

This is a redacted version of the original hearing officer decision. Select details may 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: DZ  
ODR #9276/08-09 KE

Date of Birth:  
xx/xx/xx

Dates of Hearing:  
November 14, 2008  
January 9, 2009  
March 6, 2009  
March 16, 2009  
May 12, 2009

CLOSED HEARING

Parties to the Hearing:  
Mr. and Mrs.

Representative:  
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Interboro School District  
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Date Record Closed: June 5, 2009  
Date of Decision: June 9, 2009  
Hearing Officer: Linda M. Valentini, Psy.D.

## Background

Student is an eligible kindergarten age student with cognitive, language, motor and social delays; Student attends the [school] in the Interboro School District (hereinafter District). Mr. and Mrs. (hereinafter Parents) requested this hearing, asserting that the District denied Student a free appropriate public education (FAPE) in various regards. The Parents seek compensatory education for alleged denial of FAPE, and are also seeking reimbursement for a private evaluation. An additional issue under Section 504, related to an allegation of student-on-student harassment, was dismissed.<sup>1</sup>

## Issues<sup>2</sup>

1. Must the Interboro School District reimburse Mr. and Mrs. 's out-of-pocket expense for the private evaluation conducted by the [redacted] Institute?
2. Did the Interboro School District fail to offer Student a free, appropriate public education in the following regards:
  - Inappropriate placement in a regular education setting instead of a special education learning support setting;
  - Failure to offer the pendent placement which the Parents requested;
  - Inappropriate IEP goals, objectives and specially designed instruction;
  - Inadequate amount of individual and/or group speech/language sessions, and consultation time;
  - Inadequate amount of individual and/or group occupational therapy sessions, and consultation time.
3. If the Interboro School District failed to offer Student a free, appropriate public education in the areas delineated above while Student was in the regular education program and/or the special education program, is Student entitled to compensatory education, in what form and in what amount?

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<sup>1</sup> Shortly before the first hearing session the Parents through counsel filed an amended complaint that raised allegations of student on student harassment under Section 504. The District through counsel objected to this issue being heard as it had not had the opportunity to gather information as of the first hearing session. The hearing officer, noting that an amendment to a complaint re-set the timelines for the case, ordered the parties to hold a Resolution Session directed to this one issue while proceeding with the other issues. (NT 47-57) After the Resolution Session where it learned the factual averments underlying this amended complaint issue, the District filed a Motion to Dismiss the issue based upon failure to state a claim upon which relief can be granted. This hearing officer granted the District's Motion and dismissed the specific issue. The relevant documentation is found at Exhibit J-1. (NT 290-292)

<sup>2</sup> An issue included in the Parents' case at the start of the hearing was an alleged failure to provide appropriate equipment, specifically an inclusion chair; the District ordered and provided the chair for Student. This Hearing Officer subsequently advised the parties that she would not be providing relief for the alleged denial of the equipment in the form of a discrete award, should any award be ordered, and therefore this issue is not being addressed in this Decision. (NT 943)

## Findings of Fact<sup>3</sup>

### Description of Student

1. Student is a kindergarten age eligible student enrolled in the [School] in the Interboro School District. Student is classified as having a specific learning disability and speech and language impairment. (P 26)
2. Student began receiving Early Intervention services from the Delaware County Intermediate Unit (DCIU) in August 2007. (P-3, P-4)
3. Student's cognitive functioning was assessed on three separate occasions and the testing yielded standard scores. In July 2007 on the Developmental Assessment of Young Children (DAYC) administered by the DCIU Student scored as follows: Cognitive 60, Communications 62, Physical Development 100, Social-Emotional 82, Adaptive Behavior 83. In April or May 2008 on the Wechsler Preschool and Primary Scale of Intelligence: Third Edition (WPPSI-III) administered by the District Student scored as follows: Full Scale IQ 66, Verbal IQ 78, Performance IQ 65, Processing Speed Quotient 56. In June 2008 on the Stanford Binet Intelligence Scales: Fifth Edition (SB-5) administered by the Institute Child Study Institute Student scored as follows: Full Scale IQ 77, Verbal Q 75, Nonverbal IQ 82, Fluid Reasoning Index 76, Knowledge Index 91, Quantitative Reasoning Index 83, Visual-Spatial Processing Index 68, Working Memory Index 83. (P-2, P-24, P-26)
4. The Bracken Basic Concepts Scale: Third Edition: Receptive administered in June 2008 yielded a School Readiness Composite of 66. (P-2, P-24, P-26)
5. Although the District and the private evaluators used various behavior rating scales, the most recent assessment of behavior directed solely at Adaptive Behavior was done by Institute in June 2008 using the Vineland Adaptive Behavior Scales – Second Edition (Vineland-II). Student scored as follows: Communication Domain 76, Daily Living Skills Domain 83, Socialization Domain 75, Motor Skills Domain 91, Adaptive Behavior Composite 78. (P-24)
6. On the Clinical Evaluation of Language Fundamentals – Fourth Edition (CELF-4) administered by the District in May 2008 Student scored as follows: Core Language 69, Receptive Language 59, Expressive Language 73, Language Content 63, Language Structure 69. On the Test of Language Development-Primary 4 (TOLD-P4) administered by the Institute Child Study Institute in June 2008 Student scored as follows: Listening 86, Organizing 72, Speaking 67, Grammar 82, Semantics 63, Spoken Language 71. (P-24, P-26)

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<sup>3</sup> Counsel cooperated with one another admirably in winnowing out duplicative exhibits during the course of the hearing; when there were duplicates the Parents' exhibits were used.

