

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.

A.H.

Child's Name

Xx/xx/xx

Date of Birth

5873/05-06AS

ODR File Number

October 31, 2005, November 30, 2005, December 6, 2005

Dates of Hearing

(Record closed December 16, 2005)

Closed Hearing

Parties to Hearing

Parent(s)

Dates Transcripts Received:
November 7, 2005, December 2,
2005, December 7, 2005

Parent Representative
Elizabeth Kapo, Esq.
2123 Pinehurst Road
Bethlehem, PA 18018

School District
Barry Webb
Supervisor of Special Education
Exeter Township School District
4355 Dunham Drive
Reading, PA 19606

Date of Decision:
December 20, 2005

District Representative
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PO Box 5069
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New Britain, PA 18901

Kenneth Rose
Hearing Officer

Background

The student is a [teenaged] student in the Exeter Township School District. He is identified as an eligible student with Asperger's Syndrome. He is diagnosed as having Attention Deficit Hyperactivity Disorder, NOS, Oppositional Defiant Disorder, Reading Disorder, Mathematics Disorder, Disorder of Written Expression and Developmental Coordination Disorder. He is currently in a Full Time, Life Skills program in his home school district's high school eleventh grade. Last school year the parents filed for a due process hearing that concluded with a settlement agreement. During the hearing, the school district agreed to pay for an Independent Educational Evaluation (IEE) and this issue was removed from consideration.

There is an atmosphere of mistrust and hostility between the parents and the school district.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of Exeter Township School District.
3. The student is identified with Autism and Asperger's Syndrome.

Findings of Fact

1. By a settlement agreement of April 18, 2005, the October 4, 2004 Individualized Educational Program (IEP) and Notice of Recommended Educational Placement (NOREP) are recognized by the parents as providing Free and Appropriate Public Education (FAPE). The life skills placement was at the parents' insistence.
2. The parents agree with the behavior plan in the IEP. The plan was effective in the 2004-2005 school year. (N.T. 26-28, 350-354; S-3; P-7)
3. The student was successful last school year. (N.T. 371, 375, 376; P-10, P-11, P-12, P-13)
4. The student's pendent IEP is the October 4, 2004 IEP. (N.T. 112)
5. The IEP of October 4, 2004 is a thirty-nine page IEP. Social Skills Goal and Positive Behavior Plan (PBP) comprise ten pages of the IEP. It identifies the student as having a primary exceptionality of Autism (Asperger's Syndrome) with secondary disabilities of Other Health Impaired (ADHD-NOS) and Emotional Disturbance (ODD).

The October 4, 2004 IEP, under related services, calls for Speech/Language thirty minutes twice a week, PCA daily, Social Skills Trainer 30 minutes twice a week

and Special Education bus to and from school. Under Support for School Personnel, on-going consultation with the special education teacher is listed; Asperger's training is listed; Positive Behavior Support (PBS) Training is listed and Passive Restraint Training is listed. The trainings occurred during the 2004-2005 school year.

The student had an extensive behavior support plan. It listed problematic behavior, preventative interventions and consequence interventions. The student's behavior plan notes the student's behavior can get worse before it gets better. (N.T. 46, 47, 145, 146; S-1)

The IEP calls for "...on-going assessment and measurement procedures..." It is not specified as daily. (N.T. 22, 29, 30, 122; S-1, S-2)

6. The IEP calls for data collection, but does not specify when, frequency or method. The teacher was waiting until after the transition period to collect data. (N.T. 173, 174; S-1)

7. The classroom has a space for students to be alone and regroup. The space was used by the student, but not excessively. (N.T. 146)

8. The current teacher for the student was not hired until August 25, 2005. The previous teacher resigned August 2, 2005 and her replacement resigned August 22, 2005. (N.T. 31-33, 144; S-3)

9. The student's teacher had a year's teaching experience with learning disabled high school students and in an alternative education class. These required her to develop and implement behavior plans. In college she had courses in behavior management and developing of behavioral assessments and plans. Her college courses taught data collection.

The school district trained her in crisis prevention and passive restraint this school year. She signed up the first week of school and trained in November.

