

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

ODR No. 01602-1011JS

Child's Name: D.B.

Date of Birth: [redacted]

Dates of Hearing: 11/16/10, 11/23/10, 12/13/10,
12/20/10, 1/13/11

CLOSED HEARING

Parties to the Hearing:

Parents

Parent[s]

School District

Salisbury Township
1140 Salisbury Road
Allentown, PA 18103

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney

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

School District Attorney

Kristine Roddick, Esq.
King, Spry,
One West Broad Street
Suite 700
Bethlehem, PA 18017

January 28, 2011

February 12, 2011

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

In June 2010, Student received a regular high school diploma, having completed all requirements for graduation. Student and Parents reside within the Salisbury Township School District, where Student was first identified as IDEA eligible in 3rd grade due to specific learning disabilities in reading, writing and math. By the 2008/2009 school year (11th grade) emotional disturbance (ED) had been added as disability category, Student's learning disability had been limited to math, and the District placed Student in a partial hospitalization program conducted by the [local]Intermediate Unit (IU) at a regular high school in a neighboring school district. During 11th and 12 grades, Student received emotional support services and some academic instruction in the program's emotional support classroom and the remainder of instruction in regular education classes at the high school, some of which were co-taught by a regular and a special education teacher.

At the end of 12th grade, based upon placement test results, Student was informed of the need to take several non-credit remedial courses before enrolling in college level classes at the community college Student expected to attend beginning in the fall of 2010. As part of the IDEA triennial evaluation requirement, standardized achievement tests administered in June 2010 indicated borderline functioning in math. Convinced that the combination of test results indicated inappropriate and inadequate special education services during the 2008/2009 and 2009/2010 school years, Parents filed a due process complaint.

The hearing was held in four sessions between mid-November 2010 and mid-January 2011. For the reasons that follow, Parents claims for compensatory education based upon inappropriate academic instruction and inadequate transition services are denied in all respects.

ISSUES

1. Did [the] School District appropriately evaluate Student and appropriately identify all of Student's special education needs between February 13, 2009 and June 2010?
2. Did [the] School District provide Student with appropriate special education services that met all of Student's needs between February 13, 2009 and the date of graduation in June 2010, specifically by providing IEPs that included appropriate goals, objectives, specially designed instruction and transition services, and by appropriately implementing Student's IEPs?
3. Is Student entitled to an award of compensatory education for any period between February 13, 2009 and June 2010, and if so, for what period, in what amount and in what form?

FINDINGS OF FACT

1. Student is a late teen-aged child, born [redacted]. Student is, and at all times relevant to the matters in dispute in this case, was a resident of the School District. (Stipulation, N.T. p. 13)
2. Before graduating from the District with a regular high school diploma in June 2010, Student was IDEA eligible and received special education services under the categories of emotional disturbance (ED) and specific learning disability (SLD)(math/math calculation), in accordance with 34 C.F.R. §300.8(a)(1), (c)(4)(i), (10)(i); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 13, 14)
3. During the 2008/2009 (11th grade) and 2009/2010 (12th grade) school years, Student was placed by the District IEP team in the SITES program (Student Intensive Treatment and Emotional Support), a partial hospitalization program operated by the [local] Intermediate Unit (IU) at [redacted] High School. (N.T. pp. 47, 49, 98, 880)
4. Participation in the SITES program requires a psychiatric diagnosis. It is designed to provide the support necessary for students with mental health issues to participate in a school community, including regular education classes. (N.T. pp. 839, 840)
5. In addition to a special education teacher the SITES classroom included an instructional assistant and behavior support person at all times, with a mental health counselor and social worker/mental health counselor nearby and sometimes also in the classroom. (N.T. pp. 98, 879)
6. The mental health treatment component of the SITES program included an individualized treatment plan with goals, weekly team meetings and monthly treatment plan reviews at which the SITES educational and treatment staff, including a psychiatrist, discussed Student's needs and progress. Student received mental health treatment, group counseling 3x/week, scheduled individual counseling sessions once or twice/week, and additional

individual counseling as needed and requested. (N.T. pp. 99—101, 291, 336, 337, 838, 877—879)

