

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

DUE PROCESS HEARING

Name of Child: C.H.

ODR #14530/13-14 KE

Date of Birth:
[redacted]

Dates of Hearing:
May 19, 2014
May 20, 2014
June 11, 2014
June 13, 2014
June 24, 2014

OPEN HEARING

Parties to the Hearing:
Parent[s]

Representative:
Sonja Kerr, Esquire
Jason Fortenberry, Esquire
Public Interest Law Center
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School District of Philadelphia
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Brian Subers, Esquire
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Date Record Closed:

July 23, 2014

Date of Decision:

August 3, 2014

Hearing Officer:

Linda M. Valentini, Psy.D., CHO
Certified Hearing Official

Background

Student¹ is a teen-aged student who resides with Student's mother [hereinafter Parent] in the School District of Philadelphia [hereinafter District] and is eligible for special education under the current classifications of autism and speech/language impairment. During the 2013-2014 school year Student attended a District high school and completed the 9th grade. Student's Parent requested this hearing, alleging that during the 2013-2014 school year the District denied her meaningful participation in the decision-making process regarding Student's education, and denied Student a free appropriate public education.

Issues

1. Did the District significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education [FAPE] to Student in any or all of the following ways:
 - a. Promising the Parent that an iPad would be provided but failing to notify Parent that compliance was delayed/not forthcoming; and/or
 - b. Promising the Parent that a 1:1 aide would be provided so Student could attend regular education art and gym but failing to notify Parent that compliance was delayed/not forthcoming; and/or
 - c. Implementing a "distributed practice" model for speech therapy without notifying the Parent; and/or
 - d. Not having meaningful discussion with Parent about an ESY program; and/or
 - e. Assigning Student to tasks unrelated to Student's interest in art which the Parent brought to the District's attention.
2. Has the District failed to provide Student with FAPE during the 2013-2014 school year in any or all of the following ways:
 - a. Failure to comply with the requirement in Student's Individualized Education Plan [IEP] that Student be provided an iPad as assistive technology; and/or
 - b. Denial of Student's ability to participate in the Least Restrictive Environment through failure to comply with the requirement in the IEP as amended by a Notice of Recommended Educational Placement [NOREP] that Student be provided a 1:1 aide so that Student could participate in regular education art and physical education classes; and/or

¹ This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

- c. Denial of appropriate speech/language services based on Student's individual needs; and/or
 - d. Instructing Student using inappropriate present levels of educational performance; and/or
 - e. Failing to provide meaningful transition planning to develop Student's interest in art and excluding Student from a related career and technology course; and/or
 - f. Predetermining Student's 2014 ESY program by making decisions about the amount and duration of services outside the IEP process and failing to consider Student's individual circumstances; and/or
 - g. Failing to appropriately address bullying of Student thus impeding Student's ability to receive FAPE?
3. Has the District discriminated against Student because of Student's disability in violation of Section 504 during the 2013-2014 school year by:
- a. Excluding Student from regular education art and physical education to which nondisabled peers had access; and/or
 - b. Failing to protect Student from bullying when nondisabled students were protected?
4. Should the District be ordered to conduct a comprehensive evaluation of Student?

Findings of Fact

Background

1. Student is a teen-aged Student who during the course of the hearing was in 9th grade at one of the District's high schools. Student is eligible for special education under the primary disability category of autism and the secondary disability category of speech and language impairment.² [(S-6, S-74)]
2. During the 2012-2013 school year, Student's 8th grade, Student attended a District middle school [hereinafter middle school] in a supplemental autistic support program. An IEP meeting was held on April 19, 2013 and the Parent approved the IEP on the ensuing Notice of Recommended Educational Placement

²Student was previously classified in the category of intellectual disability, based on cognitive and adaptive deficits found on the last full assessment of cognitive abilities in a 2008 reevaluation using the Wechsler Nonverbal Scale of Ability and the Stanford Binet 5th Edition Abbreviated test composite. These results were consistent with prior evaluation results from 2005 using the Stanford Binet-4th Edition. The record is silent as to how and why Student is no longer so classified. [S-72]

- [NOREP]. The Parent was represented by counsel at the April 19, 2013 IEP meeting. [S-1, S-2, S-3, S-4, S-5]
3. Pursuant to the interim Order of a previous hearing officer³ the District issued a NOREP on August 16, 2013 for the 2013-14 school year. The NOREP proposed a placement in a district high school [hereinafter high school] and indicated that an IEP meeting would be held on or before September 30, 2013 to revise Student's IEP as necessary in light of the placement at the high school. [S-6]
 4. The Parent agreed to the placement and to convening an IEP meeting but indicated disagreement with components of the program as contained in the IEP dated April 19, 2013. [NT 1368-1369; S-6, P-5]
 5. The parties participated in an IEP meeting on September 4, 2013, the first day teachers returned to school, to discuss the IEP and to review and revise as needed. [NT 63, 918; S-7, S-8]
 6. At the approximately two-hour September 4, 2013 IEP meeting the parties, both accompanied by counsel, addressed the Parent's concerns which included the transfer of Student's iPad and curricular materials from the middle school to the high school, the need for a 1:1 aide to assist Student in the transition to the high school, the Parent's dispute regarding Student's present educational levels as set forth in the IEP, and her desire that Student participate in an art class given Student's interest in that activity. [NT 1241-1242, 1248-1249, 1252-1253; S-7]
 7. On November 18, 2013 the parties, both accompanied by counsel, held another IEP meeting designed to update present levels of educational functioning based on new academic assessments and to revise goals and objectives. A typographical error regarding ESY eligibility in the prior IEP was corrected⁴. [P-11]
 8. Not having received the revised IEP the Parent filed a due process complaint in December 2013. When at the January 2014 Resolution Meeting it was discovered that the Parent had not received the revised IEP a copy was provided to her the next day. [S-24]
 9. The parties agreed to postpone the first due process hearing session scheduled for February 19, 2014 in order to conduct an additional IEP meeting on that date. [S-33]
 10. The District forwarded a revised draft IEP based on discussions at the Resolution Meeting to the Parent on February 12, 2014 and gave a further revised draft of the IEP to the Parent on February 19, 2014 for review at the IEP meeting that day. [NT 945-946; S-32, S-33, S-34]

³ A final decision was issued under ODR #14056-1213 KE.

⁴ Although the IEP noted Student's need for ESY, the box indicating non-eligibility was checked.

11. The February 19, 2014 IEP meeting lasted about three hours and both parties were accompanied by counsel. The parties discussed the revised IEP, which included further updated present education levels, additional transition services, revised goals and objectives and the corrected ESY section. The Parent was provided a Permission to Reevaluate at the February 19, 2014 IEP meeting to allow for the Student's triennial reevaluation including updating cognitive and speech/language assessments.⁵ [NT 948, 951; S-31, S-36, S-42]
12. On March 17, 2014 the parties, both accompanied by counsel, participated for about three hours in a final IEP meeting. On March 21, 2014, the District issued its final IEP to Parent. The District's final IEP included revisions expressly referencing Student's participation in some exploratory art-related Career and Technical Education [CTE] classes and CTE program showcases, increased the level of indirect speech services, and confirmed Student's receipt of Student's own personal i-Pad. [NT 90, 563, 954-955; S-45]
13. On March 28, 2104 the Parent through counsel filed the Amended Complaint which the instant hearing addressed.
14. The Parent participated in four separate IEP meetings, each lasting between 2-4 hours, was accompanied by counsel, and was provided with multiple drafts of the District's proposed IEPs for each meeting. [NT 63, 158-159, 918, 947, 951, 954, 1251-1242, 1248-1249, 1252-1253, 1256, 1371; P-11, S-24, S-32, S-34, S-42]

iPad

15. Student was provided with an iPad in the 8th grade at the middle school and the high school staff was aware of this no later than the September 4, 2013 IEP meeting when the 8th grade special education teacher, participating by telephone, explained Student's use of the iPad. [NT 64-65, 68]
16. As of the September 2013 IEP meeting, it was the understanding of the high school principal that the special education director had agreed to take care of getting Student's iPad from the middle school. [NT 215]
17. Two days after the September 2013 IEP meeting the Parent's counsel sent the District an e-mail confirming the major issues discussed at the IEP meeting, including a request for the transfer of Student's iPad from the middle school to the high school. [S-11]
18. Although the District attempted to obtain a transfer of Student's iPad from the middle school to the high school, technical difficulties, including licensing issues, delayed the transfer. [NT 86, 522, 532, 540, 542]

⁵ As of the end of the hearing the Parent had not yet signed the Permission to Reevaluate.

19. On October 21, 2013 the Parent sent the special education director an e-mail requesting a status update because Student's iPad had not yet been provided. [P-2]
20. The autistic support teacher allowed Student to use her Kindle Fire until the iPad was delivered to Student. She discussed this at the November 18, 2013 IEP meeting. [NT 87, 526; S-24, P-11, P-49]
21. The Parent's counsel sent the District another letter on or about November 19, 2013, reiterating that Student still had not been provided the iPad specified in the IEP. [P-7]
22. Student was not provided the iPad until March 2014⁶. [NT 90, 539; S-45]
23. The iPad provided to Student did not contain the 500-word bank Student used in the 8th grade. [NT 68, 93]
24. Outside the IEP process, the autistic support teacher changed Student's IEP to state that substantial modifications of the general education curriculum, such as the use of an iPad, were "beneficial" instead of needed. [NT 1018; S-1, S-45]
25. Student's current use of the iPad in the special education class is limited to entering a vocabulary word and finding a picture that helps Student remember the definition, or using the iPad for supplemental classroom work related to money and time and to put sentences in the correct order. The current iPad application Student uses does not read back to Student, nor does it allow Student to construct grammatically correct sentences independently. [NT 984-985; P-27]
26. Assistive technology is not addressed in any of Student's IEP goals although the IEP indicates that Student needs an iPad or some form of assistive technology for writing and communication support. [NT 658-659; S-45]
27. Student's autistic support teacher and the 1:1 aide indicated to the private speech/language pathologist that Student knew more about the iPad than they did and that they were not sure how to utilize it as assistive technology. The 1:1 aide did not know how to use the iPad with Student when Student first received it and she did not receive any training on using the iPad for children with autism. [NT 665, 1153]

1:1 Aide

28. In response to Parent's concerns expressed at the September 4, 2013 meeting, the District agreed to provide a 1:1 aide for Student to assist in the transition to the high school, as well as to facilitate Student's participation in some regular education classes. [NT 529-530, 919-920; S-9]

⁶ Although it may exist within the five volumes of transcript and/or in the thousands of exhibit pages, I do not know the exact date Student received the iPad so I am establishing March 15th as the date.

29. Attending some regular education classes was provided for in Student's pendent April 2013 IEP. [NT 88; P-49]
30. A September 5, 2013 NOREP, issued following the September 4, 2013 IEP meeting, specifically addressed the assignment of a 1:1 aide to Student in response to the Parent's request. [S-9, P-34]
31. Immediately following the September 4, 2013 IEP meeting the District moved to secure the necessary appropriation for and assignment of a 1:1 aide for Student. This process was delayed by Union work rules allowing District paraprofessionals to select their assignments; the high school had to wait for someone to choose its location. [NT 200, 537]
32. At a November 18, 2013 IEP meeting the IEP team confirmed and the Parent agreed that despite her earlier concerns, Student had experienced a smooth transition to the high school. [NT 1370]
33. Student did not attend any regular education classes because Student needed the 1:1 aide to receive benefit from being in such classes. [NT 88, 529-530]
34. The District provided a bus attendant three days a week rather than five days a week to support Student's educational program as an alternative during the time that Student did not have the 1:1 aide. [NT 73, 153, 174, 205-206, 936-937]
35. The District could not confirm that the bus attendant made available to Student had two years of post-secondary study or twenty hours of staff development as required by PA Chapter 14⁷. [NT 174-175, 206]
36. The bus attendant did not take Student to any regular education classes as per the pendent IEP. [NT 190-191]
37. A 1:1 aide was provided to Student as of January 2, 2014. [NT 89, 536]
38. Once the 1:1 aide was provided, a roster change added regular education art and regular education physical education to Student's schedule. [NT 209, 212; P-3, P-37]
39. The autistic support teacher and the speech/language therapist met with Student's regular education art teacher upon Student's enrollment in that class to advise her regarding Student's needs and IEP, and the speech/language therapist, consulted with Student's regular education gym teacher. [NT 356, 411, 413-415. 808, 970]

⁷ "Instructional paraprofessionals shall meet one of the following qualifications effective July 1, 2010: (i) Have completed at least 2 years of postsecondary study. (ii) Possess an associate degree or higher. (iii) Meet a rigorous standard of quality as demonstrated through a State or local assessment." 22 Pa. Code § 14.105.