The teacher is experienced with using multi-sensory teaching techniques. (N.T. 144, 189, 192, 193, 210)

10. The teacher was trained in data collection by the Itinerant Autistic Consultant Teacher (IACT) after the first nine days of school. (N.T. 172)

11. Due to her late hiring, the student's teacher was not trained in the SRA's reading program prior to the start of school, but is receiving on-going training. (N.T. 74-76)

12. This year's staff received training listed in the IEP or have had past training. Some was through consultation. Further training has occurred since September 19, 2005. The teacher and PCA were not trained in passive restraint until mid-October, 2005. This

was the first time the training was available in the 2005-2006 school year. (N.T. 30, 31, 87, 88, 132)

13. The student's teacher and PCA are taking part in on-going training in classroom management and non-violent crisis intervention. This started in September. (N.T. 103)

14. Transition issues for the student were expected by the new teacher since the student was having a new teacher, new PCA, new assistant principal and new classmates. The teacher treated the first few weeks as a transitional period rather than a time of established behaviors.

The teacher used the transition time to assess academic levels. She estimated reading to be lower than anticipated. The student left school before formal assessments were done. (N.T. 148, 151, 153, 154, 185, 229, 230)

15. At the start of the school year the student was in a regular physical education class. At the time of the suspension other regular education classes had not been assigned. (N.T. 355-356)

16. The first day of the 2005-2006 school year was August 30, 2005. The student attended school eleven days between August 30, 2005 and September 19, 2005. The days of attendance were not consecutive; there were two interruptions due to illnesses and holidays of four days. (N.T. 22, 23, 145, 335, 336; S-7, S-8)

17. On the first day of school, the student's teacher called the parents to introduce herself. At that time the parents stated their agreement with the IEP. They discussed the PCA issue and the student being upset. (N.T. 156-159, 301,-303; P-9)

18. On the first day of school, the parents wrote the teacher introducing themselves. In it they recognized time to transition the student to the new school year and new staff. They asked for a meeting with the teacher. (N.T. 301, 361, 362; P-21)

19. On September 1, 2005 (third day of school), the teacher and parents met. The IEP was discussed. No IEP issues were raised at the meeting. They discussed the closet and bus driver concerns. The teacher offered to intervene with the bus driver, but was not asked to do so. The PCA was also discussed.

[An] incident was discussed at that time. (N.T. 158-160, 179, 180, 181, 182, 303, 382, 383; S-9)

20. The parents' letter of September 2, 2005 was given to the student's teacher on September 6, 2005. In it the teacher was thanked for the meeting on September 1 and the parents further described the student. The teacher's background was queried and the lack of a permanent PCA was brought up. Concerns about staff training were also brought up. (N.T. 68, 305-309; S-21)

21. The parents expressed concerns about the bus to the school district. (N.T. 309, 311)
22. The parents were concerned about the student's programming from the first day of school when the student came home moody over the changes from last year. (N.T. 431, 432).
23. On September 8, 2005, the parents wrote the school district stating their concern that all staff dealing with the student was not trained. They still did not feel the PCA had been appointed. Also, they complained about a supposed failure by the school district to live up to a previous agreement and charged retaliation against students and parents. The school district did not respond. (N.T. 389; S-22)
24. The teacher consulted with the assistant principal from time to time about the student and his behavior. (N.T. 200, 201)
25. After the start of the school year, the teacher started doing the Curriculum Based Assessments for her students. This started the week after the suspension. It was a month long process. (N.T. 191, 192, 196)
26. The data collection system used at the start of the school year was a daily log shared with the parents. More specific data collection was not in place because the school year had just begun. (N.T. 121, 122, 123, 127)
27. The parents feel the academics in the IEP are not being addressed as stated in the IEP. (N.T. 365-369)
28. The teacher and student selected courses in the "mainstream" to be taken by the student. These are scheduled. (N.T. 152, 153)
29. The student did math worksheets. (N.T. 367, 368; S-14)
30. The parents questioned the implementation of the student's IEP as early as September 8, 2005. Issues raised were staff and bus driver training and PCA appointment. (N.T. 69, 309, 311; P-22)
31. The teacher was not concerned by the frequency of the student's behaviors. She did not see escalating frequency of negative behaviors. Unacceptable behavior was sporadic. (N.T. 176, 178)
32. Starting September 7, 2005, the teacher maintained a daily log book that went to the parents. The parents gave input using the log book. (N.T. 84, 157; P-20)
33. The Supervisor of Special Education felt the student's teacher had the background and experience to implement the behavior plan in the IEP. (N.T. 63, 64)

34. The student's PCA for the 2004-2005 school year resigned August 19, 2005. A current district PCA was assigned to the student until a replacement could be found. A replacement PCA for the student was hired September 20, 2005.