7. Student's IEP for 11th grade was developed after an independent educational evaluation (IEE) performed by a school psychologist chosen by Parents. The independent evaluator also participated directly in the development of the 11th grade IEP, which incorporated her program recommendations in some of the goals and specially designed instruction (SDI). Parents' evaluator specifically noted in the September 2008 IEE report that continued participation in the SITES program would benefit Student. (N.T. pp. 350, 351, 490—492, 500—504; J-2, pp 21, 22;¹ J-3, pp. 26, 36—43)
8. In both 11th and 12th grades, Student received regular education English instruction in Applied Communications classes, and regular education math instruction in Applied Algebra I and Applied Geometry, respectively, which were co-taught by regular and special education teachers. Student was placed in the applied classes in order to assure access to sufficient support in light of behavior and interpersonal/peer relationship issues arising from Student's ED disability category. The applied classes covered the same content and followed the same curriculum as other regular education classes, including college prep classes, but were taught at a slower pace and at less depth, but with additional classroom support always available. (N.T. pp. 473—475, 847—853, 884; J-3, pp. 37, 38; J-7 p. 27)
9. In 11th grade, Student was taught Consumer and Business Math, Health, Science, History and Study Skills by a special education teacher in the SITES emotional support classroom. Student was taught an 11th grade curriculum using grade level textbooks in science and social studies. A modified social studies text was also used as a pre-teaching strategy, to build motivation and to establish interest in the subject matter. (N.T. pp. 50, 80—83, 129, 856)
10. One of the math goals in Student's 2008/2009 IEP specified that progress was to be measured by curriculum- based probes of the Applied Algebra I material conducted by the SITES teacher. The IEP team selected algebra as one of Student's courses to expose Student higher level math concepts. (N.T. pp. 55, 56, 428, 450, 472)
11. In addition to the probes conducted by the SITES special education teacher, Student's progress in the Applied Algebra I class was measured by classroom grades based upon assignments and tests. Student received a final grade of B- for the year with the use of a calculator for basic operations as specified in the SDI section of Student's IEP. Student learned the skills expected of students in the Applied Algebra I class and made progress commensurate with other students in the class. (N.T. pp. 170—173; J-3, p. 40; J-6)
12. A second math goal was based upon Business and Consumer Math, a curriculum furnished by the District and delivered by the SITES teacher. That curriculum was designed to address Student's deficits in using basic math skills by developing Student's functional skills in basic math calculation/operations, including percentages and decimals, as applied to practical daily

¹ Counsel sensibly prepared an exhibit book containing documents that both parties agreed were relevant and admissible and did not need to be duplicated. The joint exhibits are designated J-1—J-24. Additional exhibits produced by each party separately are designated "P-#" for Parent Exhibits and "S-#" for School District Exhibits.

living skills such as computing interest, balancing a checkbook, developing a budget. That approach to practicing and applying basic math skills was approved by Parents' private evaluator. (N.T. pp. 55—61, 63, 113, 435—443, 453, 454; J-3, pp. 31, 37)

