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Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: CH

Date of Birth: xx/xx/xx

Dates of Hearing: 3/30/09, 4/2/09, 4/21/09,
5/15/09, 5/29/09, 6/9/09, 6/11/09

CLOSED HEARING

ODR No. 9725/08-09 AS

Parties to the Hearing:

Representative:

Parent

Parent Attorney:

Ms.

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School District

School District Attorney

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Date Record Closed:

July 13, 2009

Date of Decision:

July 28, 2009

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student has received special education services as a child with specific learning disabilities in reading, math and written expression since entering Wilson School District as a second grade student. Student had been evaluated in first grade and determined to be IDEA eligible by the district in which Student was previously enrolled. The District did not conduct a re-evaluation which included administration of standardized tests to measure cognitive potential or achievement until April 2009, after the due process hearing began.

By the middle of Student's 7th grade school year (2007/2008), Parent's concerns about Student's progress, particularly in reading, led Student's to obtain tutoring at [redacted] Center. The District also increased Student's reading services at that time by adding a period of instruction based on the content of the science curriculum at Student's grade level in lieu of Student's regular education science class.

In the middle of the 2008/2009 school year, Parent filed a due process complaint alleging IDEA violations arising from the District's failure to conduct a full evaluation of Student, inappropriate IEPs resulting in a lack of meaningful academic progress in reading, writing and math, denial of ESY services during the summer of 2007 and inadequate services during the summer of 2008. In addition to compensatory education, Parent seeks reimbursement for Student's instruction at Center and appropriate services for the 2009/2010 school year. Parent's additional claims for an IEE and an independent assistive technology evaluation were obviated by the District's full re-evaluation and its obtaining an assistive technology evaluation prior to the conclusion of the hearing.

For the reasons which follow, Student is entitled to an award of compensatory education and Parent is entitled to some reimbursement for tutoring services.

ISSUES

1. Did the Wilson School District provide sufficient and appropriate special education services to Student in the areas of reading, math and writing from February 11, 2007 through the end of the 2008/2009 school year, and if not, in what areas, in what amount and in what form should compensatory education be awarded to Student?
2. Did the Wilson School District appropriately determine that Student was not eligible for ESY services during the summer of 2007?
3. Did the Wilson School District offer appropriate ESY services to Student during the summers of 2008 and 2009, and if not in what amount and in what form should compensatory education be awarded to Student?
4. Is Student's Mother entitled to reimbursement for tutoring services Student provided for Student at Center?

FINDINGS OF FACT

1. Student is a teen aged child, born xx/xx/xx. Student is a resident of the Wilson School District and is eligible for special education services. (Stipulation, N.T. pp. 11, 13).
2. Student has a current diagnosis of specific learning disability in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 12, 13).
3. Student had received speech/language services in both Head Start and kindergarten. Student's continued need for those services was established through an evaluation prior to Student's transition from early intervention to kindergarten. (N.T. pp. 785, 786; P-1, P-22, S-30).
4. When Student first enrolled in the Wilson School District as a second grade student, Student had already been identified as a child with specific learning disabilities and in need of special education. (N.T. p. 45, P-1; P-23).
5. In November 2001, while attending first grade in a different school district, Student was evaluated to determine Student's eligibility for additional special education services due to difficulties Student exhibited in all areas of the curriculum. (N.T. pp. 793; P-1).
6. Student's father provided parent input for the 2001 evaluation, noting that Student did not remember what Student studied from day to day. (P-1)
7. The WISC-III intelligence scale, used to measure Student's cognitive potential for the 2001 evaluation, yielded a performance IQ score of 112, in the high average range, a

verbal IQ score of 76 and a full scale IQ of 92, in the average range. (N.T. pp. 959, 961; P-1).

8. The 2001 evaluation report also included the results of standardized, norm-referenced achievement tests (WRAT-Wide Range Achievement Test; WIAT-Wechsler Individual Achievement Test), which confirmed that Student's achievement in both reading and math was at a beginning kindergarten level, very low in reference to Student's age, ability and grade level. Student also continued to exhibit a moderate delay in expressive and receptive language skills. (P-1).
9. Based upon the conclusion that Student had average, though variable, intellectual functioning, Student was determined to have a severe discrepancy between intellectual ability and achievement in reading and math. The school district in which Student was enrolled concluded that Student was eligible for special education services due to learning disabilities in word recognition, math reasoning, math calculation and spelling, and that Student's speech/language impairment continued. (P-1).
10. A reevaluation was due in November 2004, when Student was in 4th grade. Since the District determined, without explanation, that no new assessments were needed, the reevaluation report dated July 22, 2005 consisted of a review of records only, including Student's grades. The school psychologist who compiled the reevaluation report was not a member of Student's IEP team, never met Student's and never attended an IEP meeting for Student. (N.T. pp. 42, 43, 793; P-23, p. 1; S-1, pp. 5, 9)
11. The school psychologist listed on the 2005 reevaluation report as a member of Student's IEP team also never met Student and never attended an IEP meeting for Student. His participation on Student's IEP team was entirely limited to reviewing information about Student to determine whether additional data was needed for the reevaluation. The school psychologist had no recollection of the records he reviewed, including whether he had seen the 2001 evaluation report, and no recollection of the reason he believed that no additional data was needed for the 2004 reevaluation. (N.T. pp. 115, 116, 118—121, 123, 125, 126)
12. The WISC-III intelligence test was replaced by the significantly different WISC-IV between the 2001 and 2004 evaluations. The WISC-IV has different factors, a different normative group, and different sub-tests to develop the full scale IQ. WISC-IV reports index scores to better understand and describe a student's intellectual functioning. Although there was no confidence interval reported for the intelligence test scores and the school psychologist who wrote the 2005 reevaluation report did not know which WISC-III subtests had been administered in the prior evaluation, she did not find new assessments necessary because there were no concerns about the reliability or validity of the 2001 test data. (N.T. pp. 45, 46, 90, 93, 94, 96, 132, 133, 887—889)
13. The 2005 reevaluation report noted that in 4th grade, Student had been instructed at the second grade level in math and was reading fluently at the first grade level, although Student's phonemic awareness skills were described as "emerging" and reading needs

were also noted in the areas of decoding and comprehension. At the primer level, Student was reading 58 words/min. with 85% accuracy. Comprehension, however, was only 3.5 out of 8 questions at that level. Student could answer 7 out of 8 questions at the pre-primer level. (N.T. pp. P-23, p. 2)

