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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: JB
ODR #7242/06-07 LS

Date of Birth: xx/xx/xx

Dates of Hearing:
February 20, 2007
March 2, 20007
April 2, 2007

CLOSED HEARING

Parties to the Hearing:
Mr. and Mrs.

Representative:
Frederick Stanczak, Esquire
179 N. Broad Street
Doylestown, Pennsylvania 18901

Quakertown Community School District
600 Park Avenue
Quakertown, Pennsylvania 18951

Gina DePietro, Esquire
Sweet, Stevens, Katz & Williams
331 Butler Avenue, P.O. Box 5069
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Date Record Closed:

April 18, 2007

Date of Decision:

May 3, 2007

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

Student is an xx-year-old eligible student residing in the Quakertown Community School District (hereinafter District). He is classified as having speech/language impairment and other health impairment. Mr. and Mrs., Student's parents (hereinafter Parents), requested this hearing as they believe that Student has been denied a free appropriate public education (FAPE) for the past two years. Specifically, the Parents assert that Student has a specific learning disability in the areas of reading and written expression that has not been identified and addressed, and that his current IEP is not appropriate to meet his needs in the area of academics and specially designed instruction, and in the area of counseling to address anxiety issues. The Parents believe that Student is entitled to compensatory education based upon a denial of FAPE. Additionally the Parents seek reimbursement for an independent educational evaluation.

The District maintains that Student has been provided with FAPE. Specifically, the District maintains that he was properly identified and that his IEP was and is appropriate, and that therefore compensatory education is not due. The District also maintains that the Parents are not entitled to reimbursement for the independent educational evaluation.

The Parents filed for this hearing on December 27, 2006 seeking compensatory education from the 2002-2003 school year through the 2004-2005 or 2005-2006 school years, asserting that the District had engaged in a "continuing violation". On January 29, 2007 the hearing officer granted the District's Motion to Limit Claims, setting the parameters of the period under consideration from December 27, 2004 forward.¹

Issues

1. Did the Quakertown Community School District fail to identify Student as a student with a specific learning disability, leading to a denial of a free appropriate public education (FAPE)?
2. If the Quakertown Community School District did fail to identify Student as a student with a specific learning disability, and this failure resulted in a denial of (FAPE), is he eligible for compensatory education from December 27, 2004 to the present, in what amount and of what type?
3. Does Student's current IEP appropriately address his educational needs in the areas of specially designed instruction and counseling?
4. Are the Parents entitled to reimbursement for the Independent Educational Evaluation they obtained for Student?²

¹ The Order Granting Motion to Limit Claims is marked, along with the District's January 8, 2007 Motion and the Parents' January 25, 2007 Response, as HO-2.

² The issue of reimbursement for the IEE was not raised in opening statements and was not articulated by the hearing officer at the outset of the hearing. However, in the mother's testimony her attention was

Findings of Fact

Identification in the Areas of Speech/Language and Occupational Therapy

1. Student is an xx-year-old eligible student residing in the Quakertown Community School District.
2. Student received tutoring in the Reading Acceleration Program (RAP) during first grade, and at the end of first grade he was reading at Level F, the mid-first grade level. In spelling, at the end of first grade, Student had 34 of an expected 40 words secure. (NT 36, 205, 207-208; S-1)
3. Student was identified as having speech/language impairment in February 2002 when he was in first grade, and an IEP to address needs in this area was put in place at that time. Deficits were noted in listening, comprehension, oral expression and receptive/expressive language. (NT 33-34, 197-198; P-1, P-2)
4. In March 2002, although he was young for testing, Student received an auditory processing evaluation from the IU at the suggestion of the District's reading specialist. He was found to have auditory processing deficits. (NT 36-37; P-3)
5. Auditory processing testing was repeated after Student's birthday, just prior to his entering second grade, and again he evidenced auditory processing deficits. (NT 39)
6. By the beginning of second grade Student was using an FM trainer to assist in auditory processing. (NT 203;S-1)

School District Evaluation at Parents' Request

7. Pursuant to their receiving the second auditory processing evaluation report the Parents requested a multidisciplinary evaluation because they thought Student had a learning disability. The evaluation was completed in September 2002. (S-1)
8. In September 2002 District testing with the Wechsler Intelligence Scale for Children – Third Edition (WISC-III) resulted in a Full Scale IQ of 87 (Low Average), with a Verbal IQ of 95 (Average) and a Performance IQ of 81 (Low Average). The Verbal Comprehension Index was 98 (Average) and the Perceptual Organization Index was 86 (Low Average). (S-1)
9. In September 2002 Student was administered the Woodcock Johnson Test of Achievement III (WJ III). Reading standard scores were as follows: Broad

drawn to P-8 wherein the Parents' complaint is amended to include the IEE issue. Closing arguments addressed the issue.

- Reading 87 (Low Average, commensurate with cognitive testing); Basic Reading 97 (Average), Letter Word Identification 98 (Average), Spelling 99 (Average), Word Attack 95 (Average), Passage Comprehension 91 (Average). (S-1)
10. In September 2002 on the WJ III in the area of Writing Student received the following standard scores: Broad Written Language 94 (Average), Written Expression 90 (Average), Writing Fluency 85 (Low Average), Writing Samples 100 (Average). (S-1)
 11. In first grade Student had a hard time with the physical act of writing; in third grade, according to the mother, "it physically hurt him to write". (NT 35, 38, 58)
 12. On a test of visual-graphomotor integration, the Beery (VMI), administered in September 2002 Student achieved a standard score of 85 (Low Average Range). (S-1)
 13. An occupational therapy assessment in September 2002, the beginning of second grade, resulted in recommendations for occupational therapy. (S-1)
 14. As of September 2002, compared to national norms, Student's academic skills and his ability to apply those skills were in the Average Range, although his academic fluency (speed and rate at which he applied his skills) was low. (S-1)
 15. The September 2002 multidisciplinary team concluded that Student did not have a specific learning disability and that he was not a student with a disability under the IDEA and PA special education regulations. (NT 211, 251-252; S-1)
 16. The September 2002 multidisciplinary team concluded that Student did have needs, and would have direct services, in the areas of occupational therapy and speech therapy. (NT 211; S-1)
 17. The September 2002 ER also provided for continuation of the RAP (reading) tutoring daily, help with organization at the beginning and the end of the day, chunking of writing assignments, and a word bank for writing to assist with fluency. (S-1)
 18. On September 19, 2002 the District issued a Notice of Recommended Educational Placement (NOREP) indicating that Student did not have a disability and was not in need of special education. The Parents did not sign the NOREP and indicated that they were "not convinced that Student did not have a learning disability". (P-5)