The PCA has ten years experience and has had many trainings in areas such as behavior problems, autism, Asperger's Syndrome, Down Syndrome, non-crisis intervention and passive restraint.

A PCA was assigned to the student by the classroom teacher prior to the student's first day. The Supervisor of Special Education, shortly after, confirmed the assignment. The PCA was an aide in the classroom last year and knew the student. She would "shadow" the student, keep him calm and counsel him on use of a safe haven. These techniques usually worked. The PCA assists the student in academic areas.

The temporary PCA assigned to the student had been an aide in the classroom the previous year and knew the student. She had access to the IEP. No formal training of her for this year occurred prior to September 19, 2005.

The parents feel the PCA is not really assigned to the student. (N.T. 33-35, 72, 73, 86, 87, 100, 156, 169, 171, 213-215, 216, 217-219, 221, 223, 231, 232, 240, 318; S-3)

35. The parents approved of last year's PCA. (N.T. 356, 357)

36. The teacher trained the PCA in the student's behavior plan. The PCA was not responsible for data collection. She did not communicate with the parents. (N.T. 103, 219, 221)

37. The PCA kept a journal which she kept as a personal reference and did not share with others. (N.T. 160, 161, 221, 222)

38. The student's classroom has three aides plus the teacher. One aide is assigned to the student as a PCA plus other duties. The other aides can assist the temporary PCA to the student. (N.T. 69-73)

39. One of the other aides in the classroom is trained in passive restraint. (N.T. 212)

40. The cafeteria worker, assistant principal who deals with the student, the school nurse, the librarian and the IACT have all reviewed the student's behavior support plan. This was done prior to September 21, 2005. (N.T. 163, 164, 186; P-26)

41. The school district has an IACT who gives support to staff. She has observed and interviewed the student. On the fourth day of school she met with the student's bus driver concerning the student. Behavior management techniques were reviewed. The

bus driver had no behavioral concerns about the student. There were other meetings. The autistic consultant has ridden the bus. (N.T. 92, 95-99, 102, 104, 105, 134, 135)

42. The autistic consultant worked with the student's teacher and PCA on the behavior plan and data collection. They met September 12, 2005, the eighth day of school. They worked on correcting behaviors that were emerging – cursing and other behaviors. The IACT did training with the PCA from the start of school onward.

The new data collection methods were not instituted until after the incident that led to the suspension. The suspension led to the conclusion that the log was not adequate. (N.T. 100-102, 105, 118, 121, 128, 131, 211, 228; S-7)

43. Bus driver training includes training on exceptional students. Refresher training is done. The bus aide was in a special education training last year. The student was never referred for bus discipline problems. Bus driver training on dealing with special education students is on-going.

In the spring of 2005 the Supervisor of Special Education met with bus aides to discuss needs of special education students. (N.T. 35, 87, 88, 242)

44. One on one instruction occurred in academic areas through the teacher and follow-up by the PCA. (N.T. 193-196)

45. The student appeared more agitated when school started in 2005-2006 school year than in the previous year. He missed his previous teacher. Inappropriate speech and profanity increased. (N.T. 77, 78)

46. On the first day of school the student put himself in a [room which] had been created previously for student use. The current teacher changed its use after the first day. (N.T. 174, 178, 182)

47. The student had a “slight meltdown” on September 16, 2005 which was handled by a brief conversation with the teacher and the assistant principal. This was reported to the parents by way of the log. The teacher saw the handling of this situation as consistent with the behavior plan. (N.T. 183, 184; P-20; S-1)

48. [On] September 1, 2005 [an] incident [occurred and] the student was taken to the assistant principal for him to calm the student down. (N.T. 224; S-9)

49. During outbursts, the teacher and/or PCA would talk with the student and calm him down. His behaviors would be [redacted.]

The student exhibited the problematic behavior about 30 to 40% of the time. The PCA was able to “talk the student” down when he exhibited targeted behaviors. (N.T. 149, 152, 228)

50. The student, on September 12, 2005, [made a threat.] The teacher and the assistant principal had a conference on this incident.