13. Student was able to perform basic math calculations with the assistance of a calculator and earned a C+ average for the school year in the functional Business and Consumer Math curriculum. (N.T. pp. 62, 63; J-6)
14. The 2008/2009 IEP included a writing goal with short-term objectives designed to encourage Student's use of graphic organizers and proof-reading. The SITES teacher measured progress on the writing goal by grading writing samples from science and social studies assignments using the 11th grade PSSA rubric. (N.T. pp. 74, 75, 77, 98; J-3, p. 24; J-6)
15. Student's 11th grade IEP also included a Study Skills goal designed to increase Student's academic independence through direct instruction with a study skills text and rubric and guided practice. Student used some of the time allotted for Study Skills instruction to complete work from regular education classes. Student's regular education teachers were provided with the Study Skills rubric and asked to complete and return progress forms to the SITES teacher every 2 weeks at first and later every 3 weeks. (N.T. pp. 75, 106—108; J-3, pp. 26—28)
16. The transition plan for 11th grade, implemented by the SITES teacher, included goals and activities directed toward improving academic, self-advocacy, organization and self-determination skills; developing better study habits; understanding and undertaking the process for applying to college and understanding college expectations, as well as identifying and exploring career interests. (N.T. pp. 103, 456, 457, 459; J-3, pp. 18—21, 32)
17. Student needed explicit instruction in self-advocacy to develop the ability to communicate wants and needs effectively and appropriately in the educational environment. Student also needed the opportunity to obtain feedback with respect to the perception of others concerning the Student's communications in order to assure that Student could obtain necessary assistance in a manner that enhanced rather than interfered with social communications. (N.T. pp. 493, 494)
18. In furtherance of Student's self-advocacy goal, the SITES teacher encouraged Student to approach teachers to discuss how Student could make up missed assignments and obtain additional help with material that was difficult to understand, and provided opportunities to practice such requests. Student's regular education teachers rated Student's progress toward developing self-advocacy skills using a rubric. (N.T. pp. 108, 109; J-3, p. 30)
19. During 11th grade, Student exhibited behaviors such as defiance, refusing to complete course work in some instances, and experienced difficulties with peer interactions in regular education classes for which Student received support in the SITES classroom. (N.T. pp. 99—101, 135)

20. Student's special education teacher maintained contact with Parents about academic and behavior issues, especially Student's unwillingness to complete assignments and Student's refusal to cooperate with math assessments. (N.T. pp. 85, 97, 120)
21. During the 2009/2010 school year, Student was enrolled in the following regular education classes: Chemistry-I; Applied Communications-12; Psychology; Physical Education; Multicultural Foods; Methods and Materials; Applied Geometry. The SDI included in the 12th grade IEP provided a number of supports for Student's participation in the regular education classes. (N. T. pp. 14 (Stipulation), 562; J-7, pp. 27, 28; J-17)
22. Student's post-secondary goal of attending college prompted the IEP team to maximize Student's participation in regular education classes during 12th grade. After conversations with Student's Mother at the end of 11th grade, the District's Director of Special Education, who drafted Student's IEPs, continued the progression of adding regular education classes to Student's schedule while maintaining a connection to the SITES classroom to continue to address Student's emotional support needs. (N.T. pp. 87, 115, 116, 447—449, 472, 520—525)
23. Student's IEP for the 2009/2010 school year dropped the math goal based on the Business and Consumer Math curriculum but retained the goal for a 90% performance level in Student's Applied Geometry class. Initially, progress toward that goal was again measured by probes administered by the SITES special education teacher. Student's IEP was later revised to eliminate the probes as measures of progress in the co-taught math class, but the goal was retained. (N.T. pp. 64, 68, 70, 89, 147, 150—152, 450, 451, 476—479; J-7, p. 20; J-9, p. 19)
24. Throughout the 12th grade year, Student had the opportunity to obtain help with math from the SITES teacher and the Applied Geometry teacher. As specified in the Specially Designed Instruction (SDI) section of the IEP, Student also had the option to request 1:1 tutoring from a math instructor. (N.T. pp. 88—91; J-7, p. 28)
25. Student received instruction in the SITES emotional support classroom in the following classes during the 2009/2010 school year: Economics, Government and Study Skills, which was embedded in the Economics and Government curricula. The additional regular education classes Student was taking in 12th grade left insufficient time for a separate Study Skills class, but the study skills rubric and progress monitoring were retained. (N.T. pp. 14 (Stipulation), 86, 87, 94, 95, 523, 524, 566, 567; J-7, pp. 18—20; J-17)
26. The SITES teacher used high school level texts for both academic classes, but provided curricula that differed from the regular education high school classes by emphasizing functional information such as how government works in the Government class and taxation in the Economics class. Student was graded by means of curriculum-based assessments (N.T. pp. 87, 94, 95, 130, 131; J-6, J-17)
27. The 12th grade IEP retained a written expression goal to assure maintenance of Student's writing skills. In 12th grade, the SITES teacher selected and graded samples of Student's

Economic and Government written assignments using the 11th grade PSSA rubric to monitor Student's writing skills. The teacher also encourages use of effective pre-writing strategies by assigning the same tasks to the other students in the small instructional group, so Student would not feel set apart and would be more willing to use effective pre-writing strategies. (N.T. pp. 91, 120, 121, 565, 597; J-7, p. 17; J-11, p. 1)

28. To foster greater independence, the self-advocacy goal in Student's 11th grade IEP was replaced by a goal for conferencing with the SITES teacher every 3 weeks to discuss Student's progress in regular education classes and need for accommodations. In addition, Student had reached mastery on the 11th grade self-advocacy goal. (N.T. pp. 122—124, 567—569, 642; J-7, p. 21)
29. During 12th grade, Student was strongly encouraged to use coping skills and strategies for difficult situations, resulting in a reduction in demands for immediate individual counseling. The 12th grade IEP included a Coping Strategy Reflecting Log to encourage Student to assess the value of various means of addressing problem situations. Between the beginning of 11th grade and end of 12th grade, Student's ability to cope with interpersonal peer relationships and behavior issues improved. (N.T. pp. 100, 116, 124, 125, 139, 140, 147, 148, 886, 889; J-7, p. 25)
30. As part of the 12th grade transition activities, Parents and Student were provided with disability-related information and resources to assist Parents and Student in choosing a college and obtaining accommodations. (N.T. pp. 570—575, 606; S-10; J-7, p. 13)
31. Student and Parents wanted Student to graduate from high school at the end of the 2009/2010 school year. Throughout Student's public school attendance, Parents were willing to consider holding Student back if Student did not achieve passing grades. By the end of 12th grade, Parents and Student believed Student was ready for college, but not a four year college. (N.T. pp. 684, 685, 694)
32. At the end of 12th grade, the SITES teacher created a Summary of Academic Achievement and Functional Performance for Student, noting areas of progress, needs/concerns, strategies Student was taught and used to address academic, organization, behavior, coping, self-advocacy and transition needs. The document also included reminders of the strategies/assistance provided through the IEP that Student would need to replace, and suggestions for coping with the same issues in the future. Student had the opportunity to provide input into the summary with the guidance of the teacher. The Summary was subsequently shared with Parents at a meeting. (N.T. pp. 125—127; J-13)
33. Since Student planned to attend college after high school graduation, Student took the ACT college placement test in June 2009, the end of junior year. Student scored above the "college ready" benchmark for English (Student score= 21/Benchmark =18). Student scored below the "college ready" benchmarks for Math (16/22); Reading (20/21); Science (14/24). (N.T. pp. 39, 40; P-12)

34. Upon acceptance at [the local] Community College (CC), Student took the COMPASS Placement tests in reading, writing and math, resulting in the college's determination that Student needed to take non-credit remedial courses in all three areas before enrolling in college level courses for credit. (N.T. pp. 38, P-9, p. 1)
35. The COMPASS tests were un-timed, but the amount of time Student spent on each test was recorded: Writing: 17 minutes, 57 seconds; Reading: 25 minutes, 39 seconds; Math: 23 min., 39 seconds (Algebra—15'27"; Pre-Algebra—8'12") (N.T. pp. 37, 40, 41; P-9, p. 1)
36. Student's completion of school-related tasks fluctuated depending upon Student's motivation, which was adversely affected by non-preferred tasks and tasks perceived to be difficult, particularly assessments. Student had a history of completing non-preferred tasks very quickly. (N.T. pp. 42, 46, 91, 110—112, 134—136, 147, 465, 731)
37. Student did not like being singled out, was reluctant to be known as a special education student and wanted to perform in school at the level of students without disabilities. (N.T. pp. 121, 652, 653)
38. Student's performance on tests was inconsistent and Student exhibited test-taking anxiety, particularly with respect to timed tests. To address those issues, Student was provided with specially designed instruction and accommodations in both 11th and 12th grades, including the opportunity for extended time or for un-timed tests, re-taking failed tests and taking tests in a separate location. (N.T. pp. 43, 44, 314, 349, 350, 355, 374, 375, 727—731; J-3, pp. 39, 40; J-7, p. 28; P-13)
39. The District specifically offered Student assistance and support in preparing for and taking the COMPASS tests, such as helping Student find practice tests online, providing time in the SITES classroom to practice for the tests, helping Student request disability accommodations and accompanying Student to the community college to take the tests. Student and Parents declined assistance to prepare for the COMPASS tests. (N.T. pp. 371, 467, 468, 470, 582, 583, 606, 607, 611, 622)
40. Student's 3 year evaluation was due in May 2010. For several reasons, the District members of Student's IEP team believed that the evaluation could be waived or limited to a review of records: a) there had been an independent evaluation in September 2008 which included ability and achievement tests; b) there were no questions concerning Student's identification, eligibility category or placement; c) there was sufficient information about Student's current functioning from ongoing progress monitoring and curriculum-based assessments; d) Student might perceive that requiring additional assessments at the end of senior year was an indication of failure. (N.T. pp. 293—297, 300, 339, 342, 373, 482, 483, 609, 610, 612; J-7, pp. 7—10; J-6; J-11; J-17)
41. An initial reevaluation report (RR) consisting of only the review of records and input from the SITES educational and treatment staff was issued and delivered to Parents on May 1, 2010. (N.T. pp. 297—299, 656, 658; J-10)

42. Parents disagreed that there was no need for an evaluation in May 2010, including new assessments, and requested that the school psychologist administer updated standardized achievement tests. (N.T. pp. 329, 373, 374, 481, 611, 636, 655, 656, 658)
43. On the day the school psychologist administered a standardized achievement test (WIAT-II- (Wechsler Individual Achievement Test-Second Edition) to supplement the reevaluation, Student also had final examinations. The SITES teacher observed that Student arrived late for the testing session and indicated that Student just wanted to get the testing finished. The school psychologist who conducted the testing noted that Student completed the test very quickly and did not attempt many of the math problems. (N.T. pp. 134, 310, 311, 313, 325, 328, 346—348; J-15, p. 13)
44. The WIAT-II resulted in a math composite score considerably lower than the score Student had achieved when the same assessment was administered by Parents’ independent school psychologist in the summer of 2008, and lower than the score reported by the same independent evaluator in the fall of 2010 on the newest edition of the Wechsler achievement test, the WIAT-III. Except for the math portion of the June 2010 assessment, all of Student’s overall achievement test scores for reading, writing and math fell into the average range on the Wechsler achievement tests and the TOWL-IV (Test of Written Language, 4th Edition)² between 2008 (beginning of 11th grade) and December 2010 (post high school graduation):

	<u>7/2008</u>	<u>6/2010</u>	<u>10-12/2010</u>
Reading	108 (WIAT-II) (Reading Comprehension) Average Range	100 (WIAT-II) (Reading Comprehension) Average Range	98 (WIAT-III) (Reading Comprehension) Average Range
Math	95 (WIAT-II) (Composite) Average Range	76 (WIAT-II) (Composite) Borderline Range	95 (WIAT-III) (Composite) Average Range
Writing	96 (WIAT-II) (Composite) Average Range	95 (WIAT-II) (Composite) Average Range	No Score (TOWL-IV) Average Range

(N.T. pp. 323, 355, 811 ; J-2, pp. 15, 28; P-15, pp. 4, 5, 7; S-22, pp. 13—15)

45. Parents’ independent evaluator also administered the KeyMath-3 Diagnostic Assessment in both 2008 and 2010. Student’s overall performance was below average on both assessments (2008—82; 2010—83). Generally, Student’s scores reflected a similar pattern of average and below average performance in specific areas on both assessments. Three areas showed an increase from below average to average functioning, three a decrease from average to below average functioning, and five areas remained the same whether average or below average. (N.T. pp. 805—808; J-2, pp. 16—18, 33; P-15, pp. 5—7, 16)

² There was no testimony explaining why Parents’ evaluator chose to assess Student’s written expression with the TOWL-IV in the fall 2010 evaluation, or why no specific score(s) were reported.

46. Although Student enrolled at CC for the fall 2010 term, Student did not request an accommodation plan because of discomfort with sharing disability information. At age 18, Student was no longer eligible for Therapeutic Support Services. Student discontinued both private psychiatric care and psychological counseling. (N.T. pp.785, 786; P-15, p. 1)
47. Student did not complete assignments, stopped attending classes and by December 2010, had dropped out of the community college. Student also lost a part-time job. (N.T. pp. 680, 695, 723, 724, 785; P-15, p. 1)

DISCUSSION AND CONCLUSIONS OF LAW

A. Legal Standards

Before considering the facts in light of the parties' contentions, it is helpful to set out the familiar legal framework that governs consideration of the issues in dispute.

1. FAPE/Meaningful Benefit

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) in accordance with an appropriate IEP, *i.e.*, one that is “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3rd Cir. 2009). “Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999). Consequently, in order to properly provide FAPE, an eligible student’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*”

educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3rd Cir. 1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by the *Rowley* case and other relevant cases, however, an LEA is not required to provide an eligible student with services designed to provide the “absolute best” education 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).

2. Compensatory Education

An eligible student who has not received more than a *de minimis* educational benefit is entitled to correction of that situation through an award of compensatory education, an equitable “remedy is 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 249 (internal quotation marks and citation omitted). Compensatory education is awarded 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 395 (3rd Cir. 1996); *Carlisle Area School District v. Scott P.*, at 536. 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.

3. Due Process Hearings/Burden of Proof

The substantive protections of the IDEA statute and regulations are enforced via procedural safeguards available to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415

(b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 240.

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, in this case, because Parents have challenged the appropriateness of the District's special education program during the 2008/2009 and 2009/2010 school years, Parents must establish that the District's IEPs for those school years were not reasonably calculated to assure that Student would receive a meaningful educational benefit.

The Court limited its holding in *Schaffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding. The burden of proof analysis truly affects the outcome of a due process hearing, therefore, only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position.

B. Basis for Parents' Claims

Parents' contention that the District should be ordered to provide Student with compensatory education services for the 2008/2009 and 2009/2010 school year because it failed to provide Student with an appropriate program and placement during 11th and 12 grades relies almost entirely upon Student's unsuccessful transition to post-secondary education in the fall of 2010. Testimony during the due process hearing revealed that Student had not sought disability services or accommodations from the community college in which Student enrolled and had been unable to complete course requirements, leading to withdrawal by December 2010. (F.F.

46, 47) Parents contend that Student did not make meaningful educational progress during 11th and 12th grades, despite having successfully completed the general education curriculum and received a regular high school diploma. Parents argued Student either did not truly achieve the level of progress indicated by progress monitoring on IEP goals and by the grades Student received in regular and special education classes, or that those measures are not a proper basis for assessing Student's achievement and progress in light of Student's lack of success in college and employment since graduating from high school.

The opinion of Parents' expert witness that the District failed to provide a FAPE to Student during the last two years in high school was explicitly based upon the conclusion that Student's need to take remedial courses before enrolling in college credit courses establishes that Student did not meet the academic IEP goals. (FF 34; N.T. p. 811) In addition, Parents' expert witness's conclusions in the most recent evaluation report that Student also failed to meet IEP goals in the areas of self-advocacy and study skills are obviously based upon Student's loss of part-time employment, dropping out of college during the first term and failure or refusal to seek disability services. (FF 46, 47; P-15, p. 8)

Parents' contention that a denial of FAPE can be established by looking at outcomes is legally unsupportable. Similarly, the opinions of Parents' expert witness that the District failed provide Student with appropriate services are entitled to no weight because they do not comport with the legal standards for determining whether the District complied with its IDEA obligations.

