

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

HEARING OFFICER DECISION/ORDER:

**HH (ODR FILE NO. 8204 07-08 KE)
INDIANA AREA SCHOOL DISTRICT**

Type of Hearing: Closed

Dates of Hearing: 11/30/07; 1/10/08; 2/4/08;3/6/08

I. PARTIES TO THE HEARING

PARENTS:

Mr. and Mrs.

DATE TRANSCRIPT RECEIVED:

3/11/08

PARENTS' REPRESENTATIVE:

Pamela Berger, Esquire
434 Grace Street
Pittsburgh, PA 15211

HEARING OFFICER:

Dorothy J. O'Shea, Ph.D.

Signature: Hearing Officer

DISTRICT CONTACT:

Indiana Area School District
501 East Pike
Indiana PA 15701

DATE OF DECISION/ORDER:

3/20/08

DISTRICT'S REPRESENTATIVE:

Patricia Andrews, Esquire
Andrews & Price
1500 Ardmore Blvd., Suite 506
Pittsburgh, PA 15221

II. BACKGROUND INFORMATION

Student is an eligible student, enrolled in the Indiana Area School District (the “District”). In Fall of 2007, Mr. and Mrs. (“Student’s Parents”) made a Due Process hearing request, alleging claims related to Student’s lack of meaningful educational progress and appropriate program, lack of identification and evaluation of all of Student’s needs, and lack of an appropriate current evaluation (HO 4, pages 2-3).

III. FINDINGS OF FACT

- 1) Student’s birth date is xx/xx/xx (Parent Exhibit 1, page 1: P1, page 1).
- 2) Student, an eligible student, is a District resident (Hearing Officer Exhibit 1, page 1: HO 1, page 1).
- 3) Student is a 10th grader during the 2007-2008 school year (School District Exhibit 1, page 1: SD 1, page 1).

Facts Relating to Student’s Evaluations

- 4) In Fall 1997, Student entered kindergarten in the District and made slow progress (P1, page 1).
- 5) In 1998, her Parents requested a special education evaluation while Student was in first grade due to Student’s struggles in Reading, Math, and attention (P1, page 1).
- 6) During her 1998 initial evaluation, Student was identified as a student with a Specific Learning Disability and in need of learning support services (P1, page 1).
- 7) In February 2002, when Student was in 4th grade, an independent school psychologist, Mr. W, tested Student recommending, “further evaluation by clinicians familiar with...students with Autistic Spectrum functioning” (P1, page 2).
- 8) In August 2002, Student received a recommendation for an additional evaluation to further assess symptoms related to possible Autistic Spectrum Disorder (P1, page 2).
- 9) In December 2002, Dr. R conducted the recommended psychological evaluation, diagnosing Student with “ Pervasive Developmental Disorder, NOS and Learning Disorder, NOS” (P2, page 3).
- 10) In February 2003, Student received a District reevaluation because her Parents reported that Student “is not making progress in her current educational program, particularly in the areas of reading and math” (P2, page 1).

- 11) The February 2003 reevaluation noted concerns, provided by outside experts addressing Student's language difficulties (P2, page 2).
- 12) Outside expert concerns noted in the February 2003 reevaluation cited to Student's social problems with peers, anxieties, difficulties with learning (especially in Mathematics), distress, and "relatively small problems [that] have led to conflicts in her relationships with family members and peers"(P2, page 3).
- 13) Student received the February 2003 District recommendations that Student continued to demonstrate a Specific Learning Disability and also demonstrated a Speech and Language Impairment (P1, page 11).
- 14) On November 20, 2003, while Student was in sixth grade, the District completed another reevaluation at the Parents' request, "in order to gather further information and data about Student's current exceptionality and placement in the special education program" (P1, page 1).
- 15) In the November 20, 2003 reevaluation, the District summarized its assessment to consider Student's eligibility category of Autism, but continued to recommend that Student had a Specific Learning Disability and a Speech and Language Impairment (P1, pages 3-7).
- 16) The November 20, 2003 reevaluation report concluded that Student did not present as a child with Autism (P1, page 11).
- 17) In the November 20, 2003 reevaluation report, Student's mother signed that she disagreed "with the reevaluation report that Specific Learning Disability is the correct title" (P1, pages 12-13).
- 18) On March 26, 2004, the District conducted another reevaluation, again noting Student's current exceptionalities: "Specific Learning Disability, Speech and Language Impairment" (P12, page 1).
- 19) The March 26, 2004 reevaluation report indicated that the IEP Team determined that there is a need for additional data. The report noted Student's mother request of "the current reevaluation to determine Student's eligibility for vision support services" (P12, pages 13).
- 20) On June 2, 2004, the District sent a letter to Student's Parents stating, "As per your request, the ...District is willing to assume the costs of the Functional Visual

Perception/Visual Motor Evaluation for your daughter, Student. This evaluation will be conducted at the [redacted] *Institute*” (P12, page 15).

- 21) On August 16, 2004, Student received her evaluation from Dr. S, a certified school psychologist, employed with the *Institute* (P11, pages 1-13).
- 22) Dr. S’s August 16, 2004 psychological evaluation diagnosed Student’s “Autism, Depression, NOS; Mathematics Disorder (by history); and Rule Out: Reading Disorder (by history)” (P11, page 12).
- 23) Student’s August 16, 2004 psychological evaluation recommended Student’s receipt of “wrap-around services to address her social, sensory and communication needs and problems. It is recommended that Student receive 15 hours per week of TSS services, 3 hours per week of master’s level behavioral consultation and 3 hours per week of Mobile Therapy” (P11-page 12).
- 24) On March 27, 2005, Dr. S administered another psychological evaluation to Student. This report stated, “Student is doing somewhat better at home and in her community” (P13, page 1).
- 25) Student’s March 27, 2005 psychological evaluation recommended that Student receive 12.5 hours per week of TSS services, and 3 hours per week of master’s level behavioral consultation (P13, page 11).
- 26) On August 21, 2007, Student received another psychological evaluation, administered by Dr. S, that cited to Student’s “apparent good” summer, spending time with her friend at a YMCA camp, and Extended School Year (ESY) Services for assistance in Mathematics (P14).
- 27) Student’s August 21, 2007 psychological evaluation recommended that Student receive 4 hours per week of TSS services, 3 hours per week of Mobile Therapy and 1.5 hours per week of master’s level behavioral consultation (P14, page 12).
- 28) On December 18, 2007, Student received another psychological evaluation administered by Dr. S (P15, pages 1-14).
- 29) Dr S stated in Student’s December 18, 2007 psychological evaluation that Student should “continue to receive wrap-around services due in part to more acute issues of anxiety and possibly depression...It is recommended that Student receive 2 hours per week of Mobile Therapy” (P15, page 12).