First Independent Educational Evaluation –District Agreed to Fund

19. The Parents requested that the District fund an independent educational evaluation (IEE). The District agreed, and Dr. S provided an “Educational Consultation” in mid-October 2002. (NT 44-45, 55; S-2, P-7)
20. Dr. S reviewed the District’s testing and her report indicates that she performed nine additional tests/parts of tests in various areas. She reported the results of her testing in numerical fashion on only two tests (CTOPP and TAPS) both of which were directed toward auditory processing. (S-2)
21. Dr. S performed one test in the area of reading, a brief informal reading inventory. She performed no tests in the area of written expression, although she administered the spelling subtest from the WIAT II. She utilized two behavior assessment instruments (rating scales) with parents and teacher as respondents. (S-2)
22. In the area of word recognition (sight vocabulary) Student received untimed scores on the Daniels as follows: Pre-Primer 95%, Primer 88%, 1st grade 64% and 2nd grade 12%. On a Houghton Mifflin Reading Passage, scores were not reported beyond the Primer level although his comprehension was Satisfactory at the Primer level. (S-2)
23. On the Wechsler Individual Achievement Test – Second Edition (WIAT II) on Spelling his standard score was 85 (Low Average). (S-2)
24. On the behavior scales (BASC and ADDES) Dr. S noted that on the parent form anxiety and somatization “emerged as concerns”. She did not note at what level of concern (e.g. clinical, at risk, etc.) and noted that “these symptoms are less frequent this year”. (S-2)
25. Dr. S concluded that in her clinical opinion Student did have a learning disability in reading and writing although he did not meet the discrepancy model standard. She also concluded that the District’s interventions had been appropriate and timely. She opined that he should be watched carefully “because he may need some special education instruction and support in reading and writing (such as some instruction in a learning support room) in the future”. (NT 213-214; S-2)
26. Dr. S did not support her clinical opinion that Student had a learning disability in reading and writing in any credible fashion, having administered only an informal reading inventory and a spelling assessment. (S-2)
27. Dr. S endorsed the MDT plan as articulated the District’s September 2002 ER. (NT 215; S-2)

28. At the time of Dr. S's evaluation Student was being instructed in reading one-on-one by a reading specialist for 30 minutes daily in the RAP program. His participation in the RAP continued throughout second grade and throughout third grade. (NT 216-217, 231)
29. This reading instruction was more intensive than if he were in a special education setting as it was delivered one-to-one, although the specialized reading instruction time was less. However, he also received reading instruction in his regular education classroom. (NT 231)
30. At the end of third grade Student demonstrated proficiency in all areas addressed in the RAP, and his individual reading instruction ended at that time. At the end of third grade he had a "B" on curriculum-based measures assessing daily classroom work. He was reading on grade level. (NT 228, 230-232)
31. Because there had been a clerical error on a previous NOREP, the District issued a new NOREP on December 13, 2002. The NOREP indicated that Student "has a disability and is in need of speech and language services". The Parents approved the NOREP. (NT 51, 219-223; P-5)

Period Covered in the Hearing – Fourth Grade

32. The IEP that controlled the beginning of the period addressed during this hearing (December 27, 2004 onward) is the IEP dated March 8, 2004. Student began the 2004-2005 school year under that IEP. The IEP addresses speech/language and occupational therapy needs. (S-3)
33. During the 2004-2005 school year and during the 2005-2006 school year Student continued to receive speech/language therapy. He was seen weekly for 30 minutes with one other student in small group pull-out therapy. (NT 464-465)
34. Student was making progress in speech/language therapy. The speech/language pathologist's opinion was confirmed when he reviewed the results of the new auditory processing evaluation. (NT 465-469, 475)
35. The speech/language therapist observed him in the classroom and checked in with his teachers and Student was engaged and participating. (NT 470-471)
36. At the time of the March 2004 IEP, Student had received all A's and B's on the second report card of that school year (2003-2004 – third grade), in a regular education class. (S-3)
37. The March 2004 IEP provides for continued use of an FM auditory unit, speaker type. (S-3)

38. The March 2004 IEP provides for occupational therapy once a week, with goals addressing efficiency and speed of his writing for increased success with his written work and improved postural control for success with school related tasks. Objectives included forming the upper and lower case letters in 40 seconds and obtaining and sustaining postural control positions of prone extension and supine flexation for 20 seconds. (S-3)
39. The March 2004 IEP provides for speech/language therapy, 30 sessions during the duration of the IEP, each session to last for 30 minutes. With an overall goal of improved expressive and receptive language skills, objectives included correctly using basic sentence patterns; increasing expressive and receptive vocabulary in written and oral forms; increasing skills in the areas of following oral directions, short-term memory, processing heard information, sound-symbol association, attending to a speaker, long-term memory of heard material, sound blending and auditory discrimination; and using appropriate conversational skills including greetings, topic initiation, topic maintenance, topic closure, turn taking, eye contact and listening. (S-3)
40. The March 2004 IEP also provided an objective addressing written language expression: Increase ability to express self using proper sequence, details and continuity in conversation and/or written form. Proper use of syntax, punctuation and spelling skills will be stressed in written form. (S-3)
41. The March 2004 IEP called for specially designed instruction as follows: individual or small group speech/language sessions, use of tape recorder, worksheets, homework folder, and parent and teacher collaboration. (S-3)
42. The Parents participated in developing and approved the March 2004 IEP. (NT 57; S-3)
43. Another IEP was prepared on March 10, 2005, in spring of fourth grade. The March 2005 IEP notes that in the classroom Student's instruction was on grade level and was delivered at a rate and pace consistent with others in the class. He was participating in the 4th grade curriculum and was making progress in all areas of instruction. The IEP notes that his last report card indicated that he exceeded or satisfied the Characteristics of a Successful Learner in all identified areas. He had a B average in math, a B in reading and a C in writing. In both science and social studies his rating was Satisfactory. It was noted that he had some difficulty recalling what he hears, but has the necessary visual strategy to compensate and assist in vocabulary development. (S-5)
44. The March 2005 IEP carried a goal addressing auditory processing: Student will develop strategies in order to comprehend orally-presented information of grade level material with 80% accuracy when listening in structured settings based on Pennsylvania Academic Standard 1.6.5 Speaking and Listening (C). (S-5)

45. The March 2005 IEP carried benchmarks in order to demonstrate comprehension of orally presented curricular material and utilize strategies for mastery as follows: identifying key vocabulary words by highlighting, word webs and picture cues; rephrasing oral directions of at least one sentence in length; given an orally presented story of 10-15 sentences in length, will paraphrase content, give the main idea, summarizing the story, and answering questions about the plot; following three-step directions; drawing a picture related to concepts and vocabulary or completing a graphic organizer independently. Objectives were to be measured monthly by data collection and charting, with an 80% accuracy target. (S-5)
46. The March 2005 IEP called for continuation of the same level of speech/language services. (S-5)
47. In May 2005 the BCIU repeated an Auditory Processing Evaluation. The evaluation found improvement in all but one area, with auditory processing difficulties remaining in the areas of phonemic blending or decoding, temporal processing, auditory closure, and binaural separation/integration. (S-6)
48. By the end of fourth grade Student was receiving B's and C's in reading and was continuing to read at grade level despite the RAP program having ended at the end of third grade. (NT 257-258)
49. In April 2005 in spring of fourth grade Student took the group-administered New Standards English Language and Reference Examination. He achieved a score of 159 in reading (at 150 a student is considered to have achieved the overall standard in reading) and a score of 144 in writing (at 150 a student is considered to have achieved the overall standard in writing). On a scale of "Achieved the standard with honors, Achieved the standard, Nearly Achieved the Standard, Below the Standard, and Little Evidence of Achievement" Student achieved the standard in reading in both basic understanding and analysis and interpretation, and he Nearly achieved the standard in writing in effectiveness and conventions. (S-24)

Period Covered in the Hearing – Fifth Grade

50. In 5th grade Student continued to use the FM device. (NT 370-371)
51. In October 2005 an IEP was developed for 5th grade. The October 2005 IEP notes his last report card showed a B in math and a B in writing and a C in reading. In September of fifth grade he was reading at a low Level R, typical of students entering 5th grade. Science and social studies grades were Satisfactory and he met all the Characteristics of a Successful Learner. (NT 236; S-10, P-7)

52. The October 2005 IEP notes, “Functional level of performance is age appropriate with the exception of language development in the area(s) of auditory processing skills, which may impact the communication demands of the classroom.” (S-10)
53. The October 2005 IEP carries a goal and objectives addressing comprehension of orally presented material – demonstrating rehearsal, paraphrasing, writing key words; using cues, prompts, hints to focus and facilitate retrieval; request additional time, prompts or cues when needed, concentrate carefully on speaker and watch for visual cues, ask clarification questions. (S-10)
54. The October 2005 IEP carries Modifications and SDI as follows: visual aids/handouts (daily), slower pace and increased wait time (daily), rephrasing/restating directions to obtain attention when giving directions (daily), shorter phrases/frequent checks (daily), flexible preferential seating away from competing noise/right side dominant ear (as needed), additional time/frequent breaks for lengthy assignments (as needed), grading written assignments on content rather than handwriting (as needed), adaptive note taking/peer review or copy of teacher notes when needed (as needed), sound field system (daily), visit nurse as needed (as needed)³, preview of available material when available (as needed), tasks broken down/chunking assignments and tests (as needed), teacher initial homework agenda (6th grade) (daily). (S-10)
55. In the fifth grade regular education classroom there were twenty-seven students and a teacher. An aide came in for reading and there was push-in support for writing and for math based on students’ needs. (NT 376-377)
56. Various other supports and accommodations were provided to Student in fifth grade. (NT 392-393)
57. When there were a lot of notes the teacher gave Student the notes of a reliable student as Student had difficulties with legibility. (NT 380)
58. The teacher allowed Student’s homework daily writing assignment to be shortened after the Parents reported that homework was taking a long time. (NT 380-381)
59. The Parent told the teacher that she sometimes made Student re-copy his writing homework before he handed it in and in the teacher’s opinion this led to the level of Student’s frustration being reported by the Parent. (NT 390)
60. The Parents were in frequent email contact with the fifth grade teacher regarding concerns such as fatigue at home after school, performance, grades, breaks during the day and other various issues. One specific concern of the Parents was that

³ Parents requested this be put in as Student reportedly had headaches and reportedly did not ask to visit the nurse. (NT 73-74)

spelling tests were in the B to B+ range as opposed to a higher grade. (NT 378-379, 382-387; P-7)

61. Student's grades in fifth grade were Satisfactory. (NT 376; S-25)
62. Specifically in terms of reading the fifth grade teacher found Student to be performing as a typical fifth grader in the classroom setting. His reading comprehension was right where it should be; occasionally his reading fluency was a little bit choppy but this did not interfere with comprehension. He was able to do the reading required in the curriculum. (NT 389, 391-392)
63. Specifically in terms of writing the fifth grade teacher found Student's ability to express himself and get his ideas on paper typical of other fifth graders, with the exception of handwriting. (NT 389)
64. Specifically in terms of math, this was one of his strongest areas⁴. (NT 391)
65. Student's 5th grade PSSA score in reading was Basic at 1141 (1275 is considered Proficient). (S-19, S-24)
66. Student's 5th grade PSSA score in writing was Proficient at 1438. (S-19, S-24)
67. In early 5th grade the Parents began having concerns for 6th grade and in spring of 5th grade, in preparation for Student's transition to 6th grade, they met with the principal of the middle school. (NT 75-76, 394; S-11)
68. The Parents requested a certain team for 6th grade because they liked one of the teachers on that team. The District acceded to the Parents' request, although the District's preference was for a team that had instructional support and the team the Parents wanted did not. (NT 268)
69. In summer 2006, prior to entering 6th grade, the Parents arranged for Student to receive Fast ForWord training to "give him a jump up" on 6th grade. (NT 79, 112)

Second Independent Educational Evaluation

70. In June 2006 the Parents obtained an independent educational evaluation (IEE) from Dr. G.⁵ They did not ask the District to do another evaluation since it was summer and because of Student's anxiety they wanted to "get him ready for

⁴ Math was barely addressed in the hearing and was not specified as a specific area of dispute in the Parents' opening statement. Although Dr. G's report said he had a "math disorder", in her testimony she said that he did not need specially designed instruction, and appeared to say that he had difficulty rather than a disorder. Math is not therefore addressed in this decision except for this one finding of fact. (NT 17, 179; S-15)

⁵ Other than some formatting changes, the report at S-15 is the same as the report at S-13; S-13 will be removed from the record. (NT 126-127)

- middle school”. They turned down the District’s offer to complete an evaluation at the beginning of the new school year, as they did not want to wait, and asked if the District would pay for an independent evaluation. The District declined. (NT 113-114, 272, 300; S-15)
71. The Parents did not obtain the IEE because they disagreed with the District’s evaluation. They were referred by their private audiologist/speech-language pathologist. (NT 114 127)
 72. The first version of Dr. G’s report was received by the District on August 16, 2006. (NT 273)
 73. In her report Dr. G wrote that Student had been (previously) identified as a learning disabled student. This was not based on any evaluation produced by the District. She testified that she “consider(s) a speech and language problem a deficit, a learning disability. So by my definition, it’s a learning disability”. (NT 172-173; S-15)
 74. Although teacher versions of behavior questionnaires are available, Dr. G did not use these and only collected behavioral information from the Parents.⁶ Dr. G did not make any contact with the District although her evaluation commenced on June 7th when teachers would likely still be available; teacher questionnaires could also have been distributed at the time the evaluation was scheduled. (NT 176)
 75. Dr. G did not attempt to verify with the school information supplied by the Parents. (NT 182-183)
 76. Dr. G found that, consistent with past reports, Student had a deficit in processing information both auditorily and visually and that his processing problems interfere with his ability to benefit from instruction. (NT 133)
 77. In June 2006 on the Wechsler Intelligence Scale for Children – Fourth Edition (WISC –IV) Student obtained a Full Scale IQ of 102 (Average), with a Verbal Comprehension Index of 104 (Average) and a Perceptual Reasoning Index of 108 (Average). Working Memory Index was 86 (Low Average) and Processing Speed Index was 100 (Average). (S-15)
 78. In June 2006 on the Woodcock Johnson Tests of Achievement – Third Edition (WJ III) Student achieved standard scores as follows in the area of reading: Letter Word Identification 92 (Average), Passage Comprehension 89 (Low Average), Reading Fluency 90 (Average), Word Attack 85 (Low Average), Reading

⁶ On cross examination Dr. G said, “The teachers didn’t ask for them. Nobody asked for them at the meeting either.” Usually the evaluator collects the data rather than waiting for teachers to ask to be asked. (NT 176)

- Vocabulary 94 (Average), Broad Reading 89 (Low Average), Basic Reading 88 (Low Average). (S-15)
79. In June 2006 on the Gray Oral Reading Tests Student achieved an Oral Reading Quotient of 100 (Average), with a reading rate at the 25th percentile, reading accuracy at the 50th percentile, reading fluency at the 37th percentile and reading comprehension at the 63rd percentile. (NT 178; S-15)
80. Although she opined that Student would have difficulty reading textbooks at his grade level Dr. G did not assess him in this area directly. (NT 177-178)
81. In June 2006 on the Woodcock Johnson Tests of Achievement – Third Edition (WJ III) Student achieved standard scores as follows in the area of written expression: Broad Written Language 97 (Average), Written Expression 91 (Average), Spelling 106 (Average), Writing Sample 79 (Borderline), Writing Fluency 96 (Average). (S-15)
82. Dr. G believes that the Writing Sample Score “is very likely an underestimate of [Student’s] ability”, noting that he is better able to express himself [in writing] when he has a word bank or other information to work with, than when he has to generate his own ideas. (S-15)
83. Dr. G reported that despite his average scores in reading he continues to struggle with reading and some scores are not consistent with what would be expected of a student of his age and grade placement. She concluded that he has a learning disability in reading. (NT 144-145; S-15)
84. Dr. G’s finding that Student continues to struggle in reading is supported by the data. A comparison of Woodcock Johnson III standard scores in Reading reveals that Student made progress in Broad Reading, Letter Word Identification, and Passage Comprehension, but that his skills have slipped from the Average Range to the Low Average Range in Basic Reading based on his moving from the Average Range to the Low Average Range in Word Attack. This weakness does not rise to the level of a learning disability as it is reflected in only one subtest that involves reading nonsense words, and the overall reading scores are not significantly discrepant from his cognitive level. (NT 332-334S-1, S-15, HO-1)

| WJ III Reading Subtest | 2002 | 2006 |
|----------------------------|------|------|
| Broad Reading | 87 | 89 |
| Basic Reading** | 97 | 88 |
| Letter Word Identification | 98 | 92 |
| Word Attack* | 95 | 85 |
| Passage Comprehension | 91 | 89 |

