

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

Pennsylvania

## Special Education Hearing Officer

### DECISION

ODR No. 9410/08-09AS

Child's Name: D.D.

Date of Birth: <redacted>

Dates of Hearing: 3/23/09, 5/19/09, 6/3/09,  
8/24/09, 8/31/09, 1/28/10,  
1/29/10, 3/23/10

### CLOSED HEARING

Parties to the Hearing:

Parents

<Parents>

School District

School District of Philadelphia  
440 N. Broad Street  
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney

Ilene Young, Esquire  
Law Offices of Ilene Young, Esquire  
50 East Court Street, Main Floor  
Doylestown, PA 18901

School District Attorney

Mimi Rose, Esquire  
Office of General Counsel  
440 N. Broad Street, Third Floor  
Philadelphia, PA 19130

June 11, 2010

June 26, 2010

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

<Student> (Student), an 11 year old child diagnosed with autism, was enrolled in and attended a Philadelphia School District elementary school during the 2009/2010 school year. Although a resident of the District at all times relevant to the period for which his Parents seek compensatory education, Student did not attend school at all during the 2008/2009 due to Parents' conviction that the District's proposed program and placement for that school year would place Student in the same type of inappropriate classroom setting in which his academic progress stalled and his behavior regressed during the 2006/2007 and 2007/2008 school years.

This case has had a long and difficult history, marked by a delay in scheduling the hearing to permit Parents to obtain counsel, followed by an amended complaint that re-set the timelines, and the parties' waxing and waning conviction that all matters in dispute could be amicably resolved. Although the parties agreed to a program and placement for the 2009/2010 school year, they were ultimately unsuccessful in resolving any of the disputes relating to the 2008/2009 school year and the two school years preceding Parents' October 2008 filing of their original due process complaint. The due process hearing was ultimately conducted over 8 sessions between March 2009 and March 2010.

For the reasons explained below, Student will be awarded full days of compensatory education for the 2007/2008 and 2008/2009 school years, as well as additional compensatory education for part of the 2006/2007 school year, for the District's failure to offer an appropriate program and placement between the end of February 2007 and the beginning of the 2009/2010 school year, as well as ESY services for the summers of 2007 and 2009.

## **ISSUES**

1. Did the School District <Redacted> fail to offer and provide an appropriate program and placement for <student> at any time from October 2006 through the beginning of the 2009/2010 school year?
2. If so, for what period, in what amount, and in what form should <student> be awarded compensatory education?

## **FINDINGS OF FACT**

1. <Student> (Student) is an 11 year old child, born <redacted>. <redacted> is a resident of the School District <Redacted> and is eligible for special education services. (Stipulation, N.T. p. 21)
2. Student has a current diagnosis of autism in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1)(i); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 92).
3. Student began attending a District school age program as a 1<sup>st</sup> grade student during the 2005/2006 school year, and after a brief, unsuccessful period in <redacted> home school, was moved, at Parents' request, to a full-time autistic support class in a different elementary school within the District in November 2005. (N.T. pp. 46, 878)
4. Student remained in that autistic support class, with the same teacher, through the remainder of <redacted> 1<sup>st</sup> grade year, and the beginning of 2<sup>nd</sup> grade (2006/2007 school year), until November 2006. (N.T. pp. 878, 879)
5. Although Student's attention span was short, and self-control and academic skills were weak when <redacted> began in the autistic support classroom, Student's academic and behavior skills improved considerably by the end of the 2005/2006 school year. (N.T. pp. 878—882; S-10)
6. During the period 11/05 to 11/06, instruction was presented to Student in short time periods using discrete trial training methods. (N.T. pp. 880, 895)
7. An IEP developed for Student in March 2006 placed <redacted> academic skills at a kindergarten/beginning 1<sup>st</sup> grade level. Academically, <redacted> was described as a bright child with a good understanding of basic reading skills. By the end of 1<sup>st</sup> grade, Student had exceeded expected progress on most short-term behavioral, life-skills and academic objectives, with exceptional progress on work-related skills, such as increasing time on task without avoidance and disruptive behaviors (N.T. pp. 892, 895, 896, 901, 922; S-10, pp. 6, 10—19)
8. Parents acknowledged that Student's made meaningful progress during most of the time Student was placed in the autistic support class in the fall of 2005 until the early part of the 2006/2007 school year. (N.T. pp. 842, 843)

