

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

Pennsylvania  
Special Education Hearing Officer

DECISION

Child's Name: AH

Date of Birth: XX-XX-XXXX

Dates of Hearing: September 10, October 14, November 10, and  
December 14, 2009

**CLOSED HEARING**

ODR Case # 00098-09-10-LS

Parties to the Hearing:

Mr. & Mrs.

Dr. Annette Lambeth  
Boyertown Area School District  
120 N. Monroe Street  
Boyertown, PA 19512

Date Record Closed:

Date of Decision:

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January 11, 2010

January 26, 2010

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (“student”) is a 15-year old student residing in the Boyertown Area School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup>. Parents filed a complaint in July 2009, alleging that the student’s special education program failed to provide a free appropriate public education (“FAPE”) to the student for the 2007-2008 and 2008-2009 school years, including summer programming. Parents requested compensatory education for those school years in addition to a claim for tuition reimbursement for a unilateral private placement made by the parents for the 2009-2010 school year. Additionally, parents claim that they should be reimbursed for the costs of an independent educational evaluation. For the reasons set forth below, the parents will prevail on some of these claims and will not prevail on others.

## **ISSUE**

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<sup>1</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818.

Has the District properly identified the student?

Did the District provide FAPE to the student for the 2007-2008 and 2008-2009 school years? If not, is compensatory education owed by the District as a result of the deprivation?

Is the student entitled to compensatory education for the denial of extended school year (“ESY”) programming in summer 2008 and summer 2009?

Is tuition reimbursement owed to the parents for the student’s private placement in the 2009-2010 school year? If so, is the District responsible for the transportation of the student to the private placement?

Should parents be reimbursed for the costs of an independent educational evaluation?

### **FINDINGS OF FACT**

1. The student was identified in March 2002 as a student eligible for special education as a student with specific learning disabilities in reading, writing, and mathematics. (Parents’ Exhibit [“P”]-8 at page 1; School District Exhibit [“S”]-4 at page 1).
2. The student was in 7<sup>th</sup> grade for the 2007-2008 school year. The student’s individualized education plan (“IEP”) from May 2007, in effect for most of the 2007-2008 school year, indicates the student’s present levels of academic achievement as follows: “Given a 5<sup>th</sup> grade reading probe, (the student) reads 85 words correct per minute with 96% accuracy. Comprehension of explicit/implicit information is 75%. Given a writing prompt and graphic organizer, (the student) writes 3 paragraphs focused on the topic and scoring (sic) 14 out of 20 on a PSSA writing rubric.” (S-1 at page 4).
3. The IEP included four annual goals in the following areas: reading fluency, reading comprehension, math computation, and written expression. (S-1 at pages 8-9).
4. The reading fluency goal stated: “(The student) will read 139 words correct per minute with 95% accuracy on a 5<sup>th</sup> grade level on three consecutive trials.” (S-1 at page 9).

5. The reading comprehension goal stated: “Given a cloze comprehension passage at level 5, (the student) will complete the passage with 90% accuracy over three consecutive trials.” (S-1 at page 8).
6. The written expression goal stated: “(The student) will write narrative, informational, and persuasive writing samples that will score at least a 3 on the Pennsylvania scoring guide by using the writing process to write passages with correct focus, content, organization, style, and conventions” (S-1 at page 8).
7. The student was receiving approximately 80 minutes of reading instruction each day in the Read 180 program. (Notes of Testimony [“NT”] at 613-614).
8. In January 2008, midway through the 2007-2008 school year, the District performed a re-evaluation of the student. (P-8; S-4).
9. In the re-evaluation report, the student’s English/reading teacher noted that “(the student) has difficulty with reading comprehension, decoding, and fluency....She does better on quizzes that are paper generated and has a tough time when it is on the computer. (The student) struggles with writing. (The student) also has difficulty with understanding text (the student) reads independently.” (P-8 at page 2; S-4 at page 2).
10. In the re-evaluation report, the student’s math teacher noted that “(the student) struggles with basic math facts and computational skills.” (P-8 at page 2; S-4 at page 2).
11. In the re-evaluation report, the student’s social studies teacher noted that “(the student) struggles with reading decoding and reading fluency....” and “has difficulty reading aloud”. (P-8 at page 2; S-4 at page 2).
12. The re-evaluation report contained the following percentile scores on the Woodcock-Johnson Tests of Achievement-III (“Woodcock-Johnson”) in various areas:

