

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

PENNSYLVANIA

## SPECIAL EDUCATION HEARING OFFICER

### DECISION

Child's Name: D.H.

Date of Birth: [redacted]

Dates of Hearing:

August 17, 2011

October 5, 2011

October 6, 2011

### CLOSED HEARING

ODR File No. 1933-1011KE

Parties to the Hearing:

Representative:

Parent[s]

None

West Shore School District  
507 Fishing Creek Road  
New Cumberland, PA 17070

Grace M. Deon, Esquire  
Eastburn and Gray, P.C.  
P. O. Box 1389  
Doylestown, PA 18901

Date Record Closed:

October 12, 2011

Date of Decision:

October 26, 2011

Hearing Officer:

Cathy A. Skidmore, M.Ed., J.D.

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student<sup>1</sup> is a high school-aged student in the West Shore School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> on the basis of an intellectual disability and autism. Student's Parents filed a due process complaint against the District in June 2011, asserting that its proposed program for Student for the 2011-12 did not constitute a free, appropriate public education (FAPE) under the IDEA. Specifically, the Parents contested the placement in a multiple disabilities support classroom as well as the elimination of a one-on-one personal care aide. The District countered that the proposed program was appropriate to meet Student's educational needs.

The case proceeded to a due process hearing which convened over three sessions, at which the parties presented evidence in support of their respective positions. Following the conclusion of the first session, this hearing officer entered an interim order regarding the pendent placement.<sup>3</sup> The parties were able to resolve several issues relating to the current placement prior to the conclusion of the final session.<sup>4</sup>

For the reasons set forth below, I find in favor of the District but with some modification to the implementation of the proposed program.

## **ISSUES**

Whether the proposed program for the 2011-12 school year is appropriate for Student?

## **FINDINGS OF FACT**

1. Student is a high-school aged student who is a resident of the District. Student is eligible for special education on the basis of an intellectual disability and autism. (Notes of Testimony (N.T.) 30-31; Parent Exhibit (P) 4; School District Exhibit (S) 1, S 8)
2. Student is non-verbal and is able to communicate through a few sign language signs. Student uses some signs that have been modified. (N.T. 90-91, 139, 582, 630, 634-35)
3. Student has difficulty interacting with others including peers. (N.T. 654-56)

---

<sup>1</sup> In the interest of confidentiality and privacy, Student's name and gender, as well as other potentially identifying information, are not used in the body of this decision.

<sup>2</sup> 20 U.S.C. §§ 1401 *et seq.*

<sup>3</sup> Hearing Officer Exhibit (HO) 1.

<sup>4</sup> Those issues included a Health Plan for Student, adaptive physical education, and how Student's speech/language needs would be addressed. (N.T. 269, 323-24, 341, 382-84, 624, 669; Parent Exhibit (P) 32; S 8 at 11-13, S 16 at 6) Because those particular areas are no longer at issue, this decision will make limited reference to the record evidence relating to them.

4. Changes in routine and overstimulation in the environment are also difficult for Student. (N.T. 664-65; P 4)
5. Historically and through the present, Student would cry and engage in self-injurious behavior (SIB) when Student becomes agitated or startled, or when asked to perform a non-preferred task or activity. The SIB occurs both at school and at home. However, Student's SIB has improved since Student was elementary school-aged. (N.T. 45-47, 50, 66-67, 111-13, 155-57, 365, 377, 418, 504; P 4, P 27, P 28; S 14, S 15)
6. Student previously resided in a another school district and was provided with a special education program in a multiple-disabilities support (MDS) classroom operated by a local Intermediate Unit (IU) upon Student's transition from preschool to a school-aged program. The MDS classroom at the IU had a maximum of eight students. (N.T. 33-34, 39, 59, 179-80)
7. During Student's final year in the IU program, Student was working on activities of daily living (feeding, toileting, and personal hygiene), prevocational skills (sorting, beginning meal preparation skills, and general cleaning), social skills, fine and gross motor skills, and functional academic skills. Student's sensory integration needs were also addressed throughout the school day. (N.T. 34-36, 44-45, 47-48, 60, 64-65, 67, 73-78, 107-09, 123-24; P 15; S 2 at 32-34, S 7 at 14-18)
8. Throughout the time Student was in the IU program, Student was provided with a personal care aide (PCA). The PCA provided prompting when needed to direct or redirect Student to a task or activity, particularly those that were not preferred. The PCA also monitored Student's behavior and safety and kept a log. Student sometimes needed assistance from more than one adult, such as when Student needed to walk to another room and did not want to go there. (N.T. 38, 42, 55-56, 62-64, 67-70, 73-74, 76, 566-70, 573-78; P 4, P 15, P 17; S 2 at 30-34; S 7 at 14-18)
9. To address Student's SIB, the IU used a behavior plan that stated: "When student shows signs of stress such as screaming, [], or crying, staff should apply deep pressure as well as redirection from negative behavior towards preferred activity[.]" (P 15 at 5; SD 7 at 15) The IU found that offering Student choices, providing sensory input, and momentary removal of demands were helpful in preventing or limiting Student's SIB. (P 4)
10. In the IU program, Student attended assemblies with typical peers but otherwise did not participate in activities with students who were not in the MDS classroom. (N.T. 72-73)
11. Student was in that IU program until the fall of 2010, at which time the family moved to the District. (N.T. 130-31)
12. Student's Parents contacted the District prior to moving there, and Student was enrolled in December 2010. However, the Parents asked that Student be returned to the IU