Speech/Language

40. Student's speech/language needs are addressed through both a "concentrated" and a "distributed practice" model. [NT 423-424; S-68]
41. Student's latest draft IEP [March 2014] indicates Student should receive 60 minutes a month [about 15 minutes once per week] of "direct" speech and language therapy in a group of two to four students . The service provider is a certified speech and language therapist with extensive training and experience working with students on the autistic spectrum. The direct service is to be supported by the speech/language therapist's "indirect" services in the form of consultation with staff in the amount of 40 minutes per month. [NT 111-113, 115-118, 348-349, 351, 369; P-35]
42. The concentrated practice is carried over throughout the school day by Student's 1:1 aide, who has received ongoing consultation and materials from the speech/language therapist who reviews data taken by the 1:1 aide. [NT 97, 374-375, 377-378, 404-407, 410, 412, 417, 1143, 1146-1147, 1174-1177, 1204-1207; S-60, S-61, S-63, S-65]
43. Student receives distributed practice throughout the school day, through the autistic support teacher and the 1:1 aide. The distributed practice model involves interspersed opportunities as they arise throughout the day for Student to work on communication. [NT 331, 328, 336-337, 346, 354-356; S-68]
44. A distributed practice model requires each team member to provide Student with language support across all environments and involves collecting data related to a certain context within each environment and examining the data to determine whether the team is on the right track for identifying and working on Student's needs. [NT 675-677]
45. The District's proposal of 40 minutes per month of indirect [consultative] services from the speech/language therapist is not sufficient time to adequately address a variety of environments and the various school staff involved as well as the Parent. [NT 680]
46. An experienced speech/language therapist would need at least 30 minutes per week to analyze the data collected across all environments for an individual such as Student in a distributed practice model. [NT 681-683; S-45]
47. The speech/language therapist has provided the autistic support teacher with instructional materials to support Student's language development, consults regularly with her regarding Student's interpersonal communication goals and strategies to address these goals, and regularly reviews and analyzes data with the autistic support teacher and the 1:1 aide. [NT 356, 380, 396-402, 406, 409, 814-815, 819-820, 960-963; S-56, S-57, S-60, S-64, S-75]

48. The speech/language therapist works with the 1:1 aide in multiple environments to explore and identify communication opportunities. [NT 354-355, 971-972]
49. The speech/language therapist has observed Student in the regular education art and the regular education gym classes and has consulted with the teachers regarding opportunities for language development, including arranging interaction with peers. [NT 356, 358, 360; S-61]
50. Although the speech/language therapist keeps professional service logs tracking the direct time she spends working with Student and indirect time she spends working with the staff, there is no tracking in logs or notations in the IEP of how much time Student is supposed to be getting opportunities with the staff for communication through the distributed service model. [NT 370]
51. Although the speech/language therapist believes it is critical to evaluate a student's environment and speech/language needs before designing a speech/language program for the student she did not speak with Student's previous speech/language therapist when creating Student's speech and language program, and she did not request permission to reevaluate Student's speech/language status prior to February 2014. [NT 343-345]
52. Given Student's age, multiple communication needs, and the severity of Student's speech and language disorder Student requires more than the proposed 15 minutes per week of direct group speech and language therapy. [NT 672-673; S-45]
53. Student needs individual work with developing vocabulary and syntax, provided in the actual environment in which Student will be communicating so that Student can learn to adjust to what kinds of messages would be appropriate. [NT 673]

Present Levels of Educational Performance

54. The September 5, 2013 NOREP, issued following the September 4, 2013 IEP meeting, indicated that the IEP team would revise the April 19, 2013 IEP as necessary. [NT 72-73; S-9, P-35]
55. In response to Parent's disagreement with Student's present educational levels as put forth in the April 19, 2013 IEP and her concerns regarding Student's anticipated withdrawal behaviors, the District agreed to earlier administration of the academic testing typically administered to all students at IEP review time, as well as administering transition surveys and a functional behavioral assessment. [NT 152, 849-852, 925-929]
56. The academic testing included the Distar I-II and the Connecting Math Concepts C-F placement test [administered September 10, 2013]; the Reading Mastery K-5 placement test, [administered September 26, 2013]; a Key Math Revised Inventory of Essential Mathematics Assessment [administered October 21, 2013];

- a Reading Mastery Test-Revised Assessment [administered October 21, 2013]; and a student transition survey [administered October 28, 2013]. [NT 850-852; S-13, S-14, S-17, S-18, S-20, S-26]
57. The functional behavioral assessment, completed in October 2013 specifically addressed withdrawal as the behavior of concern as noted by Parent at the September 4, 2013 IEP meeting. In conjunction with the completion of the functional behavioral assessment, the District prepared a positive behavior support plan for Student, notwithstanding the lack of any significant difficulties in the transition to the high school after the first few weeks of school and/or any related withdrawal behavior. [NT 926-927; S-16, S-15]
 58. An IEP meeting was convened for approximately three hours on November 18, 2013 to review the results of the new testing and to revise and update Student's IEP present levels as previously agreed at the September 4, 2013 IEP meeting. The principal assigned the special education liaison at the high school to serve as the LEA for this IEP meeting. The Parent was provided a draft IEP, which included updated present educational levels based upon the academic assessments administered. [NT 76-77, 153-154, 859, 930-931; P-11]
 59. The autistic support teacher who was responsible for tracking Student's progress on IEP goals relied on standardized testing to determine Student's reading level and plan instruction. [NT 812, 826-827, 908-909, 1029-1030]
 60. In addition to updating the present levels the November 18, 2013 IEP meeting also updated Student's goals and objectives, and following the IEP meeting discussions the District further revised the IEP to address the Parent's concerns. Not having received the revised IEP, the Parent filed the present due process complaint in early December 2013; at a January 2014 Resolution Meeting it was discovered that the Parent had not received the November 18, 2013 IEP as revised and it was given to the Parent the next day. [NT 932-934, 1274-1275; S-24, P-46]
 61. As agreed upon by the parties, the revised IEP of November 18, 2013 which the Parent received included updated goals and objectives. [NT 153-154, 838-840, 930; S-24]
 62. An additional curriculum based assessment was administered to Student in the Reading Mastery Program to update the IEP baseline and an additional math placement test was also administered. [NT 845-846, 949, 975-976; S-38]
 63. Following discussions at the Resolution Meeting the parties asked and were granted leave to postpone the due process hearing session scheduled for February 19, 2014 in favor of having another IEP meeting. The District forwarded a draft IEP to the Parent on February 12, 2014 and another further revised draft IEP was given to the Parent on February 19, 2014. The draft IEP of February 19, 2014 further revised Student's present educational levels, specifically updating

- interpersonal communication and vocational levels, and goals and objectives. [S-32, S-34]
64. Following the February 19, 2014 IEP meeting which lasted about three hours, the District issued another revised IEP, which included further updated present education levels, additional transition services, and revised goals and objectives as well as a description of Student's ESY program. [NT 951; S-42]
 65. Throughout Student's 9th grade the high school team worked from the revised IEPs as issued and discussed at each of the four IEP meetings held during the school year [September 4, 2013, November 18, 2013, February 19, 2014 and March 17, 2014]. Student's progress was monitored based on the IEP goals as revised because the revisions reflected updated academic information even though a new IEP had not been approved yet. [NT 824, 827, 927, S-30, S-37, P-19]
 66. Student's reading and math groups are based upon the ability levels of the students, as identified in their initial placement tests. The students are drawn from the autistic support class and the life skills class. [NT 992-994]
 67. Student is grouped in the higher level reading and math programs, Reading Mastery One and Connecting Concepts C. There are eight to nine students in Student's math class and six to seven students in the reading class. [NT 992-994, 1184]
 68. Student's progress was monitored based on the IEP goals as revised based on assessment and as discussed at the IEP meetings. Student progressed in the Reading Mastery One program from lesson 25 to lesson 80. [NT 975-976]