- 30) On March 22, 2007, the District reissued Student's reevaluation that changed her primary disability category to Autism. Student's additional disability categories noted were: Specific Learning Disability and Speech/Language Impairment (P16, page 7).
- 31) A further District testing occurred during the last week of school during the 2006-2007 school year. Dr. M testified that Student "did not want to be at the testing, did not put forth significant efforts," such that results were described as a "low estimate of Student's true ability and achievement" (P9, SD 1; NT 115-116).
- 32) On June 6, 2007, Dr. M summarized Student's results on a "Report of Adaptive Behavior Testing" (P8).
- 33) On July 11, 2007, the District issued its most recent reevaluation report. This report summarized Student's standardized test scores improvement as shown through her obtained results on the *Woodcock Johnson Testing of Achievement III* test. Student demonstrated Mathematical progress from February 2003 through May 2007 (SD 1, page 7; P9, page 7).
- 34) The July 11, 2007 reevaluation report recommended, "consideration should be given to readministering an ability testing...Test fatigue may have significantly affected Student's performance...if further evaluation of ability continue (sic) to reveal significantly sub-average performance, it may be appropriate to replace Specific Learning Disability with Mild Mental Retardation as a secondary category of disability" (SD1. pages 10-11).
- 35) Student's Parents did not agree with the July 11, 2007 testing results and sought out additional testing from Dr S (NT; P10, pages 1-11).

Facts Relating to Student's Educational Program and Progress

- 36) On December 18, 2003, Student's IEP team met to offer her 6th grade IEP. Student received Mathematics instruction and content area tests in a Resource Learning Support class. She also received Speech and Language Support. Her percentage of time outside of the regular education classroom was less than 21% (P3).
- 37) On April 12, 2006, Student's IEP team met to offer Student her 9th grade IEP (P4) that was revised on January 19, 2007 (SD 2, pages 7-8).
- 38) Student's April 12, 2006 IEP/ January 19, 2007 contained mandated components (SD 2, pages 1-23; P4, pages 1-20).
- 39) On November 3, 2006, the District issued Student's progress reports, noting Mathematical progress during the 2005-2006 school year (SD 3, pages 1-7).

- 40) Student's money skill needs were evident on work samples completed during the 2006-2007 school year and provided by Student's Parents (P5, P6).
- 41) In Spring 2007, Student's IEP team met and recommended Student for ESY Summer services in the area of Mathematics (SD 5, pages 1-3).
- 42) Student's 9th grade report card issued for the 2006-2007 school year indicated grades, primarily consisting of A's and B's (SD 4, SD 6).
- 43) On May 24, 2007, Student's IEP team met and offered Student's 10th grade IEP, her pendent IEP. Her IEP noted that Student's disability interfered with her ability to progress through the curriculum at a rate commensurate with same age/grade peers. It reported on her needs for adaptations as well as instruction in the Learning Support class for Mathematics (P7, page 9).
- 44) Student's May 24, 2007 IEP contained mandated components (SD 7, pages 1-26).
- 45) Student received 2007 ESY services in the areas of Mathematics (SD 5, pages 1-6).
- 46) Student's progress reports during the 2007-2008 school year noted her progress in Mathematics, as well as in Speech and Language (SD 9, pages 1-7, SD 10, pages 1-4).
- 47) Student's multiplication, division, and time skill gains were evident on work samples completed during the 2007-2008 school year and provided by Student's teachers (SD 8, pages 1-4; SD 8, pages 1-2).
- 48) Student's 10th grade report card for the 2007-2008 school year school year (to date) indicated grades primarily consisting of A's and B's (SD 11).

Facts Relating to the Parents' Due Process Hearing Request

- 49) On September 6, 2007, Student's mother responded to an e-mail sent by the District's Ms. M to talk about Student's evaluation and upcoming IEP. Student's mother stated, "to (sic) much going on right now" (SD 12).
- 50) On October 3, 2007, the District issued an *Invitation to Participate in an IEP Meeting* (SD 13).
- 51) On or about October 11, 2007, Student's Parents made a Due Process Hearing Request (Hearing Officer Exhibit 3, pages 4-5: HO 3, pages 4-5).
- 52) On October 16, 2007, Student's mother sent an e-mail to the District's Mr. P, stating, "I will not be making the IEP meeting. I will have to cancel it. I have retained a lawyer" (SD 14).