7. Student began receiving private occupational therapy services for one hour per week as of December 2007 and continues to receive them. Student did not receive OT from DCIU. In a February 2008 report the OT clinician noted that Student has difficulty processing multisensory input and difficulty with praxis (motor planning) especially while performing fine motor tasks and refined manipulation such as handwriting, coloring and manipulating certain toys. (NT 695; P-11)
8. When Student was observed by the District OT at DCIU Student's motor difficulties affected Student in the classroom. For example Student could not do the finger play when the class was singing finger play songs although Student did attempt to participate. (NT 732-733)
9. Assessed by the District in May 2008 Student's VMI standard score was 84, at the 14<sup>th</sup> percentile denoting difficulties in visual-fine motor integration. Also assessed by the District in May 2008, Student's composite score on the short form of the Bruininks-Oseretsky Test of Motor Proficiency Two was 36 (based on a T-score with a mean of 50) at the 8<sup>th</sup> percentile. (P-24, P-26)
10. Research by Amudson and Benbow suggests that if a child is able to execute the first twelve figures on the VMI<sup>4</sup> the child is ready for letter formation. After first testifying that Student can complete the first twelve figures, the District's occupational therapist then admitted that on the VMI she administered Student could not copy a cross (requiring Student to completely cross the midline), an X (requiring Student to draw oblique lines and completely cross the midline), or a triangle (requiring Student to draw straight oblique lines and connect them with a horizontal line) adequately enough to receive a scoring point. Student's VMI standard score was 84, at the 14<sup>th</sup> percentile. (NT 700-701, 966-971)
11. The District OT found that on the short form of the Bruininks-Oseretsky Test of Motor Proficiency Two Student had difficulty in the areas of hand strength, bilateral coordination, manual dexterity and visual-fine motor integration. Student's composite score was at the 8<sup>th</sup> percentile, a moderate delay. (NT 721-723, 726)
12. Assessed by the Institute Child Study Institute in June 2008, Student's scores on the Wide Range Assessment of Visual-Motor Abilities were as follows: Visual-Motor 80, Visual-Spatial 90, Fine Motor 62, Composite 69. Assessed by the Institute Child Study Institute in June 2008 Student's scores on the full version of the Bruininks-Oseretsky Test of Motor Proficiency Two were as follows: Fine Motor Control 27 (based on a T-score with a mean of 50) at the 1<sup>st</sup> percentile, Manual Coordination 34 (based on a T-score with a mean of 50) at the 6<sup>th</sup> percentile. (P-24)

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<sup>4</sup> Beery-Buktenica Test of Visual-Motor Integration

13. The District's evaluation concluded that Student had behaviors that interfered with Student's acquisition of developmentally appropriate academic and social skills and identified group activities as one of the triggers for the withdrawn behaviors that impeded Student's ability to learn. (P-26)
14. The Institute evaluation did not confer an ADHD diagnosis, but recommended that Student receive behavioral and environmental interventions to help Student be successful, particularly in a group educational environment. (NT 464; P-24)

#### Evaluation

15. On January 24, 2008, the DCIU held a transition meeting with the Parents and the District to discuss Student's transition to kindergarten for the 2008-2009 school year. (NT 82-86; P-9, S-3)
16. On January 24, 2008, the Parents signed a pre-printed form checking the section indicating that they intended to enroll Student in the District and requesting an evaluation to be completed within 60 school days of the form's signature date. The District's representative at the meeting indicated that the District would observe Student in Student's then-current educational placements during the 2007-2008 school year, and would conduct formal testing upon Student's entry into kindergarten in September 2008. There is no written indication in the record that the Parents disagreed with this plan at that time. (NT 82-85; P-10)
17. In early February 2008 the Parents arranged an evaluation that was to be conducted at the Institute and paid for the testing in May 2008 prior to its occurring.<sup>5</sup> (NT 203).
18. On March 12, 2008 via an 8:34 a.m. email the Parents requested that Student have a speech/language evaluation, an occupational therapy evaluation, and a functional behavior assessment. The District sent the Parents an email on March 13, 2008 at 5:48 a.m. indicating that their request for these evaluations would be forwarded to Pupil Services. On March 17, 2008, the District issued a Permission to Evaluate, detailing a list of tests and procedures it would use in evaluating Student. (P-14, P-19)
19. Also on March 12, 2008 the Parents informed the District by a 12:49 p.m. email that they had scheduled "a full evaluation" with Institute for May and June 2008, on the "earliest dates available". The District acknowledged receipt of this information by email dated 3-13-08 at 5:45 a.m. (P-14)
20. The District evaluated Student in April and May 2008 and on June 2, 2008 convened a meeting and provided its written Evaluation Report ("ER") to the Parents who were accompanied by a relative who is a special education teacher. The Institute evaluation had already commenced with a meeting with the Parents

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<sup>5</sup> Although the Institute fee was \$3700, the Parents' insurance covered all but about \$1100- \$1200 of it. (NT 206)

on May 15, 2008 at which time the Parents paid the fee. Testing of Student by Institute was completed on June 10, 11 and 12, and there was a feedback conference on June 24, 2008. By letter dated July 15, 2008 the Parents detailed their disagreements with the District's ER. (NT 112, 116-118, 121-123, 206, 277-278; P-26, P-29)

21. The Parents provided the Institute evaluation report to the District on August 4, 2008. (NT 245; P-30)

FAPE: Placement

22. The District convened a meeting on August 20, 2008 to discuss the results of the Institute evaluation and the District's recommendations for kindergarten placement in a part-time learning support classroom (NT 135-141; S-19).
23. The Parents verbally indicated their agreement with the recommended placement, but expressed their concerns about the District's recommended level of related services. (NT 137)
24. On September 2, 2008, Student's mother took Student to meet the learning support classroom teacher. (NT 1095)
25. On September 3, 2008, the first day of the 2008-2009 school year, Student was placed in the learning support classroom on a part-time basis as discussed at the August 20, 2008 meeting. (NT 149-150)
26. On September 3, 2008, the District convened an IEP meeting to develop Student's IEP and provided Student's Parents with a draft IEP, dated September 3, 2008. During the meeting, the Parents requested changes to goals and specially designed instruction, some of which the District agreed to change. The Parents also disagreed with the recommended levels of related and support services. They raised no disagreement regarding the part-time learning support placement. (NT 144-146; P-36)
27. Because they did not agree with the proposed levels of related services, and wanted to review the revisions to the goals and specially designed instruction made at the meeting, the Parents declined to sign a Notice of Recommended Educational Placement at the end of the meeting. (NT 147, 152)
28. The mother testified to her recollection that the District's Director of Pupil Services and Special Education (acting as the LEA) indicated that Student "would get no services until I signed". She said that she thought she "had to sign off on the whole IEP, not part of it". At the meeting according to the mother the LEA "turned around and told (the special education teacher) that Student would not be going back in that room, and told (the speech-language therapist) that Student would not be getting speech. So it was pretty clear what it meant. In my understanding it meant nothing". (NT 147-149, 154-155, 251-252)