14. Although no curriculum-based measures were described in the 2005 reevaluation report to determine Student's progress in written expression and spelling, the report concluded that Student continued to exhibit needs in those areas. (N.T. pp. P-23, pp. 2, 3)
15. The classroom observation reports of Student's teachers noted Student's difficulties with following directions, organizing tasks/activities and attention/distractibility. (P-23, p. 3)
16. Parent provided input dated November 30, 2004 noting that Student had regressed in reading due to a change in instructional methods in the school within the District to which Student had transferred in October 2004. On the data form completed by the IEP team members, including the non-attending school psychologist member, Parent did not check the box indicating that no additional data was needed or the box indicating that additional data was required. (N.T. pp. 787; P-23, pp. 2, 9; P-28; S-1, p. 5;)
17. The July 2005 reevaluation report concluded that no changes/modifications to Student's special education services were required because Student was participating in the regular education curriculum, making progress and meeting Student's IEP goals. The report further noted that Parent's concerns about Student's reading instruction should be addressed. (N.T. pp. ; P-23, p. 3)
18. Student's next reevaluation was due in the fall of 2008. At that time, the District, through Student's special education case manager, presented Parent with a Permission to Reevaluate (PTRE) form indicating that no additional test data/assessments were required. (N.T. p. 195; P-13)
19. Later, Student's case manager realized that she had used the wrong form and sent Parent a waiver of reevaluation, indicating that even a review of records was unnecessary. Parent signed both the PTRE issued on October, 2008 and the reevaluation waiver. (N.T. pp. 195—200; P-13)
20. After the first session of the due process hearing, Parent requested an independent psycho-educational evaluation. The District subsequently issued a PTRE, seeking Parent's permission to conduct cognitive and achievement testing and other assessments. After Parent granted permission, the reevaluation was undertaken immediately and the District issued a report dated May 28, 2009. (N.T. pp. 108—111; S-30)
21. The District school psychologist who conducted the 2009 reevaluation of Student administered a number of standardized assessments, specifically, the WISC-IV intelligence scale; the Developmental Neuropsychological Assessment-Second Edition, (NEPSY-2), in the domains of Attention and Executive Function, Language, Memory and Learning and Visuospatial Processing; the Delis-Kaplan Executive Function System

(DKEFS); the Wide Range Assessment of Memory and Learning-Second Edition-WRAML-2; the Woodcock-Johnson Tests of Achievement-Normative Update (Form C))WJ-ACH NU: C) (S-30)

22. The school psychologist also administered three rating scales, the Behavioral Assessment System for Children-Second Edition (BASC-2) and the Behavior Rating Inventory Executive Function (BRIEF), completed by a teacher, Student and Student's Mother, and the Transition Planning Inventory (TPI) completed by Student only. (S-30)
23. The school psychologist found that Student's full scale IQ (FSIQ), 83, places Student in the low average range of intellectual functioning, a decrease from the average IQ score reported in 2001. Student's index scores ranged from a low of 81 in Verbal Comprehension to a high of 91 in processing speed. The psychologist noted the difficulty of determining whether the difference in Student's FSIQ results on the WISC-III and WISC-IV indicated regression, since the confidence interval for the WISC-III score was not provided in the 2001 report, but emphasized that the detailed cognitive profile that emerged from the WISC-IV results is far more important than the FSIQ for determining how Student functions with respect to learning. (N.T. pp. 887, 889, 890, 913, 937; S-30)
24. Based upon Student's working memory index score on the WISC-IV, the school psychologist concluded that Student needs much more repetition than would ordinarily be expected in order to learn and retain new skills, and that Student's performance will be variable. He also noted that tests measuring executive functioning indicate that Student is very weak in that area and can be expected to have extraordinary difficulty organizing information in less structured learning settings and generalizing strategies Student has learned to new situations, with particular implications for reading and writing. (N.T. pp. 892—907, 913, 920, 921; S-30)
25. The standardized achievement test results administered as part of the evaluation revealed that Student is well below expected reading levels even for a learning disabled student and a student with Student's cognitive profile. Student does, however, show a surprising strength in reading comprehension and a relative strength in processing speed and hands-on tasks. The assessment results revealed a student with more significant impediments to academic achievement than a typical learning disabled student. (N.T. pp. 895, 896, 907—911, 913, 914, 946, 947, 1011, 1021; S-30)
26. The school psychologist recommended that Student's educational program focus on all areas of reading skills, particularly fluency and comprehension in order for Student to become a functional reader. He also recommended executive functioning interventions, meaning explicit, direct teaching of learning strategies; minimizing distractions; providing information visually and with a hands-on approach to the maximum extent possible. (N.T. pp. 915—918; S-30)
27. The assessments conducted as part of the 2009 reevaluation did not reveal a learning disability in math reasoning and math calculation based upon the discrepancy model, but

the school psychologist continued to believe that other factors indicate that Student needs special education services for continued progress in math. Given Student's cognitive profile, specifically Student's weakness in working memory, Student has demonstrated significant learning in math, based upon the recent standardized achievement test scores. (N.T. pp. 948, 957, 968, 969, 992, 993, 996, 997; S-30)

28. The District regularly uses standardized curriculum-based assessments to determine Student's present levels of academic functioning and develop Student's IEP goals. The Gray Oral Reading Test (GORT), measures decoding, fluency, comprehension and reading rate. The Fuchs and Fuchs math probe measures calculation/computation and problem-solving/applications. At times, the District also used DIBELS and AIMSWEB as reading measures. When the District established present levels for writing, it used its own writing rubrics, and most recently AIMSWEB. (P-6, P-8, P-10, P-11, P-14, P-17)
29. The IEP in place in February 2007, the middle of Student's 6th grade year and the beginning of the period in dispute in this matter, was dated March 16, 2006. It reported that Student was at a 1.4 level for decoding and a 2.4 level for fluency and comprehension. Student was at 2nd grade level for both math calculation and problem solving. Student's writing was assessed by means of scores on the District's writing rubric, but the IEP included no description of the skills that were measured or explanation of the scores that were reported. (P-6; Appendix Page A-1¹)
30. The March 2006 IEP included three goals, one each for reading, math and writing. Reading and math instruction were at a 3rd grade level. The writing goal, a four paragraph essay with various descriptors, indicated no instructional level. (P-6; A-2, A-3)
31. The next IEP, dated May 10, 2007, at the end of 6th grade, did not report Student's level for reading decoding. Student's fluency remained at the 2.4 level, with comprehension at 4.0. Math was reported to be at the 3rd grade level for both calculation and applications. Student's writing level was again measured against the District rubric. (P-8; A-1)
32. The reading goal in the May 2007 IEP referred to accurately identifying words and comprehension at "grade level" without specifying a grade level. The math goal was to score 8 out of 10 on unspecified math probes for 9 consecutive weeks. The writing goal was increased to 5 paragraph essays, with topic sentences, concluding or transition sentences, variation of sentence structure and correct grammar and punctuation for every essay for 8 out of 10 weeks. (P-8; A-2, A-3)
33. In March 2008, the middle of Student's 7th grade year, a revised IEP included September 2007 GORT scores that placed both Student's reading accuracy and comprehension at level 2.2 and fluency still at 2.4. In the March 2008 GORT assessment, Student's comprehension returned to the 4.0 level, but fluency remained at 2.4. No decoding score

¹ Information from all of the IEPs at issue in this case is compiled in table form in an attached Appendix designated A-1—Present Levels; A-2—Reading & Math Goals; A-3--Writing & Organization Goals.

- was reported. The reading goal was identical to the goal in the prior IEP, but specified a 3rd grade level for decoding and comprehension. (P-10; A-1, A-2)
34. In June 2008 and September 2008 Student's IEP was revised again. The reading goal continued both decoding and comprehension at a third grade level. In the June 2008 IEP, comprehension was measured by retelling the story rather than by answering questions. In the September IEP, the focus of the goal changed to word reading accuracy and fluency. (P-11, P-14; A-2)
 35. In September 2008, Student's GORT scores rose to 4.2 for decoding, 3.4 for fluency and 4.2 for comprehension. In March 2009, the reported GORT scores were 4.4 for decoding, 4.0 for fluency and 5.7 for comprehension. DIBELS scores were reported by the District in the June and September 2008 IEPs and in the March 2009 proposed IEP, showing an increase from 85 words per minute (wpm) with 93% accuracy at the 2nd grade level in March 2008 to 94 wpm 95 % accuracy at the 3rd grade level in May 2008. After a decrease in September 2008, Student's level rose to 99 wpm with 99% accuracy at the 3rd grade level in February 2009. (P-14, P-17; A-1)
 36. In a March 2009 IEP proposed by the District but not accepted by Parent, the emphasis on decoding and fluency was continued in the reading goal, but at the 4th grade level. The District also added a comprehension goal at the 4th grade level. (P-14, P-17; A-2)
 37. The writing goal in the March 2008 IEP was reduced to composing one paragraph of at least five sentences with at least 8 words per sentence and proper capitalization, punctuation and sentence structure. No present levels were reported for writing in the March 2008, June 2008 and September 2008 IEPs. (P-10, P-11, P-14; A-1, A-2, A-3)
 38. In the June and September IEPs and in the March 2009 proposed IEP, Student's writing goal increased from a one paragraph essay to a three paragraph essay but otherwise remained the same as in the March 2008 IEP. The District's proposal added another writing goal, to produce 16 correct words per minute with 16 correct word sequences including correct punctuation, capitalization and verb usage. In an AIMSWEB assessment for writing in February 2009, Student wrote a total of 34 words at a rate of 11wpm with 31 correct writing sequences. (P-10, P-11, P-14, P-17; A-2, A-3)
 39. The Fuchs and Fuchs math assessments given in March 2008 placed Student at a 3.1 grade level for calculation and a 2.5 grade level for application. The math levels were not updated for the June 2008 or September 2008 IEPs, and the math goals remained essentially the same from the May 2007 to and including the September 2008 IEP. (P-8, P-10, P-11, P-14; A-1, A-2, A-3)
 40. A goal to increase Student's organizational skills was added to Student's IEP in May 2007, and remained unchanged through the IEP offered by the District in March 2009. The proposed IEP added a new goal for organization/self-advocacy, asking for assistance to organize Student's binders. (P-8, P-10, P-11, P-14, P-17; A-1, A-2, A-3)

41. Student's math calculation was reported at level 4 -25th percentile for computation and Level-4 75th percentile for calculation in February 2009. The March 2009 IEP proposal eliminated the prior math goal and substituted a goal to answer 1 digit multiplication and division facts on a 5th grade probe with 80% accuracy on 3 consecutive probes. (P-17; A-2)
42. All of the IEPs included the following specially designed instruction: study guides/guided study; additional time for tests and quizzes; small group instruction for math, reading and language arts/english; preferential seating; access to the special education classroom for tests to be adapted, read aloud and clarified. (P-6, P-8, P-10, P-11, P-14, P-17)
43. Beginning with the May 2007 IEP, access to the computer for assistance with writing, editing and spelling was added to the specially designed instruction. (P-8, P-10, P-11, P-14, P-17)
44. The IEP proposed in March 2009 added the use of a calculator in all classes, as needed for problem solving, a multi-sensory, research-based reading program and a research based writing program. (P-17)
45. Student was found eligible for ESY in 2008 and 2009 but not in 2007. The same reason was given for both the eligible and ineligible determinations: "Student's ability to retain skills mastered from the previous year." Student was offered 6 weeks of ESY instruction 3 times/week for 3 hours in both 2008 and 2009. (P-8, P-10, P-11, P-14, P-17)
46. Student was evaluated at Center in February 2008 and began receiving two hours per week of tutoring in reading and two hours per week of tutoring in math in April 2008 and continuing to the present at a cost of \$50.00/hour. A staff member from Center appeared briefly at Student's IEP meeting in March 2008. (N.T. pp. 731—733, 735—738; P-9, P-10, P-19)
47. After the March 2008 IEP meeting, the District increased Student's reading instruction by providing an extra period of instruction in decoding and fluency for one class period each day and providing one period devoted to reading comprehension based upon the science curriculum. The two additional periods of reading instruction were substituted for regular education classes. Student also had a regular period of reading instruction each day. (N.T. pp. 210, 305, 306, 412, 455, 631, 633, 636; P-10, p. 23, P-31)
48. Student received two periods of reading instruction during the 2008/2009 school year. During one period, Student received direct multi-sensory phonetic instruction with the Orton Gillingham approach. The other reading period was devoted to development of comprehension skills. Student also used the Read Naturally program to develop fluency. Prior to the 2008/2009 school year, Student been instructed using the SRA decoding program. (N.T. pp. 313, 314, 323—332; 340—343; S-15, S-16)

49. Although Student continues to need specially designed instruction in math and continues to have weaknesses in basic math calculations, Student was successful in Student's modified 8th grade algebra class during the 2008/2009 school year. (N.T. 583—587)

DISCUSSION AND CONCLUSIONS OF LAW

A. Legal Standards

1. Requirement/Meaning of FAPE

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA), (his/Student's school district of residence for a school-age child) in accordance with an appropriate IEP, *i.e.*, one that is "reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress." *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). "Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3RD Cir. 1999). Consequently, in order to properly provide FAPE, the child's IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a "trivial" or "*de minimis*" educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, an LEA is not required to provide an eligible with services designed to provide the

“absolute best” education or to maximize the child’s potential. *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

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, 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. *M.C. v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996).

2. Evaluations/Reevaluations to Establish/Maintain Eligibility

The IDEA statute and regulations require an evaluation, provided in conformity with statutory/regulatory guidelines, in order to determine whether a child is eligible for special education services before providing such services. *See* 20 U.S.C. §1414; 34 C.F.R. §300.8(a). The primary purpose of an initial evaluation is, of course, to determine whether the child meets any of the criteria for identification as a “child with a disability” as that term is defined in 20 U.S.C. §1401 and 34 C.F.R. §300.8, as well as to provide a basis for the contents of an eligible child’s IEP, including a determination of the extent to which the child can make appropriate progress “in the general education curriculum.” 34 C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

After a child is determined to be eligible, the IDEA statute and regulations further provide for periodic re-evaluations, which “may occur not more than once a year unless the parent and public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that an evaluation is unnecessary.” 20 U.S.C. §1414(a)(2)(B)(i), (ii); 34 C.F.R. §300.303(b). School districts, however, also have the obligation to “ensure that a reevaluation of each child with a disability is conducted” at any time “the public agency determines that the educational or related services needs, including improved

academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation." 20 U.S.C. §1414(a)(2)(A)(i), (ii); 34 C.F.R. §300.303(a).

The general standards for an appropriate evaluation or re-evaluation are found at 34 C.F.R. §§300.304—300.306, which require a school district to: 1) "Use a variety of assessment tools;" 2) "gather relevant functional, developmental and academic information about the child, including information from the parent;" 3) "use technically sound instruments" to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using "any single measure or assessment as the sole criterion" for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be "sufficiently comprehensive to identify all of the child's special education and related service needs" and provide "relevant information that directly assists" in determining the child's educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

Reevaluations (and initial evaluations if appropriate) must also include: 1) a review of existing evaluation data, including a) local, state and current classroom-based assessments; b) classroom-based observations by teachers and related service providers; 2) a determination of additional data, if any, necessary to determine a) whether the child has an IDEA-defined disability (in the case of an initial evaluation); b) the child's educational needs, present levels of academic achievement and related developmental needs; c) whether the child needs (initial evaluation)/continues to need (reevaluation) specially-designed instruction and related services.

20 U.S.C. §1414(c); 34 C.F.R. §300.305(a)(1), (2). It is the district's responsibility to administer all assessments and other measures needed to compile the evaluation data required by §300.305(a). 34 C.F.R. §300.305(c).

With respect to reevaluations, the district must also use the data/information it is required to gather to determine whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum. 34 C.F.R. §§300.305(a)(2)(iv).

Nevertheless, the data described in §300.305(a) is not absolutely mandated for a reevaluation "if the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and the child's educational needs." 34 C.F.R. 300.305(d)(1). In that event, however, the district "must notify the child's parents of that determination and the reasons for the determination, and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability **and to determine the child's educational needs.**" 34 C.F.R. 300.305(d)(1)(i), (ii)(emphasis in original). Upon such notification, the district is relieved of the obligation to conduct an assessment for continued eligibility and/or to determine current educational needs unless the parents request it. 34 C.F.R. 300.305(d)(2).

Once the evaluation is completed, a group of qualified school district professionals and the child's parents determine whether he/she is a "child with a disability" and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, the district is required to: 1) "Draw upon information from a variety of sources," including those required to be part of the assessments, assure that all such information is "documented and carefully considered." 34 C.F.R. §300.306 (c)(1). The District must also provide a copy of the evaluation report and

documentation of the eligibility determination to the Parents at no cost. 34 C.F.R.

§300.306(a)(2). If it is determined that the child meets the criteria for IDEA eligibility *i.e.*, is a child with a disability and is in need of specially designed instruction, an IEP must be developed. 34 C.F.R. §§300.306(c)(2).

Procedural Safeguards/Burden of Proof

The IDEA provides various procedural safeguards to parents of children with disabilities, including “the opportunity to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate education to such child.” 20 U.S.C. §1414(a), (b)(6)(A); 34 C.F.R. §507(a). If parents who are dissatisfied with the services offered or previously provided by the responsible school district exercise that opportunity and the parties cannot resolve their differences, parents are entitled to an impartial due process hearing conducted in accordance with 20 U.S.C. §1414(f)(1), (2), (3) and 34 C.F.R. §300.511. Parent in this case has invoked her right to file a due process complaint and proceed to an impartial hearing.

With respect to allocation of the burden of proof, the U.S. Supreme Court recently established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005). Consequently, in this case, because Parent has challenged the appropriateness of the District’s actions with respect to the evaluation and provision of FAPE to Student from February 2007 through the end of the 2008/2009 school year, including ESY services in 2007, 2008 and 2009, it was Parent’s burden to establish that the District failed to adequately identify Student’s educational needs and provide Student with appropriate special education services such that Student derived meaningful educational benefit from the services

Student receive. Since Parent also seeks an appropriate program going forward, Student also had the burden to establish the components of an appropriate IEP for the upcoming school year.

B. Claims/Remedies

1. Evaluation Issues

As fully described above, the IDEA statute and regulations have detailed requirements for conducting evaluations and reevaluations, including specific requirements for determining when reevaluations must be completed. Such extensive requirements attest to the importance of current information concerning a child's cognitive potential and ability, academic achievement, memory, organization skills, ability to use and understand language, and other data designed to identify an eligible child's needs, strengths and overall functioning, particularly in the school setting. Consequently, although none of the District's evaluations are at issue in this case in the sense of supporting a claim for compensatory education, the conclusions that the District failed in several ways to provide Student with FAPE cannot be fully explained and understood without reference to the District's egregious lapses in failing to obtain current, objective data concerning Student's academic needs and functioning in both 2004 and 2008 when triennial reevaluations were due, or otherwise, since a full reevaluation was certainly warranted and necessary in this case.

The declaration, "Knowledge is power."² is generally recognized as an ancient truism with which few would disagree. In the IDEA context, detailed knowledge concerning a student is the fulcrum on which the entire special education scheme turns. A comprehensive evaluation is the prerequisite to determining eligibility and to developing appropriate interventions reasonably likely to result in meaningful educational progress. The statute and regulations do not absolutely require a district to obtain updated information by conducting additional

² *Mediationes Sacre*, "De Haresibus," Sir Francis Bacon (1597)

assessments of an eligible child when reevaluations become due by the passage of time. If there is sufficient information to continue to develop an effective program and assure an appropriate placement, a records review, and even a waiver of evaluation, may be appropriate. School districts, however, have an affirmative obligation to conduct comprehensive evaluations any time there are indications that additional information is needed to assure that the district has sufficient knowledge to understand how an eligible child functions academically and to determine whether all special education needs are identified and met, with the recognition that such functioning and needs may develop and change over time.

In this case, although Student was evaluated in a different school district very early in first grade, the District chose to complete only a review of records when Student was due for a reevaluation in 4th grade, just after Student's 10th birthday. (F.F. 10, 11, 12) The school psychologist listed as a member of Student's IEP team at that time had no recollection of the information he might have reviewed to support the conclusion that no additional assessments were needed for a reevaluation or why he reached that conclusion. (N.T. pp. 119, 120, 130) At most, he could only "imagine" that whatever unknown information he reviewed had supported the IEP team conclusion that no additional testing was needed. (N.T. p. 119)

After review of the 2001 evaluation report (P-1) and the District's 2005 report (P-23), the psychologist's lapse of memory leads to a strong inference that there was no real review of the prior evaluation data, since it is difficult to imagine that the available information could have led a well qualified school psychologist to a reasoned conclusion, fully supported by the existing data, that additional testing was not warranted. Both the school psychologist listed as a member of Student's IEP team in 2004, and the psychologist who completed the reevaluation in the spring of 2009, and wrote the most recent reevaluation report, testified to the differences between

the WISC-III and WISC-IV. (N.T. pp. 133—135; 887—889) In attempting to justify the District’s decision not to conduct new standardized assessments in 2004, the first school psychologist testified that the two tests are more akin to two varieties of apples than to “apples and oranges.” In explaining the substantial differences in Student’s IQ scores between the 2001 and 2009 evaluations, the testimony of the District school psychologist who actually met and tested Student substantially disagreed with the earlier testimony. He testified that the results yielded by the different versions of the WISC are “incomparable” –in effect, “apples and oranges” due to the different tasks in the earlier and later tests. *See* N.T. pp. 137, 138, 886. That psychologist explained that the information provided by the 2001 evaluation was limited by the structure of the WISC-III, which provided only three global scores, while the several index scores of the WISC-IV yield a far more thorough understanding of a student’s needs and strengths in terms of the ability to think and solve problems efficiently. (N.T. pp. 887—895) His testimony concerning the wealth of information about Student derived from the WISC-IV alone, in terms of both results and his observations during the testing process, as well as from the other standardized tests and rating scale results, completely undercut the earlier testimony of both of the other District school psychologists concerning the lack of a need for new data in 2004. *See* F.F. 10, 11.

Although the school psychologist who compiled the 2005 evaluation report in 2005 noted she had conducted a “thorough” examination of the records pertaining to Student, including the 2001 evaluation report (N.T. p. 43), such review could not possibly have provided a sufficient evaluation because the evaluation report from the prior school district was sparse and there was very little objective, quantifiable information provided by Student’s teachers at the time. In addition, the school psychologist herself acknowledged many factors that should have indicated

that more assessments were needed, including the large (36 point) discrepancy between Student's verbal and performance scores on the WISC-III (N.T. p. 59); the need for a "multitude of other information from an evaluation" to really determine how to educate an eligible student (N.T. p. 64); the fact that Student was still at the pre-primer level for reading comprehension at the time of the District's reevaluation in 2004/2005 and had been at the beginning kindergarten level when Student was evaluated in 2001, demonstrating very little progress in reading after 3 years of special education services and reading instruction. (P-1, P-23)

The District's school psychologist who completed the 2005 evaluation had mentioned Parent's concerns about Student's regression in reading in the reevaluation report. (P-23) It is stunning that even the combination of all of those factors were not sufficient to convince the District that new and updated testing might be warranted. Even assuming the accuracy of the testimony by a colleague that curriculum-based measures are a better and more sensitive measure of progress over time, (N.T. p. 135), Student's virtually non-existent progress in reading during the three years between the time that the WISC-III was administered to Student and the time that the first District reevaluation was due should alone have been sufficient to suggest a need for additional information. The quantitative, objective data of Student's academic progress, although there was little, still conflicts with the reports of "progress in all area" reported by Student's teachers, yet both school psychologists appear to have accepted the vague, subjective and anonymous conclusions that Student was "making improvement" and progressing toward Student's IEP goals. (P-23). Reports of difficulties with following directions, organization and attention, however, were not mentioned or considered a reason for gathering more data for the reevaluation. (P-23, p. 3.) There was no mention that Student's progress in math appeared to be

much greater than Student's progress in reading, since Student had advanced two years from beginning kindergarten levels in 2001 to a second grade instructional level in the 2004/2005 evaluation. The disparity in achievement in reading and math indicated by curriculum-based measures likewise stimulated no thought that additional data might be warranted.

It is questionable whether the school psychologist who compiled the 2005 evaluation report exercised independent professional judgment. She referred repeatedly to her confidence in Student's teacher's belief that Student was making progress, apparently without questioning whether such opinions were reasonable in light of the test results, albeit few, reported by those teachers. *See, e.g.*, N.T. pp. 51, 55, 56.

In 2007, the beginning of the period in dispute in this case, the absence of updated assessments from 2005 required the District to develop IEPs for an emerging adolescent, in the upper elementary and middle school years, based upon a 6 year old child's cognitive profile and functioning. Such circumstances made it virtually impossible for the District to develop appropriate IEPs for the period in dispute in this case. That common sense conclusion was confirmed by the District school psychologist who conducted recent reevaluation. He discussed the problems inherent in basing the current functioning of a child who is now nearly 14 years old upon the test scores of a child as young as Student was at the time of the 2001 evaluation. *See* N.T. pp. 958, 959.

After conducting no nationally norm-referenced testing during the 2004/2005 school year, despite Parent's growing dissatisfaction with Student's academic progress, particularly in reading, and with the need for serious transition planning looming on the horizon, the District nevertheless concluded in the fall of 2008 that no reevaluation of Student was needed at all, even a records review. The District, therefore, obtained Parent's waiver of the triennial evaluation.

(F.F. 18, 19) The District still concluded, in essence, that it was reasonable and appropriate to base special education services for a teenager who remained at the primary level of reading instruction on the cognitive and educational picture of a 6 year old. Determining after one hearing session that such conclusion was neither reasonable nor appropriate, the District would have been ordered to commence a thorough reevaluation immediately. Apparently reaching the same conclusion, Parent had requested an IEE and the District had indicated its plan to issue a PTRE in the two days between the first and second hearing sessions. (N.T. pp. 108—110) Parent signed the permission upon being informed that a District evaluation rather than an IEE would be ordered. (N.T. pp. 111, 112) The District completed the evaluation and issued a reevaluation report dated May 28, 2009 (S-30), before the last hearing session in this matter.

