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**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: GC  
ODR # 8343/07-08 KE

Date of Birth: xx/xx/xx

Dates of Hearing: March 13, 2008, April 9, 2008,  
May 2, 2008; May 13, 2008<sup>1</sup>

CLOSED HEARING

Parties to the Hearing:

Mr. Jerry Chromey  
Asst. Director Special Education  
Stroudsburg Area School District  
123 Linden Street  
Stroudsburg, PA 18360

Representative:

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Mr. and Mrs.

Philip Drumheiser, Esquire  
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Date Transcript Received:

May 23, 2008

Date of Decision:

June 16, 2008

Hearing Officer:

Marcie Romberger, Esquire

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<sup>1</sup> The record was held open until May 28, 2008 for the filing of briefs.

## BACKGROUND

Student just completed his 11<sup>th</sup> grade year at the Stroudsburg Area School District. Student has been receiving reading and math support and classroom accommodations for many years but has never been diagnosed as a child with a disability under the IDEA, nor has he received a Section 504 Service Agreement. Student filed for a due process hearing requesting that he be found eligible for services under either law.

## FINDINGS OF FACT

1. Student is enrolled in the Stroudsburg Area School District (hereinafter, "District."). E-2. He just completed the 11th grade. E-2.
2. In Kindergarten, Student's teacher sent extra work home with him because Student wasn't keeping up with the other children. NT 110, 111, 112.
3. Student began receiving reading support services in third or fourth grade. E-25, 35; NT 112.
4. When Student was in 5<sup>th</sup> grade, Student received a below basic score on the math and reading PSSA's. E-30.
5. When he was in 6<sup>th</sup> grade, Student's mother voiced concern about Student's academic performance and requested an evaluation to determine if Student needed special education services. E-25, 33. Instead, Student was assessed by the Instructional Support Team. E-29.
6. The Instructional Support Profile does not have any information about Student from Student's teachers. E-29.
7. After Instructional Support was attempted, the District sent Student a Permission to Evaluate to conduct a multidisciplinary evaluation. The basis for the evaluation was because Student's parents requested it and because the strategies developed for Student by the Instructional Support team enabled Student to demonstrate a bit of improvement, but not enough to satisfy the team. E-28.
8. As background for the evaluation, Student's mother stated Student struggled to do his work but received low grades because he did not understand the work. E-25. She believed he needed assistance in math and reading in a small group setting. E-25.

9. Student also told the District's psychologist he tried to do good work but was disorganized, and became frustrated because he did not understand things. NT 232.
10. Student's standardized scores were determined to be as follows: Verbal IQ - 94, Performance IQ - 90, and his full scale IQ - 92. E-25. All of those scores fell in the average range. E-25.
11. Student had weaknesses in arithmetic, vocabulary, comprehension, digit span, picture completion, coding, picture arrangement, object assembly, and listening comprehension. E-25.
12. Student's achievement test scores showed a 15 point discrepancy in written expression (5<sup>th</sup> percentile) and a 14 point discrepancy in listening comprehension (7<sup>th</sup> percentile) compared to his full scale IQ. E-25.
13. As a result of Student's low score in written expression, Student was also given the Test of Written Language – Third Edition. E-25. On this test, Student score lower than average in spelling and style. E-25. His standard score for Contrived Writing and Written Language Quotient fell within the borderline range (standard scores 75 and 76 respectfully, 5<sup>th</sup> percentile). E-25; NT 236.
14. Although the scores suggested weaknesses in listening comprehension and written expression, Student was not recommended for special education services because those weaknesses were not “significantly lower than his skills in other core academic areas.” E-25. It was recommended Student continue receiving reading support from a reading specialist. E-25.
15. Student's teachers reported to the District's psychologist Student's homework was not always complete, he performed poorly on tests, he did not participate in class, and he needed to improve his effort. E-25.
16. Student's reading teacher reported Student struggled with 6<sup>th</sup> grade non-fiction materials due to instruction in a large group and to increased demands for reading and understanding of text material on grade level. E-25.
17. She suggested Student needed to continue with reading support, small instructional opportunities, and “teacher modeling of the thinking processes and writing processes as his writing is weak [in] content and organization.” E-25.
18. Student's language arts and science teacher reported she gives Student extra time to complete tests and she signs Student's assignment book when he remembers to give it to her. E-25. She also stated Student appears to daydream often and he sometimes loses his place when following along with the instruction. E-25. She believed Student needed to “apply himself more effectively to improve his spelling skills.” E-25.

