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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

File Number: 7194/06-07 LS
Child's Name: KC
Date of Birth: xx/xx/xx
School District: Minersville Area

Type of Hearing: Closed

For the Student:

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Due Process Hearing Request Date:	December 1, 2006
Mandatory Resolution Meeting Date:	February 27, 2007
Hearing Date:	March 13, 2007
Date Transcript Received:	March 19, 2007
Decision Date:	April 1, 2007
Hearing Officer:	Daniel J. Myers

Background

Student is a xx year old, 3rd grade resident of the School District with dysgraphia, a specific learning disability, and attention deficit disorder, hyperactivity. Her parent objects to the School District's proposed November 2006 IEP and contends that the School District has not been implementing Student's pendent IEP. She contends that Student needs a smaller class size and more instructional time with a teacher or aide. The School District defends its proposed and pendent IEPs. For the reasons described below, I agree with Student's parent that the proposed November 2006 IEP is deficient, but I disagree that the IEP must require a smaller class size and more instructional time with a teacher or aide. For similar reasons, I find the pendent IEP to be deficient as well. Accordingly, I order the School District to develop more appropriate baseline present levels of academic achievement, more appropriate IEP goals, and more appropriate progress monitoring.

Issues

Whether or not the School District has properly implemented Student's IEP?

Whether or not Student's IEP is appropriate?

Findings of Fact

1. Student, whose date of birth is xx/xx/xx, is a xx year old, 3rd grade resident of the School District. (N.T. 16, 17) Student has been diagnosed with dysgraphia, a specific learning disability, and attention deficit disorder, hyperactivity (ADHD.) (N.T. 44; P1) Student has a tendency to rush through academic tasks. (N.T. 33, 55) Student focuses more and performs better when receiving adult attention than when she is alone or simply with a group of peers. (N.T. 166) Student takes the prescription medications Concerta, Zoloft and Tenex. (N.T. 58)

2004-2005, 1st grade

2. In or about December 2004, while Student was in 1st grade, she began receiving learning support services and occupational therapy (OT.) At that time, her learning support classroom contained 8 children, with one teacher and one aide. (P1, p.4; N.T. 20, 45, 50)
3. For an unknown period of time, the local mental health/ mental retardation agency has provided therapeutic support services (TSS) to Student both at home and at school to address depression and negative behaviors. (N.T. 57, 61, 77) Since January 2007, Student has not been receiving TSS services at home, and TSS services at school have been reduced on the basis of her teacher's recommendation. (N.T. 57, 58, 61)

2005-2006, 2nd grade

4. Student's December 21, 2005, 2nd grade IEP indicated that her present educational levels were as follows:
- a. In Reading (P1, pp.4-5) :
 - i. Currently reading at a 1.5 grade reading level;
 - ii. Reads 15 words per minute in the Read Naturally assessment;
 - iii. Correctly answers 4/5 comprehension questions 70% of the time.
 - iv. Identifies 25 sight words from the Instant Word list.
 - v. Student's strength is in comprehending fiction/nonfiction materials.
 - b. In Math (P1, p.5):
 - i. Identifies random numbers up to 99;
 - ii. Orally counts to 96;
 - iii. Identifies quarters, dimes, nickels and pennies;
 - iv. Understands 1:1 correspondence for numbers 0-10;
 - v. Identifies time to the ½ hour;
 - vi. Adds and subtracts up to 10 without rote counting;
 - vii. Calculates 15 digits correct per minute at the 2nd grade level;
 - viii. Solves 2nd grade level addition of whole numbers with 70% accuracy; and
 - ix. Needs word problems read aloud to understand.
5. Student's December 21, 2005, IEP goals are confusing and difficult to understand:
- a. In Reading:
 - i. At the 1.5 to 2.0 grade level, Student will increase fluency, accuracy and comprehension to 35wpm with 90% accuracy.
 1. One short term objective is, on weekly probes, Student will increase decoding skills to 90% accuracy at the 1.5 to 2.0 grade level over 3 consecutive probes.
 2. A second short term objective is, on weekly probes, Student will increase fluency to 35 wpm at the 1.5 to 2.0 grade level over 3 consecutive probes. (P1, p.9)
 - ii. Student will improve comprehension, fluency and sight words by maintaining at least an 85% average in 4/5 trials. Next to this goal is written "90% accuracy in 4 out of 5 trials with curriculum based reading assessment, Instant word [sight] words, and Read Naturally series."
 1. A single short term objective is that Student will increase her sight word recognition to 70 words. (P1, p.10)
 - b. In Math:
 - i. Given grade appropriate math probes, Student will use the correct mathematical operation to solve single and double digit problems, identify time or money, with 85% accuracy in 4/5 probes. (P1, p.11)

1. One short term objective is that Student will solve single/double digit addition or subtraction with 85% accuracy in 4/5 probes.
 2. Another short term objective is that Student will identify coins and state their values with 85% accuracy in 4/5 probes.
 3. A third short term objective is that Student will tell time to the hour, $\frac{1}{2}$ hour and $\frac{1}{4}$ hour with 85% accuracy in 4/5 probes. (P1, p.11)
- ii. Given 25 math computation problems, Student will increase her math computation fluency to the 2.5 grade level with 18 digits correct per minute. (P1, p.12)
1. One short term objective is that Student will in increase her math computation fluency to the 2.0 grade level with 18 digits correct per minute.
 2. A second short term objective is that Student will in increase her math computation skill to 85% accuracy at the 2.0 grade level. (P1, p.12)

2006-2007, 3rd grade

6. Student's learning support teacher for the last two years has been Ms. V, who has a bachelors degree in psychology and state certification in elementary education and special education. (N.T. 114) She has two years teaching experience and, prior to teaching, ten years experience as a children and youth services social worker. (N.T. 114, 126-127)
7. Ms. V testified that she breaks her learning support students into ability-based groups of 2-4 children, and has the children move around to different learning stations during the course of the lesson. In this way, each group receives instruction from the teacher at two different times for 10-20 minutes each, while at other times of the lesson the children are either working together in their small group without the teacher, or independently at their individual desks. In total, Student receives direct teacher instruction with her math group of 3 students for 30-45 minutes daily, and with her reading group of 4 students for 45 minutes daily. (N.T. 65, 94, 118, 124)
8. During the first half of Student's 3rd grade school year, her TSS was Ms. H, who received her bachelor's degree in psychology last year. Student's TSS testified at the hearing that Ms. V's learning support classroom was chaotic, and that Student lacked direction and guidance, especially during individual work sessions. (N.T. 62, 69, 72) When the TSS informed Ms. V that Student couldn't focus under classroom conditions, Ms. V told the TSS that she, Ms. V, was very stressed. (N.T. 66, 72)

9. Ms. V testified at the hearing that she was stressed at the beginning of the 2006-2007 school year, and that she sought assistance from her supervisor. (N.T. 126, 147) Ms. V testified that the reason for her stress involved maintaining the flow of her classroom. Ms. V denied that she ever requested a classroom aide as a solution to her stress. (N.T. 147, 160-161) Ms. V acknowledged that, at least in the beginning of the school year, the presence of Student's TSS in the classroom was helpful in keeping Student focused. (N.T. 175)
10. On or about September 22, 2006, Student's parent wrote to Ms. V through Student's daily assignment book and asked why Student was reading at a 1.5 grade level when she was at a 2.0 grade level the year before. Student's parent wrote that she would like Student to remain at a 2.0 grade level and then move up to a grade 3 reading level. (P5, p.1)
11. Ms. V testified that she was instructing Student at a 1.5 grade reading level in August and September 2006, so that Student would feel successful. (N.T. 150) Ms. V testified that she gradually raised the reading level of Student's instructional material from 1.5 to 2.5, but Ms. V does not remember when that occurred. (N.T. 150, 152) It appears from correspondence between Student's parent and teacher in Student's assignment book that Ms. V was using 1.5 grade level material on September 21, 2.0 grade level material on October 6, and 2.25 grade level material on October 11, 2006. (P5; N.T. 18-19, 25-26)
12. Two IEP meetings were conducted on November 8 and 17, 2006, to discuss the concerns of Student's Parent that: 1) Student was having a difficult time concentrating in the learning support classroom; 2) there were too many children in the classroom with just one teacher; and 3) the solution should be the assignment of a classroom aide to that room. (SD 2, p.1; P2, p.6; N.T. 51, 85, 159)
13. The School District superintendent attended the November 2006 IEP meetings in response to reports that Student's parent had been difficult in earlier meetings with Ms. V. (N.T. 183) Student's parent testified that her meetings with School District personnel typically were difficult. Student's parent attributed the difficulty to unprofessional School District conduct, where she felt her concerns were not heard, where there was a lot of "back and forth," and where she was told to leave the teaching to the professionals. (N.T. 20, 42) The superintendent testified that Student's parent was hostile, insistent and very emotional. He testified that Student's parent demanded a classroom aide immediately, while Student's parent testified that she simply asked for either an aide or a tutor, to which the superintendent responded with a lecture about the budget. (N.T. 38-40, 183-185, 193-195)
14. In any event, the superintendent ordered Ms. V's supervisor to observe the learning support classroom and analyze classroom conditions. (N.T. 184-185) Ms. V's supervisor observed the classroom on at least 5 different days, recording

on a checklist the good teaching practices that she observed. The checklist does not indicate how frequently any particular teaching practice was observed – simply that it was observed at some point during at least one observation. (N.T. 86, 88-89, 107-108; SD 2) Ms. V’s supervisor observed small groups of 3-4 students engaged in their assignments, and no chaos. (N.T. 87; SD2, p.1) The superintendent also observed Ms. V’s classroom once, saw no chaos, and described it as a standard, not a model, classroom. (N.T. 185-186)

Student’s Performance Under the December 2005 IEP

15. For the 2006-2007 school year, Student’s grades for the first two marking periods were: (SD 1)

Subject	Marking Period 1	Marking Period 2
Reading	B	A-
Math	A	A+
Spelling	B+	A-
English	Satisfactory	Satisfactory
Writing	Satisfactory	Satisfactory

16. Although the December 2005 IEP is Student’s pendent IEP until the dispute concerning the School District’s proposed November 2006 IEP is resolved, Student’s teacher reported Student’s IEP progress pursuant to the proposed November 2006 IEP goals, rather than Student’s 2005 IEP goals. (P2, pp.24-26)
- a. Student’s teacher reports that Student has made moderate progress in reading. More specifically:
 - i. In reading fluency, Student is currently reading 43.5 words correct per minute at a grade 2.25 reading level with 80% accuracy. (P2, p.24)
 - ii. In reading comprehension, Student is at 2.25 reading level and attaining 80% of comprehension questions correct. (P2, p.24)
 - iii. In reading decoding, Student has made progress but becomes overwhelmed with two syllable words, working through them with guidance, but having a hard time with 3 or more syllables. (N.T. 170-171)
 - b. In Spelling, Student is currently receiving a 92% in spelling high frequency 2.25 grade level words. (P2, p.26)
 - c. In Math, Student is struggling in subtraction, has made progress in double digit subtraction and addition, and requires prompts in currency identification. (N.T. 123, 155) More specifically:
 - i. In math computation fluency Student has made moderate progress with 85% accuracy at 2.75 grade level, and 15 dcpm at 2.5 grade level. (P2, p.25; P3; N.T. 172-174)
 - ii. Student can tell time to the minute with 95% accuracy.

- iii. Student can identify coins and bills with 98% accuracy, add money up to one dollar with 80% accuracy and up to five dollars with 70% accuracy in three consecutive robes with prompts. (P2, p.25) Her teacher reports that Student can identify coins, with prompting, with 85% accuracy. (N.T. 161)
- iv. In using correct operation and problem solving strategies, Student has made moderate progress. At the 2.5 grade level, Student is accurate 89% of the time in double digit addition, and 76% of the time in subtraction. (P2, p.26)

The School District's December 2006 Proposed IEP

17. On November 17, 2006, the School District recommended new IEP goals. (P2, pp.1-23; P4) That new IEP contained the following:
- a. Student's handwriting and keyboarding OT services are described as "orientation and mobility" services. (P2, p.9) ¹
 - b. Student's present levels of academic achievement and functional performance are (P2, pp.13-14; P4, pp.5-6):
 - i. In reading she is being instructed the 2.25 grade level. Reading fluency is 34.3 average wpm on the 2.0 grade level. Reading comprehension is inconsistent, averaging 2.5 out of 5 questions correct. She identifies 35 high frequency sight words. She struggles with differentiating long and short vowel sounds. Student understands the parts of speech, is inconsistent with capitalization and punctuation, and writes complete sentences although her subsequent sentences in a paragraph usually repeat the first sentence.
 - ii. In math she is being instructed either at the 2.5 or 3.0 grade level.² In addition, she attains 10 dcpm at either the 2.5 or 3.0 grade level. She recognizes numbers up to 100, and counts to 100 by 2s and 5s. She can identify pennies, dimes and a quarter (there is no mention of nickels.) She adds and subtracts double and triple digit problems, and identifies numbers in the thousand place value. She sometimes understands concepts and demonstrates skills, but she is not always able to accurately apply these skills to her math problems.
 - iii. Student works better in small groups or one-to-one. She needs consistent redirection and does well with simple directions every 5-6 minutes. She responds well to highly structured environment

1 Orientation and mobility services, which are typically associated with children with severe vision impairments, are incongruent with Student's handwriting and keyboarding OT goals.

2 Two different versions of the proposed November 2006 IEP are in the record. (P2; P4) One lists a 2.5 math level (P2, p.13) while the other lists a 3.0 math level. (P4, p.5)

and consistent schedule. She tries very hard to keep up in a larger group setting but she does fall behind without direct instruction.

- c. Student's Reading goal is to increase fluency and accuracy at the 3.0 grade level from 42 wcpm to either 80 or 95 wcpm at the 3.0 grade level on weekly probes with 90% accuracy. Reading comprehension will increase from a baseline of 2.0 grade level to 3.0 with 90% accuracy in 3 consecutive probes. (N.T. 172-175; P2, p.18; P4, p.10)
- d. Student's Math goal is to increase her math computation fluency from either 2.0 or 2.5 grade level to either 3.0 or 3.5 grade level with 20 dcpm on weekly probes with 90% accuracy. (P2, p.20; P4, p.12) She will increase her math reasoning in time and money from a base line of 2.0 or 2.5 grade level to 3.0 or 3.5 grade level with 90% accuracy in 3 consecutive probes of 10 word problem sets, weekly. (P2, p.21; P4, p.13) She will apply correct operation and problem solving strategies in double digit addition and subtraction from the 2.0 or 2.5 grade level to the 3.0 or 3.5 grade level with 90% accuracy over 3 bi-weekly consecutive probes of 10 word problem sets. (P2, p.22; P4, p.14)
- e. Student's Spelling goal is to reach 90% accuracy on a weekly spelling list and 80% accuracy in written work in 3 consecutive weekly writing samples, from base line of 2.0 to 3.0 grade level. (P2, p.23; P4, p.15)

18. On November 18, 2006, Student's parent disapproved the School District's proposed IEP. Student's parent contends:
- a. Student needs a smaller learning support classroom.
 - b. Student's parent believes that the IEP must explicitly define the term "small group instruction." She contends that Student is distracted by, and cannot receive the adult assistance she needs in, her current class of 15 students. (P2, p.2; N.T. 33)
 - c. Student's Parent believes that all of the time that Student spends in the learning support classroom working either independently or in small groups without teacher assistance is ineffective because Student requires adult assistance in remaining focused. (N.T. 22-23, 33, 55)
 - d. Student's parent also does not believe the School District is accurately tracking Student's educational progress. She complains that reports of Student's grade level abilities change at each meeting. (N.T. 18-19, 34) Student's parent also complains that Student does not demonstrate money and time skills at home, causing Student's parent to disbelieve reports that Student actually has learned those skills. (N.T. 33, 71)
19. On December 1, 2006, the School District submitted the parent's due process hearing request to the Office for Dispute Resolution. I was assigned to this case on December 11, 2006, and I scheduled a hearing for January 31, 2007. (HO 2) I granted the School District's request for continuance until February 23, and later, to accommodate my own scheduling conflict, I continued the hearing to March 13, 2007. (HO 2)

20. On March 13, 2007, I conducted a due process. I refused to permit Student to add, in the middle of the hearing, an additional issue concerning Student's entitlement to extended school year services. (N.T. 123) I overruled parental objection to SD 3 and I admitted into the record School District exhibits SD1 – SD4. (N.T. 201-202) I overruled the School District's objection to P8 and I admitted Parent exhibits P1 – P8 into the record. (N.T. 79)

Miscellaneous

21. Before this school year (2006-2007), the intermediate unit provided learning support services to the School District. (N.T. 199) At all times relevant, the total number of elementary level learning support students has been around 42-43 students, who have been grouped into 3 learning support classes. (N.T. 111-112)
- a. For Student's 1st grade, 2004-2005 school year, her learning support classroom contained 8 children, with one teacher and one aide. (P1, p.4; N.T. 20, 45, 50)
 - b. For Student's 2nd grade, 2005-2006 school year, her learning support classroom contained 8 children, with one teacher and no aide. (N.T. 20)
 - c. For Student's 3rd grade, 2006-2007 school year, her learning support classroom has contained 12 to 15 children, with one teacher and no aide. (N.T. 20, 115-116)

DISCUSSION

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide a free appropriate public education (FAPE) to all students who qualify for special education services. 20 U.S.C. § 1412 The School District program will meet its FAPE obligation if it provides special education and related services at public expense, that meet the standards of the state educational agency, and that are provided in conformity with an individualized education program (IEP.) Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998) It is rare, if ever, that an IEP document can be deemed perfect. In Re R.B. and the Eastern Lancaster County School District, Special Education Opinion No. 1802 (2007)

The cornerstone of FAPE analysis is an IEP that need not provide the maximum possible benefit, but must be reasonably calculated to enable the child to achieve meaningful educational benefit. Board of Education v. Rowley, 458 U.S. 176, 207, 73 L.Ed.2d 690, 107 S.Ct. 3034 (1983); Polk v Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1998); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999) Where a student's IEP contains vague or unmeasurable goals, lacks appropriate baseline data, and/or fails to address all of the student's needs, that IEP is not reasonably calculated to provide meaningful educational benefit. In Re A.D. and the Schuylkill Haven Area School District, Special Education Opinion No. 1611 (2005)

The whole process of evaluation, IEP development, and progress monitoring is to assist the IEP team in establishing baseline data, track the effectiveness of particular

teaching strategies, and then communicate the rate and growth of the Student's progress to parents and professionals. It allows other teachers, parents, and hearing officers to look at the documents, perceive the Student's needs, see the teaching strategies used to address the Student's needs, and observe how the instruction was adjusted in response to the progress monitoring feedback.

Meaningful curriculum based assessment requires a definitive statement of comparison of the student's performance with the requisite level of performance for success. Qualitative statements (such as "moderate progress") are insufficient. The hallmark of curriculum-based assessment is quantitative data. In Re K.N. and the Bethlehem Area School District, Special Education Opinion No. 1225 (2002)

The parties' positions in this case are relatively simple. Student's parent wants the School District's proposed November 2006 IEP to define the term "small group instruction," and she argues that the Student's current learning support classroom, with a student: teacher ratio of 15:1, does not constitute "small group instruction." The School District, on the other hand, contends that its proposed November 2006 IEP need not define the term "small group instruction," and that Student's current learning support classroom does constitute "small group instruction."

For the reasons described below, I agree – and disagree – with both parties. I disagree with Student's parent that the proposed November IEP must define the term "small group instruction," and I think Ms. V's learning support classroom does constitute "small group instruction." I do not believe, however that either the School District's proposed November 2006 IEP, or its progress monitoring of Student's performance, is adequate. Neither the December 2005 IEP, nor the proposed November 2006 IEP, provide a clear, consistent picture of Student's: 1) baseline educational levels in reading and math; 2) expected levels of achievement over any IEP period; or 3) the rate and growth of either her past or expected future progress.

For example, the present education levels of Student's December 21, 2005, IEP are imprecise and confusing. In reading fluency skills, Student read 15 words per minute in the Read Naturally assessment, but I do not know whether 15 is the number read correctly out of an unknown total, or if 15 is the total (correct and incorrect) words read in one minute. (P1, p.4) In reading comprehension, Student correctly answered 4 out of 5 comprehension questions 70% of the time. (P1, p.5) This is confusing. Perhaps she answered 80% (4 out of 5) of reading comprehension questions correctly, or perhaps she answered 70% correctly – but what does "4 out 5, 70% of the time" mean? Does it mean that, 30% of the time she answered less, or more, than 4 out of 5? It is also inconsistent for this IEP to state that Student's strength is in comprehending fiction/nonfiction materials, while simultaneously containing a reading comprehension goal. (P1, pp.5, 9,10)

The December 21, 2005, IEP reading goals are also confusing and difficult to understand because they consolidate, and do not distinguish among, the three separate components of reading that they purport to address – decoding, fluency and

comprehension. (P1, pp.9-10) In addition, the first reading goal's short term objectives contain decoding and fluency objectives but not comprehension. (P1, p.9) The second reading goal purports to do the same thing, but inexplicably has two different numerical goals side by side, i.e., "85% in 4 out of 5 trials," and "90% accuracy in 4 out of 5 trials." (P1, p.10) Which is it, 85% or 90%? And which reading skill is to be achieved at 85% or 90% success - comprehension, fluency, or automaticity (sight words) – or all of them together?

Finally, despite the fact that the December 2005 IEP requires weekly reading probes, the record lacks any systematic weekly reading probe data. Ms. V testified that, after starting Student's reading instruction at a 1.5 grade reading level in August and September 2006, she gradually raised the reading level of Student's instructional material from 1.5 to 2.5 – but Ms. V does not remember when that occurred. (N.T. 150, 152) According to this IEP, however, no one should have to rely upon memory because Ms. V's phase changes (increases in instructional level) should be recorded in her weekly reading probe data. (P1, pp.9-10)

Similarly, with respect to math, the December 2005 IEP's present educational levels do not match up with the first math goal. While the goal is to use the correct mathematical operation to solve single and double digit problems, and to identify time or money, with 85% accuracy in 4/5 probes, there are no baselines or present educational levels that describe the starting points for those skills. (P1, p.11) What percentage of accuracy did Student start with in these skills? On the other hand, the math computation fluency goal does correlate to baselines (15 digits correct per minute at the 2nd grade level and 2nd grade level addition of whole numbers with 70% accuracy), and so I can see the relationship between the present education levels and the short term objectives. (P1, pp.5, 12)

The record does contain a chart of math probes for the first half of the 2006-2007 school year. (P3; N.T. 172) The probing started in late September 2006, pursuant to the December 2005 IEP, which called for bringing Student's computation skills up to 18 digits correct per minute. (P1, P12) The probe data chart, however, indicates that between September 2006 and February 2007, Student never exceeded 15 digits correct per 2 minutes, which does not appear to be consistent with the IEP's expectations. (P3; N.T. 172) If the purpose of the probing is to compare Student's performance against IEP expectations, then sometime between September 2006 and February 2007, one would expect to see some sort of phase change (instructional change) in response to Student's less-than-expected performance. It does not appear, however, that any phase change occurred. (P3)

The School District's proposed November 2006 IEP is also deficient. The present education levels page indicates that Student identifies 35 high frequency words and struggles with distinguishing long and short vowel sounds. (P4, p5) Based upon this, the November 2006 IEP should have a goal that expressly addresses reading decoding. (N.T. 170-171) It does not. The proposed November 2006 IEP's present levels of academic achievement indicate a fluency rate of 34.3 words per minute on a 2.0 grade level

passage, while the School District's second quarter 06-07 progress record indicates that Student's baseline is 43.5 words correct per minute on a 2.25 grade level passage. (P2, p.24)³ With regard to reading comprehension, Student's present education levels appear to be 50% on either a 2.0 or 2.25 grade level passage (the IEP is not clear) while the School District's second quarter 06-07 progress record indicates that Student's baseline is 80% on a 2.25 grade level passage. (P2, p.24) These reading goals are not reasonably designed to confer meaningful educational benefit because they do not appear to be explicitly connected to Student's present education levels.

Regarding math, the November 2006 IEP does not indicate Student's present education levels in math computation. (N.T. 155) The goal simply states that her baseline is the 2.0 grade level. (P4, p.12) The School District's second quarter 06-07 progress record indicates that Student's baseline is 85% on 2.75 grade level material. (P2, p.25) The probe data chart in the record indicates that Student's baseline is somewhere around 15 digits correct per 2 minutes (it does not indicate the grade level of the computation problems.) (P3; N.T. 172-173) While I have seen math computation progress reported both ways (digits correct and by percentage), the School District appears to be using these terms interchangeably, or at least in a manner that is unclear to a reasonable observer. If such data is to be useful, consistent terminology must be used.

Regarding math operations and problem solving skills, the present education levels page simply indicates that Student "is not always able to accurately apply problems solving skills to her math problems." (P4, p.5) The goal itself simply indicates that Student's base line is at the 2.0 grade level, with no mention of her accuracy percentage at that grade level. (P4, p.14) The School District's second quarter 06-07 progress record, however, indicates that Student's baselines in 2.5 grade level double digit addition and subtraction are 89% and 76%, respectively. (P2, p.26) I empathize with the frustration of Student's parent regarding what seems to be constantly shifting grade level assessments of Student's abilities. (N.T. 18)

The problem in this case is with the IEPs and progress monitoring, not with the class size or method of teaching. Ms. V's practice of ability grouping and moving the students through stations is appropriate teaching methodology. There is no evidence that Student requires any fewer students or additional teaching aide in her learning support classroom environment. What Student requires is more systematic IEP development and progress monitoring, which Ms. V is capable of providing.

To establish baseline data, the School District must conduct a comprehensive curriculum-based reading assessment using grade-level material, and a curriculum-based math assessment. For these purposes, grade level material means material that has a

³ An appeals panel has indicated, by way of dicta, that the widely accepted standard for material being at an independent reading level is material that is read the first time with at least 95% of the words read correctly, with a rate of at least 90 words read per minute, and with no more than 2 errors per minute. In Re A.D. and the Schuylkill Haven Area School District, Special Education Opinion No .1611 (2005)

readability that corresponds to Student's current grade (e.g., 3.9 if the assessment is made before the start of fourth grade, 4.0 at the start of fourth grade, etc.). Readability shall be ascertained with a standard readability formula such as the Flesch-Kincaid Grade Level Index. Moreover the reading materials cannot have not been previously read by Student and they must be sufficiently long to produce reliable results (i.e., requiring at least three minutes for Student to read). The scoring of the curriculum-based assessment must be objective, reporting the results of Student's assessment objectively as the percentage of words read correctly, the number of words read per minute, and the number of errors made per minute. In addition, it is important that Student is able to read instructional materials independently. Therefore, the School District shall include an analysis of the texts and supplementary materials used in regular education classes in which Student is mainstreamed to ascertain if she is capable of reading them independently or she requires supplementary materials or supportive instruction. See In Re A.D. and the Schuylkill Haven Area School District, Special Education Opinion No .1611 (2005)

Once baselines have been established, then the IEP team shall establish goals using the same criteria. If digits correct per minute are used to establish math baselines, then the goals shall use the same criteria. The School District has demonstrated that it can probe and chart Student's probe data. When it does create graphs based upon Student's probe data, it will also place an "aim line" on the graphs that are based upon the IEP goals. By comparing, on the same graphs, Student's actual performance against the IEP goals' aim lines, the IEP team, parents and educators, can more easily assess how well Student is responding to various teaching interventions. The IEP team might (but is not required to) determine that, if 4 of the last 6 data points fall below the aim line, then student is not making progress and a phase change (different teaching strategy) is necessary.⁴ The IEP team might also consider having Student assist in charting her own probe data, thereby motivating Student to participate in her own academic progress.

Finally, I note that Student's parent's complaint is with the content of the November 2006 IEP and with implementation of the December 2005 IEP, and the requested remedy concerns specific terminology within Student's IEP. Student has not requested compensatory education as a remedy for the denial of FAPE, and I will not order it. Hearing Officers and Appeals Panel are not authorized to raise issues, including compensatory education remedies, sua sponte. Mifflin County School District v. Special Education Due Process Appeals Board, 800 A.2d 1010 (Pa. Cmwlth. 2002); In Re R.W. and the Moon Area School District, Special Education Opinion No. 1340 (2003) In this case, where the content and implementation of IEPs is at issue and the requested relief involves changes to the IEP, the appropriate remedy is the assessment, goal development, and charting requirements contained in the following Order.

⁴ Instructional adjustments may mean more teacher time with student, a different instructional group, different materials, different strategy, or additional personnel to permit more guided practice.

Order

The School District is ORDERED to take the following actions within 30 calendar days.

- Establish baseline present levels of academic achievement and functional performance data by conducting a comprehensive curriculum-based reading assessment using grade-level material, and a curriculum-based math assessment.
 - For these purposes, grade level material means material that has a readability that corresponds to Student's current grade (e.g., 3.9 if the assessment is made before the start of fourth grade, 4.0 at the start of fourth grade, etc.). Readability shall be ascertained with a standard readability formula such as the Flesch-Kincaid Grade Level Index. Moreover the reading materials cannot have not been previously read by Student and they must be sufficiently long to produce reliable results (i.e., requiring at least three minutes for Student to read).
 - The scoring of the curriculum-based assessment must be objective, reporting the results of Student's assessment objectively as the percentage of words read correctly, the number of words read per minute, and the number of errors made per minute.
 - In addition, the School District shall include an analysis of the texts and supplementary materials used in regular education classes in which Student is mainstreamed to ascertain if she is capable of reading them independently or she requires supplementary materials or supportive instruction.
- Once baselines have been established, then the IEP team shall establish IEP goals using the same criteria used in the baseline data. If digits correct per minute are used to establish math baselines, then the goals shall use the same criteria.
- The IEP shall contain at least three separate reading goals, each addressing only one reading component—decoding, fluency, and comprehension.
- The IEP shall require progress monitoring graphs based upon Student's probe data, including an "aim line" on the graphs that are based upon the IEP goals.

Daniel J. Myers

Hearing Officer
April 1, 2007