On the day of the September 12th incident [redacted], the student was permitted to go to a safe haven (another teacher) with the PCA “shadowing” him. (N.T. 204, 227, 228; S-9)

51. The student has [certain interests]. (N.T. 372, 378)

52. [Redacted.] The parents feel some teachers pick on him. (N.T. 425, 426)

53. The teacher was absent on September 19, 2005. A substitute teacher was in charge of the class. (N.T. 164)

54. The student was suspended from school on September 19, 2005 to be served September 20, 2005 for “...threatening behavior in class, disruptive to educational environment [particularly redacted].” The parents knew the suspension was for one day. (N.T. 61, 332, 391; P-25)

55. On the day of the suspension incident, the student was having an off day. [Redacted.]

He was removed from the class for the remainder of the day and taken to the assistant principal’s office area. (N.T. 235-240; P-20)

56. The assistant principal reviewed the student’s IEP the week before the suspension. (N.T. 211, 219, 256, 270)

57. The student was argumentative [and] the assistant principal could not calm the student down. He used his knowledge of the behavior plan and his experience to attempt to calm the student.

The assistant principal viewed the student’s behavior on September 19 to be out of control unlike other incidents previously. Previously the assistant principal was able to calm the student by talking with him.

The behaviors that led to the student’s suspension are behaviors described in the IEP’s behavior plan. (N.T. 64, 257, 258-261, 262-266, 274; S-1)

58. The assistant principal talked with the student about three times before the September 19 incident. They were not viewed as disciplinary by the assistant principal. This included the [previous] incidents. These were viewed as counseling and time out. (N.T. 250)

59. The assistant principal is an experienced educator. He is trained in non-crisis intervention and passive restraint. The school district’s Discipline Policy Manual allows

for flexibility and discretion in punishment. This has specific reference to behavior management for exceptional children that provides for understanding the behavior, collecting data, least intrusive intervention, monitoring behavior and IEP review. (N.T. 248, 254, 255, 269)

60. The assistant principal had seen the teacher's log book prior to September 19, 2005. He had also seen the IEP. (N.T. 188)

61. The autistic consultant had a conversation with the assistant principal about the student. (N.T. 106)

62 On September 19, 2005 the father was called to the school and found the student upset and agitated. (N.T. 389)

63. The assistant principal was emotional (upset or angry) in the meetings with the parents on September 19 and 20. The conference on September 20 was ended by the assistant principal. (N.T. 322, 332, 390)

64. At the meeting on September 20, 2005 with the parents to discuss the suspension and re-entry to school, the parents informed the school district their attorney advised them not to have the student return to school.

The teacher was present at the meeting with the assistant principal and the parents to discuss the suspension. The teacher had input and stated the student's behavior was improving. The parents did not want the student to return to school; the school wanted him to return the next day.

The meeting was ended by the assistant principal. (N.T. 187, 188, 271, 272)

65. The parents did not bring the student to the readmission meeting on September 21, 2005 on the advice of their attorney. At the meeting the assistant principal showed the parents drawings by the student [redacted].

At the meeting the assistant principal informed the parents that another parent had complained that their child had been verbally "assaulted" by the student. The parents viewed these events as danger signals. (N.T. 392-394, 433)

66. The high school assistant principal issued a Notice of Unlawful Absence to the parents on October 6, 2005. The parents were cited for truancy on October 25, 2005. (N.T. 33, 40, 41, 55, 395, 396; P-33; HO-1)

67. On November 29, 2005 the truancy charges were dropped by the court when the school district failed to appear at the hearing. (N.T. 395-396)

68. The parents requested a due process hearing on September 19, 2005 and amended it on September 21, 2005. (N.T. 25; S-5, P-24)

69. On September 21, 2005 the parents determined they wanted another placement for the student. Their attorney was in contact with the school district's attorney. (N.T. 405, 434)

70. The parents did not request an IEP meeting at the September 20, 2005 resolution meeting. (N.T. 84)

71. The annual review date for the October 4, 2005 IEP came and went with no IEP meeting being held. The teacher was responsible to convene an IEP meeting prior to the October 4, 2005 expiration date. (N.T. 42, 49, 50, 207)

72. The school district did not call an IEP meeting immediately after the suspension because lawyers were involved. (N.T. 129, 130)

73. On October 18, 2005 an invitation to attend an IEP meeting was issued. On October 27, 2005 the parents responded that the time was inconvenient and that the invitation had several irregularities. They asked for another date.

