

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

# PENNSYLVANIA

## SPECIAL EDUCATION HEARING OFFICER

ODR No. 8365/07-08 KE  
MF  
Tredyffrin-Easttown School District  
Closed Hearing

For the Student:

Brian K. Wiley, Esq.  
Law Office of Brian K. Wiley  
100 South Main Street  
North Wales, PA 19454

For the School District:

Joyce Videlock, Director of Special Education  
Tredyffrin-Easttown School District  
738 First Street  
Berwyn, PA 19312-1779

Lawrence D. Dodds, Esq.  
Wisler Pearlstine, LLP  
484 Norristown Road, Suite 100  
Blue Bell, PA 19422-2326

Dates of Hearings: February 20, 21, March 3, 4, 2008  
Date Record Closed: April 7, 2008  
Date of Decision: April 16, 2008  
Hearing Officer: Daniel J. Myers

### **Background**

Student seeks reimbursement for his private school tuition for the last two years, contending that he had previously been denied a free and appropriate public education (FAPE) while attending public elementary schools, and that the School District's proposed individual education plans (IEPs) for his middle school 5<sup>th</sup> and 6<sup>th</sup> grades did not offer FAPE. For the reasons described below, I find for the School District.

### **Issues**

Whether or not Student's parents are entitled to tuition reimbursement for the 2006-2007 and 2007-2008 school years; and

Whether or not the School District has offered/provided Student a free and appropriate public education since December 3, 2003

### **Findings of Fact**

1. Student, whose date of birth is xx/xx/xxxx, is a sixth grade resident of the Tredyffrin-Easttown School District (School District) who has been identified [redacted] with attention deficit hyperactivity disorder (ADHD), and a specific learning disability (SLD) in reading and written expression. (N.T. 32; SD6; SD12; SD47; SD63) <sup>1</sup>

### **Second Grade (2003-2004)**

2. In October of Student's 2<sup>nd</sup> grade, his Informal Reading Inventory instructional reading level was 1.2-2.1, with some needs in the areas of reading comprehension when reading silently. (SD6; SD7; SD9; N.T. 429-430) Student received regular

---

<sup>1</sup> References to "P", "SD" and "HO" are to the Parent, School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcripts of the hearing sessions in this case.

education reading support interventions, including small group supplemental reading instruction four times per week. (SD7, p. 2; N.T. 430-431) Midway through that school year, on February 17, 2004, a Section 504/Chapter 15 Service Agreement was developed to address Student's ADHD, impulsivity, distractibility, and organizational difficulties. (SD10; N.T. 58) At the end of the school year, a multidisciplinary evaluation report found a lack of reading fluency that significantly impacted Student's reading overall, with an independent reading level of 1.2, and instructional reading level of 2.1 (SD11; SD12, pp.9-10; N.T. 59-60)

### **Third Grade (2004-2005)**

3. The classroom of Student's regular education 3<sup>rd</sup> grade teacher, who has at least 13 years teaching experience, was filled with visual cues, including a list of homework assignments, charts for the writing process, and charts for materials to bring to math class or to lunch. (N.T. 336, 520-522) In response to an October 2004 note from Student's mother, the 3<sup>rd</sup> grade regular education teacher added to Student's desk a visual reminder to pack up at the end of the day. (SD23, p.2; N.T. 342-343, 374-375)
4. Student's 3<sup>rd</sup> grade IEP called for one hour per day of reading instruction in the learning support room, and listed specially designed instruction (SDI) to address perfectionist strivings, organizational needs, and coping skills. (SD14; SD15) Student's 3<sup>rd</sup> grade learning support teacher, with 16 years teaching experience, used the Wilson Reading System, a research-based systematic multi-modal

- reading program with supplemental materials from the DC Heath series. (N.T. 502, 504-506)
5. When Student's parent expressed concern about Student's 60% performance on a regular classroom spelling test in October, the learning support teacher coordinated with the regular education teacher, developed a strategy for modifying spelling lists, and suggested revisiting the IEP goals. (SD18, pp.2-3; SD21; SD24; N.T. 345, 509, 513) On December 23, 2004, Student's IEP team added two hours in the learning support room for writing, as well as monitoring of binder and folders, monitoring the recording of homework assignments, preferential seating, verbal and visual prompts, wait time for processing, attention cues, and segmenting of larger assignments. (SD27, pp.5, 9, 13; N.T. 509-510) The learning support teacher began meeting Student in his regular education classroom at the end of each school day to check his assignment book, assisted with desk organization and packing up materials, and sent a paper home each week outlining that week's activities. (N.T. 341, 343-344, 515-519, 527-528) In March 2005, Student's IEP was revised to add specific organizational goals. (SD31)
6. Student also attended an above-grade level math class, where he received reading assistance on word problems, highlighted key words, and was allowed to work through problems orally. Student's tests were segmented to intentionally slow him down, and he was stopped frequently to verify that he was following directions. (N.T. 458, 465-468) Once, when a substitute math teacher did not segment one of Student's tests, the math teacher informed Student's parents and

then allowed Student to retake the test with supports in the learning support classroom. (N.T. 469-470, 528-529)

7. At the end of the school year, an Informal Reading Inventory (IRI) indicated an independent reading level of 2.2, and instructional reading level of 3.1, and a frustration level of 4. (SD33)

#### **Fourth Grade (2005-2006)**

8. Student's 4<sup>th</sup> grade IEP was developed June 8, 2005 with goals in reading, writing, organization skills, and [redacted]. (SD34) Learning support continued at six hours per week, and a weekly thirty minute session with a guidance counselor was added. (SD34, pp. 9-10; N.T. 591-592)
9. In September, [an incident occurred] A psychiatric risk assessment concluded that Student was not a danger to himself or others and no educational change was indicated. (SD36; SD37)
10. The parties stipulate that Student's regular education fourth grade teacher provided FAPE. (N.T. 488) Student advanced from Level 7 to Level 11 in the Wilson Reading System. (N.T. at 592) Progress monitoring indicated that Student's reading fluency progressed as expected from 81 words correct per minute to 126 wcpm, with comprehension on target. (SD43; N.T. 597-601, 604) Writing probes indicated better than expected progress from 20 total words with 15 correct word sequences to 57 total words with 46 correct word sequences. (SD43, pp.5,6; N.T. 608) Student's fourth grade progress report shows Student demonstrated appropriate progress in all subject areas. (SD42)

11. At the end of the school year, Student's independent reading level was 3.1, and his frustration reading level was at 4<sup>th</sup> grade level. (SD47, p.2)

**Fifth Grade (2006-2007)**

12. In this School District, middle school begins with 5<sup>th</sup> grade. (SD75; SD76) On May 28, 2006, when Student's IEP team met to prepare for his transition to the middle school, Student's advocate asked that the School District assist in paying Private School tuition for the upcoming school year. (SD49; SD50; N.T. 626-627) The School District requested information about the Private School and rescheduled the IEP meeting. (N.T. 628)
13. After an IEP team meeting in July, the School District proposed an educational program and placement in its middle school, effectively refusing to publicly fund a private school placement. (SD52; SD53; SD56) The July 2006 proposed IEP contained writing [redacted] goals, as well as SDI that included weekly locker cleanings, prompts and reminders to slow down, graphic organizers for writing, monitoring of binder and folder organization of binders, and monitoring of recording of homework. (SD51) Student would attend a daily learning support class to work on writing and organizational skills. (SD51, p.16) Fifth grade middle school teachers credibly testified that they could have delivered the School District's proposed IEP as written, including organizational and emotional supports through regular education interventions. (N.T. 770, 925)
14. For the 2006-2007 school year, Student was unilaterally enrolled by his parents into the Private School. (N.T. 146-148, 283, 295, 855; P2, pp.3-6) Private School provides [redacted] learning support, including multisensory, phonics-based

structured and sequential reading with fluency as part of each lesson, as well as intensive therapy and small class sizes. (N.T. 400-403, 413-415, 854, 862-866, 869; SD80; SD81; SD85) Student received reading instruction on the 3.2 level and writing instruction on Level 4 when he entered Private School in September 2006. (SD85, pp.1,2) Tuition is \$23,500 per year. (N.T. 414)

15. In September 2006, Student's parents obtained a private reading evaluation, which concluded that Student had developed average, grade appropriate reading skills, with the exception of reading fluency for which scores were variable. It determined that Student's independent reading level was at 4<sup>th</sup> grade and recommended that fluency be part of every lesson. The report also concluded that Student's writing was basically sound and recommended instruction to take his writing to the next level to develop richer, deeper, more complex sentences. (SD55, p.3-4) Student's parents were upset because this [redacted] Student, whose reading vocabulary was at the 9<sup>th</sup> grade level, had a 4<sup>th</sup> grade independent reading level, indicating that he was not reaching his potential. (SD55, p.2)

### **Sixth Grade (2007-2008)**

16. A June 19, 2007 School District IRI indicated Student's instructional level at Level 6, with 100% comprehension and impulsivity affecting his fluency. (SD62) An August 2007 Reevaluation Report noted significantly above range cognitive functioning, appropriate academic skill development, basic reading and writing skills commensurate with cognition, but social, emotional and behavioral development concerns. (SD63, p.18) When confident in his skills, such as in math, Student appeared more motivated and productive; when less certain in

- reading, anxiety, inattention and impulsivity increased, diminishing the quality of Student's performance. (SD63, p.18; N.T. 707, 709-710, 714-715)
17. An August 28, 2007 proposed 6<sup>th</sup> grade IEP contained goals for organization skills, writing, [redacted], reading fluency, reading comprehension, and emotional self-monitoring, as well as SDI that required a weekly locker check/clean out, weekly monitoring of binder organization, weekly monitoring of recording homework, supports for writing assignments, social skills instruction, daily opportunities to meet with a guidance counselor, and a functional behavioral assessment. (SD68; SD69) It proposed a regular education reading class taught by a reading specialist, with a daily learning support period to provide supplemental instruction in organization skills, emotional self-regulation skills and writing supports. (SD68, p. 22) The 6<sup>th</sup> grade teachers testified that they could have delivered the IEP as written; they would have used, among other things, an Orton-Gillingham structured, systematic phonics based approach to reading and comprehension; and they would have provided organizational and emotional supports to Student through regular education interventions. (N.T. 779-782, 912-915, 928-932)
18. Student has attended Private for the current 2007-2008 school year, receiving reading instruction at level 4 in December 2007, and writing instruction on Level 4 through December 2007. (SD85, pp. 1,2) Tuition paid was \$15,500. (N.T. 414, 416; P2)
19. Student's parents have been cooperative and honest in their communications with the School District. (N.T. 411)



20. Student's parents filed a Due Process complaint on December 3, 2007 alleging FAPE denials since 3<sup>rd</sup> grade and seeking compensatory education and tuition reimbursement. (SD70) Four hearing sessions were conducted on February 20, 21, and March 3, 4, 2008. School District exhibits SD1 through SD 85, and Parent exhibits P1 and P2, were admitted into the record. (N.T. 938) Hearing Officer exhibits HO 1 and HO 2 are admitted into the record. Written closing arguments were received by, and the record in this case was closed on, April 7, 2008. (N.T. 939)

### **Discussion**

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide FAPE to all Students who qualify for special education services. 20 U.S.C. § 1412 The School District 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)

The United States Supreme Court has held that, in an administrative hearing challenging a special education IEP, the burden of persuasion (which is only one element of the larger burden of proof) is upon the party seeking relief, whether that party is the disabled child or the school district. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); In Re J.L. and the Ambridge Area School District, Special Education Opinion No. 1763 (2006) If the evidence produced by the parties is completely balanced, or in equipoise, then the non-moving party prevails and the party

with the burden of persuasion (i.e., the party seeking relief) must lose. Schaffer v. Weast, supra. If the evidence is not in equipoise, but rather one party's evidence is preponderant, or of greater weight or more convincing than the other party's evidence, then that party prevails whose evidence tips the scales.

In this case, Student seeks relief and therefore bears the burden of persuasion. Of course, as I just noted above, where any party has produced more persuasive evidence than the other party (regardless of who seeks relief), then the evidence is not in equipoise, and the Supreme Court's ruling is not at issue – in that case I must simply find in favor of the party with the more persuasive evidence.

### **Statute of Limitations**

The School District argues that Student is not entitled to raise claims prior to December 3, 2005, which is two years prior to Student's due process hearing request. (SD70; SD72) The School District contends that the Appeals Panel's recent decision in In Re V.P. and the Haverford Township School District, Special Education Opinion No. 1864 (2008) expressly reversed a hearing officer's ruling that IDEIA creates a four-year look-back period. That panel decision, however, observed that IDEIA is admittedly ambiguous on this issue and is not a model of legislative draftsmanship. Another Appeals Panel decision observed that the "2+2" interpretation is at least a tenable alternative, although the statutory language is awkwardly ambiguous, there is scant legislative history supporting it, all published decisions refer to a two-year period, and two years appears to be Congress' middle ground solution to the various conflicting judicial interpretations on the issue. In Re C.C. and the Philadelphia School District, Special Education Opinion No. 1866 (2008)

While Congress clearly intended to limit claims under the IDEIA and to require parents to file timely claims, In Re P. P. and the West Chester Area School District, Special Education Opinion No. 1757 (2006), Congress was not very clear in articulating the limits and time lines that it had in mind. Section 615(f)(3)(C) of the IDEA, 20 USCA §1415(f)(3)(C), requires parents to request a due process hearing within 2 years of the date they knew, or should have known, about the alleged action that forms the basis of the complaint (hereinafter, the “KOSHK” [knew or should have known] date).<sup>2</sup> Section 615(b)(6)(B) of the IDEA, 20 USCA §1415(b)(6)(B), permits parents to present complaints that set forth an alleged violation that occurred not more than 2 years before the KOSHK date. The only two limited exceptions to these claims limitations are when the parent was prevented from making the request due to the local education agency’s specific misrepresentations or withholding of information. 20 USCA §1415(f)(3)(D)

In this case, because the statutory language is ambiguous, and because I further find that Student was not denied FAPE even during the maximum four years, I will give Student the benefit of the doubt on the legal analysis, but with all due respect to the Appeals Panels.

**Student’s claim may span four years, but he was not denied FAPE during that time**

---

<sup>2</sup> The Appeals Panels have noted the difficulty and subjectivity inherent in determining what date parents knew, or should have known, of the actions forming the basis of a due process hearing complaint. In Re V.P. and the Haverford Township School District, Special Education Opinion No. 1864 (2008); In Re C.C. and the Philadelphia School District, Special Education Opinion No. 1866 (2008) I would also suggest that this apparent Congressional requirement contraindicates the incredible speed with which federal regulators expect due process decisions to be issued. 34 CFR §300.515(a) Nevertheless, for some reason, Congress referred to this date twice in IDEIA.

I simplistically refer to IDEIA's claims limitations and timeline provisions as the "what" (615(b)(6)(B)) and "when" (615(f)(3)(C)) provisions, respectively, both of which hinge upon the KOSHK date. Thus, in cases such as this, where the two limited exceptions described above (misrepresentations and information withholding) do not apply, my role is first to ascertain the KOSHK date, and then determine whether the claim alleges violations that occurred not more than 2 years prior to the KOSHK date (the "what"), and whether the complaint was filed within 2 years after the KOSHK date (the "when").

Student's parents certainly knew, or should have known, about the alleged FAPE denials that form the basis of this complaint on May 28, 2006, when Student's IEP team met to prepare for his transition to the middle school, and Student's advocate asked that the School District assist in paying Private School tuition for the upcoming school year. (SD49; SD50; N.T. 626-627) If May 28, 2006 was the KOSHK date, Student's parents would have had 2 years, or until May 28, 2008, within which to file a timely complaint (when), and their timely complaint could go back 2 years, or to May 28, 2004 (what). Here, because Student's parents filed their Due Process Complaint on December 3, 2007 alleging FAPE denials since 3<sup>rd</sup> grade and seeking compensatory education and tuition reimbursement (SD70), they apparently believe that knew, or should have known, about the alleged FAPE denials that form the basis of this complaint on December 3, 2005, six months before the May 2006 middle school transition IEP meeting. It is reasonable to accept December 3, 2005 as the KOSHK date in this case because Student's parents surely were considering their placement options prior to the May 28, 2006 IEP team meeting.

### **No FAPE Denial in 3<sup>rd</sup> Grade**

Having concluded that Student may claim FAPE denial since December 3, 2003, however, I further find that Student was not denied FAPE during that period. At the end of 2<sup>nd</sup> grade, Student was at an independent reading level of 2.2, and instructional reading level of 3.1. (SD33) At the end of 3<sup>rd</sup> grade, Student's independent reading level was 3.1. (SD47, p.2) Student's 3<sup>rd</sup> grade learning support teacher provided one hour per day of Wilson Reading System reading instruction, a research-based systematic multi-modal reading program with supplemental materials from the DC Heath series. (SD14; SD15; N.T. 502, 504-506) This constitutes an appropriate educational program designed to produce meaningful educational benefit, which resulted in steady progress in Student's area of disability.

Student's ADHD, impulsivity, distractibility, and organizational difficulties were addressed in the regular education 3<sup>rd</sup> grade classroom with visual cues, including a list of homework assignments, charts for the writing process, and charts for materials to bring to math class or to lunch. (N.T. 336, 520-522) In response to an October 2004 note from Student's mother, the 3<sup>rd</sup> grade regular education teacher added to Student's desk a visual reminder to pack up at the end of the day. (SD23, p.2; N.T. 342-343, 374-375) When Student's parent expressed concern about Student's 60% performance on a regular classroom spelling test in October, the learning support teacher coordinated with the regular education teacher, developed a strategy for modifying spelling lists, and suggested revisiting the IEP goals. (SD18, pp.2-3; SD21; SD24; SD27, pp.5, 9, 13; N.T. 345, 509, 513) The learning support teacher also began meeting Student in his regular education classroom at the end of each school day to check his assignment book, assisted

with desk organization and packing up materials, and sent a paper home each week outlining that week's activities. (N.T. 341, 343-344, 515-519, 527-528) In March 2005, Student's IEP was revised to add specific organizational goals. (SD31) This constitutes an appropriate educational program designed to produce meaningful educational benefit.

In his above-grade level math class, Student received reading assistance on word problems, highlighted key words, was allowed to work through problems orally, had segmented tests designed to intentionally slow him down, and he was stopped frequently to verify that he was following directions. (N.T. 458, 465-468) Although a substitute math teacher did not segment one of Student's tests, the math teacher cured this problem by informing Student's parents and then allowing Student to retake the test with supports in the learning support classroom. (N.T. 469-470, 528-529) This constitutes an appropriate educational program designed to produce meaningful educational benefit.

#### **No FAPE Denial in 4<sup>th</sup> Grade**

The parties stipulate that Student's regular education fourth grade teacher provided FAPE. Student advanced from Level 7 to Level 11 in the Wilson Reading System, and progress monitoring indicated that Student's reading fluency progressed as expected from 81 words correct per minute to 126 wcpm, with comprehension on target. (SD43; N.T. 488, 592, 597-601, 604) Writing probes indicated better than expected progress from 20 total words with 15 correct word sequences to 57 total words with 46 correct word sequences. (SD43, pp.5,6; N.T. 608) Student's fourth grade progress report shows Student demonstrated appropriate progress in all subject areas. (SD42) This constitutes an appropriate 4<sup>th</sup> grade educational program designed to produce meaningful educational benefit, which resulted in steady progress in Student's area of disability. My

conclusion is further supported by the private reading evaluation secured by Student's parents in September 2006 as he entered 5<sup>th</sup> grade, which concluded that Student had developed average, grade appropriate reading skills, with the exception of reading fluency for which scores were variable, had a 4<sup>th</sup> grade independent reading level, and had basically sound writing skills. (SD55, p.3-4)

### **FAPE was offered for 5<sup>th</sup> and 6<sup>th</sup> grades**

The School District's July 2006 proposed 5<sup>th</sup> grade IEP contained writing [redacted] education goals, as well as SDI that included weekly locker cleanings, prompts and reminders to slow down, graphic organizers for writing, monitoring of binder and folder organization of binders, and monitoring of recording of homework. (SD51)

Student would attend a daily learning support class to work on writing and organizational skills. (SD51, p.16) Fifth grade middle school teachers credibly testified that they could have delivered the School District's proposed IEP as written, including organizational and emotional supports through regular education interventions. (N.T. 770, 925)

The School District's August 2007 proposed 6<sup>th</sup> grade IEP contained goals for organization skills, writing, [redacted], reading fluency, reading comprehension, and emotional self-monitoring. It proposed a regular education reading class taught by a reading specialist, with a daily learning support period to provide supplemental instruction in organization skills, emotional self-regulation skills and writing supports. SDI required a weekly locker check/clean out, weekly monitoring of binder organization, weekly monitoring of recording homework, supports for writing assignments, social skills instruction, daily opportunities to meet with a guidance counselor, and a functional behavioral assessment. (SD68; SD69) This IEP was reasonably based upon recent June

19, 2007 IRI data indicating Student's instructional level at Level 6 with 100% comprehension and impulsivity affecting his fluency, and an August 2007 Reevaluation Report noting appropriate academic skill development and basic reading/ writing skills commensurate with cognition, albeit with social, emotional and behavioral concerns. (SD62; SD63, p.18)

Both the 5<sup>th</sup> and 6<sup>th</sup> grade IEPs were reasonably calculated to provide meaningful educational benefit. School District personnel credibly testified that they could have implemented these appropriate IEPs. (N.T. 779-782, 912-915, 928-932) Thus, the School District offered FAPE for both 5<sup>th</sup> and 6<sup>th</sup> grades.

#### **Student did not establish FAPE denial**

Student argues that the School District failed to ensure that Student reviewed and completed his homework, failed to provide packing up service at end of day, failed to segment his math tests, failed to ensure progress in writing and reading, shifted responsibility to Student, [redacted] , and failed to comply with its own Mission Statement to help Student develop to his maximum potential. (Student's Closing Brief; N.T. 279, 281-282, 399, 401, 730, 742, 743, 809, 845-847, 850, 852, 854, 855, 869, 901, 902) Student's complaints primarily concern his 3<sup>rd</sup> grade school year. The parties stipulate that Student's regular education fourth grade teacher provided FAPE. (N.T. 488) Student's parents are upset because this [redacted] Student, whose reading vocabulary is at an advanced grade level, has a below-grade independent reading level, indicating that he is not reaching his potential. (SD55, p.2)

I disagree with Student's perceptions of FAPE denials. In response to an October 2004 note from Student's mother, the 3<sup>rd</sup> grade regular education teacher added to



Student's desk a visual reminder to pack up at the end of the day. (SD23, p.2; N.T. 342-343, 374-375) When Student's parent expressed concern about Student's 60% performance on a regular classroom spelling test in October, the learning support teacher coordinated with the regular education teacher, developed a strategy for modifying spelling lists, and suggested revisiting the IEP goals. (SD18, pp.2-3; SD21; SD24; N.T. 345, 509, 513) The learning support teacher began meeting Student in his regular education classroom at the end of each school day to check his assignment book, assisted with desk organization and packing up materials, and sent a paper home each week outlining that week's activities. (N.T. 341, 343-344, 515-519, 527-528) In March 2005, Student's IEP was revised to add specific organizational goals. (SD31)

The record does establish that a substitute math teacher did not segment one of Student's tests. Even that failure was cured, however, when the math teacher informed Student's parents and then allowed Student to retake the test with supports in the learning support classroom. (N.T. 469-470, 528-529)

As I have concluded above, the School District's IEPs were reasonably calculated to provide meaningful educational benefit to Student. See In Re S.J. and the Tredyffrin Easttown School District, Special Education Opinion No. 1435 (2008) (FAPE was provided where the progress student made in the school district program was not trivial and not incongruent with his abilities and special needs, and student might have caught up with his peers given sufficient time and support.) Further, the School District appropriately implemented Student's IEPs. Thus, the School District has offered/provided Student a free and appropriate public education since December 3, 2003.

**Student's parents are not entitled to tuition reimbursement**

To satisfy the first of the three-prong tuition reimbursement test, Student must establish that the School District did not offer FAPE. As I have found in detail already, the School District did offer FAPE in this case. Thus, Student has failed to meet his tuition reimbursement burden.

Although not necessary, I will briefly address the other two prongs of the tuition reimbursement test, both of which Student has sufficiently established. Private School provided [redacted] learning support, including multisensory, phonics-based structured and sequential reading with fluency as part of each lesson, as well as intensive therapy and small class sizes. (N.T. 400-403, 413-415, 854, 862-866, 869; SD80; SD81; SD85) This sufficiently addressed Student's needs appropriate to his learning profile and educational needs. In Re J.A. and the Newtown Area School District, Special Education Opinion No. 1054 (2000)

Student also met his burden on the third prong of the tuition reimbursement test, i.e., the weighing of the equities. Student's Parents have cooperated with, and have not withheld information from the School District. (N.T. 411) They have attended IEP team meetings consistently expressing as best they could their concerns with the District's educational planning for the Student. In Re J.H. and the Souderton Area School District, Special Education Opinion No. 1870 (2008)

Having failed to establish that the School District denied FAPE in the first place, however, Student's parents are not entitled to tuition reimbursement.

**Conclusion**

For the reasons described above, the School District provided FAPE to Student during his 3<sup>rd</sup> and 4<sup>th</sup> grade school years, and it offered FAPE to Student for his 5<sup>th</sup> and 6<sup>th</sup> grade school years. Consequently, Student is not entitled to compensatory education and his parents are not entitled to tuition reimbursement for the 2006-2007 and 2007-2008 school years.

**Order**

- The School District provided FAPE to Student during his 3<sup>rd</sup> and 4<sup>th</sup> grade school years.
- The School District offered FAPE to Student for his 5<sup>th</sup> and 6<sup>th</sup> grade school years.
- Student is not entitled to compensatory education since December 2003.
- Student's parents are not entitled to tuition reimbursement for the 2006-2007 and 2007-2008 school years.

*Daniel J. Myers*  
Hearing Officer

April 16, 2008

ODR No. 8365/07-08 KE  
MF  
Tredyffrin-Easttown School District