9. During the fall of the 2006/2007 school year, after several younger children who needed more of the teacher's time and attention were placed in the class, Student's school behaviors began to deteriorate. (N.T. pp. 68—70, 902, 903)
10. At Parents' request and with the concurrence of Student's IEP team, Student began to transition to another full-time autistic support class, in the same school, which included older children (3<sup>rd</sup>–5<sup>th</sup> grade age levels). The transfer was completed toward the end of November 2006. (N.T. pp. 69, 722, 724, 725, 913, 914, 934, 936; P-7, p. 45)
11. A new IEP dated November 15, 2006 was developed as Student was completing the move to the other autistic support class. After approximately the first quarter of 2<sup>nd</sup> grade, present levels of performance described improvements in task-related behavior, math, reading and self-help skills. Student was reported to be working at a beginning second grade level in reading (sight word development) and math, but lagging in age-appropriate social and behavior skills, as well as reading comprehension. Staying focused and performing adequately in small groups continued to be areas of need and an increase in verbal aggression was noted. (N.T. pp. 923, 936, 937; P-30, pp. 5, 6)
12. At about the same time (November 2006) Student's IEP team, at Parents' request, determined that a full reevaluation was warranted. It was completed and a reevaluation report (RR) was issued in February 2007. The reevaluation included standardized, norm-referenced intelligence<sup>1</sup> and achievement<sup>2</sup> tests administered by the District school psychologist. Parents and Student's teacher also completed rating scales designed to assess Student's adaptive functioning.<sup>3</sup> (N.T. pp. 499, 500, 507—513, 914, ; P-32, S-1)
13. The WISC-IV intelligence test yielded the following scores: Verbal Comprehension Index-53; Perceptual Reasoning Index-59; Processing Speed Index-56; Working Memory Index-54; Full Scale IQ (FSIQ)- 46 On the ABAS-II adaptive skills assessment, both Parent's and teacher's ratings yielded scores in the borderline to extremely low range of adaptive functioning. The teacher's General Adaptive Composite Score of 73 (borderline range) was higher than Parent's composite score of 65 (extremely low range). (N.T. pp. 497—503, 507—514; S-1, pp. 8—10, 13)
14. The evaluator noted that Student was "fidgety" throughout the WISC-IV test and made increased efforts to escape the tasks as they increased in complexity and required higher language processing skills. The evaluator further noted that Student remained seated most of the time and was easily re-directed, and, therefore, considered Student cooperative overall, and the test results a valid estimate of his cognitive potential, which she placed in the MR (mentally retarded) range. Based upon the WISC-IV and the

---

<sup>1</sup> WISC-IV (Wechsler Intelligence Scale for Children-Fourth Edition)

<sup>2</sup> WIAT-II (Wechsler Individual Achievement Test-Second Edition)

<sup>3</sup> ABAS-II (Adaptive Behavior Assessment System-2<sup>nd</sup> Edition ) and BASC-II (Behavior Assessment System for Children-Second Edition)

adaptive skills assessment results, the District's school psychologist identified Student's eligibility category as MR. (N.T. pp. 499, 513; S-1, pp. 3, 14)

15. The WIAT-II achievement test scores for both math and reading were higher than the WISC-IV results would predict, especially with respect to reading: Math Composite-56, Math Reasoning-55, Numerical Operations- 68; Reading Comprehension-70, Reading Composite-80; Word Reading-94; Pseudo-word Decoding-81. The unusual discrepancy between the intelligence and achievement testing, as well as the adaptive behavior scores in some domains, indicate that the WISC-IV FSIQ score underestimates Student's learning potential and that <redacted> is not mentally retarded. (N.T. pp. 92—101; P-20, pp. 4—18, P-23, S-1, pp. 7, 8)
16. Another IEP, dated March 30, 2007 was developed for Student without Parents' participation. Relations between Parents and teacher had become tense around the time the reevaluation report was completed. (N.T. pp. 958, 961, 990)
17. The March 30, 2007 IEP included goals and short term objectives for literacy, math, speech/language, behavior, interpersonal communication, recreation and leisure. Present levels for math and reading were again reported to be at an early 2<sup>nd</sup> grade level, with reading comprehension lagging behind sight words. (N.T. p. 974; P-26, S-15)
18. A behavior plan developed close to the time of the new IEP identified cursing and hitting as target behaviors to decrease. The behavior plan identified included goals, decreasing the behaviors by 75%, and developing a positive replacement behavior, appropriate interactions with teachers, as well as methods of evaluating progress toward the goals. The behavior plan did not describe the functions of the targeted behaviors or any strategies for replacing the behaviors. (S-16)
19. Between November 2006 and the time the RR was completed, Student's negative behaviors became more intense and unpredictable, resulting in frequent melt-downs that often led trips to the nurse due to the effects of extended crying on Student's asthma and telephone calls to Parents to calm Student or take <redacted> home. (N.T. pp. 174—178, 181, 731—736, 937, 938, 952, 992; P-7)
20. Parents made unannounced visits to observe Student's classroom on a fairly regular basis. (N.T. pp. 735, 968, 969)
21. By the end of the 2006/2007 school year, the relationship between Parents and Student's 2<sup>nd</sup> grade teacher had become increasingly strained, culminating in a contentious final meeting in June 2007. Parents were extremely upset about Student's experiences in the 2<sup>nd</sup> grade autistic support classroom and requested a transfer to another school. (N.T. pp. 762—764, 966—968, 970, 991—993, 998—1001; P-49, p. 20)
22. The 2<sup>nd</sup> grade teacher recalled that Student continued to make academic progress in developing sight word vocabulary and math, noting that Student began working with two digit numbers. Data collection sheets completed between April and June 2007 disclosed

- little, if any, progress, in speech/language (re-telling stories), reading and math skills. Student's greatest gains were recorded in behavior and life skills categories, such as recreation/leisure and inter-personal communications. (N.T. pp. 939—944; P-36)
23. Although both the November 2006 and March 2007 IEPs indicated Student's ESY eligibility, the District did not offer an ESY program for the summer of 2007. (N.T. p. 765; P-30, p. 27, S-15, p. 18)
  24. Student was assigned to an autistic support class in a different elementary school for the 2007/2008 school year (3<sup>rd</sup> grade), with approximately 8 other students. The teacher recalled that at the beginning of the school year, Student was at grade level in reading, at least with respect to sight word vocabulary, which he described as very strong, but noted weaker comprehension skills. Student's classroom behavior continued to fluctuate, with several issues on some days, few or none on other days. (N.T. pp. 204--208, 1082, 1084, 1085)
  25. In October 2007, curriculum-based assessments conducted by the teacher placed Student approximately a year below the 3<sup>rd</sup> grade regular education level. Word identification (2-6) and word attack (2-5) were well within a second grade level, but reading passage comprehension was measured at only a mid-1st grade level (1-4). (N.T. pp. 1093, 1094; S-19)
  26. Although Student had TSS services, Student's classroom behaviors again escalated, resulting in frequent removal to an accommodation room to calm down. Frequent bouts of crying exacerbated Student's asthma. (N.T. pp. 219, 774—782, 1085)
  27. Parents continued the practice of frequent (2x/month) classroom visits to monitor Student's progress and functioning. (N.T. pp. 218, 795)
  28. A meeting to develop a new IEP for Student was held in February 2008. The final draft of the IEP was dated March 7, 2008. Present levels of performance in the March 2008 IEP were based upon the October 2007 assessments and additional assessments conducted in January 2008, which again demonstrated a considerable difference between word reading (50% of 4<sup>th</sup> grade words; 75% of 3<sup>rd</sup> grade words) and comprehension (5 of 6 questions correct at the primer level). (N.T. pp. 1113, 1115, 1150; P-27, pp. 1, 6; S-21, p. 1)
  29. Math and reading goals in the February/March 2008 proposed IEP provided for reading and math instruction at a beginning 2<sup>nd</sup> grade level. (P-27, pp. 13, 15)
  30. By May 2008, Student's behaviors in school had so deteriorated that an inter-agency meeting was held to discuss a behavioral treatment plan. (N.T. pp. 796—801; P-3, p. 6—9)
  31. Student attended a District ESY program during the summer of 2008. (N.T. pp. 807, 808)

32. Because Parents and the District were ultimately unable to agree on a placement for the 2008/2009 school year, Student did not attend school in the District during that school year. (N.T. pp. 40, 811—819)
33. The District proposed an IEP in September 2008 for Student’s 4<sup>th</sup> grade year that again placed Student’s instructional level at the beginning of 2<sup>nd</sup> grade for reading and math based upon the results of a District school psychologist’s review of records evaluation report and curriculum-based assessments conducted at the end of the 2007/2008 school year. (N.T. pp. 1165, 1167—1169; P-28, p. 6, S-4)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### APPLICABLE LEGAL STANDARDS

The statutory obligation to provide for the educational needs of children with disabilities was recently summarized by the Court of Appeals for the 3<sup>rd</sup> Circuit as follows:

The Individuals with Disabilities Education Act (“IDEA”) requires that a state receiving federal education funding provide a “free appropriate public education” (“FAPE”) to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan (“IEP”). 20 U.S.C. § 1414(d). The IEP “must be ‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Shore Reg’l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir.2004) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)).

*Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3<sup>rd</sup> Cir. 2009)

The centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir.2003). The IEP consists of a detailed written statement developed for each child summarizing the child’s abilities, how the disability affects performance, and measurable annual goals. *Id.* The IEP specifies the special education services and supplementary aids the school will provide the child, explaining how these will allow the child to progress. *Id. Damian J. v. School District of Philadelphia*, 2008 WL 191176 (E.D.Pa. Jan. 22, 2008) at \*1, FN.2.

### Due Process Hearings/Burden of Proof

The IDEA statute and regulations provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3<sup>rd</sup> Cir. 2009)

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, in this case, because Parent has challenged the appropriateness of the District's program/placement for several school years, Parents must establish that the District's educational placements for Student during the periods in dispute were not reasonably calculated to assure that Student would receive a meaningful educational benefit from the proffered services.

Since the Court limited its holding in *Schaffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding, the burden of proof analysis affects the outcome of a due process hearing only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position.

### Compensatory Education Standards

An eligible student who has not received more than a *de minimis* educational benefit is entitled to correction of that situation through an award of compensatory education, an equitable "remedy is designed to require school districts to belatedly pay expenses that [they] should have

paid all along.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3<sup>rd</sup> Cir. 2009)(internal quotation marks and citation omitted). Compensatory education is awarded for a period equal to the deprivation and measured from the time that the school district knew or should have known of its failure to provide FAPE. *Mary Courtney T. v. School District of Philadelphia* at 249; *M.C. v. Central Regional School District*, 81 F.3d 389, 395 (3<sup>rd</sup> Cir. 1996); *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District* at 396.

#### CLAIMS/ISSUES IN DISPUTE

The District characterizes the core of the dispute between the parties in this matter as a significant difference in their understanding of the Student’s ability to participate in and benefit from academic learning. After the February 2007 reevaluation, the District’s school psychologist determined that Student’s eligibility category should be MR, based upon an FSIQ score of 46 on the WISC-IV, indicating at least by the FSIQ score, that Student cannot be expected to make significant academic progress, thereby justifying the obvious failure of the District to provide a program that permitted Student to advance beyond the academic levels <redacted> had reached in reading and math by the beginning of second grade, when <redacted> was not far below grade level. (FF11) By the beginning of the 2008/2009 school year, Student remained at a beginning 2<sup>nd</sup> grade instructional level, the same level <redacted> was reported to have reached in November 2007 when <redacted> was in 2<sup>nd</sup> grade. (FF 11, 33) In addition to the overwhelming evidence that the District’s program and placement during that period provided no opportunity for meaningful academic progress, the record also establishes that the encouraging

behavioral progress Student made during the 2005/2006 school year was reversed by the end of the 2007/2008 school year. (FF 5, 19, 26, 30)

The record does not support the District's contention that Student's regression during that period can be explained primarily by extremely limited cognitive potential and adaptive skills. An independent school psychologist who reviewed all evaluation reports, testified persuasively that the FSIQ score of 46 yielded by the District's evaluation, described as the extremely low range, is not a true measure of Student's cognitive potential because it is inconsistent with Student's higher scores on the WIAT-II standardized achievement test. (FF 13, 15) Both the independent school psychologist who testified at the hearing and an independent school psychologist who evaluated Student at District's expense, and whose report was admitted to the record (P-20, pp. 4-18), concluded that the results of the cognitive potential assessments underestimated Student's true ability. Neither independent psychologist found the MR designation accurate. (FF 15; P-20, p. 12, P-23)

Moreover, the record also establishes that despite the February 2007 standardized test results on which the District bases its arguments concerning Student's very limited cognitive potential, the District's school psychologist's and the Parents' independent psychologist's assessments of Student's expected functioning are consistent—and consistent with Student's higher functioning at the end of 1<sup>st</sup> grade and beginning of 2<sup>nd</sup> grade.

The District's psychologist testified concerning Student's abilities as follows:

Mental retardation doesn't mean that a student is not able to learn. It means that they learn at a much slower pace, and ultimately that some of their thinking and reasoning abilities may be immature compared to children their age.

N.T. p. 523, l. 3–8.

Q. Would you have some idea of what you thought based on that IQ his functioning was at that particular time?

- A. I really don't make overall assumptions just based on one score, but if I had looked at that score I would expect a student to have significant difficulty with higher order thinking skills and also some -- I would expect him to be less independent than a typical peer at his age.

N.T. p. 544, l. 4—13.

Parent's independent psychologist, who testified that Student's true cognitive potential is likely closer to an IQ score of 80, also described Student's functioning as slower than a child of average intelligence, but certainly capable of learning:

Well, the child with an IQ of 80 you expect to be able to read and to learn. It will be somewhat slower. Those children are typically referred to as slow learners, but they're not mentally retarded. You would expect them to be able to have reading skills close to grade level. You would expect them to have math skills close to grade level as well as written language skills. They certainly do find skill and academic learning to be more challenging than (*sic*) their counterparts of average or better intelligence, but these children can learn and get close to grade level, but it's at a slower pace, but you typically do not have the purely functional curriculum that you would for someone who truly had an IQ of 46.

N.T. pp. 108, l. 12—25; 109, l. 1—2.

The issue, therefore, is not truly whether the parties are far apart in their assessment of Student's intellectual functioning and potential as the District argues. Going beyond the WISC-IV FSIQ score, as the District's school psychologist did in her description of Student's learning potential, the dispute does not truly center on whether Student's eligibility category should have been changed to MR rather than autism, or whether Student can be properly characterized as having Asperger's syndrome or ADHD. Rather, as always, in such cases, the fundamental issue is whether the District developed and delivered a program for each school year in dispute that was reasonably calculated to meet all of Student's academic and behavioral needs, which were indisputably significant.

The record in this case leads to the conclusion that Student's lack of progress during most of the 2006/2007 through the 2007/2008 school year, which led to Parents' refusal to send Student to school during the 2008/2009 school year, was due to the District's failure to develop and implement an appropriate program for those school years. The evidence compiled after numerous hearing sessions amply supports Parents' contention that the District failed to provide Student with a free, appropriate public education beginning in the 2006/2007 school year. That conclusion is most tellingly supported by the contrast between Student's progress in 1<sup>st</sup> grade compared to <redacted> 2<sup>nd</sup> and 3<sup>rd</sup> grade years.

Student's 1<sup>st</sup> grade autistic support teacher testified to the impressive academic and behavioral gains Student made in first grade, when <redacted> was taught in an age appropriate class with discrete trial training methods. (FF 5, 6, 7, 11) Parents remained satisfied with Student's progress until the composition of the classroom changed in the fall of 2006. (FF 8, 9, 10) Examining the entire record lays bare the stunning and sad decline Student experienced from the time <redacted> transferred from <redacted> original autistic support class to a different class within the same school building in November, 2006 through the end of the 2007/2008 school year, as Student's academic progress stopped, and <redacted> behavioral issues escalated. (FF 16, 18, 19, 21, 22, 25, 26, 29, 30, 33) In light of Student's lack of academic progress and deteriorating behaviors, and the unresponsiveness of the District throughout that period, Parents certainly cannot be faulted for refusing to send Student to school during the 2008/2009 school year. There is no evidence that the District made a true effort to find an appropriate placement for Student for the 2008/2009 school year and the IEP proposed in September 2008 provided for no academic progress. (FF 33)

Throughout the due process hearing, the District suggested that Parents were unreasonable, seeking to transfer Student to different schools and teachers because they could not accept their child's significant limitations. The record, however, does not support the District's characterization of Parents' beliefs and conduct. The first classroom setting requested by Parents was very successful through 1<sup>st</sup> grade as indicated by the teacher's progress reporting.<sup>4</sup> (FF 7, 11) That teacher's testimony also corroborated Parents' description of why Student was transferred to a different classroom in November 2007. (FF 9, 10; N.T. p. 913) The teacher confirmed that Student's negative behaviors escalated when younger students, transitioning from early intervention, changed the mix of students in her classroom. The changed circumstances led to a regression in Student's functioning due to lack of attention and 1:1 teaching time. (N.T. pp. 902, 903)

There was no testimony from other District witnesses concerning efforts made to continue and build on Student's early progress. The record is devoid of a true functional behavioral analysis, positive behavior support plan or description of instructional strategies to increase reading comprehension and to finally move Student beyond a second grade instructional level. There is no evidence that the discrete trial training methods that had been so successful for Student in 1<sup>st</sup> grade were ever used again. In short, the evidence entirely supports Parents' claims that the District failed to provide an appropriate special education placement and services for Student during most of the period in dispute

---

<sup>4</sup> The teacher's testimony was somewhat confusing in that she first stated that Student entered her classroom in approximately November 2005, which was <redacted> first grade year, but she identified it as kindergarten. The teacher later testified that she began teaching <redacted> in the 2004/2005 school year, which was <redacted> kindergarten year. See N.T. pp. 878, 917. There is no question, however, that she taught Student for most, if not all, of <redacted> 1<sup>st</sup> grade year and part of 2<sup>nd</sup> grade. Since the period in dispute in this matter did not begin until the fall of 2006, near the beginning of 2<sup>nd</sup> grade, the number of years Student was in the first autistic support class does not affect the issues or the outcome of this case.

In accordance with the applicable legal standards, however, the compensatory education award will begin only after allowing a reasonable period for the District to offer Student an appropriate educational placement after his progress stalled in the fall of 2006. The District did take reasonable action in moving Student to a class with older children and initiating a full reevaluation. By the time the reevaluation was completed on February 22, 2007, however, the District should have realized that the new placement was unsuccessful and taken action to correct the deficiencies in that program. The compensatory education award, therefore, will begin at that point.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the <redacted> District is hereby **ORDERED** to take the following actions:

1. Provide <student> with full days of compensatory education for the following periods:
  - a. Each day school was in session from February 22, 2007 through the last day of the 2006/2007 school year;
  - b. Each day school was in session during the 2007/2008 school year;
  - c. Each day school was in session during the 2008/2009 school year;
  - d. The summers of 2007 and 2009, for the same number of hours ESY services were provided to <student> during the summer of 2008.
  
2. The compensatory education award shall be measured and provided in accordance with the following terms and conditions:
  - a. The value of the award shall be computed by reference to the total cost per day to educate a child in a full-time autistic support class in the Philadelphia School District, measured by the proportional cost of the salary and fringe benefits of a full-time autistic support teacher in each separate period listed above. The compensatory education award shall include the proportional cost of speech/language and occupational therapy services for the 2008/2009 school year only.
  - b. Student's Parents shall determine the specific type of compensatory education services, which will be limited to academic and/or psychological/counseling/behavioral services designed to meet Student's identified needs;

- c. Parents may use part of the compensatory education award to pay for the services of a knowledgeable, independent educational consultant to help them choose appropriate compensatory education services, provided, however, that any such consultant may derive no financial benefit from the services s/he recommends or from the providers of such services;
- d. The compensatory education services shall be in addition to, and shall not be used to supplant, educational services and/or products/devices that should appropriately be provided by the School District through Student's IEP to assure meaningful educational progress;
- e. Compensatory education services may occur after school hours, on weekends and/or during the summer months when convenient for Student and Parents;
- f. The hours of compensatory education may be used at any time from the present to Student's 21<sup>st</sup> birthday, and may include additional instruction in reading, math and/or other skills needed for independent living after Student completes the School District curriculum and graduates, if that occurs before he reaches <redacted> 21<sup>st</sup> birthday;
- g. The compensatory education award may not be used for anything considered post-secondary education or vocational training without the School District's explicit consent.
- h. Parents may use part of the compensatory education award to reimburse costs they incurred in providing Student with educational or related services during the 2008/2009 school year and the summer of 2007.

It is further **ORDERED** that any claims or issues not explicitly considered or adjudicated in this order or the accompanying decision are deemed to be denied and dismissed.

*Anne L. Carroll*

---

Anne L. Carroll, Esq.  
HEARING OFFICER

June 26, 2010