29. The Parents are familiar with special education procedures insofar as they have received NOREPs relative to their older son. The Parents had the support of the relative who is a special education teacher. (NT 157-158)
30. On September 4, 2008 the District removed Student from the part-time learning support classroom and placed Student in the full-time regular education classroom; Student received no related services. (NT 152-153, 250)
31. The Parents picked up a copy of the NOREP on September 8, 2008. They had an appointment with their special education attorney on or about September 11, 2008. On September 11<sup>th</sup> they signed the September 3<sup>rd</sup> NOREP indicating their disapproval, writing “The offered program and (sic) placement are inappropriate to meet Student’s needs. A demand letter will follow. We invoke our right to pendency. As such, please continue to provide services under IEP of August 15, 2007 as revised on June 4, 2008.” The Parents checked the box indicating their request for a due process hearing. The Parents do not indicate anywhere on the NOREP that they agreed with the proposed placement but not the program; they underlined the word “and” as noted above. (NT 208-209; P-37)
32. The Parents had previously, on July 15, 2008 sent a letter to the District’s Director of Pupil Services and Special Education making specific comments about the District’s ER, one of which could be interpreted as suggesting that the Parents were asking for a regular education placement: “I would agree that Student needs to socialize with other neurologically ‘normal’ children in order to model behavior, however Student also needs to be in an educational setting with children who are neurologically ‘normal’ in order to model that behavior as well. The make-up of the room which is recommended in the report for Student is a concern as Student may regress just as Student did in [building redacted]”. (S-18)
33. Subsequent to September 3, 2008 the Parents had not informed the District in writing by letter or by email, in person, or by telephone that they agreed with the learning support placement; they had specifically hand written that they disapproved the placement (see above) on the September 11<sup>th</sup> NOREP. (NT 812, 831-832)
34. In a September 18, 2008 letter from Parents’ counsel to District’s then-counsel the Parents’ agreement that “at this time, Student’s placement in a part-time learning support classroom at the [School] is appropriate to address Student’s needs, provided that the classroom is set up and organized in a manner which minimizes Student’s attention and noise issues” was conveyed to the District. The record is devoid of any information indicating why Student was not placed back in the learning support setting upon the District’s receipt of this letter or why Parents or their counsel did not follow up. (P-40)



35. The parties held a resolution meeting on October 16, 2008 at which the Parents agreed, according to an October 21<sup>st</sup> letter from their counsel to District's then-counsel, that "placement in the LS classroom is appropriate to meet Student's needs at this time. The District must therefore immediately move Student to the LS classroom". (P-45)
36. The District responded in a letter dated October 22<sup>nd</sup> by issuing the Parents a NOREP, "which you agreed to sign at our recent Resolution Meeting that places your son Student in a Learning Support classroom per the IEP that was presented to you on September 3, 2008. It is my understanding that you have agreed to this placement. If this is correct please sign this initial proposal for placement and return to my office. Placement will be arranged as soon as we receive back from you a signed document reflecting your agreement. Should you have any questions please feel free to contact our offices or have your attorney correspond to District's counsel". (P-46)
37. Parents signed the NOREP as approved on October 28, 2008. The next day, October 29, 2008 Parents' counsel sent an email to District's now-counsel noting, "As we discussed, the s are revoking their approval of the NOREP dated October 22, 2008 which they returned to the District on October 28, 2008 which indicated their approval of the entire program and placement offered by the District. It was not their intention to approve the program and placement in its entirety. I will get you a letter by Friday that specifies which portions of the program and placement are being approved and what is still at issue for the upcoming hearing." The District's counsel responded that Student's understanding of the NOREP and its cover letter was that the Parents were only agreeing to the Learning Support classroom placement and not "other portions of the placement offered in September." (P-46, P-50)
38. Enclosed in a letter<sup>6</sup> dated Friday October 31, 2008, Parent counsel sent District counsel a NOREP signed by the Parents on October 31, 2008. The Parents checked the box for "I approve this action/recommendation", hand writing in "as it pertains to the part-time learning support placement. See attached letter dated October 31, 2008". The parents checked the box for "I do not approve this action/recommendation" with the reason for disapproval being the hand written note, "See attached letter dated October 31, 2008". (P-51)
39. On Monday November 3, 2008 the District placed Student in the part-time Learning Support classroom as per the signed NOREP. (NT 192-193; P-60)

FAPE: Pendency

40. The Parents provided the District with the DCIU IEP dated June 4, 2008 between September 8, 2008 and September 17, 2008<sup>7</sup>. That IEP, which on the disapproved

<sup>6</sup> The letter also detailed the portions of the programming with which Parents were in disagreement.

<sup>7</sup> The record is contradictory in this regard; Parent thinks September 8, District thinks September 17. Both agree that services started on or about September 18<sup>th</sup>. (NT 217, 815)

NOREP the Parents identified as the pendent IEP, provided for Speech/Language Therapy on an individual basis twice per week for a half hour per session. It also, cryptically, called for “Itinerant Education Group” in an ‘Early Childhood Environment’ with an arrow pointing to “typical preschool sp ed portion sm group, (illegible) of IEP – sm groups” “1/45 min” and “1/30 min”. The best that can be understood from this document is that Student was to receive the speech services as clearly indicated, as well as one 30-minute and one 45-minute session of itinerant special education services, per week. (NT 217, 815; P-28)

41. After receiving the Parents’ pendency demand written on the September 11, 2008 NOREP, the District took about seven calendar days (until about September 18<sup>th</sup>), to put pendent speech services into place; the District began providing an itinerant teacher on or about September 22, 2008. (NT 155-156; P-37, P-59)

#### FAPE: IEP Program

42. The Learning Support classroom of the District’s [School] is a full day developmental kindergarten in a small group setting, and as such the placement affords Student the individualized attention recommended by the Parents’ experts. There are four students in Student’s class. The program contains speech and language components as well as occupational therapy components within it. (NT 607, 950, 964, 967, 978, 977, 1075; P-24, S-53)

