Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: Student D

Date of Birth: REDACTED

Dates of Hearing:
June 30, July 30, August 18, August 19, September 2, September 7
2010

CLOSED HEARING

ODR Case # 00865-0910KE

Parties to the Hearing:	Representative:
Father & Mother xxxxxxxxxxxx XXXXXXXXXXXXX	Ilene Young, Esq. 50 East Court Street Doylestown, PA 18901
Beverly Ryan Supervisor of Special Education Pennsbury School District 134 Yardley Avenue P.O. Box 338 Fallsington, PA 19058	Gail Weilheimer, Esq. Wisler Pearlstine 484 Norristown Road/Suite 100 Blue Bell, PA 19422

Date Record Closed:	September 29, 2010
Date of Decision:	October 13, 2010
Hearing Officer:	Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student D ("student") is a 13-year old student residing in the Pennsbury School District ("District") who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA") and Pennsylvania special education regulations ("Chapter 14").[1] The parties agree that the student qualifies under these provisions of law as a student with an emotional disturbance and attention deficit hyperactivity disorder ("ADHD"). The parties disagree over the student's special education programming. Specifically, the student's parents allege that, through multiple acts and omissions, the District has denied the student a free appropriate public education ("FAPE") as required under IDEIA and Chapter 14, for the 2008-2009 and 2009-2010 school years, including extended school year ("ESY") services over the summers of 2009 and 2010. Additionally, the parents allege that those acts and omissions have violated the District's duties under the Rehabilitation Act of 1973 (specifically under Section 504 of that statute, hence the follow-on reference to this section as "Section 504").[2] Parents seek compensatory education as a result of

[1] It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818.

[2] It is this hearing officer's preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See also 22 PA Code §§15.1-15.11 wherein Pennsylvania education regulations explicitly adopt the provisions of 34 C.F.R. §§104.1-104.61 for the protection of "protected handicapped students". 22 PA Code §§15.1, 15.10.

these alleged deprivations and reimbursement of tuition for the private summer programming in the summer of 2010. The District counters that at all times it has provided a FAPE to the student and met its obligations under IDEIA, Chapter 14, and Section 504.

For the reasons set forth below, I find in favor of the student.

ISSUES

Has the student been denied FAPE by the District under the terms of IDEIA/Chapter 14 and/or Section 504?

Has the student, on the basis of handicap, been excluded from participation in, been denied the benefits of, or otherwise been subjected to, discrimination on the part of the District under the terms of Section 504?

If the answer to either or both of these two questions is in the affirmative, is compensatory education, or tuition reimbursement, owed to the student?

FINDINGS OF FACT

1. The student has been diagnosed as having REDACTED disorder. This has led to an identification of the student as having an emotional disturbance. The student has also been identified as a student with ADHD. (Parent's Exhibit ["P"]-1, P-6, School District Exhibit ["S"]-34; Notes of Testimony ["NT"] at 61-62).
2. In the 2005-2006 school year, the student's 3rd grade year, the student attended a nearby school district. In July 2006, following

the student's diagnosis with REDACTED disorder, that school district developed a Section 504 services agreement. (P-22).

3. After the Section 504 service agreement was developed, the student moved into the District and began to attend District schools in the 2006-2007 school year, the student's 4th grade year. (S-1).
4. Upon enrolling the student with the District, the student's family informed the building principal and 4th grade teacher of the student's diagnoses. (NT at 73-74).
5. In November 2006, the District requested permission to evaluate the student in anticipation of issuing its own Section 504 service agreement. (S-4).
6. The District's evaluation report and Section 504 service agreement were completed and issued in January 2007. (S-7, S-11 at pages 4-6).
7. The student completed the 2006-2007 school year (4th grade) in the District and entered 5th grade for the 2007-2008 school year. (NT at 1148).
8. In December 2007, the student's Section 504 service agreement was re-issued. (S-11 at pages 1-3).
9. The student was generally successful in 5th grade. There were concerns raised by the student's family about being overwhelmed by homework; homework completion was a concern cited and

addressed in both the 4th grade and 5th grade Section 504 service agreements. (S-11; NT at 1147-1208).

10. The student also developed trichotillomania—the obsessive pulling-out of hair. The student's family and 5th grade teachers shared information about this condition and monitored it. (NT at 1165-1168).

11. Given what he knew about the student's REDACTED disorder, the 5th grade teacher communicated with the student's parents more frequently, and over observed behaviors, that he might not have for other students. (NT at 1200-1202).

12. For the most part, the family's reports to the 5th grade teacher of difficulties and "meltdowns" at home were generally not observed in the school setting. (NT at 1173-1175).

13. In the 2008-2009 school year, the student's 6th grade year, the student transitioned from elementary school to middle school. (NT at 1212).

14. The student's 6th grade year, on the surface, seemed to be successful. The Section 504 service agreement from 5th grade was carried over to 6th grade. The student exhibited elevated levels of anxiety regarding the transition to middle school; the student, the student's mother, and a middle school counselor met for a building tour. (S-11; NT at 113-115, 207-208, 1212-1214).

15. The school counselor had information regarding the student's diagnoses, Section 504 service agreement, and particular concerns about homework completion. (NT at 1218).

16. Seemingly, the student was having a successful year in 6th grade. There were, however, signals and potential difficulties that something was unfolding over the course of the school year that was negatively affecting the student in the school environment. Among these issues were:

- There was no update of the Section 504 service agreement, last issued in the elementary school environment;
- Immediately upon entering 6th grade, the middle school counselor was concerned with "red flags" regarding what was being related to her, and the student was placed on the caseload of the pupil assistance teacher, an assignment normally not made until student needs/behavior develops after the school year has begun;
- The student engaged, with parental permission, in a weekly student group counseling session run by a mental health agency;
- The student was given a pass to allow the student to leave classes to visit the school counselor, although classroom teachers voiced concerns to the counselor that the student

was abusing the pass-system with too many visits to the counselor;

- Issues about homework continued to surface as a primary concern for the student;
- A specific incident surfaced involving the student and other students in the cafeteria where the student reported to the counselor and the cafeteria monitor that the student felt the other students had made a threatening gesture with a plastic knife—this complaint was dismissed as horseplay among students, but the student testified credibly that it was deeply emotionally wounding;
- Regardless, the student's cafeteria table assignment could not have been changed because it had been changed already due to teasing and bullying at another table and a table reassignment was not considered because of the 'no more than two table assignments' policy; and
- The student encountered multiple, difficult home-based stressors that the student shared with the school counselor. (S-11 at pages 1-3, NT at 209-210, 221-223, 1220-1244, 1248-1261, 1267-1272, 1275-1283, 1501-1519).

17. On March 25, 2009, the student's parent and school-based teaching team both requested a meeting. The student had begun to pull out hair again, an issue that the middle school counselor was

unaware of even given the previous information-sharing from the elementary school. (S-19; NT at 1288).

18. The school counselor testified that the student consistently had problems with homework completion but that academically she was unaware of any concerns. The team meeting notes, however, indicate that the student was missing significant amounts of work in all classes. (P-25, S-19; NT at 1271).

19. The conference notes of March 25, 2009 indicate that:

- The student had a 56% average in English with a notation "always playing catch-up creates stress in (the student)";
- A notation of "possibility of repeating math if needed";
- The student had a D in social studies with the notations "homework needs to be done and more thoroughly" and "missed work needs to get caught up";
- A notation for science of "only turned in 2/11 assignments";
- In reading, the students average is reported as 51→60 with the notation "writing pieces never come in—count as test grade";
- There is a notation on the conference notes to increase the pupil assistance time for the student.

(P-25, S-19).

20. Coming out of this meeting, the student's family requested a multi-disciplinary evaluation. (P-25, S-19).

21. On March 27, 2009, the student went into a partial hospitalization treatment program at the recommendation of the student's therapist. (S-20 at page 7; NT at 135).

22. Toward the end of the partial hospitalization, in early April, the student was admitted to an emergency full hospitalization program after physically assaulting and further threatening the student's mother, and exhibiting suicidal behavior. (P-2 at page 4; NT at 135-136).

23. The student underwent severe trauma at the full hospitalization site, such that, after two days, the parents removed the student to another facility to complete the in-patient treatment. (NT at 140-144, 550-551, 585, 866-867, 886-887).

24. The student was discharged from the full hospitalization placement on April 28, 2009 and began a homebound program under prescription from a psychiatrist with the following diagnoses: REDACTED disorder, anxiety disorder, and trichotillomania. The prescription describes the student's disabilities as: mood lability, extreme anxiety, compulsive pulling of eyebrow hair, and suicidal ideation with a plan. The prescription identifies "what keeps the student from classes" as:

teased/taunted by peers, anxiety, and poor concentration. (P-24 at page 1).

25. The student remained on homebound instruction for the remainder of the 2008-2009 school year. (P-24 at page 1).

26. In May 2009, the District requested permission to evaluate the student. The parents granted permission on May 6, 2009 and then revoked it the next day. Parents had decided to pursue an independent educational evaluation and did not want to create test confusion between the two evaluations. (S-23, S-24; NT at 155).

27. The independent evaluator began evaluating the student on May 19, 2009. The independent evaluator issued his report on August 5, 2009. (P-1).

28. The evaluator diagnosed the student with REDACTED disorder and ADHD. The evaluator concluded that the student remained "emotionally fragile, highly anxious, clinically depressed, and at risk for self-destructive and/or violent behavior". (P-1 at page 23).

29. The evaluator made recommendations for educational programming. (P-1 at pages 24-25).

30. In August 2009, the parents shared the independent evaluation with the District and granted permission for the District to evaluate the student. (S-29; NT at 1023).

31. The student began the 2009-2010 school year, the student's 7th grade year, on homebound instruction. The student remained on homebound instruction for the entire 2009-2010 school year. (P-24 at pages 2-5).

32. The District's evaluation report was issued on October 26, 2009. The District's evaluation relied largely on medical and other records and the parents' independent evaluation. The District evaluator included reports and observations of District personnel who had worked with the student. (S-34).

33. The District evaluation found that the student qualified under IDEIA as a student with an other health impairment (ADHD) and a secondary identification as a student with an emotional disturbance. (S-34 at page 7).

34. The student's individualized education plan ("IEP") team met in November 2009. (P-7, S-41).

35. The draft IEP prepared by the District envisioned a program not unlike the Section 504 service agreement provided to the student, to be implemented at a District middle school. (P-7, P-22, S-11, S-41).

36. The family's private evaluator participated in the meeting. After sharing information about the student's REDACTED diagnosis and a District placement, the IEP meeting ended with a consensus that the IEP was not appropriate as drafted and that

the student required a private placement. (NT at 181, 535-540, 1039-1041, 1574-1577).

37. At the IEP meeting, the District presented a notice of recommended educational placement ("NOREP") to the parents for the draft IEP's implementation at a District school, with an indication that parents' disapproving the NOREP was necessary to formalize the team's collaborative decision that a private placement was appropriate for the student. (P-9, S-42; NT at 1039-1040).

38. The local education agency representative at the meeting, a supervisor of special education, mentioned at the end of the IEP meeting two private placements that, off the top of her head, might be suitable for the student. (NT at 181-182, 1041-1042).

39. In December 2009, the family visited the two private placements mentioned by the supervisor of special education. One facility was on the grounds of the full hospitalization program where the student had the traumatic in-patient experience in April 2009 (see FF 24) and presented deep emotional discord for the student. The second facility was, in the eyes of the family, academically far below the student's achievement and contained an unruly student population that made the student feel uncomfortable on a number of levels. (P-20; NT at 181, 203-205, 345-347, 357-360, 551-552, 689-700, 867-873).

40. Before visiting the first of these private placements (the placement associated with the student's trauma from April 2009), the District asked parents to sign a release of records form. The District was informed at that time about the negative associations the student had with the campus where the private placement was located—in proximity to the hospitalization program where the student suffered the trauma during full hospitalization. (S-43; NT at 1059).

41. The District sent a NOREP to the parents on December 30, 2009 for the private placement at the facility negatively associated in the student's mind with the traumatic incident at the full hospitalization in-patient stay in April 2009. (P-8, S-49).

42. Parents, through their counsel, approved the NOREP to the extent that it identified the student as eligible for special education and related services under IDEIA. The parents rejected the NOREP, however, as to its offer of the private placement. The parents requested a due process hearing. (P-19).

43. On March 17, 2010, the student's IEP team met to discuss issues related to the student's homebound education program. At the end of the meeting, without team consideration, the District provided a NOREP to the family for implementation of the student's IEP at the District middle school last considered at the November 2009 IEP meeting. (S-51, S-52; NT at 852-856).

44. The family and their private evaluator visited the program and rejected the NOREP. (P-2, P-10; NT at 405-409, 562-567, 855-856).

45. Parents filed their due process complaint on March 25, 2010. (P-26).

46. The student completed the 2009-2010 school year on homebound instruction and successfully attended a private placement ESY program at parents' expense. (NT at 418-425, 856-857).

47. The student was enrolled, at parents' expense, in a private placement for the 2010-2011 school year. (NT at 1133-1143).

DISCUSSION AND CONCLUSIONS OF LAW

Provision of FAPE Under IDEIA

Under the IDEIA, school districts are responsible for identifying, locating, and evaluating all students with disabilities who reside within the geographical boundaries of the school district (a school district's "child-find duty"). (34 C.F.R. §§300.111, 300.201; 22 PA Code §14.121). Furthermore, to assure that an eligible child receives a FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful

educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning" (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

In this case, the District has failed in both its child-find duty toward the student and its obligation to provide FAPE to the student. As to child-find, it is clear that the student came to the District and, through 5th grade, the student was appropriately served through the Section 504 service agreement. (FF 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12). Yet in 6th grade, the record in its entirety supports the finding that the District knew or should have known that the student was no longer being appropriately served under the District's programming and that the District was accommodating the student in ways that indicated that the student should have, at least, been evaluated. (FF 16, 17, 18, 19).

The record supports the notion that the District was acting in good faith to help a student that it felt was having a difficult time in adolescence. Yet the litany of issues that incrementally built up over the course of 6th grade, at every turn adding services or accommodations or providing specialized services or treating the student differently than it would almost any other student, should have, at some point, alerted the

District that the student was potentially eligible for special education and related services. (FF 16).

So, pursuant to Ridgewood, when should the District have known that the student should have been evaluated? The student's Section 504 service agreement was issued on December 4, 2007. (FF 8). By December 4, 2008, then, it seems the District should have been, at the least, re-visiting the Section 504 service agreement, especially as the operative Section 504 service agreement was designed for the elementary school (FF 6, 8). With the concerns and accommodations already being loaded into the student's program throughout 6th grade (FF 16), it is the finding of this hearing officer that 10 days to issue and have returned a permission to evaluate would have put the District on an evaluation timeline starting December 14, 2008. Therefore, with 60 calendar days to perform an evaluation and issue an evaluation report (22 PA Code §14.123(b)), and another 10 school days—in actuality, two weeks—to be in a position to implement an IEP (22 PA Code §14.131(a)(6)), the District should have known by February 26, 2009 that the student was eligible for special education and related services.

Indeed, only a month later, the District and parents were concerned enough about falling grades, incomplete homework, and trichotillomania that all parties felt compelled to meet (and, from the District's perspective, yet again ratchet up the non-special-education services it was providing to the student (FF 19)). Six weeks later, the

student had been admitted to a full hospitalization program. (FF 17, 18, 19, 20, 21, 22, 23, 24).

Thus, the student has been denied a FAPE since through the District's failure in its child-find duties from February 26, 2009 through April 27, 2009, the day before the student began homebound instruction. (FF 24). An award of compensatory education will be fashioned accordingly.

Additionally, the student has been denied a FAPE through the District's acts and omissions in not proposing an appropriate educational program for the child at any time from April 28, 2009 (when the student went on homebound instruction) through the ESY summer program in the summer of 2010. The student's homebound instruction through the end of 6th grade was a direct result of the District's failure to appropriately identify and evaluate the student in 6th grade. (FF 15, 16, 21, 22, 23, 24, 25).

The student's homebound instruction in 7th grade, the 2009-2010 school year (FF 31), was the result of the District not proposing an appropriate program for the student at any time over the course of the school year. The first IEP team meeting, to consider the student's IEP in light of the private evaluation and the District evaluation, was not held until November 2009. (FF 26, 27, 28, 29, 30). Coming out of that meeting, there was accord among the members of the IEP team that (a)

the draft IEP considered at the meeting was inappropriate and (b) the student would be appropriately served only in a private placement. (FF 34, 35, 36). Even though the parents rejected the proffered NOREP, the record is clear that the parties took this to be District-requested paperwork rather than any adversarial positioning between the parties. (FF 36, 37). Still, though, the student had no IEP and no agreed-upon placement.

The District's next attempt to establish the stance between the parties vis a vis a NOREP was in December 2009. (FF 41, 42). But there was no IEP under consideration to be implemented through the NOREP—the only IEP meeting in the record (November 2009) ended with mutual understandings that that specific IEP was not appropriate for the student. (FF 34, 35, 36, 41, 42). And the NOREP was issued without even a minimal re-convening of the IEP team to consider the merits of the (or, in the eyes of the family, the flaws) in the private placement proposed by the District. (FF 40, 41, 42).

The District's final attempt to issue a NOREP occurred in March 2010. (FF 43). Again, there was no IEP to be considered, a particularly fatal error because the nearly 4-month assumption that the student would attend a private placement was now supplanted by the District's offer of a District-based placement, entirely changing the calculus under which the parties had been operating. (FF 34, 35, 36, 43).

In sum, the student completed the 2009-2010 school year on homebound instruction because of the District's prejudicial procedural errors in not proposing an IEP to be considered by the team and simply issuing NOREPs for the implementation of programming that did not exist. (FF 34, 35, 36, 41, 42, 43, 46).

On this record, as of the date of this decision, the IEP team has not convened since November 2009 to design the initial IEP for proposed implementation at a specific placement location, whether at a private placement or a District placement.

Thus, the student engaged in homebound instruction from April 28, 2009 through the end of the 2009-2010 school year. An award of compensatory education will be fashioned accordingly.

Finally, the parents claim that the student was wrongly denied ESY programming in the summers of 2009 and 2010. Having found that the District should have had an IEP in place in February 2009, the District would have been in a position to decide whether ESY programming was appropriate for the student. (22 PA Code §14.132). Because the IEP team was not in a position to deliberate the issue of ESY programming for the summer of 2009, the student was denied a FAPE, again as a prejudicial procedural flaw. Thus, a compensatory education award will be fashioned accordingly.

As for ESY programming for the summer of 2010, the parents funded a private summer program. (FF 46). Parents presented a claim for reimbursement of this private summer programming. As such, long-standing case law and the IDEIA provide for the potential for private tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi); Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985).

A substantive examination of the parents' tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated implicitly in IDEIA (34 C.F.R. §§300.148(a),(c),(d)(3)). In this three-step analysis, the first step is an examination of the school district's proposed program. Here, the District has denied the student FAPE by not having an IEP designed, or available for consideration by the IEP team, for ESY programming in the summer of 2010. (FF 34, 35, 36, 41, 42, 43).

When the school district's program is found to be inappropriate, as here, the second step is an examination of the appropriateness of the private school program which the parents have selected. Here, there was very little evidence or testimony as to the student's private program in summer 2010. What there is in the record, however, shows that the student had a productive academic and social experience in the private

summer program. (FF 46). Therefore, the private summer placement is appropriate.

When the school district's program is found to be inappropriate, as here, and the private placement is found to be appropriate, as here, the third step of the analysis is to determine if tuition reimbursement is a fair remedy and, if so, in what amount. This is the so-called "balancing of the equities" step. In this case, reimbursement of the cost of tuition for the private summer program is appropriate and equitable.

Thus, the order will account for reimbursement of the privately funded tuition for the student for the summer 2010 program.

Provision of FAPE Under Section 504

Section 504 defines a handicapped person, the qualifying term for Section 504 eligibility, as an individual having "a physical or mental impairment which substantially limits one or more major life activities". 34 C.F.R. §104.3(j)(1). A public school district receiving federal funding must provide a free appropriate public education to any handicapped person who is a student in the district. 34 C.F.R. §104.33.

Clearly, the student in this case qualifies for protection under Section 504. Furthermore, the prejudicial acts and omissions outlined in the previous section (which will not be repeated here) substantiates the finding that the District denied the student a FAPE under the terms of Section 504 as well as the IDEIA.

Accordingly, there will be a finding that the District denied the student a FAPE under the terms of Section 504.

Discrimination Under Section 504

To establish a *prima facie* case of disability discrimination under Section 504, a plaintiff must prove that (1) he is disabled or has a handicap as defined by Section 504; (2) he is "otherwise qualified" to participate in school activities; (3) the school or the board of education received federal financial assistance; (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at the school; and (5) the school or the board of education knew or should be reasonably expected to know of her disability. Ridgewood; W.B. v. Matula, 67 F.3d 484, 492 (3d Cir. 1995).

In the instant case, the student qualifies under the provisions of Section 504 as an individual with a disability who is otherwise qualified to participate in school activities. (FF 1). While evidence as to the District receiving federal funding was not made part of the record, the hearing officer takes judicial notice that the District, as with every public school district and intermediate unit in Pennsylvania, receives federal financial assistance (directly from the federal government and/or channeled through the Pennsylvania Department of Education) as part of its funding. Finally, the District knew at or near the start of the 2006-2007 school year that the student had various disabilities. (FF 3, 4, 5, 6).

Therefore, the only remaining point under the Section 504 discrimination analysis is whether the student was excluded from participation in, denied the benefits of, or subject to discrimination at the school. In this case, as outlined above, this hearing officer finds that the student was subject to discrimination based on disability through the acts and omissions by the District that led the student to be excluded from the school environment. (FF 16, 17, 18, 19, 21, 22, 23, 24, 25, 31, 34, 35, 36, 41, 42, 43, 46).

Accordingly, there will be a finding that the District discriminated against the student under the terms of Section 504.

Compensatory Education

Compensatory education is an equitable remedy that is available to a claimant when a school district has been found to have denied a student FAPE under the terms of the IDEIA. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). The right to compensatory education accrues from a point where a school district knows or should have known that a student was being denied FAPE. (Ridgewood; M.C.). The U.S Court of Appeals for the Third Circuit has held that a student who is denied FAPE "is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." (M.C. at 397).

Here, the District has denied the student a FAPE from February 26, 2009 through April 27, 2009 while the student was in school, or should have been in school. The degree of deprivation over these weeks is not as severe as the period that follows. It is the finding of this hearing officer that the student should have received approximately one hour per school day of specially designed instruction and/or related services.

The exclusion from April 28, 2009 through the end of the student's homebound program for the 2008-2009 school year, and the entirety of the 2009-2010 school year, amounts to an outright exclusion, as a result of the District's acts and omissions, from the educational environment. Therefore, the student will be awarded 5 hours of compensatory education for every school day from April 28, 2009 through the end of the student's homebound program for the 2008-2009 school year and 5.5 hours of compensatory education for the entirety of the 2009-2010 school year.[3] This compensatory education award will be reduced, however, to reflect the homebound instruction the student received over that period. Therefore, the compensatory education award will be 5 hours of compensatory education for every school day from April 28, 2009 through the end of the student's homebound program for the 2008-2009 school year and 5.5 hours of compensatory education for the entirety of the 2009-2010 school year, less the total amount of homebound instruction delivered to the student over those periods.

[3] The figure is based on the Commonwealth's minimum school day requirements of 5 hours for 6th graders and 5.5 hours for 7th-12th graders. 22 PA Code §11.3.

The student will be awarded 15 hours of compensatory education for the ESY programming for the summer of 2009. [4]

As for the nature of the compensatory education award, the parents may decide in their sole discretion how the hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, when convenient for the student and the family.

There are financial limits on the parents' discretion in selecting the appropriate developmental, remedial or enriching instruction that furthers the goals of the student's IEPs. The costs to the District of providing the awarded hours of compensatory education, or any lump sum, must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the District professionals who provided services to the student during the period of the denial of FAPE.

Awards of compensatory education will be ordered accordingly.

[4] The calculation is based on fairly standard types of ESY programming to serve a student such as this: 3 hours per week each week for a period of five weeks over the summer (e.g., from June 20 – August 1). So the calculation for ESY programming reduces to 3 hours per week x 5 weeks = 15 hours.

CONCLUSION

The District has denied the student FAPE for numerous acts and omissions over the period February 26, 2009 through the end of the 2009-2010, including the summer of 2009. As such, compensatory education is owed. The District must also reimburse the parents for the privately funded summer program in the summer of 2010.

Additionally, the District has denied the student FAPE under the relevant provisions of Section 504 and has engaged in discrimination against the student as a result of the student's disabilities under the relevant provisions of Section 504.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student is entitled to an award of compensatory education, subject to the nature and limits set forth above, calculated as follows:

- 1 hour of compensatory education for each school day from February 26, 2009 through April 27, 2009;
- 5 hours of compensatory education for every school day from April 28, 2009 through the end of the student's homebound program for the 2008-2009 school year and 5.5 hours of compensatory education for the entirety of the 2009-2010 school year, less the total amount of homebound instruction delivered to the student over those periods.;
- 15 hours of compensatory education for ESY programming in the summer of 2009; and

- Upon presentation by the parents of a bill for charges/account statement supplied by the private placement for all tuition, fees, and charges for the summer 2010 program, the District is ordered to pay 100% of these costs. This payment shall be made within 45 calendar days of the date the parents present the bill to the District.

Additionally, as set forth above, the District has (a) denied the student a free appropriate public education and (b) discriminated against the student on the basis of the student's disabilities, both in violation of its obligations under the relevant portions of the Rehabilitation Act of 1973.

Any claim by the parties not specifically addressed by this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

October 13, 2010