

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

DUE PROCESS FOR:

Student's Name: JM
Date of Birth: xx/xx/xx
Dates of Hearing: March 1, 13 and 19, 2007
Type of Hearing: Closed
ODR #: 7198/06-07 LS

PARTIES TO THE HEARING:

Parent: . Date Last Transcript Received: March 26, 2007
Date of Decision: April 3, 2007
Hearing Officer: Ambrose Finnegan, Ed.D.

School District:
Wallingford-Swarthmore

District Representative: A. Kyle Berman, Esquire
Parent Representative: Alan Yatvin, Esquire

Background Information

The student is a xx year, 10th grade aged resident of the District. The student has an extensive history of learning and psychiatric issues. She attended school in the District for 9th grade, but is presently attending a private school in [state redacted].

A resolution meeting was held on November 18, 2006, but the parties ultimately elected to pursue due process.

The parent initiated these proceedings and is requesting tuition reimbursement and compensatory education for the student.

Findings of Fact

1. The student is a xx year resident of the District. She is presently attending a private school in [state redacted]. (N.T. 11, 245-246)
2. The parties stipulated to the authenticity of the nurse's notes which were put forth as an exhibit. (N.T. 9-11; P #33)
3. The Hearing Officer denied two motions submitted by parent's Counsel prior to the hearing being convened. One dealt with the proposition that the District's response to the parent's due process request was untimely. The other dealt with which side had the burden of proof in these proceedings. (N.T. 14-15; P #31-32)
4. The parent is seeking the following remedies in this matter: that the student be provided a free, appropriate public education ("FAPE"); that she ordered to continue in her current placement in [state redacted] at District expense; that the student receive tuition reimbursement for the placement in [state redacted] retroactive to June 2006; and that the student receive compensatory education for the period from December 2004 through June 2006. (N.T. 28-29)
5. The student has had an extensive history of learning, emotional and psychiatric issues which have had an impact on her academic progress. Her most recent Individualized Education Plans ("IEP") have specified that the student requires Learning Support ("LS") services. Her most recent Evaluation Report ("ER") from the District dated May 2005 identified the student as having a learning disability. Psychiatric diagnoses include bipolar disorder. (N.T. 36-45, 75, 200-203, 390-391, 703-718; P #1, 8-9, 23-25)
6. The student's IEPs developed for the 2005-06 and 2006-07 school years did not address social-emotional needs of the student and the IEPs did not list any special considerations under the category "Behavior that impede his/her learning or that of others." (N.T. 4-045; P #24-25)

7. The IEP developed for the 2006-07 school year did not specify whether the student was considered for Extended School Year Services (“ESY”). The previous IEP developed in June 2005 specified that the student was not eligible for ESY during the summer of 2005. (N.T. 48, 461-462, 521; P #24-25)
8. The student was placed in several settings during the summer of 2006 for primarily psychiatric reasons: the [redacted] Program; the [redacted] Center; the [redacted] Academy; and the [redacted] School in [state redacted]. The psychiatric issues evidenced included suicidal concerns, reported hallucinations, an apparent psychotic episode and depression. (N.T. 49-52, 239-245, P #1, 10-14)
9. The private psychologist who reviewed the student’s records felt that the School the student is presently attending constitutes an appropriate program for her. He was uncertain as to whether annual goals were specified in the student’s academic program at the School, however. The psychologist only reviewed the student’s records. He did not formally evaluate her himself. (N.T. 52-60, 80-84; P #2-5, 7-14, 25)
10. The private psychologist was not familiar with, or able to identify, any specific behavioral episodes evidenced by the student within the school setting during the student’s 8th grade year, 2004-05, or during her 9th year, 2005-06, through January 2006. (N.T. 61-63, 67)
11. The student was on medication under a psychiatrist’s supervision to address her bipolar disorder and ADHD conditions. (N.T. 63-64)
12. The student was admitted to a variety of psychiatric and mental health settings between January and June 2006. The settings included: the [redacted] Clinic, [redacted] Hospital, [redacted] Treatment, the [redacted] Center, and the [redacted] Center. Presenting behaviors associated with the placements included depression, self-injurious behaviors, hallucinations, and post traumatic stress disorder. (N.T. 70-71, 74-75; P #2-5, 7,9)
13. The measurable annual goals in the student’s proffered June 2006 IEP address two specific academic goals: student will improve her ability to follow the necessary steps in solving math problems with 100% accuracy; and within one academic year student will improve her writing language skills by 1.5 or 2 full grade levels. There were four additional goals addressing the student’s more global test-taking and organizational skills. The academic goals did not list a baseline performance level to gauge progress. The student’s mother did not express disagreement with the proffered IEP at that time. (N.T. 88-90, 268-269; P #25)
14. The School is a private school that provides therapeutic, medical and residential components. The school is accredited by the [redacted] Association of

