S. Ms. S has a bachelor's degree in foreign languages and a master's degree in linguistics. She has taken additional post-graduate course work to obtain the PA Dept. of Education Instructional I certification as a reading specialist⁶ (NT 1161-2, 1322). She has been employed at Academy for seven years and in August of 2002 was promoted to center director in the Academy Learning Center (NT 1166-1168).
109. Since the Academy inception in 1986, research has been conducted on the programs and peer reviewed research articles have been written on the programs and their efficacy with students in a one-on-one small group and a district wide model (NT 1171-1173, 1178-1182, P-38 B, P-38C)⁷.

⁶ She is not certified as a classroom or special education teacher by the PA Dept. of Education. The training and certification in the Academy methodology consisted of 10 days of intensive instruction, followed by a 90 day mentoring period from [Academy method] (1169-1170, 1322).

⁷ Note that none of the research presented was on students with profiles similar to Student's (NT 1328-1329, P-38 B, C.)

110. Academy program addresses students who have deficits in reading, reading comprehension, phonemic awareness, and symbol and concept imagery. Programs are specifically targeted at these skill areas, which may be worked on sequentially to establish a foundational base for higher skills development. The students in the program currently are either placed through a school district IEP or privately. NT 1205-1206. It is an intensive program which is self limiting in duration. Both the intensity and length of program are dictated by the needs of the individual student. These needs are initially evaluated through their diagnostic evaluation (NT 1203, 1209-1210, 1211). The testing instruments used in these assessments were chosen by the Program as targeting specific information necessary to the Program in programming and progress monitoring. The tests used are nationally normed, nationally standardized tests (NT 1214-1215)⁸.
111. Student was first evaluated by Academy on May 12, 2004. The reading results were at or below the first percentile in reading and at the .02 percentile in arithmetic. The Peabody Picture Vocabulary Test, a measure of receptive vocabulary was at standard score of 70 or the second percentile for students her age (P-5, NT 1213-1222),
112. The recommendation following the Academy exam in May of 2004 was for enrollment at Academy for an exploratory period of instruction. However, the parents did not enroll her at that time (NT 1225-1226).
113. [redacted] Learning Center is not licensed as a school by the PA Dept. of Education. It is a testing and educational remedial center. (NT 1323).
114. The Academy program contains several parts. One part is The Visualizing and Verbalizing for Language Comprehension and Thinking program that addresses concept imagery. It is the program for students that have difficulty with vocabulary, reading and listening comprehension, critical thinking and higher order thinking skills and following directions (NT 1189). The Seeing Stars program is for reading and spelling fluency and this is frequently taught in combination with the Phoneme Sequencing program that is typically recommended for students who are very severe in the level of reading disability. These are further explained in NT 1190-1203 and the recommendations for the program are on P-5, p. 12. The programs are multi-sensory (NT 1196).
115. By the end of 2006-2007 school year in June of 2007 Student had completed 400 hours of instruction (NT 1265). Student continued for part of the summer.
116. By 12/11/07 Student had completed 360 hours in the Visualizing and Verbalizing Program in addition to the previous 400 hours progress appeared to be minimal in most areas, based on standard scores where available (P-35, p. 30-33).⁹

⁸ Although most tests are standardized, only selected sub-tests were used in some cases and older versions of tests that have been revised have been used and sometimes tests designed for younger children have been used. (NT 1218, 1336-1337, 1343-1344, 1385-1386).

⁹ Standard scores are more reliable measures of progress than grade level equivalents. An example would be on word reading, Student's standard score went from 61 to 66 from March to December 2007. This represents an increase of 0.5 percent in rank when compared to her age peers after 8 months of intensive reading instruction (NT 1354). Many tests showed no improvement.

117. There was a level of inconsistency in Student's performance. On some days she would be able to decode up to four syllable words but at times would be stumped at a three sound word NT 1261). Student could understand a sentence read to her at a fourth or fifth grade level but could not read it herself (NT 1284).
118. The SD contacted Academy and Ms. R, the supervisor of special education at the middle school and two others came for a visit while Student was a student there. They observed a session for Student and several other students (NT 1270-1271).
119. Ms. S has not reviewed any evaluation reports or records on Student generated by the SD (NT 1321-1322). While she had Dr. G's report, Academy did not base its teaching methodology for Student on the results of Dr. G's testing or suggestions made by him. Neither Dr. G's nor Dr. M's examinations changed the way she was instructed (NT 1322). Since all instruction is one-on-one, there is no integration with non-handicapped peers. The Center has nine students from ages nine through 22 (NT 1358, 1361).
120. Ms. S agrees that there are other multisensory approaches to reading. She is aware of some and not others. Others mentioned were the SRA program, Reading Mastery, the Corrective Reading Program, the Multisensory Reading Instruction and others (NT 1364-1368).
121. Fluency and comprehension of reading material remains a significant problem for Student, with little to no progress by December of 2007 (NT 1386-1387).
122. Dr. M was the evaluator hired by the District upon its receipt of the partial report of Dr. G. He has a Ph.D. in school psychology and worked as a certified school psychologist in [state redacted] and he is a certified school psychologist in PA. (NT 1719, 1756, SD-28) Dr. M worked in test development for the American Guidance Service and played a role in the development of the KBIT and Behavior Assessment System for Children. He was also employed by Psychological Corporation as a clinical measurement consultant responsible for training psychologists, neuropsychologists, school psychologists, psychiatrists, medical doctors and teachers in the appropriate use and interpretation of tests (NT 1719-1720). Dr. M worked on the test development of the WISC-IV, the WPPSI-III and the Dulles Kaplan Executive Function Scales and, the California Verbal Learning Test for Children. Dr. M spent more than four years training psychologists for the [city redacted] Board of Education, has been retained as a trainer for many school districts and has been a featured speaker on subjects ranging from test development, testing issues to neuropsychology topics. (NT 1723, 1727-1729, 1733-1737, SD-28).
123. Dr. M is currently an Associate Professor and Director of Research in School Psychology at [redacted] (NT 1725-1726) where he teaches two courses taught at the graduate level on the neuropsychological basis of reading, writing and mathematics to doctoral candidates in psychology (NT 2282-2284). He also maintains a private practice evaluating students at the request of parents, school districts or as an independent evaluator (NT 1728-1729).
124. Dr. M has evaluated other students with Williams Syndrome and has done research regarding the reading capabilities of children with Williams Syndrome (NT 1763-1765). His

total fee was \$2500 for the evaluation and \$150 per hour for testimony and \$80.00 an hour for preparation and review (NT 1757).

125. For the purposes of this hearing Dr. M will be considered an expert in psychological measurement as he has been involved in developing tests that neuropsychologists, school psychologists and educational psychologists use. He has credentials as a certified school psychologist in PA (NT 1756) and FL and has evaluated many students. He does not have formal credentials as a neuropsychologist and does not hold a license from the PA State Board of Psychology. His experience qualifies his expertise in school psychology and psychological measurement (SD-28).
126. Dr. M read Dr. G's report from a collaborative perspective in an attempt to gather information. He believes that it would be absurd to do the same thing another person was doing. That information would be available and he would be effectively able to use it and incorporate it into the interpretation of what he knows about Student. He sees his role as supplementing what has already been done, to get a whole picture and to give some impressions based on what he knows about Student at that point in time He may include what another individual is collecting on her within a similar time frame (NT 1762-1763).
127. Dr. M disagreed with Dr. G's conclusion on his partial evaluation (P-7) that Student was a child with average learning potential (NT 1767). After reviewing the tables reporting the scores that Student earned (SD-7, p.9-11), he found no support for a conclusion that Student was a student with average learning ability (NT 1768-1770). Rather, Dr. M concluded that Student's cognitive profile suggested extremely impaired performance in all areas that are extremely important in learning to read effectively (NT 1770-71).
128. Dr. G testified that Student's performance on only one subtest of the Children's Memory Scale, word pairs, would be the best indicator of her learning potential than any other task because it is a "dynamic" assessment (NT 1064-65). However, he admitted that there is nothing in the manual published by the test developer to support this conclusion (NT 1070). Nor are there any validity studies that confirm that the word pair subtest is a valid measure of learning potential. (NT 1070-1071.). Dr. M stated that while the Children's Memory Scale is a test of learning, it is not a dynamic learning test in the test-teach-test paradigm that is used by Feurstein¹⁰ and therefore is not an extremely good indicator of learning potential (NT 1775-1778, 2206).
129. According to Dr. M, the subtests of the Woodcock Johnson Test of Cognitive Abilities administered by Dr. G, that are the most relevant to determining Student's capacity to read are those that assess her ability to reason with information. Those subtests assess fluid reasoning. On all subtests of fluid reasoning, Student scored extremely low with a 38 in concept formation and a 48 in analysis/synthesis and a fluid reading composite of 33. These scores place Student four standard deviations below the mean or in the less than first percentile. Likewise Student scored a 62 on visual auditory learning tasks (NT 1793-97, P-7, p.10).

¹⁰ An internationally known practicing psychologist and researcher with much experience with cognitively impaired children who has published about Dynamic Assessment.

130. Dr. M acknowledged that Student's sound blending subtest score of 115, which was her highest score and above average (84th percentile), and her spatial relations score of 83 were relative strengths for Student but the latter score was still in the 13th to 15th percentile (NT 1797-99, P-7, p.10).
131. Dr. M conducted his own evaluation of Student over two sessions of two hours each. An observation at Academy was not conducted (NT 1800, SD-24) After Dr. M performed the evaluation, it is his practice to draft a report, provide it to the parent and then meet with the parent to include any additions, clarifications or deletions agreed to by the team. The report that was provided to the parent at a meeting in July 2007. In this instance, the mother. was not in agreement with the results of the evaluation (NT 1802-1804, 1808, SD-24, P-8)¹¹.
132. Dr. M administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) in order to assess Student's ability to reason with language. He did not believe that the KBIT would be an appropriate measure to give Student because of her lack of spelling knowledge. (NT 1810-1818). He administered the Woodcock Johnson Tests of Achievement III to obtain an assessment of Student's reading skills such as decoding, word recognition and reading comprehension (NT 1818-19) and he administered the Wisconsin Card Sorting Test to obtain a measure of executive capacities, (NT 1820), the Comprehensive Test of Phonological Processing and the Test of Word Reading Efficiency (NT 1821-1822).
133. On interviewing Student, Dr. M found that she was very socially outgoing, friendly and talkative. Her speech was mature and appropriate for a 15 year old. However, her responses to questions were lacking in depth or understanding or appreciation of the nature of the question. For example, when asked what her birth year was, Student responded: "probably November". He estimated that from her responses were what one would expect of a five or six year old child (NT 1824-28).
134. During Dr. M's first day of testing, there was hammering in the building which caused Student to stop working. However, in Dr. M's judgment, he could accommodate for the disruptions and it did not affect Student's performance on any task. Student was easily re-directed to the task at hand (NT 1823, 1828-1839).
135. His analysis of the WISC-IV results focused on Student's reasoning abilities. He concluded that her reasoning abilities were extremely impaired. (NT 1845-1850, 1851) Dr. M used his clinical judgment by asking Student to begin the test items at levels below what is recommended by the test manual so that she would experience success. (NT 1847-1850)
136. Dr. M confirmed that while Student would be able to learn, the rate at which she would learn is going to be extremely slow. Student has a lot of severe cognitive impairments that make it very difficult for her to learn and profit from instruction. Her rate of acquisition is very poor (NT 1855, 1912).
137. Dr. M disagreed with Dr. L that Student's scores should be compared to six year old students rather than her 15 year old peers (NT 1850).

¹¹ P-8 is the corrected first draft of Dr. M's report,

138. Student's capacity to express meaning through language was severely deficient. This deficit would seriously constrain Student's reading comprehension capacity as material becomes more complex and similarly for her writing and mathematics capacities.(NT 1853-1855)
139. Student's receptive language abilities were intact for normal, everyday speech if the language is kept at a very simple basic level. (NT 1856-58) This would require alteration in the way in which Student is taught by requiring simple, short, sentences and information that is clear in meaning. (NT 1859-1861)
140. In the area of expressive language, Student obtained a standard score of 77 in general fluency which is in the 6th percentile. (NT 1861; P-6) However, in the area of expression of complex thought, Student's scores were in the first percentile generally with the verbal comprehension score on the Woodcock Johnson III (WJ-III) at 61; less than the first percentile. (NT 1863-4; P-6) This will greatly constrain Student's reading comprehension. (Id.)
141. Dr. M disagreed with Dr. G's conclusion that because Student obtained a 115 standard score on the Sound Blending subtest of the WJ-III, she had average cognitive capability (NT 1864-1869).
142. Dr. M did not believe that the Visualizing and Verbalizing method taught at the Academy program would be an appropriate technique for teaching Student comprehension (NT 1869-1871, 1876-1877).
143. Student's working memory is also deficient (NT 1878-1881).
144. Dr. M opined that it is important to also understand how an individual uses executive functions in dealing with everyday situations; self-regulating behavior or social executive capacities. Student's performance on tasks assessing executive functioning was extremely impaired (NT 1888-1894).
145. Dr. M administered the Comprehensive Test of Phonological Processing (CTOPP) as a basic measure of auditory processing capacities that also involve working memory. From the results he obtained, he concluded that appropriate teaching strategies for use with Student would include: close monitoring of work and frequent prompts to stay on task; frequent re-teaching and use of cues to assist with recall; and visual materials would need to be provided so that Student is not required to hold information in working memory (NT 1895-1898).
146. In rating adaptive behavior from scales administered to the mother from January 2003 by the SD, January 2007 by Dr. G, and June 2007 by Dr. M, she has consistently rated Student's adaptive behavior skills as deficient, on or below the first percentile range on the global composite and on two of the three area composites. The one area that is rated higher is the socialization skills composite which is consistent with the findings of research on Williams Syndrome (NT 1903).
147. Dr. M listed Student's strengths and weaknesses (P-8, p.3). He found that she had relatively good receptive language skills, adequate use of expressive language skills when

engaged in cursory conversation, the capacity for immediate and sustained attention to tasks for relatively short periods of time in the one to one assessment context, average rote verbal memory skills, rudimentary capacity for self-regulation of her cognitive and emotional processing (NT 1905-1908, P-8 p.3).

148. However, both Dr. M and Dr. G's reports reflect that Student had extreme deficiencies in the areas of reasoning abilities, receptive language when language was more complex, visual processing, word decoding processing, speed and automaticity for word reading, graphomotor skills, application of basic math skills, executive functioning and adaptive behaviors (NT 1908-1911, P-8 pp 3-4).
149. There is nothing wrong with attempting to continue to educate Student to read as best she can, to do math as best she can and write as best she can. These need to be part of the curriculum that is introduced to her. She has adaptive deficits. There are social deficits that are a consequence of her condition. A lot of other things need to be considered in a program for Student other than just reading. Dr. M believes that working on reading and reading instruction 6 hours a day. 5 days a week is an exorbitant amount of time and he does not believe that will lead to great gains in reading. (NT 1917-1918).
150. In his review of Student's IEPs, Dr. M noted that there were some areas that were not worded as carefully as they could have been in specifying exactly what instruction was taking place. It was more than what was specified in the IEP (NT 1942, 1960-1961).
151. While the Edmark functional word lists were part of instruction to attempt to get Student a reasonable sight vocabulary for the words she would encounter in the environment but beyond the tracking of the teacher, Dr. M commented that he had not seen any updated assessment of her functional vocabulary, her functional word recognition to know the extent to which she has retained that instruction and training (NT 1957).
152. Dr. M believed that there would not be much benefit beyond 90 minutes a day of instruction for reading and writing combined. The difficulty would be in the amount of information that Student can hold and process at one time. Most of what has to be done is repetition and reinforcement of small increments of information that are being presented over and over again. A lot of repetition has to occur. While there is some evidence that a 180 minute block for reading has been tried for some students with difficulties as severe as Student's, he believes that the next day she would not retain even half of what was drilled (NT 1962). Dr. M's report contains his findings but does not contain educational recommendations. He would like to participate with the ER team which contains the parents and the SD representatives to make his recommendations collaboratively. (NT 1916-1921, 2049-2052, 2055-2056).
153. Dr. M believed that the IEP of November 2007 (SD-21) proposed an appropriate program of education for Student. However, he would have added what was clearly being done in the classroom which was work on comprehension and vocabulary that were not listed as separate goals. He also concluded that Student was appropriately placed at Middle School (NT 1988-1994).

154. Dr. M's opinion was that Student had been exposed to good instruction while in the SD but that the severity and extent of her impairments resulted in slow progress (NT 1949-1952). Since he is not aware of her instruction from kindergarten until she came to the SD until the middle of the 4th grade, it would be difficult to say where she should be reading by the time of his examination. Phonological awareness is a skill that is best taught in kindergarten to first grade for maximum effectiveness, and it has an impact on the development of coding skills which affects the basic recognition of words. Not having those skills by the middle of the fourth grade, slowed down her reading development (NT 2064-2065).
155. Student has considerable difficulty on tasks that involve reasoning. This creates a tremendous challenge to teaching reading comprehension to an individual who cannot put the pieces together and figure out what the meaning or the intention of the author is beyond simple, basic, very direct information that is being communicated through a reading passage (NT 2268).
156. Dr. M reviewed research articles. On P41-A, he stated that the overall findings suggest that the relationship between reading and phonological awareness is not as strong in Williams Syndrome as in typical development. While Student obtained a score of 115 in sound blending, a simple phonological awareness task, in Williams Syndrome students, it is not a good indicator of reading ability (NT 2247-2248).
157. The IEP of January 2006 in the section on Present Levels of Academic Achievement (PLAA), showed improvement from the previous year. She had mastered 100/100 restaurant words from the Edmark list. Her average reading fluency rate was 32 wpm with 97% accuracy. She was able to read a typed paragraph rated at the 2.2 grade level by the Spache Readability index. She had established a baseline of 7 wpm with 43% accuracy on the Maevis Beacon word processing program. She could count nickels and dimes to a dollar with minimal prompting. She mastered 309/1370 words and was able to decode or sight read all of the words from the Reading Mastery II list and was progressing on other lists (SD-17, p.3).
158. In the specially designed instruction section of the IEP of January 2006 (P-21), neither the reading programs to be used nor the intensity of instruction were mentioned. Mr. B testified that by the end of the 2005-2006 school year Student had started Reading Mastery III. Irregular words were introduced (NT 2351-2353). Student could now count quarters to a dollar. He testified that he was providing one hour and forty minutes of one on one instruction daily and he was using multi-sensory techniques (NT 2364), This IEP was implemented from January through May of 2006 (NT 2365).
159. Another IEP was developed in May of 2006 considered the transition into middle school. The PLAA indicated an average reading fluency rate of 25 wpm with 85% accuracy as the text got harder. She mastered 154/200 words from the Mastery II list and mastered 100/100 restaurant words. She had mastered 92/100 safety words. Student's level of functional performance was improving (SD-18 p. 3).
160. In the specially designed instruction setting of SD-18, p.12 neither the technique nor the intensity of reading instruction was specified, except for stating direct systematic instruction in reading, mathematics and language arts should take place. She could count

nickels to 60 cents and dimes to a \$1.00. She could count nickels, dimes, and pennies in combination to fifty cents. Multi-sensory math instruction was specified. Word processing and occupational therapy were specified.

161. Extended school year was not recommended because Student could recoup previous learning in a reasonable amount of time and the parents felt that she needed a break time (NT 2367-2368),
162. Mr. B thought that regular school settings where Student could interact with typical peers were much more important socially in middle school than in elementary school (NT 2387).
163. Dr. D testified that he helped to establish the American Board of School Neuropsychology in 1997 in Maryland (NT 2671). In order to apply for the credential the candidate needs to be certified as a school psychologist by the state or to be a nationally certified school psychologist by a board affiliated with the National Association of School Psychologists. Candidates have to have a background in courses with functional neuroanatomy, clinical neuropsychology, and theoretical approaches to understanding cognitive brain behavior relations. School neuropsychologists need to have documented competencies in specific areas relating to sensory motor functions, attention functions, visual spatial language, memory, executive functions, and general cognitive abilities. There are requirements for practicum and internship experiences, a written exam and an oral defense of a clinical case (NT 2674-2675).
164. The American Board of School Neuropsychology does not require a doctoral degree or that its members be licensed psychologists (NT 2695, 2713).
165. Dr. D denied any major involvement with Dr. M and stated that he does not meet the requirements of the American Board of School Neuropsychology to obtain its Diplomate status (NT 2685-2686).
166. The parents terminated Student's program at Academy on April 2, 2008. Academy recommended that she continue in their program (NT 2724-2725).
167. When looking at test scores, the standard score is the most reliable measure of test scores for purposes of comparison (NT 2795).

III. Issues

1. Has the Central Bucks School District had an appropriate program for Student from the 2005-2006 School Year until she left the program?
2. Is the Academy program an appropriate program for Student?
3. Are the parents entitled to tuition reimbursement and reimbursement for the cost of their transportation expenses?

4. Is there an entitlement for compensatory education for Student?
5. Are the parents entitled to reimbursement for their expenses of obtaining a school neuropsychological evaluation?

IV. Discussion and Conclusions of Law

In this case the parents brought the complaint so that they had the burden of persuasion.¹² This was a complex and lengthy case.¹³ Student has been diagnosed with Williams Syndrome, a rare genetic disorder characterized by a complex pattern of cognitive strengths and deficiencies (FF-1).¹⁴ The parents claim that the Central Bucks School District denied FAPE to Student from September 20, 2005 through the present in that the IEPs were not reasonably designed to provide educational benefit to Student and did not, in fact, provide educational benefit. They seek compensatory education for the 2005-2006 school year through February 14, 2007, Student's starting date at Academy. In addition, they seek tuition reimbursement for 40 weeks at Academy beginning February 14, 2007, together with transportation costs or, in the alternative to tuition reimbursement for the forty weeks, compensatory education for that same period of time.

As the history indicates Student received early intervention services through the Bucks County Intermediate Unit. A CER dated September 25, 1997 found her eligible for early intervention services due to moderate developmental delays in the areas of cognitive-development, receptive and expressive language, social-behavioral skill, fine motor skills and gross motor skills (FF-2). In February of 1997, the parents discontinued the IU early intervention services and enrolled Student privately with the Institute. They later sought the services of the National Association of Child Development which provided them with an intervention plan to carry out at home for 3 to 4 hours a day. The parents also enrolled her in the preschool at the [redacted] parochial school in [redacted] and from there she transferred to [another] parochial school. On the April 15, 1998 CER, Mr. D, the SD certified school psychologist, reported a Kaufman Brief Intelligence Test IQ of 80. He classified Student as having a specific learning disability and other health impairment because of her ADHD and considered her eligible for special education services.

While Student was still a student in a self-contained special education class in the second parochial school, an evaluation report dated January 10, 2003 by the SD, indicated a variation in cognitive standard scores from 48 to 61. Mr. D, was the school psychologist who examined her, observed her at the parochial school and spoke with her teachers. He utilized the more comprehensive WISC III, the Central Bucks Literacy Screening, the Bracken Basic Concept Scale revised, the Wide Range Achievement Test, 3rd Edition, the Peabody Picture Vocabulary Test, III, Developmental Test of Visual Motor Integration and the Vineland Adaptive Behavior Scales. Although her full scale IQ on the WISC III was 48, he concluded that IQ 61 was likely the level of Student's functioning at that time. Reading, Spelling and Arithmetic test scores were minimal and at the kindergarten level (below the first percentile for her age). Because there was not a severe discrepancy between her ability level and achievement, she was no longer considered learning disabled and was classified as mentally retarded (FF-4).

¹² Schaffer v. Weast, 543 U.S.1145, 126 S. Ct. 528, 537(2005); L.E. v. Ramsey Board of Education, 2006 WL 156827 (3d Cir. 2006)

¹³ The case lasted several months due to a variety of scheduling problems between the parents, witnesses, attorneys, and holiday schedules.

¹⁴ FF-#, refers to the number of the Findings of Fact.

In the middle of the 2002-2003 school year, following her first communion and the religious component of the education at the parochial school that the parents desired, they felt that she was not progressing, especially in reading, and applied back to the SD in the middle of her fourth grade (FF-5). Parents disputed the evaluation report's conclusions concerning Student's cognitive abilities and learning potential, which had been significantly downgraded from Mr. D's earlier evaluation to an IQ of 48. Specifically, they believed that insufficient consideration had been given to Student's unique profile as a person with Williams Syndrome (NT 199-200). Student was in the fifth grade for two years, 2003-2004, 2004-2005) at the parents request to better ready her before the move to the middle school.

I note that Dr. L indicated that students with Williams Syndrome may show a drop in IQ over the years. Individuals, like Student, who increase very slowly in mental age, would demonstrate a drop in IQ scores over the years because of the comparison with their more rapidly developing age peers. She stated that it was not surprising to find very poor performance on many of the tests that one could carry out on a person with Williams Syndrome because it is in comparison to age mates. The student with William Syndrome might show a personal strength in language and be at the sixth percentile instead of the first percentile but still low in comparison to age mates (FF-69, 70). She believed that Student could benefit from reading instruction and could learn to read. Some students with Williams syndrome go up to 2nd grade level but some few others might go to the eighth grade level. She believed that Student could benefit from reading instruction and could learn to read but no estimate was made as to the level she could attain.

In May of 2004, Student was privately evaluated by the Academy Center at [redacted], PA to determine if she might benefit from that program.

Since this hearing focuses on the time period from the 2005-2006 school year to the present, a look at the IEPs is in order. Starting with the regulations we find in 34 CFR §300.320 the following:

The IEP must include (1) a statement of the child's present levels of academic achievement and functional performance including (i) How the child's disability affects the child's involvement and progress in the general education curriculum. (2)(i) A statement of measurable annual goals, including academic and functional goals designed to-(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (B) Meet each of the child's other educational needs that result from the child's disability; (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short term objectives; (3) A description of - (i) How the child's progress toward meeting the annual goals will be measured: and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child or on behalf of the child, and a statement of the program supports for school personnel that will be provided to enable the child - (i) to advance appropriately toward attaining the annual; goals; (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and non disabled children described in this section; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children the regular class and in the activities described in paragraph (a)(4) of this section; (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on "State and districtwide assessments... (ii) if the IEP team determines that the child must take an alternate assessment instead of the regular State or districtwide assessment of student achievement, a statement of why- (A) the child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child and (7) The projected date of the beginning of the

services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team and updated annually, thereafter. The IEP must include measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate independent living skills; and (2) the Transition services (including courses of study) needed to assist the child in reaching these goals.

(c) *Transfer of rights of age of majority.* Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) *Construction.* (1) Nothing in this section shall be construed to require – (1) that additional information be included in a child's IEP beyond what is explicitly required in section 614 of the act; or (2) The IEP team include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Since the IEP for Student went from January to January, the IEP for the first half of the 2005-2006 school year was written in the previous semester. Student's district reevaluation was completed in December of 2004 (P-10). The examination included the WISC-IV. The achievement assessment consisted again of comparing the WIAT results with the WRAT-3 results that were administered a year earlier. Since these are different tests, it is difficult to compare the results directly except the standard score results were similar.¹⁵ Other tests included a visual motor integration assessment, (VMI), the BASC¹⁶ administered to the mother and the teacher. The Clinical Evaluation of Language Fundamentals (CELF III) was administered. Three of the four subtests were within normal limits according to the examiner.¹⁷ They were Word Classes, Listening to Paragraphs and Word Associations. Only the Concepts and Directions questions were at a low level (P-10, p.9). P-10 simply repeated the scores on the Wide Range Achievement Test (WRAT). Rather than giving that test again for comparison purposes, the examiner administered the Wechsler Individual Achievement Test II (WIAT II). Thus we are required to look at the results of a different test. Based on the standard scores, Student showed no improvement from the previous testing since the standard scores were lower than her previous assessment seventeen months earlier. (P-11). The parents were particularly interested in Student's reading ability and this led them to conclude that no progress had taken place (NT 403). They also noted that the Wechsler Full Scale IQ had dropped. But again the previous test was a WISC III and the one on P-10 was a WISC IV. Some changes in scores may occur when going from one version to another. Further as Dr. L pointed out, since development is slower for students with Williams Syndrome it is not unusual to see a drop in IQ since the students are compared to their more rapidly developing age peers (FF-69).

It is interesting to note that in addition to the three subtests of the CELF III, the Peabody Picture Vocabulary Test (PPVT) and the One Word Expressive Language Test were both within the normal limits. Nevertheless the Reevaluation Report concluded that Student's achievement levels were

¹⁵ Standard scores reflect how the student stands in relation to their age peer group. While some learning could take place, if the standard score remains the same, it means that the student's relative position on the particular task has not changed compared to his/her age peer group.

¹⁶ Behavior Assessment Scale for Children, teacher and parent version

¹⁷ There seems to be some confusion between scaled scores and standard scores. Some tests include scaled and standard scores on the same table. On scaled scores a score of 10 is usually an average score, whereas in standard scores a score of 100 is average. When the examiner indicated that three of the subtests on the CELF were within normal limits, therefore she was referring to scores where the average score is 10. Usually a score from 8 and above would be within normal limits. Scores above 10 would be above average. (Scaled Scores and Standard Scores are related). This can cause some misunderstanding and confusion and can lead one to believe that no progress has taken place when in this case some progress did occur. While this test can be administered by a psychologist or a speech and language therapist, it is related to reading.

commensurate with her intellectual ability, as shown through the WISC-3 results, and no programming changes were warranted (P-10, p,5)

In the January 2005 IEP (SD-12-B) the one hour of intensive reading instruction that appeared in the previous IEP did not appear in this one. The IEP that was developed in January of 2005 was still in effect in September of 2005, the beginning of Student's sixth grade year. On this IEP, the student's Present Level of Educational Performance (PLEP) indicated that Student demonstrated mastery on the first 155 out of 271 words of her Reading Mastery I instruction. She was making progress with the Edmark series of safety signs and the series of grocery words (SD-12B, p.3). On her specially designed instruction page (SD-12B, p.8) nothing reflected the amount of individual reading instruction that Student would receive nor the particular type of instruction. This was also mentioned by Dr. G (NT 901-903). Nevertheless, Mr. B testified that Student received an hour a day of one on one reading instruction from him plus an additional 40 minutes at his lunch hour where he worked individually with her (FF-35, NT 2310-2311, 2320). He was utilizing the Reading Mastery series and Student was in the second half of Reading Mastery Two (NT 2313) by the end of that year. Reading Mastery Two focuses on decoding and word attack skills. Some comprehension techniques were used (NT 2318-2319). Student would practice reading stories she had in her reading instruction and read them to the kindergarten students (NT 2319). They would also work on the sight word series from the Edmark program. In addition she worked on Touch Math and typing skills (2321). She also had gym, music, library and recess with typical students (NT 2325-2327). During his 40 minute lunch hour Mr. B utilized items that were in the MRI reading program; a program based on a research based alphabetic phonics, multisensory program. (FF-13, 33, NT 2328), He used techniques from that program with Student. (NT 2401-2402) There were three adults in the classroom and she could practice the lessons she learned using her word decks with them. Student received rewards for her successes (NT 2341-2342). Student also received occupational therapy. Thus while the specifics of the reading methodology was not mentioned, it was clear that she was receiving instruction that was multisensory and included whole word and phonetic approaches. Mr. B believed that Student had made progress using the standardized or manualized techniques as well as some of his own measures. He did measure Student's progress on those measures but did not use standardized nationally normed tests. I note that the regulations quoted above from §300.320 do not require that progress be measured on standardized nationally normed tests but they do require measures to determine progress towards educational goals. Various types of progress monitoring was described in this IEP. The measured progress towards these goals was presented in the form of worksheets. Independent standardized measures to assess her progress were not presented by the classroom teacher (SD-32). While the IEP has deficiencies; but this in of itself does not necessarily render the program to be inappropriate and create eligibility for compensatory education. The denial of an appropriate education—and not merely the denial of an appropriate IEP—creates the right to compensatory education, Ridgewood Bd. of Ed. v. N.E. for M.E., 172 F.3d 238 at 250 (3d Cir. 1999). Thus we do have to look at the testimony of the teachers and what they say they did and the fact that they said that they saw some progress. Mr. B believed that he was offering a program similar to what the parents requested, a multisensory program using both whole word and phonetic approaches where Student was progressing.

However, we can also understand the chagrin of the parents that consider reading the most important subject (NT 188). From their vantage point they did not see her reading any meaningful books even at a very elementary level. Parents, through the Williams Syndrome Association, learned of scientifically based sequential reading instruction, and the success of the programs with individuals with Student's learning profile (NT 189-190). They learned that Academy had such a

program and requested that the SD consider that or a similar program. Mr. L, a supervisor of special education, informed the parents that the SD had been using instructional techniques similar to the one they requested the IEP would be amended to reflect this fact (P-24 p. 1).

The IEP of January 2006 in the section on Present Levels of Academic Achievement (PLAA) showed improvement from the previous year. She had mastered 100/100 restaurant words from the Edmark list. Her average reading fluency rate was 32 wpm with 97% accuracy. She was able to read a typed paragraph rated at the 2.2 grade level by the Spache Readability index. She had established a baseline of 7 wpm with 43% accuracy on the Maevis Beacon word processing program. She could count nickels and dimes to a dollar with minimal prompting. She mastered 309/1370 words and was able to decode or sight read all of the words from the Reading Mastery II list and was progressing on other lists (FF-157). She had also progressed in visual motor tasks and showed improvement with fine motor and bilateral coordination tasks as reported by the occupational therapist (SD-17, p.3).

In the specially designed instruction section of the IEP of January 2006 (P-21), neither the reading programs to be used nor the intensity of instruction were mentioned. Mr. B testified that by the end of the 2005-2006 school year Student had started Reading Mastery III. Irregular words were introduced (NT 2351-2353). Student could now count quarters to a dollar. He testified that he was providing one hour and forty minutes of one on one instruction daily and he was using multi-sensory techniques (NT 2364), This IEP was implemented from January through May of 2006 (NT 2365).(FF-157).

Another IEP was developed in May of 2006 which would consider the transition into middle school. The PLAA indicated an average reading fluency rate of 25 wpm with 85% accuracy as the text got harder. She mastered 154/200 words from the Mastery II list and mastered 100/100 restaurant words. She had mastered 92/100 safety words. Student's level of functional performance was reported to be improving (SD-18 p. 3). FF-159

In the specially designed instruction setting of SD-18, p.12 neither the technique nor the intensity of reading instruction was specified, except for stating direct systematic instruction should take place in reading, mathematics and language arts. She could count nickels to 60 cents and dimes to a \$1.00. She could count nickels, dimes, and pennies in combination to fifty cents. Multi-sensory math instruction was specified. Word processing and occupational therapy were specified.

For the 2006-2007 school year, Student, now aged 15, transitioned to the Middle School. The May 2006 IEP was drafted based upon the teacher's reported achievement levels for Student in both reading and mathematics¹⁸ (P-20). Parents were aware that Student still could not read at all and expressed their doubts about the achievement reports in the PLAA of the proposed IEP. Student began the 2006-2007 school year with the IEP drafted May, 2006 and she was placed in the full time learning support classroom of Mrs. F.

However, the parents still did not perceive much improvement. When Student brought home homework that was at a kindergarten level that supposedly she already mastered, the mother became

¹⁸ The IEP included starting levels at two-digit addition with carrying to 90%, for example, and Mr. B testified that Student had moved beyond the basic decoding and blending portions of reading, to RMIII, where phonics were no longer taught. However, the following school year, Mrs. F's assessments revealed that Student did not even know all of her letter sounds. (SD- 37 c).

upset and discussed it with the teacher. Mrs. F then suggested the Corrective Reading Program but did not believe that Student was eligible for it, The teacher said that they might try it anyway (NT 206). Perceiving no progress, the parents had Student retested by Academy. When the parents viewed the two Academy exams that were administered 5/12/04 and 10/12/06 before Student received any instruction from Academy, her progress in reading as measured by the standardized tests selected over the 17 month period was minimal (P-5, pp. 5-8). Thus by the beginning of the 2006-2007 school year, it was becoming evident that Student was not appropriately progressing in reading instruction when using the metric of Academy.

The amended IEP of 11/20/06 indicated that Student was participating in a one on one direct reading program, Edmark. She received instruction in the functional Word Series and the High Frequency Series, Level 1, every other day. After reading first grade material she was asked questions of the “who, what, where, and when type” as a measure of comprehension. The intensity of the reading program or if other materials were used was not mentioned in this IEP (SD 21, pp. 3, 13, NT 611-612 FF-88).

In the revised IEP of 2/8/07, the Edmark series was again mentioned with one on one direct instruction every other day and some goals were changed slightly in the nonsense word fluency assessment and in the addition of a social-emotional technique to allay becoming upset. The intensity of the reading program or if other materials were to be used was not mentioned (SD-22, pp. 5, 10, 15, NT 613). The mother understood the instruction to be 45 minutes every other day (NT 617). FF 89

The parents hired their own expert, Dr. G¹⁹ to examine Student to determine if she had the potential for improvement, especially in reading. On January 6, 2007, he began conducting a partial School Neuropsychological Evaluation and concluded that Student was improperly classified under mental retardation, that she be regarded as an adolescent with average to low average learning potential and had the capacity to profit from reading instruction due to her relative strengths in sound blending. He believed that she would respond well to any of the well known and scientifically based sequential approaches to teaching reading such as LB, Wilson Reading Program, Project Read, etc. (P-7, p.7). The report was dated on March 7, 2007. His estimate of average to low average learning potential was based on testing done at the preschool level and that done while she was still in parochial school. Other evidence he pointed to were certain subtests namely the CMS Word Pairs Learning subtest, the W-J III Cog. Auditory Processing cluster/92/90 and the long term Retrieval and Visual-Spatial Thinking cluster factors. Also the Vineland Adaptive Behavior Scale, in the Socialization Domain her standard score was 86 (P-6, p.19). He believed that she had potential to be a better reader because of his estimated level.

He thus disagreed with Mr. D’s finding of a WISC III IQ of 48, but based on the scatter on various subtests, he concluded an IQ of 61 was her likely level.

Dr. L²⁰ indicated that in classification by IQ, Student would be considered to be mentally retarded (NT 287). In Williams Syndrome, visual-spatial functions are usually impaired and that leads to difficulties in reading. An adolescent may have the vocabulary of a typical child of six to eight, but the typical visual-spatial functioning may be that of a four or five year old child. (NT 278). However,

¹⁹ See FF-91 for information on Dr. G.

²⁰ Dr. L is a research professor from [redacted] University; see FF-66 for further information. She studies the cognitive processes of people with Williams Syndrome and is not involved in educational programming or treatment.

Dr. L does not believe that the genetic condition necessarily imposes constraints that would lead to never moving beyond the elementary levels for math or reading (NT 296). When comparing Student's profile to other individuals with Williams Syndrome, Dr. L believed that not all, but many could benefit from reading instruction. Some could learn up to a second grade level and others might go to the eighth grade level. She believed that Student could benefit from reading instruction and could learn to read but no estimate was made as to the level she could attain (NT 255). She further opined that Student's skills may develop very, very slowly (FF 71, 73, 74, 76, 79).

Dr. L testified that on mathematics tests, adults with Williams Syndrome usually only test up to a third grade level even after much instruction. There are also issues concerning attention (NT 312-313). She further found that it is difficult for people with Williams Syndrome to hold jobs and to live independently, although some work in day care centers, grocery stores, libraries or post offices (NT 371). Thus an appropriate program would begin working on transition skills to make her as independent as possible in terms of self care, shopping, food preparation, to increase her comfort in dealing with regular education students, and to develop some vocational skills. Increasing her reading and math ability would also be part of an appropriate program, but not the total program.

After receiving Dr. G's report the SD asked the parents for permission to have an additional examination. The parents consented and an independent school psychology consultant and a measurement specialist, Dr. M²¹ was hired by the SD. He opined that the reasons for lack of skill development are based on the very real constraints on development that Student's genetic conditions have imposed. He concluded that there would likely not be significant improvement in many academic skills (P-8, p.5, FF-40).

Dr. M read Dr. G's report from a collaborative perspective in an attempt to gather information. He believes that it would be absurd to do the same thing another person was doing. Since information would be available in Dr. G's report and he could effectively use it coupled with his own testing data (FF-126).

Dr. M disagreed about Student's intellectual or learning potential being in the IQ 80 to 90 range. He argued that the subtests or tests that he deduced that range from really indicate certain minor splinter skills and cannot be substituted for global estimates of learning capacity (NT 1779-1780). Dr. M has evaluated other students with Williams Syndrome and has done research regarding the reading capabilities of children with Williams Syndrome (NT 1763-1765). Dr. G testified that Student's performance on only one subtest of the Children's Memory Scale, word pairs, would be the best indicator of her learning potential than any other task because it is a "dynamic" assessment (NT 1064-65). However, he admitted that there is nothing in the manual published by the test developer to support this conclusion (NT 1070). Nor are there any validity studies that confirm that the word pair subtest is a valid measure of learning potential (NT 1070-1071). Dr. M stated that while the Children's Memory Scale is a test of learning, it is not a dynamic learning test in the test-teach-test paradigm that is used by Feurstein and therefore is not an extremely good indicator of learning potential (NT 1775-1778, 2206, FF-128). A few other tests were within the low average to average range (FF-130).

²¹ Dr. M is a certified school psychologist and a measurement specialist. He currently is an associate professor and Director of Research in school psychology at the [redacted College]. See FF 122, 123, for more details of his background.

Dr. M confirmed that while Student would be able to learn, the rate at which she would learn would be extremely slow. He stated that Student has a lot of severe cognitive impairments that make it very difficult for her to learn and profit from instruction. Her rate of acquisition is very poor (NT 1855, 1912). This is similar to Dr. L's description and recognized in part by Dr. G who is a bit more optimistic. The H.O. concurs with this finding from the evidence presented.

On December 22, 2006, Parents, through their counsel, provided Special Education Director Ms. S with a notice of the Parents' intent to make a private placement at District expense (P-29 p.2, and on January 5, 2007 P-30 p.3). The parents paid for Student to attend the Academy trial for a brief period following the holiday break, for a total of roughly forty hours of intensive instruction, from January 2nd through January 12th, 2007 (NT 1228).

Student resumed attending her class in the District on January 12, 2007, at which time Parents requested an IEP meeting. At the meeting, they again requested effective scientifically based sequential reading instruction in an appropriate intensity for Student such as would provide actual educational benefit and attempt to redress her extreme deficits. Student's mother reiterated to the District her frustration with Student's ongoing lack of progress and the failure of the District to provide adequate programming. Parents, accompanied by counsel, requested the District's programming proposals. The District, in response, re-proposed the previous IEP. Parents disapproved the IEP and requested a prehearing conference. (NT 439).

Parents enrolled Student in the Academy program on or about February 15, 2007. Student's programming was, as had been recommended and designed by Ms. S, based upon Student's individual needs as shown in her assessment (NT 442). The recommendation was that Student receive: "intensive sensory cognitive instruction six hours daily, five days a week, for 48 weeks, for an estimated 1,440 hours of instruction in the following programs. See FF 114 for some details of this program.

A summary of the results of the Academy program appear in P-43. On viewing the test results, there has been progress in some areas on the specific tests selected although some are not the latest versions of the tests. Many of the tests do not require reading. Student's reading of sight words has improved from a standard score of 36 to 62 but that is still at the first percentile. Fluency has improved slightly. She has been able to read a paragraph and answer some questions with 75% accuracy at third grade level which shows some progress (P-43, p.13). Thus she can make some small progress in a 6 hour per day reading program. However, in this decision as to the appropriateness of the SD IEP, the following applies. In Fuhrmann v. East Hanover Bd. of Education, 993 F.2d 1031 (3d Cir. 1993). The court stated, "...the appropriateness of a student's placement must be assessed in terms of its appropriateness at the time it is created and not at some later date when one has the benefit of the child's actual experience." Obviously the information on the outcome of this program cannot be used in the decision process of an earlier written IEP. Further I do not find a program of 6 hours a day of individual reading instruction on a one to one basis to be an appropriate program. Academy is not a licensed school in Pennsylvania. It lacks the social interaction and the association with non-disabled students that will be necessary for her future adjustment as well as exposure to other school subjects.

Based on the testimony in this case from the three psychologists that testified, the estimates of what would be appropriate for Student to benefit from one to one instruction would be 90 minutes to 2 hours per day. While Dr. G did not offer negative testimony on an all day program of reading, he

did say in his career in a public school, he never recommended more than two hours a day of one on one instruction in reading. While Ms. S believes that it should be 6 hours per day, she is a recently PA certified reading specialist, her primary experience is with the Academy group. Academy has a specific program and while that intensity may greatly benefit some students, I do not find that an adequate IEP can be written to accommodate most of Student's needs with a total program dedicated to just reading. It did not appear that neither Dr. G's nor Dr. M's report played any role in the program planning at Academy. While Ms. S had some knowledge of other programs, her experience outside of Academy was limited.

From the evidence presented both written and in testimony, I find that the IEPs for the 2005-2006 year did meet the essential requirements of 34 CFR §300.320. Whereas the intensity and the specific reading program were not specified, Mr. B's description of the program, the intensity of the instruction in reading, including multisensory experiences, at one hour and forty minutes a day one on one would seem appropriate. Based on Mr. B's testimony Student did make progress in her program.

We come to the 2006-2007 school year when Student entered middle school, and despite Mr. B's report of progress, Student was started over again on material she had 3 or more years earlier. The mother complained to the teacher that Student's homework repeated her 2003-2004 homework. Mrs. F then discussed the Corrective Reading Program for which she initially said that Student was not qualified, but then was ready to use it anyhow. I do not doubt that Mrs. F diligently worked with Student on her reading during the time she was at the middle school but she admitted that she was not an expert on the Corrective Reading Program (NT 2571). There are two questions that I would raise; one would be, if Student regressed so much over the summer, why was not a recommendation made for an extended school year program? The second would be, if she truly did not learn the material utilizing the Reading Mastery Program and the Edmark program, why was not another alphabetic phonic based program used? The SD could have called in a reading specialist that has experience with students like Student to suggest an alternate program. Was there any alternative to the Corrective Reading Program for which Student would have qualified? If the reading specialist then selected the Corrective Reading Program he/she could have consulted with Mrs. F and helped her to adapt the program to Student. From the testimony, it seemed like there were only two or three possible programs used by the SD, Reading Mastery, Edmark or the Corrective Reading program. Perhaps an experienced reading specialist might have considered others.

While I do not find the entire IEP deficient, I find the reading program to be deficient in the 2006-2007 school year for repeating the same program she already had and then selecting a program which the SD initially felt that she did not qualify for and implementing it without a consultation from an experienced reading specialist who has dealt with students with cognitive impairments. Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that she is receiving only a *de minimis* benefit and fails to correct the situation. *M.C. on behalf of J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir.1996) It is apparent from the evidence presented that one must be patient with students who suffer from Williams Syndrome for even making small increments. I concur with Mr. D and Dr. G on the two hours for reading instruction. Dr. M is not far off. His estimate was 90 minutes a day. I understand the parents' dilemma about utilizing a program for which Student is not qualified²². I

²² While Dr. M believed the reading program was appropriate, he did not visit the program while Student was present in the SD. He did not directly observe her in the classroom. While Student was initially declared to be unqualified for that program, the SD should

find that Student should be awarded two hours of compensatory education for every school day that she attended from the start of the 2006-2007 school year until the date when she returned to the SD in April 2008. I have included the time that she was at Academy because had she remained in the SD, her same reading program would likely have continued. If there was an appropriate reading program, the parents would not have looked for another reading program and this hearing would not have taken place. Note that this does not imply payment for any part of the Academy program. Since a school year is 36 weeks for the 2006 to 2007 school year, I award 10 hours a week for a total of 360 hours. For the 2007-2008 school year, from September through March, there are approximately 25 weeks, therefore, I award an additional 250 hours. Since Student is returning to the SD, they are entitled to the time to reassess her current needs before further compensatory education ensues. M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d at 397. In trying to assess an amount for private reading instruction, it appears that the Academy rate of \$2000 per week for 30 hours would come to \$67.00 per hour. In Heather D. Cite as: 2007 WL 1775467 (E.D.Pa.) the court considered up to \$75.00 per hour a fair rate. While the parents can determine how they would like to use these hours, there should be some mutual agreement between the parties with the amount not to exceed between \$67.00 and \$75.00/hr. on presentation of appropriate bills. Since this is an award of hours, the parents may accept additional SD services that are not part of the regular program rather than tutorial funds.

Since I do not find the Academy program to be an appropriate program designed to meet Student's broader needs, the request for reimbursement of tuition and the expenses of transportation will be denied. Further, I note that Academy is not a licensed private school in Pennsylvania.

While there is a disagreement between Dr. G and Dr. M²³ on some items of interpretation, I consider both to be experts and recognize that experts sometimes disagree. Dr. M did utilize some results from Dr. G's evaluation in a collaborative manner and addresses it in his report and his findings were used in an ER. I award the cost of the Dr. G's psychological evaluation, to the parents on delivering their receipts of payment to the appropriate SD personnel in the amount not to exceed \$4000.00 (FF-93). Fees for testifying are not reimbursable.

I do not find that Dr. M was asked to do an examination simply to rebut Dr. G. I find that a SD had a right to a second opinion and can ask for an expert that they hire to do an examination with parental consent. If there are differences of opinion, each can argue their case and it is up to the hearing officer to consider the weight of the testimony.

V. Accordingly the following is made:

ORDER

1. The IEP of January 2005 that was in effect for the beginning of the 2005-2006 school year and the IEP of January 2006 that was in effect for the second half of the 2005-2006 school

have had the services of a certified reading specialist, experienced with students like Student to develop the program if Student no longer had the skills she apparently possessed at the close of the previous school year.

²³ While each side tried to discredit the expertise of the other, both are experienced school psychologists with knowledge of neuropsychology. Both have been in school psychology practice both in public schools and in private practice. Dr. G has more years of experience in practice and is licensed and has identified post-doctoral coursework in neuropsychology. Dr. M has both practice and research experience in schools and in private practice. Because of his past experience working in the field of psychological testing for test developers, he has more research experience in interpreting tests. While Dr. M is certified in school psychology, he is not a licensed psychologist in Penna.

year was appropriate when clarified with the testimony of Mr. B concerning his activities in Student's reading instruction. The total program was appropriate.

2. The reading program offered in the 2006-2007 school year was not appropriate. Therefore Student is awarded 2 hours of compensatory education for each school day from the beginning of the 2006-2007 through March 2008.²⁴ This totals 610 hours.
3. Reimbursement of tuition and travel expenses to the Academy is denied.
4. The parents shall be reimbursed for the cost of the School Neuropsychological Examination not to exceed \$4000 (four thousand dollars) on receipt of proof of payment delivered to the appropriate official in the SD.
5. The SD hiring of Dr. M for another opinion on the case was within their rights and was appropriate.
6. On Student's reentry into the SD program, a PA certified reading specialist who is experienced with children who have profiles similar to Student's, shall conduct a reading examination, consult with the IEP team and be available to the classroom teacher to select and adapt the program to Student's needs.
7. The IEP team shall select other aspects of the program including science, math, computer use, language arts, writing, and services as needed. Provision for inclusion with regular education students where appropriate, shall be determined by the IEP team.

Joseph G. Rosenfeld

Joseph G. Rosenfeld, Ph.D.
Hearing Officer

June 9, 2008²⁵

²⁴ Since there is no IEP from the SD that changes the program, this should continue until her re-entry into the SD. She left Academy on April 2, 2008.

²⁵ The H.O. hoped that he could complete the decision within the 15 day guideline but warned that may not be possible because of the length of this hearing (NT 2819). There were 2823 pages of testimony and 87 exhibits. The parties were informed of the delay on May 26, 2008 by email.