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.

F.R., 5935/05-06 KE
Name/File Number

[redacted]
Date of Birth

03/07/06; 04/18/06
Dates of Hearing

Closed
Type of Hearing

Parties to the Hearing:

Parent[s]
Parent(s) Name(s)

4/21/06
Date Transcript Received

Philadelphia City
School District

06/14/06
Date of Decision

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I. BACKGROUND

[Student] is a [late teenaged] Philadelphia School District [District] student who began receiving specially designed instruction in a part-time learning support setting after [Student] was identified in 2002 as an IDEA eligible student due to mild mental retardation.

After [a traumatic incident at a] school [Student] attended as a 9th grade student, [Student] was placed on homebound instruction for several months in the second half of the 2003/2004 school year. [Student] returned to classes at the beginning of the 2004/2005 school year in a smaller high school as a 10th grade student. When [Student]'s family moved [within] the School District in January 2005, [Student's] Parents did not want [Student] to attend [Student's] new regional high school because they felt its large size would be detrimental to [Student's] safety and well-being. The School District eventually offered, and Parents accepted, a placement for [Student] at a smaller [school]. [Student] adjusted well to that placement, but both [Student] Parents and the School District believed that [Student] could not return there for the 2005/2006 school year, when [Student] would presumably be an 11th grade student. [Student]'s Mother contacted the School District during the summer of 2005 to determine where [Student] would attend school during the 2005/2006 school year, but the matter was not resolved until early November 2005, when [Student] returned to the same school [Student] had attended previously for a 45 day interim placement pending a reevaluation and IEP meeting.

Prior to [Student]'s return to school in November 2005, [Student's] Parents had requested a due process hearing. Due to ongoing settlement negotiations, complicated by difficulties arranging IEP meetings, the hearing was postponed numerous times. During discussions with counsel just before convening the first hearing session, an agreement was reached to limit the

issues, initially, to the following questions: 1) Whether the School District appropriately changed [Student]'s disability category to emotional disturbance; 2) Whether [Student] should receive compensatory education for the approximately 2 months [Student] did not attend school at the beginning of the 2004/2005 school year. The parties and counsel further agreed to adjourn the hearing to have an IEP meeting. Subsequently, the parties resolved their disputes with respect to a School District funded independent educational evaluation and with respect to developing an appropriate program and placement for [Student] for the future, leaving for decision only the two issues considered at the initial hearing session.

II. FINDINGS OF FACT

1. [Student] is a [late teenaged] child, born [redacted]. [Student] is a resident of the School District and is eligible for special education services. (Stipulation, N.T. pp. 19, 20).

2. The School District changed [Student]'s disability category from mild mental retardation to emotional disturbance after a traumatic incident. Although the Parents disagree with the ED diagnosis, there is no dispute that [Student] is a student with a disability in accordance with Federal and State Standards, given [Student's] scores on standardized tests measuring intellectual ability and achievement. 20 U.S.C. §1401(3)(A), 34 C.F.R. §300.7(a)(1), (c)(4), (6); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 20, 97—100, 184,188, 194—197, 204, 210; S-2, S-7).

3. In evaluations conducted in November 2002 and February 2004, [Student]'s scores on the WISC III placed [Student's] intellectual functioning at the mentally deficient level. Nevertheless, [Student]'s achievement in the early school grades led the School District to conclude that [Student's] estimated IQ score of 77 on the Raven Progressive Matrices Test, a nonverbal measure of reasoning ability considered language free and culturally unbiased, which places [Student] in the borderline to low average range intellectual functioning, was a more accurate assessment of [Student]'s cognitive potential. (S-7)

4. On November 16, 2005 the School District issued its most recent Psychological Evaluation. [Student]'s full scale IQ was measured at 73, in the borderline range, which the examiner considered an accurate estimate of [Student's] intellectual capacity. Other standardized test scores indicated that [Student's] reading comprehension is at the mid 3rd grade level, with math and written language grade equivalents ranging from early fourth grade to late 6th grade. (S-9)

5. The evaluator also concluded that [Student]'s primary area of exceptionality was emotional disturbance, based upon his observations and interaction with [Student] during the evaluation and one standardized measure of emotional functioning, the Behavior Assessment for Children (BASC). The evaluator concluded that [Student]'s score was invalid due to [Student's] attempt to respond in a socially acceptable manner and to portray [Student's] self as happy. (S-9)

6. An additional Reevaluation Report issued on November 28, 2005 further concluded that although [Student] did not begin attending school in the 2005/2006 school year until November 8, 2005, [Student's] average and above average grades in [Student's] curriculum indicated that [Student] was making academic progress in [Student's] current placement and that the accommodations and supports [Student] was receiving were sufficient to assure success in the curriculum. (N.T. p. 150; S-2)

7. The Reevaluation and Psychological Reports also concluded that it was too soon to determine whether [Student] needed specialized supports for the issues brought to light by the invalid BASC score, which indicated that [Student] might have a need to deny emotional involvement, as well as the examiner's belief that [Student] harbored fears and anxieties. (S-2, S-9)

8. Although [Student]'s Mother was concerned about the evaluator's recommendation that [Student]'s disability category be changed to emotional disturbance, she checked the "agree" box when she signed the Reevaluation Report. She also, however, added a note that she was accepting the School District evaluation only until the Parents' independent evaluation was completed. (N.T. pp. 65, 66, 97-- 100; S-2)

9. [Student]'s standardized test scores of intellectual ability and educational achievement are consistent in all evaluations and amply support [Student's] eligibility for special education services. (N.T. pp. 184, 194, 196, 197, 204, 208-- 210; S-2, S-7, S-8, S-9; P-12)

10. During the 2004/2005 school year, [Student] attended [redacted] High School until [the] family moved [within] the School District in January, 2005. (N.T. pp. 38, 39)

11. [Student]'s Parents notified the School District of their move and were given the name of a contact person in the [new school], with whom they discussed [Student]'s placement. (N.T. pp. 39, 40)

12. On January 10, 2005, [Student]'s new IEP team met to formulate an IEP for [Student]. The team, however, did nothing more than adopt [Student]'s July 26, 2004 IEP. (S-5)

13. [Student]'s Parents did not believe that [Student's] neighborhood high school was appropriate for [Student] due to its size, which is much larger than [the prior school], and their assessment, after a tour, that the students were not well controlled. (N.T. pp. 40–

42, 44)

14. During the latter part of the 2003/2004 school year, [Student]'s primary care physician had requested homebound instruction for [Student] for the remainder of the year, stating in a note that [Student] [was involved in a traumatic incident] at school. That incident, which occurred in a large high school environment, was a primary reason for the Parents' objection to [Student]'s placement in another large high school environment. (N.T. pp. 43, 44; P-2)

15. The School District ultimately proposed, and Parents accepted, a placement for [Student] at [redacted school] for the remainder of the 2004/2005 school year. Parents felt that [redacted school], which is affiliated with [Student]'s neighborhood high school, was a better choice because of its smaller size and more secure environment. (N.T. pp. 45, 47, 115)

16. On February 22, 2005 the School District issued a NOREP identifying [redacted school] as [Student]'s placement. The NOREP was approved by [Student]'s Mother on the same date. The process of determining which school [Student] would attend resulted in [Student] not attending school at all from the time school resumed after the winter holiday break until February 26, 2005 a period of nearly two months. (S-3, S-6).

17. At the end of the 2004/2005 school year, both [Student] Parents and the School District believed it would be necessary to place [Student] in a different school for the 2005/2006 school year because the [redacted school] curriculum ended with 10th grade and [Student] was entering 11th grade (N.T. p. 55)

18. [Student]'s Mother contacted the School District several times during the summer of 2005 to attempt to determine where [Student] was to attend school when the 2005/2006 school year opened, but nothing was resolved in response to her inquiries before the 2005/2006 school year opened. (N.T. pp. 51—53, 84, 119, 120; S-3)

19. According to School District procedures for determining an appropriate placement, an IEP meeting would be convened at the school in which the student was registered and a NOREP issued for the placement deemed appropriate by the IEP team at the conclusion of the meeting. Such procedure was not followed for [Student] prior to the beginning of the 2005/2006 school year because [Student's] January 2005 IEP and NOREP were still in effect. (N.T. pp. 129—131)

20. In September 2005, the School District again suggested that [Student] attend [Student's] neighborhood high school. (N.T. pp. 54, 119, 131)

21. The School District also suggested [redacted school], an alternative school where [Student]'s IEP services could have been delivered, and ultimately scheduled an IEP meeting there on October 25, 2005. (N.T. pp. 53, 54, 56—59, 129, 131, 132, 136, 140-

143; S-1)

22. [Student]'s Parents traveled to the IEP meeting using the same transportation route [Student] would have used and determined that traveling to/from school would have taken [Student] 1½ hours each way, which they deemed too long. (N.T. pp. 61, 62)

23. There were other reasons that Parents believed [redacted school] would not be an appropriate setting for [Student], including a lack of an appropriate curriculum for [Student] and conduct they observed on the part of both students and teachers. (N.T. p. 63)

24. After the October 25, 2005 IEP meeting, the School District offered to allow [Student] to return to [redacted school] for a 45 day interim placement, during which an evaluation would be conducted and IEP meetings held. (N.T. pp. 64, 144, 145)

25. The offer to return [Student] to [redacted school] was based, in part on the School District's conclusion that it would be advantageous for [Student] to be closer to [Student's] home and Parents on a daily basis, which attendance at [redacted school] would not have permitted. (N.T. p. 145)

III. ISSUES

1. Did the District appropriately identify [Student] as a student with emotional disturbance?

2. Should [Student] be awarded compensatory education because [Student] did not attend school from September 5, 2005 the date the 2005/2006 school year opened until November 7, 2005?

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Change in disability Category to Emotional Disturbance

The dispute between the Parents and the School District concerning [Student]'s disability category is most unfortunate in that the time and effort expended on that issue distracted attention from specifically identifying and meeting [Student]'s academic, social and emotional needs, which should have been the primary focus of the parties for this student. Fortunately, the parties were ultimately able to put aside their differences over [Student]'s classification and begin to work together to provide [Student] with an appropriate program in an appropriate

setting. Nevertheless, the students' Parents are still concerned about the "emotionally disturbed" label and want it removed as the basis for [Student]'s IDEA eligibility.

Although "serious emotional disturbance (referred to in this title as 'emotional disturbance')" is listed as an eligibility category in the current version of the IDEA statute (20 U.S.C. §1401(3)), the term is not defined in the statute itself. The 1999 federal regulations, therefore, still provide the criteria for determining when that disability is appropriately used as the basis for IDEA eligibility:

> *Emotional disturbance*…(i)…means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
>
> (A) An inability to learn that cannot be explained by intellectual, sensory or health factors.
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
> (C) Inappropriate types of behavior or feelings under normal circumstances.
> (D) A general pervasive mood of unhappiness or depression.
> (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
>
> (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

34 C.F.R. §300.7(c)(3).

There is no evidence in the record to support a conclusion that [Student] exhibits any of the foregoing characteristics to a marked degree, over a long period of time or to such an extent that emotional factors adversely affect [Student's] educational performance. There are only two possible bases for the School District's determination that [Student]'s primary disability category is emotional disturbance: 1) The psychologist's conclusion in the November 16, 2005 psychological report that [Student] "harbors fears and anxieties" despite [Student's] "attempts to present a happy and well-adjusted façade" and "put on a happy face." (*See*, S-9 at p. 7; S-2 at

p.3); 2) a psychological report dated 2-11-04, soon after [a traumatic incident], in which the evaluator stated that [Student] had been observed by a psychologist during the evaluation and who noted that [Student's] affect appeared depressed and that [Student's] test performance was likely adversely affected by [Student] emotional state. (S-7 at pp. 2, 11). On the other hand, however, the School District's Reevaluation report dated November 28, 2005 noted that "Observation by Special Education teacher reported that [Student] was engaged in lesson with little distraction. [Student] responds well to instruction and will ask a peer for clarification. Tasks are completed in a timely manner which is comparative to [Student's] peers." (S-2 at pp. 1, 2) The report went on to summarize the observations of [Student]'s teachers: "All teachers report that [Student] is respectful, behaves appropriately, interacts with peers, accepts criticism and deals with frustration accordingly." (*Id.* at p. 2) [Student]'s behavior and adjustment in school, therefore, does not support using emotional disturbance as [Student]'s primary disability category, since whatever "fears and anxieties" [Student] may harbor do not affect [Student's] educational performance. In addition, [Student]'s low levels of academic achievement are consistent with [Student's] low scores on tests of intellectual capacity and educational achievement, which have been near the same levels in all School District evaluations from the first one in November 2002 (S-8), through the reevaluation in February 2004 (S-7) and the most recent reevaluation report and psychological report in November 2005 (S-2, S-9).

It is difficult to understand why the School District insists that [Student]'s eligibility category should be emotional disturbance. The explanation that the most recent reevaluation indicated that [Student's] emotional/social needs now appear to be greater than [Student's] academic needs makes no sense in light of [Student's] IQ and achievement test scores, as well as

the School District's proposal to maintain [Student]'s LD program/placement. [Student]'s academic needs certainly did not lessen, and there is no suggestion in the record that [Student's] emotional needs significantly interfere with [Student's] ability to benefit from academic instruction. Consequently, the School District's decision to change [Student]'s disability category was not necessary to assure that [Student] receives the services [Student] needs. [Student]'s IEP should reflect individualized goals, objectives, strategies, specially designed instruction and related services to meet every identified emotional social and academic need, regardless of [Student's] disability category.

Moreover, as noted by the Parents' expert witness, in light of [Student]'s significant cognitive deficits which entirely support [Student's] IDEA eligibility, it is reasonable to expect that a school psychologist proposing to classify a student as emotionally disturbed rather than cognitively impaired would not rely primarily upon his subjective belief regarding [Student]'s primary area of need. This is especially true when such belief arose from only a brief observation/interaction with the student and one standardized test score that the psychologist considered invalid due to [Student]'s attempt to answer questions in a socially acceptable manner. (N.T. pp. 198--204; S-9 at pp. 2, 7). As the Appeals Panel suggested in *In Re: The Educational Assignment of David M.*, Special Education Opinion No. 1082 (1/10/01), where emotional disturbance is used as a basis for IDEA eligibility, the record should include supporting documentation such as a full assessment and comprehensive report by a certified school psychologist, as well as expert testimony on the part of both parties. Here, the School District relied only upon the written reports of a school psychologist who observed [Student] during an evaluation and one who met the student briefly on one occasion and used only one

standardized assessment as the basis recommending a change in disability category. The report, therefore, falls far short of comprehensive. In addition, neither the psychologist who prepared the report nor any other expert testified for the School District. The record, therefore, leaves many unanswerable questions with respect to why the School District so strongly argues that emotional disturbance is the appropriate disability category for [Student].

The School District's insistence upon identifying [Student] as emotionally disturbed is especially puzzling since neither of the evaluation reports which identify emotional disturbance as [Student]'s primary disability category make any recommendations for counseling or other services, and certainly do not suggest that [Student's] special education need should no longer be addressed in a learning support setting. Moreover, even if the school psychologist's observations in the most recent psychological evaluation concerning [Student]'s hidden anxieties are accurate and [Student] thereby needs counseling or other psychological services to enable [Student] to address those issues and benefit fully from [Student's] special education program, [Student] could certainly be provided with such related services in accordance with 20 U.S.C. §140126(A) regardless of [Student's] disability category.

For the foregoing reasons, the Parents' contention that emotional disturbance is not the appropriate disability category for [Student] is correct based upon the evaluations in the record.

B. Compensatory Education

Although there is no dispute that [Student] did not attend school for two months at the beginning of the 2005/2006 school year, the School District contends that there was a placement available for [Student] in [Student's] neighborhood high school before the school year began, and, therefore, that [Student] is not entitled to compensatory education for that period. The

record, however, does not support the conclusion that the School District had made a reasoned decision regarding an appropriate educational setting for [Student] for the 2005/2006 school year, based upon [Student's] identified needs, before an IEP meeting was held in October 2005. Moreover, there is no evidence that the School District effectively communicated to [Student]'s Parents where the School District expected [Student] to attend school beginning in September 2005.

The School District witness who was contacted by [Student]'s Mother concerning [Student's] placement for the 2005/2006 school year admitted that the Parents had received nothing to indicate whether [Student] had been promoted to 11th grade and/or where [Student] was expected to report when the new school year began; that no IEP meeting was convened to determine an appropriate placement for [Student] between the end of the of the 2004/2005 school year and the beginning of the 2005/2006 school year; that no NOREP was issued to identify the school [Student] should attend in September 2005. (N.T. pp. 122, 123, 129) Although the School District witness noted that there was an IEP in place at the beginning of the 2005/2006 school year because the January 2005 IEP was still in effect, the witness also admitted that an IEP meeting should be convened whenever it is necessary to assure that the student has an appropriate program and placement. (N.T. p. 131) The IDEA statute requires school districts to assure that an eligible student's IEP team meets whenever it is necessary to revise the child's IEP to address, *inter alia,* the child's anticipated needs or "other matters." 20 U.S.C. §1414(d)(4). Here, there was clearly a need for an IEP team meeting to determine an appropriate placement for [Student], as the School District obviously recognized by convening an IEP meeting in October 2005. That meeting, however, should have been held at least 2 months earlier, in

August 2005, when the School District admits that [Student]'s Parents contacted the District to determine where [Student] should attend school in September.

Moreover, although a meeting in August would have been far better than waiting until October, after school had been in session for nearly two months, the School District should have known before the end of the 2004/2005 school year that there was a significant question concerning [Student]'s placement for the following year, since [Student] had not previously attended [the] high school due to concerns about [Student] safety and adjustment to a large school. According to the last NOREP issued for [Student], dated 2/22/05 [Student] was assigned to [redacted school] not to the [redacted] high school. (F.F. 16; S-6) An IEP meeting, therefore, should have been convened during the last few weeks of the prior school year, or soon after it ended, to consider placement options for [Student] if [Student] was not expected to return to the same school in September 2005.

In addition, nothing in the record suggests that the School District reasonably believed that the circumstances which led to its decision to place [Student] at [redacted school]when [Student] moved [within] the School District had changed so significantly that it was appropriate for [Student] to attend [Student's] high school beginning in September 2005. Knowing that [Student]'s Parents did not want [Student] to attend a large school, and also believing that it would not be possible for [Student] to return to [redacted school] as an 11th grade student, it is surprising that the IEP team did not anticipate the need to find an appropriate placement for [Student] for the next school year, and plan a meeting to address that issue at the time the first [new school] IEP was approved in February 2005. In light of [Student]'s history and the February NOREP which, as the School district's witness pointed out, was still in effect at the end

of the 2004/2005 school year, it is also surprising that the School District responded to the Parents' inquiries in August 2005 by suggesting that [Student] attend [Student's] high school.

The School District also contended that it offered [Student] a placement at an alternative high school if the high school was not acceptable to [Student's] Parents. It is unclear from the record, however, when that placement was offered. (*See*, N.T. pp. 120, 132, 133, 136, 139—141). It is also obvious that the offer of the alternative school was not based upon the School District's conclusion that it would be an appropriate setting for [Student]. The testimony by the School District witness made it quite clear that the convenience of the School District and the size of the school were the only factors taken into account when the offer was made:

> We discussed the options in reference to what was available based on the [school's] availability of spaces. And considering that [the] high school was something [Student] had not been used to in [Student's] previous school experience, we felt an option—an offer of the [redacted school] was more appropriate under these circumstances.

(N.T. p. 129) The School District did not take into account the considerable distance [Student] would have had to travel, whether [Student] would have been a good fit with the population of the school and whether it would be advantageous for [Student] to attend school close to [Student's] home and family, as the School District later determined it is. (*See*, F.F. # 26).

In short, prior to and at the beginning of the 2005/2006 school year, the School District failed to assure that the placement decision for [Student] was "made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options" as required by 34 C.F.R. §300.552(a). The School District failed to timely convene an IEP team meeting to consider an appropriate placement for [Student]. Instead, the School District tried to shift the IEP team's responsibility for determining

an appropriate placement entirely to the Parents, but provided them with only two "take it or leave it" options, one of which was the local high school. That setting had already been considered and rejected by the Parents when the family first moved into the [area] only nine months before. With respect to the second option, a distant alternative school, the School District provided the Parents with no basis upon which they could reasonably determine that it would have been an appropriate placement for [Student]. Indeed, when [Student]'s IEP team finally met there in late October 2005, it was rejected as an appropriate placement and [Student] returned to the school [Student] attended in the prior school year on an interim basis.

Consequently, although there may have been one or more placements offered to [Student] before, or at the beginning of the 2005/2006 school year, there was no **appropriate** placement "on the table" at that time. Moreover, the hearing record provides no good reason why the October 2005 IEP meeting could not have occurred at the end of the of the 2004/2005 school year, or at least in August or very early September 2005, especially since there was a NOREP in effect which both the Parents and the School District believed could no longer be implemented at the same school [Student] had attended during the prior school year. There was no valid reason for [Student] to miss two months of school at the beginning of the 2005/2006 school year and the reason [Student] did not attend school, lack of an appropriate recommended placement, must be laid entirely at the School District's door.

Since [Student] is an eligible student who did not receive a free, appropriate, public education from the School District of residence for a period of two months, from the day school opened on September 5, 2005 until November 7, 2005, the day before [Student] began classes in the 2005/2006 school year, [Student is] entitled to an award of compensatory education for that

period. *M.C. v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996). The School District, therefore, will be ordered to provide [Student] a full day of compensatory education for each day school was in session during that period. The monetary limits of the award shall be delineated by the total amount per day it costs the School District to educate a student with an IEP for part-time learning support. [Student]'s IEP team shall determine the specific type of compensatory education services, which will be limited to academic and/or psychological services designed to meet [Student]'s identified needs. If there is a dispute between the Parents and the School District members of the IEP team with respect to specific compensatory education services, the Parents shall make the final decision, and may use part of the compensatory education award to pay for the services of a knowledgeable, independent educational consultant to help them choose appropriate services, provided, however, that any such consultant can gain no financial benefit from recommended services or the providers of such services. The compensatory education shall be in addition to, and shall not be used to supplant, educational services and/or products/devices that should appropriately be provided by the School District through [Student]'s IEP to assure meaningful educational progress. Compensatory education services may occur after school hours, on weekends and/or during the summer months when convenient for [Student] and [Student's] Parents. The hours of compensatory education may be used at any time from the present to [Student]'s 21st birthday, and may include additional instruction in reading, math and/or other skills needed for independent living after [Student] completes the School District curriculum and graduates, if that occurs before [Student] reaches [Student's] 21st birthday. The compensatory education award

may not, however, be used for anything considered post-secondary education or vocational training without the School District's explicit consent.

V. SUMMARY

The School District did not have a reasonable basis for determining that emotional disturbance is the appropriate disability category to upon which to base [Student's] IDEA eligibility. There is substantial evidence from the School District's evaluations that [Student]'s low level of academic performance is due to significant cognitive limitations and no evidence that emotional factors interfere with [Student's] ability to benefit from instruction.

[Student] was unable to attend school from the beginning of the 2005/2006 school year until November 8, 2005 due to the lack of an appropriate recommended placement. Because the School District failed to convene an IEP team meeting before the end of the 2004/2005 school year, or at least before the beginning of the next school year, a decision concerning [Student]'s placement for the 2005/2006 school year was unreasonably delayed until late October, 2005. [Student], therefore, will be awarded compensatory education for each day school was in session from the date the 2005/2006 school year began through November 7, 2005.

VI. ORDER

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

1. Remove emotional disturbance as the basis for [Student]'s IDEA eligibility.

2. Provide [Student] with a full day of compensatory education for each day school was in session from the first day students attended school in September, 2005 through and including November 7, 2005 under the following terms and conditions:

a. The cost of the award shall be measured by the total amount per day it costs for the School District to educate a student with an IEP for part-time learning support;
b. [Student]'s IEP team shall determine the specific type of compensatory education services, which will be limited to academic and/or psychological services designed to meet [Student]'s identified needs;
c. Except as provided in subparagraph h, below, if there is a dispute between the Parents and the School District members of the IEP team with respect to specific compensatory education services, the Parents shall make the final decision;
d. Parents may use part of the compensatory education award to pay for the services of a knowledgeable, independent educational consultant to help them choose appropriate compensatory education services, provided, however, that any such consultant may derive no financial benefit from the services h/she recommends or from the providers of such services;
e. The compensatory education services shall be in addition to, and shall not be used to supplant, educational services and/or products/devices that should appropriately be provided by the School District through [Student]'s IEP to assure meaningful educational progress;
f. Compensatory education services may occur after school hours, on weekends and/or during the summer months when convenient for [Student] and [Student's] Parents;
g. The hours of compensatory education may be used at any time from the present to [Student]'s 21st birthday, and may include additional instruction in reading, math and/or other skills needed for independent living after [Student] completes the School District curriculum and graduates, if that occurs before [Student] reaches [Student's] 21st birthday;
h. The compensatory education award may not be used for anything considered post-secondary education or vocational training without the School District's explicit consent.

Dated: 06/14/06

Anne L. Carroll

Anne L. Carroll, Esq., Hearing Officer