- 53) On October 16, 2007, Student's mother sent an e-mail to Ms. M, stating, "I will not be able to attend today. I have retained a lawyer" (SD 15).
- 54) On October 22, 2007, the District provided an Answer to the Parents' October 11, 2007 Due Process Complaint (HO 3, page 6-7).
- 55) On October 23, 2007, the Hearing Officer wrote a letter to the parties explaining the responsibilities of the LEA and the Parents when a party makes a claim under the IDEA (HO 1, pages 1-2).
- 56) On October 23, 2007, the Hearing Officer scheduled Student's hearing for November 26, 2007 (HO1, pages 3-4).
- 57) On October 25, 2007, the Hearing Officer received notice from the District that the hearing scheduled for November 26, 2007 was Thanksgiving Monday and the District was closed. The Hearing Officer rescheduled the hearing to the agreed-upon date of November 30, 2007 (HO 2, pages 1-10).
- 58) On October 26, 2007, the District challenged the sufficiency of the Parent's Due Process Hearing Request (HO 3, pages 1-3).
- 59) On October 29, 2007, the Hearing Officer determined the insufficiency of the October 11, 2007 Due Process Hearing Request, but permitted the Parents to amend their request (HO 3, pages 1-5).
- 60) On November 7, 2007, the Parents specified their request for Due Process (HO 4, pages 2-3).
- 61) On November 12, 2007, the Hearing Officer acknowledged the sufficiency of the Parents' amended November 7, 2007 Due Process complaint (HO 4, page 1).
- 62) On November 30, 2007, Student's Due Process hearing initiated (Notes of Transcript, pages 1-136: NT 1-136).
- 63) On November 30, 2007, the parties agreed to the hearing issues on the record (NT 23-24).
- 64) On November 30, 2007, Student's Parent testified concerning her concerns for Student and Student's educational programming (NT 29-102).
- 65) On November 30, 2007, Dr. M, certified school psychologist and employed with the *Armstrong-Indiana Intermediate Unit 28*, (ARIN, IU-28), testified concerning her review of Student's educational records and prior evaluations, as well as the psycho-educational evaluation of Student in May of 2007 (NT 105-136).

- 66) On December 9, 2007, the Hearing Officer granted a continuance to January 10, 2008 at the request of the parties (HO 5, pages 13).
- 67) On December 20, 2007, the Parents' Attorney requested a number of subpoenas so that two employees of the [redacted] *Resources* may testify at Student's hearing (HO 6, pages 1-6).
- 68) On January 10, 2008, Dr. S testified concerning his numerous psycho-evaluations and recommendations he made on behalf of Student (NT 142-242).
- 69) On January 10, 2008, Dr. S reported that although Student is a high functioning child with Autism and has social and communication skills needs, she has made many improvements since 2003. Dr. S did not deny Student's social and communication gains were due, at least in part to her school services (NT 141-242).
- 70) On January 10, 2008, the Hearing Officer reissued the subpoenas for February 4, 2008 at the request of the witnesses and Parents (HO 7; HO 8, pages 1-5; HO 9, pages 1-4).
- 71) On January 10, 2008, the Hearing Officer granted a continuance on the record at the parties' request to February 4, 2008 (HO 8).
- 72) On February 4, 2008, Student stated that she doesn't like school; school is boring. Student stated that she has friends (NT 248-254).
- 73) On February 4, 2008, Ms. F and Ms. B, subpoenaed witnesses, provided testimony concerning Student's Therapeutic Support Services and Mobile Therapy, as recommended by Dr. S's psycho-evaluations of Student (NT 254-272).
- 74) On February 4, 2008, Student's Speech and Language Support teacher, Mrs. M described Student's services and progress in Speech and Language services (NT 322-367).
- 75) Mrs. M described Student's communication skills and gains at school (NT 353-354).
- 76) Student's speech goals focused on her social/pragmatic use of language (P4, page 5).
- 77) Mrs. M testified that in 9th grade, she planned and implemented real life situations in which Student would respond using appropriate social-language skills through real life examples (P4, page 11; NT 339).
- 78) Student continued to have a goal in the area of pragmatic/social communication during her 10th grade (P7, page, pages 11-12) through use of social stories and by specifically choosing real life situations (NT 334-338).
- 79) Speech/Language activities also targeted Student's use of interpreting cues, intonation, idioms, and figures of speech (NT 354).

- 80) On February 4, 2008, Student's Mathematics teacher, Ms. D, and Student's Learning Support teacher, Ms. M, described Student's educational programs and progress in their classrooms (NT 273-322).
- 81) On February 4, 2008, the Hearing Officer granted a continuance to March 6, 2008 at the request of the parties (HO 10, pages 1-5).
- 82) On March 6, 2008, the District recalled District teachers, Ms. D and Ms. M to discuss further Student's services and progress in Mathematics during her 9th grade and Student's services and progress in Mathematics and Learning Support during her 10th grade (NT 372-421; 421-474).
- 83) On March 6, 2008, Ms. D described Student's 2007 Summer ESY services in Mathematics, based on the IEP Team's recommendations (NT 401, 402).
- 84) Ms. D reported that although Student had math problems, Student made meaningful progress (NT 378-385; 386-390; 391-393).
- 85) On March 6, 2008, Ms. M discussed Student's participation and progress in Learning Support and Mathematics, Student's friends and social/communication gains, as well as Student's transition planning process through her IEP (NT 423-424, 425-431, 432-434).
- 86) On March 6, 2008, Ms. H, English teacher, described Student's program and progress in her Basic English class during the 2007-2008 school year (NT 474-487).
- 87) On March 6, 2008, Ms. D, Biology teacher, described Student's program and progress in her Basic Biology class during the 2007-2008 school year. She also described a lab incident involving Student and lab partner (NT 487-494).
- 88) On March 6, 2008, Ms. M, District Coordinator of Special Programs, testified concerning the District's decision to add on to Student's eligibility category and continue Student's needs-based programming (NT 494-546).
- 89) Ms. M testified concerning the District's current reevaluation report (NT 497-499) and Student's Parents' response to the District's attempts to reschedule the reevaluation (NT 500, 502; SD 12; SD 13).
- 90) On March 6, 2008, Student's mother provided rebuttal testimony concerning whether Student has friends (NT 546-550).
- 91) On March 6, 2008, Student's hearing adjourned after both parties rested (NT 553).

IV. ISSUES

During Student's initial hearing session, the parties agreed to the issues on the record (NT 23-24):

- Was Student's program reasonably calculated to allow her to make meaningful educational progress and did she make meaningful educational progress?
- Have all of Student's needs, including the need for transition planning, been identified and assessed by the District?
- Is Student's current evaluation appropriate?

V. DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging an IEP is upon the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Student's Parents (who raised their Due Process claims in October 2007, and as a result of the District's sufficiency challenge, amended their claims on November 7, 2007), held the burden of persuasion, an element of the burden of proof. The *Shaffer* Court makes this principle applicable when the evidence presented by both sides is of nearly equal weight (i.e., in "equipoise"). The Third Circuit adopted this position in *L.E. v. Ramsey Board of Education*, 435 F.3d 384 (3rd Cir. 2006). Student's Parents, also, held the burden of production and presented their case-in-chief first (HO 3, pages 1-3; HO 4, pages 1-2).