19. Student's social studies teacher gave Student preferential seating in class to help him attend and study guides to help him prepare for tests. E-25. Student had difficulty staying focused in class. E-25. Student "sometimes appears to be looking right through this teacher when she speaks to him" and sometimes seems like he is attending but is not. E-25. She says Student needs to do all of his assignments and give more attention to instruction in order to be more successful. E-25.
20. Student's math teacher gave Student the opportunity to correct his tests to receive a higher grade. E-25. She also noted Student often appeared to be daydreaming, and frequently did not know what the class is working on when called upon. E-25. She also stated Student needed to be more motivated and improve his effort in order to be successful. E-25.
21. In math, science, and language arts, Student's grades were below a "C." E-25.
22. Two of Student's teachers assessed Student using the Connor's Rating Scale. E-25. Both teachers assessed him similarly. Student's cognitive problems domain was interpreted to fall within the mildly atypical, possible significant problem area; ADHD Index was interpreted as slightly atypical, borderline, should raise a concern. E-25. Student's mother also assessed Student in the same manner on the ADHD Index. E-25.
23. The District's psychologist observed Student in class and found him on task 100% and 97 % of the time. E-25. This is inconsistent with the statements of Student's teachers. E-25; NT 242, 243, 245-246.
24. The District's psychologist summarized her findings by calling Student an underachieving student who needed to engage in daily class discussions and complete his homework daily. She would not discuss the possibility Student had ADHD. She also claimed Student's weaknesses in listening comprehension and written expression were due to those areas not being preferred activities rather than weaknesses as a result of a learning disability. E-25.
25. She did recommend Student continue with support from the reading specialist and small instructional groups when possible. E-25.
26. A team met to discuss whether Student should receive an Individualized Education Program (hereinafter, "IEP"). E-20. The team determined Student was not eligible for special education services. E-21.
27. Student continued to receive reading and math support. NT 115.
28. Also, in 6<sup>th</sup> grade, Student took the Terra Nova test. NT 227. The District's psychologist testified there were no red flags seen from the test results, but she also stated Student was "struggling significantly." NT 227.

29. On November 30, 2006, Student's mother wrote a letter to Student's guidance counselor requesting Student be evaluated for special education services. E-19. She believed Student needed more support than the math and reading support he was receiving. E-19.
30. On March, 22, 2007, a Permission to Evaluate was sent to Student. E-16. The Permission was sent almost 4 months after Student's mother requested an evaluation. E-16, 19. Student's mother signed the form the same day it was provided to her. E-16.
31. An Evaluation Report was issued on August 14, 2007 when Student was entering 11<sup>th</sup> grade. E-15. The District's psychologist is not a certified school psychologist or a licensed psychologist. NT 221, 222.
32. The psychologist observed Student in class. E-15. He needed prompts to begin working, played with items rather than participate in discussion, and made very little eye contact with the teacher. E-15.
33. Student was determined to have a composite score of 104 in Verbal Comprehension; 88 in Perceptual Reasoning; 94 in Working Memory; 80 in Processing Speed; and a 90 full scale score. E-15.
34. Student's full scale score is lower than in 2003, but not by a significant number. E-15, 25.
35. The District's psychologist did not conduct achievement testing that can be correlated to the intelligence testing, so it is difficult to ascertain how they compare. E-15; NT 404-405. <sup>2</sup> However, Student was working only at a 6<sup>th</sup> grade level in math computation and written expression even though he was entering 11<sup>th</sup> grade when he took the test. E-15. His spelling was found to be at the beginning 7<sup>th</sup> grade level. E-15.
36. The District psychologist determined that his 6<sup>th</sup> grade written language equivalency was consistent with his average IQ. E-15.
37. No behavior rating scales were completed although many of Student's teachers complained about Student's attention issues. E-15. It does not appear the District's psychologist considered Student could be other health impaired as a result of ADHD – Inattentive type.

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<sup>2</sup> The District's psychologist does not believe it is important to use achievement tests that compare the full scale score of the intelligence test to the results of the achievement test because the results will only tell you if there is a significant difference, not a severe discrepancy. NT 405-406.

38. In 10<sup>th</sup> grade, Student was enrolled in remedial reading/writing, biology, and algebra. E-15.<sup>3</sup>
39. Most of Student's teachers indicated Student minimally participated in class and Student appeared tired and seemed to fight sleep. E-15.
40. Student's remedial Reading/Writing teacher stated Student needed to work on spelling, grammar, and punctuation, and to expand his vocabulary. E-15.
41. Student's Applied Algebra teacher stated Student barely passed the class. E-15. She also testified Student constantly talked to his girlfriend in class. E-15.
42. Student's remedial Biology teacher stated Student was somewhat successful at functioning on grade level without any interventions and did not function successfully without interventions when he chose not to do his work. E-15. Student's teacher stated Student "simply needs to work harder at staying on task and completing assignments." E-15.
43. Student's science teacher stated Student appeared to do nothing outside of class regarding science. E-15.
44. Remedial Biology was a co-taught class. E-15.
45. Student's vocational/technical teacher indicated Student could not function on grade level without interventions. E-15. Student was provided study guides, study groups, modified tests, and testing in a quiet area. There was also a paraprofessional in the classroom. E-15.
46. Student indicated he had difficulty in some classes and that he asked for help from one teacher and did not receive any assistance. E-15.
47. Student was allowed to attend a study group which helped his grades. E-15. He also stated he benefited from the additional English teacher in his class. E-15.
48. Student indicated he had difficulty understanding the material in science class. E-15.
49. Student admitted he talked to his girlfriend and his friends in class. He said it was to seek help from his friends or girlfriend. NT 197. He believes that is how he has been able to be somewhat successful in class. NT 197.
50. The District's psychologist determined Student was not eligible for special education services because he did not exhibit a severe discrepancy between his

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<sup>3</sup> The District objected to the admission of portions of the High School course book as an exhibit on the last day of the hearing by the Parents. I will permit the admission of this exhibit because there was quite a lot of testimony regarding this document in a previous hearing although the document itself was not admitted.

- achievement and intellectual abilities. E-15; NT 251, 260. She does not have a set definition of “severe discrepancy,” nor does she have a specific discrepancy that she identifies as severe. NT 404, 405. She did not review Student’s response to intervention in making her eligibility determination because the District does not use that model to determine eligibility. E-15; NT 342.
51. She also felt Student was succeeding in regular education even though Student’s grades were not very good. E-25; NT 285.
  52. Although the Evaluation Report was dated August 14, 2007, no meeting to discuss the report was held until October 18, 2007 – over two months from the date of the report. E-11, 15.
  53. On October 4 and 15, 2007, Student was seen by a private psychiatrist. E-13. The reason for the evaluation was Student did not believe he was getting the help he needed at school, and he was having difficulty with studying, concentration, and forgetfulness. E-13. Student told the psychiatrist he disengages when he receives too much information in a class and then has to fight sleep as a result of the disengagement. E-15.
  54. On October 15, 2007, the psychiatrist diagnosed Student with Attention Deficit Hyperactivity, predominantly Inattentive type (hereinafter, “ADHD.”). E-12. He concluded the ADHD impaired Student’s ability to function academically. E-12.
  55. On October 21, 2007, Student’s psychiatrist wrote an evaluation report based upon his evaluation of Student. E-13. His results conflicted with the results from the District’s evaluation. E-13. The psychiatrist concluded Student had been suffering for many years from a poor ability to concentrate and complete tasks, distractibility, day dreaming, poor focus, forgetfulness, and issues with working memory. E-13.
  56. Student’s psychiatrist diagnosed Student with ADHD and a learning disability not otherwise specific. E-13. He recommended Student receive educational supports. E-13.<sup>4</sup>
  57. On November 5, 2007, a meeting was held to determine if Student was a protected handicapped student under Chapter 15. Two out of three teachers rated Student mildly atypical for cognitive problems/inattention and slightly atypical on the Conner’s ADHD index. E-9. Student’s science teacher also made comments regarding Student such as: Student is poor at spelling and arithmetic, fails to finish what he starts, does not follow through on instructions, and fails to finish school work. E-9

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1. <sup>4</sup> The District’s Special Education Director testified she received a copy of this on March 4, 2008. E-13; NT 479, 480. Student’s mother admitted she did not provide the document to the District until around the beginning of March, 2008. NT 144.