- Accredited Schools, and its teachers are licensed by the state of Utah. All teachers are either certified in special education by the state of Utah or working toward such certification. (N.T. 111-112; P #14)
15. The School offers both a college prep curriculum and a remedial high school track for students with academic needs/deficits. On the campus the student is attending, approximately 55% of the students have IEPs. Class size averages 8-10 students. Many of the students attending the School evidence emotional disorders. (N.T. 114-117, 130-131)
 16. At School, students are monitored regularly, both by individual teachers and a comprehensive team of professionals. (N.T. 120-124)
 17. The student is enrolled primarily in remedial courses at the School. (N.T. 127)
 18. The student was not enrolled at School long enough in the summer of 2006 to receive any academic credit for course work. The student's grades during the first two – eight week terms at School ranged from 'F' through 'A-'. The majority of her grades were 'C+'. (N.T. 124-134; P #14(pg. 273))
 19. The student evidenced difficulties remaining on task when she entered School, initially associated with negative peers, and interacted with other peers poorly. School addresses students' behavior both within and outside the classroom or academic setting. (N.T. 141-145)
 20. The Special Education Coordinator who offered testimony concerning the School and the student had not directly taught the student or had much direct interaction with her. (N.T. 117-118, 150-151)
 21. The student has problems controlling her feelings in class at School, and, due to becoming frustrated, can be disruptive in class. Her assigned therapist has been working with the student to assist her in developing better coping skills in reacting to her feelings. (N.T. 157-158, 193-194)
 22. The student initially had difficulty adjusting to School, but has subsequently evidenced a better adjustment to the placement over the course of her first six months of placement there. (N.T. 162-165, 178-179; P #14 (pgs. 252, 270))
 23. The student was academically an honor student as an 8th grader in the District in 2004-05, but behaviorally was evidencing self-injurious behaviors such as cutting herself. The student continued to evidence self-injurious behaviors as a 9th grade student in 2005-06. These behaviors were being evidenced outside of the school setting. (N.T. 203-211)
 24. The parent informed the school about suicidal ideation and a suicidal attempt by the student in 2005-06. The parent also informed the school through on-going

- e-mails and phone calls about an abortion the student underwent, post traumatic symptoms associated with a previous episode of abuse and the host of psychiatric placements the student had commencing in or about January 2006. (N.T. 216-234, 248-257, 293-294, 325-328, 417-418, 433, 470-471, 489-491, 524-525, 530-531, 555-556, 630-631; P #2-3, 5, 7, 27)
25. At an IEP meeting on June 7, 2006 the student's mother discussed the emotional and psychiatric issues being evidenced by the student. The IEP, however, did not specifically address these issues or their possible implications. The parent described the IEP meeting as more a conversation rather than a formal IEP meeting with one exception, delineating the student's needs in the area of English. (N.T. 235-239, 317-321, 330-331, 467, 511-512, 526, 532-533; P #25)
26. The student was placed at the [redacted] Academy prior to her placement at the School. The [redacted] Academy felt it could not address the student's needs due to her disassociating and manifestation of different personalities and recommended that she be placed at School. (N.T. 243-245)
27. The student's parent discussed the student's placement at School with the District's Director of Pupil Services during the summer of 2006 after the student had been placed there. (N.T. 246-247, 332-335, 344; P #28)
28. During the summer of 2006, the District did not issue a request to re-evaluate the student or convene an IEP meeting upon learning the student was placed at School. (N.T. 248, 257-258, 335, 741)
29. Among the many e-mails exchanged between the student's mother and District staff during the student's several absences for psychiatric reasons in the spring of 2006 was an e-mail from the parent to the student's Learning Support teacher, who was the manager of the student's IEP and the individual responsible for convening IEP meetings, inquiring whether the student's IEP needed to be revised. (N.T. 254, 283-284, 476-477, 486-488, 503-504, 526; P #27 (pg. 378c))
30. The student's 9th grade teachers provided academic work for the student during the spring of 2006 when she was in her psychiatric placements. (N.T. 286-287, 424-425, 452; P #27)
31. The student's mother did not want school records to indicate the student had behavioral or emotional problems. The student's mother did not want certain information impacting the student's social-emotional adjustment and contributing to her psychiatric placements to be shared with the IEP team in June 2006. (N.T. 311, 351-352, 453-454, 477-478, 514)
32. The student's mother did not share records from the psychiatric placements the student was in between January and June 2006 when she met with the IEP team on June 7, 2006. Members of the IEP team were aware, however, that the student

- had been placed in settings for psychiatric/psychological treatment. (N.T. 317, 461, 511-512, 667,747)
33. District staff were told by the student's mother over the course of her 9th grade year that the student was receiving therapy and counseling outside the school, in addition to informing them of the student's hospitalizations. (N.T. 320-321, 448-450)
 34. The middle school psychologist opined that in-patient hospitalization for psychological and/or psychiatric treatment would have an impact on a student's education. (N.T. 378-379, 393-394)
 35. Contrary to her transition from elementary school into middle school, middle school staff did not believe the student would experience any significant problems in transitioning from the middle school into her high school placement for the 2005-2006 school year. (N.T. 368-371, 406-408; P #13)
 36. High school staff opined the student did not evidence problems or behavioral concerns during the first semester of the 2005-06 school year. The staff did not observe self-injurious behaviors being manifested by the student in the school setting. (N.T. 413-414, 431, 491-497, 501, 508, 539-550, 585-590, 596-598, 654)
 37. District school psychologists did not believe the student met the IDEA criteria to be classified as having a disability of Emotional Disturbance ("ED"). Had the student met this criteria, the recommendation would have been to place the student in an Emotional Support ("ES") classroom. (N.T. 372-373, 392-393, 528-530, 698)
 38. The student visited the nurse's office on an excessively frequent basis during the 2005-06 school year. (N.T. 434, 648-651; P #2, 33)
 39. At the June 2006 IEP meeting the IEP Team discussed the option of providing the student homebound instruction during the summer of 2006 to reinforce concepts missed in class due to her hospitalizations and absences. The District did not believe the student qualified for ESY services, however. (N.T. 456-459, 520-521, 560, 701-702)
 40. There was no discussion at the June 2006 IEP meeting of the student not returning to classes within the District for the 2006-07 school year. (N.T. 458-459)
 41. The student's psychiatric placements in the spring of 2006 had an impact on her grades. The District made accommodations in grading for the student in the form of assigning a pass/fail grade in certain subjects rather than assigning a more traditional numerical grade. (N.T. 463-465, 481, 519, 726-732, 754-755; P #26)

42. The June 7, 2006 IEP did not specify baseline data to assess the goals identified for the student. (N.T. 724-725; P #25)
43. The High School psychologist indicated an IEP Team should request reports concerning psychiatric placements of students when developing an IEP for such a student. The IEP Team knew that such placements had occurred at the time of the student's June 2006 IEP Team meeting. (N.T. 738-741)
44. The student did not return to District classes due to her psychiatric placements after April 17, 2006. (N.T. 728)
45. The Hearing Officer indicated he would give minimum attention to exhibits that were not addressed during testimony. (N.T. 788-790)
46. The Hearing Officer indicated he might exceed the 15 day requirement to render his decision due to the volume of testimony. (N.T. 787)
47. Parent exhibits 23, 24, 31, 32 and 33 were referenced in testimony and inadvertently not entered into the record. They are to be considered as having been entered. This necessity was noted by the Hearing Officer during his review of the transcript.

Issues

1. Was the student offered FAPE during the period between December 2004 and June 2006?
2. Did the proffered IEP in June 2006 provide the student FAPE?
3. Is the student's placement at the School in [state redacted] for the 2006-2007 school year an appropriate placement?
4. Is the student entitled to tuition reimbursement for placement at the School for the 2006-07 school year as well as for ESY placement at the facility during the summer of 2006?
5. Is the student entitled to any compensatory education due to FAPE not being provided her during the period between December 2004 and June 2006?

Discussion and Conclusion of Law

Before addressing the issues in this matter, the question of which party has the burden of proof in the matter will be considered. The parent sought to have the burden of proof placed upon the District (FF: 3). Schaffer v. West, 126 S. Ct. 528, 537 (2005) addressed

this issue, and held that the burden of proof in an administrative hearing contesting an IEP is properly placed upon the party seeking relief. Special Education Opinion #1757 (2006) and Special Education Opinion #1763 (2006). Thus the parent is viewed as having the burden of proof in this matter.

The first issue to be addressed will be the appropriateness of the IEP proffered by the District for the 2006-07 year.

The IDEA mandates that states receiving federal funds for education provide FAPE to students with disabilities. This entitlement is conveyed through the IEP, a detailed written document that delineates the student's abilities, specifies measurable goals for the student's education and describes the services the student will receive. Oberti v. Board of Education, 995 F. 2d 1204 (3rd. Cir. 1993). A district's failure to offer an IEP reasonably calculated to enable the student to receive meaningful educational benefit will be considered a denial of FAPE. Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982).

The IDEA implementing regulations at 34 C.F.R § 300.320 detail what should be included in an IEP. Among other factors, the IEP must include: a statement of the student's present levels of academic achievement and functional performance; and a statement of measurable annual goals designed to both meet the student's needs to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.

For a variety of reasons to be enumerated below, it is held that the District did not offer the student an IEP for the 2006-07 school year that would provide FAPE.

At the most basic level the IEP offers vague and poorly delineated measurable annual goals (FF: 13). As indicated in the IDEA citation above, there should be a connection between the statement in the student's IEP concerning her present levels of academic achievement and functional performance and the IEP's statement of measurable annual goals. The proffered IEP lists an annual goal in math but math is not even addressed in the statement of present levels of academic achievement and functional performance. Furthermore, the goals do not list a baseline performance level against which to gauge subsequent progress on achieving the established goals (FF: 42). More to the point, the listed goals of "following the necessary steps in solving math problems..." and "will improve her writing language skills by 1.5 or 2 full grade levels" convey no meaning. What necessary steps in reference to solving math problems? What writing language skills will be improved? The goals are simply vague and meaningless, and are simply incapable of objective measurement.

Great weight was given to the testimony of the psychologist who testified on behalf of the parent in this matter regarding the inappropriateness of the substantive elements of the proffered IEP. His testimony was highly credible and pervasively convincing, and I must concur with his assessment.

That being said, the substantive elements lacking in the proffered 2006-07 IEP as written pale in comparison to the neglect of the IEP to appropriately address all of the student's needs for FAPE.

The record clearly indicates that the student has had an extensive history of educational and psychiatric needs (FF: 5, 8, 12, 24, 32). The parent was in constant contact with District staff concerning traumatic events in the student's life (FF: 24, 33) and the District was acutely aware of the series of psychiatrically related placements the student had incurred during the second semester of the 2005-06 school year at the time the IEP Team convened in June 2006 to discuss the development of the student's IEP for the 2006-2007 school year (FF: 24-25, 32-33).