Since then other correspondence has occurred to set a date for a meeting to review an IEP issued by the school district. (N.T. 41, 165-167; P-38, P-39)

74. An IEP meeting was held on October 28, 2005 without the parents in attendance. The IEP created unilaterally by the school district was unacceptable to the parents. No NOREP was provided to the parents. (N.T. 52, 408-410, 415, 416; P-38)

75. The school district reissued an invitation to attend an IEP meeting on November 14, 2005. The parents offered alternative dates and requested a facilitated IEP meeting. (N.T. 412-416; P-39)

76. The parents felt they were working with the school district "behind the scenes" to educate the student during his absence.

Homebound instruction was offered to the parents as part of a settlement agreement. It was not an offer of an educational placement to replace current programming. (N.T. 39, 55-61, 402; P-27)

77. The student is receiving tutoring services ten hours a week provided by the parents in place of attending school. (N.T. 347; P-6; P-35)

78. The student has trouble dealing with the other students in his class and doesn't want to go to school. (N.T. 326, 327)

79. The parent does not think the other students in the class are a good match with the student. (N.T. 316-318, 336, 337)

80. The student feels other students and teachers pick on him. (N.T. 424, 425)

81. The parents do not want the student around the assistant principal again.
(N.T. 332)

82. The parent did not want to send the student back to school because he felt the student was a serious danger to himself, students or staff. (N.T. 400, 401, 403, 406)

83. The school district does not see a danger to students or staff by the student.
(P-34)

84. The parents have a concern/fear of being sued because of the student's behavior. (N.T. 361, 362, 427)

85. The parents feel a distance has been put between them and the school district.
(N.T. 426, 427)

86. The student has a behavior specialist who works with him outside of school. He did visit the class once this year at the request of the parents. (N.T. 312, 323, 324, 325, 384)

87. The student had a Transitional Support Service (TSS) aide previously at home. Re-instituting this was being discussed with the parents by the private behavior specialist at the time of the suspension.

At the start of the school year the student was showing tension and aggression at home. The parents are exploring this with the behavior specialist and psychiatrist.
(N.T. 385, 386)

88. The parents have not shared information with the school district on increased TSS services.

The parents did not invite the school district to the agency meeting on the student held in October, 2005. (N.T. 422, 423, 426)

Issues

1. Was the student's IEP for 2005-2006 implemented?
2. Should a personal care aide (PCA) have been provided for the whole school day for the student?
3. Was the suspension of September 19, 2005 appropriate?
4. Is the current program and placement for the student appropriate?

5. Has the student been denied FAPE?

6. Is the student due compensatory education for the 2005-2006 school year?

Discussion and Conclusions of Law

The student started the school year under an IEP developed October 4, 2004. This IEP was recognized as appropriate by way of a settlement agreement between the school district and the parents. The IEP is extensive. Just prior to the start of the school year the student's 2004-2005 teacher and PCA resigned. The replacement also resigned. A new teacher was hired four days prior to the start of school. The teacher was experienced in special education and implementing behavior support plans. She taught an alternative education program and learning support the previous year. The school district assigned a temporary PCA to the student until a permanent PCA could be hired. At the time of the hearing a permanent PCA was employed. Specific training for the new teacher in behavior techniques and passive restraint was arranged for at the earliest possible time. The PCA was an experienced person with previous training as a special education aide. Also, she was an aide the previous year in the student's classroom.

The student was upset from the first day of school over the change in teachers and PCAs. The teacher viewed the first weeks of school as a transition period for the student to adjust to the new situation. It is important to note that the student was in attendance for only eleven of the fifteen days school was in session before his suspension for one day and the parents' refusal to return him to school. These eleven days were not successive days; there were two interruptions of four days.

The issues of the hearing will be discussed individually. Decisions on the issues are being made on substantive grounds.

Issue 1 – Was the student's IEP for 2005-2006 implemented?

The teacher is trained and experienced in multi-sensory methods in teaching reading. The student was placed in academic settings with personal instruction as stated in his IEP. The key to the parents' complaint is the implementation of the extensive behavior support plan.

There were several incidents during the eleven days of attendance. [Redacted.] These were all in keeping with behaviors in his IEP. The teacher and PCA used strategies in the IEP, especially providing choice, talking with him to calm him down and use of a quiet area to calm him down. These strategies were effective. The teacher felt the student's behaviors were improving at the time of the suspension (this will be addressed later). Although passive restraint was not needed, one classroom aide and the assistant principal were trained to use it.

It is important to note that data collection is specified in the IEP. The teacher had not started formal data collection and charting in the first fifteen days of school. She saw this time period as transitional and wanted the student's behaviors to be established since they were different from last year. Curriculum-based assessment started the week the parents started to keep him home. The teacher did track and report what the student did to the parents by way of logs and other communication. The teacher phoned the parent to introduce herself on the first day of school. There was a parent conference several days later. The correspondence by the parents showed both their concerns and knowledge of what was happening at school.

Staff, including the bus driver, was trained previously or during the school year as called for in the IEP. The training is on-going.

The IEP was being implemented.

Issue 2 – Should a PCA have been provided for the whole school day for the student?

The student was assigned a temporary PCA as established in the IEP.

Issue 3 – Was the suspension of September 19, 2005 appropriate?

On September 19, 2005 the student was loud, cursing and uncooperative. It is significant that the teacher was absent and a substitute was present. The assistant principal, whose office was nearby, was called to the class. He was familiar with the student and the IEP. He had interacted previously with the student. The assistant principal has training in behavior management techniques and passive restraint.

The assistant principal took the student to his office area. The assistant principal could not calm the student. He consulted with the substitute teacher, the PCA and the Supervisor of Special Education during this time. The IEP does not prohibit suspension. The assistant principal exercised his administrative prerogative and suspended the student for the next day.

The parents were called to take the student home. The assistant principal became upset at the meeting with the parents. On September 21, 2005 there was a re-entry conference with the parents. At this time, the parents were shown drawings [and] the meeting ended abruptly when the assistant principal became upset over the progress of the meeting.

It is of note that with advice of counsel the parents had decided on September 19, 2005 that they would not return the student to school. They stated that the student was upset by his classmates and the parents feared lawsuits by families of classmates.

The emotional handling of the parent conferences is a puzzle. Certainly a trained professional should be able to manage an emotionally charged parent conference.

The suspension did not violate the IEP, and was within the assistant principal's administrative prerogative. IDEA §615 (k)(1)(A) permits a suspension of up to ten days for a violation of the school's code of conduct. The suspension was for one day.

Issue 4 – Is the current program and placement for the student appropriate?

The judging of the appropriateness of the program and placement needs to be done as of the date of the suspension. The student's teacher stated that in her opinion the student's behavior was actually improving during his eleven days of attendance. The drawings by the student were with the knowledge of the teacher [redacted]. There is no doubt that the events that led to the suspension are important, but the IEP and placement were appropriate. Unfortunately, the parents unilaterally removed the student from the placement making further judgment impossible. An IEP review meeting was due in a couple of weeks.

At the time of the suspension the program and placement were appropriate.

Issue 5 – Has the student been denied FAPE?

FAPE is to be provided to all students qualifying for special education services. The Supreme Court, in Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), held FAPE is met by complying with IDEA's procedural requirements and by providing individualized instruction and support services to permit a child to benefit educationally from the instruction. While the law does not require school districts to offer optimal educational programs to maximize the child's potential, this standard is met only when the child's program provides more than a de minimus educational benefit.

As outlined in items one through four, there is no reason to find that FAPE was not provided.

Issue 6 – Is the student due compensatory education for the 2005-2006 school year?

Compensatory education is an in-kind remedy. A child is entitled to compensatory educational services if the child is exceptional and in need of special education and related services (i.e., eligible for FAPE) and if through some action or inaction of the district, the child was denied FAPE. See *Lester H. v. Gilhool*, 916 F.2d 865 (3rd Cir. 1990), *In Re the Educational Placement of J.A.*, Opinion Number 1238. Compensatory education's specific purpose is to remedy a period lacking such benefit computed from when the district knew or should have known of the programmatic deficiency.

Since FAPE was provided no compensatory education is warranted.

The Hearing Officer feels compelled to comment on two related events.

First, it is disturbing that the student has been out of programming since September 21, 2005. Yes, the student is being tutored at parent expense, but this does not take the place of the programming the student needs. The school district did file truancy proceedings, but inexplicably did not appear at the hearing. Evidently the school district relied on “behind the scenes” activities to resolve this.

Second, the school district permitted the annual IEP review date to pass without action. Belatedly, on October 18, 2005, the school district started the process of reviewing the IEP. As of the date of the last hearing session, no IEP meeting had been held. If it were not for the fact that finally actions are occurring to review the IEP, I would have ordered action on revising the IEP and returning the student to the pendent placement.

The LEA is ordered to take the following action:

None.

Date _____

Kenneth Rose
Hearing Officer