Transition Planning/Career Education

69. The autistic support class members participate in community trips, usually on a weekly basis. The students visit the Dollar Store, restaurants, the supermarket, the post office and the library. The instructional focus of these trips is to develop the ability to read a shopping list and find the identified items, to practice appropriate behavior in a restaurant and practice reading and ordering from a menu, and learning money skills necessary for purchases. [NT 994-995]
70. A CareerScope assessment profile was administered on November 21, 2013. The draft IEP provided at the IEP meeting on February 19, 2014 added a description of post-secondary education and training service activities for Student, which were supported by an additional post-secondary education and training goal. [S-34]
71. At the February 19, 2014 IEP meeting the Parent raised her desire for Student to participate in the high school's career technical education program ("CTE"),

- particularly in an art related field; however art is not a CTE program. [NT 217, 556, 563-564, 973-974]
72. Although CTE programs are open to both regular and special education students, students are not eligible to participate in CTE programs until their tenth grade school year. [NT 134, 184, 218, 221-222, 548, 554, 573-574, 578, 582]
73. The District discussed and the Parent agreed to Student's participation in exploratory classes in web design and cinematography, the only art-related CTE programs offered at the high school, as well as attending CTE program showcases. [NT 172, 182, 220-221, 225, 550, 975, 1376-1377]
74. Student's IEP was revised to incorporate express reference to Student's participation in these exploratory classes and Student did subsequently participate in the classes with assistance from the autistic support teacher and the 1:1 aide. [NT 182-184, 973-975]
75. Student's 8th grade art teacher, and Student's two 9th grade art teachers, opined that Student's artistic talent and abilities were in the moderate range.⁸ [NT 262, 300, 601]
76. In 8th grade and in 9th grade Student required significant assistance to facilitate the completion of assigned projects and in some cases did not complete all requirements of the projects. [NT 268-274, 278-279, 281, 285, 296-297, 300-311, 317-319, 615- 617, 624-625]

ESY

77. Student's ESY eligibility was discussed at the November 18, 2013 IEP meeting and the notation [checked box] of non- ESY eligibility in the previous April 19, 2013 IEP was clarified to have been a clerical error. [NT 1256, 1275, 1371; S-24]

⁸ Student's two 9th grade art teachers opined that it was highly unlikely that Student could develop the requisite skills for competitive employment in an art-related field, and Parent's witness who teaches a class for special needs students that Student attends at [redacted] acknowledged that Student lacked originality and that many of the art samples presented by Parent on behalf of Student were at an elementary level. [NT 276, 299-300, 316-318, 605-607, 622, 1110-1113, 1117, 1121-1123] However, talent and creativity are in the eye of the beholder and I do not have the credentials or the inclination to evaluate the samples of Student's art work presented at the hearing. Given the almost limitless range of pieces of visual art on public display and the ever-increasing applications of "art" extending into the digital and performance realms, it is certainly possible that Student could find a niche in this wide field, working under another artist or perhaps on Student's own. What will be needed are the functional skills [reading ability, number/money competence, adaptability, communication, perseverance and self-advocacy] to support Student's interest in and possible vocational aspirations in the area of art. I decline to endorse Parent counsel's description of Student at the beginning of his closing brief as being "artistically talented", but there is ample evidence of Student's interest in drawing and the Parent's commitment to fostering this interest.

78. On or about January 30, 2014, the Parent was issued the District's notification of ESY programming and registration form. The Parent returned the form acknowledging her intent that Student attend the District's 2014 ESY program. [NT 111, 156, 537, 864-865, 1275, 1371; P-12]
79. The ESY registration form included the dates, days and times of the ESY program. [P-12]
80. The draft IEPs issued on February 12, 2014 and on February 19, 2014 for the February 19, 2014 IEP meeting further clarified and updated the level of services and goals and objectives to be addressed in ESY. [NT 58-159, 947; S-32, S-34]
81. Another IEP meeting was held on March 17, 2014. Again, the IEP included services, goals and objectives to be addressed in ESY. [S-45]

Bullying

82. On January 30, 2014 the Parent reported to the autistic support teacher and to Student's 1:1 aide that Student had returned home from school that day without Student's cell phone, and that she had discovered that a fellow student had the cell phone. The following day, the 1:1 aide retrieved the cell phone from the student, an intellectually-disabled [student], who represented that Student had let the student "borrow" the cell phone. The student's guardian was contacted, and the Parent came to the high school to retrieve the phone. The building principal was alerted, and the school team determined that the matter did not involve forcible taking of Student's cell phone, but was in the nature of manipulative behavior by the [other] student. In order to keep Student and the [other] student separated while on the school bus [the only time they had unsupervised direct interaction] Student was seated at the front of the bus with the bus attendant and the [other] student remained at the rear of the bus. [NT 164-168, 234-235, 861-862, 942-944, 557-558, 1169-1171, 1212-1215; S-28]
83. At the February 19, 2014 IEP meeting the Parent objected to the change in Student's bus seat on the basis of her belief that such action was punitive against her child who was the innocent party in the cell phone incident. In response to the Parent's concern, the District readjusted the seating arrangements to allow Student to sit in the back of the bus, Student's original seat, and moved the [other] student to the front of the bus. [NT 168, 1380]
84. During the discussion of the phone incident at the February 19, 2014 IEP meeting, additional information was revealed that prior to the IEP team meeting there was a period of four or five days when Student was missing Student's \$2.00 per day spending money which the 1:1 aide had replaced so Student could buy water and ice cream; the 1:1 aide also reported this matter to the Parent. The same intellectually disabled [other] student who had come to possess the cell phone was believed to have been taking this money. Based on the prior action to keep the students separated on the school bus, the District believed this matter to have been

resolved, and the 1:1 aide took the additional steps to count Student's money upon arrival at school, hold the wallet during the school day, and text Parent the amount of money Student had upon leaving school. The [other] student's guardian reimbursed the money. [NT 960, 1169-1171, 1217, 1316]

85. At the February 19, 2014 IEP meeting the Parent also requested that Student's IEP address self-advocacy skills to help avoid future recurrences of other students taking advantage of Student's good nature, and the IEP was revised to note Parent's concern and to add a self-advocacy goal. [NT 128-129, 1301, 1378-1379; S-42, S-45]

86. Student's IEP addresses Student's need to develop conflict resolution skills in order to address bullying issues, but the IEP offers such conflict resolution skills only once per IEP term. [S-45]

Evaluation

87. The District issued a permission to reevaluate to Parent on three (3) separate occasions in regard to the District's obligation to conduct a triennial reevaluation of Student. The Parent has refused to execute the permission to reevaluate. [NT 151, 949-951, 956; S-39, S-40, S-41, S-46]

Discussion and Conclusions of Law

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case both the Parents and the School asked for a hearing and thus each bore the burden of proof on the issue[s] raised in their complaints. As the evidence was not equally balanced in either case the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732

(E.D. Pa. 2009). I had no issues of credibility with any of the witnesses, as each appeared to be trying to testify honestly and according to their best recollections.

Standards for a Free Appropriate Public Education: Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §711.1 *et seq.* and 34 C.F.R. §300.300, *et seq.*, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA). A FAPE is "an educational instruction specially designed . . . to meet the unique needs of a child with a disability, coupled with any additional 'related services' that are 'required to assist a child with a disability to benefit from [that instruction].'" *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982); *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 127 S. Ct. 1994, 167 L. Ed. 2d 904 (2007) (citing 20 U.S.C. § 1401(29)); see also 20 U.S.C. §§ 1401(9), (26)(A).

The appropriateness of an IEP must be determined as of the time it was created, and reasonableness of an offered program should be judged only on the basis of the evidence known to the LEA at the time the offer was made. *D.S. v. Bayonne Board of Education*, 602 F.3d 533, 564-65 (3d Cir. 2010). Hindsight evidence and "Monday morning quarterbacking" are not appropriate when making this analysis. *Furhman v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

Under the interpretation of the IDEA statute established by the *Rowley* case and other relevant cases, LEA is not required to provide an eligible student with services designed to provide the best possible education to maximize educational benefits or to maximize the child's potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995). What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

ESY: Acknowledging that some students may require programming beyond the regular school year, the federal legislature deemed that Extended School Year services are to be provided to an eligible child if necessary to assure that the child receives a free, appropriate public education (FAPE). 34 C.F.R. §300.106(a)(2). ESY services are meant to keep students' acquired skills up during the period between the close of school in June and beginning of school in the fall.

Neither party in this matter disputes Student's qualification for ESY programming. The dispute between the parties centers on the appropriateness of Student's summer 2014 ESY program. The substance of an ESY program, as is under consideration here, is judged by the standards of appropriateness and FAPE that would govern any aspect of a special education program. In determining whether a district has offered an appropriate ESY program, the proper standard is the same as for a program during the school year - whether the proposed program is reasonably calculated to confer meaningful educational

benefit – that is, does an eligible student’s program afford him or her the opportunity for “significant learning.” *Rowley; Ridgewood* .

Transition Planning: Transition services is a coordinated set of activities for a child that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.” 20 U.S.C. § 1401(34)(A). Transition services must be based on “the individual child’s needs, taking into account the child’s strengths, preferences, and interest.” 20 U.S.C. § 1401(34)(B) Transition services can include “instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.” 20 U.S.C. § 1401(34)(C); 34 C.F.R. § 300.43.

Procedural Violations: The IDEA’s implementing regulations provide that “in matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process. . . or (3) caused the deprivation of educational benefits. 34 C.F.R. §300.513(a)(ii).

Compensatory Education: An eligible student to whom a District has denied FAPE is entitled to correction of that situation through compensatory education, an equitable “remedy . . . designed to require school districts to belatedly pay expenses that [they] should have paid all along.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3rd Cir. 2009) (internal quotation marks and citation omitted). Compensatory education is given for a period equal to the deprivation and measured from the time that the school district knew or should have known of its failure to provide FAPE. *Mary Courtney T. v. School District of Philadelphia* at 249; *M.C. v. Central Regional School District*, 81 F.3d at 395; *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3^d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District* at 396.

In contrast to the hour-for-hour approach utilized in Pennsylvania following *M.C.* the standard for arriving at compensatory education set out by the Commonwealth Court of Pennsylvania in *B.C. v. Penn Manor School District*, No. 1150 C.D. 2005, 2006 Pa. Commw. LEXIS 445 (8/15/06), a gifted case, was “where there is a finding that a student is denied a FAPE and . . . compensatory education is appropriate, the student is entitled to an amount of compensatory education reasonably calculated to bring [him/her] to the position that [he/she] would have occupied but for the school district’s failure to provide a FAPE.” In a recent IDEA case from this Circuit, the standard was affirmed. *See Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3rd Cir. 2010), *citing Reid v. District of Columbia*, 401 F3d 516, 518 (D.C. Cir. 2005) (Compensatory education is

intended to assure that an eligible child is restored to the position s/he would have occupied had a violation not occurred.)

As far as is practicable I will use the *Penn Manor* standard to fashion a compensatory education remedy for a denial of FAPE, but in other areas *M.C.* will be applied. In those areas, while it is true that there is no record evidence of where the student's functional levels would have been but for the deprivation of FAPE, the fact of the matter is that the nature of Student's disabilities makes the impossibility of establishing such prospective levels patently obvious beyond the need for detailed specific evidence of same.

Section 504 Claims: The obligation to provide a "free appropriate public education" is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa.Comm. 2005). Because all of the Parent's claims have been addressed pursuant to the IDEA, there need be no further discussion of claims under Section 504.

Discussion:

iPad

Procedural: The Parent's claim that she was denied meaningful participation because after promising the iPad the District did not provide her with information relative to the delays is rejected. The Parent was well aware of the delays in providing the iPad, although she did not necessarily know the ins and outs of why there were delays. Throughout the delays, from the September 4, 2013 IEP meeting to the November 18, 2013 IEP meeting until the device was finally delivered the Parent and/or her counsel were in communication with the District about the iPad. Parent was an active participant in establishing the District's obligation to procure the iPad and in urging the District to fulfill its obligation.

Substantive: The denial of an iPad between September 15, 2013⁹ and March 15, 2014 was a denial of FAPE, and the teacher's loan of her Kindle Fire, while generous, did not rectify the denial. I sympathize with the District's candidly described bureaucratic difficulties in transferring Student's iPad from the middle school to the high school, nevertheless the fact remains that Student was denied the device for most of the 2013-2014 school year.

Remedy: Once Student received the iPad, the teacher and the 1:1 aide did not know how to use it for Student's educational benefit. As described by the private speech/language pathologist, the iPad as assistive technology could provide visual support for Student's communication needs. There are iPad applications that would allow Student to construct grammatically correct sentences and then hear them, to fill in gaps in vocabulary, to work on using writing for a purpose, and to supplement writing skills with art. The iPad can be used for modeling language so Student can learn to recognize what a correct sentence sounds like and not always rely on an adult to provide a model. The iPad could be used

⁹ Allowing the district two weeks to enact the transfer of the device.

to work on vocabulary at a variety of levels as opposed to solely picture association. Finally, the iPad could be utilized to provide visual supports in natural environments, such as using it in cooking class to take pictures of the steps and sequences, using the iPad in a job setting to take pictures and make a how-to presentation, and using the iPad to work on using e-mail and conveying messages. [NT 659-660, 670; P-27]

Because Student did not receive the iPad in a timely fashion and once it was received it did not contain Student's 500-word bank nor did the staff have knowledge about using it with Student, compensatory education services are due. A remedy designed to bring Student to the point where Student would have been but for the denial of FAPE, in accordance with the *Penn Manor* standard is appropriate. The iPad can be used for a variety of communication and learning opportunities, but only if Student and the adults in Student's environment can understand and operate the device and its applications.

To remedy the denial of FAPE caused by delayed delivery of Student's iPad the District will be ordered to contract with the private speech/language therapist and/or an expert in iPad educational application technology to research, acquire, and teach Student, the Parent, Student's teachers and the 1:1 aide how to use appropriate educational applications to assist Student in the variety of ways in which these applications can be useful in supporting the IEP goals. This service is to be provided at the start of each school year, beginning in September and ending no later than the end of October, for 10th, 11th and 12th grades to develop Student's skills in the subject areas presented each year, and to promote Student's overall communication and vocational goals. This remedy is for the 2014-2015, the 2015-2016, and the 2016-2017 school years and may extend to subsequent school years should the Parent decide to keep Student in school through the end of the school year in which Student turns 21 provided that the total number of cumulative hours has not been exceeded. The total amount of cumulative hours shall not exceed one hundred twenty [120] hours, based on the formula of denial of FAPE in 2013-2014 of one hour each day, five days each week for twenty-four [24] weeks. The speech/language therapist and/or the expert in assistive educational technology must be paid at the usual and customary rate for such services in the [local] area. The total cost of the purchase of educational applications acquired throughout the remainder of Student's high school years may not exceed one thousand dollars [\$1000.00].

1:1 Aide

Procedural: The Parent's claim that she was denied meaningful participation because after promising the 1:1 aide the District did not provide her with information relative to the delays is rejected. As was the case with the iPad, the Parent was very well aware that the District was having difficulty assigning a 1:1 aide to Student, and she and her counsel communicated about this issue during the time Student was waiting for the aide.

Substantive: The failure to provide the 1:1 aide agreed upon at the September 4, 2013 IEP meeting and memorialized in the September 5, 2013 NOREP was a denial of FAPE, and the assignment of a substitute individual three days a week did not remedy the denial. There was no evidence that the substitute aide had appropriate coursework or training, and, in violation of Student's right to the Least Restrictive Environment [LRE] this

individual did not take Student to any regular education classes. Again, I sympathize with the District's candidly described difficulties in having the 1:1 aide assigned, but not providing this support to Student until January 2, 2014 nevertheless constituted a denial of FAPE. However the District will be given a one-month grace period which is deemed to be a fair span of time to vigorously search out a 1:1 aide.

Remedy: Notably and fortunately Student did not have significant adjustment problems upon transitioning to the high school. However, the absence of the agreed-upon 1:1 aide, with a specific responsibility to facilitate Student's participation in some regular education classes violated Student's right to LRE. A remedy designed to bring Student to the point where Student would have been but for the denial of FAPE, in accordance with the *Penn Manor* standard is appropriate. To remedy the denial of FAPE caused by the District's failure to provide Student with the 1:1 aide thus violating Student's right to receive art and physical education in the Least Restrictive Environment, the District will be ordered to fund Student's fees and transportation costs including parking for a[n] evening, weekend or summer community art class/program[s]. The District is also ordered to fund Student's fees and transportation costs including parking for a[n] evening, weekend and/or summer physical activity/sports program[s] such as, but not limited to, membership in a community gym or fitness center, individual or group instruction in a physical skill such as karate, boxing, bowling, ice skating, swimming, or other similar physical activity program, and/or enrollment in a summer day camp. The Parent is responsible for locating the art and sports program[s] and must submit invoices, mileage logs and parking receipts to the District. The total combined cost of these programs may not exceed the cost [salary and benefits] of the 1:1 aide for a three [3] month period. The District must provide reimbursement to the Parent and/or direct payment to the chosen programs within thirty (30) days of receiving the Parent's documentation. Student may utilize this compensatory education through the school year in which Student turns 21.

Speech/Language

Procedural: Over the course of four IEP meetings where the Parent was accompanied by counsel the IEPs under discussion put forth the amounts and method of delivery of speech language services. The Parent disagreed and engaged a private speech/language therapist to evaluate Student's speech/language needs. The Parent successfully challenged the District's plan on her child's behalf as is detailed below. Meaningful participation does not mean that a District needs to agree with a parent's point of view, and parents have the unfettered right, as did this Parent, to challenge the District's programming. I do not find a procedural violation in this area.

Substantive: The District's adoption of the "distributed practice" approach to addressing Student's speech/language needs represents a lack of an individual determination of the type/frequency/amount of speech/language services Student needs. Although the District's speech/language therapist observed Student she never consulted with the former therapist nor did she conduct any formal reevaluation of Student's speech/language. The private speech/language therapist evaluated Student and is familiar with the distributed practice model and testified credibly that the District's IEP does not

provide for implementation of the distributed practice model with fidelity for this Student, and moreover testified that the District's proposal of 15 minutes per week of direct speech/language therapy is inappropriate for Student at this time given Student's age and the severity of Student's speech/language disorder. I accept in its entirety, and give substantial weight to, the testimony of the private speech/language therapist and conclude that the District denied Student FAPE in the speech/language area.

Remedy: In this instance, a remedy using the *MC* standard is appropriate. I accept the private speech/language therapist's professional recommendation that Student requires three 45-minute sessions per week in a natural environment to address Student's multiple communication needs. I understand her reasoning that Student requires work with developing vocabulary and syntax, provided in the actual environment in which Student will be communicating so that Student can learn to adjust to what kinds of messages would be appropriate. Although I considered subtracting the District's 15 minutes per week of speech/language services that it delivered to Student, I will not do so given that the speech/language therapist did not consult with the previous therapist nor did she propose a reevaluation of Student in this area until the school year was two-thirds over. Therefore to remedy the denial of FAPE in the area of speech/language services the District is required to fund private speech/language and communication services in the amount of two-and-a-quarter [2 ¼] hours per week for every week school was in session for the 2013-2014 school year. In addition, an extra one-and-a-quarter [1¼] hours per month for ten [10] months, [a total of twelve-and-a-half [12.5] hours], is to be used for consultation with Student's Parent, and/or staff at Student's community art and recreational programs, and/or collaboration with the speech/language therapist providing services to Student in the school setting. These hours must be used solely for speech/language and communication services, must be funded at the usual and customary rate for private speech/language and communication therapy in the Philadelphia area, and may be used after school, in the evening, on weekends and/or during the summer until the end of the school year in which Student turns 21. These hours are not to be used to substitute for the speech/language services that will be ordered to be provided through Student's IEP.

Present Levels

Procedural: The Parent's claim in this area is unclear. She seems to be alleging that she was denied participation in planning Student's educational program because Student was instructed according to results of assessments done in the early part of the 9th grade year, and progress monitored on accordingly revised goals and objectives that, while put into draft IEPs and discussed in several IEP meetings at which she was present with counsel, were not yet part of an approved IEP. Given that the Parent reasonably questioned whether the present levels in the April 2013 middle school IEP were accurate in the fall at the beginning of high school, the parties agreed to conduct assessments, the results were discussed at the November IEP meeting, and goals and objectives were discussed and revised at the next two IEP meetings. Had the District not instructed Student according to updated academic information Student would have been ill-served. The Parent was part of the IEP revision process from the beginning; she was not denied meaningful participation.

Substantive: The Parent has not produced persuasive evidence to show that Student was inappropriately educated in academic areas during the 2013-2014 school year.

Remedy: The District appropriately used the assessment data to develop and modify goals and objectives for Student as the year progressed and to instruct and monitor progress on these goals and objectives. No remedy is due on this issue.

Transitional Planning/Career Education/Interest in Art

Procedural: The District listened when Parent relayed Student's interest in art, and provided regular education art classes to Student once the 1:1 aide was assigned. The District indicated to the Parent that it would provide Student with the experiences of attending the only two art-related exploratory classes offered at Student's high school—web design and cinematography, and did provide this to Student. The District explained to the Parent that the three-year Career and Technical Education [CTE] courses were only open to students once they reached tenth grade.

Substantive: Student missed attending regular education art classes due to the difficulty locating/assigning an aide. As Student is interested in art and may possibly be able to use this interest in post-secondary employment, missing these art classes was a denial of FAPE. The CTE programs are set up to run for three years beginning in 10th grade. As a 9th grader Student was not eligible to attend a CTE program in 2013-2014. This is not deemed to constitute a denial of FAPE. The Parent alleges discrimination under Section 504 because Student was denied access to regular education art classes. This issue is coextensive with the IDEA issue of denial of FAPE; there is no evidence that Student's not attending regular education art classes [or regular education physical education classes] was discrimination; lack of a 1:1 aide for several months was the reason Student did not go to regular education art and physical education.

Relief: The denial of FAPE resulting from Student's inability to participate in regular education art class [and regular education physical education class] will be remedied under the issue of 1:1 aide. No additional remedy is required in the area of transition planning.

ESY

Procedural: The Parent was present at four IEP meetings, accompanied by counsel at each. In the second of these IEP meetings [November 2013] ESY was specifically addressed, as an error regarding ESY in the previous IEP had to be corrected. ESY was presented in all IEPs following. At the end of January the Parent received the ESY registration form. At the February 19, 2014 IEP meeting the Parent brought up two new issues – alleged bullying and her desire for Student to attend a CTE program related to art. Clearly she was not hampered from raising concerns about any aspect of Student's program, including ESY, but she did not do so. The four IEP meetings as well as the Resolution Meeting in January 2014 offered a great deal of *opportunity* for meaningful parental participation and ESY could have been put front and center in any of these

meetings had the Parent chosen to do so. I find no procedural error in the offer of Student's ESY program.

Substantive: An ESY program is judged by the standards of appropriateness and FAPE that would govern any aspect of a Student's special education program – Is the program reasonably calculated to confer meaningful [not minimal] educational benefit? The Parent has argued that by proposing an ESY program of three days a week for four hours each day within a specific calendar period the District has failed to individualize the plan for Student's ESY services. As I have found recently in another matter, it is perfectly reasonable for any school district, particularly a large district with a substantial special education population, to establish time parameters for delivery of ESY services over the summer. Availability of buildings, teachers, support staff, and transportation must be established in such a way that every child who is entitled to ESY receives it. The Parents' argument that offering specific dates, days and times is a "cookie cutter" approach to Student's ESY is rejected – the ESY schedule is no more of a cookie cutter approach than establishing a school year calendar with opening and ending dates, hours of the school day, and holidays or breaks. What individualizes an ESY program are the goals and objectives in the ESY portion of the IEP. Student's ESY goals and objectives relate to the goals and objectives addressing Student's needs during the school year. Conclusions of hearing officers are specific to each case, each set of facts, and each witness and document. It may be that in another case the evidence and my conclusions would add up to a different result, but in this matter I find no denial of FAPE.

Remedy: Student is not entitled to a remedy for ESY as I find there has not been a denial of FAPE in this regard.

Bullying

Procedural: The Parent has not alleged a procedural violation regarding this issue.

Substantive: The Parent brings claims on Student's behalf as a denial of FAPE under the IDEA and as discrimination under Section 504 on this issue. On the same day that the District found out about the conduct of the [other] student towards Student steps were taken to address the situation. Staff including the building principal became involved. Staff were in contact with the Parent, with the other student's Guardian, met with the other student, changed Student's bus seat and then reversed the change when the Parent expressed concern about this. These steps, as far as is known, have prevented further incidents. Although the Parent characterizes the cell phone incident and the money incident[s] as bullying, the exact nature of these events is not known to the adults, and as described in the record may not rise to the level of bullying. No one but Student and the [redacted] peer know exactly what transpired between them; the interaction could have been flirtation, persuasion, bribery, manipulation, coercion or demand, or a combination of any of these. It does appear that the [other] student at the very least took advantage of Student's good nature. I find that the District handled this situation swiftly and appropriately and in a non-discriminatory manner - there is no evidence that it would have done anything more for a non-disabled Student.

Remedy: As there was no denial of FAPE under the IDEA and there was no discrimination under Section 504 there is not a remedy per se. However I do find that given Student's age and communication deficits the plan to address self-advocacy skills once an IEP term is insufficient. An order to substantially increase the provision of this service will be entered.

Evaluation

Students must receive reevaluations every three years. As Student is entering 10th grade Student will continue to receive special education programming for at least three more years, and for several more if the Parent elects to have Student continue to attend through the school year in which Student turns 21. Formal evaluation consisting of record review, parent input, teacher input, student input, special education and regular education classroom observations, as well as formal cognitive, achievement, speech/language, social/emotional, executive functioning, assistive technology and vocational assessments are necessary to provide a robust basis upon which to plan Student's IEP goals and objectives, specially designed instruction and supportive services in the coming years.

Order

It is hereby ORDERED that:

1. The District did not significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to Student.
2. The District failed to provide Student with a free appropriate public education during the 2013-2014 school year by:
 - a. Failure to comply with the requirement in Student's Individualized Education Plan that Student be provided an iPad as assistive technology; and
 - b. Denial of Student's ability to participate in the Least Restrictive Environment through failure to comply with the requirement in the IEP as amended by a Notice of Recommended Educational Placement that Student be provided a 1:1 aide so that Student could participate in some general education classes; and
 - c. Denial of appropriate speech/language services based on Student's individual needs.
3. The Parent's Section 504 claims on behalf of Student are coextensive with and have been addressed pursuant to the IDEA.
4. The District must provide Student with compensatory education as follows:

- a. To remedy the denial of FAPE caused by delayed delivery of Student's iPad the District is ordered to contract with the private speech/language therapist and/or an expert in iPad educational application technology to research, acquire, and teach Student, the Parent, Student's teachers and the 1:1 aide how to use appropriate educational applications to assist Student in the variety of ways in which these applications can be useful in supporting the IEP goals. This service is to be provided at the start of each school year, beginning in September and ending no later than the end of October, for 10th, 11th and 12th grades to develop Student's skills in the subject areas presented each year, and to promote Student's overall communication and vocational goals. This remedy is for the 2014-2015, the 2015-2016, and the 2016-2017 school years and may extend to subsequent school years should the Parent decide to keep Student in school through the end of the school year in which Student turns 21 provided that the total number of cumulative hours has not been exceeded. The total amount of cumulative hours shall not exceed one hundred twenty [120] hours, based on the formula of denial of FAPE in 2013-2014 of one hour each day, five days each week for twenty-four [24] weeks. The speech/language therapist and/or the expert in assistive educational technology must be paid at the usual and customary rate for such services in the Philadelphia area. The total cost of the educational applications acquired throughout the remainder of Student's high school years may not exceed one thousand dollars [\$1000.00].
- b. To remedy the denial of FAPE caused by the District's failure to provide Student with the 1:1 aide thus violating Student's right to receive art and physical education in the Least Restrictive Environment, the District is ordered to fund Student's fees and transportation costs including parking for a[n] evening, weekend or summer community art class/program[s]. The District is also ordered to fund Student's fees and transportation costs including parking for a[n] evening, weekend and/or summer physical activity/sports program[s] such as, but not limited to, membership in a community gym or fitness center, individual or group instruction in a physical skill such as karate, boxing, bowling, ice skating, swimming, or other similar physical activity program, and/or enrollment in a summer day camp. The Parent is responsible for locating the art and sports program[s] and must submit invoices, mileage logs and parking receipts to the District. The total combined cost of these programs may not exceed the cost [salary and benefits] of the 1:1 aide for a three [3] month period. The District must provide reimbursement to the Parent and/or direct payment to the chosen programs within thirty (30) days of receiving the Parent's documentation. Student may utilize this compensatory education through the school year in which Student turns 21.
- c. To remedy the denial of FAPE in the area of speech/language services the District is required to fund private speech/language and communication

services in the amount of two-and-a-quarter [2 ¼] hours per week for every week school was in session for the 2013-2014 school year. In addition, an extra one-and-a-quarter [1¼] hours per month for ten [10] months, [a total of twelve-and-a-half [12.5] hours], is to be used for consultation with Student's Parent, and/or staff at Student's community art and recreational programs, and/or collaboration with the speech/language therapist providing services to Student in the school setting. These hours must be used solely for speech/language and communication services, must be funded at the usual and customary rate for private speech/language and communication therapy in the Philadelphia area, and may be used after school, in the evening, on weekends and/or during the summer until the end of the school year in which Student turns 21. These hours are not to be used to substitute for the speech/language services that will be ordered to be provided through Student's IEP.

5. The District is further ORDERED to:
 - a. Continue, as part of the IEPs, to provide Student with a personal iPad throughout Student's attendance in high school. Further, pursuant to the compensatory services regarding the iPad ordered above, on an annual basis and no later than the end of October of Student's remaining school years, the District must make Student's special education and regular education teachers and the 1:1 aide available for training by the private speech/language therapist and/or assistive technology expert on the educational applications and educational/communication uses of the iPad for Student in coursework and communication for that school year.
 - b. Continue, as part of the IEPs, to provide Student with a 1:1 aide throughout the school day throughout Student's attendance in high school unless and until the entire IEP team, with particular emphasis on the Parent, believes that the aide can and should be faded for part of the day, or eliminated entirely, in order to promote Student's growing independence in the school setting.
 - c. Provide, as part of the IEPs, direct speech/language therapy with an appropriately credentialed speech/language therapist with experience with older students with autism at the rate of three 45-minute sessions weekly. Two of these sessions must be individual sessions; the other session may be a small group session, with no more than a total of four students in the group, to facilitate Student's practicing communication skills with peers. Further, in order to ensure ongoing assessment of each school environment and to coach/monitor team members in their responsibilities to assist Student to practice communication skills, Student's IEP must provide for seventy-five [75] minutes per month of speech/language consultation services, at least fifteen [15] minutes of which must be consultation with the Parent.
 - d. Provide, as part of Student's IEP, direct instruction on self-advocacy through modeling, social stories, group discussion, videos and/or other methods. This

instruction must be carried out in a small group setting once per week for thirty [30] minutes in the autistic support classroom or in a social skills group composed of special education and regular education students. Further, the 1:1 aide must be present at the sessions and as each occasion arises, prompt Student to utilize and practice the learned skills. This instruction may be provided by a guidance counselor, a school social worker, a school psychologist and/or the speech/language therapist, or by another individual possessing the training and skills required to provide this service.

- e. Conduct, within 60 calendar days, counting from the first day of school in the 2014-2015 school year, a comprehensive multidisciplinary evaluation of Student including record review, parent input, special education and regular education teacher and 1:1 aide input, student input, special education and regular education classroom observation, cafeteria observation, and cognitive testing, achievement testing, speech/language testing, social/emotional assessment, functional behavior analysis, executive functioning assessment, and assistive technology assessment. A thorough vocational assessment is also ordered, but as it is likely to take longer than 60 calendar days, that evaluation is to be completed no later than May 31, 2015. The Parent's permission is not required to conduct any part of the comprehensive evaluation described in this paragraph.

Any claims not specifically addressed by this decision and order are denied and dismissed.

August 3, 2014
Date

Linda M. Valentini, Psy.D., CHO

Linda M. Valentini, Psy.D., CHO
Special Education Hearing Officer
NAHO Certified Hearing Official