While somewhat understandable as will be noted below, it still defies this Hearing Officer's understanding as to how the IEP Team in June 2006 could not have addressed the student's social-emotional needs and considered how these substantial needs might impact her academic achievement in the coming academic school year (FF: 6). Indeed the District's own school psychologist testified that an in-patient hospitalization for psychiatric treatment would impact a student's education (FF: 34). Another District school psychologist indicated that IEP Teams, when cognizant of a student having been in psychiatric placements, should request such reports concerning these placements as part of the IEP development process (FF: 43). The District in this instance did not make such requests even though they were aware of the student's placements in psychiatric facilities. Indeed, at the time of the IEP meeting in June 2006, the student had not been in school since April 17, 2006 (FF: 44), and staff were aware of the reasons for her absence (FF: 29-30, 32-33). Additionally, testimony indicated that the student's placements had, in fact, had an impact on her academic achievement (FF: 41). Still, the IEP Team neglected to consider the student's social-emotional needs and how they might impact her academic progress.

The District argues that, even though they were aware of the student's in-patient psychiatric placements, the behaviors prompting these placements were not being evidenced in the school setting (FF: 36). That may well be the case, but, as noted above, the District's own psychologists acknowledged that events in a student's life cannot be compartmentalized and should at least be considered by the IEP Team. The IDEA at 20 U.S.C. § 1414 (d) (4) (A) ii states that an IEP must be revised as appropriate to address, among other things, a student's anticipated needs or other matters (emphasis added). I cannot see how the litany of psychiatric placements in the spring of 2006 would not have compelled the IEP Team to consider any anticipated needs on the student's part due to these placements. The determination of the reasonableness and appropriateness of an IEP is assessed in the context of the IEP Team using the information available to it at the time of the IEP meeting. Special Education Opinion #1731 (2006). The District failed this test.

Finally, the District seemed to suggest that, since the student had not been diagnosed as ED, social-emotional considerations were unwarranted (FF: 37). While certainly seeing some general connection between a student's IDEA diagnosis for entitlement to special education and the corresponding services a student would receive, I am unaware of any

statue or regulation that would render any necessary service or intervention required for a student to receive FAPE to be made contingent upon that student's IDEA disability classification. Quite to the contrary, whether an IEP is considered as adequate and as providing an appropriate and meaningful education in addressing a student's unique needs is not predicated upon or dependent upon the specific IDEA related diagnosis that may have been accorded to the student.

For all the above reasons, it is held that the District did not offer the student an appropriate IEP for the 2006-07 school year.

As suggested above, there were factors indicated in the record that influenced what deliberations and discussion occurred- or did not occur- at the June, 2006 IEP meeting.

The student's mother previously taught within the District and had personal relationships with many staff members. As previously noted, she was in constant communication with staff (FF: 24). This high level of familiarity may have influenced the staff to conduct the June 2006 IEP meeting in a manner that did not allow for all the student's needs to be brought up and discussed as necessary (FF: 25, 31-32). Whatever the District's well-intentioned reasons were for not addressing all the student's needs, it is still ultimately the District that must assume responsibility for the development of an IEP designed to provide FAPE, and the District failed in its obligation to do so in crafting the 2006-07 IEP for the student. Rowley, supra.

Subsequent to the June IEP meeting, the student was placed in additional settings for primarily psychiatric reasons in the summer of 2006, and was ultimately placed at the School on July 25, 2006 (FF: 8, 26). The parent is now seeking tuition reimbursement for the student's placement there.

Parents of a special education eligible student are entitled to tuition reimbursement based upon a three prong analysis: (1) did the District provide FAPE; (2) is the program provided by the private school placement appropriate; and (3) which party do the equities favor. Burlington School District v. Massachusetts Department of Education, 471 U.S. 379 (1985); Florence County School District v. Carter, 114 S. Ct. 361 (1993); and Special Education Opinion #1786 (2006).

The first prong of the analysis has been deemed to have been met in having determined that the District did not offer the student FAPE.

In considering the second prong of the analysis, testimony indicated that School is a private school staffed by special education teachers or those working toward certification; it offers both college prep and remedial academic tracks; many of the students attending the school evidence emotional problems; class size is small; and students are monitored regularly by a comprehensive team of professionals (FF: 14-16). The student evidenced difficulties in her initial adjustment to School but, with the intertwined educational and therapeutic program offered at School, the student has subsequently demonstrated a better adjustment to the facility and is achieving adequate grades for the most part, primarily grades of 'C' in her largely remedial class placements (FF: 17-19, 21-22).

I find no indication that School is not providing an appropriate program for the student and support the conclusion of the parent's expert psychologist to whom high credibility was accorded, that School has offered the student an appropriate placement (FF: 9). Thus the second prong of the analysis is considered to have been met by the parent.

Considering the equities in this matter poses a more difficult analysis. The parent's complicated relationship with the District merits some consideration. As noted, her excessively involved relationship with staff both promoted communication concerning the student and restrained staff from utilizing the information in certain instances. It appears that, in some respects, the parent usurped the District's authority in making decisions about programming for the student.

Nonetheless, the District had ample opportunity to craft an appropriate IEP for the 2006-07 school year and neglected to do so. The District never requested to conduct a reevaluation of the student despite being aware of her series of psychiatric placements in the spring of 2006 and did not conduct the June IEP meeting in a manner adequate to meet the student's needs. Still, the District had an opportunity to address the IEP in the summer of 2006 when the parent informed the District of the student's placement at the School (FF: 27). Despite being informed of the placement and presumably the implications of such placement, the District did not seek to initiate either a re-evaluation of the student or convene an IEP meeting (FF: 28).

Thus it is held that the equities rest largely with the parent and hold that the parent is entitled to tuition reimbursement for the student's placement at School commencing with the beginning of the 2006-07 academic year in September 2006.

I next address the issue of whether the student was offered FAPE during the period December 2004 through June 2006.

It appears that the December 2004 through June 2005 period is included merely to capture any allowable time prompted by the two year limitation on requesting due process established by the IDEA. 20 U.S.C. § 1415 (f) (3) (c) and Special Education Opinion #1763 (2006). There was no credible evidence offered that the student was not provided FAPE during this period of time. The parent, in fact, noted in her testimony that the student was an honor student as an 8th grader in 2004-05 (FF: 23).

The bulk of the testimony dealt with the 2005-06 school year and that period will now be addressed.

The testimony was uncontested that the student was anticipated to have a smooth transition into the 9th grade in 2005-06 (FF: 35). Highly credible evidence was also rendered that the student did well during the first semester of the 2005-06 school year (FF: 36). While the student may have unfortunately been engaging in self-injurious and other self-destructive behaviors outside of the school setting during this period, these behaviors were not having a noticeable impact upon her academic achievement (FF: 36).

The student's behavior deteriorated during the second semester of the 2005-06 school year, resulting in the series of psychiatric placements described above (FF: 12). These

multiple placements caused her to be absent from school for the majority of the second semester. During this period of time, staff regularly provided academic work for the student and modified grading procedures to accommodate the student's needs (FF: 30, 41).

The unfortunate circumstances that prompted the student's essential absence for the majority of the second semester of the 2005-06 school year could not have been addressed by the District because the student was not available to the District. It would be incongruous to hold that the District did not provide FAPE when it was prevented by circumstances from being able to do so. During the first semester of 2005-06, when the student was available to the District, the District, uncontestedly, did, in fact, provide FAPE to the student.

For all the above reasons, it is thus held that the District offered the student FAPE during the period between December 2004 and June 2006 and no compensatory education is warranted. Compensatory education allows for the provision of retrospective services that were denied to a student and which thus denied the student FAPE. Special Education Opinion #1462 (2004). There was no denial of such services in this case.

The final issue to be resolved is whether the student should have been provided ESY services during the summer of 2006.

ESY services are to be provided only if a student's IEP Team determines on an individual basis...that the services are necessary for the provision of FAPE to the student. 34 C.F.R § 300.309 (a) (2). It was noted that the student's proffered IEP did not indicate whether ESY was discussed at the June 2006 IEP meeting (FF: 7). The previous IEP developed in June 2005 indicated that the student was not eligible for ESY in the summer of 2005 (FF: 7). The fact that the student's eligibility for ESY was not reflected on the June 2006 proffered IEP is viewed as harmless error, however, as there was on-going interchange between the District and parent concerning academic support in the form of homebound instruction during the summer of 2006 for the student (FF: 39). Moreover, there was no evidence rendered which suggested that the student's parent even requested ESY for the student. The District acknowledged that the student's absences from school during the second semester of the 2005-06 had an effect on her academic progress, and was prepared to offer her academic reinforcement during the summer of 2006 to cover academic material she had missed during her hospitalizations.

22 PA.Code § 14.132 (2) lists seven factors which could prompt the need for ESY services, including traditional regression/recoupment criteria, as well as such other factors as:

- The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
- The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

- Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

If any of these factors would make it unlikely that the student would maintain skills and behaviors relevant to IEP goals and objective or if the student otherwise needed ESY services to receive FAPE, then the student would be ESY eligible. Basic Education Circular on Extended School Year Eligibility dated April 1, 2003.

While it is not necessary for a student to have first experienced regression during an interruption in educational programming in order to receive ESY, ESY eligibility must nonetheless show that such eligibility has a relationship to lessening possible regression in a skill or behavior. Special Education Opinion #1462 (2004).

It is thus held that the student was not eligible for ESY services after considering the conditions that must exist to be considered for ESY.

Even, however, for the sake of argument, the student was eligible for ESY services in 2006, she was not available for the District to provide these services due to her hospitalizations. Her eligibility for services then becomes moot. Even after the student's enrollment at School, the student did not participate in academic coursework – course work arguably being more similar to homebound instruction than ESY skill or behavior maintenance or enhancement – long enough, or to a degree, to receive any academic credit (FF: 18).

Thus it is held that the parent has met its burden to show that the student is eligible for tuition reimbursement for the regular 2006-07 academic year at the School. It is also held that the parent did not meet its burden to demonstrate that the District did not provide the student FAPE during the period between December 2004 and June 2006. The parent also did not meet its burden to demonstrate the student was eligible for tuition reimbursement for purported ESY services provided at the School during the summer of 2006. Drawing upon the highly credible testimony of the parent's psychologist, the staff at School and the regular education English and Math teachers from the District, I find substantial and preponderant evidence to reach these conclusions.

There was no indication in the record, however, that the District could not provide the student an appropriate IEP for the 2007-08 academic year if it conducted a comprehensive evaluation of the student's needs and then developed an IEP to address these needs.

Order

On this the 3rd day of April 2007, it is hereby ordered that:

1. The student was provided FAPE during the period between December 2004 and June 2006.
2. The student was not offered FAPE for the 2006-07 school year in the proffered IEP of June 2006.
3. The student's placement at the School for the 2006-07 academic year constitutes an appropriate placement for her.
4. The student is entitled to tuition reimbursement for the 2006-07 academic year at the School commencing with the beginning of the regular school term in September 2006.
5. The student was not eligible for ESY services during the summer of 2006 and the parent is not entitled to tuition reimbursement for academic programming at the School prior to the beginning of the regular school term in September 2006.
6. The student is not entitled to compensatory education of any sort as she was provided FAPE by the District during the period between December 2004 and June 2006.

Ambrose Finnegan, Ed.D., Hearing Officer

April 3, 2006