After a close examination and analysis of all of the evidence and testimony, this Hearing Officer did not find "equipoise." The burden of persuasion was not at issue in this case. It was unnecessary to apply *Schaffer*. Based on preponderant evidence, Student's Parents did not establish their allegations.

Witness Credibility and Weighing of Evidence

A hearing officer holds the responsibility to "specifically mak[e] credibility determinations among the various witnesses and contrary expert opinions." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at 34 (2003). This Hearing Officer holds the authority in Student's Due Process hearing to assess the credibility of witnesses and to weigh evidence. *Carlisle Area School District v. Scott P.*, 62 F.3d 520,524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

1. WAS STUDENT’S PROGRAM REASONABLY CALCULATED TO ALLOW HER TO MAKE MEANINGFUL EDUCATIONAL PROGRESS AND DID SHE MAKE MEANINGFUL EDUCATIONAL PROGRESS?

Federal mandates of the IDEA direct that an eligible child must be assured a free, appropriate public education (FAPE). A FAPE means special education and related services that meet state standards, provided in conformity with an IEP, at public expense, under public supervision and direction, without charge, and include an appropriate preschool, elementary, or secondary school education. 20 U.S.C.§1401(8). Both substantive and procedural requirements must be met to ensure a FAPE. 20 U.S.C.§1401(7) (8).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

- (I) Impeded the child’s right to a FAPE;
- (II) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE; or
- (III) caused a deprivation of educational benefit. See, §615(f)(3)(E).

The IDEA's substantive component requires that the eligible child be provided with a FAPE that, “consists of educational instruction specifically designed to meet the unique needs of the child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” 20 U.S.C. § 1412(1). The IDEA does not require a district to maximize the potential of the child with a disability, nor does the IDEA require the child to be achieving commensurate with his or her non-disabled peers. *Rowley v. Hendrick Hudson School District*, 458 U.S. 176 (1982).

A review and analysis of the record established that Student’s IEPs at issue in this Due Process hearing addressed of all Student’s identified needs, including her needs in Mathematics, social/pragmatic communication skills, and transition. Although the District did not maximize Student’s potential and Student did not evidence achievement commensurate with her non-disabled peers, Student’s IEPs were reasonably calculated to allow Student to make progress. The following are relevant as based on the factual evidence of record:

A. Witnesses Offered by Both Sides Supported the District’s Argument that Student Made Meaningful Progress in Academic, Social, and Communication Skills, and Received Appropriate Specially Designed Instruction.

Witnesses offered by both the Parents and District provided evidence of Student's opportunities to receive a FAPE and make meaningful educational progress. For example, *LH, Ph.D. Manager, Western Region of the Bureau of Autism*, testified concerning his knowledge of Student and his observations of her social and communication needs. He worked with Student for a number of years, testifying that he first met Student, while he was employed at the *Institute* in 2003. Dr. S testified that Student does not perceive appropriately (e.g., what a friend is, how to make friends, obsessions about the *Pittsburgh Penguins'* hockey team). Dr. S testified Student is sensitive to and often misinterprets tone of voice. He is a licensed psychologist and certified school psychologist offered by the Parents, however, Dr. S's testimony actually contributed to the District's case. Dr. S reported that although Student is a high functioning child with Autism and has social and communication skills needs, she has made many improvements since 2003. Dr. S did not deny that the improvements were due, at least in part to the District's efforts (NT 141-242).

Ms. F, Autism Coordinator, [redacted] *Resources*, was Student's Behavioral Specialist Consultant from October of 2006 until May of 2007. She was the camp director for *Camp* [redacted] that Student attended during the Summer 2007. She testified that Student could not choose appropriate clothing, could not use the telephone, and could not make change. *Ms. F* testified that Student perceived people as yelling at and were angry with her; Student often became upset. *Ms. F* holds a Master's degree in Counseling and is a board certified Behavior Analyst, however, *Ms. F*'s limited (if any) work in school settings, and amount of time she actually spent with Student, lessened her credibility (NT 254-255).

Ms. B worked with Student through the [redacted] *Resources*. *Ms. B* was Student's Mobile Therapist from August of 2006 until December of 2007. By January 2008, *Ms. B* was no longer employed by the *Resources*. *Ms. B* testified that she is a certified teacher, although her school experiences were limited to long-term substituting and academic counseling. Her primary role with Student was to implement a therapy treatment plan dealing with Student's feelings, self-esteem, and self-advocacy. *Ms. B*'s limited school experiences, and her minimal knowledge of Student's academic, functional, and social-communication needs, lessened her credibility (NT 263-273).

Parent, testified concerning her personal concerns for Student during Student's childhood and the attempts she made to support her daughter's evaluation and programming throughout Student's school career. *Mrs. 's* testimony reflected the family's concerted efforts to support

Student (NT 29-102; 546-550).

Student presented herself as truthful and sensitive. She testified that she does not like school because it is boring. She reported that she doesn't like her teachers. She also stated that she wants to be a kindergarten teacher (NT 253-254).

Dr. M, certified school psychologist and employed with the *Armstrong-Indiana Intermediate Unit 28*, (*ARIN, IU-28*), described her more than 37 years of work experience, including services to the [redacted] Center, [redacted] Guidance Center, [redacted] Head Start program, [redacted] University, and *ARIN, IU-28*. *Dr. M* provided a psycho-educational evaluation of Student in May of 2007. *Dr. M*, also, reviewed Student's school records from 1997 and Student's 1998 initial District identification and 2000 reevaluation. *Dr. M* presented herself as a highly qualified, experienced, and credible professional. Her explanation of her testing for the District and Student's prior testing was very insightful and helpful in making the determination that the District did put forth efforts to ensure that Student's needs were met through appropriate services (P1, P2, P9, P12, P16, SD 1; NT 106-108).

Ms. D, certified Mathematics teacher, was Student's teacher during the 2006-2007 school year. *Ms. D* obtained a Bachelor's degree in Elementary Education and Special Education from [redacted] College and a Master's in Mathematics from the [redacted] University (NT 273-274). *Ms. D* offered credible testimony concerning Student's Mathematical program and progress during Student's ninth grade, the 2006-2007 school year (NT 275-289; 372-420).

Mrs. M, certified Special Education teacher, was Student's Learning Support classroom and Academic Support teacher during the 2007-2008 school year. She, also, was the liaison teacher for Student's transition services as designated in Student's 10th grade IEP. *Mrs. M* has taught for over 35 years, including 27 years in the *ARIN IU-28*, and as a District employee since 2000. *Mrs. M* presented as a credible witness offering information on Student's social and academic needs, Student's learning support and transition opportunities, and Student's academic and social progress (NT 290-322; 421-463).

Ms. M, certified Speech/Language Support teacher, testified that she holds both a Bachelor's and Master's degree from the [redacted] University in Speech and Hearing. She has been Student's certified Speech and Language clinician since Student was in the seventh grade to the present. This witness offered mostly credible testimony (NT 322-366).

Ms. H, certified English teacher, was Student's Secondary English teacher during the 2007-2008 school year. *Ms. H* holds a Bachelor's in English Education from the

[redacted]University and is enrolled in a Master's in Education program there. Ms. H presented herself as very credible, offering information on Student's academic and social progress in the basic English classroom, a general education program with Student's non-disabled peers (NT 474-478).

Ms. D, certified Biology teacher, was Student's Biology teacher during the 2007-2008 school year. She holds a Bachelor's degree in Biology Education and a Master's degree in Biology, both from the [redacted]University. Ms. D, also, provided information on Student's academic and social progress in the general education program with non-disabled peers, and offered credible testimony concerning an incident Student had with a lab partner during a Biology class (NT 491-492).

Ms. M, District Coordinator of Special Programs, presented herself as a highly qualified, experienced, and credible professional. Ms. M described her Special Education supervisory and principal certificates, her Special Education teaching credentials, and her professional preparation/prior experiences in working with students with Emotional Disabilities and Autism. She was very forthright and her answers were stated without hesitation. She presented as very knowledgeable, offering credible testimony as to why the District offered to Student a program that is based on needs and not based upon eligibility category. Ms M testified that regardless of whether Student was identified as having a primary label of Learning Disability or Autism, Student's IEP team sought to determine Student's needs and developed all of Student's IEPs based upon those needs (NT 494-545).

B. The District Addressed Student's Academic Needs Appropriately.

Her Parents claimed that Student has not made appropriate progress in academic skills, asserting that Student's present levels have not been clearly established, that she does not demonstrate comprehension of what she reads, that she cannot make change or tell time, and that she is not able to make simple purchases. Her Parents contended that Student is not assigned homework and thus does not use her academic skills outside of the school environment (HO 3, pages 4-5; HO 4, pages 2-3).

The evidence of record shows that Student made progress in her general education classes as reflected by the testimony of both her English and Biology teachers during the 2007-2008 school year. Both teachers testified that Student did demonstrate comprehension of what she reads. Ms. H described Student as very courteous, well mannered, and very conscientious. Student displayed an excellent work ethic in Ms. H's English class. Ms. H described Student as,

“always accurate, and she does well on quizzes” (NT 483). Ms. H testified that all of her course objectives are aligned with the Pennsylvania English curriculum standards and her content is preparing Student to take the Pennsylvania State Assessment in Student’s eleventh grade. Ms. H testified that she does provide additional class time to assist students with work and may not get as in depth in content, however, Student participated and did well in this class (NT 474-486).

Ms. D, also, testified that Student performed very well in her Biology, hands-on class, and was able to comprehend the content. Student got along with others in this class, and usually was able to answer comprehension questions posed by Ms. D (NT 489). Ms. D testified that she aligns all of her course objectives with the Pennsylvania Science curriculum standards and her Biology content is preparing Student to take the State assessment in Student’s eleventh grade (NT 490-492).

Both teachers testified that they implemented the specially designed instruction in Student’s IEP. With these supports, Student was not only able to participate in these general education classes, she was, also, able to do very well in these classes. Student achieved in both special education and general education classes as evidenced by her passing grades, which have consisted primarily of A and B grades (SD 6, SD11).

Additionally, Student’s teachers in Mathematics and Learning Support offered credible testimony that Student was working toward mastering math facts, telling time, and making change. A review of evidence reveals that in both 9th and 10th grades, Student worked on mathematical operations. In 9th grade she progressed through various levels of addition and subtraction and began multiplication. Student’s 9th grade teacher, Ms. D, offered credible testimony reporting that although Student continued to have difficulty with mathematical facts, Student made meaningful progress (NT 378-385; 386-390; 391-393). Through address of her mathematical needs in her 9th grade IEP (P4), and as evidenced by progress reports toward math goals (SD 3, SD 9, SD 10), Student showed progress in money skills (P6), as well as in multiplication, division, and use of decimals (SD 7; NT 393-396).

During the 2007-2008 school year, as a 10th grader, Student made additional progress in multiplication skills and worked on division. She mastered identifying coins and the values of coins, how many coins make up a given amount, and paper currency, as listed in her IEP (P7). She had the opportunity to practice functional skills, such as being on time for the job and using money when working in the “Coed Café.” Student also worked on making change for purchases under \$100.00 and demonstrated progression in identifying the value of coins (P5, P6).

Her Parents asserted that Student cannot tell time. This issue was identified by Student's 2007-2008 IEP and was addressed in her tenth grade Math class (P7, pages 13). Mrs. M testified that she worked with Student on telling time; Mrs. M disagreed with the Parents' contention that Student did not understand the concept of time. She testified that Student always knew when to leave for Speech, even though there was no bell, and Student consistently anticipated the end of class periods (NT 432-435).