58. Student's science teacher and another teacher described Student as having a short attention span and lacking interest in schoolwork. E-9.
59. The team determined Student was not eligible for accommodations under Chapter 15. E-9. Student's mother disagreed with the team's determination. E-9.
60. On November 5, 2007, the District requested permission to complete a psychiatric evaluation of Student. E-10. Student's mother wanted the District to fund a comprehensive evaluation with Student's psychiatrist instead, but the District refused. E-9. Student's mother refused to provide consent to the District to perform the psychiatric evaluation and requested a due process hearing. E-10.
61. The District agreed to fund an independent educational evaluation. E-8.
62. An independent educational evaluation was conducted on November 19, 2007. E-4.
63. On a test of intelligence, Student functioned from mildly impaired to average. E-4. He was mildly delayed in processing speed and long-term retrieval. E-4. The independent evaluator concluded Student is unable to make associations with previously learned material and has difficulty recalling information. E-4. Student also has difficulty completing work based upon his processing speed. E-4. The independent evaluator stated Student's teachers are likely to blame Student for his difficulties, which has occurred. E-4.
64. Student's discrepant scores on the Verbal Comprehension Index and the Processing Speed Index on the WISC-IV completed by the District in August, 2007 is significant at the .01 level, meaning it occurs in less than 1 out of 100 times and only 6.6 of the standardized populations has a discrepancy of this size. E-4.
65. The independent evaluator disagreed with the District's conclusion Student's intelligence was in the lower limits of the average range. E-4. He concluded Student's intelligence, based upon the General Ability Index was solidly in the average range. E-4.
66. Based on discrepancies between Student's General Ability Index and his processing speed and cognitive fluency scores, and based on Student's response to interventions the District provided to Student over the years, the independent evaluator concluded Student has a learning disability. E-4; NT 30-31.
67. The independent evaluator believes Student's inattention in class is caused by his learning disability. E-4.



68. The independent evaluator also diagnosed Student with ADHD-Inattentive type. E-4; NT 30-31, 97-98.
69. The independent evaluator took note that Student's 2003 evaluation resulted in a standard deviation discrepancy between his intelligence and his written expression standard scores. E-4. He also noted the many comments made from Student's mother and teachers in that evaluation were symptoms of ADHD inattentive type. E-4. The independent evaluator believed Student had a learning disability and ADHD in 2003. NT 74.
70. A reevaluation report was compiled by the District on February 15, 2008. E-2. No Permission to Evaluate was ever requested prior to completing the reevaluation. NT 179-180. In this report, Student's reading teacher stated Student "does not appear to have any trouble reading" and appears to be reading at an average speed. E-2. This is speculation. There was no testing completed by this teacher to determine whether Student was having difficulty. E-2.
71. Student's math teacher gave Student the ability to re-do a test when it seemed Student has given up. E-2. The summary of the teacher's comments in this evaluation were more subdued than his comments regarding Student on the Connor's rating scale. E-2, 9.
72. This District reevaluation again determined Student was not in need of special education services as either a child with a learning disability or other health impairment as a result of his ADHD. E-2.
73. Student himself sought assistance from an advocate in order for him to get supports in school. NT 203.
74. Student began working part time beginning January 17, 2007. E-39.<sup>5</sup> Student worked 20 hours per week, usually from 5:30 p.m. to 9:30 p.m. If he had homework, he would get it done before he left for work. NT 207, 208-209.
75. Student was having difficulty staying awake in class prior to beginning his part time employment. E-40.

## ISSUES

Is Student eligible as a Student with a disability under the IDEA and Chapter 14?

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<sup>5</sup> The District objected to the admission of E-39 and E-40. However, as the District was the party to raise Student's work as the basis of his sleep issues during cross examination of Student's mother, I believe this was appropriate rebuttal and will allow the documents into evidence.

Is Student eligible under Section 504?

Is Student entitled to compensatory education from December, 2005?

## DISCUSSION AND CONCLUSIONS OF LAW

### Burden of Proof

Following [Schaffer v. Weast, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 \(Nov. 14, 2005\)](#), and [L.E. v. Ramsey Bd. of Educ., 435 F.3d 384 \(3d Cir. 2006\)](#), the burden of persuasion in IDEA cases, as one element of the burden of proof, is now borne by the party bringing the challenge. As it was Student who filed this due process request, he has the burden of persuasion. Pursuant to [Schaffer](#), though, it only comes into play when neither party introduces preponderant evidence and, as a result, that evidence is fairly evenly balanced.

### Special Education Services

The Individuals with Disabilities Education Act (hereinafter, “IDEA”) entitles each child with a disability a free appropriate public education (hereinafter, “FAPE”). The IDEA defines FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge to the child’s family. 34 C.F.R. § 300.17. Special education for a student with disabilities can include instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. 34 C.F.R. § 300.39.

#### A. Evaluation

In order to be entitled to FAPE, a child must have a disability established under the IDEA. In order to determine if a child has a disability under IDEA, a comprehensive evaluation must be completed. 34 C.F.R. §300.301(a). In conducting an initial evaluation, a school district must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability.” 34 C.F.R. § 300.304. A child must be assessed in all areas related to the suspected disability, including social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304. The evaluation must be sufficiently comprehensive to identify all of the child’s special education and related services needs. 34 C.F.R. § 300.304.

The District’s Evaluation from April, 2003 showed Student had a discrepancy in written expression and symptoms of ADHD which were being exhibited in the

classroom. P-25.<sup>6</sup> Student had these issues even though Student had been receiving accommodations from many of his teachers.

Student was diagnosed with ADHD Inattentive type by two individuals authorized to give that diagnosis, yet the District, who has no one qualified to make that diagnosis, did not accept this diagnosis and provide Student with services or accommodations under either the IDEA or Section 504. NT 334, 335. Student was also diagnosed with a learning disability by both private individuals separately, yet this was not accepted by the District. NT 339, 340.

Student should have been deemed eligible under IDEA and Chapter 14 under other health impairment as a result of his ADHD and as a child with a learning disability as a result of the discrepancy between his intelligence and achievement and the lack of response to intervention. Both diagnosis affected his learning to the point that special education services should have been provided.

#### Section 504 of the Rehabilitation Act

Section 504 states: An otherwise qualified individual with a disability in the United States, . . . shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .@ 29 U.S.C.S. § 794. The substantive requirements of the Rehabilitation Act in the education context are equivalent to the requirements set forth in the Individuals with Disabilities Education Act, [20 U.S.C. § 1400](#) et seq. See [Ridgewood Bd. of Educ. v. N.E.](#), 172 F.3d 238, 253 (3d Cir. 1999) (citing [W.B. v. Matula](#), 67 F.3d 484, 492-93 (3d Cir. 1995)). The regulations implementing the Rehabilitation Act provide that districts "shall provide a free appropriate public education to each qualified handicapped person who is in the district's jurisdiction." [34 C.F.R. § 104.33\(a\)](#); see also [W.B.](#), 67 F.3d at 493.

To establish a violation of § 504, Student must demonstrate that (1) he is disabled as defined by the Act;<sup>7</sup> (2) he is "otherwise qualified" to participate in school activities; (3) the school or the Board receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. [Ridgewood Board of Education v. N.E.](#) 172 F.3d 238, 253 (3d Cir. 1999); [J.F. v. School District of Philadelphia](#), 2000 U.S. Dist. LEXIS 4434, No. 98-1793, (E.D.Pa. 2000); [Nathanson v. Medical College of Pennsylvania](#), 926 F.2d 1368, 1380 (3d Cir. 1991); [34 C.F.R. § 104.4\(a\)](#). In addition, to be liable, the District must have known or have been

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<sup>6</sup> The independent evaluator took note that Student's 2003 evaluation resulted in a standard deviation discrepancy between his intelligence and his written expression standard scores. E-4. He also noted the many notations made from Student's mother and teachers regarding symptoms of ADHD inattentive type. E-4. The independent evaluator believed Student had a learning disability and ADHD in 2003. NT 74.