<u>Reading</u>	
Broad Reading	3 <sup>rd</sup> percentile
Basic Reading Skills	4 <sup>th</sup> percentile
Reading Comprehension	9 <sup>th</sup> percentile
Letter-Word Identification	2 <sup>nd</sup> percentile
Reading Fluency	5 <sup>th</sup> percentile
Spelling	5 <sup>th</sup> percentile

Passage Comprehension	5 <sup>th</sup> percentile
Word Attack	6 <sup>th</sup> percentile
Reading Vocabulary	21 <sup>st</sup> percentile

Writing

Basic Writing Skills	6 <sup>th</sup> percentile
Editing	7 <sup>th</sup> percentile
Punctuation & Caps	10 <sup>th</sup> percentile

Math

Broad Math	20 <sup>th</sup> percentile
Math Calculation	16 <sup>th</sup> percentile
Math Reasoning	19 <sup>th</sup> percentile
Calculation	29 <sup>th</sup> percentile
Math Fluency	5 <sup>th</sup> percentile
Applied Problems	27 <sup>th</sup> percentile
Quantitative Concepts	13 <sup>th</sup> percentile

(P-8 at page 4; S-4 at page 4).

13. The re-evaluation report noted that “(the student’s) reading and writing skills are significantly below same age peers” and “negatively affect performance across academic settings”. The student was diagnosed with specific learning disabilities in reading and written expression. (P-8 at page 6; S-4 at page 6).
14. A new IEP was developed for the student in February 2008. (P-9; S-5).
15. The student’s reading goals changed dramatically from the May 2007 IEP. The goals in reading comprehension and reading rate were dropped, replaced by one generalized goal that read as follows: “Using reading strategies and skill in (the student’s) reading/English class, (the student) will attain at least a 80% average utilizing curriculum based assessments given during the marking period across four consecutive quarters.” (P-9 at page 8; S-5 at page 8).
16. The one goal in written expression in the May 2007 IEP expanded to five goals in written expression, each calling for a score of 3 out of 4 on the PSSA scoring rubric in (1) style, (2) focus, (3) conventions, (4) organization, and (5) content on various writing samples. (P-9 at pages 8-9; S-5 at pages 8-9).
17. The goal in math computation from the May 2007 IEP was dropped because the student had met progress on the goal and

seemingly maintained adequate performance in excess of the goal. (P-9; S-5, S-13 at page 2; NT at 495-498).

18. The IEP of February 2008 indicated that the student was not eligible for ESY programming. (P-9 at page 12; S-5 at page 12).
19. The student's mother testified that, during 7<sup>th</sup> grade, when the student read books at home to meet the District's independent reading requirement, the student read books well below grade level. By the mother's estimation, the books were at the 2<sup>nd</sup> and 3<sup>rd</sup> grade level. (NT at 149-150).
20. The student was in 8<sup>th</sup> grade for the 2008-2009 school year. The student's IEP from February 2008 was being implemented for the first half of the school year. Again, the student was receiving approximately 80 minutes of reading instruction per day. (P-9; S-5; NT at 613-614).
21. Progress monitoring for the reading goal showed that the student maintained an average of 81.25% for the period that the February 2008 IEP was in effect (with assessments in April 2008, June 2008, November 2008, and January 2009). (S-13 at page 5).
22. In February 2009, a new IEP was developed for the student. Present levels of educational performance indicate that the student's lexile score in the Read 180 program was 457. This score was "far below basic", with an 8<sup>th</sup> grade student normally having lexile scores between 900-1150. (P-45; S-7 at page 4; NT at 633-638).
23. Present levels of educational performance indicate that the student scored 2 out of 4 on the PSSA scoring rubric in writing in the areas of content, focus, style, organization, and conventions. (S-7 at page 4; P-11 at page 4).
24. The student had two goals in the February 2009 IEP, one in reading and one in writing. The writing goal continued to pursue a goal of a cumulative score of 15 out of 20 from a single score of 3 out of 4 on the PSSA scoring rubric across five areas. (P-11 at page 10; S-7 at page 10).
25. The reading goal in the February 2009 IEP was replicated, except that the 80% average was replaced by an 85% average, as follows: "Using reading strategies and skill in (the student's) reading/English class, (the student) will attain at least a 80% average utilizing curriculum based assessments given during the

marking period across four consecutive quarters.” (P-11 at page 9; S-7 at page 9).

26. After the February 2009 IEP team meeting, due to the insistence of parents that the District focus more on the student’s reading instruction, that instruction was split between the Read 180 program and SRA Corrective Reading. (NT at 641-645).
27. The student’s lexile scores in the Read 180 program for the 2007-2008 program were measured at 319 in October 2007, 353 in December 2007, 307 in February 2008, and 358 in April 2008. The lexile scores for the 2008-2009 school year were measured at 415 in September 2008, 291 in October 2008, 457 in December 2009, and 433 in March 2009. (P-17 at page 8; S-14, S-18 at page 10).
28. Progress monitoring for the reading goal in the February 2009 IEP showed that the student maintained an average of 82% for the period that the February 2009 IEP was in effect (with assessments in February 2009, April 2009, and June 2009). (S-13 at page 11).
29. The IEP of February 2009 indicated that the student was eligible for ESY programming in the summer of 2009. (P-11 at page 11; S-7 at page 11; S-12).
30. In April 2009, the parents sought an independent educational evaluation (“IEE”) which diagnosed the student as having a learning disorder of the dyslexic type. The evaluator concluded that the student qualified under Pennsylvania special education regulations as a student with specific learning disabilities in reading, written expression, and mathematics, and a speech and language impairment. The IEE was received by the District on April 24, 2009. (P-20; S-9).
31. In the summer of 2009, the student participated in an international visitation program in [Redacted country]. Due to the time spent abroad, the student did not participate in summer 2009 ESY programming. (NT at 175-178, 671-673).
32. In May 2009, the student’s family attended an open house at a local private school. The student applied in June 2009 and was accepted on August 3, 2009. (P-25; NT at 48-49).
33. The private school enrolls approximately 200 students in grades 6-12. All of the students at the school have learning disabilities, with approximately 85% of the student’s having

language-based disabilities, an area which the school's director of admissions described as an area of expertise. (NT at 40-42).

34. Parents filed their complaint in late July 2009.
35. In early August 2009, the IEP team met to consider the IEE and to revise the student's IEP. (P-17; S-18).
36. The August 2009 IEP contained a reading goal, a reading comprehension goal, three written expression goals, five mathematics goals, and a transition goal for post-secondary planning. (P-17 at pages 14-20; S-18 at pages 16-22).
37. The reading goal reverted to its form in the May 2007 IEP. It reads: "Given a passage at the 5<sup>th</sup> grade reading level, (the student) will demonstrate fluency in reading by reading 139 words correct per minute with 98% accuracy on at least 3 out of 4 consecutive trials." (P-17 at page 14; S-18 at page 16).
38. The reading comprehension goal also mirrors the goal in the May 2007 IEP: "Given a cloze passage at the 5<sup>th</sup> grade level, (the student) will complete the passage with 90% accuracy over three consecutive bi-weekly trials." (P-17 at page 15; S-18 at page 17).
39. The five math goals include a problem-solving goal, and one goal each for basic math-fact fluency in addition, subtraction, multiplication, and division. (P-17 at pages 17-19; S-18 at pages 19-21).
40. The student testified and reported that she feels she is engaged in meaningful learning at the private school. (NT at 350-353).

### **DISCUSSION AND CONCLUSIONS OF LAW**

Again, the parents have claimed (1) that the student has been in appropriately identified, (2) that compensatory education is owed for alleged deprivations of FAPE in the 2007-2008 and 2008-2009 school years, (3) that compensatory education is owed for alleged deprivations of FAPE in the summer of 2008 and summer of 2009, (4) that the parents



are entitled to tuition reimbursement for the private placement in the 2009-2010 school year, and (5) that the parents are entitled to reimbursement for the cost of the IEE. Each of these claims will be examined separately.

### Identification

Parents claim that the District has failed to appropriately identify the student under relevant Pennsylvania and federal special education laws.<sup>2</sup> Although it is unclear exactly what identification the parents seek, it appears that the claim is centered on the degree of detail that the independent evaluator used in identifying the student's exceptionalities compared with the District's evaluation. (FF 8, 30). The District has consistently identified the student as having learning disabilities. Both federal and Pennsylvania law define specific learning disability as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations...."<sup>3</sup> The private evaluator's use of terms in explaining the student's exceptionalities is more detailed. But that does mean that the District's identification of the student as a child with specific learning disabilities is flawed or in error.

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<sup>2</sup> 34 C.F.R. 300.1-300.818; 22 PA Code §§14.101-14.162.

<sup>3</sup> 34 C.F.R. 300.8(c)(10); 22 PA Code §14.102(a)(2)(ii).

Accordingly, parents' claim that the District has not appropriately identified the student must fail.

### Denial of FAPE

Parents claim that the District has denied the student FAPE in the 2007-2008 and 2008-2009 school year. To assure that an eligible child receives FAPE,<sup>4</sup> an IEP must be "reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress."<sup>5</sup> "Meaningful benefit" means that a student's program affords the student the opportunity for "significant learning",<sup>6</sup> not simply *de minimis* or minimal education progress.<sup>7</sup>

In this case, the District's IEPs fail on two counts. First, the goals for guiding the student's programming in 2007-2008 and 2008-2009 are flawed. The goals crafted in the May 2007 IEP, especially regarding reading (which is clearly the student's greatest area of need), are appropriate. Both the reading fluency and reading comprehension goals are well-written and measurable. (FF 4,5). Yet in February 2008, both goals simply disappear, replaced by one reading goal, an overly general goal that lacks any rigor in measuring the student's progress. (FF 15). "Using reading strategies and skill in (the student's) reading/English class, (the student) will attain at least a 80% average utilizing curriculum

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<sup>4</sup> 34 C.F.R. §300.17.

<sup>5</sup> Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

<sup>6</sup> Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

<sup>7</sup> M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996).

based assessments given during the marking period across four consecutive quarters.” (FF 15). In effect, the District has said “the student will maintain a B average on the report card based on the assignments we give.” That is an inappropriate goal for a student who, on the Woodcock-Johnson, scored above the 10<sup>th</sup> percentile on only one of eight reading subtests and scored at the 3<sup>rd</sup> percentile in broad reading. (FF 12).

Second, the student failed to make meaningful education progress across the 2007-2008 and 2008-2009 school years. Given the inappropriateness of the reading goals in the February 2008 and February 2009 IEPs, any progress measured by 80% or 85% average must be discounted. (FF 21, 28). More objective measures, such as the Read 180 lexile scores, show that the student started and ended both academic years at roughly the same level. (FF 27). Across both school years, the student made no progress on written expression goals. (FF 6, 16, 23, 24). But perhaps most problematic is the last-offered IEP of August 2009. Here, the measurable goals in reading fluency and reading comprehension from May 2007 return. But those goals are identical, using the same achievement levels on a 5<sup>th</sup> grade reading curriculum. (FF 37, 38). It is either an explicit recognition that the District does not believe the student made progress, or an implicit admission that those measurable goals gave way to the inappropriate/insufficiently-measurable goals of the February 2008 and February 2009 IEPs.

Likewise, in February 2008, the IEP did away with the student's goal in mathematics because the student no longer had need of a goal in mathematics. (FF 17). But in August 2009, the student has five math goals, four of them geared to progress on the four basic calculations—addition, subtraction, multiplication, and division. (FF 39). Again, a student who in February 2008 doesn't need a math goal because of supposed progress should not have, in August 2009, four goals on simple mathematical calculation. Or, if the student does need those goals, the decision in February 2008 amounts to a prejudicial flaw in the student's IEP.

In sum, then, the May 2007 IEP is appropriately designed and the weight of the record is not convincing that it was inappropriately implemented. Therefore, the student was provided with FAPE from May 18, 2007 through February 20, 2008. From February 21, 2008 until the student left the District, however, the student failed to make progress in reading, writing, and mathematics under the terms of appropriately designed IEPs. Therefore, as a result of this deprivation, there will be an award of compensatory education.

Compensatory education is an equitable remedy that is available to a claimant when a school district has been found to have denied a student FAPE.<sup>8</sup> The right to compensatory education accrues from a point where a school district knows or should have known that a student

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<sup>8</sup> Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992).

was being denied FAPE.<sup>9</sup> The U.S Court of Appeals for the Third Circuit has held that a student who is denied FAPE “is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.”<sup>10</sup>

Here, I find that the District’s failure to appropriately address the student’s disabilities in reading, writing, and math rendered the entire academic years for 2007-2008 and 2008-2009 ineffectual. Indeed, the student presents with deep, complex, and intellectually paralyzing disabilities in reading which were in evidence across the entire regular education curriculum. (FF 9, 10, 11). In effect, the 2007-2008 and 2008-2009 school years were lost to this student.

The student will be awarded 5.5 hours of compensatory education for every school day the student attended school from February 21, 2008 through the end of the 2007-2008 school year and entire 2008-2009 school year.<sup>11</sup>

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<sup>9</sup> Ridgewood; M.C. .

<sup>10</sup> M.C. at 397.

<sup>11</sup> The figure is based on the Commonwealth’s minimum school day requirements for 7<sup>th</sup>-12<sup>th</sup> graders. 22 PA Code §11.3. It should be noted that in 2006, however, the Pennsylvania Commonwealth Court explicitly rejected the Third Circuit’s ‘compensatory education equals the period of deprivation’ calculation. Instead, the Commonwealth Court adopted a ‘compensatory education equals an amount for rectification’ calculation”. B.C. v. Penn Manor Sch. Dist., 906 A.2d 642 (Pa. Commonw. 2006). The Commonwealth Court held: “the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district’s failure to provide a FAPE”. Penn Manor at 651. In this case, I find that the ‘period of deprivation’ calculation is likely to yield in excess of 1,000 hours of compensatory education. That award, coupled with the award of tuition reimbursement, set forth below, for an intensive program geared toward students with

As for the nature of the compensatory education award, the parents may decide how the hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, when convenient for the student and the family.

There are financial limits on the parents' discretion in selecting the appropriate developmental, remedial or enriching instruction that furthers the goals of the student's IEPs. The costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the District professionals who provided services to the student during the period of the denial of FAPE.

An award of compensatory education will be fashioned accordingly.

### ESY Programming

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disabilities will put the student in a position where the District's deprivation will be rectified.

Parents claim that the student was denied FAPE due to the lack of any ESY programming in the summer of 2008 and summer of 2009. Given the student's severe learning disabilities, it seems clear, as stated in the February 2009 IEP, that the student "would not retain...skills over extended absences." (FF 29; S-7 at page 11). Therefore, the District's failure to offer ESY programming to the student in the summer of 2008 (FF 18) was a denial of FAPE. The District did, however, stand ready to provide ESY programming to the student in the summer of 2009. (FF 29). It was the student's international travel for the exchange program that interfered with an opportunity to receive ESY programming in the summer of 2009. (FF 31).

Accordingly, an award of compensatory education will be made on an hour-for-hour basis for the ESY programming the student would have received in the summer of 2008.

### Tuition Reimbursement

Parents claim tuition reimbursement for the cost of the private placement for the 2009-2010 school year. Long-standing case law and the IDEIA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability.<sup>12</sup> A substantive examination of the

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<sup>12</sup> 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi); Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985).

parents' tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated implicitly in IDEIA.<sup>13</sup>

In this three-step analysis, the first step is an examination of the school district's proposed program. Here, the District has proposed a program at the 11<sup>th</sup> hour which, on its face, would seem to be appropriate. (FF 36, 37, 38, 39). When considered at the time it was offered, parents had come to the end of two academic years (and the intimation outside of the record in this case is that the parents' discontent had been building over years) where they felt the educational programming for their child was inappropriate, leading to a lack of meaningful progress and a denial of FAPE. In this, they were correct. (FF 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 27). Therefore, it is the opinion of this hearing officer that, under the facts of this case and weight of this record, the District's proposed IEP of August 2009 was too little, too late. The parents' rejection of the August 2009 IEP is defensible.

When the school district's program is found to be inappropriate, as here, the second step is an examination of the appropriateness of the private school program which the parents have selected. Here, the private school program is appropriate. The school is geared to serving students with learning disabilities, and many of the students in the school present with the same type of complex and deep-seated

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<sup>13</sup> 34 C.F.R. §§300.148(a),(c),(d)(3).



disabilities as the student in this case. (FF 32, 33). The record regarding the private school placement fully supports the assertion that it is a school with an expertise in serving students like the student in this case. (FF 33). Therefore, the private placement is appropriate.

When the school district's program is found to be inappropriate, as here, and the private placement is found to be appropriate, as here, the third step of the analysis is to determine if tuition reimbursement is a fair remedy and, if so, in what amount. This is the so-called "balancing of the equities" step. In this case, I find that the parents should be compensated with tuition reimbursement. But the District's August 2009 IEP, while not enough to forestall tuition reimbursement under the facts of this record, certainly goes a long way toward designing a program that is reasonably calculated to deliver FAPE to the student. Indeed, it is not hard to imagine a result more favorable for the District if an IEP like the August 2009 IEP had been guiding the student's education (and had it been appropriately implemented). (FF 36, 37, 38, 39).

While the August 2009 IEP is not appropriate under the facts of this case and weight of the record, it is appropriate in the abstract. Because the District, even at the 11<sup>th</sup> hour, took into account the information in the IEE and developed a program with appropriate, measurable goals, there is an equitable argument that the tuition reimbursement award should be reduced. It is an argument that this hearing officer recognizes and will act upon.

Accordingly, the parents are entitled to tuition reimbursement for the private placement for the 2009-2010 school year. The award of tuition reimbursement will be reduced, however, to reflect the balance of the equities between the parties.

#### Reimbursement for IEE

Parents claim that they should be reimbursed for the cost of the IEE. IDEIA provides for an IEE at public expense when parents disagree with a school district's evaluation.<sup>14</sup> Here, that is not the case. The parents solicited the private evaluator on their own, not as the result of rejection (or even a disagreement) with a District evaluation process or report. (FF 8). I agree with the District that the IEE is the report of an expert rather than an independent evaluation sought as the result of rejection of a District evaluation. Accordingly, the parents' claim for reimbursement for the IEE is denied.

#### **CONCLUSION**

The District has correctly identified the student as a student with learning disabilities under federal and Pennsylvania special education law. The District has denied the student FAPE from February 21, 2008 through the end of the 2007-2008 school year and the entire 2008-2009 school year. The District has denied the student FAPE in not providing

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<sup>14</sup> 34 C.F.R. §300.502(b)(1).

ESY programming for the summer of 2008. The District stood ready to provide ESY programming to the student in the summer of 2009 and so there is not denial of FAPE therefore. The parents are entitled to an award of tuition reimbursement for the private placement for the 2009-2010 school year, although this award will be reduced as a result of the balance of the equities between the parties. Finally, the parents' claim for reimbursement for the IEE is denied.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the District has appropriately identified the student through its evaluation and re-evaluation processes.

Parents' claim for reimbursement for the out-of-pocket costs for the independent educational evaluation is denied.

Parents are awarded compensatory education, subject to the nature and limits set forth above, in an amount equal to 5.5 hours for every school day attended by the student from February 21, 2008 through the end of the 2007-2008 school year and for every school day attended over the course of the entire 2008-2009 school year.

Additionally, parents are awarded compensatory education, subject to the nature and limits set forth above, for the total amount of hours of the District's ESY program for the summer of 2008.

The District is ordered to pay directly to the private school 75% of the private school's tuition charge for the 2009-2010 school year for the tuition account for the student. After the payment is made to the private school, it is the responsibility of the parents and the private school to reconcile between themselves any surplus or deficit in the tuition account for the student.

Additionally, parents are also entitled to reimbursement for mileage for transportation to the private placement, using mileage reimbursement as allowable under Internal Revenue Service mileage

reimbursement rates for the period(s) in question. The mileage reimbursement is limited to one round trip, for every school day the student attended/attends, from the parents' address to the address of the school as calculated using an online mapping or directions service. Should the District offer to transport the student using its own transportation services, and the parents decline the District's offer, the District is no longer responsible for reimbursing the parents for mileage.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

January 26, 2010