

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

Pennsylvania

## Special Education Hearing Officer

### DECISION

ODR No. 13807-1213 KE

Child's Name: M.C.

Date of Birth: [redacted]

Dates of Hearing: 6/17/13, 10/29/13, 12/5/13,  
12/9/13, 12/11/13, 1/23/14

### CLOSED HEARING

Parties to the Hearing:

Parents

Parent[s]

School District

Marple Newtown  
40 Media Line Road  
Newtown Square, PA 19073

Representative:

Parent Attorney

Tanya Alvarado, Esquire  
McAndrews Law Offices  
30 Cassatt Avenue  
Berwyn, PA 19312

School District Attorney

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331 E. Butler Ave.  
New Britain, PA 18901

Date Record Closed:

March 10, 2014

Date of Decision:

March 28, 2014

Hearing Officer:

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student in this case has been enrolled in the District and received special education and related services continuously since transitioning from early intervention due to the disabling effects of a complicated early health history. Student will reach the statutory limit of eligibility at the end of the current school year.

In the spring of Student's 12<sup>th</sup> grade (2012/2013) school year, Parent submitted the due process complaint in this case, alleging that the District failed to appropriately evaluate Student and to provide sufficient special education services, specifically including transition services and assistive technology, to appropriately address Student's significant needs, leaving Student unprepared for adult life. Parent seeks full days of compensatory education from April 26, 2011 (10<sup>th</sup> grade) through the end of the current school year, including the summers of 2011 and 2012 but excluding the summer and fall of 2013. Parent also seeks independent assistive technology and transition evaluations funded by the District.

Despite the extensive efforts of the parties and counsel to resolve all of the issues in dispute, resulting in considerable delay in completing the record, a six session hearing was ultimately conducted between June 2013 and January 2014. For the reasons that follow, the District will be ordered to provide the independent assistive technology and transition assessments, as well as a limited amount of compensatory education.

### **ISSUES**

1. Did the School District appropriately evaluate Student in order to identify all needs?
2. Were the IEPs the District offered Student from April 26, 2011 to the present reasonably calculated to result in meaningful educational benefit, and, therefore, appropriate for Student?

3. If the District failed to offer and provide appropriate placements and educational services during the period in dispute, including ESY for the summers of 2011 and 2012, is Student entitled to an award of compensatory education and/or other equitable relief, and if so, in what amount and in what form?<sup>1</sup>

## **FINDINGS OF FACT**

### **Background/Disabilities/Evaluation Results**

1. Student, born [redacted] and now [beyond teenaged], is a resident of the District and eligible for special education services. (Stipulation, N.T. pp. 14, 15)
2. Student has been identified as IDEA eligible in the orthopedic impairment and other health impairment disability categories, in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(8), (9); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 15)
3. Student's physical disabilities and complex educational and health needs arose from a very premature birth. The injuries and medical complications that occurred during infancy, including spastic cerebral palsy, feeding difficulties, brain and lung injuries resulting from the need for a respirator for an extended period, caused significant developmental delays that continue to affect Student's physical and intellectual functioning. Student exhibits vision, learning and memory difficulties, reduced stamina and fatigue. Continuing medical issues, including a shunt to drain fluid from Student's brain, must be monitored, and required an emergency plan as part of Student's IEPs. (N.T. pp. 959—962; P-2 pp. 1, 2, P-4, P-17 p. 1, P-83, P-125 pp. 1, 2 )
4. Although Student completed 12<sup>th</sup> grade at the end of the 2012/2013 school year, the parties agreed to an additional year of transition services provided by the District. The District also agreed to fund an independent neuropsychological evaluation that was completed in the late summer of 2013. (N.T. pp. 409, 694; P-111 p. 10, P-125 pp.1, 5)
5. Pursuant to an IEP dated 2/27/13, the District proposed a half day program at a technical high school in Computer Networking and Digital Forensics, along with a half day of 1:1 academic tutoring in reading, writing and math for the 2013/2014 school year. Parent and Student rejected the vocational program and the District ultimately agreed to fund remedial classes Student took in the summer and fall of 2013 that were needed before Student could enroll in college courses for credit. (N.T. pp. 1005; P-111, P-125 p. 5; S-48 )
6. Student enrolled in a local community college (DCC) during the summer of 2013 to take the first of the two remedial math classes required for full admission. In the fall of 2013, Student enrolled in a remedial reading class, which was also required, as well as a criminal justice class for credit. Student passed the remedial math class, received a high

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<sup>1</sup> The parties stipulated that the period of June 17, 2013 through December 31, 2013 will be excluded from any award of compensatory education.

pass in the remedial reading class and a “B” grade in the criminal justice class. (N.T. pp. 1005—1007, 1045; P-125 p. 6)

7. Educational evaluations after school age special education services began through the most recent independent evaluation have been consistent in measuring Student’s verbal ability in the low average to average range, with performance components generally in the borderline to deficient range. The WISC-IV (Wechsler Intelligence Scales for Children, 4<sup>th</sup> Edition) and WAIS (Wechsler Adult Intelligence Scales) index scores placed Student’s working memory in the low average range and perceptual reasoning in the borderline range. The processing speed component of intellectual functioning as measured on the WISC-IV and WAIS were far below Student’s verbal abilities and rendered the FSIQ score meaningless as a general assessment of Student’s cognitive potential. Deficits in processing speed are associated with brain injury arising from the intraventricular bleeding and hydrocephaly Student experienced in the neonatal period. (P-17 p. 5, P-34 p. 3, P-47 pp. 6, 7, P-66 pp. 8—10, 19, P-102 pp. 2, 3, P-125, pp. 2, 9, 10, 17, 22)
8. Student has always exhibited learning difficulties in reading, writing and particularly in math. Other issues that affected Student’s classroom functioning and academic performance are difficulties with attention, fine motor coordination, visual organization and novel problem-solving, which are also associated with the intraventricular bleeding and hydrocephaly. (P-17 p. 7, P-125 pp. 1, 2, 4, 17)
9. Student’s academic achievement in reading, writing and math, as measured by the standard scores derived from standardized tests (Wechsler Individual Achievement Tests-WIAT-III or Woodcock-Johnson Achievement tests-WJ-III ) administered during periodic District reevaluations declined between 2000 and 2004, (age 7—11), increased between 2004 and 2007 (age 14, 6<sup>th</sup> grade) and dropped back to 2004 levels in 2009 (age 16, 9<sup>th</sup> grade). (P-34 p. 7, P-47 p. 8, P-66 pp. 11, 12, 19, 20)
10. The District’s evaluation at the end of 11<sup>th</sup> grade (May 2012) included only three WIAT-III subtests, reading comprehension, math problem solving and numerical operations, all of which fell in the average range with scores of 99, 90 and 90, respectively. On the Kaufman Test of Educational Achievement-Second Edition (KTEA-II), administered by Student’s special education case manager in December 2011, with scores reported only as grade equivalents, Student was at the 11<sup>th</sup>—12<sup>th</sup> grade level in measures of reading, at the 7.6 grade level for math concepts and applications and at the 5.8 grade level for math computation. (P-102 pp. 4, 5)
11. When Student’s academic achievement in reading was assessed by the independent evaluator a few months after completing 12<sup>th</sup> grade, scores on the KTEA-II placed Student’s word identification skills in the average range (SS=99; 12.2 grade equivalent). Timed tasks of reading fluency were in the low average range. (Word Recognition Fluency, SS=83, 7.8 grade equivalent; Decoding Fluency, SS= 94,10.2 grade equivalent) Student’s slow processing speed showed greater effects in the WJ-III reading fluency subtests (SS=69, 2<sup>nd</sup> percentile) due to the limited number of items Student was able to

- complete. In reading comprehension, Student's KTEA-II score (SS=81, 7.2 grade equivalent, 10<sup>th</sup> percentile) declined from the District's KTEA assessment in December 2011, which had placed Student at a reading comprehension grade equivalent of 12.4. On another specific measure of reading comprehension administered by the independent evaluator, Student's scores were at the 1<sup>st</sup> to 3<sup>rd</sup> percentiles (P-125, pp. 5, 11, 23, 24)
12. The independent evaluator recommends specific instruction in reading comprehension strategies delivered by a skilled tutor/reading specialist, focusing particularly on material that requires integration, inference and abstraction, as well as explicit strategies for responding to multiple choice comprehension questions. (P-125 pp. 19, 20)
  13. In math, Student's score on the WJ-III math fluency subtest was in the extremely low range (SS=62, 1<sup>st</sup> percentile). On the KTEA-II Math Concepts and Applications subtest, Student scored in the low average range (SS=84, 6.8 grade equivalent), a decrease from the District's 2011 and 2013 testing on the same instrument. (7.2 grade equivalent) Math computation was comparable in both the District's 2013 testing (4.2 grade equivalent) and the IEE (4.5 grade equivalent). (P-125 pp. 5, 12, 13, 23)
  14. In light of Student's significant weaknesses in math calculation and fluency, the independent evaluator recommends use of a calculator to permit Student to focus on concepts and problem solving, as well as the minimal number of math classes necessary to meet core requirements of any post-secondary education or training program. (P-125 p. 19)
  15. On the WJ-III Writing Samples subtest administered by the independent evaluator, Student scored in the average range (SS=100, 50<sup>th</sup> percentile). The evaluator noted in her report that Student did not earn maximum points when credit was given for correct punctuation, and that the sentences Student generated were limited in quality/quantity and not well-elaborated. On the last District administration of the WJ-III Writing Samples subtest for the October 2009 reevaluation, Student scored in the low average range (SS=86, 18<sup>th</sup> percentile) (P-66 p. 12, P-125 pp. 12, 23)
  16. The independent evaluator recommends access to/use of a laptop with appropriate software to address Student's reading and writing difficulties, as well as available support services, such as teacher assistance, peer tutoring/review of writing assignments and test preparation. (P-125 pp. 20, 21)
  17. As predicted in an independent neuropsychological evaluation conducted at age 7, Student has significant difficulty with higher order thinking skills and organization, manifested in problems with completing work efficiently, understanding the overall organizing principles of complex verbal and nonverbal materials, understanding the relationship between parts of complex materials, applying previously learned concepts to new material, performing tasks rapidly and flexibly shifting between activities. (P-17 p. 7, P-125 p. 17)

18. In general, the pattern of strengths and weaknesses in intellectual ability and deficits in academic functioning that Student has exhibited through the years is consistent with very low birth weight, premature birth and structural brain injury. (P-17, p. 7, P-125 p. 17)
19. Student will continue to need significant accommodations and assistive technology to successfully complete college courses, and the time necessary for Student to successfully compete post-secondary education and training will need to be extended, perhaps considerably. (N.T. pp. 1007, 1008; P-125 p. 18)
20. On measures of social/emotional and behavioral functioning in the 9<sup>th</sup> grade District reevaluation, the two teachers who completed rating scales indicated some school-related problems centering on learning more slowly than peers, distractibility, organization and concentration difficulties on one measure (*Connors*) and behaviors related to self-control and peer relationships on another. (*BASC-2*)<sup>2</sup> Scores in only a few areas, however, were elevated, and none fell into the markedly or clinically significant range. (P-66 pp. 14, 15)
21. Student was offered counseling after the evaluation, but Parent declined it based upon her understanding that the District intended to address behavior issues with peers and her belief that Student did not need counseling of that nature. (N.T. pp. 974, 975)
22. Ratings by two District 12<sup>th</sup> grade teachers and a CC math professor on the *BASC-2* in connection with the post 12<sup>th</sup> grade IEE indicated no elevated scores in any area, and that Student “is appropriately adaptable, demonstrates age-expected prosocial skills and communicates effectively.” (P-125 pp. 13, 24, 25)

### Educational Placement/Services

23. During the early school years, Student repeated kindergarten and was later placed in a life skills classroom. Although Parent did not believe that Student truly fit into the life skills peer group, she also believed that Student would have had significant difficulty in a regular classroom due to physical limitations, including gross and fine motor skill deficits. (N.T. pp. 958, 959, 1039; P-125 p. 3)
24. Student repeated 4<sup>th</sup> grade after transferring to a learning support classroom. Student’s reading, writing and math skills improved significantly after instruction with the *Wilson Reading Program* during the elementary and middle school years. Student also benefitted from a 1:1 personal care assistant in middle school, who also scribed for Student, taking notes and assisting with written assignments. Student, however, did not want to be accompanied by an aide in high school due to concerns about looking different from peers. (N.T. pp. 958, 965—970; P-125 p. 3)

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<sup>2</sup> Connors Rating Scales-Revised; Behavior Assessment System for Children-Second Edition

25. Student's special education placement remained learning support from 4<sup>th</sup> through 12<sup>th</sup> grades, reduced from supplemental to itinerant learning support by 11<sup>th</sup> grade. (N.T. pp. 968, 969; P-97 pp. 35, 36; P-125 p.5 )
26. Student's time in regular education classes increased in 8<sup>th</sup> grade, and continued to increase through the high school years. In 8<sup>th</sup> –10<sup>th</sup> grades, Student was receiving remedial reading, English and math instruction in a special education class, and participated in general education classes for all other subjects. (P-125 pp. 3, 4)
27. In 9<sup>th</sup> grade, Student was assigned to a case manager who worked with Student through 12<sup>th</sup> grade. The case manager's duties were to write Student's IEPs, serve as liaison between Student and teachers and monitor Student's progress. (N.T. p. 472)
28. In 10<sup>th</sup> grade, Student's academic classes were World Civilizations and Cultures, Spanish, Fundamentals of Geometry, English 10, British Literature, Child Development and Biology. Two classes, Geometry and English, were special education classes and the remaining classes were regular education classes. Although Student's written expression, reading fluency and math difficulties hindered progress, Student demonstrated knowledge of curriculum content, participated well in classes and was able to work at grade level with the assistance of accommodations and supports. (N.T. pp. 625, 626; P-82 pp. 4—7)
29. In the 11<sup>th</sup> grade (2011/2012 school year), Student also participated in the regular education academic program for all classes except Algebra II. Student's other academic classes were SAT Prep for math and reading, 20<sup>th</sup> Century American History, Chemistry, Elements of Engineering, English 11, American Literature and Child Development II. Curriculum-based assessments and teacher observations indicated that Student was functioning at a high school level and doing well in all academic subjects, with the extensive supports and accommodations listed in the SDI section of Student's IEP and provided in both the regular education and special education classrooms. (N.T. pp. 662—664, 801, 804—806, 825, 826, 883—889, 900—902 ; P-97 pp. 6—8, 27—31)
30. Student could solve problems in both Geometry and Algebra II with the use of a calculator, but performed poorly on mid-year and final exams due to the limitations imposed by Student's disabilities on memory, and the physical stamina needed for study and preparation over many hours and days. The special education teacher who instructed Student in the Geometry and Algebra II classes worked with Student to be prepared to work and take notes from the beginning of the math class periods and periodically checked for understanding during each class. (N.T. pp. 761—764, 777—780, 783; P-119, P-120)
31. In 12<sup>th</sup> grade, Student participated entirely in regular education classes and participated in the Renaissance Club, which conferred certain privileges based on good grades. Student's academic classes were English 12, World Literature, Political and Economic Issues, International Relations, Presidents as People, World War II and the Vietnam War, Holocaust, Physics, Forensic Science and Senior Project. Student requested, and was permitted to be assigned to a regular study hall period, rather than the "guided" study

available to special education students for obtaining help with class work and homework. (N.T. pp. 976, 1055; P-111 p. 5, P-125 p. 4)

32. Student had some difficulty with the Physics, English and Political and Economic Issues classes, requiring two to three presentations of material. Student struggled with math word problems and computation in Physics, needed 4—5 prompts to recall prior material in English and had skill deficits in sentence variation and elaboration. Although a reading fluency skill deficit was noted, Student was able to grasp concepts with little repetition and was able to apply previously learned concepts in the World War II and Vietnam War elective classes. The teachers provided instructional strategies and techniques, classroom supports and accommodations that helped Student succeed. (N.T. pp. 843, 844, 862, 874, 875, 918—927, 931—933, 934, 936—939, 942—946, 948—950, 955, 956; P-111 pp. 6, 7, P-113)
33. The 12<sup>th</sup> grade physics class included use and application of basic math and measurement concepts, for which all students in the class used calculators. The teacher spent time in each class period working directly with Student on both math and physics concepts until the teacher believed Student had grasped the concepts. Student could retain and apply math concepts, but had difficulty extracting information from word problems. (N.T. pp. 846—854, 865, 871—873, 876, 877)
34. In the 11<sup>th</sup> and 12<sup>th</sup> grade English classes and the 12<sup>th</sup> grade Holocaust elective, in particular, the teachers tried to expand Student's mental flexibility, analytical and critical reading/thinking skills. (N.T. pp. 895—899, 927, 930, 939—941, 947, 952, 956)
35. The IEPs in place during Student's 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> grade school years included goals in reading, writing and math based on maintaining or advancing Student's KTEA assessment scores by one year. In 11<sup>th</sup> and 12<sup>th</sup> grades the IEPs also included the same reading vocabulary goal for both decoding and learning the meaning of words, a reading comprehension goal for identifying figurative language and its meaning in a 3 to 5 paragraph passage, a goal for improving use of conventions and mechanics through editing, a writing focus goal and math goals for computation and problem-solving using knowledge of linear measurement and algebraic coordinates to solve problems involving the measurement of interior angles of a triangle. (N.T. pp. 588; P-82 pp. 14—16, P-97 pp. 20, 22—25, P-99 pp. 21, 23—26, P-111 pp. 20—23)
36. Accommodations, supports and specially designed instruction provided to Student during high school included review and repetition, extended time for tests and assignments, tests taken in a separate room and read aloud, class notes provided, assistance with note-taking, writing, word banks, study guides, reducing the amount of text on a page, narrowing the scope of visual materials, assistance with staying on task, and key locks rather than combination locks, due to Student's difficulty with fine motor skills. (N.T. pp. ; P-82 pp. 17—20, P-97 pp. 27—31, P-99 pp. 28—32, P-111 pp. 25—30, P-125 pp. 4, 5)

37. Student's annual IEP goals, as well as quarterly progress reports, were based substantially on the results of a KTEA assessment that Student's case manager administered annually to determine Student's grade equivalencies in reading, math and written expression. Student's word reading and reading comprehension levels were based upon the letter and word recognition and reading comprehension subtests. The math levels were derived from the scores of the math concepts and application and math computation subtests. Student's writing level was based upon the written expression subtest. (N.T. pp. 484, 485, 507, 587; P-80, P-127)
38. The case manager was unsure whether some of her methods for eliciting responses strictly conformed to the test administration criteria. In the January 2012 assessment (11<sup>th</sup> grade), the case manager did not follow the instructions for administering the math computation subtest, in that she did not drop back to a lower level when Student did not meet the basal criteria of correctly answering the first 5 items at the level at which she began the test, and continued testing in several levels after Student met the criteria for discontinuing the test. There was also a scoring error that considerably overstated Student's score. (N.T. pp. 495—498, 501, 550—552; P-127 p. 43 )
39. Based on the anomalies of the administration and scoring of the math computation subtest, the statement in the present levels section of the January 2012 IEP that Student had advanced nearly two grade levels in math computation was inaccurate. (N.T. pp. 550—552, 596, 597; P-97 p. 7, P-103 p. 4)
40. In January 2012, the KTEA results placed Student at a 12.4 grade level equivalency for reading comprehension and at 11.2 for letter-word recognition. The case manager did not reassess Student's reading comprehension in 2013, since the 11<sup>th</sup> grade results placed Student at a 12<sup>th</sup> grade level. On the letter-word recognition subtest, Student's grade equivalency dropped in the 2013 assessment from 11.2 to 9.1. The case manager's testimony was contradictory, and it is unclear from the test answer sheet, whether the case manager began the assessment at the same level as the January 2011 assessment two years before, when the same form of the subtest was used, or began several levels lower. Student, however did not pass the first three items at the level where the 2011 assessment began. The case manager did not compare the 2011 and 2013 results. (N.T. pp. 609, 610; P-111 p. 6, P-127 p. 33, 45, P-127 p. 1, P-128 pp. 1, 6)
41. Student's special education case manager also gathered information for progress monitoring reports by soliciting comments from teachers concerning Student's progress toward meeting IEP goals in terms the curriculum in their classes. The case manager did not ask how the teachers determined Student's progress toward IEP goals based on performance in their classes, and did not know the method any teacher used to determine whether Student was meeting the mastery criteria specified in the IEP goals. (N.T. pp. 474—478, 513—516, 539, 540, 569; P-76, P-78, P-85 pp. 15—18, P-91, P-113)
42. Teacher progress comments included in Student's IEPs could be selected from check boxes on a form. The case manager did not recall asking many follow-up questions of teachers to get more detail concerning the basis for their comments. (N.T. pp. 477—480)

43. Student received occupational therapy (OT) and physical therapy (PT) through the beginning of high school. OT services were reduced to a “consult” level and PT was discontinued in the middle of 10<sup>th</sup> grade (January 2011). (N.T. pp. P-82 pp. 7, 21, P-125 p. 4 )
44. ESY services were not recommended by Student’s IEP team or provided during the summers of 2011 and 2012. No specific data was taken with respect to regression and recoupment. The ESY decision was based upon Student’s grades and the KTEA testing indicating grade level performance during the preceding school years. (N.T. pp. 590, 591; P-85 p. 25, P-97 p. 33, P-99 p. 34; P-125 p. 5 )

## Transition

45. The school counselor to whom Student was assigned beginning in 9<sup>th</sup> grade and Student’s special education case manager were responsible for overseeing and implementing Student’s Transition Plan, which included goals for post-secondary education and training, competitive employment and independent living, along with services/activities that the counselor described as “pretty standard” provisions. (N.T. pp. 355, 356, 362, 363, 372, 375, 472; P-82 pp. 9—11, P-97 pp. 14—16; P-99 pp. 15—18, P-111 pp. 13—16)
46. The post-secondary education/training transition goal in Student’s 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> grade IEPs included an activity for developing self-advocacy skills by requiring Student to state his/her disability, strengths, needs and the specially designed instruction included in Student’s IEP. Special education students, generally, are encouraged to take their latest evaluations and IEPs into post-secondary settings to request the same or similar accommodations and supports. (N.T. pp. 372—374; P-82 p. 9 P-97 p. 14; P-99 p. 15, P-111 p. 13)
47. In the spring of 2011, on an informal questionnaire designed to provide an insight into “learning style,” Student’s self-report responses indicated a stronger preference/ability for visual learning, including reading, and greater success in classes that involved activity and movement. Student’s counselor agreed that the self-assessment was inconsistent with all evaluations describing Student’s disabilities, strengths and needs. Student’s case manager, however, agreed with Student’s self-assessment of learning style based upon her belief that SDIs in Student’s IEP were aligned with it. (N.T. pp. 389, 390, 578; P-87)
48. In the middle of 11<sup>th</sup> grade, Student completed an Employment Planning Application for the Office of Vocational Rehabilitation (OVR). Although Student described some of the effects of his/her disabilities, Student also indicated on a checklist that difficulties with learning, reading, writing, math, concentration, memory, energy/stamina, standing, walking, running would not interfere with the ability to work. The school counselor agreed that the form did not accurately reflect the full range/ likely effect of Student’s disabilities on employment. (N.T. pp. 390, 391; P-93)
49. From the beginning of high school, Student expressed a very strong interest in becoming a police officer or an FBI agent after attending college. The counselor first suggested

- during 10<sup>th</sup> grade that employment as a police officer or agent was not realistic due to Student's physical disabilities. Her comments did not immediately dissuade Student from that employment goal, but by 12<sup>th</sup> grade Student realized that becoming a law enforcement officer was unlikely. (N.T. pp. 360, 361, 367, 369, 370; 424, 425; P-82 pp. 8, 10)
50. A service available to Student for transition planning beginning in 11<sup>th</sup> grade was a computer program that provided the opportunity for a number of activities, including building a resumé, researching jobs and colleges and a personality assessment. The counselor showed Student how to set up/use the program, which could then be accessed independently. (N.T. pp. 379—381)
  51. In March 2012, Student's Mother formally requested a vocational assessment, following up on a discussion at the December 2011 IEP meeting, where a representative from the [local] Intermediate Unit (IU) had specifically offered a situational assessment for independent living skills. Parent wanted an updated assessment of Student's strengths, weaknesses and abilities as those matters would impact Student's post-secondary life, as well as guidance with respect to available opportunities and reasonable/unreasonable expectations. (N.T. pp. 1020—1023; P-97 p. 10, S-23)
  52. Student's special education case manager initiated a referral to [the] IU for the situational assessment and a vocational assessment, but at Parent's and Student's request, the assessment was scheduled for the summer to avoid Student missing school. (N.T. pp. 566, 567, 664, 665, 677; P-95, P-97 p. 10)
  53. The vocational assessment was based upon a Career Scope interest inventory. The Career Scope results showed a high interest in protective professions and a lesser interest in mechanical professions. The aptitude assessment placed Student in the average range for form perception, clerical perception, manual dexterity, finger dexterity, and motor coordination and in the below average range for general learning ability. Despite knowing that Student has motor skill difficulties, the Career Scope results did not surprise the case manager, based on the indirect assessment of those skills by tracking use of the computer mouse while completing the assessment. The vocational assessment narrative noted that jobs in the protective area generally require a General Learning Ability score of 95 and higher, while Student's score was 66. (N.T. pp. 602—605; P-105 pp. 1—7, P-106 pp. 3, 4)
  54. The situational assessment was conducted in an office and two retail stores. Based on the summaries of each experience by the evaluators who worked with Student, all three experiences were fairly positive. The list of Student's strengths included considerate and respectful, willing to do whatever was asked, pleasant personality, good conversationalist, ability to follow multi-step directions. Needs included improved productivity, development of employability skills, development of skills to compete a variety of simple to complex tasks with little to no intervention. Strategies used by the evaluators included verbal prompts, verbal and written instructions, physical and gestural prompts and modeling. Parent, however, does not believe that Student could perform the

- tasks described in the situational assessment regularly over a long period of time. (N.T. p. 1001; P-107 pp. 8—10)
55. The District began using a formal assessment to determine whether the District's special education students had functional life skills appropriate to their age, such as the ability to do laundry and identify the doctor they would call if ill. The assessment was administered to Student but apparently was not placed in Student's record. (N.T. pp. 576, 577, 579)
  56. Student also completed an online Career Zone interest inventory in 11<sup>th</sup> grade to explore areas of interest and aptitude. The Career Zone assessment results suggested that Student's interests were highly correlated with clerical jobs, such as library technician and loan counselor. (N.T. pp. 529, 580, 602—605; P-97 p. 10)
  57. In the spring of 11<sup>th</sup> grade, Student took the SAT with accommodations consisting of 100% extended time, small group setting and extra breaks. District staff who worked with Student was unaware of, did not explore, the full range of accommodations available to students with documented physical disabilities, such as a large block answer sheet, use of a computer or a scribe for responding, and even multiple test days. Student's counselor believed at the time that Student had received the highest possible level of SAT accommodations. No one from the District investigated the accommodations that might have been available, although the instructions from the College Board with respect to applying for accommodations contemplate that schools submit requests for accommodations electronically on behalf of students. (N.T. pp. 376, 378, 598; P-111 p. 19, P-130, S-47)
  58. Student's SAT scores were 240 in critical reading, 330 in math and 270 in writing. (P-123)
  59. The high school counselor had encouraged Student to apply to a local four year college, where a former District student with similar physical and learning issues had done well. Student was not accepted due to the extremely low SAT scores. A counselor at the college indicated to the District counselor, who advocated for Student's acceptance, that Student might be admitted after attending CC. (N.T. pp. 375, 381—383, 991, 992)
  60. After Student's rejection by the four year college and the high school counselor's conversation with the college counselor, she encouraged Student to apply to the community college that Student is currently attending. (N.T. pp. 399, 400)
  61. After receiving the SAT scores, Parent lost confidence in Student's ability to attend college, and sought the guidance of District staff to locate a vocational program to point Student toward a skilled trade. (N.T. pp. 990—992, 1026—1028; S-31)
  62. Student's case manager, the counselor, other District members of the IEP team and Parent encouraged Student to apply to the technical school for the Computer Networking and Digital Forensics program. District staff believed that completing that program

would be a means for Student to become involved in a law enforcement field. The case manager's conclusion that the program was a good option for Student was based upon the positive experience of another District student. (N.T. pp. 401, 418, 421, 425, 681, 687, 993, 735, 736; P-111 pp. 10, 15, S-48 p. 22)

63. Student and Parent visited the program but Student did not complete the application. Student had no interest in the program from the start, and Parent concluded that it would not be good fit for Student due to the fine motor skills necessary to fulfill the requirements and the lack of confirmation, in response to her questions, that the program and the building would be safe for Student. The case manager believed that Student could learn the skills needed to successfully complete the vocational program, based upon the description of the program by the other student and the written description of the program. (N.T. pp. 423, 736, 737, 740, 992, 993, 995, 996, 998, 999)

### Assistive Technology

64. During 8<sup>th</sup> grade, Parent requested, and the District provided, an assistive technology evaluation. (N.T. pp. 358, 359, 970; P-52)
65. After a SETT assessment by [the local] Intermediate Unit (IU) in April 2008, and trials of recommended devices/services, Student had access to various assistive technology including a *Kurzweil* device for providing access to e-text versions of classroom materials, *Dragon Naturally Speaking*, a voice recognition/ talk to text computer software program, and *Bookshare*, which provides verbal versions of written materials, such as novels and textbooks that can be downloaded. Prior to the assessment, Student was already using a calculator for math problems. No additional investigation of assistive technology was initiated during high school. (N.T. pp. 482, 483, 970, 971; P-52, P-53; P-125 p. 4)
66. According to information provided to the independent evaluator in connection with the recent evaluation, Student used *Dragon Naturally Speaking* primarily at home and *Bookshare* primarily for summer reading assignments. Difficulties with inputting text made the *Kurzweil* device largely non-functional, and so it was rarely used. (P-125 pp. 4, 5)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### General IDEA Legal Standards

The statutory obligation to provide for the educational needs of children with disabilities has been summarized by the Court of Appeals for the 3<sup>rd</sup> Circuit as follows:

The Individuals with Disabilities Education Act ("IDEA") requires that a state receiving federal education funding provide a "free appropriate

public education” (“FAPE”) to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan (“IEP”). 20 U.S.C. § 1414(d). The IEP “must be ‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Shore Reg’l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir.2004) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)).

*Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3<sup>rd</sup> Cir. 2009)

“Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3<sup>rd</sup> Cir. 1999). Consequently, in order to properly provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a “trivial” or “de minimis” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3<sup>rd</sup> Cir. 1996; *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3<sup>rd</sup> Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, however, an LEA is not required to provide an eligible student with services designed to provide the “absolute best” education or to maximize the child’s potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995). There is also no guarantee of any particular outcome even when a school district provides appropriate services. *Ridley School District v. M.R.*, 2011 WL 499966 (E.D.Pa. 2011) at \*8.

Finally, although school districts are obligated to conform to the procedural, as well as the substantive IDEA requirements, the federal regulations explicitly provide that a hearing

officer may not conclude that there has been a denial of FAPE unless

- the procedural inadequacies (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child or
- (iii) caused a deprivation of educational benefit.

### Burden of Proof

The IDEA statute and regulations provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 240.

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parent challenged the District's actions during the period in dispute, she was required to establish the violations she alleged, as identified at the beginning of the due process hearing in this case, as well as establish the substantive adverse effects of those violations.

The Supreme Court limited its holding in *Schaffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding. Allocating the burden of persuasion affects the outcome of a due process hearing only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012)

Here, although Parent identified a plethora of procedural violations, the record did not establish that the District's conduct substantively impeded Student's right to a FAPE, or her own

participation in decision-making. Parent did, however, establish that the District's actions caused a deprivation of educational benefit with respect to reading comprehension, for which Student is awarded compensatory education as an equitable remedy. The record also established that the District failed to provide Student with a current assistive technology evaluation and a thorough, objective transition assessment. The District, therefore, will be ordered to provide independent evaluations in those areas.

#### District Educational Evaluations and Services

The very difficult question at the heart of this case is how much could reasonably have been accomplished, with even the best possible educational program, in terms of closing the gap between Student and typically functioning peers, given Student's significant disabilities and extensive, well-documented needs. A closely related issue is the time and effort "cost" to Student, not to the District, weighed against the benefit to an adult Student of attempting to remediate rather than accommodate disabilities that arise from permanent organic/structural causes. Even if it were possible to significantly improve some of the effects of Student's disabilities, such as the impact of slow processing speed on both math and reading fluency, what regular education experiences would Student have had to miss in order to focus on such efforts?

Parent contended that the recent District evaluations did not identify all of Student's needs. Student, however, has had numerous evaluations with consistent results throughout the school age years that are now coming to an end. Prior evaluations fully identified Student's deficits and their long-term effects. (FF 7, 8, 17) Moreover, the District funded a recent independent evaluation that certainly identified continuing deficits in basic academic skills, but also included eminently reasonable conclusions concerning the essentially irremediable nature,

of Student's educational disabilities and sensible recommendations that favor accommodation over remediation at this point in Student's life. (FF 11, 12, 13, 14, 15, 16, 18, 19)

More important, however, are Student's significant educational and life accomplishments despite severe disabilities. Student completed regular high school graduation requirements, is currently enrolled in college, has already passed two remedial courses and earned college credits. (FF 4, 6) Student is functioning very well in the areas of language, social/emotional and interpersonal skills. (FF 22, 54)

Reaching these conclusions, however, does not diminish the District's inattention to the procedural requirements of producing IEPs that rise above the level of "going through the motions," and of conducting assessments that provide accurate and meaningful information. The District's IEPs in 10<sup>th</sup> –12<sup>th</sup> grades included essentially meaningless goals, and some of the information provided by recent evaluations and KTEA assessments was inaccurate, or at least suspect. (FF 10, 1137, 38, 39, 40)

Nevertheless, the District's reports to Parent that Student was doing very well in high school, which she now feels were misleading, were accurate. Student was quite successful in accessing the general education curriculum with the specially designed instruction, modifications and accommodations that were included in Student's IEPs and that District teachers implemented. (FF 28, 29, 30, 31, 32, 33, 36) The District's reports of Student's good progress, however, did not reflect any sort of objective comparison with the academic skills of non-disabled, same age peers.

It appears that Parent may not have fully appreciated that only a very high level of supports and services allowed Student to be successful in the regular education curriculum, despite significant and permanent disabilities. The District's reports of Student's progress,

regardless how accurate, did not mean that Student had overcome the effects of his/her disabilities and acquired the ability to function academically at the same level as non-disabled peers if the supports were not in place. Parent's testimony strongly suggested that although Parent knew that was the case, she only became fully aware of the implications when she received Student's very low SAT scores and learned that Student had not been accepted at the four year college that Student was hoping to attend. (FF 58, 59, 60, 61; N.T. pp. 984, 985)

It is certainly understandable, and reasonable, that during Student's high school years, Parent focused on Student's success, having survived against great odds, overcome early developmental delays and successfully transitioned entirely into regular education high school classes by 12<sup>th</sup> grade. There were, however, objective indications throughout high school that Student's academic skills were below the level expected of non-disabled students. The District evaluation in 9<sup>th</sup> grade included standardized test scores that placed Student in the borderline range for reading and writing, and far below average in math. (FF 9) Although the three subtests of standardized achievement test administered at the end of 11<sup>th</sup> grade fell into the average range for reading, writing and math, the IEP developed for Student in December of 11<sup>th</sup> grade, a few months before Student took the SAT, reported scores in math and written expression that were considerably below grade level at 5.8 in math calculation, 7.2 in math concepts and 7.2 in written expression. (FF 10; P-97 p. 7)

Parent also testified that "to this day" she needs to edit Student's writing assignments due to poor punctuation and other mechanical and style problems. (N.T. p. 977) Parent admitted that Student needed help with writing mechanics throughout high school, and that her observations of Student's writing performance conflicted with information she was receiving from teachers and assessment scores reported in the 2012 evaluation and at IEP meetings. (N.T. pp. 1045, 1046)

Parent, therefore, was aware prior to 12<sup>th</sup> grade and prior to receiving the SAT scores that Student did not have writing skills at a college level, at least in terms of mechanics and conventions. Still, Parent also observed that the content of Student's writing is "accurate, sequential and detailed." (N.T. p. 1056) Student, therefore, does not lack composition skills, notwithstanding a continuing need for assistance with the mechanics of writing and conventions of style, such as knowing when to begin a new paragraph. Such continuing issues were, no doubt, the basis for the independent evaluator's recommendations for developing resources for continuing assistance in the post-secondary education setting. (FF 16)

Although Student's writing skills were measured in the low average range on the most recent assessments given in connection with the 2013 IEE (P-125 p. 12), accommodations and extra help in regular education classes for writing were clearly sufficient for Student to make progress in a broad array of content courses available in the general education. It was reasonable for teachers to provide Student with additional instruction and assistance with writing tasks within the context of regular education classes where those skills were needed and used.

Parent is correct that the District did not provide Student with focused, intensive instruction in math calculation and fluency during the period in dispute. Student was, however, able to succeed in special education high school math classes and in regular education science classes with high math content with the supports and accommodations in place, including use of a calculator. (FF 30) Student may not be able to do math calculations fluently and accurately without a calculator, but spending a great deal of high school time working on a skill that a simple device can easily accomplish would not have been productive. Student was exposed to higher level math concepts by taking math and science classes, and thereby had the opportunity

to develop higher order thinking skills, which are also a need for Student, and are likely to have far greater long-term benefit.

In short, if the District had focused narrowly and intensely on raising the levels of Student's math computation, fluency and written expression skills, Student might have missed high school classes with interesting and enriching content. For an eligible Student on the verge of adulthood, meaningful educational progress is more than improving math and writing skills. Student had full and meaningful access to the regular education curriculum, which is the ultimate goal of special education services. It is unfortunate that Student could not have developed academic skills commensurate with those of non-disabled peers by the end of IDEA eligibility, but that is beyond the IDEA legal standard, and in this case, may not have been possible, regardless of the intensity of services. Student made meaningful educational progress, albeit not because of the goals in the IEPs. The specially designed instruction included in the IEPs were, however, very effective and met Student's needs, allowing significant learning in regular education classes.

The record in this case provides no basis for awarding full days of compensatory education, or for a conclusion that the District's failure to offer and provide ESY services constituted a denial of FAPE or a deprivation of educational benefit. Parent, indeed, presented no explicit evidence that any of the factors supporting a need for ESY services applied to Student in this case. For the most part, therefore, Parent's claim for compensatory education is denied because Student made meaningful progress in the 10<sup>th</sup>—12<sup>th</sup> grade school years.

### Reading

Although Student was also able to make progress in the regular education curriculum with continuing deficits in reading, the need for well-developed reading skills, especially

comprehension, is of a higher order of importance, and more difficult to successfully accommodate. The need to read for meaning is pervasive, and important for college, as well as for virtually any job Student might obtain in the future. Student's 12<sup>th</sup> grade Physics teacher noted that Student had less difficulty grasping and applying math concepts than with extracting the meaning from word problems, compromising Student's progress in that class. (FF 32, 33) The independent evaluator recommended instruction in reading comprehension in her evaluation report, after noting a drop in Student's comprehension score from the District's last assessment. (FF 11) Moreover, in the past, Student's academic skills increased generally during the time Student was receiving explicit, sequential reading instruction, so it was likely to have improved academic skills generally. (FF 9, 12, 24)

Despite the importance of good reading skills, and information from teachers that Student's progress in various classes was compromised by poor reading skills in 12<sup>th</sup> grade, the District did not even assess Student's reading comprehension at the time of the other KTEA assessments in January 2013 but chose to rely on the prior year's assessment. Although it appeared from the KTEA results in 2012 (11<sup>th</sup> grade) that Student was at a 12<sup>th</sup> grade reading level, by the end of the first quarter of 12<sup>th</sup> grade, Student's case manager had reason to question whether Student was able to read effectively in "real world" situations after learning of Student's very low SAT reading score in the fall of 2012, despite taking an SAT prep course at the District in 11<sup>th</sup> grade. (FF 40, 58)

Although Student had recognized deficits in math, that was the highest of Student's SAT scores, and reading was the lowest by thirty points. (FF 58) At that point, the District should have recognized the need to provide Student with additional reading instruction, directed particularly toward improving comprehension. At the very least, the SAT scores should have

indicated to the District that Student may not have maintained the 12<sup>th</sup> grade reading provided in Student's IEP goals , and included in Student's transition plan.

The record in this case did not disclose specifically when the SAT scores became available, but the end of the 1<sup>st</sup> marking period in the 2012/2013 is a reasonable beginning point for the compensatory education award. The record also did not provide a clear basis for the amount of time that could have been devoted to additional reading instruction during 12<sup>th</sup> grade either from the independent evaluator's report or other evidence to indicate how much additional reading instruction would likely have made a difference without unduly interfering with Student's daily schedule. It appears that Student's 12<sup>th</sup> grade schedule included more than one study hall on most days. (P-108) Taking two per week for reading instruction would have been reasonable. Accordingly, Student will be awarded 2 hours/week from the first day of the second marking period to the end of the school year.

There is no basis for compensatory education for the current school year, since Student had already left the District and was enrolled in a post-secondary educational program. Also, the District paid for Student's remedial classes, and, therefore, provided appropriate instruction.

#### Independent Transition/Assistive Technology Evaluations

The IDEA transition provision is found in 34 C.F.R. §300.43:

- a) Transition services means a coordinated set of activities for a child with a disability that —
  - (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
  - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes —
    - (i) Instruction;
    - (ii) Related services;

- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Although Student's transition plan nominally met the regulatory standards, it did not provide any truly useful knowledge or assistance to Student, primarily because it was admittedly generic. (FF 45) The transition plan did not take Student's unique needs into account and provide opportunities to determine how the needs might be met in various work environments. Although Student has expressed an interest in a law enforcement career, and it is obvious that becoming a police officer or FBI agent is unrealistic, no real steps were taken to assist Student in exploring other possibilities in that field. (FF 49) The District seized on one program without really exploring whether it would be appropriate for Student. (FF 62)

The self-reports and interest inventories Student completed did not provide any truly useful information, since the results do not really reflect the realities of Student's disabilities or interests. (FF 53)

In addition, the independent evaluation from August 2013 made explicit what the District should have realized throughout Student's high school years, and should have taken into full account in transition planning: Student will need significant accommodations to successfully complete any post-secondary education or training program, and assistive technology will be an important part of the supports Student will need to be successful.

To make up for the deficiencies in the District's transition services and provide Student with useful information to plan for adult life, the District will fund a comprehensive transition evaluation. Also, since the District did not initiate an updated assistive technology evaluation during Student's high school years as part of transition services or otherwise, and Student needs

assistive technology, it is important to determine the devices and software that will be most useful to Student. The District, therefore, will also fund an assistive technology evaluation.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to take the following actions:

1. Provide Student with two hours of compensatory education for every week school was in session from the end of the first quarter of the 2012/2013 school year through the last week of the school year.

The compensatory education shall take the form of instruction from a reading specialist skilled in strategies to develop and facilitate reading comprehension, as further described in ¶ 5 of the recommendation section (pp.19 and 20) of the August 2013 independent evaluation report from [Dr. R].

By agreement of the parties, the compensatory education award may be used for other appropriate services that will meet Student's needs.

2. Provide thorough and independent assessments of Student's current transition and assistive technology needs from a rehabilitation hospital or other provider of Parent's choice.

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

*Anne L. Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER

March 28, 2014