

*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. 9847/08-09 KE

Child's Name: STUDENT

Date of Birth: xx/xx/xx

Dates of Hearing: 05/18/09; 06/18/09; 08/07/09;  
09/14/09; 09/18/09

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

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School District

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Date Record Closed:

October 19, 2009

Date of Decision: November 3, 2009

Hearing Officer: Anne L. Carroll, Esq.

**INTRODUCTION AND PROCEDURAL HISTORY**

The Student involved in this case was enrolled in the Unionville-Chadds Ford School District from the beginning of 6<sup>th</sup> grade through the end of 9<sup>th</sup> grade. In January 2007, a private neuro-psychologist identified a nonverbal learning disability (NLD) as the source of Student's academic difficulties in reading, math and written expression, and also noted the adverse effects of Student's NLD on social interactions as those became more complex.

After a difficult first year in the District high school, including a [redacted behavior] and short-term partial hospitalization admission, Parents unilaterally placed the Student at [redacted Private School] for 10<sup>th</sup> grade after the District refused to consider funding a private school placement. Parents then commenced a due process hearing to seek tuition reimbursement for the 2008/2009 school year and compensatory education from 6<sup>th</sup> through 9<sup>th</sup> grades. After a first hearing session in May 2009 directed primarily toward determining the scope of the relief Parents were permitted to seek in this case, Parents were limited to presenting evidence dating back two years from the date the due process complaint was filed. The hearing was then completed in four additional sessions between June 18 and September 18, 2009.

For the reasons explained below, the District will be ordered to reimburse Parents for the Private School tuition paid during the 2008/2009 school year and to provide full days of compensatory education for the second half of the 2007/2008 school year.

**ISSUES**

1. Did the Unionville-Chadds Ford School District fail to provide Student with appropriate special education and/or related services at any time between March 2007 and June 2008?

2. Did the District fail to offer Student an appropriate program/placement for the 2008/2009 school year?
3. If so, have Parents met the remaining criteria for obtaining tuition reimbursement?
4. If Student is entitled to compensatory education for any period between March 2007 and June 2008, in what form and in what amount is compensatory education due?

### **FINDINGS OF FACT**

1. Student (Student) is a teen-aged child, born xx/xx/xx, a resident of the Unionville-Chadds Ford School District and eligible for special education services. (Stipulation, N.T. p.15 ).
2. Student has a current diagnosis of specific learning disability in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii); (P-4, S-23, S-41).
3. Student had received special education services, consisting of pull-out speech/language services and resource room support, in a [state redacted] school district since second grade due to language processing deficits. (P-4, S-23, S-41)
4. Student entered the District as a 6<sup>th</sup> grade student in the 2004/2005 school year with an IEP from Student's former school district and began receiving special education services in accordance with that IEP before the District completed its own evaluation and determined that Student needed specially designed instruction in the areas of reading and written expression. (N.T. pp. 26—28; S-23, S-41, S-42, S-44)
5. As the end of Student's 8<sup>th</sup> grade school year (2006/2007) approached, Student's Parents became concerned about the transition to high school. Parents' concerns were based on progress reports that indicated little or no academic progress, as well as the results of a private neuro-psychological evaluation completed in January 2007. (N.T. pp. 29—34; P-4, S-9)
6. Based upon testing completed in the course of the neuro-psychological examination which revealed a pattern of deficits in complex interpretation of language, visual-spatial problem solving, visual-perceptual skills, bilateral fine motor skills and complex encoding of information, the evaluator concluded that Student's specific learning disorder is a nonverbal learning disability (NLD). A psychiatric evaluation obtained by the District in the fall of 2008 confirmed the January 2007 NLD diagnosis and that Student exhibits a classic pattern of difficulties typically associated with NLD. (N.T. pp. 51—55; P-4, S-9, S-23)

7. Problems with visual/spatial, visual/motor processes are characteristic of NLD. School-related problems associated with NLD typically increase as academic and social demands increase, often beginning in middle school. (N.T. p. 311; S-9, p. 10)
8. Academically, NLD primarily affects higher level thinking skills such as inferential understanding of reading material and math problem solving. Struggles in those areas become more pronounced as academic subject matter increases in complexity. (P-4, S-9)
9. NLD is also associated with difficulties in social interactions arising from misperceptions of social situations/cues, as well as difficulties in understanding both academic and social expectations and in adapting to novel situations. Students with NLD tend to continue to rely on prior learned behaviors when confronted with new or ambiguous situations and have difficulty learning from mistakes and realizing that past strategies are no longer either appropriate or effective. (N.T. pp. 317, 318; S-9, p. 10)
10. Recommendations for school programming for Student made in the January 2007 neuropsychological evaluation included small group or individualized instruction whenever possible, but especially for reading, language arts and math; concrete, straightforward presentation of verbal materials; simplified instructions/directions with opportunities for asking clarifying questions; adult “check-ins” because Student was not likely to self-advocate on a consistent basis; organized, direct instruction with clear classroom expectations; slower instructional pace; additional training in reading comprehension skills; extended time for tests and completing work; supportive education in math and writing; study skills and social skills training; continued use of study guides; encouragement to slow down when completing complex academic tasks. The evaluator also recommended an alternative academic placement if the District had difficulty meeting Student’s needs. (P-4, pp. 10—12)
11. An IEP meeting to plan for a successful transition to high school was convened on May 10, 2007. The meeting included both 8<sup>th</sup> and 9<sup>th</sup> grade District staff. The January 2007 neuro-psychological report with the NLD diagnosis was considered at that meeting. (N.T. pp.122; P-4, S-27, S- 30)
12. The IEP resulting from the May 2007 meeting included goals in the areas of reading comprehension, language arts/English (writing), self-advocacy and study skills, all of which had also been areas covered in the IEP developed in November 2006 for Student’s 8<sup>th</sup> grade year. A goal for math problem-solving was added, which provided that Student would use specified strategies to correctly solve word problems with 80% accuracy. The reading goal provided for 90% comprehension of literature and informational texts at a 7<sup>th</sup> grade level on 3 quarterly curriculum-based assessments. The language arts/English goal was directed toward developing focus, content, logical order between sentences and paragraphs, meaningful transitions, and identifiable introduction, body and conclusion in written work, measured by three consecutive probes/marking period. The IEP team recommended placement in regular education classes for all academic subjects, with one period of learning support daily. (S-26, S-27, pp. S-33)

13. During the early months of 9<sup>th</sup> grade (2007/2008 school year), Student appeared to be adjusting fairly well to high school as indicated by Parent and teacher comments. (N.T. p. 823; S-23, S-58, p. 36)
14. During the fall of 2007, however, Student also began to exhibit more problems with behavior and emotional controls, manifested by off-task behaviors during academic classes, tardiness and breaking school rules. Student received a number of disciplinary referrals/detentions for infractions such as arriving late to class and leaving the classroom without permission. According to the 12/07 R.R., the disciplinary issues were also being addressed through school social work services and private counseling.(S-23, pp. 5, 7)
15. In October 2007, Student reported engaging in cutting and drinking alcohol to relieve stress and drinking fairly large quantities of alcoholic beverages on a regular basis at home. The school counselor and school social worker notified Parents of the behaviors Student had reported. Parents arranged for counseling/therapy sessions for Student. (N.T. pp. 683—686, 823—825, 990; S-23)
16. A District reevaluation report (RR) issued in December 2007, consisting of a review of records including the January 2007 neuro-psychologist's report, classroom observations and curriculum-based assessments, confirmed Student's difficulties typical of NLD in both academic and social areas. The December 2007 RR also noted problems/weaknesses in coping skills and self-advocacy and concluded that Student's "emotional and behavioral function should be closely monitored for any changes or increases in difficulties within this area." (P-4, S-9, S-23, p. 5)
17. In January 2008, Student's IEP team met to review and revise the IEP based upon the December 2007 RR. For that IEP, the math applications goal was altered to provide that Student would identify appropriate math reasoning strategies to accurately solve problems from Student's general education math class with 85% accuracy on two checks/marking period. The reading goal focused on using reading comprehension strategies with adult support to answer inferential questions in content areas with 80% accuracy on two checks/marking period. In writing, Student was to be provided with adult support to revise and edit writing assignments to achieve a score of 3 out of 4 on all writing domains as measured on two writing samples/marking period. (S-21, S-23)
18. Self advocacy goals in both the May 2007 and January 2008 IEPs required Student to verbalize knowledge of how to self-advocate. The January 2008 IEP added a goal for verbalizing knowledge of how to deal with stress management, decision-making and coping skills. (S-21, S-27)
19. On March 31, 2008 another student reported that Student had made statements indicating a possible [redacted behavior] plan. Parents immediately took Student home and later to an appointment with Student's therapist, who suggested remaining at home for a few days.. When the therapist cleared Student to return to school, Student was to be provided with an open pass to visit the school counselor whenever Student felt the need to speak to

- someone. Student's return to school did not go well, however, and Student returned home with Parent after a short period(N.T. pp. 690—693, 854—860; S-50)
20. Student returned to school again several days later on the date of a much anticipated field trip. Without a new clearance from Student's therapist, however, District administrators, did not permit Student to participate in the field trip. (N.T. pp. 694—697, 860-866)
  21. The District's refusal to permit Student to participate in the field trip triggered a downward spiral and Student remained out of school until entering a partial hospitalization program, [redacted], for a two week stay on the advice of the private therapist. (N.T. pp. 697, 698)
  22. In planning for Student's return to the District, Student identified as a particular stressor peers in Student's English class who were also in the learning support room. Student's English class. Parents and District representatives determined that the least disruptive means of dealing with the issue for the remainder of the school year was to place Student in an emotional support class to substitute for the English and learning support periods where Student could receive the academic supports previously provided in the learning support classroom and catch up the work Student had missed during the partial hospitalization treatment (N.T. pp. 698—701, 870—876; S-18)
  23. In July 2008, the District proposed an IEP for the 2008/2009 school year that added two social/emotional goals for a ½ hour weekly meeting with a school counselor or social worker for the purpose of acknowledging and describing feelings of stress and anxiety, determining a short-term plan for addressing those issues, engaging in and accepting feedback from the counselor or social worker. Another social/emotional goal was added for using self-advocacy skills to request support when feeling overwhelmed academically or socially. (S-15, pp. 18, 19)
  24. Academic goals for reading comprehension, math, language arts/English were identical to the academic goals in the January and April 2008 IEPs. The goal for verbalizing stress management techniques was also repeated from the earlier 9<sup>th</sup> grade IEPs. (S-15, S-18, S-21)
  25. In August 2008, Parents notified the district that they had decided to place Student at Private School for the 2008/2009 school year. (N.T. p. 743; S-54, p. 23)
  26. Private School serves students with learning disabilities. Classes are small, averaging 5—8 students. Academic classes are leveled from significant accommodations to accommodations, independent and advanced. Student's classes are primarily at the independent (college prep) level, although Student requested that math be moved to the accommodations phase for the second and third marking periods (N.T. pp. 405—407; P-16, S-60)

27. In the fall of 2008, the District sought and received Parents' permission for a full psycho-educational reevaluation, including standardized achievement and other tests, and for a psychiatric evaluation. (S-13)
28. The reevaluation results again confirmed the NLD diagnosis and described the effects of it on Student's performance. The psychiatric evaluation report provided considerable detail linking the characteristics of NLD to the behaviors Student exhibited during 9<sup>th</sup> grade and noted a persistent personality style of not wanting to feel or appear different from Student's peers. (S-9, S-10)
29. The District's final IEP offer for the 2008/2009 school year was developed in December 2008, after the District's reevaluation and psychiatric evaluation. In addition to providing the same social/emotional goals included in the prior offer, it included a goal for one to one or small group instruction to verbally identify stressors and ways to implement appropriate decision-making and coping skills. The math and reading goals were the same as the prior 9<sup>th</sup> grade and proposed 10<sup>th</sup> grade IEPs. (S-5, S-15, S-18, S-21)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### A. Legal Standards

#### 1. IDEA FAPE Standards

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) in accordance with an appropriate IEP, *i.e.*, one that is “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). “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. *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* case and other relevant cases, an LEA is not required to provide an eligible with services designed to provide the “absolute best” education or to maximize the child’s potential. *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995).

## 2. Tuition Reimbursement

In *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985), the United States Supreme Court established the principle that parents do not forfeit an eligible student’s right to FAPE, to due process protections or to any other remedies provided by the federal statute and regulations by unilaterally changing the child’s placement, although they certainly place themselves at financial risk if the due process procedures result in a determination that the school district offered FAPE or otherwise acted appropriately.

To determine whether parents are entitled to reimbursement from their school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon *Burlington School Committee v. Department of Education of Massachusetts*. The first step is to determine whether the program and placement offered by the District is appropriate for the child. Only if that issue is resolved against the District are the second and third steps considered, *i.e.*, is the program proposed by Parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the

amount thereof. *See also, Florence County School District v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 366, 126 L. Ed. 2d 284 (1993); *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3<sup>rd</sup> Cir. 2007).

### 3. Compensatory Education

Compensatory education is an equitable remedy, designed to assure that an eligible student receives all of the special education services to which s/he is entitled. An eligible student who has not received a FAPE from the responsible school district is entitled to correction of that situation through an award of compensatory education for the 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 (3<sup>rd</sup> Cir. 1996); *Heather D. v. Northampton Area School District*, 511 F.Supp.2d 549 (E.D. Pa. 2007). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District*.

### 4. Burden of Proof

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. In this case, Parents contend that the District failed to provide Student with appropriate services during the latter part of the 2006/2007 school year (8<sup>th</sup> grade), the entire 2007/2008 school year (9<sup>th</sup> grade) and failed to offer an appropriate program and placement for the 2008/2009 school year (10<sup>th</sup> grade). To obtain an award of tuition reimbursement for the 2008/2009 school year and compensatory education for Student for the earlier periods, Parents were required to establish that they are entitled to relief by providing evidence 1) that the District's IEPs and proposed IEPs were not reasonably calculated to assure that Student would receive a meaningful educational benefit; 2) that the private school Parents

selected for Student was appropriate, *i.e.*, met Student's needs; 3) that the equities favor the Parents in the sense that nothing Parents did suggest that the District should be relieved of the obligation to reimburse Parents for the tuition they paid, or that the amount of tuition that would otherwise be due should be reduced. As a practical matter in this case, Parents can obtain relief for themselves and/or for the Student only if there is sufficient evidence to support the conclusion that the District did not offer an appropriate program and placement for purposes of an award of both compensatory education and tuition reimbursement and in addition that the private school Parents selected student attended was appropriate in order to support their claim for tuition reimbursement.

B. Appropriateness of 9<sup>th</sup> Grade (2007/2008) and Proposed 10<sup>th</sup> Grade (2008/2009) IEPs

The fundamental problem for the School District in this case was its failure to develop and articulate explicit strategies to address the adverse effects of the Student's NLD in either the academic or social/emotional areas of difficulty resulting from the disability. Although the District attempted to address Student's weaknesses in higher level academic skills by developing goals in math, reading and written expression (language arts/English), those efforts could not result in meaningful progress without effective interventions to meet social/emotional needs. Moreover, there was no coherent plan for either skill development or progress monitoring for academic goals.

The nature of Student's disability, exacerbated by what the evaluating psychiatrist termed Student's longstanding "personality style" (S-9, pp. 3, 4) of resistance to being different from peers, made high school extraordinarily stressful for Student because of limited academic success despite good effort and a desire to succeed. Student's self-esteem plummeted because disability-related needs required Student to be pulled out of regular classes and thereby set apart

in order to receive academic and social/emotional services. These factors made it virtually impossible for the District to successfully meet Student's academic and social/emotional needs within the context of a large public high school filled with academic classes and social situations that exceeded Student's capacity to keep up. Ultimately, Student's disability and the personality factors that caused Student to resist necessary services escalated from negative behaviors at home and at school to depression and [redacted]. (F.F. 14, 19)

Although it is understandable that the District wanted to believe that it could accommodate Student's NLD needs in the public school setting, the District did not offer, and likely does not have, the type of small, slower-paced academic classes with embedded social skills training and facilitation that is at least implicitly recommended for the Student in both the Parents' neuro-psychological report and the District's psychiatric report. (F.F. 10) If the District cannot appropriately meet Student's need within its own offerings, however, it must seek and offer out of District alternatives.

#### 1. Emotional/Behavioral Issues

By the time Student's IEP team began planning for transition to high school in May 2007, the District was aware that Student had been diagnosed with a nonverbal learning disability. In a subsequent records review reevaluation report issued in December 2007, and in the testimony of Student's 9<sup>th</sup> grade special education teacher and the school psychologist, the District acknowledged both the accuracy of the diagnosis and the characteristics of NLD that Student exhibited. (F.F. 7, 8, 9) In the December 2007 RR, the District noted Student's problems with coping skills and weaknesses in self-advocacy, as well as the need for "close" monitoring of "changes and increases in difficulties within this area." (F.F. 16; S-23, p. 5) Nevertheless, when confronted with Student's behaviors that reflected "changes and increases in difficulties"

such as refusing to follow school rules and chronic lateness to class, the District responded by applying the same type of discipline it imposed on typical students without ever considering whether the behaviors reflected the very disability symptoms the District itself had noted the need to monitor.

Similarly, with respect to “coping skills,” the District obviously did not consider whether the cutting and alcohol use Student reported in October 2007 (FF ) reflected disability-related issues that the IEP team should have discussed and addressed in the January 2008 IEP meeting. Although the District’s response, reporting the behaviors to Parents, who obtained private counseling services for Student, was certainly appropriate as fulfilling one aspect of its responsibility to the Student, it did not relieve the District of the obligation to determine whether changes to Student’s IEP were needed to address the needs underlying those behaviors in the school setting.

By the late fall of 2007, the District should have determined that a psychiatric evaluation was warranted rather than waiting nearly a year, until after Student left the District, to seek permission for the examination, which was readily given by Parents. The District’s psychiatric report (S-9) not only provided additional detailed explanations of the relationship between Student’s academic, social and behavioral issues and the characteristics of NLD, it also identified a basic personality trait that interfered with Student’s ability to fully benefit from the kind of supports the District was providing. The psychiatrist noted Student’s extreme reluctance to be set apart from peers--perceived as “different”-- and the frustration arising from wanting to be academically successful and yet needing significant help.

From the District’s response to the report in a subsequent IEP proposal, however, it is unlikely that an earlier examination would have made a significant difference in the Student’s 9<sup>th</sup>

grade program or proposal for a program prior to the start of the 2008/2009 school year. After receiving the psychiatric report, the District proposed a program in December 2008 for the remainder of the 2008/2009 school year that increased the amount of pull-out counseling or social work services Student would receive during the school day, thereby further setting Student apart and emphasizing the existence of significant social/emotional needs, which was more likely to increase rather than decrease the stress Student experienced in the school by further setting Student apart and emphasizing differences from peers who did not need ongoing, regular assistance. .

Moreover, the goals for social/emotional needs focused on the Student identifying stressors, developing and articulating plans for coping with stressful academic and social situations and developing self-advocacy skills in order to request assistance. (F.F. 18) Part of Student's disability, however, was misperceiving both classroom and social expectations and interactions. It is possible that the adult "feedback" listed in the proposed IEP would have addressed methods for more accurately assessing difficult situations in discussing the Student's identification and response planning, but that was not explicitly provided in either the proposed goals or described as part of the proposed specially-designed instruction. (S-5, pp. 14, 18, 19) Moreover, although Student's self-advocacy skills were consistently described as "improving" in IEP progress reports, there were no strategies specified for assisting Student to develop those skills in any of the IEPs or proposed IEPs. (*See* Progress Reports, S-47, S-48; IEP proposals and IEPs, S-5, S-15, S-18, S-21, S-27) It is difficult, in the first place, to determine what such purported "improvement" meant from reviewing the IEP goal reports, in which progress was expressed as a 10 point percentage range of achievement of the goals. *See, e.g.,* S-47 pp.1, 4, where a goal for verbalizing knowledge of self advocacy skills on 3 out of 4 inquiries was

reported to fall between 70—79% in June 2007 and between 80 and 89% in November 2007 and February 2008 and 60—69% in April 2008. The only truly meaningful progress toward achievement of that goal, however, would have been for Student to use self-advocacy skills to alert the 9<sup>th</sup> grade learning support teacher, Student’s counselor or the school social worker of the extreme stress Student was experiencing from interactions with certain peers who were in both Student’s learning support and English classes prior to needing to enroll in a partial hospitalization program in the spring of 2008. (F.F. 21, 22) Yet the self advocacy goals developed for subsequent IEPs continued to be vague and include no explicit strategies for developing and using such skills. (S-15, S-5)

## 2. Academic Issues

The academic goals in the IEPs for Student’s 9<sup>th</sup> grade year, and the lists of specially designed instruction, were too vague to determine whether Student would, or did, receive sufficient services to address the academic needs arising from Student’s NLD and to determine whether Student made meaningful progress toward overcoming the effects of that disability in the regular education classes where Student spent most of each school day. In addition, because the IEP goals lacked baselines there is no means of determining whether Student was moving forward at all in skill development from the IEP progress reports, since virtually every report indicated the same percentage of achievement toward each of the academic goals. With the exception of the writing goals, which specified the achievement of minimum scores on writing domains rubrics or tests, the quarterly reporting on IEP goals measured progress in terms of percentages of achievement with little indication of what the percentages measured and no narrative explanation of what Student was actually working on in the learning support class to develop skills that Student could use in regular education classes or whether regular education

teachers were implementing the specially designed instruction in Student's IEPs. Moreover, a simple review of the District's measurements over time revealed that at most, Student moved from 70—79% of achievement of IEP reading, math and writing goals to 80—89% achievement between November 2007 to June 2008. *See*, S-47 pp. 1, 2, 4, 5, 7—10. Consequently, even taking the District's measurements at face value, without a clear understanding of what the measurements of progress toward IEP goals actually mean, Student's progress was flat or minimal. Despite testimony from Student's 9<sup>th</sup> grade learning support teacher to supplement the documentary evidence, it is impossible to determine whether Student learned any skills to assist in drawing inferences from reading materials of increasing complexity and to assist Student in understanding higher level math concepts. With respect to writing, Student's need for improvements in grammar and mechanics was noted on the IEP progress reports, but nothing in the indicated when, or whether Student received direct and explicit instruction to improve those skills. In June 2008, IEP progress reports noted that Student continued to need support in those areas. *See* S-5, p. 9; S-47, pp. 8, 10.

Although Student maintained passing to average, and even some above average grades in 9<sup>th</sup> grade, the District provided little or no detail concerning the skills it sought to develop to address Student's academic needs arising from NLD and no information concerning whether Student made meaningful progress toward Student's IEP goals. The actual data provided by the District showed no significant movement toward improving progress on Student's IEP reading, writing and math goals, despite the conclusions in documents and testimony that Student was improving.

The social/emotional/behavior goals either included in the 9<sup>th</sup> grade IEPs or proposed for 10<sup>th</sup> grade were even more vague and incapable of true monitoring than the academic goals and

in 9<sup>th</sup> grade were spectacularly unsuccessful for the Student. The evidence in the record leads to the inescapable conclusion that the non-academic effects of Student's NLD were actually exacerbated during the 2007/2008 school year. There is nothing in the record on which to base a rational conclusion that Student was likely to experience decreased stress in the public school setting during the 2009/2010 school year as a result for the IEPs offered by the District. The District made no effort to incorporate the recommendations of the psychiatric evaluation it obtained of the Student into its final IEP offer in December 2008.

Consequently, the only possible conclusion to be drawn from the record is that the District failed to offer IEPs that were reasonably likely to assure meaningful progress toward remediating the effects of Student's disability during the 2007/2008 school year and were not reasonably likely to assure meaningful progress during the 2008/2009 school year.

C. Appropriateness of the Private School Selected by Parents

The District's contention that Private School is not appropriate for Student is based upon the description of the program provided by the assistant head of program for Private School and the opinion of the District's Director of Special Education, whose obvious interest in the outcome of this case greatly diminishes the weight of that opinion.

More important, however, is that the District's position in this regard was completely undercut by its own psychiatric report. (S-9). The psychiatrist selected by the District to evaluate Student noted that symptoms of anxiety and depression decreased and Student's self-esteem greatly improved after the end of the 9<sup>th</sup> grade school year. Unmanageable levels of stress and anxiety and did not recur during the early part of 10<sup>th</sup> grade, significantly diminishing Student's need for private counseling and eliminating consideration of medication for depression. (S-9, pp. 7, 8, 11)

The appropriateness of the Private School program for Student is best summarized by the psychiatrist's comments that at Private School, Student "received interventions that are woven into the fabric of the school program. This has been helpful for [Student] as [Student] no longer perceives that [Student] is different and is being pulled out." (S-9, p. 7)

This is most certainly a case where the whole of the private placement is far more than the sum of the parts the District contends are deficient, primarily lack of an IEP and lack of typical peer contact. In Student's case, due to both the nature of the disability and Student's innate personality traits, Student perceives that Student fits into the school peer group at Private School far better than at the public high school. It is unnecessary for a private placement to meet the same IDEA procedural criteria and assure similar opportunities for contact with typical peers. For every student, the least restrictive environment is the setting in which s/he can make meaningful progress. Opportunities to practice social skills with typical peers abound in community settings. The key for this Student is having the opportunity to learn, internalize and practice social skills and skills for handling stressful situations in a pervasively supportive setting prior to the need for generalizing those skills to contacts with non-disabled peers.

In addition, the narrative reports of Student's progress at Private School (P-16) include far more detail concerning the academic subject matter covered in Student's classes, the type of skills instruction Student is actually receiving and how Student is progressing in academic classes than is provided in either the District's IEPs or progress monitoring reports. Just as procedural violations alone could not support a claim for denial of FAPE, lack of procedural conformity to IDEA requirements does not diminish the substantive appropriateness of the Private School program for this Student.

Finally, the Private School program provides the type of social and academic setting and interventions, such as small classes and direct, explicit instruction at a slower pace, recommended for Student in both the January 2007 neuro-psychological report that first identified Student's non-verbal learning disability and the District's psychiatric report. *See* P-4, S-9, S-60. Student's grades reflect academic progress, and as noted above, the narrative explanations provided in the Private School conference reports are detailed enough to convey a thorough understanding of what the letter grades actually reflect.

#### D. Equitable Considerations

The District identified no equitable considerations that support denial or reduction of tuition reimbursement, and there is nothing in the record that supports refusing or reducing tuition reimbursement in this case due to equitable considerations.

The District, therefore, will be ordered to fully reimburse Parents for tuition payments they made to Private School for the 2008/2009 school year.

#### E. Compensatory Education

Based upon the conclusion above that the District failed to offer the Student appropriate IEPs for the 2007/2008 school year (9<sup>th</sup> grade), and because the deficiencies in the IEPs, particularly in the areas of social/emotional/behavior services, pervaded the entire school day, Student will be awarded full days of compensatory education, but not for the entire 2007/2008 school year.

All parties reasonably believed that the District's IEP in place at the beginning of the 2007/2008 school year was appropriately meeting Student's needs when it appeared that Student was making a successful transition to high school. (F.F. 14) Student's problems began to surface with the increase in disciplinary referrals and detentions later in the fall. Questions

concerning the need for more or different interventions should have come to the District's attention with the Student's self reports to the counselor and social worker of cutting and alcohol consumption. (F.F. 16, 17) By that time, a District reevaluation was in process, and the IEP team subsequently met on January 10, 2008 to review the reevaluation report and revise Student's IEP. (S-21, S-23) At that point, the increase in Student's behaviors resulting in school discipline, Student's self-reported at-risk behaviors outside of school, and increasing resistance to meeting with the school social worker should have triggered a closer look at the supports in place for the emotional/behavioral/social consequences of Student's NLD, and changes should have been made to better address those issues. The time between the increase in Student's increasingly problematic behaviors in the fall of 2007 and the date the new IEP (S-23) went into effect constitutes the District's reasonable time to identify and correct the deficiencies in Student's IEP. Student, therefore, will be awarded full days of compensatory education from January 20, 2008 through the last day of the 2007/2008 school year.

With respect to the last few months of the 2006/2007 school year, Parents did not provide sufficient evidence to support the conclusion that Student's program during 8<sup>th</sup> grade was inappropriate. Parents testified that their concerns about the education the District was providing to the Student arose toward the end of the 8<sup>th</sup> grade year and were focused on whether the District could provide an appropriate program that would meet Student's needs beginning in 9<sup>th</sup> grade. (F.F. 5) In the absence of explicit identification of deficiencies in Student's program, and lack of evidence that Student did not make appropriate progress during the 2006/2007 school year, no compensatory education will be provided for that period.

## **ORDER**

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

1. Reimburse Student 's Parents for the costs of tuition paid to Private School for the 2008/2009 school year.
2. Provide full days of compensatory education to Student for each day school was in session for the District from January 20, 2008 to the last day of the 2007/2008 school year.
  - a. Parents may decide how the compensatory education hours are used. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that will assist Student in overcoming the effects of Student nonverbal learning disability.
  - b. The costs of the compensatory education award shall not exceed the cost of educating a high school student in the District for each day of compensatory awarded as measured by the average daily compensation of a high school teacher in the District during the 2007/2008 school year, including salary and fringe benefits.

It is **FURTHER ORDERED** that in all other respects, Parents' claims are **DENIED**.

*Anne L. Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER

November 3, 2009