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# Pennsylvania Special Education Hearing Officer

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## DECISION

Child's Name: AM

Date of Birth: XX/XX/XX

Dates of Hearing: March 24 & May 7, 2009

### **CLOSED HEARING**

ODR Case # 9584-08-09-KE

Parties to the Hearing:

Mr. & Mrs.

Mr. Gerald Miller  
Seneca Valley School District  
126 Seneca School Road  
Harmony, PA 16037

Representative:

Pamela Berger, Esquire  
434 Grace Street  
Pittsburgh, PA 15211

Christina Lane, Esquire  
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Date Record Closed:

June 1, 2009

Date of Decision:

June 16, 2009

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION**

Student (“student”) is a teen aged student residing in the Seneca Valley School District (“District”). Under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup>, Student has been diagnosed with specific learning disabilities in reading and math. Student also has been diagnosed with “an other health impairment”, namely Tourettes Syndrome.

Student’s parents filed a complaint seeking compensatory education for allegations of inappropriate design and implementation of Student’s instruction in mathematics. The District contends that its design and instruction of the student’s mathematics program has been appropriate.

For the reasons set forth below, this hearing officer finds in favor of the District.

## **ISSUES**

Has the District appropriately designed and implemented the student’s instruction in mathematics?

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

## **FINDINGS OF FACT**

1. Student has been diagnosed as a student with specific learning disabilities in reading and math. Additionally, Student is a student with Tourettes Syndrome, which adversely affects Student's learning. (Parents' Exhibit ["P"]-3, P-4; School District Exhibit ["S"]-1, S-2).
2. Student has been receiving services from the District since 6<sup>th</sup> grade, the 2005-2006 school year. (Notes of Testimony ["NT"] at 20-21).
3. Student was re-evaluated in a report issued in March 2009, shortly before the first hearing session. That report revealed that Student scored at the 9<sup>th</sup> percentile (low average) in Student's mathematics composite score on the Wechsler Individual Achievement Test-2<sup>nd</sup> Edition ("WIAT-II"). (P-3 at page 10; S-1 at page 10).
4. Shortly before this re-evaluation, in February 2009, the parents obtained an independent evaluation of Student's abilities in mathematics. On the calculation and applied problems sub-tests of the Woodcock-Johnson Achievement Test-3<sup>rd</sup> Edition, Student scored at the 12<sup>th</sup> and 25<sup>th</sup> percentiles, respectively. On the numerical operations and mathematical reasoning sub-tests of the WIAT-II, Student scored at the 21<sup>st</sup> and 8<sup>th</sup> percentiles,

respectively.<sup>2</sup> On the KeyMath-3<sup>rd</sup> Edition, Student scored at 14<sup>th</sup> percentile in basic concepts, the 10<sup>th</sup> percentile in operations, and the 13<sup>th</sup> percentile in applications. (P-13).

5. Both the District evaluator and the parents' evaluator characterized their results as roughly equivalent. (NT at 150-153, 318-319).
6. Student's IEP individualized education plan ("IEP") for 9<sup>th</sup> grade includes five pages detailing Student's present levels of educational performance. (P-1 at page 5-9).
7. The IEP includes eight goals, five related to reading, one related to mathematics, one related to written expression, and one related to organizational skills. (P-1 at pages 14-21).
8. The goal structure of the IEP reflects the general opinions of the District and parents' evaluators that Student's needs in mathematics are not as pronounced as in reading. (NT at 150, 327-328).
9. Student's mathematics goal reads as follows: "When given 10 one-to-three digit number math problems, Student will correctly compute a variety of problems 7 out of 10 times on class assignments with 75% accuracy". (P-1 at page 19).

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<sup>2</sup> The numerical operations and mathematical reasoning sub-tests of the WIAT-II were administered as part of the District's re-evaluation. Student's scores were, respectively, at the 8<sup>th</sup> percentile for numerical operations and at the 16<sup>th</sup> percentile for mathematical reasoning. The parents' evaluator, unlike the District evaluator, did not provide a mathematics composite score as a result of these two sub-test scores.

10. The IEP includes among its two pages of specially designed instruction access to a paraprofessional and “opportunities for repetition/re-teaching and review of concepts”. (P-1 at pages 22-23).
11. Student’s ability to retain skills in Student’s instruction has been an issue throughout Student’s educational history. In a re-evaluation report of 2006, Student’s teacher reported: “In mathematics, (Student) continues to need repeated instruction and drill practice to grasp any math concept. Once Student grasps a concept, Student can usually complete assignments with the assistance of a teacher or classroom paraprofessional verbally going over the processes. Student cannot complete assignments independently nor can Student retain learned processes for more than one or two days.” (P-4 at page 7; S-2 at page 7).
12. In the present levels of educational performance for mathematics in Student’s most recent IEP, Student’s 8<sup>th</sup> grade teacher reported: “When the individual (math) skill was taught and steps were cued Student could solve all problems. Student takes a great deal of re-teaching and extra practice to learn new concepts and when any time is between their use (sic) Student needs to be re-taught.” (P-1 at page 6).

13. In the March 2009 re-evaluation report, Student's teacher noted: "Student can grasp new concepts; however, recall is sometimes a problem." (P-3 at page 4; S-1 at page 4).
14. The parents' independent evaluator testified that "(T)hroughout the reports that are written on (Student) and through everyone that's worked with Student, we all see memory issues. We all see attention issues, and that leads to inconsistency in performance." (NT at 152-153).
15. Student's 8<sup>th</sup> grade teacher testified that Student's difficulty with recall hampered Student's abilities in mathematics instruction. (NT at 88-91).
16. In 8<sup>th</sup> grade, the District sought to have Student take the Pennsylvania Alternative School Assessment ("PASA"), a modified version of the Pennsylvania Standard School Assessment based on students' abilities. The PASA involves three levels—A, B and C—depending on the needs of the student; level A is the most basic level of assessment on the PASA, level B is more advanced, and level C is the most advanced version of the PASA. Student took the level C version, as recommended by the Pennsylvania Department of Education ("PDE") based on the District's responses regarding Student on PDE's checklist for qualifying for PASA administration. Student scored at the Advanced level on the PASA. (P-2; NT at 103-106).

17. Student's mathematics instruction in 8<sup>th</sup> grade and 9<sup>th</sup> grade included both modified instruction in the District's curriculum and specific instruction geared toward the PASA. (NT at 82-89, 123-129, 249-256).
18. Selected samples of Student's classwork were admitted into evidence, including worksheets geared toward PASA instruction as well as samples of worksheets/assignments from Student's mathematics instruction. Parents pointed to many of these samples to bolster the claim that Student's mathematics program was inappropriate; the District pointed to many of these samples to defend the appropriateness of its mathematics program for Student. (P-5, P-9, P-10, P-11, P-12, S-10, S-11).

## **DISCUSSION AND CONCLUSIONS OF LAW**

The provision of special education to students with disabilities is governed by federal and Pennsylvania law.<sup>3</sup> To assure that an eligible child receives a free appropriate public education,<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

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<sup>3</sup> 34 C.F.R. §§300.1-300.818; 22 PA CODE §§14.101-14.

<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).

“significant learning.”<sup>6</sup> More specifically, a student’s IEP must include specially designed instruction designed to meet the unique needs of the child and must be accompanied by any necessary related services to permit the child to benefit from the instruction.<sup>7</sup>

In this case, the record weighs in favor of the District that Student’s IEP was appropriately designed and implemented. All of the evaluations of Student, including the parents’ evaluation, are consistent in terms of Student’s mathematical ability. (FF 3, 4, 5). Student’s IEP contains a detailed recitation of Student’s present levels of educational performance, including five pages of summary, observation, and objective data regarding Student, including a detailed report from Student’s 8<sup>th</sup> grade math teacher. (FF 6).

The goals in Student’s IEP are appropriate based on the evaluation data available to the District. (FF 7, 8, 9). The focus of parents’ claims were centered on present levels of educational performance and the classroom instruction Student received. As such, the evidentiary record on Student’s goals was sparse. Still, there is nothing in the mathematics goal that was shown to be inappropriate. And, furthermore, the specially designed instruction, among its many strategies, approaches, and modifications, included the focus on re-teaching and one-on-one support that Student requires. (FF 10, 11, 12, 13, 14, 15). Accordingly, it is the

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

<sup>7</sup> Rowley; Oberti v. Board of Education, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993).

finding of this hearing officer that the components of Student's 9<sup>th</sup> grade IEP related to mathematics instruction were appropriately designed.

As to the IEP's implementation, the record further supports the notion that the District has appropriately met its obligations. The parties have quite differing views of the mathematics instruction that Student received. Parents contend that Student is not being instructed appropriately and offered into evidence worksheets that purport to show that Student is being instructed in very low-level mathematical concepts, such as time-telling; the District takes the exact opposite position, offering into evidence examples of Student's work in 8<sup>th</sup> and 9<sup>th</sup> grade to show that Student engaged in wide array of mathematical instruction under the terms of Student's IEP. (FF 18). The weight of this evidence falls on balance in the District's favor. The District also presented evidence that Student performed at an advanced level on the PASA. (FF 16, 17). While PASA results were not a formal part of Student's goals or short-term objectives, and parents in their closing argument intimate that they disagree with Student's participation in the PASA, Student's results on the PASA show at least anecdotal evidence that Student's mathematics instruction was leading to demonstrable progress. (FF 16). Accordingly, the weight of the record fully supports the conclusion that the District appropriately implemented instruction in mathematics under the terms of Student's IEP.

Having found that the District appropriately designed and implemented Student's IEP regarding mathematics, the District does not owe compensatory education.

## **CONCLUSION**

Both the design and implementation of Student's IEP for the 2008-2009 school year, as the IEP related to mathematics, were both appropriate. The District does not owe compensatory education.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, it is hereby ordered that the IEP for Student for the 2008-2009, as that IEP related to mathematics, was appropriately designed and implemented. Therefore, the Seneca Valley School District does not owe compensatory education.

Jake McElligott, Esquire

Jake McElligott, Esquire  
Special Education Hearing Officer

June 16, 2009