*Reading nonsense words **Affected by nonsense words

85. Dr. G reported that despite his average scores in written expression, writing continues to be an area of deficiency that needs to be addressed. She concluded he has a learning disability in written expression. (NT 145, 183-185; S-15)
86. Dr. G's conclusion is not supported by the data. A comparison of Woodcock Johnson III standard scores in Written Expression reveals that Student is making progress in this area, as he needs to make a year's progress in one year to keep pace with his same age peer cohort. *Dr. G reported that the Writing Sample was an underestimate of Student's abilities. (NT 138-140; S-1, S-15)

| | | |
|------------------------|------|------|
| WJ III Writing Subtest | 2002 | 2006 |
| Broad Written Language | 94 | 97 |
| Written Expression | 90 | 91 |
| Writing Fluency | 85 | 96 |
| Writing Sample | 100 | 79* |
| Spelling | 99 | 106 |

87. In reaching her conclusions that Student has a specific learning disability Dr. G did not use the discrepancy model (ability vs. achievement) in the usual fashion. Instead of comparing his Full Scale IQ with achievement scores, she compared his intellectual functioning and his auditory and visual processing ability. (NT 150; S-15)
88. Dr. G testified that Student "has a learning disability in information processing". (NT 160)
89. Dr. G was not able to articulate clearly her reasons for finding that Student has a specific learning disability in reading or in writing at the meeting with the school or in the due process hearing. (NT 161-162, 278)
90. The weakness in reading is not a significant discrepancy as assessed using the mathematical ability/achievement discrepancy model. The District applies the discrepancy model through a formula; the discrepancy must be of a magnitude that it occurs in less than 5 percent of the population. The District psychologist, who teaches assessment of intelligence at [redacted] University, looked at all Student's subtest scores from Dr. G's testing and found no significant discrepancies in any of them compared to the Full Scale IQ score. (NT 325-327, 350-354, 361-362, 363-366; HO-1)
91. Although Dr. G diagnosed Student with Attention Deficit Disorder (DSM-IV Axis I diagnosis) she testified, "I do not believe that he has an attention deficit disorder". The District does not believe that he has an attention deficit disorder either. (NT 169-170, 345-346)

92. The District considered Dr. G's report in a meeting in which Dr. G participated by speakerphone. This was not an IEP meeting. The District did not agree that Student was a student with a specific learning disability as there was no difference between his ability and his achievement.⁷ His scores were in the Average Range and he was making good progress in school with good grades. (NT 159, 165, 239, 248, 278, 342-344, 346-347; S-18)

The Current IEP – Sixth Grade

93. Although the meeting in which Dr. G participated by telephone was not an IEP meeting, Dr. G noted that "many items that were going to be included in this IEP were discussed at that meeting. Many of the issues to be addressed in an IEP were discussed in that meeting." Dr. G endorsed much of the SDI. (NT 165, 168-169, 337)
94. All at the meeting agreed that Student continued to be a student with a speech/language impairment and in need of specially designed instruction; that Student was experiencing auditory memory and auditory processing difficulties that negatively affected his classroom performance; that Student was having difficulties with reading decoding and at times writing that require him to have additional services in the nature of learning support services to address reading and writing more specifically; and that Student would receive learning support services from a learning support teacher in all his major subjects in a co-taught classroom, with the exception of reading/language arts, where he would receive services in a pull-out replacement class to work on difficulties with reading decoding and writing. (NT 240, 279; S-18)
95. The "team consensus was to provide additional learning support services based on the additional educational diagnosis of "other health impairment" due to auditory processing difficulties, and reported ADHD, despite Student's qualifying for these same services under his present educational diagnosis of "speech/language impairment". The District decided to add these supports because of the Parents' concerns, even though they did not view Student as a student with a specific learning disability in reading or writing. The District was trying to compromise with the Parents. (NT 347, 358-359; S-19)
96. The District issued an Evaluation Report in October 2006 and the MDT formally recommended that Student receive learning support services in the areas of math, science and social studies in an inclusive co-taught setting with one regular education teacher and one special education teacher in the room to assist Student with reading, writing or memory difficulties. The MDT team also recommended that Student receive reading/language arts in a replacement reading/language arts class that would assist Student in improving his reading decoding and assist him with writing. (NT 247-248; S-18)

⁷ At the present time the District does not use an RTI model for diagnosing a learning disability. (NT 323-324325)

97. Although the Parents checked their agreement with the ER, they appended a statement that they believe that Student has a learning disability. (NT 86, 279; S-18)
98. The Parents believe that Student has a learning disability because in reading and writing “the things that he should have caught onto, he doesn’t catch on...he’ll get it one day. He’ll be perfect one day. The next day he won’t.” (NT 114)
99. On October 5, 2006 a new IEP was developed for Student. The Parents were accompanied to the IEP meeting by an advocate. Subsequent to the IEP meeting the District and the Parents continued to communicate about the IEP draft through emails and changes were made. (NT 86-87, 282-283-287)
100. Needs were identified in the October 2006 IEP as auditory memory, auditory processing, memory skills, reading decoding and writing skills. (S-19)
101. The October 2006 IEP carries an annual goal for writing as follows: Given a 6th grade writing prompt, Student will independently improve his writing skills from a below standard in the areas of content, organization, style and conventions to a level 3, meeting the District’s standard. (S-19)
102. The October 2006 IEP carries annual goals for reading as follows: Given a direct instruction reading program, Student will increase his reading fluency from 112 wpm to 124 wpm when given a fourth grade reading passage; Given a baseline assessment, Student will move from a 4th grade decoding level to a 5.5 grade level through the use of a direct instruction reading decoding program; When given a list of consonants vowels, digraphs/trigraphs and blended sounds Student will correctly identify 90% of the sounds over 3 consecutive trials. (S-19)
103. One of the annual reading goals in the October 2006 (current) IEP was placed in the IEP at the request of the Parents and Dr. G. (NT 244-245; S-19)
104. The October 2006 IEP carries an annual goal for learning strategies as follows: Student will develop a booklet of 10 learning strategies, and demonstrate application across the curriculum to support his learning by making a portfolio of class work employing the different strategies. (S-19)
105. The October 2006 IEP carries an annual goal for memory as follows: Student will recall a list of 12 out of 12 curricular words using visualization strategies. (S-19)
106. The October 2006 IEP carries an annual goal for speech/language as follows: Student will correctly producer 20 curricular multi syllabic (4 syllables) words, given instruction in phonological skills of syllabification, rehearsal and oral motor awareness training. (S-19)

107. The October 2006 IEP carries specially designed instruction as follows: direct instruction in reading in RELA class (daily), extension period scheduled in resource room/review, repetition, clarification of concepts in Resource Room (1 hour per 4 day cycle), study guides for classes (prior to assessment), skeletal outlines for notetaking (whenever large amounts of notes are given in class), copy of teacher notes (when notes are given in class), use of books on tape (as needed and determined by teacher and student), extended time for tests and assignments (as needed and determined by teacher and student – amount of time determined by teacher), opportunity for revision after receiving written or oral teacher feedback (as determined by teacher), paraphrase instructions to check for understanding (daily), use of computer or scribe for lengthy assignments (as determined by teacher), alternative assignments (as determined by teacher/student request), homework agenda checked (daily), untimed tasks/opportunity to challenge individual time rather than meet class criteria (when timed tasks are given), alternative schedule (as appropriate based on student need), aide support in math class (daily), self monitoring checklist for class materials (daily), use of calculator in math and science (daily), and use of graph paper in math and science class (daily). (S-19)
108. SDI is being used in the current sixth grade program as written daily and/or as needed. One of his special education teachers testified that although they are provided as per the IEP some of them often do not seem necessary. (NT 436-439, 447-449)
109. The October 2006 IEP provides the following Related Services: Speech/language therapy 30 30-minute sessions per IEP year pull-out and 30 30-minute push in sessions per IEP year; guidance counselor consultation for course selection once in the spring; occupational therapy evaluation once during October, SETT evaluation for possible use of assistive technology minimum of once within 60 school days. (S-19)
110. The District issued a NOREP on October 5, 2006. The Parents checked that they “approve of the recommendation that the IEP be implemented at this time, however we do think it is not appropriate and it doesn’t suit all of Student’s needs. We will however agree so Student can start his classes in the Learning Support RELA class”. The IEP was implemented on October 26, 2006 after the Parents’ approval was obtained subsequent to a meeting with the teachers and the Parents so the Parents could hear how the SDI was being explained to the teachers. (NT 286-288; S-20)
111. The Parents believe that Student should be getting more reading and writing instruction. (NT 115)
112. Student is being instructed in reading using the SRA Corrective Reading Program, a multisensory program that addresses both decoding and

- comprehension. Student's class is emphasizing decoding because that is the area of need for him and the students with him. The program is systematic, research-based, scripted and repetitive, and addresses phonemic awareness and comprehension. There is an assessment at the beginning of the program and a student does not move on until everyone in the group has reached proficiency on the lesson. There is a daily checkout for fluency. On the last checkout as of 3/2/07 Student was expected to read 100 words in 60 seconds at the 4.9 grade level and he read 176 words in paragraph form. The fluency goal for the fifth grade passage is 137. (NT 241, 289-290, 292, 411-412, 424, 427; S-23)
113. In the RELA class there are eleven students and two co-teachers. The students are broken into two groups for reading based on a pre-assessment. (NT 402-403)
114. Writing is a major District initiative for all teachers. The students are taught the writing process and expectations are clearly spelled out. All teachers are given staff development to learn how to focus on writing across the content areas. Student is working on writing in his RELA class, but also in all his classes. (NT 293)
115. In the RELA class writing is taught through the use of prompts and graphic organizers and skills are assessed through the District's writing rubric. Although there is no specific writing program used as a whole, the Write Source Program is used as a supplementary aid. (NT 418-420)
116. Student is doing very well in school this year. He made the honor roll for the third marking period and received recognition for showing the most motivation of the students on his team. (NT 290-291)
117. In his replacement RELA class Student is "pretty far above the rest of the class", "definitely at the top of the class". Students turn to him if they have a question, and they view him as being far above them. (NT 423, 444)
118. In science and social studies he is an average to above-average student. (NT 444)
119. Student is able to achieve academic success and make progress in all his classes. He is able to read the material for all his classes and he is able to respond in writing in all his classes. Reading comprehension is a definite area of strength. He almost always gets 100% in his workbook, and if he gets one item wrong it is usually a spelling error. (NT 295-296, 423)
120. Student continues to receive speech/language therapy services, twice a week, one time for a one-to-one pull-out session and one time within one of his classes. (NT 514-516)

121. In speech/language therapy Student works on phonological skills, listening, syllabication, and various memory skills and techniques. (NT 517-518, 537-538, 541-542)
122. Student is doing very well in speech/language therapy; he has moved very quickly in the area of memory skills. Spelling skills and multi-syllabic pronunciation usually requires three tries. (NT 515-516, 523-526; S-26)
123. Observed by the speech/language therapist in the classroom settings Student has been able to work at the same pace as his peers. He has been carrying over strategies from therapy to the classroom. (NT 519-522)

Headaches and Anxiety

124. Student experienced headaches during the school year and during the summer when school was not in session at the frequency of four to five headaches a week. These headaches continue. The Parents are not sure if the headaches are caused by anxiety. The first communication to the District about his headaches was in relation to loud noises so accommodations were made in music class. (NT 106-108, 223-224, 238)
125. The Parents had a neurological evaluation performed on Student at [redacted] Hospital in August 2003. The neurologist concluded that Student's long-standing history of headaches which continue even during the summer when school is not in session does not seem to prevent him from school attendance or other activities. She "wondered" whether the headaches were "linked to the school problems". She recommended, "If there is a definite connection between anxiety and his headache, a [sic] formal counseling should be considered. At the present moment I do not recommend any treatment..." (NT 52; P-6)
126. This District did not see the [Hospital] evaluation until the due process hearing; the report was not in the District's records, although the Parent believes she gave it to someone in the District. (NT 276-277).
127. In fifth grade Student went to the nurse "a couple of times" to get headache medicine. (NT 390)
128. Student always experienced anxiety in the beginning of the year and the anxiety would lessen as the teachers became familiar with him. (NT 75)
129. When Dr. G tested Student she did not find that he had the type of anxiety that would have interfered and affected his scores. (NT 171-172)
130. In fifth grade the teacher did not see any anxiety in Student in the classroom and the teacher does not remember any of his special subjects teachers commenting on anxiety in him. (NT 372, 391, 398)

131. At the beginning of 6th grade (2006-2007 school year) Student had his usual anxiety and this was observed by the school-based team. His anxiety was greater than that of the typical student. (NT 75-77, 280, 302-303)
132. The middle school was different from the elementary school as it is in a larger building and the students change classes. Many students find the transition to 6th grade stressful. (NT 281)
133. Student said that middle school was “too hard” and that he “was afraid”. The Parents communicated this information to the teachers and the guidance counselor. (NT 77-78)
134. At the beginning of the year Student was crying a lot, even in school. The sixth grade guidance counselor touched base with the counselor from fifth grade to see what he had been like the year before in terms of anxiety level. (NT 291)
135. At the end of October when he entered the RELA class he was exhibiting anxiety, for example with a locker situation. Since then it is very rare. (NT 441-443)
136. A plan was developed that as soon as Student got to school he would see the guidance counselor and she would talk to him. This helped him go from home to school and at school. (NT 78)
137. The guidance counselor worked individually with Student. (NT 546, 553)
138. The sixth grade guidance counselor worked with Student on teaching him calming techniques and told the teachers about the techniques. The teachers made an effort to make a special connection with Student around his areas of interest. (NT 291-292, 546-547)
139. Student can see the guidance counselor whenever he needs to and has seen the nurse occasionally. He took advantage of seeing the guidance counselor. (NT 292, 295, 303)
140. Student has been involved in a weekly group geared toward making friends, held by the guidance counselor for students transitioning to sixth grade. (NT 294, 546, 551-552)
141. Although Student would sporadically get frustrated and start to cry in the beginning of the year, this tapered down and has not happened since December of

this school year. Student's anxiety has decreased considerably over the course of this year.⁸ (NT 295, 547, 548, 551, 553)

142. The speech/language pathologist has not observed anxiety in Student in his classes. He appears confident. (NT 522)
143. None of Student's teachers informed the guidance counselor that he was exhibiting anxiety since she stopped seeing him. (NT 554)

Credibility of Witnesses

A Pennsylvania Special Education Hearing Officer is specifically charged with making credibility determinations regarding the witnesses' testimony, as in the great majority of cases the hearing officer level is the only level at which direct testimony is taken. The weight assigned to the various witnesses is discussed below.

Discussion and Conclusions of Law

Legal Basis and Discussion

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004). Having been found eligible for special education, Student is entitled under the IDEIA and 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).

As per the IDEIA regulations, the IEP for each child with a disability must include a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet the child's other educational needs that result from the child's disability; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent

⁸ When the counselor began describing the things that Student told her he worried about, the Parents through counsel asserted Student's confidentiality so the direct examination of the witness stopped. (NT 548-550)

practicable, to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided to enable 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 §300.320(1-4)

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 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing Board of Education v. Diamond, 808 F.2d 987 (3rd 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 (3rd Cir. 2000); Ridgewood Bd. of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999); S.H. v. Newark, 336 F.3d 260 (3rd 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 (9th Cir. 1999); Rose supra.

Districts need not provide the optimal level of service, maximize a child's opportunity, or even 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 (4th 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 his untapped potential, or between his 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)

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). Under the IDEA parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student. M.M. v. School Board of Miami - Dade County, Florida, 437 F.3d 1085 (11th Cir. 2006); Lachman v. Illinois Bd. of Educ., 852

F.2d 290, 297 (7th Cir. 1988) 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).

Compensatory education is a remedy designed to provide a student with the services he should have received pursuant to a free appropriate public education (FAPE). When a student has been denied the due process rights or an appropriate educational program that he should have received, compensatory education is an in-kind remedy. Lester H. v. Gilhool, 916 F. 2d 865 (3d Cir. 1990), cert. denied 499 U.S. 923, 111 S.Ct. 317 (1991) A child is entitled to compensatory education services if the child is exceptional and in need of services and/or accommodations and if through some action or inaction of the District the child was denied FAPE. With regard to the standard for determining whether and to what extent compensatory education should be awarded was summarized by the Third Circuit in M.C. v. Central Regional School District, 81 F. 3d 389, (3d Cir. 1996). As the Court in M.C. observed, when a school district fails to deliver that to which a student is entitled, an award of compensatory education is justified.

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).

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion 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). However, application of the burden of proof does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio.

Discussion

Due to some weaknesses identified in kindergarten, beginning in first grade Student received reading assistance through a regular education program initiative (FF 2). In

February of his first grade year he was identified as needing speech/language services and later testing confirmed the existence of an auditory processing problem as well as some physical difficulties that interfered with the act of writing (FF 3, 4, 5, 11). Student received speech/language therapy, occupational therapy and the use of an FM trainer (FF 6). As the Parents believed that Student was a child with a specific learning disability they requested that the District perform a multidisciplinary evaluation which was completed in September of his second grade year. The District conducted cognitive, achievement, and perceptual-motor evaluations and concluded that Student's ability and achievement were not discrepant, that he was performing in the broad average range overall in all academic areas tested, and that he did not meet criteria for a specific learning disability (FF 7, 8, 9, 10, 12, 14, 15, 18). The multidisciplinary team found that Student remained eligible for an IEP addressing speech/language issues; the IEP also provided for occupational therapy and continued reading assistance (FF 16, 17). Disagreeing with the District's findings the Parents asked for an independent educational evaluation at public expense (IEE) and the District agreed (FF 20). The evaluator, Dr. S, reviewed the District's work and performed a total of nine tests or parts of tests herself. However, in the areas of disagreement (reading and writing) Dr. S's testing was quite skimpy (FF 21, 22, 23). Based on her record review and perfunctory testing Dr. S diagnosed Student with a learning disability (FF 25). However, Dr. S also endorsed the program that the District had been providing and proposed to provide to Student (FF 27). This hearing officer found the District's September 2002 evaluation to be appropriate and the conclusions sound. The conclusion of the independent evaluator, based on her clinical opinion gleaned from records review and inadequate testing, was not supported by the evidence.

During the second half of fourth grade, the beginning of the period covered in this decision, the two IEPs governing Student's special education program (FF 32, 43) were appropriate and addressed his areas of needs with well-designed specially designed instruction (FF 32, 33, 37, 38, 39, 40, 41). Student made meaningful educational progress during fourth grade (FF 34, 36, 48, 49). The IEP prepared for fifth grade likewise was appropriate (FF 51, 53, 54, 56, 57, 58) and Student made meaningful educational progress (FF 61, 62, 63, 65, 66).

The Parents, wanting to be proactive and concerned about Student's ability to do well in sixth grade, took him to an audiologist who recommended he receive Fast ForWord over the summer and who also recommended a private evaluator. The Parents engaged the private evaluator and a second IEE was completed in June, at the end of fifth grade, with a report being provided to the District in mid-August, just prior to the beginning of sixth grade. This independent evaluator, Dr. G, conducted a substantial battery of tests, but her testimony was given limited weight due to a variety of factors ranging from misinformation to unorthodox interpretations of the data. Among other things, Dr. G writes that Student was previously identified as having a learning disability (FF 73) although this was not a District classification, she did not solicit input from Student's teachers even though in early June school would no doubt still have been in session (FF 74) and did not attempt to verify with the school what the Parents told her (FF 75). She opined that Student would have trouble reading textbooks at his grade level without

conducting a probe in this area (FF 80), and wrote that he “continued to struggle” in reading when scores from the WJ III showed steady educational progress (FF 84). She found that Student’s written expression abilities were average but then concluded that writing was “an area of deficiency”. In fact, Student made year for year progress in writing as illustrated by the WJ III scores (F 86). Most troubling was the fact that, while opining that Student had a learning disability, she utilized confusing and novel ways of making her diagnosis (FF 87, 88, 89). Even in a more straightforward sphere, she provided a written diagnosis of attention deficit disorder, but then testified that she did not believe Student had an attention deficit disorder (FF 91). Particularly under cross-examination this witness, upon whose testimony and report the Parents’ case was largely built, was simply not credible and did not bolster the Parents’ position in any way.

The District psychologist who testified is a professor at [redacted] University who teaches assessment. He clearly explained the process for diagnosing a learning disability using the discrepancy model, which is the model currently in use in the District. Moreover, he specifically ran each of the numbers obtained by Dr. G through the formula for ability/achievement discrepancy and found no area in which Student’s scores were discrepant (FF 90, 92). This hearing officer is in agreement with the District, based on this psychologist’s testimony and the record as a whole, that Student does not have a learning disability in the areas of reading or written expression, and does not have one in mathematics either.

As regards the topic of anxiety, although various school personnel and the mother testified that Student has at times exhibited anxiety, most recently at the beginning of the current school year, the District has appropriately and successfully addressed this issue in the specially designed instruction and in the manner of providing counseling services to Student as needed. In this regard, the guidance counselor was entirely credible.

In regard to reimbursement for Dr. G’s evaluation, the Parents are not entitled, as they did not commission the evaluation in disagreement with one performed by the District and, although the District considered the evaluation results when designing the current IEP, the elements generously added to his program in response to the evaluation and the Parents’ wishes went beyond the services to which his legitimate needs entitled him.

The District constructed an IEP for sixth grade that provides specially designed instruction in reading and written expression to satisfy the wishes of the Parents, as well as in the area of his identified disability, speech/language and other health impairment (auditory processing). Contrary to the Parents’ belief, the specially designed instruction as written is entirely appropriate in all aspects, including where it is to be provided and under what conditions. Assuming for a moment, for the sake of argument, that Dr. G is correct and the District is incorrect regarding classification, Student is clearly being provided with FAPE, and well beyond FAPE, under his current IEP. The District’s special education teachers and speech/language therapist testified credibly and in detail about the program being offered to Student and to his progress. Although the record is not devoid of pieces of contradictory evidence, specifically the WJ III score in the area of reading nonsense syllables and the WJ III writing sample score (which the Parents’

expert testified was an underestimate of Student's abilities) the overwhelming, preponderant and persuasive thrust of the testimony and documents established the case that Student has not suffered a deprivation of FAPE, that his classification and his program are and have been appropriate, that he is making meaningful educational progress, and therefore he is not due compensatory education services.

Student's mother testified at length and left the overwhelming impression that she and her husband are loving, vigilant and persistent advocates for their child. However, the level of services desired by the Parents, and the level of attention that they expect the District to afford their concerns, is a level to which the law does not entitle a student. Student is receiving an appropriate education, and given the District's willingness to accommodate the Parents' concerns in the current IEP and the District's responsiveness to the Parents' frequent communications, this hearing officer finds that Student is receiving over and above the basic floor of educational opportunity to which he is entitled.

Order

It is hereby ordered that:

1. The Quakertown Community School District did not fail to identify Student as a student with a specific learning disability, leading to a denial of a free appropriate public education (FAPE).
2. As the Quakertown Community School District did not fail to identify Student as a student with a specific learning disability and thus deprive him of FAPE, he is not eligible for compensatory education.
3. Student's current IEP does appropriately address his educational needs in the areas of specially designed instruction and counseling.
4. The Parents are not entitled to reimbursement for the Independent Educational Evaluation they obtained for Student

May 3, 2007

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer