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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: SM

ODR #7268/06-07 AS

Date of Birth: xx/xx/xx

Date of Hearing:
May 4, 2007

CLOSED HEARING

Parties to the Hearing:
Mr. and Mrs.

Representative:
Pro Se

New Media Technology Charter School
7800 Ogontz Avenue
Philadelphia, Pennsylvania 19150

Lawrence Dodds, Esquire
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Date Transcript Received:

May 10, 2007

Date of Decision:

May 13, 2007

Hearing Officer:

Linda M. Valentini, Psy.D.

Background¹

Student is an xx-year-old student who attended the New Media Technology Charter School (hereinafter New Media) for the 2005-2006 school year and is now attending a regular education private school². He was evaluated in May 2006 and found eligible for special education services as a student with an Other Health Impairment (ADHD), with a secondary classification of Emotional Disturbance. An IEP was prepared pursuant to the evaluation.

Student's parents, Mr. and Mrs. (hereinafter Parents), requested this hearing because they believe that Student should have been evaluated earlier in the 2005-2006 school year and given special education services; they are requesting compensatory education for a denial of a free, appropriate public education (FAPE).

New Media maintains that its evaluation of Student was timely and that no compensatory education is due.

Issues³

Did the New Media Technology Charter School fail to timely identify Student and offer him a free appropriate public education for the school year 2005-2006?

If the New Media Technology Charter School did fail to timely identify and offer Student a free, appropriate public education for the school year 2005-2006, is he entitled to compensatory education and in what kind and amount?

Findings of Fact

1. New Media's Middle School was started in September 2005, the year Student enrolled. (NT 86)
2. Student's application for admission to New Media notes three schools attended from Kindergarten through 4th grade: [redacted] Charter (K-2nd), [redacted] Academy (3rd), and [redacted] Montessori (4th). (S-4)
3. The application form the Parents completed for New Media notes that Student had never participated in any special education programming or participated in any special school programs. The Parents did not tell the school staff during the

¹ The matter was originally scheduled for March 7th, a date within the regulatory timelines. Shortly before the hearing date it was determined that the charter school had not received the Parents' complaint or the hearing notice and was not prepared for a hearing. The matter was continued to a date that allowed adequate preparation and the opportunity to hold a resolution meeting.

² See NT 24-25

³ The Parents, proceeding pro se, sought remedies that were not appropriate and this was addressed on the record. Specifically the Parents wanted New Media to develop an IEP for implementation at his current private school. (NT 23-28)

- application process that he required special education services or psychological services. (NT 39, 118-119; S-4)
4. The application for New Media noted that he was on the honor roll, and that he had received the President's Award for Academic Excellence. (S-4)
 5. The application notes that Student plays the [instruments redacted], [redacted] dances, is an usher at church, and plays football and basketball. (S-4)
 6. The application notes that Student has asthma and ADHD. (NT 131; S-4)
 7. An elementary school teacher who taught Student for 1½ years (the years are not specified) notes on a Recommendation Form, under Social Relationships, "Student needs to understand the need for rules and the acceptance of such from adults and peers as well. His relationships are acceptable when this is remembered". (S-4)
 8. There is no other documentary evidence relating to the Parents informing New Media about Student's previous behaviors, although it is notable that New Media is the upper division of [Academy], where he spent part of 3rd grade and the New Media CEO knew him there. (NT 101-105)
 9. The Parent reported to the school psychologist who evaluated him in May 2006 that at [redacted] Charter Student had some behavior problems and that [the Charter school] could no longer accommodate him. (S-10)
 10. The Parent reported to the school psychologist who evaluated him in May 2006 that Student left [Academy] before the end of 3rd grade and enrolled in the Montessori school where the classes held fewer than 10 children. Towards the end of 4th grade in the Montessori school he required a TSS worker. (S-10)
 11. Student was withdrawn from [Academy], but at the initiative of the Parents. The school did not ask him to leave. (NT 101-105)
 12. The Parent reported to the school psychologist who evaluated him in May 2006 that in June 2005, due to increasing tantrums and other aggressive behaviors, Student was seen at [behavioral health facility] where he was evaluated and found to have ADHD and Oppositional Defiant Disorder. (S-10)
 13. Despite his behavioral challenges, prior to coming to New Media, Student maintained grades in the A and B range. (S-10)
 14. A Child Health Assessment completed on 12-1-05 by Student's physician and given to the school on or about that day notes "ADHD and Depression⁴" under

⁴ "Depression" is illegible.

- health history and also under Health Problems or Special Needs. There is no notation of Oppositional Defiant Disorder. (NT 58-59, 61, 121-122; S-6)
15. Student's science teacher at New Media had 14 or 15 students in her class, one of whom was a special education student. (NT 36)
 16. The science teacher saw Student as an "average but bright" student who was "in the center of the curve" in the class. He performed satisfactorily. (NT 40)
 17. Student's reading, language arts and social studies teacher had about 17 students in her class. One sixth grade student in her class had an IEP. (NT 74-76)
 18. In reading, language arts and social studies classes Student's academic performance was "inconsistent – he would vary back and forth". He made progress in those classes. (NT 77)
 19. Student's grades for each of three trimesters were as follows:
Reading/Language Arts: 89/90/85; Mathematics: 75/64/60; Science: 75/75/75;
Social Studies: 82/84/85. Between the 1st and the 2nd Trimesters, Student went from "Consistently Meets Expectations" to "Inconsistently Meets Expectations" in all aspects of Mathematics. (S-7)
 20. Student scored at the Proficient level in Writing on the Pennsylvania Writing Report, administered in 5th grade. (NT 120; S-8)
 21. On the report card dimension of Character Development (respect for adult authority, respect for peers, appropriate self-control, adds to order and decorum of classroom, takes responsibility for own actions, follows directions and instructions and makes responsible choices), Student received a rating of Inconsistently Meets Expectations on the 2nd and 3rd Trimester reports (there was no rating for the 1st Trimester in this area). (S-7)
 22. In science class sometimes Student would resist sitting next to a certain student if something had happened to them earlier in the day, but there were never any behavioral challenges causing a call to the Parents. Sometimes he seemed angry. Sometimes working in groups appealed to him, sometimes not. (NT 40-41)
 23. Student's attention seemed like that of the other students in his science class. Sometimes he was distracted. Sometimes he read from a book of his interest placed in his lap while the teacher was instructing the class. (NT 42, 70)
 24. The science teacher saw nothing that would raise concerns that Student needed additional supports because of his behavior. None of Student's behaviors seemed to interfere with his learning process in her class. Nothing seemed out of the ordinary. (NT 41-42, 68)

25. In reading, language arts and social studies classes Student was “easily agitated”. At times he regularly argued with other students or become upset easily. (NT 77-78)
26. The reading, language arts and social studies teacher had concerns about Student’s anger level, as he became very angry over small things. (NT 78)
27. The reading, language arts and social studies teacher noted that sometimes Student had problems sitting still, but this was the case with many of the children. (NT 79)
28. The reading, language arts and social studies teacher did not see anything to lead her to think that Student needed more supports than what were being provided in the classroom to him. (NT 79)
29. On December 8, 2005 Student and another student got into an altercation at recess and started fighting. He was assigned a two-day suspension and a parent conference was held on his return to school. (S-9)
30. On February 14, 2006 Student received a detention for disobedience, poor attitude and disturbing the class – he “refuses to follow directions. He constantly draw (sic), plays and talks during class”. (S-9)
31. On March 17, 2006⁵ Student received a detention for using inappropriate language, calling another student a “fat jerk”. (S-9)
32. On May 4, 2006 Student was suspended for three days pursuant to an extended incident of not following teacher direction to stay seated at lunch, jumping into photographs despite being told not to, and after being told he had to remain outside the classroom in a hallway, slamming the door. (S-9)
33. On May 19, 2006 Student was suspended for an unspecified number of days for physically fighting during dismissal time. The reinstatement date was May 23, 2006. (S-9)
34. The number of Student’s suspensions was not so out of the ordinary compared to other students at New Media, although it is not the behavior the school sees across the board. (NT 46)
35. Most of the incidents for which Student was suspended occurred in recess, lunch, dismissal time and other social times. (NT 46; S-8)
36. After each suspension parents are required to come to the school for a reinstatement meeting. During Student’s reinstatement meetings his Parents did not ask that he be evaluated. (NT 45)

⁵ The report is dated 3/17/05 in error.

37. The science teacher did not believe that Student's disciplinary history at New Media raised any concerns about a need for special education services. (NT 46)
38. From the first day of the school's operation, New Media employed an individual who consulted with the teachers regarding instructional practices to guide their adequately accommodating the students with IEPs. This person came to the school an average of one or two days per week. (NT 37, 76, 81, 87-88, 94, 147)
39. The special education coordinator would have been informed if a record noting that a student had ADHD was received. (NT 100)
40. New Media also has speech/language consultants and a certified school psychologist who comes in and tests the students as requested. (NT 87-88)
41. In October or November 2005 the Parent met with the school's principal and spoke about his having ADHD and being on medication. At that time Student had had no disciplinary incidents. The Parent did not ask for an evaluation. (NT 120-121, 148, 156)
42. The reading, language arts and social studies teacher spoke to the mother on the phone about twice a month in the beginning of the year. The Parents made no mention to her that Student should have an evaluation. (NT 79-80, 122)
43. If the Parents had mentioned the need for an evaluation the reading, language arts and social studies teacher would have directed them to the person who was the school's special education consultant. (NT 80-81)
44. In May 2006, near the end of the school year, Student's grandmother contacted the CEO of the school to request that a meeting be set up to discuss his mother's concerns about the student. The CEO was aware of Student's disciplinary issues. (NT 88-90)
45. On May 5, 2006 there was a request for an evaluation of Student. (NT 90, 121)
46. Student was evaluated by a certified school psychologist on May 18th and May 26th 2006. He was somewhat resistant to testing, at one point refusing to continue a particular writing task. The evaluator thought that his IQ scores may have been an inaccurate reflection of his ability due to resistance to testing. (S-10)
47. On the Wechsler Intelligence Scale for Children – Fourth Edition (WISC IV) Student received a Verbal Comprehension Index of 96 (Average)⁶, a Perceptual Reasoning Index of 94 (Average), a Working Memory Index of 94 (Average) and a Processing Speed Index of 97 (Average). His Full Scale IQ score was 93 (Average). (S-10)

⁶ The Average Range is from 90 to 109.

48. Reading decoding skills, assessed through the Silvaroli Reading Inventory were at the 5th to 6th grade level on recognition of isolated words and through the 6th grade level on reading passages. (S-10)
49. Reading comprehension skills were assessed on the Silvaroli as being at a 4th to 5th grade instructional level and a 6th grade frustrational level. He was better on inferential questions than on factual recall, suggesting that his reasoning was a strength, whereas attention to details was a weakness. (S-10)
50. Math was assessed through the Wechsler Individual Achievement Test – Second Edition (WIAT II). Student’s math skills were assessed to be no higher than beginning 5th grade. (S-10)
51. On the Behavior Assessment System for Children (BASC) the Parents’ endorsements of items resulted in a clinically significant score on Hyperactivity, Attention Problems and Depression. On the BASC the teacher’s endorsements resulted in clinically significant scores on Hyperactivity, Aggression and Conduct Problems. On the Adaptability scale (the ability to adapt to changes in the environment), Student scored at the clinically significant level (1st percentile) on the Parents’ ratings and in the at risk level (6th percentile) on the teacher’s ratings. (S-10)
52. The behavior scales and interviews with Student and his parents yielded a picture of a fairly competitive boy who is often trying to prove himself, who sees school as confining and limiting, who has difficulty conforming to requirements for socially appropriate behavior in class, who has very low frustration tolerance, who engages in attention-seeking behavior at times and whose school adjustment is “marginal”. (S-10)
53. The school psychologist found Student to be exceptional (Other Health Impaired – ADHD and Emotionally Disturbed) and in need of specially designed instruction. She recommended instructional accommodations, consistent behavioral support across the school environment, and outpatient counseling to address poor frustration tolerance and depression. (S-10)
54. The school psychologist generated a list of specific recommendations for Student’s teachers, noted that an in depth functional behavior assessment should be completed by the next semester to determine the most significant frustrations to learning, advocated good parent/school communication and again highlighted the need for (outpatient) counseling. (S-10)
55. During the school year, prior to the evaluation’s being completed, the science teacher provided positive feedback, routinely allowed working in groups, and gave extra testing time to Student and any student who needed it. There was a

- daily report, used inconsistently, when he remembered it. As writing was difficult for Student, she allowed him and others to draw. (NT 49-51, 72)
56. Because Student needed help staying focused, his reading, language arts and social studies teacher sat him next to her in the classroom. (NT 77)
 57. When he became upset the reading, language arts and social studies teacher would talk to him in the hallway or let him go outside the classroom to calm down. He would come back and sit down and be calm afterwards. These accommodations were successful. This teacher provided the same accommodations to another child in another grade who did not have an IEP. (NT 78-79, 81-85)
 58. The Parents had developed a daily behavior report at the beginning of the year to help Student get into a positive routine and was used by the science teacher whenever he presented it to her. The teacher understood that it was for tracking his behavior and keeping up with his assignments, “more like a homework log”. The reading, language arts and social studies teacher also used the notebook. (NT 67-68, 79, 108; S-10)
 59. A Notice of Recommended Educational Placement (NOREP) was issued on June 21, 2006 following an IEP meeting. The NOREP called for “Specialized Instruction for Emotional Support” with the placement being “Emotional Disturbance – Itinerant”. The Parents approved the NOREP⁷. (NT 54, 123-124; S-12)
 60. The science teacher believes that the IEP could have been delivered at New Media. (NT 54)
 61. On August 29, 2006 the Parents sent New Media a letter outlining Student’s school history and expressing concern about his returning, asking for a meeting to “mutually agree on the next course of action. (NT 128; S-15)
 62. The Parents withdrew Student from New Media, despite having signed the NOREP because they were not confident that he would receive the services he would need coming back for the new school year. (NT 125)
 63. The Parents’ form of notifying the school that Student was not going to come back in September was sometime in the summer returning the re-enrollment forms checked to indicate that he would not be returning. On the forms the Parents did not indicate that Student was being enrolled at the private school. (NT 127-129)

⁷ The NOREP informs parents that there is a document entitled Procedural Safeguards Notice, and that they may obtain a copy of the Notice by contacting the school by telephone. It is not known whether the Parents actually received a copy of the Procedural Safeguards when they signed the Permission to Evaluate and/or when they were presented with the NOREP.

64. New Media offers ongoing one-to-one or small group consultation to its staff regarding special education issues through its special education consultant. (NT 91-92)
65. The individual who was principal of New Media from August 2005 to February 2006 reviewed the folders of the special education students with the educational consultant. (NT 146-147)
66. New Media has a special education program and offers such to students with IEPs. (NT 148-150)
67. The former principal of New Media from August 2005 to February 2006 did not have any concerns that Student needed special education or related services to address ADHD or for any other reason. (NT 152)
68. If the principal had received information from a parent or a teacher or an administrator that a child needed special education services and was not yet classified, she would have asked the parents to write a letter requesting special education. (NT 153)
69. Child Find information would be delivered at a Wednesday staff development session. The CEO did not recall when that would have occurred. (NT 93)
70. From August 2005 to February 2006 New Media did not provide a formal or informal training to its staff regarding its child find obligations. (NT 167-168)
71. Student's stepfather worked for [redacted], an approved private school providing special education services to students with a variety of behavior challenges as a teacher's assistant. He has received a number of trainings. He had access to the IEPs of the students under his care. (NT 132-138)
72. Student's mother is an administrative assistant at [redacted], a charter school in Philadelphia. She has a Bachelor's degree in recreation from [redacted] University and may be certified to teach recreation. Previously the mother was an assistant at [redacted], another charter school in Philadelphia. Before that she worked at [redacted], a residential facility serving persons of all ages with special needs. (NT 138-141)
73. The Parents had been in ongoing contact with a gentleman who was a co-worker of the mother. He was in education for 38 years, 15 of those years being in special education as a coordinator and a consultant. (NT 171, 173)
74. Over the nine years they had been discussing Student's challenges with this individual, and particularly during the period the student was attending New Media, the special education consultant did not suggest to the Parents that they make a written request for an evaluation of Student. (NT 178-179)

75. He did not make such a recommendation to the Parents because what they were doing with the school “was working”. (NT 179)

Credibility of Witnesses

A Pennsylvania Special Education Hearing Officer is specifically charged with making credibility determinations regarding the witnesses’ testimony; in the great majority of cases the hearing officer level is the only level at which direct testimony is taken. The weight assigned to the various witnesses is addressed in the Discussion section of this decision.

Discussion and Conclusions of Law

Legal Basis

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act (“IDEA”). 20 U.S.C. § 1400 *et seq.* (as amended, 2004).

Under the IDEIA, a “public agency” includes nonprofit public charter schools that are not otherwise included in LEAs or ESAs and are not a school of an LEA or an ESA. 34 C.F.R. §300.33

The IDEIA states its Child Find requirements in this way:

The State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated. 34 C.F.R. §300.111(a)(i)

The Commonwealth of Pennsylvania’s current special education regulations, effective June 9, 2001 provide regarding Child Find:

(a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(1)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district’s jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.

- (c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter. PA 22 Code § 14.121.

The Commonwealth of Pennsylvania further puts forth its **specific Child Find expectations for charter schools** at 22 PA Code § 711.21:

- (a) To enable the Commonwealth to meet its obligations under 34 CFR 300.125 (relating to child find), each charter school shall establish written policies and procedures to ensure that all children with disabilities that are enrolled in the charter school, and who are in need of special education and related services, are identified, located and evaluated.
- (b) Each charter school's written policy shall include:
- (1) Public awareness activities sufficient to inform parents of children applying to or enrolled in the charter school of available special education services and programs and how to request those services and programs.
 - (2) Systematic screening activities that lead to the identification, location and evaluation of children with disabilities enrolled in the charter school.

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

Where there is evidence that there were deficiencies in either an IEP itself or in the delivery of the program resulting in a denial of services altogether or in a trivial or minimal educational benefit in any area of need, a student is entitled to an award of compensatory education. In such cases, compensatory education is due for a period equal to the deprivation, measured from the time that the school district knew or should have

known of its failure to provide FAPE. *M.C. v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996).

The District's (or LEA's) obligation to serve a student commences within a "reasonable time" after the District should have suspected the child to be disabled, the "reasonable time" being allowed to the District to conduct an evaluation, identify the student as disabled, and formulate an appropriate program for the child. See Puxatawney Area School District v. Kanouff and Dean; Ridgewood; W.B. v. Matula; Palmyra Board of Education v. F.C.; T.B. v. School District of Philadelphia; In Re: The Educational Assignment of R.A. Special Education Opinion No.1431 (Jan. 5, 2004). .

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). However, application of the burden of proof does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio.

Discussion

This case revolved around the Parents' allegations that the charter school failed to evaluate and identify their son in a timely manner. As the school did ultimately evaluate and identify Student, the central question to be explored is whether or not the school did so in a timely manner.

An examination of the application paperwork filed by the Parents prior to Student's admission reveals that the only formal hint that this was a student with a disability was that he had Attention Deficit Hyperactivity Disorder (ADHD) (FF 3, 4, 5, 6). Although one of his former teachers noted some difficulties, these were not beyond what would be normally expected of a young child (FF 7). A physical examination form given to the school in December notes "ADHD" and an indecipherable word that at the hearing was translated as "depression" (FF 14). In May 2006, when the school psychologist was evaluating Student the Parents provided an extensive behavioral history that may have been of some assistance to the school early on, but also may have, at least in the Parents' minds, posed problems re the boy's acceptance into New Media (FF 9, 10, 11, 12). The mother's testimony that she presented information regarding Student's difficulties and behavioral challenges upon application (NT 107) is simply not credible. What is credible is that she and the principal met on at least one occasion sometime in October or November 2005 before Student had any notable behavioral incidents and that she told the principal that Student had ADHD and was on medication (FF 42; NT 108). Notably the mother contradicted her own testimony regarding when she told the school about

Student's depression and his oppositional defiant disorder (See NT 111-112 versus NT 112-116).

From the perspectives of the two teachers who testified in a most credible manner, who together had Student for science, reading, language arts and social studies, his behavior was not all that different from the norm and he was making academic progress (FF16, 18, 22, 23, 24, 25, 28). The first formal disciplinary action took place on December 8, 2005; the infraction involved physical fighting at recess (FF 29). Over two months later, on February 14, 2006 Student received a suspension for not following class rules (FF 30). One month later, on March 17, 2006 he called a student a "fat jerk" at lunch and received a suspension (FF 31). About seven weeks later, on May 4, 2006 he was disruptive (threw bag of chips, didn't follow directives during a party, slammed the classroom door) and received a detention (FF 32). The final suspension, which occurred after the Parents had requested an evaluation, was on May 19, 2006 when he fought with another student during dismissal (FF 33). Contrary to the mother's testimony that most of the issues involving discipline were classroom behaviors (NT 109), only one of the suspensions related to instructional classroom time rather than less structured lunch, recess, or dismissal time (FF 35; S-9).

Although it has long been established that a student's right to special education does not depend on the vigilance of the parents, in this case the Parents, contrary to their testimony (NT 120) were not naïve. First, the mother testified that she had received information regarding the special education process toward the middle of the year (NT 110). Although the source of that information is unknown, and "the middle of the year" is not defined, it is likely to have come before May 5, 2006 which is hardly the middle of the year. Second, and of much greater import, is that both the stepfather and the mother have more experience than the average parent with special education and special education students. The stepfather worked as a teacher's aide in an approved private school for children with learning and behavior challenges requiring special education (FF 71); the mother worked at [redacted], a residential program for persons with disabilities from early years through geriatrics wherein the children receive special education. More recently the mother worked in an administrative capacity at [redacted charter schools], both small charter schools, and very likely had at least a passing acquaintance with special education concepts at one or both schools⁸, (FF 72). Finally, the mother's co-worker who is a special education consultant and has known the family for nine years discussed Student with the Parents over time (FF 74).

From the point of view of New Media, although hindsight is 20/20, and it could conceivably be argued that there was a thread from the mention of ADHD on the application, through some classroom manifestations of anger or difficulty focusing, through the suspensions, the thread is very slender and even from a current perspective does not present an impressive case for the need for an evaluation. Notably, also, the teachers recognized some of Student's needs in the areas of structure and focus and made successful accommodations for him in their classrooms; these accommodations were not so out of the ordinary that the teachers required support from a special education

⁸ One of the schools has been involved in the due process system with this hearing officer.

consultant. Student was making progress and was afforded a free appropriate public education. In fact, Student successfully completed the year with the regular education structure and supports supplied at New Media.

For the sake of argument, this hearing officer believes that the earliest New Media could possibly have discerned a thread given exactly what they knew at the time would have been on May 19, 2006 on the occasion of the second physical fight. Prior to that second fight the student was making academic progress, and although he was not a stellar citizen of the school he certainly was not having frequent and serious discipline issues (in some schools calling another student a “fat jerk” would hardly merit a suspension). The Parents asked for an evaluation on May 5th, two weeks prior to May 19th, the occasion of the second fight. The evaluation was completed rapidly and competently and the school offered Student an IEP for the coming year. As this hearing is focused on the 2005-2006 school year, the appropriateness or lack thereof of the proffered IEP is not relevant at this time and will not be addressed. The Parents approved the IEP as written, with their participation. Had Student remained at New Media and had it become apparent that the IEP needed revision that would likely have happened.

As New Media evaluated Student in a timely manner and did not deprive him of a free appropriate public education he is not entitled to compensatory education.

Although the charter school prevailed in this matter as the Parents failed to meet their burden of proof, this hearing officer will offer some specific guidance to New Media. The school provided evidence that it has a special education consultant who is available weekly to assist in providing support to the teachers who are implementing IEPs. The school provided credible testimony that it implements and monitors the IEPs of its special education students. What the school seems to lack, or at least what it failed to establish, is that it formally or even informally instructs its staff regarding its Child Find obligations. This was clearly a deficit during the tenure of the previous principal whose testimony made clear that she was not familiar with the concept of active Child Find, although she did have an understanding of the process involving a parental request for an evaluation. It would be wise for the school to arrange a specific formal training for its faculty and administrators very early in the coming school year, with informal follow up throughout the school year. It is suggested that its educational consultant along with its consulting school psychologist would be in an excellent position to provide this training. Guidance may also be sought from PaTTAN in King of Prussia. If New Media takes the opportunity to learn from this hearing experience it will be in a good position to afford its students who may be eligible but unidentified a free appropriate public education.

Order

It is hereby ordered that:

1. The New Media Technology Charter School did not fail to timely identify Student and offer him a free appropriate public education for the school year 2005-2006.
2. As the New Media Technology Charter School did not fail to timely identify and offer Student a free, appropriate public education for the school year 2005-2006, he is not entitled to compensatory education.

May 13, 2007

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer