

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

---

5691/05-06 KE

File Number

JB

Child's Name

xx.xx.xx

Date of Birth

10/11/05

Date of Hearing

Closed

Type of Hearing

**For the Student:**

**For the St. Marys Area School  
District:**

St. Marys Area School District  
977 South St. Marys Street  
St. Marys, PA 15857

Jeffrey Champagne, Esq.  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Date of Hearing:	October 11, 2005
Receipt of Transcript:	October 19, 2005
Date of Decision:	November 3, 2005
Hearing Officer:	Daniel J. Myers

## **BACKGROUND**

Student is a xx year old student of the St. Marys Area School District (School District) with an auditory processing disorder and deficits in organizational skills and memory. Student's parent contests the School District's proposed 2005-2006 individualized education program (IEP) because Student does not believe that past IEPs have been implemented. As described in greater detail below, I find for the School District.

## **ISSUE**

Whether or not the School District's proposed 2005-2006 IEP should include intensive one on one instruction to address Students' deficits in math, written expression, organization and planning, working memory, and visual and auditory perception and processing? (HO 2; N.T. 16)  
1

## **FINDINGS OF FACT**

1. Student, whose date of birth is xx/xx/xx, is a xx year old resident of the School District. (SD 1)
2. In September 1993, Student was attending public school kindergarten at the School District. In October 1993, Student's parent requested a comprehensive evaluation based upon speech and academic concerns. On February 11, 1994 the [redacted] School District issued a comprehensive evaluation report. Student's Stanford Binet IQ test results indicated cognitive ability in the low average range, and Student's below average reading and math readiness scores on the Woodcock Johnson Test of Achievement were within expectations in relation to cognitive functioning. Thus, the School District concluded that Student did not exhibit a specific learning disability. It did, however, provide itinerant speech and language services based upon mildly delayed receptive language abilities and some speech articulation deficits. (SD 1; SD 2; P6, page 1-5; N.T. 67, 136, 173)
3. On December 12, 1994, a privately-secured evaluation by the [redacted] Hospital concluded that Student did not exhibit a specific learning disability, because Student's below age and grade level achievements were consistent with Student's cognitive abilities. That evaluation did, however, note some motor difficulties and attentional weaknesses. (SD 3; N.T. 67-68, 70)

### **Second Grade, 1996-1997**

4. At the beginning of the 1996-1997 school year, Student entered the School District, and began attending 2<sup>nd</sup> grade. Student received instructional support in reading during the

---

<sup>1</sup> References to "P," "SD," and "HO" are to the Parent, School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcript of the October 11, 2005 hearing session.

- first semester. In January 1997, Student's parent requested an evaluation. (N.T. 136; SD 4; SD 5; SD 7; P6, page 231)
5. A February 25, 1997, speech and language evaluation observed no articulation errors, receptive language skills exceeding Student's chronological age, and average-range overall language skills. Student's phoneme recognition skills were in the below-average range, however, and Student's teacher reported difficulty with phonics. Student's teacher further reported that Student had experienced significant progress through instructional support (IST) in reading since the beginning of the year. The speech and language evaluation concluded that Student did not present a speech and language impairment. (SD 8; N.T. 70-71, 138, 173)
  6. The School District's April 14, 1997, evaluation report (ER) noted below average skills in recognizing differences between phonemes. Unidentified IQ testing yielded an average range full scale IQ score at the 37<sup>th</sup> percentile. Unidentified achievement testing resulted in average math and reading comprehension scores, and below average scores in reading decoding, spelling and math computation. Student's teacher reported a need for re-teaching before Student completed new tasks, and difficulty understanding and completing homework. The ER concluded that, while Student was developing 2<sup>nd</sup> grade level skills with difficulty, Student did not appear to have a specific learning disability and Student did not appear to need special education services. (SD 9; N.T. 71, 173)
  7. On May 7, 1997, the School District issued a Notice of Recommended Assignment (NORA) proposing that Student should remain in regular education. On August 24, 1997, Student's parent rejected the NORA. (SD 10)

### **Third Grade, 1998-1999**

8. On September 3, 1997 Student's parent and the School District met to discuss their dispute regarding Student's programming. They agreed that Student would not receive special education, but that Student would continue receiving Title I reading assistance. (SD 10; N.T. 138)