<sup>7</sup> A "Handicapped person" under Section 504 of the Rehabilitation Act is defined as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 34 C.F.R. §104.3(j).

reasonably expected to know of Student's disability. [Nathanson, 926 F.2d at 1381](#). However, plaintiffs "need not establish that there has been an intent to discriminate in order to prevail under § 504." [Id. at 1384](#). See, [Alexander v. Choate](#), 469 U.S. 287, 297, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985); [Ridgewood](#), 172 F.3d at 253; [Matula](#).

As a resident of the District, Student was "otherwise qualified" to participate in school activities at the District. The issue then, is whether Student was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. Student has argued that the District did not provide him with an appropriate education because the District should have provided him with a § 504 Service Agreement and/or IEP since the evaluation in 2003

An "appropriate" education "is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met." [34 C.F.R. § 104.33\(b\)\(1\)](#). There are no bright line rules to determine when a school district has provided an appropriate education as required by § 504. [Eric H. v. Methacton Sch. Dist.](#), 265 F. Supp. 2d 513 (E.D.PA 2003).

What is known is that §504 requires a recipient of federal funds to make "reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped" person. [34 C.F.R. §104.12 \(a\)](#). Although the Third Circuit has not specifically addressed what is a "reasonable accommodation" in relation to the Rehabilitation Act's requirement of an "appropriate" education, Courts have concluded that a reasonable accommodation analysis comports with the Third Circuit's explanation that an "appropriate" education must "provide 'significant learning' and confer 'meaningful benefit,'" [T.R. v. Kingwood Township Bd. of Educ.](#), 205 F.3d 572, 577 (3d Cir. 2000) (quoting [Polk v. Cent. Susquehanna Intermediate Unit 16](#), 853 F.2d 171, 182, 184 (3d Cir. 1988), but that it "need not maximize the potential of a disabled student." [Ridgewood](#), 172 F.3d at 247; [Molly L v. Lower Merion School District](#), 194 F. Supp. 2d 422 (E.D.PA 2002).

Student had been receiving accommodations from his teachers since elementary school. The District should have provided Student with, at the very least, a § 504 Service Agreement.

### Compensatory Education

The Federal Courts have held the right to compensatory education accrues when the school knows or should know that its IEP is not providing an appropriate education. [M.C. v. Central Reg. Sch. Dist.](#), 81 F.3d 389, 395 (3d Cir. 1996). If a school district fails to correct the situation, "a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." [M.C.](#), 81 F.3d at 397 (noting that "[t]he school district . . . may not be able to act immediately to correct and inappropriate IEP; it may require some time to respond to a complex problem"). [P. v. Wissahickon Sch. Dist.](#), 2007 U.S. Dist. LEXIS 44945, (E.D.Pa. 2007).

Thus, the “right to compensatory education accrues when the school knows or should know that the student is receiving an inappropriate education.” *Id.* As to the timeframe, “[t]he school district, however, may not be able to act immediately to correct an inappropriate IEP; it may require some time to respond to a complex problem.” M.C. v. Central Reg’l. Sch. Dist., 81 F.3d 389, 397 (3d Cir.), cert. denied, 519 U.S. 866 (1996). Thus, M.C.’s corollary:

a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.

Student has been receiving accommodations informally from his teachers and has been receiving supports in reading and math from the District for many years. NT 403; E-25. Neither has helped Student. Student has not successfully responded to the interventions of the District and is in need of special education supports and services as a child with a disability under IDEA. As a result, Student is entitled to compensatory education for the entire school day for every day Student was in school from December, 2005 to the present. E-36; NT 78.

I give Student credit for self-advocating and attempting to seek help for himself. Student was honest with the District’s psychologist by telling her his frustrations and his desire to receive assistance. When he could not get it from the District, he initiated this due process hearing. When many other high school Students try to stop receiving support so as not to be different, Student was mature enough and cared enough about his school work to seek the help he needs. For this he should be commended, not attacked by teachers who believe he is not working hard enough.

## ORDER

Student is eligible as a Student with a disability under the IDEA and Chapter 14.

Student is eligible under § 504 as a Protected Handicapped Student.

Student is entitled to compensatory education from December, 2005 to the present.  
Compensatory education is granted for a full day for every day Student was in school from December, 2005 to the present.

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Marcie Romberger, Esquire