The District provided additional evidence that Student's standardized test scores improved as shown through the *Woodcock Johnson Testing of Achievement III* test. Student demonstrated Mathematical progress from February 2003 through May 2007. Despite testimony that the results of the July 2007 ER were most likely a low estimate of Student's true abilities, Student's Mathematical standard scores on the *Woodcock Johnson* actually improved significantly since 2003. Calculations increased from her standard score of 59 to her standard score 74; Math fluency increased from her standard score of 66 to her standard score of 71; and applied problems increased from her standard score of 69 to her standard score of 72. Her Broad Math score increased from her standard score of 64 to her standard score of 69 (SD 1, page 7; P9, page 7).

Student received ESY services in Mathematics during the Summer 2007 because she was below grade level and showed some inconsistencies (SD 5). Her 9th grade Mathematics teacher, Ms. D, testified that Student's IEP Team believed Student would benefit from continued practice during the Summer. Ms. D testified that there was evidence of regression. Therefore, the IEP Team provided ESY to Student in the area of Mathematics (NT 401, 402).

C. The District Addressed Student's Communication, Social, and Self Esteem Needs.

Her Parents claimed that Student has no friends and has the perception that she is being teased (NT 42-45). District witnesses refuted the Parents' claim that Student has no friends and reported on Student's appropriate communication and social skills in their classrooms (NT 478, 489,492). Student, herself, stated that she does have friends at school (NT 250-251).

District witnesses, including her teachers and Speech therapist, reported that Student is not being harassed or even teased at school. Dr. S reported that the issue is one of Student's perception that she is being teased (P14, P15). Both Ms. M and Mrs. M testified that they work on Student's perceptions with her by teaching her appropriate reactions to people's comments (NT 445-446).

This Hearing Officer agrees with the District that the Parents' own witness, Dr. S, verified Student's social and communication progress through his various evaluation reports that he conducted at the *Institute* (P11, P15). Dr. S testified that although the 2004 report was the first report submitted by the Parents, it was not the first time he saw Student; most likely, he saw her at least three times prior to that meeting. Dr. S's personal observations of Student described Student's social and communication gains over a three year period (NT212-216; 222-226). His original observations described Student as having difficulty with eye contact, mumbling responses, looking away from the examiner, picking her skin and lips, and running her hands through her hair. She could not fully answer questions, buried her head in her arms, and displayed that she was anxious (P11). In contrast, by 2007, Dr. S noted that Student appeared happy and spoke clearly, with ease and animation. She was less anxious than in the past and appeared excited. Overall eye contact was either close or direct. There was no mention of picking skin or lips, or running hands through her hair (P15). Dr. S's credible testimony supported the District's contention that although Student has needs, she has made improvements.

Student's improvement was also evidenced by the reduction in the amount of wrap-around services prescribed to Student during this three year period. In 2004, Student was receiving 15 hours of TSS services that was eliminated completely by Dr. S's 2007 report (P15). Remainder of Student's wrap-around services was reduced to her current program of only 3 hours per week of Mobile Therapy. Dr. S testified that a reduction in recommended wrap-around services corresponded to a reduction in need. He testified that the insurance carrier will not pay for services that a child does not need (NT 216-220). Student, a child whose wrap-around services was reduced, progressed such that she does not require the same degree of wrap-around services as she did previously.

In the instant matter, Student's Parents did not prove that Student's needs have not been met. Student made progress as offered through her IEPs. As evidenced by Student's academic records, her assessments and evaluations, and testimony by both Parent and District witnesses, the District provided a program reasonably calculated to allow Student to make meaningful educational gains.

2. HAVE ALL OF STUDENT'S NEEDS, INCLUDING THE NEED FOR TRANSITION PLANNING, BEEN IDENTIFIED AND ASSESSED BY THE DISTRICT?

In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The *Rowley* standard is only met when a child's needs are met and the program provides him or her with more than a trivial or de minimis educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988). The following are relevant as based on the factual evidence of record:

A. The District Addressed Student's Diagnosis Of Autism Through Programming That Met All of Student's Needs.

The Parents did not prove, by a preponderance of the evidence, that Student's needs have not been identified and addressed. Dr. S's testimony underscored the District's assertions that although Student continues to have needs, her needs are not indicative that educational offerings by the District are inappropriate. The District did not identify Student incorrectly as an eligible student with a Specific Learning Disability in Mathematics. At the time Student received the District's initial evaluation in November of 1998, there were no outside evaluation reports suggesting that Student had Autism (P1, pages 1-2). Dr. M, the *ARIN- IU 28* certified school psychologist, testified regarding Student's initial identification. She testified that in 1998, there was a noted discrepancy between Student's full scale IQ of 83 and her Math standard score of 71 (NT 112-113). Dr. M further testified that in third grade, Student was reevaluated in 2000. At that time, Student obtained a Full Scale IQ of 81 and an achievement score of 61 in Overall Mathematics on the WIAT (NT 113). Dr. M testified that based upon these scores, Student's early ERs "established the identification as a student with a Specific Learning Disability" (NT 113). Although Dr. M did not complete the initial testing, she found nothing inaccurate about the District's initial determination that Student had a Specific Learning Disability in Mathematics (NT 125).

Student's parents raised the issue of Student having Autism. The District's evaluation reports included data provided by the *Institute* and other outside evaluations (P1, P2, P9, P12, P16, SD1). With regard to Independent Educational Evaluations (IEE), the statutory

requirement is such that the District must “consider” the IEE when making decisions related to the provision of Student’s FAPE; however, the District does not have to accept the findings or act on the recommendations. 34 C.F.R. §300.503(c)(c).

The District received the first suggestions to consider testing for Student’s “Autistic Spectrum functioning” in 2002, four years after the District found Student to be eligible for special education. It is noteworthy that the Parents did not provide evidence to refute Student’s Specific Learning Disability in Mathematics. An independent psychological evaluation, conducted by Dr. R in December 2002, resulted in Student’s “Axis I Diagnoses of Pervasive Developmental Disorder, NOS and Learning Disorder, NOS” (P1, page 2). At no time did Dr. R, nor Dr. S, refute the District’s identification of Student as having a learning disability. Dr. S testified and his reports reflect that he did identify Student with a Specific Learning Disability in Mathematics (P11, P13, P14, P15; NT 238).

In November 2003, the District conducted an Autism screening for Student, with the school psychologist administering the *CARS* (P1). Based upon that assessment, Student’s score placed her in the “Non-Autistic” category. The psychologist interviewed Student’s teachers, who reported that Student had “normal eye contact with adults,” “maintains eye contact,” and did not have to “be reminded to look up.” She responded to other’s emotions appropriately. She demonstrated appropriate peer relationships and initiated conversations with other peers. She shared enjoyment and interests with others and played with two other girls, as other students her age. She communicated well and maintained good conversations with others. The teachers did not observe any stereotyped patterns of behavior, abnormal behavior, or preoccupations. Student was not inflexible to change in routines nor was she sensitive to noise. Her teachers indicated that she was soft spoken and did not volunteer in class. Student tended to hold her emotions in and was observed to have cried on one occasion. Based upon the evaluation, the school psychologist continued to conclude that Student had a learning disability and a Speech and Language impairment. Nothing in the reports from her teachers, however, concluded that Student demonstrated characteristics of Autism (P1, pages 3-7).

In March 2007, a district reevaluation recommended that Student’s primary disability category be changed to Autism, with additional disability categories noted as Specific Learning Disability and Speech/Language Impairment (P16, page 7). Both Dr. M and Ms. M testified that Student’s mother wanted Student to be identified as a student with Autism (NT 110). At the time of the reevaluation in March 2007, neither Dr. M nor Ms. M believed that there was a

problem with changing Student's primary eligibility category. There were outside reports to support the Autism eligibility. Regardless of Student's disability category, witnesses testified and the evidence of record support that Student's program targeted Student's needs. Regardless of whether Student was identified as having a primary eligibility category of Specific Learning Disability or Autism, the IEP Team considered Student's needs and developed her IEP based upon those needs. Student demonstrated steady progression.

There is existing recognition that what must be reviewed under the IDEA is whether a child's needs have been met, rather than a focus on the child's disability category. In *Re The Educational Assignment of J.H., A Student In The Avon Grove School District*, Opinion No. 1268, the district and the parents disputed the child's category of eligibility. The Panel, however, concluded that once the child is an eligible student, her needs "must be met regardless of her disability category." The nature of special education support should be left to the IEP Team.

In the instant matter, Ms. M testified that the District changed Student's label. Again, all District's witnesses testified that such a change did not alter Student's program as her special education program targeted Student's needs. The needs identified by the Parents' outside reports and Student's needs identified by her IEP team have all been identified and addressed. Dr. S testified that Student's primary needs were pragmatic communication and socialization. The District's witnesses testified that Student did in fact engage in conversations with people in the school setting. Ms. M testified that in the school setting, Student did not experience difficulties with greetings (NT. 353-354). Student received Speech therapy for three thirty minute sessions per week. In Student's ninth grade IEP, the present education levels underscored one of Student's two Speech goals focusing on her social/pragmatic use of language (P4, page 5). Her goal focused on acquiring appropriate social/language skills through real life examples (P4, page 11). Student continued to have a goal in the area of pragmatic/social communication during her 10th grade (P7, page, pages 11-12). Student's Speech therapist, Mrs. M, testified that in 9th grade, she planned and implemented situations in which Student would respond (NT 339) In 10th grade, she addressed this goal through social stories and by specifically choosing real life situations that Student may be experiencing (NT 334-338). Her Parents claim that Student is literal. Mrs. M testified that she worked with Student on interpreting cues, intonation, idioms, and figures of speech (NT 354).

B. Student Is Being Taught Functional Application Skills In Real Life Applications.

Student's Parents asserted that Student cannot apply the things that she learns in school. Mrs. M discussed that the entire second semester of her class during the 2007-2008 school year is spent teaching skill applications learned during the first semester. Mrs. M testified that real world situations in her curriculum, *The World of Work*, focused on applying time, determining pay, tracking a paycheck, using advertisements and coupons, figuring out unit prices for groceries, searching for best prices on items, and purchasing grocery store items to obtain the correct change. Student's independent living skills targeted keeping a checkbook, establishing a budget, and reading bills. While Student's IEP did not list these activities specifically, Mrs. M testified that they are the methods that she uses to teach Student those skills identified through the IEP (e.g., making change, telling time, adding, subtracting, and so forth, through these real life activities). Mrs. M testified that an IEP need not contain the lesson plans or activities that will be used to teach Student the skills identified in her IEP (NT 423-424, 425-431, 432-434). Dr. S testified that Student can learn from real life situations (NT 188).

C. Student's Transition Plan Meets Mandated Requirements.

Her Parents asserted that transition planning for Student was inadequate because it was not individualized, did not address her needs (e.g., for community living skills, social skills, daily living skills), and was generic. They claimed that Student requires community living skills and her transition plan did not identify skills that she must develop to proceed toward this goal (HO 3, pages 4-5). Her Parents asserted that while Student has expressed a desire to be a kindergarten teacher, which requires a college degree, in all areas Student was provided with an adapted curriculum. Her Parents claimed that Student's academic skills have been poorly developed for a college-bound student; moreover, it was unclear that Student comprehends what college work or social environment would be like.

Student's 10 grade IEP contained a transition plan (her pendent IEP), developed May 24, 2007 for Student's 10th grade (P7, pages 11-12). Mrs. M testified that as Student was a 10th grader during the 2007-2008 school year, her transition plan will continue for at least two years. In 10th grade, this transition plan focused on exploring career opportunities and was a blue print for direction setting and constructing career services aimed at high school exit goals most appropriate for Student. IEP team decisions about transition services were based on Student's strengths, preferences, and interests. Mrs. M testified that in 10th grade, exploration of Student's career options was appropriate as Student participated in a graduation project where

she explored ten careers, narrowed those careers to three, researched those three careers of interest and did a project on one of the careers. Student, herself, testified that she chose “kindergarten teacher” as her future option (NT 253-254).

The IDEA 2004 did not prescribe how the IEP team should determine the kinds of transition services a student needs. There is no statutory language in the IDEA stating that a transition plan must include the entire plan, from the time the student begins transitioning until the time he or she graduates from high school. IEPs are written on an annual basis; an IEP contains the program that will be implemented during that year.

Dr. S testified that Student needed job shadowing for appropriate transitioning (NT 226). Job shadowing was specifically included in Student’s IEP transition goal (P7, page 16). Student had the opportunity to participate in a job shadowing experience with a district kindergarten teacher, but Student’s parents would not permit her to participate. Ms. M made clear that had Student been allowed to participate, she would have worked with Student to prepare her for the job shadowing experience, by talking to her about dress, lunch, how to get checked in, and get to the classroom. She would not have simply dropped Student off at the elementary school and expected her to know what to do (NT 423-434).

Student’s disputed IEPs during her 9th grade and 10th grade addressed mandated components (SD 2, SD 7, P4). They contained present levels of academic achievement and functional performance. 34 C.F.R. § 300.320 (1). They contained statements of measurable annual goals. 34C.F.R. § 300.320 (2). They addressed a description of progress toward meeting the annual goals and when periodic reports on the progress Student is making will be provided. 34C.F.R. § 300.320 (3). They addressed a statement of the special education and related services and supplementary aids and services, and a statement of program modifications or supports for school personnel. 34C.F.R. § 300.320 (4). They provided an explanation concerning Student’s participation with non-disabled children in the regular class. 34C.F.R. § 300.320 (5). They named appropriate accommodations to measure academic achievement and functional performance. 34 C.F.R. § 300.320 (6). They had projected dates for the beginning of services and modifications, including the anticipated frequency, location, and duration of those services and modifications. 34 C.F.R. § 300.320 (7). The IEPs were complete IEPs.

3. IS STUDENT’S CURRENT EVALUATION APPROPRIATE?

Student’s Parents asserted that Student’s current evaluation did not yield valid scores because Student was not cooperative and attentive in taking the tests (HO 4, page 3). The

District began a reevaluation for Student in early 2007 that was completed in March 2007 (P16). Pursuant to that report, Mrs. indicated that she would provide testing from *Institute* (SD 1, page 4) and no additional District evaluation should be completed. However, she did not provide additional *Institute* testing. Therefore, the District did complete an additional District evaluation (SD 1). That evaluation made clear that Student was not cooperative during the evaluation and, therefore, the test results were a low estimate of her ability and achievement (SD 1, page 7).

The current testing occurred during the last week of school. Dr. M testified that Student did not want to be at the testing and did not put forth significant efforts. Therefore, the results were a low estimate (NT 115-116). Ms. M testified that she and Dr. M met with Mrs. over the Summer and additional testing in the Fall was discussed (NT 497-499). Dr. S verified that when a child is not cooperative during testing, it would be appropriate to reschedule to conduct the testing. However, when Ms. M attempted to contact the Parent to discuss the additional testing, Mrs. responded that she was too busy (NT 500, 502; SD 12; SD 13). Therefore, Student's Team scheduled an IEP meeting to again attempt to discuss the testing. Mrs. canceled that meeting, stating that she had an attorney. Therefore, the District was never given the opportunity to conduct additional testing to determine Student's true levels (NT 503-505).

In the instant matter, the District acknowledged that current evaluation results were a low estimate of Student's ability and achievement. Student's current evaluation cannot be considered appropriate. (However, such an acknowledgement does not mean that the Parents are entitled to an independent evaluation at District expense. Parents have a right to an Independent Educational Evaluation (IEE) at public expense if they disagree with an evaluation obtained by a public agency and the agency fails to show that its evaluation is appropriate. §300.502(b). In such cases, a district may initiate a Due Process hearing to demonstrate that its evaluation was appropriate. 34 CFR §300.502(a) - (b)(1)(2)(3). See, 22 Pa. Code at Chapter 14.123, adopting by reference 34 C.F.R. §300.502(b)(1).) Student's Parents prevented the District from retesting Student and are not entitled to an IEE at District expense.

By way of dicta, the District shall retest Student to obtain more accurate testing results. Student, however, has received a great amount of testing during the past number of years, either through District efforts or from outside experts. Her reaction to and frustration with testing situations, (e.g., resulting in low estimates of her ability and achievement) may be due, partly, to inundating Student with testing. It would be prudent, therefore, for Student's IEP Team to monitor carefully when/how to re-evaluate Student prior to her next mandated evaluation.

Conclusions

Student's program was reasonably calculated to allow her to make meaningful educational progress. Student made meaningful educational progress. The District identified and assessed all of Student's needs, including her need for transition planning. The District shall consider Student's eligibility as a high functioning child with Autism, prior to Student's next mandated triennial evaluation.

When a child with a disability has been denied a FAPE, the child is entitled to compensatory education. 20 U.S.C. § 1415(i)(C)(iii). Compensatory education for a period equal to the period of deprivation, excluding the time reasonably required to rectify the problem, is appropriate where a school district knows or should know a child is not receiving more than a de minimis educational benefit and fails to correct the situation. *M.C. on Behalf of J.C. v. Central Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996).

Student's Parents sought two years of compensatory education. As based on preponderant evidence presented during Student's hearing, however, because Student's program addressed all of her needs and allowed her to make meaningful educational progress, the District is not required to provide compensatory education.

HEARING OFFICER ORDER:

**SPECIAL EDUCATION HEARING FOR Student , FILE ###/07-08 LS
Indiana Area SCHOOL DISTRICT**

AND NOW, this 20th day of March 2008, the Parties shall be advised that:

1. The District did not deny a FAPE to Student and met both procedural and substantive obligations as set forth under the IDEA, pursuant to 20 U.S.C. §1401(8).
2. The District is not obligated to provide Student with compensatory education.

Dorothy J. O'Shea, Ph.D.
Hearing Officer

DECISION DATE: _____