### **Fifth Grade, 1999-2000**

9. On September 17, 1999, Student's Title I reading teacher administered the Gates-MacGinitie assessment, indicating that Student's reading vocabulary was at the 3.6 grade equivalent, which was at the 18<sup>th</sup> percentile, Student's reading comprehension grade equivalent was 4.4 (41<sup>st</sup> percentile), and Student's total reading grade equivalent was 4.0 (29<sup>th</sup> percentile.) Student was found to be below 5<sup>th</sup> grade level in all areas except listening comprehension, with a weakness in phonics. Student's Title I reading teacher recommended continued Title I reading services three days per week. (SD 11; N.T. 173)
10. On or about October 12, 1999, the School District and Student's parent agreed to a Chapter 15/Section 504 service agreement that provided for proximity seating near the teacher, additional time for assignments, shortened spelling words, frequent

reinforcement, visual cues, instructional work at the 3.5 - 4.0 grade level, extra practice in basic math facts, Title I reading, and additional time for tests. (SD 12; N.T. 139)

11. Sometime between January and March 2000, Student's parent obtained several private evaluations.
- a. A January 2000 Occupational Therapy (OT) evaluation did not recommend any school-based OT services. (P5, page 1; N.T. 173)
  - b. A February 26, 2000 psychological report by school psychologist Mr. W noted WISC III IQ scores of 112 Verbal, 106 Performance, and 109 Full Scale.
    - i. WIAT scores were as follows:

<b>WIAT Subtest</b>	<b>Standard Score</b>	<b>Grade Equiv.</b>
Basic Reading	83	3.8
Numerical Operations	86	4.8
Mathematics Reasoning	91	4.6
Spelling	92	5.0
Reading Comprehension	111	7.1

(P5, page 4)

- ii. Mr. W's evaluation report noted that, although Student demonstrated attention deficit disorder (ADD) symptoms, they were more likely to be manifestations of Student's auditory perceptual and processing deficits. (P5, page 5)
  - iii. Mr. W concluded that Student qualified for learning support services for language arts and mathematics, he suggested support services for science and social studies if those courses required significant reading or writing, and he recommended guidance counseling regarding academic progress and social emotional concerns. (P5, page 6)
12. In March 2000, Student was placed into homebound education for the remainder of the school year due to high anxiety and stomach ulcers. (SD 13; P4; P5, page 2; 140, 193-194) Student's March 23, 2000, IEP team noted that Student was receiving home bound services, determined that Student was eligible for special education services due to a specific learning disability, and agreed to develop an IEP that would include OT and learning support services in math and language arts, OT. Finally, they agreed to wait for additional information from Student's physicians before developing an IEP that would return Student to school. (SD 13)
13. On July 28, 2000, the School District issued a comprehensive evaluation report (CER) concluding that Student had a specific learning disability in the areas of listening comprehension and written expression. (P6, page 17)

### **Sixth Grade, 2000-2001**

14. Student's August 1, 2000, 6<sup>th</sup> grade IEP noted that Student had severe problems with language processing which could interfere with Student's ability to follow verbal directions as well as tasks involving language skills.

- a. It contained a goal to improve reading comprehension, sight vocabulary, decoding skills, oral reading, and “survival reading.” Another goal was to improve Student’s handwriting, Student’s expressive writing, and Student’s spelling. A third goal was to complete “pre-set requirements” of regular and learning support classes.
- b. The IEP called for Student to attend adaptive courses, which are regular education middle school courses that are taught at a slower pace, with smaller class sizes (approximately 14 students)<sup>2</sup> and with more opportunities for practice and repetition of skills.
- c. It provided for Student to attend the resource room for one period each day and for one period of emotional support services each week, as needed.
- d. It provided for an AlphaSmart device to assist Student in taking notes and writing reports, and it permitted allowances for spelling errors, preferential seating, use of resource room for tests, semi-monthly parent teacher meetings, resource room teachers checking Student’s assignment book, and an OT evaluation.  
(SD 14; SD 15; N.T. 141-142, 196-197; P6, page 25)

15. Student used an assistive device during this school year, probably similar to an FM system in which the teacher wore a microphone and Student wore the speaker. Student’s parent contends that the School District did not properly train its teachers regarding the use of this system. On one occasion when the teacher reprimanded another child in the hallway outside of class, the other children in the class gathered around Student to hear the teacher’s conversation on Student’s assistive device. (N.T. 213)

### **Seventh Grade, 2001-2002**

16. Student’s August 2, 2001, IEP for his 7<sup>th</sup> grade year contained two goals: 1) To achieve passing grades in Student’s classes, with the short-term objective/benchmark to bring Student’s assignment book to class; and 2) To demonstrate techniques and strategies for success. The IEP provided that Student would receive weekly OT, weekly itinerant emotional support if needed, and “resource room all year.” (SD 16; SD 17; SD 18; P6, page 28)
17. On October 10, 2001, a private speech and hearing re-evaluation at [redacted] University indicated that Student’s hearing was within normal limits, but that Student demonstrated significant difficulty with auditory perceptual abilities. Student exhibited below average skills in both receptive and expressive language, difficulty with sentence formulation, and auditory discrimination problems in the presence of background noise and in deciphering competing messages. (P6, page 47-48; P5, page 14)
18. On January 2, 2002, the School District issued another ER in response to a request from Student’s parent. Student’s parent was not satisfied with Student’s placement in adaptive middle school classes, feeling that Student spent all day being teased and humiliated at

---

<sup>2</sup> Student’s parent alleges that 2/3 of the students in the adaptive classes had behavioral rather than academic problems. (N.T. 196-197)

school, and then spent all evening at home learning the information that Student should have been learning at school.

- a. The School District's Woodcock Johnson ability and achievement tests indicated that Student's overall intellectual ability was in the average range, although Student demonstrated a significant relative weakness in cognitive efficiency. Student's performance was average in math, written language and written expression, and low-average in reading and math calculation skills. The ER concluded that Student did not have a specific learning disability.
  - b. The ER noted that Student's low average/borderline freedom from distractibility score on Mr. W's March 1, 2000 WISC III indicated significant processing difficulty.
  - c. The ER concluded that Student was succeeding in Student's adaptive classes and was performing as well as, or better, than Student's classmates.
  - d. The ER concluded that Student did have a speech or language impairment and was in need of specially designed instruction.
- (SD 20; N.T. 73-75, 125-127; P4, page 14; P6, pages 41, 53)

19. A January 22, 2002 IEP provided for adaptive classes, end-of-the-day resource room support, and weekly OT and speech and language services. One of Student's goals was to generalize the skills Student learned in speech and language therapy regarding auditory discrimination, organizational skills, auditory memory, following directions, formulating complex and meaningful sentences, and increasing Student's knowledge of word classes. Student's other goal was to improve Student's visual sequencing and visual memory by copying words from sentences. (SD 21; P6, pages 67, 73)

### **Eighth Grade, 2002-2003**

20. On August 19, 2002, Student's pediatrician, Dr. F, diagnosed an auditory processing disorder, based upon unidentified evaluations by both University and Hospital. (P4, page 17)
21. Student's January 23, 2003 updated IEP contained the same goals and objectives as Student's January 2002 IEP. (P6, pages 81, 239; SD 21; SD 22; SD 23)
22. On or about April 28, 2003, an independent evaluation was performed by school psychologist Mr. Y.
- a. Student's Woodcock Johnson IQ score of general intellectual ability was 106. In verbal ability, Student's standard score was 123.
  - b. Student's Woodcock Johnson overall performance in math, reading and writing was at the lower end of the average range.
  - c. Mr. Y concluded that Student's cognitive efficiency, phonological skills, word attack and spelling skills were substantially lower than Student's verbal intellectual ability. He attributed this to Student's relative weaknesses in working memory and Student's need for extra processing time.
  - d. Mr. Y recommended that Student needed, at least, a Chapter 15 service agreement. (P5, pages 31-32)

- e. The School District argues, and I agree, that Mr. Y's report lacks credibility because he does not compare Student's overall or general intellectual ability score to achievement, but rather he selectively compares Student's highest IQ subtest score to achievement. (N.T. 107-108)
23. A privately-secured May 2, 2003 audiologist report suggests that Student's auditory processing deficit causes Student difficulty in acting upon incoming written or verbal information, which may cause poor organizational skills, difficulty following directions, poor word retrieval, and may affect spelling and writing. (P5, page 37) The audiologist recommended preferential seating, repetition, phonemic awareness during speech and language therapy, pre-teaching, chunking and verbal rehearsal to improve memory, organizational help, a reading specialist evaluation, and use of an FM system in the classroom. (P5, page 38)
24. Student's 8<sup>th</sup> grade PSSA scores were Below Basic in Math and Proficient in Reading. (P6, page 125) In comparison, the 8<sup>th</sup> grade PSSA scores of Student's brother were Proficient in both Math and Reading. (P6, page 127; SD 25; N.T. 155, 198)
25. On July 7, 2003, Student's parent requested a hearing evaluation by the Western Pennsylvania School for Deaf and Hearing Impaired. (P4, page 20; SD 26)
26. On July 11, 2003, Student's occupational therapists reported that Student had met all of Student's OT goals, and they recommended discontinuation of OT services. (SD 27; N.T. 143-144)

#### **Ninth Grade, 2003-2004**

27. Student's October 20, 2003 IEP noted that all of Student's grades were 80% or mid 80% and that Student was demonstrating success in all class work. It noted Student's difficulties with organization, daily assignment book completion, and refining short and long term memory skills. Student's goals remained the same as before. (P6, page 106-109; SD 29; SD 30)
28. Student's end of year 9<sup>th</sup> grade report card contained a 79% in American Culture, with the remainder of Student's grades in the 80s and 90s. (SD 34)
29. On June 3, 2004, a privately-secured neuropsychological examination by Dr. F2 noted WISC-III IQ scores of 91 Verbal, 89 Performance, and 89 Full Scale.
- a. Wide Range Achievement Test (WRAT) scores were:

<b>Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>Grade Equivalent</b>
Arithmetic	81	10 <sup>th</sup>	7 <sup>th</sup>
Reading	80	9 <sup>th</sup> %	7 <sup>th</sup>

Spelling	70	2 <sup>nd</sup>	4 <sup>th</sup>
----------	----	-----------------	-----------------

- b. A Peabody reading comprehension test standard score was 84, which is in the 14<sup>th</sup> percentile and at a 5.8 grade level.
  - c. Dr. F2 concluded that, unless Student improved Student's reading and math skills before Student graduated, Student's future employment would be limited to jobs and programs that involved only a 7<sup>th</sup> grade reading level.
  - d. Dr. F2 diagnosed a Mathematics Disorder, a Disorder of Written Expression (writing and spelling), a Learning Disorder NOS (new learning, organizing and planning), and Attention Deficit/Hyperactivity Disorder, predominantly inattentive.
  - e. The School District argues, and I agree, that Dr. F2's report has limited credibility because:
    - i. His math disorder diagnosis appears not to be based upon an ability/achievement discrepancy analysis, since Student's full scale WISC-III score in Dr. F2's report is 89 and Student's WRAT math score is 81.
    - ii. His written expression disorder diagnosis appears to lack any objective evaluation of Student's written expression.
- (P5, pages 49, 53; N.T. 99-102)

#### **Ninth Grade, 2003-2004**

- 30. For 9<sup>th</sup> grade, the School District upgraded Student's AlphaSmart to a "DANA" machine. Student and Student's parent, however, were frequently frustrated with the DANA because its battery often did not work, it was incompatible with other computer systems, they could not get it to print, and it often seemed to be more hindrance than help. (P4, page 23; N.T. 37, 145, 207, 209-210, 216, 226)
- 31. On October 19, 2004, Student's IEP team, including Student's mother, decided that Student no longer required speech and language services, and that Student's disability would be accommodated through a Chapter 15/Section 504 service agreement rather than through an IEP. Accommodations included a daily planner, an assistive writing device, a second set of books for home, preferential seating, extended time for tests, and assistance during study hall with Student's "reading Plato activities." (SD 35; SD 36; SD 38; P6, pages 183, 247; N.T. 90, 146, 174)

#### **Tenth Grade, 2004-2005**

- 32. Student's parent feels that Student was often bullied at school. (N.T. 204) On or about November 4, 2004, [an incident with a peer occurred]. (P4, page 25; N.T. 202)
- 33. On January 6, 2005, Student's parent requested reevaluation in response to Student's difficulty in completing homework and earning passing grades. (SD 37)
- 34. Student's end of year grades for 10<sup>th</sup> grade were:



<b>Subject</b>	<b>Grade</b>
Gym	94
Am Cult	89
Driver Tr. Class	87
Metal Tech	82
Bio Science	79
Applied Alg 1	78
English 2A	78
Speech Voc.	75

(SD 44; P3, page 3)

35. On April 11, 2005, the School District issued an ER, concluding that Student's auditory processing deficit constitutes a disability, specifically "other health impaired" (OHI), but also concluding that Student does not need specially designed instruction.
- The ER noted that, because Student did not demonstrate a sufficient discrepancy between Student's abilities and Student's achievement, Student did not have a specific learning disability.
  - The ER also observed that Student had been earning, without an IEP, passing grades in all subjects since October 2004.
  - The ER concluded that Student's service agreement was adequately addressing Student's needs, and it recommended that Student should continue receiving regular education with a Chapter 15/Section 504 service agreement.
  - I find that, although the School District's April 2005 ER does not explicitly refer to the outside evaluations of either Dr. F2 or Dr. Y, those opinions were, in fact, reviewed and considered when the 2005 ER was written.
- (SD 38; N.T. 95, 111, 130; P6, page 151)
36. On April 26, 2005, consistent with its ER, the School District proposed continuation of Student's Chapter 15/Section 504 service agreement. Student's parent, however, disagreed, contending that Student was not completing the work that is required for Student's grade level. (SD 41; SD 42; P6, page 185; N.T. 149)
37. After Student's parent requested, on May 23, 2005, a pre-hearing conference, the parties agreed to develop an IEP rather than a Section 504 service agreement. (N.T. 175)
38. On July 14, 2005 the School District issued a NOREP proposing itinerant learning support services in a resource room to assist Student with class activities, homework completion and organizational skills. (SD 45; SD 46; P6, page 187)
39. Sometime during 10<sup>th</sup> grade year, it appears that Student's parent filed a complaint with the Pennsylvania Department of Education's Bureau of Special Education with PDE, alleging that Student is a gifted student with disabilities that are not being addressed by the school. (P6, page 185) There is no evidence in the record regarding any disposition of this complaint.

40. On or about July 18, 2005, Student's parent filed a due process hearing request with the Office for Dispute Resolution, although it was not entered into the record as an exhibit at the due process hearing. This complaint alleged:
- a. Student is very far behind and needs intensive one on one to bring Student up to Student's potential. Student's intelligence is such that this is possible, but so far the school district has not seen the need and is unwilling to do this.  
(HO 2)
41. On August 8, 2005, I found that the July 18, 2005 due process hearing complaint lacked sufficiency, and I cancelled the September 6, 2005 hearing. (HO 2)
42. On August 12, 2005, Student's parent filed an amended complaint, with my permission, that sufficiently allowed me to describe the issue for hearing as whether or not the School District's proposed 2005-2006 program should include intensive one on one instruction to address Students' deficits in math, written expression, organization and planning, working memory, and visual and auditory perception and processing. (HO 2)

### **Eleventh Grade, 2005-2006**

43. On September 8, 2005, Student's IEP team developed an IEP.
- a. It has three goals addressing: 1) strategies for achieving passing grades; 2) independent use of daily organizing aids; and 3) independent daily use of planning aids.
  - b. Each goal has well-described short-term benchmarks and methods of reporting progress on those benchmarks.
  - c. Specially designed instruction and program modifications include preferential seating, resource room support, a peer mentor, chunked target dates for long term projects, repetition, retesting in the resource room, and teacher monitoring of Student's organizing binder.  
(SD 47; N.T. 147, 151-153)
44. On September 8, 2005, Student's parent approved the School District's proposed 2005-2006 IEP. (SD 48)
45. On September 27, 2005, Student received a Notification of Unsatisfactory Work in Student's Principles of Technology class because Student's class and homework assignments were either incomplete or poorly done, and because Student did not put forth sufficient effort. The Notification indicates that Student's current score in the class is 76%. (P 3, pages 2, 47; N.T. 30)
46. On October 3, 2005, Student's parent requested, over the School District's objection, a continuance of the October 11 hearing to allow time: 1) within which to procure an attorney; 2) to attend a family funeral; and 3) to attend to details related to the purchase of a new building for a family business. I denied that request because this case had been pending since July, Student's parent had already had plenty of time within which to hire

an attorney, and time was of the essence because this case involved a dispute regarding Student's current school year. (HO 2)

47. At the October 11, 2005 hearing, I concluded that Student's parent had not provided sufficient notice of any claim for compensatory education. (N.T. 15) I determined that evidence regarding past IEPs will be considered, not for compensatory education purposes, but rather for the purpose of judging the appropriateness of the School District's proposed 2005-2006 IEP. (N.T. 16)
48. School District Exhibits SD 1-50 were admitted without objection. (N.T. 232) Parent Exhibits 1 -7 were admitted into the record without objection. (N.T. 233)
49. I find the opinion of Mr. T, the School District's psychologist, to be credible.
- a. He has a Master's degree in educational psychology and he has been a certified school psychologist since 1983 for various school districts and intermediate units, both in Pennsylvania and in other states. Over the last 22 years, he has evaluated approximately 2,000 students, and he has administered the Woodcock Johnson tests of cognitive ability and achievement 1,000 times.
  - b. Since 2002, he has evaluated Student twice and he has reviewed in detail every outside evaluation of Student that the School District has.
  - c. His testimony at hearing was detailed and thorough.
- (N.T. 63, 66, 113-114)
50. There is no evidence in the record suggesting that Student requires one on one instruction.
51. This decision is issued:
- a. 108 days after the due process hearing request was filed;
  - b. 100 days after my assignment as Hearing Officer to the case;
  - c. 23 days after the hearing session; and
  - d. 15 days after receipt of the transcript.

## **DISCUSSION**

The Individuals with Disabilities Education Act (IDEA) and its successor, the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), and their implementing regulations, require the School District to provide a free appropriate public education (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412; Section 612(a)(1) of IDEIA, 118 STAT. 2676; 34 CFR §300.304 et seq.; 22 Pa. Code §14.102 et seq. This entitlement is delivered by way of the IEP, i.e., a detailed written statement arrived at by the IEP team, which summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. The burden is on the School District to establish that a child's educational program complies with the law. Oberti v. Board of Education, 995 F.2d 1204, 19 IDELR 908 (3<sup>rd</sup> Cir. 1993)

In this case, the parties have actually agreed to an IEP for this 2005-2006 school year. (SD 48) Student's parent nevertheless prosecutes this due process hearing request because, I believe, an unresolved "big-picture" conflict lingers between these parties. On one hand, Student's parent is disappointed that, after so many years of special education services, Student is still disorganized and not producing the high grades that she believes Student is capable of producing. (N.T. 186-187, 191, 198, 205) On the other hand, School District officials are satisfied with Student's average performance and they do not believe that Student even needs special education services and an IEP. (SD 38, SD 41, SD 42; N.T. 95, 130, 149)

In creating a legally appropriate IEP, however, 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. v. Laurel School District, Special Education Opinion No. 1451 (2004) ; See In Re J.B. v. Pennsbury School District, Special Education Opinion No. 1281 (2002) A School District is simply required to provide a program that confers more than trivial, or minimal benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989); Board of Education v. Diamond, 808 F.2d 987 (3d Cir. 1986) Further, children eligible for special education services are to be educated within the regular classroom "to the maximum extent appropriate." 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550; 22 Pa. Code §14.102(a)(2)(xxiv); Oberti v. Board of Education of Clementon School District, supra.

I recognize that previous IEPs have been "all over the map," variously providing OT, speech therapy, goals in reading and written expression, and sometimes non-measurable goals. (SD 14; SD 16; SD 21) I find, based upon the most recent ER, that Student has general processing and organizational deficits which, if not addressed throughout the day, will negatively impact Student's math, reading and written expression activities. (SD 38) I agree with the School District, however, that Student does not need one on one instruction in the academic areas of math, reading and/or written expression, but rather he requires an IEP addressing his processing and organizational deficits.

I find that the School District's proposed IEP for 2005-2006 meets the School District's burden. (SD 47) It is detailed and it provides explicit strategies to compensate for Student's organizational and processing deficits. I note that last year, with just Section 504 accommodations and no IEP, Student's grades in academic subjects ranged from a low of 75 to a high of 89. (SD 44; P3, page 3) The proposed 2005-2006 IEP, which builds upon the accommodations provided last year, reasonably can be expected to produce as much meaningful educational benefit as last year's service agreement.

Student will continue to struggle when Student does Student's homework, and Student may continue to be inclined to crumple Student's papers in Student's pockets rather than to use Student's organizing binder regularly. The School District's proposed IEP, however, acknowledges Student's needs in these areas, and it provides measurable goals for producing "more than minimal" academic progress. The proposed IEP will not cure Student's deficits, but it acknowledges their existence and it provides mechanisms that allow Student to meaningful participate in Student's classes despite their existence. The proposed IEP will not guarantee

optimal performance from Student – but the law does not require it to do so. Accordingly, I conclude that the School District’s proposed IEP for 2005-2006 is appropriate.

### **CONCLUSION**

Student’s parent contests the School District’s proposed 2005-2006 IEP because she does not believe that past IEPs have been implemented. I conclude that the proposed IEP addresses Student’s needs and is designed to produce meaningful educational benefit. Accordingly, I conclude that the School District’s proposed IEP for 2005-2006 is appropriate.

**ORDER**

For the reasons described above, I ORDER that:

- Accordingly, I conclude that the School District's proposed IEP for 2005-2006 is appropriate.
- No further action is required of the School District.

*Daniel J. Myers*  
Hearing Officer

November 3, 2005

Re: Due Process Hearing  
File Number 5691/05-06 KE  
, Student

[Redacted] School District