placement. Several IEP meetings were scheduled, and some convened, in early 2011.<sup>5</sup> The District provided some tutoring in the home at that time, but Student did not actually begin attending school until mid-April 2011.<sup>6</sup> (N.T. 132, 146-47, 166-68, 175-76, 181-82, 196-98, 208-09, 218-21, 238, 702-11; P 3, P 4, P 5; S 1, S 2, S 3, S 4)

13. An Individualized Educational Program (IEP) was drafted in April 2011 for Student to attend school in the District. This IEP provided information on Student's present levels of academic achievement and functional performance, as well as goals and objectives addressing identification of functional items, sorting items, communication/sign language, activities of daily living (personal hygiene and household chores), and following directions. Program modifications and items of specially designed instruction were also included, as was a PCA. Student's program was identified as MDS in a functional life skills curriculum. (P 5; S 16)
14. From mid-April to the end of the 2010-11 school year, Student attended one of the District middle schools in a classroom which was a combined MDS and life skills class.<sup>7</sup> The Parents did not approve the Notice of Recommended Educational Placement (NOREP) for this setting, but did agree to have Student attend the middle school in the MDS classroom. (N.T. 132, 245, 249-51, 264-65, 452-53, 626-27; P 9 at 12)
15. The District implemented the April 2011 IEP, which was essentially the same as the IU's most recent IEP, during that seven-week period in the spring of 2011. Student was provided with a dedicated PCA. (N.T. 231-34, 248, 267-68, 410-11)
16. During the spring of 2011 when Student attended school, the school nurse checked Student twice each day for signs of SIB, typically once each morning and afternoon. Student did engage in SIB, some of which produced bruising, and transition from a preferred activity to a non-preferred activity often resulted in SIB. Student's SIB in school was more frequent in the morning than in the afternoon. (N.T. 413-14, 426-27, 504-05, 519-20, 524-26; P 1, P 6; S 9, S 19)
17. The District addressed Student's SIB in the middle school by redirecting Student, removing the demand, and providing Student with an opportunity to use a sensory item and/or engage in a preferred activity. (N.T. 415-18, 478-79, 715-17)

---

<sup>5</sup> While helpful in providing some background information as well as placing the parties' current disagreement into context, this hearing officer limited the sometimes contradictory testimony about whether and why IEP meetings were scheduled and held or not held prior to April 2011, since the sole issue presented in this case involves the program proposed for the 2011-12 school year. (See, e.g., N.T. 624-27, 630, 639, 710-12)

<sup>6</sup> Among other things, there were concerns regarding Student's thermoregulation needs and how they could be addressed. (See, e.g., P 11) During this time period, placements were discussed and proposed but were not implemented for reasons not pertinent to the issues presented in this case. (See, e.g., N.T. 161-62, 204-07)

<sup>7</sup> Student did not attend two days of school right after the Memorial Day holiday weekend at least in part because there was a concern that the classroom environment was not appropriate for Student's thermoregulation needs. (N.T. 479-81; P 47 at 1-2)

18. When Student attended the District middle school in the spring of the 2010-11 school year, Student participated in activities related to prevocational/vocational skills (matching and sorting), functional academics, activities of daily living (including personal hygiene and cooking/meal preparation), fine and gross motor skills, and social skills. (N.T. 413, 452-56, 484, 486, 505-06, 713-14; P 6)
19. In May 2011, Student and some classmates attended Move-Up Day at one of the District's high schools. Some students who are not in special education classes also attended Move-Up Day, which is an event that all eighth grade students who will be attending that high school participate in. (N.T. 315, 456-47, 501; P 12 at 1)
20. Student was eligible for, but did not participate in, an Extended School Year program during the summer of 2011. (N.T. 683; S 7 at 1)
21. A facilitated IEP meeting was held in July 2011. The IEP which was developed provided new information on Student's present levels of academic achievement and functional performance, including progress on Student's IEP goals. This IEP contained goals and objectives addressing matching/selecting functional words, sorting functional items, activities of daily living (personal hygiene and household chores), communication/sign language, and behavior. A Functional Behavior Assessment (FBA) summary related to SIB and aggression was also included, as were program modifications and items of specially designed instruction and a Health Plan. Related services addressed speech/language therapy and occupational therapy consultation. The Parents did not approve the accompanying NOREP. (P 6, P 7, P 9 at 15, 22; S 7 at 10-12)
22. Student started the 2011-12 school year in the District in a combined MDS/life skills support classroom at the high school. The District has been implementing the April 2011 IEP, including the provision of a PCA, pursuant to the interim pendency order. The parties did agree upon a Health Plan as part of Student's pendent IEP. (N.T. 269, 303-04, 312, 333; P 32; S 8 at 11-13; Hearing Officer Exhibit (HO) 1)
23. There are five students in the MDS classroom Student attends, including Student, and three paraprofessionals (including Student's PCA) in addition to the teacher. (N.T. 350-51)
24. The MDS classroom has a restroom and a kitchen area and a main classroom area. (N.T. 351-52)
25. Student has access to a variety of sensory items in the classroom. (N.T. 353)
26. The classroom teacher and Student's Parents communicate daily through written communication. (P 28)
27. Since the beginning of the 2011-12 school year, the school nurse has been checking Student twice each day for signs of SIB: once in the morning on arrival, and once before leaving school for the day. The District and Parents are utilizing a daily communication

log to report signs of SIB as well as any concerns over those reports. (N.T. 338-39, 352, 355-56, 364, 365-66, 449-50, 541-42, 548, 554; P 27; S 14, S 15, S 18)

28. When District staff observe that Student is becoming agitated and/or exhibits SIB in the high school placement, the current demand is removed and Student is given a sensory item and redirected. (N.T. 358-59, 715-17)
29. In the present placement, Student engages in more SIB in the morning than during other times of the day at school. Student's PCA believes that the frequency of Student's SIB has decreased since the start of the 2011-12 school year. (N.T. 364-65, 420-21)
30. Students in the MDS classroom Student attends at the high school engage in activities relating to prevocational/vocational skills, activities of daily living (including personal hygiene and preliminary cooking/meal preparation skills), and fine and gross motor skills, as well as time for leisure activities. Each student has an individual schedules depending on his or her needs, as well as an individualized program. (N.T. 308-10, 356-58, 361-63, 380, 714-15, 734-36, 749-51)
31. Student's IEP team met on September 14, 2011 and reached agreement with respect to communication and speech/language as well as adaptive physical education needs. (P 26; S 16)
32. As of the date of the final session of the due process hearing, the District had completed an FBA and was awaiting additional parent information before a meeting would convene to discuss the results and develop a positive behavior support plan. (N.T. 359-61, 370-71, 752-53, 771-72)
33. The exhibits are summarized as follows.

The following exhibits were admitted into evidence without objection:

P 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 23, 26, 27, 28, 29, 32  
S 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19  
HO 1, 2

The remaining exhibits were addressed as follows:

P 2, P 8, P 18, P 19, P 20, P 21, P 22, P 24, P 25, P 30, and P 31 were not referenced in the record and, therefore, were not admitted. P 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 48 were not admitted as they were not disclosed until the third hearing session, and in addition the substance of those documents was covered in the testimony to the extent it was relevant. (N.T. 610, 778)

Ruling was reserved with respect to P 47, S 12, and S 13 (N.T. 613-15, 738-42) and, as discussed below, P 47 pp. 1-2 is admitted; the remainder of P 47 and S 12 and S 13 are not admitted.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### General Legal Principles

Broadly stated, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Courts in this jurisdiction have generally required that the filing party meet their burden of persuasion by a preponderance of the evidence. *See Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Nevertheless, application of these principles determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position. The burden of production, “*i.e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding,” *Schaffer*, 546 U.S. at 56, merely relates to the order of presentation of the evidence.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). This hearing officer generally found the testimony of the various witnesses to be credible and forthright, even though at times the parties’ recollections and perspectives reflected differing opinions and conclusions. The credibility of particular witnesses will be discussed further in this decision as necessary.

## IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Local education agencies, including school districts, meet the obligation of providing FAPE to eligible students through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Under the IDEA and its implementing regulations, an IEP for a child with a disability must include present levels of educational performance, measurable annual goals, a statement of how the child’s progress toward those goals will be measured, and the specially designed instruction and supplementary aids and services which will be provided, as well as an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular classroom. 20 U.S.C. § 1414(d); 34 C.F.R. §300.320(a). First and foremost, of course, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, “the measure and adequacy of an IEP can only be determined as of the time it is offered to the

student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

The IDEA further requires that eligible students be educated in the “least restrictive environment” which permits them to derive meaningful educational benefit. 20 U.S.C. § 1412(a)(5); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000). Placement decisions must, of course, be based upon the child’s individual needs, and not on what resources that are available or more convenient. 34 C.F.R. § 300.116(b)(2); 71 Fed. Reg. 46587; *see also* BEC 22 Pa. Code §14.102.

#### Evidentiary Rulings on Exhibits

Prior to discussing the application of these principles to the present case, I will address several exhibits on which ruling was reserved. (Finding of Fact (FF) 33) Following objections and argument by both parties, ruling was reserved on one exhibit offered by the Parents, P 47, and two exhibits offered by the District, S 12 and S 13. (*Id.*) Parent 47 pp. 1-2 establish that Student missed two days of school on May 31, 2011 and June 2, 2011, one day due to SIB and one day due to excessive heat in the building. The information contained in these pages of this document were referenced during the testimony of one of the teachers (N.T. 479-81), and this hearing officer concludes that these two pages are relevant to and supportive of this testimony, providing the best evidence of the basis for those absences. Accordingly, pages 1 and 2 of P 47 are hereby admitted. The remaining pages of P 47 are not admitted for the reasons stated on the record for sustaining the objection to and denying admission of P 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 48. (FF 33) S 12 and S 13 are documents of the Bureau of Special Education relating to a complaint investigation of the time period between December 2010 and April 2011 when Student was not in school. This hearing officer finds these documents to be not relevant to

the narrow issue presented in this case, as well as cumulative of the testimony and other evidence offered relating to the reasons that Student did not attend school during that time period.

Accordingly, the objection to these two exhibits is hereby sustained, and S 12 and S 13 are not admitted. This hearing officer also did not consider the testimony of the District's Coordinator of Special Education specifically relating to these two exhibits. (N.T. 738-42)

### The Proposed Program

The proposed program at issue is the July 2011 IEP (P 7) with its explanatory specially designed instruction (S 17), as modified by the Parties' agreement at the September 14, 2011 meeting (P 26/S 16). (N.T. 760-62) The proposed IEP does include the agreed-upon Health Plan which was resolved by the parties prior to the start of the due process hearing. (FF 22; P 26/S 16) There is no challenge to the appropriateness of the goals and objectives, or the program modifications and specially designed instruction. Rather, the Parents' concerns focus on the District's proposal to eliminate the PCA and substitute one on one supervision by three different adult paraprofessionals as needed throughout Student's school day, and the placement in the MDS classroom. (N.T. 663-64)

The MDS classroom will be addressed first. The Parents expressed concern that the MDS classroom, which is also a Life Skills classroom, places demands which are too high for Student. (N.T. 137, 140-41, 143, 153, 631-35) They also objected to the inclusion of "life skills" students in the same classroom as Student because those children were able to work at a more advanced or more independent level than Student, because of the setup in the classroom, and because a "life skills" placement is not appropriate for Student. (N.T. 616-17, 622, 627-30, 653, 663-67, 674-75, 677-78) They do not, however, claim that MDS is inappropriate for Student.

As noted, there is no challenge to the substantive content of Student's IEP goals and objectives, or the program modifications and specially designed instruction with the exception of the PCA/adult supervision. The evidence in the record is preponderant that Student's IEP is individually implemented in the MDS classroom to address Student's unique needs. (FF 22, 25, 28, 30) Merely because other students in the classroom, whose IEPs are also implemented on an individual basis, may be working on different goals and objectives, does not mean that the MDS classroom is inappropriate for Student. On the contrary, the record establishes that the decision to place Student and implement the IEP in the MDS classroom was made upon consideration of Student's individual needs and where those needs could be met. (FF 22, 23, 25, 28, 30) *See* 34 C.F.R. § 300.116(b)(2). There was no evidence that Student's educational program was determined or changed in any manner simply because of the label of the classroom or the population of students who are in that setting. The record also fails to demonstrate that the size or setup in the MDS classroom poses a risk to Student's safety or is otherwise inappropriate. For these reasons, this hearing officer finds the Parents have not met the significant burden of demonstrating that the District has denied FAPE to Student on the basis of the placement in a combined MDS/life skills support classroom.

The Parents' concerns with the elimination of the PCA are that Student is not able to independently perform tasks, resorts to SIB without that level of supervision, and exhibits better behavior when Student is supervised by the same familiar person. (N.T. 622, 635-36, 670-72, 692-94; FF 3) The District proposes that Student will not be provided with a PCA but instead will have adult support and supervision "as needed" during all activities. (S 17) Its witnesses also believe that the adults who supervise Student should not be limited to one specific person so that Student learns to generalize without becoming too dependent upon one particular adult.

(N.T. 395-98, 497-98, 743-48) The District witnesses further have suggested that Student can work independently without adult supervision during leisure time activities and breaks, and does not engage in SIB during those time periods. (N.T. 335-36, 354, 397-98, 430)

The District's proposal to provide adult supervision to Student through several paraprofessionals rather than a single dedicated PCA is supported by the preponderant evidence in the record. While it is perfectly logical and understandable to believe that Student currently responds better to a single, familiar adult, the record also establishes that Student need not be limited to working with or supervised by a single individual. Student has worked successfully with adults other than the dedicated PCA in more than one educational setting (N.T. 497, 603-04) and should continue to have that opportunity. The family's recent experience with replacing Student's Certified Nursing Assistant is illustrative of the difficulties with finding a single "right" person, as well as of the inevitable fact that professionals are sometimes required to leave their positions. (N.T. 692-94) Similarly, even the most dedicated of family members may at times be unavailable, despite their greatest of intentions, requiring others to step in to provide necessary supervision and support. As Student gets older, it will only become more important that Student grow accustomed to different people to provide support and supervision.

The Parents' major concern is that without a dedicated PCA, the District will be unable to address the extent and severity of Student's SIB. While there was some testimony that the signs of Student's SIB are more dramatic in the District placements than they were at the IU (N.T. 74-75, 153-54; P 1), there was also evidence presented that even when Student has been attended by both a teacher and a PCA, Student still managed to engage in SIB. (N.T. 474-75) One of Student's Parents testified credibly that she did not believe that Student is able to work independently to the extent the District witnesses described (N.T. 662, 666-67, 687-88), and the

Parents' concern for Student's safety without a dedicated PCA was palpable throughout the hearing. On the other hand, the District witnesses who testified that Student is able to work independently at times during the day without one-on-one supervision and prompting (N.T. 335-36, 354, 397-98, 430) were also credible and persuasive and, it must be remembered, are the individuals who have the best opportunity to observe Student throughout the school day on a regular basis.

There is no question that Student's SIB at school has been and remains a concern. (FF 5, 8, 9, 16, 17, 27, 28, 29, 32) Thus, Student continues to require a great deal of adult supervision throughout the school day. After careful consideration of all of the evidence in this record, this hearing officer concludes that the District's proposal to provide adult supervision of Student by a variety of paraprofessionals is appropriate. Nevertheless, this hearing officer will require the IEP team to reconvene to revise that proposed specially designed instruction as follows. As the Coordinator of Pupil Services testified, the intention of eliminating the PCA, and substituting adult supervision by several paraprofessionals as needed, is to "begin to fade" adult assistance to Student. (N.T. 744-46) Student, now in high school, has had a dedicated PCA since entering a school age program. (FF 1, 8, 15, 22) Removing this level of intense support which Student has always had in the school environment must be done carefully and gradually, particularly given the severity of Student's SIB at times. There must be a period of transition during which District staff will take data on when Student is able to work independently without engaging in SIB or other problematic behaviors, and convey that information to the IEP team so that decisions may be made on how and when this level of support may be faded.<sup>8</sup> During that period of information gathering, the District may begin to provide adult supervision at all times by any one

---

<sup>8</sup> To the extent this data has already been collected through the FBA or otherwise, the IEP team may use that information rather than take new data subsequent to this decision.

of the paraprofessionals in the classroom so that Student will begin to adjust to other adults in the classroom rather than a single PCA. Once the IEP team has sufficient data, it may begin to fade the adult supervision at specified times, gradually moving toward providing this support on an as needed basis as contemplated by the proposed IEP.

Two other aspects of Student's program as proposed and currently implemented merit mention. The Parents expressed concerns with inclusion opportunities at lunch and field trips (N.T. 329-30), which this hearing officer concludes have been appropriately addressed through convincing testimony that participation in such activities with peers in regular education are limited according to Student's needs and are determined on an individual basis. (N.T. 377-80, 385-86) Additionally, the practice of the nurse examining Student twice each day for signs of SIB does not appear to be detrimental or stressful to Student (N.T. 371-73, 433-37, 524-26), with the exception of one or two isolated incidents (N.T. 446-47), but the District is clearly willing to revise the method of accomplishing these checks should that become necessary. (N.T. 736-37) Furthermore, the current exchange of information between the home and school about Student's SIBs and signs of those injuries appears to be both sufficient and appropriate, particularly with the additional clarification from the testimony that District staff would alert the Parents immediately if an injury required a visit to the nurse. (N.T. 344-45, 494-95, 530)

Based on all of the foregoing, this hearing officer concludes that the Parents' claim that the District's proposed IEP is inappropriate for Student, and the associated request to order placement outside of its high school, must be denied.

This hearing officer makes the following final observations. The relationship and communication between the Parents and District has been strained and, at times, contentious. Nevertheless, review of the communication logs during the current 2011-12 school year reveals

an ability on the part of both parties to engage in civil and productive communications relevant to Student and Student's educational programming, as well as a mutual concern for Student and Student's education and safety. The fact that the parties were able to reach agreement on several issues before this hearing convened and between sessions is remarkably positive. Additionally, the information which has been gathered through the FBA process (while the hearing has been ongoing) has or will undoubtedly provide useful insight into Student's SIB, as well as a foundation for an appropriate behavior support plan.

As stated at the conclusion of the final hearing session, this hearing officer continues to encourage the parties to communicate openly and collaboratively regarding Student's educational program. Just as this hearing officer limited the evidence regarding the attempts to schedule IEP meetings in early 2011 and how successful those efforts were and why, she suggests that the parties put those experiences behind them and concentrate on the current school year and the future. The accompanying order directing the IEP team to reconvene will provide the parties with an immediate opportunity to demonstrate their continued dedication to and interest in providing for Student's needs.

### **CONCLUSION**

The District's program as proposed in the July 2011 IEP with its explanatory specially designed instruction, as modified by the Parties' agreement at the September 14, 2011 meeting and the agreed-upon Health Plan, including placement in the MDS classroom, is appropriate for Student, with the exception of some modification to the implementation of the provision for adult supervision. The IEP team will be directed to reconvene to develop a plan for fading the level of individual support based upon data collected on when Student is able to work independently without engaging in SIB or other problematic behaviors, but may in the interim

provide the adult supervision by more than one adult paraprofessional in the classroom rather than by a PCA.

## **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The IEP proposed by the District in July 2011, as modified by the September 14, 2011 agreed-upon revisions and agreed-upon Health Plan for Student, is appropriate, with the exception of the item of specially designed instruction relating to adult supervision as modified by Paragraph No. 2 below.
2. The IEP is directed to convene within 30 days of the date of this decision to develop a plan for fading the level of individual support based upon data collected over the next twenty-one (21) days on when Student is able to work independently without engaging in SIB or other problematic behaviors. The District will provide continual adult supervision of Student by any one of the three paraprofessionals in the MDS classroom while this data is collected.
3. The Parents' request to order a placement outside of the District is denied.
4. The District is not ordered to take any further action.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

*Cathy A. Skidmore*

---

Cathy A. Skidmore  
HEARING OFFICER

Dated: October 26, 2011