

*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

Child's Name: DF

Date of Birth: xx/xx/xxxx

Date of Hearings:  
November 7, 2008

January 9, January 12, January 15, January 27, January 28 & February 12, 2009

**CLOSED HEARING**

ODR Case # 9193-08-09-LS

Parties to the Hearing:

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Date Record Closed:

March 18, 2009

Date of Decision:

April 2, 2009

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student is a 12-year old student residing in the Red Lion Area School District (“District”) who has been identified as a child with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup> and Chapter 14 of the Pennsylvania education regulations (“Chapter 14”)<sup>2</sup>. Specifically, Student has been diagnosed with deafblindness as the result of a bacterial meningitis infection contracted when he was an infant. In July 2008, the parents rejected an individualized education plan (“IEP”) and recommended educational placement proposed by the District, contending that the proposed IEP and recommended education placement are inappropriate and that Student should continue to be educated under the terms of his current IEP until an appropriate IEP is proposed. Thereafter, the District filed a complaint seeking an order that its proposed IEP and recommended education placement are appropriate.

For the reasons set forth below, this hearing officer’s decision incorporates aspects of both parties’ prayers for relief.

## **ISSUES**

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<sup>1</sup> 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.

<sup>2</sup> 22 PA Code §§14.101-14.163.

Are the District's last-proposed IEP and recommended education placement appropriate for Student?

### **FINDINGS OF FACT**

1. At the age of six months, Student contracted bacterial meningitis, causing him to lose much of his sight and hearing. He has limited hearing through the aid of a cochlear implant and limited sight due to cortical vision impairment. Student has some sight but has a cortical vision impairment that limits his ability to see. (Parents' Exhibit ["P"]-65; Notes of Testimony ["NT"] at 1076-1078).
2. The parties have an extensive and contentious litigation history. The parties were involved in a round of due process in the fall of 2005 which involved a hearing officer's decision and Pennsylvania special education appeals panel opinion. In the spring of 2006, the parties met as the result of a compliance complaint regarding the due process order of the previous fall. Thereafter, in summer of 2006, the parents filed suit in federal court. In September 2006, the federal court issued a preliminary injunction regarding Student's education program and placement. (P-18, P-19, P-25, Hearing Officer Exhibit 1).
3. Student began attending a District elementary school in November 2006 under the terms of an IEP that was dated March 31, 2006. This IEP is referred to as "P-5" given its exhibit number in the federal litigation and its central role in those proceedings and the current proceedings. P-5 is the pendent IEP under which Student is currently instructed. (P-5; NT at 48, 1109).
4. Student communicates using total communication, including tactile sign language, objects, print, pictures, and speech. Tactile signing means that Student holds out his hands with someone signing underneath Student's hands so he can feel the sign. (P-5 at page 44, P-65; NT at 857, 1044-1045, 1080-1083, 1328-1329).
5. Under the terms of the IEP at P-5, Student has twenty-two goals in the following areas: balance and muscle control, math computation and application skills (2 goals), book handling/print skills, story/direction sequencing (4 goals), letter identification, acquisition of signs, increased sign/symbol/picture response, age-

- appropriate play activities, increased sound awareness, navigation through various settings, communication of “stop” or “no”, use of sign combinations for requests, correct responses to “who” questions, correct responses to “what” questions, correct responses to “where” questions, fine and gross motor skills for activities of daily living, visual attending to objects, and decreasing rates of unsafe/self-injurious/aggressive/inappropriate behaviors. (P-5 at pages 18-41).
6. The IEP at P-5 contains a behavior support plan that calls for updating with a follow-up functional behavior assessment. To date, a functional behavior assessment has not been performed. (P-5 at pages 42-43, 46; NT-November 7<sup>th</sup> at 167<sup>3</sup>, 1181, 1295, 1304-1305, 1366).
  7. At times, Student engages in self-injurious behaviors and, on certain occasions, he has acted out against others by biting, pinching, grabbing. Other non-threatening acting-out behaviors have included vocalizations in class. (P-65; S-8; NT at 61-63, 85-87, November 7<sup>th</sup>-162-163, November 7<sup>th</sup>-173-176, November 7<sup>th</sup>-211, January 9<sup>th</sup>150, January 9<sup>th</sup>-180, 349-350, 473, 501, 539, 581-582, 729-732, 745-746, 780-787, 821-824, 1263-1264, 1282, 1348, 1359-1360).
  8. Under the terms of the IEP at P-5, program modifications and specially designed instruction include the following: use of total communication, provision of choices for use of total communication, modeling of speech, calendar system, consistent routines, 2-minute warnings for upcoming transitions, adapted utensils, use of an intervener [see FF 8], wait-time, hand-under-hand assistance, adapted classroom materials, adaptation of general education curriculum, sensory diet at scheduled intervals, use of behavior plan, frustration/fatigue breaks, use of cues, [redacted], use of 36-point Arial font, and adapted physical education. (P-5 at pages 44-46).
  9. An intervener is a classroom aide who has been trained to assist students with deafblindness, acting as the student’s eyes and ears. The intervener uses total communication to allow the student to access the environment and to communicate. Building a trusting relationship between the intervener and the student is a critical

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<sup>3</sup> There is an overlap in the notes of testimony from pages 129-229. These pages were mistakenly duplicated in the transcripts for the hearing sessions on November 7<sup>th</sup> and January 9<sup>th</sup>. As such, citations to any page from 129-229 necessitates citation to the date of the appropriate transcript.

component of the intervener's role. (P-2, P-84; NT at 65, November 7<sup>th</sup>-118-119, January 9<sup>th</sup>-151, 396-397, 416-418, 878-879).

10. Pennsylvania does not have an official designation, certification, or training for an intervener. (NT at 118).
11. Under the terms of the IEP at P-5, the intervener is identified as "one person to serve this role who is not one of [Student's] teachers; a teacher, therapist, or assistant may serve as intervener for Student during his intervener's legally required breaks". (P-5 at pages 44-45).
12. Under the terms of the IEP at P-5, Student receives speech and language therapy, occupational therapy, physical therapy, nursing/health services, audiological services, and orientation and mobility services. (P-5 at 47-48).
13. Under the terms of the IEP at P-5, supports for school personnel include a "professional with experience and training in working with children with deafblindness" to provide initial training to Student's teachers and therapists; to consult initially weekly with teachers, therapists, parents and intervenor; to train the intervener initially for 5 days before beginning services and then for 10 days while the intervener begins providing services with periodic training thereafter. (P-5 at pages 49-50).
14. This individual was referred to by the parents as the "deafblind coordinator", a term the District resists using. Throughout the proceedings, the parties both referred to this individual as the "person with experience and training". (NT at January 9<sup>th</sup>-135-137, 289-292, 379).
15. Under the terms of the IEP at P-5, the educational placement is listed as "regular education placement with supplementary aids and services, with itinerant (hearing impaired) and (vision impaired) supports in the regular education classroom and pull-out to a resource setting for selected therapies". The type of support is listed as "deafblind support to the regular education environment". (P-5 at page 51).
16. Under the terms of the IEP at P-5, Student's least restrictive environment calculation indicates that he will be educated in the regular education environment 21-60% of the time. (P-5 at pages 51-52).

17. The District re-evaluated Student in March 2007 that included a review of the student's progress monitoring, and learning media, vision and hearing assessments. The re-evaluation did not include a functional behavior assessment, an assistive technology assessment, psychological testing, or cognitive testing. (P-65).
18. The parties met thereafter to revise Student's IEP at P-5. The IEP team met six times in April and May 2007, once in November 2007, and four times in April, May and June 2008. For the most part, these meetings included both parents, or at least one parent, except for the final IEP meeting on June 6, 2008 which, due to the parents' inability to shift a work schedule. June 6<sup>th</sup> was the last time the IEP team met to consider Student's IEP. (School District Exhibit ["S"]-3 at page 1; P-111; NT at November 7<sup>th</sup>-142-143, 1042-1044, 1155-1156).
19. The parents were particularly upset by the course of the November 13, 2007 where the District shared a "curriculum update" that indicated that Student had regressed since the 2006-2007 school year. (NT at 1146-1147).
20. The District's proposed IEP at S-3 indicates that Student should begin pre-Braille activities, a change from the IEP at P-5. (S-3 at page 3; P-5 at page 3).
21. The District's proposed IEP at S-3 removes orientation and mobility services as a special consideration, although it does not remove it as a related service. (S-3 at page; P-5 at page 3).
22. In the IEP at S-3, Student's present levels of educational performance have been updated. (S-3 at pages 4-13).
23. In the IEP at S-3, the District recommends that the student participate in the Pennsylvania Alternate System of Assessment with videotape documentation and participate in alternate local assessment because "local assessments...would not correlate with Student's readiness skills" and "will more accurately measure Student's academic skills". There is no indication in the IEP at P-5 how Student will be engage in state or local assessments. (S-3 at page 14; P-5 at page 16).
24. The IEP at S-3 contains twenty-six goals. Practically none of the goals from the IEP at P-3 carry over to the IEP at S-3. The IEP at S-3 contains goals in the following areas: identifying numbers 1-10, utilizing his calendar box for daily activities, using signs in conversational exchange, increased awareness of sounds, imitation of simple word utterances, imitation of consonant sounds, toileting

sequence, correct sequencing of naturally occurring routines, fine motor skills (3 goals), choosing between items, increased use of signs, purchasing an item at a local establishment, gross motor skills (5 goals including balance, jumping, supporting his weight, movement, ball play), navigating with a sighted guide, navigating alone, [redacted], tactile discrimination between objects (2 goals), use of a computer touch screen, and reduction of self-injurious behaviors. (S-3 at pages 16-40).

25. The IEP at S-3 includes an expanded behavior support plan, laid out in terms of antecedents, replacement behaviors, and consequences. The student has not had a formal functional behavior assessment (FF 6). (S-3 at pages 41-44).
26. The IEP at S-3 deeply revises the program modifications and specially designed instruction as compared to the IEP at P-5. Those include the following: opportunities to participate in sustained physical activity, assistance for navigating uneven ground, elimination of contact sports, adaptations of playground equipment and scheduling, sensory diet, extended time for fine/gross motor skills, use of a cushion, adapted utensils, preferential seating, use of total communication provided by teacher of hard of hearing or intervener under that teacher's direction, adapted grading, clear/high-contrast pictures, use of 36-point font, use of wait time, use of a calendar system, hand-under-hand assistance, use of a mobility cane, use of simple/differentiated tactile materials, clear work space, use of consistent language, computer touch screen, brimmed hat for outdoor activities, proprioceptive activities (such as joint compression and massage) prior to activities requiring increased activity, warm-up exercises before fine motor skill activities, and use of pants with elastic waistband for independent toileting. (S-3 at pages 45-48; P-5 at 44-46).
27. The related services in the IEP at S-3 are largely unchanged from the related services in the IEP at P-5. Specifically, audiological consultation is reduced from bi-monthly to monthly, orientation and mobility services is increased from two 30 minute weekly sessions to two 45 minute weekly sessions, adds vision services of three 30 minute weekly sessions, and adds "intervener" as at a daily frequency "at school". (S-3 at pages 50-51; P-5 at pages 47-48).
28. The supports for school personnel in the IEP at S-3 changes those supports from those listed in the IEP at P-5. Specifically, Student's therapy providers (speech, occupational therapist, and physical therapist), vision teacher, and teacher of the hearing

impaired will consult at least weekly with classroom teachers; the occupational and physical therapists will consult at least weekly with classroom teachers to adapt curriculum and materials; orientation and mobility therapist and physical therapist will consult at least monthly with classroom teachers on optimizing Student's safe and consistent movement; a case manager will consult at least weekly with "classroom personnel"; a member of the school team will share at least weekly information with parents; and the occupational therapist will consult at least once per academic quarter with the "occupational program support specialist" regarding, among other things, Student's sensory diet. It is unclear who the case manager and the occupational program support specialist are or what role these individuals play. (S-3 at pages 51-54; P-5 at 49-50).

29. The support for the intervener also changes in the IEP at P-5. The person with training and experience will consult at least weekly by phone, email, or in person with the education team (as opposed to in-person consultation only in the IEP at P-5), and the person with training and experience will train the intervener for 3 days before beginning services and follow-on training as deemed necessary by the person with training and experience. A minimum of 3 days of additional training would be required after the intervener begins working with Student, with follow-on training as deemed necessary by the person with training and experience. (S-3 at page 53; P-5 at 49-50).
30. In both IEPs, S-3 and P-5, Student is eligible for extended school year services. (S-3 at page 54-55; P-5 at page 50).
31. Under the terms of the IEP at S-3, the educational placement lists "part-time" as the type of service, "deaf/hard of hearing" as the type of support, in Student's neighborhood school. The IEP states: "Student will not participate with non-disabled children in the regular education class during speech therapy, occupational therapy, physical therapy, vision services, orientation and mobility services. He will attend a special education resource classroom to receive services from a teacher of the deaf/hard of hearing for all classes except for specials, lunch and recess, regular education class group activities up to one per day." (S-3 at pages 55-56).
32. Under the terms of the IEP at S-3, Student's least restrictive environment calculation indicates that he will be educated in the regular education environment 21-60% of the time (precisely 50%). (S-3 at page 56).

33. The District claims that any time a student is in a regular education setting, in the words of a District witness “breathing regular ed air”—hallways, for example—that time counts toward time in the regular education environment. For that reason, the District calculates that the range of percentages that Student will remain in regular ed will not change and so is not a change in Student’s placement (let alone a more restrictive change). (NT- November 7<sup>th</sup> at 158-160, 200).
34. Two experts in the area of deafblindness have offered reports on. One of the experts testified at the hearing. Among his recommendations for Student were use of a specific model peer integration model (Circle of Friends), use of a specific instructional model (COACH model), pre-teaching and post-teaching, IEP matrix, and curriculum overlapping. (P-84, P-94).
35. Circle of Friends is a peer integration model to allow fellow students who want to engage Student on a deeper level to do so. The COACH model is a values-based, intensive approach to providing inclusion for deafblind students. Pre- and post-teaching involve previewing/preparing for instruction before it takes place and re-visiting/reinforcing instruction after it takes place. An IEP matrix and curriculum overlapping are techniques to integrate, in literally a grid format of sorts, instructional time/topics with IEP goals. (NT at 870-872, 918-919, 988-989, 992.)
36. Student was last re-evaluated in March 2007 and, previous to that, in December 2004. In March 2006, it looked as if Dr. Harvey Mar, a leading expert in the cognitive evaluation of students with deafblindness—a very rare specialty—, would be available to conduct a re-evaluation of Student. Due to scheduling difficulties, that re-evaluation never took place, and Dr. Mar has subsequently indicated he will not perform the evaluation. (P-5 at pages 4-5, P-65; NT at November 7<sup>th</sup>-158, November 7<sup>th</sup>-215-217, 1313).
37. While the parents have made no claim in these proceedings for remedy based on allegations of deprivations of a free appropriate public education (“FAPE”) related to the implementation of the IEP at P-5, it is clear that the parents feel the District has not appropriately implemented the IEP at P-5, feel that those alleged implementation issues are at the root of any non-progress under the IEP at P-5, and feel that the District has mischaracterized the progress that Student has made under P-5. (P-58, P-59, P-65, P-84, P-99; S-3, S-6; NT at November 7<sup>th</sup>-100-101, November 7<sup>th</sup>-105-107, November 7<sup>th</sup>-109-110, November 7<sup>th</sup>-139, November 7<sup>th</sup>-164, 262-263, 285-286, 301-305, 308-312, 349-350,

384-385, 527, 541-542, 729-730, 745-746, 791, 874-878, 891-895, 910, 953, 1088, 1129-1130, 1145-148, 1195-1196, 1211-1212, 1243-1246, 1274-1275).

38. The District feels quite strongly that the IEP at P-5 is mis-serving Student and that the proposed IEP at S-3 provides a comprehensive and appropriate education for him. (S-3, S-8, S-11, S-12; NT at 54-56, 81-83, 91, November 7<sup>th</sup>-158-164, November 7<sup>th</sup>-175, November 7<sup>th</sup>-192-194, November 7<sup>th</sup>-204-208, November 7<sup>th</sup>-217-226, January 9<sup>th</sup>-204-216, January 9<sup>th</sup>-220-228, 368-369, 380, 389-400, 408-411, 473-474, 496-497, 501, 510, 519-524, 535-537, 543-565, 571-581, 585-589, 592-595, 599, 631-635, 639, 649, 667, 673-679, 692-699, 703-709, 719-720, 1168, 1413-1422, 1453-1455).

## **DISCUSSION AND CONCLUSIONS OF LAW**

The provision of special education and related services for students with disabilities is addressed in federal law (“IDEIA”) and Pennsylvania law (“Chapter 14”).<sup>4</sup>

### **FAPE in the LRE**

To assure that an eligible child receives a free appropriate public education,<sup>5</sup> an IEP must be “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.”<sup>6</sup> ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning.”<sup>7</sup> More specifically, a student’s IEP must include specially designed instruction designed to meet the

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<sup>4</sup> 34 C.F.R. §§300.1-300.818; 22 PA Code §14.101-14.163.

<sup>5</sup> 34 C.F.R. §300.17.

<sup>6</sup> *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982).

<sup>7</sup> *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

unique needs of the child and must be accompanied by any necessary related services to permit the child to benefit from the instruction.<sup>8</sup>

In this case, the IEP at P-5 does not appear to offer Student the opportunity for significant learning. The voluminous record, taken in its entirety, weighs in favor of the District in terms of the goals in the IEP at S-3 being more appropriate for Student than the goals in the IEP at P-5. (FF 5, 23).

As written, however, the IEP at S-5 fails to provide in the provide FAPE to Student in significant ways. Regardless of the District's calculation of time in regular education, this hearing officer finds that the proposed program and placement is much more restrictive than Student's program outlined in the IEP at P-5. (FF 14,15, 30, 31, 32). It is clear that Student would spend the majority of his day, and almost all instructional time, in a setting excluded from non-disabled peers.

Both federal law, at 34 C.F.R. §§300.114-120, and Pennsylvania law, at 22 PA Code §14.145, require that the placement of a student with a disability be in the least restrictive environment ("LRE").

Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

"Each (school district) must ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled, and...separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

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<sup>8</sup> Rowley; Oberti v. Board of Education, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993).

Pursuant to 34 C.F.R. §300.116(b)(2-3), however, the notion of LRE for a student's placement has additional contours:

“In determining the educational placement of a child with a disability...each (school district) must ensure that...the child's placement...is based on the child's IEP and is as close as possible to the child's home.”

Additionally, to comply with LRE mandates, the school district must ensure that “unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.” 34 C.F.R. §300.116(c).

Simply put, the District proposes to move Student to a more restrictive environment which is inappropriate. It is the considered opinion of this hearing officer, then, that the District's proposed IEP at S-3 can and should form the basis of Student's education program. But the IEP at S-3 requires significant alterations to allow Student to receive FAPE in the LRE.

Specifically, the IEP at S-3 requires revisions regarding assessments, the addition of certain new goals, the revision of Student's behavior management plan, the addition of critical program modifications and specially designed instruction, slight revisions to related services, and revisions to the supports for school personnel. (FF 6, 7, 22, 23, 25, 26, 27, 28). These changes will also necessitate a re-working of the characterization of Student's education placement and LRE calculation. (FF 30, 31).

Accordingly, an order will be entered with explicit direction as to revisions to the IEP at S-3 that are necessary for it to be entirely appropriate.

### Evaluation

The record is equally clear that Student requires a comprehensive re-evaluation to assess accurately his strengths and needs. (FF 16, 35). Such an evaluation, especially as to its components on cognitive functioning, is very difficult to perform. (FF 35). But Student needs to be assessed, to the extent that he can be, in all areas: cognitive, psychological, and in terms of behavior and assistive technology; the IEP team may see the need for additional areas for formal re-evaluation.

Accordingly, an order will be entered with an explicit framework to provide a means to allow Student to be comprehensively re-evaluated.

### **CONCLUSION**

On balance, the proposed IEP at S-3 is more likely to provide Student the opportunity for significant learning given his disability. There are serious flaws in the IEP at S-3, and this hearing officer will seek to address those flaws in a very intricate, but necessary, order.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the IEP at S-3 will form the basis for Student's education program with the following revisions:

- The IEP team shall convene to discuss the section on Student's local assessment (S-3 at page 14). Given revisions to the IEP at S-3 outlined below, the IEP team may decide that local assessment of Student needs to be altered;
- The IEP team shall convene to discuss the addition of goals and short-term objectives for Student in social studies and science classes (see below);
- Student's behaviors, while sometimes problematic, are not currently unmanageable, and so the behavior management plan in S-3 shall be replaced by the behavior management plan in P-5 at pages 42-43 (pending the completion of a complete functional behavior assessment - see below);
- The following items shall be added explicitly to S-3 as program modifications/specially designed instruction: Circle of Friends, the COACH model, pre- and post-teaching for instruction in social studies and science in the regular education environment, IEP matrices and curriculum overlapping for all

aspects of Student's IEP at S-5 (including instruction in social studies and science in the regular education environment);

- Audiology consultations (S-5 at page 50) shall continue to be bi-monthly (that is, every two weeks);
- To ensure consistency and efficiency in communication, in the section for supports for school personnel (S-5 at page 54), a specific individual (by title, not by name) shall be identified and tasked with the duty to share on at least a weekly basis information with parents; and
- The training and support of the intervener shall not change. As such, the support, location, and frequency of the supports provided by the "person with training and experience in deafblindness" as written in S-3 (pages 52-53) shall be removed and replaced with the support, location, and frequency of supports provided by that same individual as stated in P-5 (pages 49-50), except that the location of the provision of those services may be in person, by email, or over the phone and not exclusively in person.

Additionally, the explanation of the extent to which Student will participate with non-disabled peers (S-3 at page 56) shall read as follows: "Student will participate with non-disabled children in daily instruction employing pre-and post-teaching, IEP matrices, and curriculum overlapping in regular education in social studies and science. Student will

not participate with non-disabled peers in regular education during speech therapy, occupational therapy, physical therapy, vision services, and orientation and mobility services. Except for social studies, science, specials, lunch, and recess, Student will attend a special education resource classroom to receive services from a teacher of the deaf/hard of hearing.” In accord with this provision of the order, the IEP team shall recalculate the time spent outside of regular education in the LRE calculation to ensure it is accurately reported (S-3 at page 56).

Furthermore, the District shall perform a comprehensive re-evaluation of Student. The re-evaluation shall include, to the extent possible, cognitive and psychological evaluations as well as complete functional behavior and assistive technology assessments, and any other evaluation(s) that the IEP team is warranted.

The methods and instrumentation shall be in the sole control of the evaluator, but those methods and/or instrumentation shall be shared with the parents before the evaluation takes place.

In terms of the cognitive evaluation, within 20 calendar days of the date of this order, the District shall contact Dr. Harvey Mar and, if he is willing, contract with him to recommend 2-4 evaluators with, in his opinion, the training, knowledge and experience to perform a cognitive evaluation of Student . These 2-4 evaluators may be located anywhere in the continental United States.

If Dr. Mar is willing to supply these recommended evaluators, the District shall contact them to gauge their interest in performing the evaluation. For any evaluator interested in performing the evaluation, the District shall collect the evaluator's CV and supply it to the parents. The parents shall not contact any evaluator identified as part of this process. But based on the CVs, and any other information outside of contact with the evaluators that the parents may ascertain, the parents shall have sole control in selecting the evaluator.

If Dr. Mar is unwilling to supply a list of recommended evaluators, the District shall compile its own list of evaluators that, through its investigation, may be willing to perform the evaluation. The process and limitations outlined in the above paragraphs to select the evaluator shall be employed as indicated.

Lack of progress in identifying an evaluator for cognitive functioning shall not delay the District's efforts to secure evaluations in other areas.

The District shall pay all fees and costs associated with the evaluation process.

Pursuant to 22 PA Code §14.124(b), the 60-calendar day timeline begins to run to as of the date of this order.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

April 2, 2009