The District, however, argued that the evaluation results should not be considered in evaluating the appropriateness of the IEPs at issue here, since the information was not available to the District at the time the IEPs were developed. Under the circumstances of this case, that argument is rejected and the recent evaluation and testimony concerning it fully considered in reaching a decision in this matter.

In the unique in this case, the District will be held responsible for constructive knowledge of information that it surely would have learned if it had followed both the letter and the spirit of the IDEA with respect to reevaluations. Charging the District with constructive knowledge is reasonable here because the IDEA requires the District to reevaluate an eligible student under three specific and separate conditions: an indication of a need for updated information, upon parental request and after the passage of three years. Here there is no indication that Parent requested an evaluation until after the due process hearing was underway and the District promptly complied. The record makes it abundantly clear, however, that the District abdicated

its responsibility to reevaluate Student both times a triennial reevaluation was due and never considered whether a reevaluation was warranted, despite long outdated standardized test results concerning Student, the availability of an updated, far more informational test of cognitive potential and numerous indicators of extremely slow academic progress.

Both federal and state courts applying Pennsylvania law have recognized that it is proper to impose liability on a party with constructive notice of a condition where that party has a particular duty to another, yet chooses to ignore available information and take no action to discover and correct the condition, which harms the other party, when circumstances establish that there was sufficient information to stimulate inquiry. *See, e.g., Prell v. Columbia Sussex Corp*, 2008 WL 4646099 (E.D.Pa. Oct. 20, 2008); *Felton by Felton v. Spratley*, 433 Pa.Super. 474, 640 A.2d 1358 (Pa.Super. 1994) (Landowners may be responsible for injuries caused to invitees under certain circumstances in the absence of actual notice of a dangerous condition.)

2. Appropriateness of IEPs/Meaningful Progress: 2006/2007 (February--June 2007), 2007/2008 and 2008/2009 School Years

The District maintained that despite the absence of updated assessments to provide norm-referenced, objective data concerning Student's needs and progress since 2001, Student's needs were fully addressed throughout the period for which Parent seeks compensatory education. The District bases its argument that Student is not due any compensatory education rests upon the contention that Student has made meaningful progress in all academic areas throughout the period in dispute. Tellingly, however, the District primarily referred to and relied on the progress Student made in reading and math from the end of the 2007/2008 school year to February 2009, when the most recent curriculum-based assessments were completed. When the limited objective data available from such assessments during the entire period in dispute is represented in table form, it is patently obvious that Student's progress, particularly in reading

was imperceptible from February 2007 until September 2008, when there was a considerable increase, which continued, albeit far less dramatically, to the most recent assessment in February 2009. (*See A-1*)

It is impossible to use even curriculum based assessments as an objective method to determine whether Student has made meaningful progress in writing since the middle of the 2006/2007 school year, since there is very little data concerning Student's performance. In the absence of any explanation as to what the District measured according to its own writing rubrics reported in the IEPs of March 2006 and May 2007, that data provides no reasonable basis for comparison with the AIMSWEB assessment reported in February 2009.

The record clearly establishes that with significant time spent on intensive instruction, Student can make impressive progress in reading despite the severity of Student's verbal learning disabilities and a cognitive profile that includes extreme difficulties with working memory and with organization due to executive functioning deficits.

The problem with the District's position that it should get the entire credit for the progress Student made in reading during the past year, and that the focus should be entirely on such recent progress, is the District's failure to take any steps to address, or even acknowledge, Student's lack of progress during the preceding year, from February 2007 to March 2008. There is no evidence that the District provided Student with anything more than standardized, "one size fits all" resource room reading instruction until March of 2008. That is not surprising since, as detailed above, the District deprived itself of essential information about the severity of the deficits in Student's cognitive profile and the specific needs arising from those problems by ignoring its obligation to reevaluate Student. It should have been obvious to the District that it needed updated information about Student's intellectual functioning and achievement in

comparison to Student's same age peers when Student's lack of meaningful progress was patent from its own curriculum based assessments. Moreover, the District, through its staff of school psychologists, should have known that a much more sensitive measure of intellectual functioning had become available in the WISC-IV. Not only did the District fail to notice that a reevaluation was warranted when Student remained at a second grade reading level for two years, it refused to take the opportunity to reevaluate Student when the IDEA's mandated triennial evaluation should have occurred in September 2008, despite the surge in Student's progress in reading in the period after Student began receiving substantially increased reading instruction. By myopically deciding to forego a full reevaluation of Student in 2004, the District did not avail itself of the opportunity to gather sufficient information about Student to provide appropriately intensive and explicit instruction to address Student's substantial individual needs between February 2007 and March 2008. Beginning in March 2008, and due only to Parent's increasing dissatisfaction with Student's progress, the District began, at last, to actually address Student's needs for more intensive instruction, particularly in reading, albeit without a real understanding of the full extent of Student's needs and clinging to its clearly unreasonable position that Student had been making good progress all along.

Due to the District's failure to provide Student with the intensive reading instruction Student clearly needed, and Student's lack of meaningful progress in the absence of instruction appropriate to meet Student's significant needs, Student will be awarded compensatory education for reading from February 11, 2007 through March 10, 2008. The hours of compensatory education awarded for that period will be equal to the additional hours of reading instruction Student received from the District beginning in March 2008, which the evidence established was

two periods/day, combined with the number of hours of tutoring Student received at Center from March 2008 until the end of that school year, *i.e.*, an additional two hours/week.

In addition, since the record establishes that the District reduced the time for Student's reading instruction during the 2008/2009 school year by one period per day, and there is no evidence that Student would have received more hours of reading instruction, if the proposed IEP of March 2009 had been approved by Student's Mother, Student will be awarded the equivalent of one additional class period of reading per day as compensatory education during the 2008/2009 school year, along with an additional two hours/week represented by the tutoring Student continues to receive at Center

The weeks of compensatory education due for the 2007—2008 period and the 2008/2009 school year will be reduced by any full weeks during which the District was closed for winter holiday/spring break.

The compensatory education hours for reading will take the form of additional instruction in a multi-sensory, research-based reading program based upon the Orton Gillingham approach, which the District has been providing for Student as part of Student's school-based program during the 2008/2009 school year. The District will have the first opportunity to locate a provider and arrange for such instruction. If the District is unable to do so within thirty (30) days of this decision, the Parent may locate a reading tutor who uses the Orton Gillingham approach, whom the District will pay, unless Parent agrees to additional time for the District to locate a provider. Parent will not be permitted to substitute Center instruction for reading instruction based upon the Orton Gillingham approach, which the recent District evaluation supports as appropriate instruction for Student. (S-30)

Student will also be awarded compensatory education for writing equal to the number of hours Student was provided with instruction in writing from February 2007 until the end of the 2008/2009 school year. The District's IEPs during that period were flawed due to the absence of multi-sensory, research-based writing instruction designed to meet Student's needs and the lack of sufficient objective data compiled by the District to whether Student was making any real progress in writing. The compensatory education award for writing is subject to the same reduction as the reading instruction, and must also take the form of instruction in a multi-sensory, research-based writing program such as Orton Gillingham, unless Student's IEP team determines, at some point, that there is an instructional program for writing better able to meet Student's needs.

The testimony of the school psychologist who recently evaluated Student and Student's math teacher, as well as the curriculum based assessments established that Student made slow progress in math, but far better than in reading and writing. (F.F. 27, 49; A-1) Since Parent did not provide sufficient evidence to establish that Student's instruction in math was inappropriate or insufficient, no compensatory education will be awarded for math.

Similarly, there was insufficient evidence presented at the due process hearing that Student presently needs, or ever needed, assistive technology in order to receive FAPE.

3. ESY

The District's denial of ESY services to Student during the summer of 2007 had no rational basis. The District's only attempted justification of that decision was Parent's decision not to accept the District's offer of ESY during the summer of 2006. Even setting aside Student's significant memory issues revealed by the recent reevaluation, the District was well aware of Student's need to maintain instruction and practice in reading over the summer, since

ESY was consistently offered except for the summer of 2007. Student clearly did not undergo a significant—and short-lived—change in Student’s needs and functioning during that period alone. Consequently, Student will be awarded compensatory education for the summer of 2007 equal to the number of hours the District offered ESY to Student during the summer of 2008 and 2009. Although Parent shortened the ESY instruction period in 2008 to permit Student to engage in other activities, that situation does not diminish the District’s obligation to offer Student the services Student needs. Parent’s and Student’s decision to refuse some of the services in 2008 does not establish that they would have done so in 2007.

Parent’s contention that the District should also be required to provide compensatory education for the summers of 2008 and 2009 is not supported by the record, since Parent did not specifically identify substantive deficiencies in the ESY services provided or offered. Although it appears that the District did not develop specific ESY goals for Student, that flaw falls into the realm of procedural deficiencies for which no remedy is provided in the absence of proof of a substantive denial of educational benefit. 34 C.F.R. §300.513. Parent provided no evidence of a substantive deprivation of services or denial educational benefits.

4. Reimbursement for Costs of Center Tutoring Services

The District contends that it should not be required to reimburse Parent for the tutoring services in reading and math that Student received at Center since 2008. As the District notes, Center does not provide reading instruction based upon the Orton Gillingham approach. Parent argued, in part, that the District’s failure to provide Orton Gillingham instruction for Student prior to the current school year justifies an award of compensatory education. Parents have been denied reimbursement where the private placement they selected did not provide the type of instruction they believed was necessary. *Matrejek v Brewster*, 293 Fed. Appx. 20 (2nd Cir 2008).

In addition, the record supports the conclusion that multi-sensory, instruction is beneficial to Student. (F.F. 26)

Nevertheless, according to the District's own curriculum-based assessments, Student experienced a surge in reading progress after beginning tutoring services at Center. That effect may be due to Student's extreme need for repetition/practice to consolidate even those skills which Student seemed to have mastered, or simply that Student derived significant benefit from the extra time spent in reading instruction and practice.

Student's recent progress in reading might also be attributed to the additional instruction which the District began providing to Student close to the time Student began the tutoring program at Center. It is impossible, and would be entirely speculative, to attempt to determine how much of the benefit Student obtained from additional reading instruction was derived from the extra reading instruction the District provided and how much can be attributed to the Center services.

In addition, the record supports the inference that Parent's decision to have Center tutor Student in reading beginning in February 2008, to make that decision known to the District and to invite Center personnel to the March 2008 IEP meeting served as the catalyst, at least in part, for the additional reading instruction commenced by the District almost immediately. There is no suggestion in the record that the District would have attended more closely to Student's needs and lack of progress in reading if Parent had not begun to request that the District do more. The Center involvement in Student's reading instruction was a component of that wake-up call to the District. In light of that conclusion, and the authority of the hearing officer to fashion appropriate equitable relief, Parent will be awarded reimbursement for the costs of the Center tutoring in reading, but not math, that Parent incurred from February 16, 2009 through the end of

the 2007/2008 school year. The entire amount of the tutoring services for that period appears to be \$2,940.00, including the cost of the initial evaluation. (P-19) Parent is in the best position to determine whether the hours of the reading and math instruction were equal or whether the hours expended on one exceeded the other and by how much. Consequently, the order will not simply award half of that amount. Parent can submit a bill to the District for whatever portion of that amount was expended for tutoring in reading.

As noted above, Parent did not provide any evidence of substantive deficiencies in the District's 2008 and 2009 ESY program. Parent is not entitled to reimbursement for Center tutoring during either summer simply because Student chose to substitute private tutoring services for those offered by the District. With respect to the expenses incurred during the 2008/2009 school year, as discussed above, Student will be awarded compensatory education in the form of tutoring services for the amount of reading instruction time that the District did not provide during the 2008/2009 school year. The evidence amply supports the conclusion that instruction based upon the Orton Gillingham approach, which relies upon sequential, multi-sensory methods, will provide Student with significant benefits. There is no convincing evidence that the Center instruction is equivalent. The purpose of compensatory education is to provide Student with the benefit Student would have received had the District provided Student's with the appropriate amount and type of reading instruction since February 2007. Although Parent certainly made a commendable effort, as well as a significant financial commitment to provide Student with the services she believed were necessary and beneficial, compensatory education is a remedy for the eligible child, not the parent.

CONCLUSION

Because the District failed to provide Student with the type and amount of instruction in reading and writing that would have permitted Student to make meaningful progress, Student was denied FAPE from February 11, 2007 through the end of the 2008/2009 school year, and will be awarded an appropriate amount of compensatory education for reading and writing. Student will also be awarded compensatory education for the District's denial of ESY services during the summer of 2007.

Because the involvement of Center may have played a role in the District's decision to provide additional reading instruction to Student, Student's Mother will be awarded partial reimbursement of the cost of providing Student with tutoring in reading.

ORDER

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

1. Provide Student with the number of hours of compensatory education services for reading that is equivalent to two class period per day in the school Student attends, and an additional two hours per week of compensatory education, from February 11, 2007 through March 10, 2008. The weeks of compensatory education shall be reduced by any full weeks during which the District was closed for winter holiday/spring break.
2. Provide Student with two hours of compensatory education for reading each week from March 10, 2008 to the last day of school in the Wilson School District in 2008.
3. Provide Student with 54 hours of reading instruction as compensatory education for ESY during the summer of 2007.
4. Provide Student with the number of hours of compensatory education services for reading that is equivalent to one class period per day in the school Student attends, plus an additional two hours per week, for the 2008/2009 school year. The weeks of compensatory education shall be reduced by any full weeks during which the District was closed for winter holiday/spring break.

5. Provide Student with the number of hours of compensatory education services for writing equal to the number of hours Student was provided with instruction in writing from February 2007 until the end of the 2008/2009 school year.
6. Reimburse Student's Mother for the cost of tutoring services for reading only provided by Center to Student from February 2007 until the end of the Wilson School District's 2008/2009 school year.

IT IS FURTHER ORDERED that the compensatory education hours for reading and writing will take the form of additional instruction/tutoring using a multi-sensory, research-based program based upon the Orton Gillingham approach. Wilson School District shall have the first opportunity to locate a provider and arrange for such instruction. If the District is unable to do so within thirty (30) days of this order, Parent may locate a reading and writing tutor who uses the Orton Gillingham approach, whom the District will pay, unless Parent agrees to additional time for the District to locate a provider.

Anne L.
Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

July 28, 2009

A-1—PRESENT LEVELS

IEP DATE	3/06 Gr. 5/6 (P-6)	5/07 Gr. 6/7 (P-8)	3/08 Gr. 7 (P-10)	6/08 Gr. 7/8 (P-11)	9/08 Gr. 8 (P-14)	3/09 Offer Gr.8 (P-17)
(Grade Levels) <u>Reading</u>	GORT 9/05	GORT – No Dates	GORT	GORT 3/08	GORT 9/08	GORT 2/09
Decoding/ Accuracy	1.4		2.2 9/07		4.2	4.4
Fluency	2.4	2.4	2.4 9/07 2.4 3/08	2.4	3.4	4.0
Comprehension	2.4	4.0	2.2 9/07 4.0 3/08	4.0	4.2	5.7
Rate						4.0
DIBELS	76 wcpm			85 wpm-93% acc 2 nd grade 3/08 94 wpm-95% acc 3 rd grade 5/08	92 wpm-94% acc - 3 rd grade	99 wpm-99% acc 3 rd grade Goal: 107
AIMSWEB						103 wpm-98% acc- 3.0 level Goal: 112
MAZE Comprehension						17/22 words correct
<u>Math</u>	Fuchs	Fuchs	Fuchs 3/08	Fuchs 3/08	Fuchs 3/08	Fuchs 2/09
Calculation/Computation	Gr. 2 -50%ile	Gr. 3-50%ile	3.1	3.1	3.1	Level 4-25%ile
Fluency	15/25					
Problems /Application	Gr. 2 25%ile	Gr. 3-61%ile	2.5	2.5	2.5	Level 4- 75%ile
<u>Writing</u>	SD Rubric	SD Rubric				AIMSWEB- 2/09
	35/54 Q-1 29/54 Q-2	36/54				34 Total words written

						11 wpm
						31 correct writing sequences

A-2—READING & MATH GOALS

<u>IEP DATE</u>	3/06 Gr. 5/6 (P-6)	5/07 Gr. 6/7 (P-8)	3/08 Gr. 7 (P-10)	6/08 Gr. 7/8 (P-11)	9/08 Gr. 8 (P-14)	3/09 Offer Gr.8 (P-17)
<u>Reading</u>	Read, comprehend-3 rd grade level	Correctly identify all words w/95% accuracy on a grade level reading passage; correctly respond to 8/10 grade level comprehension questions	Correctly identify all words w/95% accuracy on 3 rd grade reading passage; correctly respond to 8/10 grade level comprehension questions	Correctly identify all words w/95% accuracy on 3 rd grade reading passage; retell the passage in one minute for 4 consecutive marking periods	Given controlled 3 rd grade reading level passages, read aloud 120 wpm w/ 95% accuracy; given uncontrolled 3 rd grade reading level passages, read aloud 107 wpm w/ 95% accuracy;	Given controlled 4th grade reading level passages, read aloud 123 wpm w/ 95% accuracy; given uncontrolled 4h grade reading level passages, read aloud 113 wpm w/ 95% accuracy;
						Given 4 th grade level MAZE probe, identify 26 wcpm on 3 consecutive probes given over 3 min.
<u>Math</u>	Answer 18 digits correct-3 rd grade basic computation test in 2 minutes	Score at least 8/10 on weekly math probes on 9 consecutive probes	Same	Score 80% or better on quarterly math assessments on 3 consecutive tests to proceed to next grade level assessment	Same	On 5 th grade probe, answer 1 digit multiplication and division facts w/ 80% accuracy on 3 consecutive probes
	Answer 10 questions correct					

	on 3 rd grade problem solving test in 10 minutes					
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A-3—WRITING & ORGANIZATION GOALS

<u>IEP DATE</u>	3/06 Gr. 5/6 (P-6)	5/07 Gr. 6/7 (P-8)	3/08 Gr. 7 (P-10)	6/08 Gr. 7/8 (P-11)	9/08 Gr. 8 (P-14)	3/09 Offer Gr.8 (P-17)
<u>Writing</u>	Write a 4 ¶ essay with various descriptors	Write 5 ¶ essays w/ topic sentences relating to theme of paper & concluding or transition sentence w/variation of sentence structure, correct grammar, punctuation – every essay, 8/10 weeks	Given a topic, compose one ¶ w/a minimum of 5 sentences of at least 8 words/sentence in 4/5 trials; proper capitalization, punctuation, structure in each sentence	Given a topic, compose a 3 ¶ essay w/a minimum of 5 sentences and at least 8 words /sentence in 4/5 trials; proper capitalization, punctuation, structure in each sentence	Same	Same
						Produce 16 correct words/min. w/16 correct word sequences including correct punctuation, capitalization and verb usage
<u>Organization</u>		Demonstrate increase in organizational skills; know, record, complete academic tasks, assignments, be prepared for class 100% of the time	Same	Same	Same	Same

						Verbally request additional assistance w/organization of subject area binders and self-advocate request in given environment 5/5 trials
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