#### Speech/Language

43. The proposed speech/language therapy goals are complex, making progress measurement and reporting difficult if not impossible, and are written in such a way that they cannot be identified as being specifically written for Student versus being goals for any child whether neurotypical or not. One goal for expressive language (which as pointed out by the Institute speech/language evaluator combined both expressive and receptive areas) for example calls for Student to use new vocabulary without specifying from where the expected vocabulary would be drawn (such as from calendaring at circle time, kindergarten level literacy, math, science and/or social studies instruction), to respond to “wh” questions without specifying the hierarchy (when and why questions may be more difficult than who, what or where questions), and to speak in simple and complex sentences without specifying the expected length of utterance. (P-37)
44. A serious deficiency in the September 3<sup>rd</sup> IEP is that the proposed speech therapy goals did not have baselines for progress measuring, nor do they suggest that baselines would be taken early in the school year. The District’s speech/language evaluator testified that she determines criteria for progress on a session by session basis. (NT 371, 533-534; P-37)
45. The Parents demand that the District provide Student with three sixty-minute sessions of individual speech/language therapy per week. The proposed IEP calls

- for two thirty minute individual sessions of speech therapy per week and one forty-five minute session of group speech therapy once per week. (P-37, P-40)
46. At the time the IEP was offered, Student did not have the speech and language foundation that would have allowed group speech to provide Student with meaningful educational benefit. (NT 602-603, 623-624, 674)
  47. Both the District and the Parents' speech and language pathologists acknowledged that standards established by the American Speech-Language-Hearing Association (ASHA) are authoritative. These guidelines reference five different areas that should be examined in determining the appropriate level of therapy for a student: severity of disorder, articulation/phonology, language, fluency, and voice. Neither speech/language evaluator identified Student as having issues with fluency, voice, or articulation. (NT 632, 1034, 1041-1043; P-24, P-26, S-52).
  48. Both speech/language evaluators found deficits in the areas of language. The Institute evaluator found that in six areas tested, Student's language scores ranged from below average to two standard deviations below the mean. The District speech/language evaluator found that in five areas tested, most of Student's language scores were two standard deviations below the mean. (NT 575, 652; P-24)
  49. When compared to ASHA standards Student's speech/language deficits are "moderate" suggesting two units of therapy for a minimum of 31 to 60 minutes per week. The Institute evaluator's recommendation of three sixty minute sessions per week goes far beyond ASHA's guidelines; this amount of therapy would be appropriate for students whose language skills were greater than 2.5 standard deviations below the mean, who need augmentative communication and/or whose deficits prevent appropriate communication in the school setting. (NT 1043-1044, P-52)
  50. The Parents demand that the District provide Student's teaching team with one sixty minute speech therapy consult per month. The IEP calls for one speech/language consult per month but does not specify the total number of minutes. (P-37, P-40)

#### Occupational Therapy

51. The District's OT testified that her job is to "help support the classroom teacher and to help Student access the general curriculum and that is done by helping with writing letters and numbers". (NT 747)
52. The District's OT believes that separately written OT goals are not needed in a child's IEP. However, there are OT goals that the District's OT testified were the learning support teacher's goals. There are no baselines for the OT goals although the OT thinks that they would be helpful although they do not have to be stated in the IEP. (NT 747-748, 756-757, 796-797)

53. The Institute OT evaluator testified credibly that the two OT goals in the September 3, 2008 IEP are not appropriate. If a child doesn't have the basic shape formation ability, copying 10 of 16 letters of the alphabet is very difficult depending on which ten letters are being targeted. There is no distinction between uppercase and lowercase letters. Sizing and spacing are not addressed. Letters should be addressed before numbers. Skills such as cutting with scissors and crossing the midline are not addressed. Finally, and significantly, there are no baselines from which to measure progress. (NT 902-907)
54. The Parents demand that the District provide Student with two thirty minute sessions of individual occupational therapy per week. The proposed IEP offers one individual and one group OT session each of thirty minutes duration.<sup>8</sup> The IEP does not specify what is meant by "group" but the District's OT testified that it meant group rather than individual instruction in the setting of a group. Student is not receiving individual OT inside the classroom; Student does receive 45 to 60 minutes of group OT/PT once a week in Student's small-group classroom. The Institute OT evaluator testified that the amount of time is fine, but that group is not appropriate unless it means that Student would be instructed individually in the context of Student's classroom group. (NT 75, 765910; P-37, (P-40)
55. The Institute OT evaluator clarified the OT recommendation in the private evaluation report to mean that she was recommending one session a week of individual ("pull-out") occupational therapy outside the classroom and one individual session of "pushed-in" therapy where "the therapist would go into the classroom and work on whatever curriculum was going on at the time in the classroom ...." The OT evaluator further clarified that the push-in session should be done directly with Student and not with a group of peers. (NT 892-893)
56. The Institute OT evaluator testified credibly that Student needs one-on-one direct instruction and teaching to generalize Student's skills across the curriculum in Student's academic setting and ensure that Student is benefiting from the direct instruction of Student's teacher and not just following whatever the group is doing. (NT 894-895)
57. The Parents demand that the District provide Student's teaching team with one sixty minute occupational therapy consult per month. The September 3<sup>rd</sup> IEP provides one occupational therapy consult per month; the IEP does not specify the amount of time per month. The Institute OT evaluator testified credibly that an hour of OT consultation monthly with Student's teachers is an appropriate amount of time, at the frequency of about 15 minutes per week. (NT 912; P-37, P-40)

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<sup>8</sup> Given the Parents' concerns about the September 3<sup>rd</sup> IEP the District offered to try the IEP for a short period of time and come back to reconsider it if necessary. For example, the occupational therapy services are written for three months. (NT 145-46, 759, 786, 951-952)

### Behavioral Supports

58. The Kindergarten Learning Support classroom uses a classroom-wide behavior plan. The plan includes visual feedback to students and regular feedback to parents. Given the small class size the program is easily targeted toward each child's specific behavioral needs. (P-43)
59. The classroom plan in effect in the student's placement was effective for Student. (NT 978-981, 1067-1068)
60. As part of the kindergarten curriculum, the Learning Support classroom addresses feeling identifiers teaches techniques to address feelings, including frustration. The program uses an emotions chart, a blank face on which the students identify how individuals might feel in certain circumstances as well as how the students themselves might feel in certain circumstances. (NT 1079-1080, 1103-1105)
61. Although Parents believe that a behavior support plan was needed to address Student's withdrawn behavior, the classroom teacher who has 15 years of experience working with young special education students, explained that such a plan would likely lead to even more withdrawn behavior. Furthermore, the IEP provided several key elements to encourage Student to socialize with other students and the classroom program was set up to address those issues. There are numerous opportunities to develop social skills included in the classroom. (NT 978, 1068-1070, 1072; S-53).
62. The Learning Support classroom provides Student with additional support to enhance Student's daily behavioral functioning in areas suggested as needs by the Parents and their experts. The classroom uses visual reminders and charts, practices verbal praise and encouragement, offers preferred and non-preferred activities, positive reinforcement for pro-social behavior. The Parents' experts were admittedly not familiar with what was being done in these regards in Student's classroom. (NT 438, 478, 979, 1067-1068; P-37)

### Discussion and Conclusions of Law

Burden of Proof: In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion, as one element of the burden of proof, for cases brought under the IDEA, is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D.

Pa. October 26, 2006). As the Parents asked for this hearing, the Parents bear the burden of persuasion. However, application of the burden of persuasion analysis does not enter into play unless the evidence is in equipoise, that is, equally balanced so that by definition the party seeking relief has not presented a preponderance of the evidence.

In the instant matter, the evidence was not in equipoise on any issue. The Parents, by presenting a preponderance of the evidence, met their burden of persuasion on the issues of the appropriateness of the September 3<sup>rd</sup> IEP in the areas of occupational therapy and speech/language therapy, specifically goals/objectives, types or frequency of sessions, and duration/frequency of consults. The Parents, by not presenting a preponderance of the evidence, nor even equally balancing the District's, can not prevail regarding the issues of reimbursement for the private evaluation, removing Student from special education, implementation of the DCIU pendent placement and behavioral supports.

Credibility: Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. The decision shall be based solely upon the substantial evidence presented at the hearing.<sup>9</sup> Quite often, testimony or documentary evidence conflicts; this is to be expected as, had the parties been in full accord, there would have been no need for a hearing. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. 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). This is a particularly important function, as in many cases the hearing officer level is the only forum in which the witnesses will be appearing in person. Credibility will be addressed in the discussion below

Must the Interboro School District Reimburse Mr. and Mrs. 's out-of-pocket expense for the private evaluation conducted by the Institute?

A parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must either initiate a hearing and at that hearing show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. 34 CFR §300.502(b)(1)(2)(3).

The applicable regulations provide that a parent may obtain an independent educational evaluation at public expense when the parent *disagrees* with an evaluation obtained from the public agency. "The threshold requirement, then, is that parents disagreed with the District's evaluation." *In Re: J.P.*, Pa. SEA No. 1573 (2005). [See also *In Re D.L.* Pa.

<sup>9</sup> Spec. Educ. Op. No. 1528 (11/1/04), quoting 22 PA Code, Sec. 14.162(f). See also, Carlisle Area School District v. Scott P., 62 F.3d 520, 524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

SEA No. 1665 (2005)] In the instant matter, whether one takes into account the January 23, 2008 request or the March 12, 2008 request, the Parents preempted the District's evaluation; at the time they commissioned the Institute assessment they had no ER with which to disagree. "Where, as here, the parents set the IEE in motion well before the completion of the District's evaluation, and, obviously, prior to a point when they could have knowledge whether they agreed with it or not, this initial requirement is not met." *In Re J.P.* Additionally, when considering the issue of reimbursement, "several appeals panels have further concluded over the years that, consonant with these requirements, the IEE must answer questions not previously raised, provide essential new information, or add something to the prevailing understanding of the student's disability, and that a mere showing of differences between the district and independent evaluations is not sufficient.<sup>10</sup>" *Id.* [See also *In Re D.S.*, Pa. SEA No. 899; *In Re K.B.*, Pa. SEA No. 1111; *In Re C.S.*, Pa. SEA No. 1116; *In Re P.C.*, Pa. SEA No. 1140]

By arranging for the private evaluation before reviewing the District's evaluation (FF 17-20) the Parents have not met the threshold requirement for reimbursement of their expenses for an independent educational evaluation. Expanding the circumstances under which a private evaluation may be reimbursed, although the Institute evaluation provides additional information of use to the IEP team, it does not add essential new information or change the fundamental understanding of Student's disability.

The educational evaluation is an integral part of determining eligibility as well as the nature and extent, if any, of needed programming. Parents have the right to an independent one at public expense when disagreeing with the public agency's. Notwithstanding their sense of urgency, in conducting theirs before the District had that opportunity, parents could not have known whether they disagreed with it, and so "jumping the gun" defeated their claim for reimbursement.

Did the Interboro School District fail to offer Student a free, appropriate public education in the following regard: Inappropriate placement in a regular education setting instead of a special education learning support setting?

Having been found eligible for special education, Student is entitled by federal law under IDEIA, and by state law under the Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.*, to receive a free appropriate public education (FAPE). FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP).

'Special education' is defined as specially designed instruction...to meet the unique needs of a child with a disability. 'Specially designed instruction' means adapting, as

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appropriate to the needs of an eligible child ...the content, methodology, or delivery of instruction to meet the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that Student or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. §300.26

'FAPE' is defined as "special education and related services" provided according to the IEP. 20 U.S.C. §1401(9); 34 C.F.R. §300.17

However, a school district, "must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child." 34 C.F.R. § 300.300(b)(1). *See also* 20 U.S.C. § 1414(a)(1)(D)(i)(II). If a parent refuses to consent to the initial provision of special education and related services, the school district "shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the [district] requires such consent." 20 U.S.C. § 1414(a)(1)(D)(ii)(III)(aa). *See also* 34 C.F.R. § 300.300(b)(4)(i). Although not yet addressed directly in this Circuit, case law from other circuits is instructive for holdings that if the actions of the parents caused a denial of FAPE, a district should not be held responsible. *See Dorros v. District of Columbia*, 510 F.Supp. 2d 97, 100 (D.C. 2007); *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 518 F.3d 18, 26-27 (1<sup>st</sup> Cir. 2008) *citing* *M.M. v. Sch. Dist. of Greenville County*, 303 F.3d 523, 535 (4<sup>th</sup> Cir. 2002); *Doe v. Defendant I*, 898 F.2d 1186, 1189 (6<sup>th</sup> Cir. 1990); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 995 (1<sup>st</sup> Cir. 1990).

A close look at the exact chronology of events detailed above suggests that the District acted appropriately when it moved Student from a special education to a regular education setting. (FF 22-39) At first glance it does seem precipitous, on September 4<sup>th</sup>, for the District to have removed Student from the Learning Support classroom Student had attended for one day. However, once having received the September 11<sup>th</sup> NOREP, with a specific disapproval of the "offered program and (sic) placement" the District received a very clear direction that the Learning Support classroom was in question and that its removal of Student from that classroom was correct. The Learning Support classroom remained in question for some time, as the Parents even with the benefit of counsel and having attended a Resolution Meeting, approved and then again disapproved the placement. Even though counsel were communicating by letter and by email as early as September 18<sup>th</sup>, there was not an unrescinded approval by signed NOREP of the Learning Support classroom placement. The Parents consulted with counsel on or before September 11, 2008. There is no doubt that they informed counsel that Student was placed in regular education after having spent one day in the Learning Support classroom. If the Parents were actually in agreement with Student's being in the Learning Support classroom and wanted Student returned there as soon as possible, this hearing officer has no doubt that their counsel could have advised them to sign the NOREP in a different manner on September 11<sup>th</sup> and/or Parent counsel could have picked up the telephone and called District counsel to clarify the Parents' position. Given the Parents' written communications it would have been foolhardy for the District to have placed Student



back in the Learning Support classroom at any time before it received the very clear October 31, 2008 detailed NOREP and accompanying letter from Parents' counsel. With regard to their belief that the NOREP represented an "all or nothing" offer, the Parent's testimony was not credible, and if indeed they did hold this belief they had the opportunity to have it corrected at least by September 11 if not sooner.

The Parents' cannot claim that the District acted improperly when in fact they provided two separate written disapprovals of the special education placement the District offered to Student. Both disapprovals were tendered while Parents were represented by counsel. Aside from having counsel, the Parents were not naïve about special education in the area of the importance of a NOREP. Not having provided any proof, much less preponderant proof, that the District acted improperly in placing Student in regular education the Parents' claim for compensatory education much fail.

Did the Interboro School District fail to offer Student a free, appropriate public education in the following regard: Failure to offer the pendent placement which the Parents requested?

34 C.F.R. §300.323(a) provides that "at the beginning of the school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP..." Moreover, if a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP that meets the applicable requirements. 34 CFR 300.323(e), 20 U.S.C. 1414(d)(2)(C)(i)(I)

On September 3, 2008 the District convened an IEP meeting and presented the Parents with a draft IEP; some changes to goals and objectives were made during the meeting. The Parents raised objections to the amount of the supportive services offered. On September 11, 2008 after consultation with counsel Parents rejected the September 3 IEP and invoked pendency.

The pendency requirements of the IDEA provide that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to public school, shall, with the consent of the parents, be placed in the public school program ...." 20 U.S.C. § 1415(j) The purpose of this provision is to ensure that students "remain in their current educational placement until the dispute with regard to their placement in ultimately resolved." Susquenita Sch. Dist. v. Raelee S., 96 F.3d 78, 83 (3d Cir. 1996) quoting Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864-65 (3d Cir. 1996). The "then-current educational placement" means "the operative placement actually functioning at

the time the dispute first arises.” Thomas v. Cincinnati Bd. of Educ., 918 F.2d 618, 625-26 (6th Cir. 1990)

In Student’s case, as Student had transitioned from an Early Intervention program to a school-age kindergarten program, providing Student with a pendent program was challenging. It would not be appropriate, nor did either party seek, to return Student to the DCIU. The only reasonable approach, given the Parents’ invoking pendency as per the June 8, 2008 revised IEP, was to provide Student with two half-hour sessions of speech/language therapy per week and 1.25 hours of specially designed instruction per week. In contrast, the proposed District September 3, 2008 IEP offered Student not only two half-hour sessions of speech/language therapy per week, but also one forty-five minute session of group speech/language therapy per week. The DCIU IEP offered no occupational therapy, while the District’s proposed IEP offered two half-hour sessions of OT per week, one individual and one group. The DCIU IEP provided for learning support for 1.25 minutes per week; the District’s proposed IEP called for learning support 210 minutes a day five days per week. The District then, when it received the NOREP Parents signed on September 11, 2008, was in the position of being asked to offer Student fewer minutes of service, and fewer services, than it had found appropriate. Although Parents had consulted with counsel when they signed the NOREP and invoked pendency it is unclear if they understood what they were asking the District to do. Given that the Parents were represented by counsel it would have been inappropriate for the District to attempt to clarify the situation with them, or to offer any advice in this regard. The testimony of the District’s Director of Pupil Services and Special Education was credible with regard to this issue. (FF 40-41)

The District properly provided Student with the speech/language therapy and the specially designed instruction contained in the DCIU IEP within a reasonable time after the Parents clearly stated that they were invoking pendency. The Parents have not established through evidence, let alone a preponderance of evidence, that the District did anything other than act upon the instructions it was given, in writing. Thus the Parents’ claim for compensatory education for Student must fail.

Did the Interboro School District fail to offer Student a free, appropriate public education in the following regard: Inappropriate IEP goals, objectives and specially designed instruction?

“The IDEA’s requirements regarding a FAPE are ‘modest’.” Z.W. v. Smith, C.A. No. 06-1201, 2006 WL 3797975, \*3 (4th Cir.), *quoting* A.B. v. Lawson, 354 F.3d 315, 325 (4th Cir. 2000). A student’s special education program must be reasonably calculated to enable the child to receive meaningful educational benefit at the time that it was developed. (Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. PA. 1996)). The IEP must be likely to produce progress, not regression or trivial educational advancement [Board of Educ. v. Diamond, 808 F.2d 987 (3d Cir. 1986)]. Polk v. Central Susquehanna IU #16, 853 F.2d 171, 183 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing Board of Education v. Diamond, 808 F.2d 987 (3<sup>rd</sup> Cir. 1986) held that “Rowley makes it

perfectly clear that the Act requires a plan of instruction under which educational *progress* is likely.” (Emphasis in the original). The IEP must afford the child with special needs an education that would confer meaningful benefit. The court in Polk held that educational benefit “must be gauged in relation to the child’s potential.” This was reiterated in later decisions that held that meaningful educational benefit must relate to the child’s potential. See T.R. v. Kingwood Township Board of Education, 205 F.3d 572 (3<sup>rd</sup> Cir. 2000); Ridgewood Bd. of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999); S.H. v. Newark, 336 F.3d 260 (3<sup>rd</sup> Cir. 2003) (district must show that its proposed IEP will provide a child with meaningful educational benefit). The appropriateness of an IEP must be based upon information available at the time a district offers it; subsequently obtained information cannot be considered in judging whether an IEP is appropriate. Delaware County Intermediate Unit v. Martin K., 831 F. Supp. 1206 (E.D. Pa. 1993); Adams v. State of Oregon, 195 F.3d 1141 (9<sup>th</sup> Cir. 1999); Rose supra.

Districts need not provide the optimal level of service, maximize a child’s opportunity, or even offer a level that would confer additional benefits, since the IEP as required by the IDEA represents only a basic floor of opportunity. Carlisle Area School District v. Scott P., 62 F. 3d at 533-534.; Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1998); Lachman, supra. In creating a legally appropriate IEP, a School District is not required to provide an optimal program, nor is it required to “close the gap,” either between the child’s performance and Student’s untapped potential, or between Student’s performance and that of non-disabled peers. In Re A.L., Spec. Educ. Opinion No. 1451 (2004); See In Re J.B., Spec. Educ. Opinion No. 1281 (2002)

The IEP for each child with a disability must include a statement of the child’s present levels of educational performance; a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum and meeting the child’s other educational needs that result from the child’s disability; a statement of the special education and related services and supplementary aids and services to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals (and) to be involved and progress in the general curriculum...and to be educated and participate with other children with disabilities and nondisabled children; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class... CFR §300.347(a)(1) through (4)

An IEP must be crafted in such a manner that, provided it is implemented, there is a reasonable degree of likelihood that the student will make educational progress. Implementation of an appropriate IEP does not guarantee that the student will make progress.

Speech/Language: With regard to the speech/language goals, this hearing officer agrees with the Institute speech/language evaluator’s credible testimony that the goals in the

proposed IEP are inappropriate for their lack of specificity and for their lack of baselines which renders them unable to be measured. (FF 43-44)

Overall, the Parents have met their burden of proof on this issue through a preponderance of evidence and Student is entitled to compensatory education in this regard.

Occupational Therapy: With regard to the occupational therapy goals, this hearing officer found the testimony of the Institute OT evaluator to be persuasive. The District's OT evaluator was in large part not credible as she contradicted her own testimony from one session to the next and testified to the belief that OT goals actually are not needed. The OT goals in the proposed IEP are not based on Student's current skill set, are not specific, and are not measurable given that there are no baselines. (FF 51-53)

The Parents have met their burden of proof on this issue through a preponderance of evidence and Student is entitled to compensatory education in this regard. Student will be awarded 30 minutes per week of individual occupational therapy from November 3, 2008 to the end of the 2008-2009 school year. The OT may be push-in or pull-out as determined by the occupational therapist. The minutes must be in addition to and not instead of or part of the OT Student is already receiving as per Student's IEP.

Behavior Supports: Pennsylvania law requires that the type of behavior support used "shall be the least intrusive necessary." 22 Pa. Code § 14.133(a).

When a student responds to a classroom behavior support plan, an individual plan is not needed; Parents' expert testified to her agreement with this standard. In the present case, there was testimony that a classroom plan was in effect in the student's placement and this was effective for the student. Accordingly, a more individualized behavior support plan was not needed for this student. Testimony by the classroom teacher showed that the behavior program in the classroom offered varied and age-appropriate means through which Student's individual behavioral needs were addressed. (FF 58-62)

The classroom teacher's testimony was credible as opposed to that offered by the Parents' experts in this regard. Accordingly, the Parents have failed to meet their burden of establishing that the District failed to implement an appropriate IEP that included necessary behavior supports.

Did the Interboro School District fail to offer Student a free, appropriate public education in the following regard: Inadequate amount of individual and/or group speech/language sessions and occupational therapy sessions, and consultation time?

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). If personalized instruction is being provided with sufficient supportive services to permit the student to benefit from the instruction the child is receiving a "free appropriate public education as defined by the Act." Polk, Rowley. The purpose of the IEP is not to provide the "best" education.

The IEP simply must propose an appropriate education for the child. Fuhrman v. East Hanover Bd. of Educ., 993 F. 2d 1031 (3d Cir. 1993). (See also Board of Education v. Murphysboro v. Illinois Bd. of Educ., 41 F.3d 1162 (7<sup>th</sup> Cir. 1994) (Under the IDEA a district must follow the procedures set forth in the act, and develop an IEP through procedures reasonably calculated to enable the child to receive educational benefits. Once the district has done this the court cannot require more; the purpose of the IDEA is to open the door of public education to handicapped children, not to educate a child to Student's/her highest potential), citing Rowley, 458 U.S. at 206-07.) More recently, the Eastern District Court of Pennsylvania ruled, "districts need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by the IDEA represents only a basic floor of opportunity." S. v. Wissahickon Sch. Dist., 2008 WL 2876567, at \*7 (E.D.Pa., July 24, 2008), citing Carlisle, 62 F.3d at 534, citations omitted. . See also, Neena S. ex rel. Robert S. v. School Dist. of Philadelphia, 2008 WL 5273546, 11 (E.D.Pa., 2008).

Speech/Language: The District's speech language therapist was credible and persuasive in this regard, relative to ASHA's guidelines. Based on ASHA guidelines, Student's moderate speech/language deficits require two units of therapy for a minimum of 31 to 60 minutes per week. The Institute evaluator's recommendation of three sixty minute sessions per week goes far beyond ASHA's guidelines. The Parents' speech/language evaluator provided no credible explanation of her recommendation, a level of service that goes well beyond ASHA guidelines. Moreover, in making her recommendations for the level of service the private speech/language evaluator did not review these guidelines, although she accepts them as authoritative. However, the private speech/language evaluator and the private psychologist were persuasive in their opinion that because of Student's difficulties in a group setting the offer of group speech/language therapy to Student was not appropriate for Student at the time the IEP was written. (FF 45-50)

Given that ASHA's guidelines of 60 minutes of therapy is a "minimum" the District will be directed to withdraw the forty-five minute group speech therapy session and instead offer Student one additional thirty minute individual session for a total of three thirty minute individual speech/language sessions weekly.

The Parents have not met their burden of proof on the amount of time that speech therapy must be delivered to Student (minutes per week/number of sessions), however they have met their burden regarding the delivery method (individual rather than group) and the amount of time allotted for speech/language therapy consultations with teachers.

Occupational Therapy: With regard to occupational therapy services, this hearing officer found the testimony of the Institute OT evaluator to be persuasive and fair. She presented realistic recommendations for the amount of time Student should receive OT weekly, and for how and where the sessions should be conducted. She presented a fair estimate of an appropriate amount of consultation time that should be given to the teachers monthly and at what intervals. (FF 54-57)

The Parents have met their burden of proof regarding the delivery method of Student's occupational therapy sessions (individual rather than group) and the amount of time allotted for occupational therapy consultations with teachers.

Compensatory Education:

Critical to their case, then, the weight of parents' evidence established that the standards for FAPE were not satisfied as to certain elements of the IEP at issue which evidence the District failed to rebut.

Specifically, special education and related services are the critical constituents of a free *appropriate* public education (FAPE). Special education has at its focal point specially designed instruction (SDI), which to be *appropriate* adapts to an eligible child's unique needs the content, the methodology, or the delivery of instruction, with access to the general curriculum that allows the meeting of state education agency standards for all. This is legally accomplished through an IEP reasonably calculated at its inception to, in the least restrictive environment, confer "meaningful educational benefit," which does not envision regression, trivial advancement, or the best available program.

In-kind compensatory education is a remedy for the span of FAPE denial by district action or inaction, less a reasonable period when it could have been rectified, its form and timing to be a matter of parental discretion as long as costs are commensurate with what was denied and it does not replace otherwise currently entitled to programming.

As the District's speech/language and occupational therapy goals were inappropriate as described above, Student will be awarded:

30 minutes per week of individual occupational therapy for the period from November 3, 2008 to the end of the 2008-2009 school year excluding one week for the winter break and one week for the spring break. This totals 31 weeks at .5 hours per week, or 15.5 hours. The compensatory OT may be push-in or pull-out as determined by the occupational therapist. The minutes must be in addition to and not instead of or part of the two thirty minute sessions of individual OT Student will already be receiving as per Student's IEP.

30 minutes per week of individual speech/language therapy for the period from November 3, 2008 to the end of the 2008-2009 school year excluding one week for the winter break and one week for the spring break. This totals 31 weeks at .5 hours per week, or 15.5 hours. The compensatory speech/language therapy minutes must be in addition to and not instead of or part of the three thirty minute sessions of individual speech/language therapy Student will already be receiving as per Student's IEP.

Endnote: By way of dicta, this hearing officer wishes to note that many more than one occasion the parties were encouraged to try to come to an agreement on the issues in this case; when there was a two-hour delay caused by the court reporter's not receiving Notice the parties met and attempted to reach some agreement. Student is just beginning Student's formal education in the District. The parties are urged to work cooperatively in the future so that their resources can be used for purposes other than litigation.

### Order

It is hereby ordered that:

1. The Interboro School District is not required to reimburse Mr. and Mrs. 's out-of-pocket expense for the private evaluation conducted by the Institute.
2. The Interboro School District did not fail to offer Student a free, appropriate public education in the following regards:
  - Placement in a regular education setting instead of a special education learning support setting;
  - Failure to offer the pendent placement which the Parents requested.
3. The Interboro School District did, as described in detail above, fail to offer Student a free, appropriate public education in the following regards:
  - Inappropriate IEP goals, objectives and specially designed instruction;
  - Inadequate amount of individual and/or group speech/language sessions, and consultation time;
  - Inadequate amount of individual or group occupational therapy sessions, and consultation time.
4. As the Interboro School District failed to offer Student a free, appropriate public education in the areas delineated above Student is entitled to compensatory education to be provided in school year 2009-2010 as follows:

30 minutes per week of individual occupational therapy for the period from November 3, 2008 to the end of the 2008-2009 school year

excluding one week for the winter break and one week for the spring break. This totals 31 weeks at .5 hours per week, or 15.5 hours. The compensatory OT may be push-in or pull-out as determined by the occupational therapist. The minutes must be in addition to and not instead of or part of the two thirty minute sessions of individual OT Student will already be receiving as per Student's IEP.

30 minutes per week of individual speech/language therapy for the period from November 3, 2008 to the end of the 2008-2009 school year excluding one week for the winter break and one week for the spring break. This totals 31 weeks at .5 hours per week, or 15.5 hours. The compensatory speech/language therapy minutes must be in addition to and not instead of or part of the three thirty minute sessions of individual speech/language therapy Student will already be receiving as per Student's IEP.

5. The District must reconvene the IEP team within 15 days of receiving this decision and revise Student's IEP to include:

Specific, discrete and measurable OT goals with baselines;  
Two individual 30-minute OT sessions weekly, one pull-out and one push-in;  
Sixty minutes of OT consultation per month distributed in frequency according to a schedule developed by the therapist and the classroom teacher(s).

Specific, discrete and measurable speech/language goals with baselines;  
Three individual 30-minute speech/language sessions weekly;  
Sixty minutes of speech/language consultation per month, distributed in frequency according to a schedule developed by the therapist and the classroom teacher(s).

June 9, 2009  
Date

*Linda M. Valentini, Psy.D.*  
Linda M. Valentini, Psy.D.  
Hearing Officer