As noted in court decisions cited above, and more recently in *High v. Exeter Twp. School District*, 2010 WL 36832 at *4 (E.D. Pa. 2010),

Congress did not intend the IDEA to guarantee a specific outcome, but to provide a basic level of educational opportunity. *Rowley*, 458 U.S. at 192 (quoting *S.Rep. No. 94-168, at 11 (1975)*); *Polkv. Centr. Susquehanna Intermediate Unit 16*, 853 F.2d 171,178 (3d Cir.1988).

Moreover, the Court of Appeals held in two prior IDEA decisions that the appropriateness of a School District's program and placement must be determined as of the time it was offered, and not at a later date. *Fuhrmann v. East Hanover Bd. of Education*, 993 F.2d 1031, 1040 (3rd Cir.1993), *Susan N. v. Wilson School District*, 70 F.3d 751, 762 (3rd Cir. 1995). The focus of the decision in this case, therefore must be on determining whether the goals in Student's IEPs for 11th and 12th grades were reasonably calculated to result in meaningful progress and whether Student made meaningful progress, not on whether Student achieved mastery of all goals.³

This approach to the issues in dispute is both legally required in light of court decisions interpreting IDEA requirements and comports with common sense. During Student's 12th grade year, both Student and Parents believed that Student was ready to move out of high school and had no desire to continue secondary education despite Student's eligibility for IDEA services until age 21, and, most unfortunately but understandably, are disappointed with post secondary life. (FF 31) This Student is not the first, and surely won't be the last high school graduate who wants to pursue post secondary education and fully expects to enroll in and complete a college course of study immediately after high school only to find that s/he is unsuccessful for any number of reasons. Whether such students have a disability or not, an immediate lack of success does not mean that they did not make educational progress in high school or did not really meet graduation standards, or that they will not be able to re-enroll and ultimately complete a college degree in the future. Determining whether the District provided a FAPE to Student and

³ It is not particularly surprising that Parents' expert witness preferred to approach the appropriateness of the District's program by opining that Student's post secondary difficulty indicate lack of mastery of IEP goals rather than focusing too closely on the appropriateness of the goals and SDI in the IEPs at issue when offered, since the 11th grade IEP was based in large part on her own recommendations and the 12th grade IEP retained many of the same goal areas and SDI. (FF 7; N.T. p. 790; J-7; P-15, p. 8)

otherwise complied with IDEA requirements during Student's final 2 years in high school based upon an unsuccessful immediate transition to post-secondary education would be manifestly unfair as well as unreasonable.

C. Appropriateness of Student's 11th and 12th Grade IEPs When Offered

The record in this case provides extensive support for the conclusion that the District provided Student with appropriate academic instruction designed to foster progress in the general education curriculum despite Student's dual ED disability and SLD in math.

Student's participation in the IU SITES partial hospitalization program worked for Student as designed and expected, *i.e.*, permitted Student to be educated along with non-disabled peers in a regular public high school environment while receiving extensive mental health and educational support to address the significant needs arising from Student's disabilities. (FF 3—8, 21, 22)

1. Academic/Instructional Goals and Services

In both 11th and 12th grades, Student's IEPs included academic goals focused on math, Student's primary area of need, but also included writing goals to maintain Student's skills in that important area of academic functioning. (FF 9—12, 14, 23, 27) Although Student continued to struggle with math because the learning disability in that area was not entirely remediated, Student was able to make progress in the general education curriculum with supplementary aids and services, such as co-taught classes and use of a calculator. (FF 8, 9, 11)

The District, through the SITES program, also provided goals and SDI designed to foster academic success, generally, by improving Student's study skills and self-advocacy skills (FF 15, 17, 18, 25, 28, 29) Those needs arose primarily from the effect of Student's ED disability on classroom functioning. The uncontradicted evidence in the record established that Student made

meaningful progress toward developing appropriate study and self advocacy skills and controlling inappropriate behaviors. (FF 29)

There is no requirement that eligible students completely overcome their disabilities by the time they finish high school, and Student continued to exhibit emotional support needs, particularly in 11th grade. (FF 19, 20) There was no evidence, however, that any academic or social needs arising from Student's disabilities were either not recognized or not addressed appropriately during the 2008/2009 or 2009/2010 school year. Parents provided no factual basis or reasonable argument for their suspicion that Student did not achieve the average to above average academic grades reported for 11th and 12th grades. *See* J-6, J-17. As noted above, Parents' primary basis for arguing that the District failed to appropriately identify and address all of Student's educational needs is Student's lack of the success Parents hoped Student could achieve after high school graduation.

2. Transition

Many of the skills Student needs for achieving post secondary independence, participating in post secondary education and ultimately obtaining employment coincide with the skills needed to successfully complete high school. Those general skills were identified in Student's transition plans in the 11th and 12th grade, and were included as goals in Student's IEPs, along with college and career exploration activities. (FF 16; J-3, pp. 18—21; J-7, pp. 12, 13) Although Student successfully completed high school with the supports and services in place through the SITES program, it quickly became apparent that when Student needed to seek out additional supports during high school, such as help in preparing for college placement tests, or seeking available supportive services, Student was unwilling to do so. (FF 34, 39, 47)

Both directly and through the SITES program, however, the District attempted to provide Student with general information concerning post secondary transition for students with disabilities and information about resources through which Student could obtain supportive services after high school. (FF 30, 32) The record leaves the impression that Student, and perhaps Parents to some extent, were unrealistic in expecting that Student could attend the community college with no supports in place. Nevertheless, the District fulfilled its responsibilities by providing Student and Parents with important and necessary information as part of transition services. The District cannot reasonably be held responsible if Student and Parents choose not to obtain further assistance for Student's disabilities through the resources the District provided. As noted several times in this decision, the District was not required to assure that Student completely overcame the effects of Student's disabilities such that supportive services would no longer be needed after high school graduation.

D Implications of PSSA, COMPASS and 2010 Achievement Tests

Although the appropriateness of the District's services cannot be determined by information not available at the time the IEPs in question were offered, the results of the tests Student took at the end of 11th and 12th grades can be considered to the extent that they provide information relevant to determining the appropriateness of the IEPs, particularly the 12th grade IEP, when offered by the District and accepted by Parents.

The test results, however, do not suggest that the District should have known that Student needed additional or different services to overcome the effects of Student's disability and, therefore, that the 12th grade IEP, in particular, was inappropriate when offered. The record in this case establishes that test results are an unreliable indicator of Student's abilities due to Student's test anxiety and well-documented history of avoiding non-preferred tasks, particularly

skill assessments. (FF 36, 38) Student spent very little time completing the COMPASS college placement tests and refused all offers of assistance to prepare for the tests. (FF 35, 39)

Although Parents spent considerable effort parsing the subtests of the WIAT achievement tests given to Student by both the IU school psychologist and their independent evaluator, as well as the Key Math test given only by the independent evaluator, looking at the overall picture supports the reasonable inference that Student's poor performance on the math portion of the test was due to motivational factors on the day the test was given. (FF 43) The results of the WIAT achievement tests given by the independent evaluator in the summer of 2008 and the fall of 2010 are remarkably consistent, and the scores for reading, writing and math all fall in the average range in both assessments. (FF 44) Moreover, although the Key Math test results vary to some degree in the pattern of strengths and weaknesses that emerged from the results, overall, Student's math performance remained stable between 2008 and 2010.

Finally, it would be unreasonable to determine the appropriateness two years of extensive special education services by Student's performance on two or three tests, when even Parents' evaluator admitted that such "snapshots" can be adversely affected by factors such as fatigue and motivation. (N.T. p. 812)

CONCLUSION

For all of the reasons stated above, Parents claims in this case must be denied. Student's difficulties since graduating from high school are undoubtedly disappointing to Student, and to Parents who are obviously caring and deeply concerned about Student's long-term welfare and ability to function successfully in adult life. The record, however, establishes that Student's present difficulties are the result of disabilities that the District appropriately addressed in Student's 11th and 12th grade IEPs, but unfortunately could not be overcome.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in this matter, including any claims not specifically addressed by this decision and order, are **DENIED**. The School District need take no further action with respect to Student and Student's Parents.

February 12, 2011

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER