

*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: J. B.

Date of Birth: [redacted]

Date of Hearing: 2/24/2015

### CLOSED HEARING

ODR File No. 15630-14-15

#### Parties to the Hearing:

#### Representative:

##### Parents

Parent[s]

##### Parent Attorney

Angela Uliana-Murphy Esq.  
106 N. Franklin St., Suite 2  
P.O. Box 97  
Pen Argyl, PA 18072

##### Local Education Agency

Greater Johnstown School District  
1091 Broad Street  
Johnstown, PA 15906-2437

##### LEA Attorney

John Kuzmiak Esq.  
442 Main Street  
Johnstown , PA 15901

Date Record Closed:

March 1, 2015

Date of Decision:

March 16, 2015

Hearing Officer:

Cathy A. Skidmore, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student)<sup>1</sup> is a pre-teenaged student in the Greater Johnstown School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> as a child with Emotional Disturbance. Student was initially identified as IDEA-eligible at the time Student first enrolled in the District in the fall of 2011, and received the majority of instruction at home rather than in school until October 2014, when the District placed Student in an approved private school (APS). Soon after the APS placement began, Student's Parent filed a due process complaint against the District asserting that it had denied Student a free, appropriate public education (FAPE) under the IDEA as well as the federal and state regulations implementing that Act.

The case proceeded to a due process hearing convening over a single session, at which the parties presented evidence in support of their respective positions. The Parent sought to establish that the District failed to provide Student with appropriate special education services from the time period November 2012 through the fall of 2014, and further failed to comprehensively evaluate Student. The District maintained that the Parent sought programming in the home rather than at school, and also refused to consider a residential treatment facility for Student, diminishing its ability to meet Student's needs, and that in any event its evaluation and educational program were not inadequate.

For the reasons set forth below, I find in favor of the Parent, and will award

---

<sup>1</sup> In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

<sup>2</sup> 20 U.S.C. §§ 1400-1482.

compensatory education as well as an Independent Educational Evaluation (IEE) at public expense.

### **ISSUES**

1. Whether the District provided Student with an appropriate special education program from November 2012 through the start of the APS placement;
2. If it did not provide an appropriate program, is Student entitled to compensatory education and in what amount;
3. Whether the District has appropriately evaluated Student; and
4. If the District has not appropriately evaluated Student, should Student be provided with an IEE at public expense?

### **FINDINGS OF FACT**

1. Student is a pre-teenaged student residing within the District. Student is eligible for special education on the basis of an Emotional Disturbance. (Notes of Testimony (N.T.) 25-26)
2. Student has exhibited behavioral difficulties since age two, and was initially evaluated by the local Intermediate Unit (IU) and found eligible for early intervention services at the age of four. Student was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) around that time. (N.T. 28-29; Parent Exhibit (P-) 21 p. 1; School District Exhibit (S-) 22 p. 2)<sup>3</sup>
3. The IU reevaluated Student in the spring of 2011 as Student prepared to transition to school-aged services. At that time, Student was demonstrating aggression toward others, noncompliance, and elopement; Student's safety was also a concern. Further assessments were recommended to determine cognitive ability and academic achievement, although academic weaknesses in many basic skill areas were noted. (P-21)
4. Student started first grade in the District at the beginning of the 2011-12 school year. On the second or third day of school, Student exhibited significant behavioral difficulties and staff called the Parent to pick up Student. Student did not return to school for the remainder of the school year. (N.T. 31-32, 34, 69-70)
5. The District issued its own Reevaluation Report (RR) the day after the significant behavioral incident. After repeating the information from the IU reevaluation, that

---

<sup>3</sup> The parties presented a number of duplicative exhibits. Citations to duplicative exhibits may be to one or the other or occasionally both.

incident was described in the RR to include threats and verbal aggression against the teacher and other staff. The District referred Student to a behavioral health service agency partial hospitalization program. (N.T. 33; P-20 pp. 1-4, 9-10; S-22 p.1)

6. Parent input into the District's September 2011 RR reflected behavioral problems at home including defiance, inattention, noncompliance, and hyperactivity. She also indicated that Student had previously had Therapeutic Staff Support (TSS) that was discontinued. (P-20 p. 5)
7. The District conducted assessments of Student's cognitive ability (Reynolds Intellectual Assessment Scales) and academic achievement (Wechsler Individual Achievement Test – Third Edition (WIAT-III) and a Kindergarten Curriculum Based Assessment). Student obtained low average cognitive scores and extremely low scores on the Early Reading Skills and Math Problem Solving subtests on the WIAT-III with no obtainable score for Alphabet Writing Ability. Curriculum-based assessment reflected mastery of some basic facts and not others. (P-20 pp. 6-8)
8. The District used the Parent form of the Behavior Assessment System for Children – Second Edition (BASC-2) for the September 2011 RR, which yielded clinically significant concerns in the areas of hyperactivity, aggression, and adaptability, and on the Externalizing Problems, Internalizing Problems, and Behavioral Symptoms Indices; and at-risk scores in the areas of attention problems and social skills and on the Adaptive Skills Index. (P-20 pp. 8-9)
9. The September 2011 RR includes a Functional Behavioral Assessment (FBA), identifying four behaviors of concern: invading personal space of others, verbal aggression, physical aggression, and noncompliance. The functions of these behaviors were identified as escape/avoidance of nonpreferred activities, gaining attention, and mood lability. A Behavior Intervention Plan was recommended. (P-20 pp. 10-11, 13-15)
10. The District concluded that Student was eligible for special education on the basis of an Emotional Disturbance following the September 2011 reevaluation. Numerous recommendations for Student's educational program included emotional support and a behavior plan, and Student's need for early academic skill acquisition was noted. (P-20 pp. 11-15)
11. Student entered a partial hospitalization program in mid-September 2011 after the behavior incident at school, and remained there for approximately two months. Student exhibited "high risk, aggressive, defiant and noncompliant behaviors" on a daily basis; Student was also twice suspended from the van that provided transportation to and from the partial hospitalization program due to violent and aggressive behaviors. Student was discharged from the program because of those behaviors and having failed to respond positively to treatment, a combination of behavior management, medication management, and group therapy. Student's diagnosis on discharge was Bipolar Disorder, Not Otherwise Specified. (N.T. 32-34, 122-23, 132; P-16 pp. 2-3, P-19; S-22)

12. In January 2012, following an Individualized Education Program (IEP) meeting at which a residential treatment facility (RTF) was discussed, Student was placed on either instruction in the home or homebound instruction for the remainder of the school year.<sup>4</sup> That determination was not based on a physician's recommendation, but was the only placement option offered to the Parent and Student. Between the end of the partial hospitalization program and the start of the homebound program, Student did not receive any instruction. Student was provided with five hours of homebound instruction each week after that meeting. (N.T. 34-35, 112-13, 132)
13. Toward the beginning of the 2012-13 school year, Student was provided a modified school day in full time emotional support pursuant to an approved Notice of Recommended Educational Placement (NOREP). Student continued to demonstrate the same aggressive and noncompliant behaviors and returned to homebound instruction after only a few days. (N.T. 36-39, 41; P-13, P-14)
14. Student's IEP team met again in November 2012 to develop a new IEP and discuss Student's program. The team did talk about an RTF but the Parent was not in agreement. By that time, Student was temporarily residing with grandparents within the District. The placement proposed in the NOREP was either cyber school if available, or instruction in the home for five hours per week. (N.T. 39-41, 75, 94, 112, 133-34; P-11, P-12; S-5)
15. The November 2012 IEP included goals relating to use of coping skills, compliance with adult directives, assignment completion, and learning problem solving techniques. Program modifications and items of specially designed instruction addressed an adapted/modified curriculum, modifications to assignments and tests, small group instruction, prompts to remain on task, preferential seating, and a behavior plan. Student's placement was homebound instruction with full time emotional support. (P-11, P-12)
16. Beginning in January 2013, Student was enrolled in the District's cyber school program in addition to the homebound instruction. Student's Parent tried to work with Student to complete cyber instruction and assignments but those efforts were largely unsuccessful. However, she was concerned because Student received A grades for the cyber classes without completing work. (N.T. 44-47, 50-51, 54)
17. At the start of the 2013-14 school year, third grade, Student's IEP team discussed an RTF placement, a modified school day, and cyber instruction. The modified school day was an option only if Student had a TSS assigned during the school day, and Student did not have that service. Student returned to homebound instruction five hours per week for that

---

<sup>4</sup> There is uncertainty in the record whether Student was to be provided instruction in the home or homebound instruction, or some combination, during the time period in question; the terms appear to have been used interchangeably. See N.T. 113, 132; P-18; and P-12 pp. 1-2 compared with P-11 p. 13. The term "homebound instruction" is used for convenience where the record is unclear since the consistent five hours per week is the typical amount of homebound instruction reimbursed by the Department of Education for school attendance. See generally [http://www.portal.state.pa.us/portal/server.pt/community/homebound\\_instruction/20918/structuring\\_hombound\\_instruction/1166346](http://www.portal.state.pa.us/portal/server.pt/community/homebound_instruction/20918/structuring_hombound_instruction/1166346) (last visited March 14, 2015).

school year beginning in late October 2013; and Student logged on to the cyber school program on a few occasions that school year. (N.T. 51-54, 55-56, 95-98, 114-15, 135-36; P-5, P-6, P-8, P-9; S-8, S-14)

18. Student's fall 2013 IEP included goals relating to use of coping techniques, compliance with directives, and assignment completion; there was also a reference to a Positive Behavior Support Plan (PBSP). Student's placement was to be five hours of itinerant emotional support with cyber school instruction. The Parent approved the NOREP for this program. (P-5, P-7; S-11)
19. The District developed a PBSP in October 2013 to address physical and verbal aggression, noncompliance with adult directives and work completion. The hypothesis was that these behaviors served the function of work avoidance/escape or to gain attention. The PBSP included antecedent strategies, replacement behaviors, and consequences; however, skill deficits were not identified, nor did the plan include goals. (S-9)
20. The homebound instructors worked with Student on academics (reading, mathematics, and writing) but not behavior. (N.T. 42, 48, 56)
21. For the first month or two of the periods of homebound instruction, Student frequently engaged in problematic behaviors. At times, Student would calm down and return to tasks, but at other times Student would not do so and the homebound instructor would leave. Student's problematic behaviors improved after that initial one or two month period. (N.T. 42-44)
22. Progress monitoring on Student's IEP goals throughout the time period in question reflects either no assessment or no progress. (P-10, P-15)
23. At the start of the 2014-15 school year, the IEP team discussed homebound and cyber instruction again. The District also suggested the APS at that time. After the Parent toured and agreed to the APS, Student began attending there, sometime in October 2014. Student received no instruction at the beginning of the school year through the time that APS placement began. (N.T. 58-61, 88-89, 119, 122; S-21 p. 5)
24. In the fall of 2014, the District sought permission from the Parent to conduct a reevaluation. The Parent gave consent in November 2014 to an FBA but did not receive the initial request for permission to conduct a reevaluation. The District did not make contact with the Parent regarding her failure to return the initial Permission to Reevaluate form. (N.T. 82-84, 99-100, 121-22; S-16, S-20)
25. Student's IEP team met to develop a program for Student at the APS in November 2014. Participants were Student's Parent, the special education teacher and behavioral health specialist at the APS, and a District administrator. Student's present levels of academic achievement included an administration of the Kaufman Test of Educational Achievement – Second Edition, on which Student scored no higher than the first percentile/lower extreme range in all areas except mathematics computation which was

below average. Additional assessments indicated that Student was at a beginner reading level with decoding skill weaknesses and at an emerging level in mathematics. (P-3 pp. 6-7)

26. IEP goals addressed basic mathematics skills, early reading skills, and science inquiry/investigation; program modifications and items of specially designed instruction included clear and consistent rules/expectations, frequent breaks, prompting and redirection, modeling, individual and small group instruction, and one on one re-teaching as needed as well as a crisis intervention plan. Student would also participate in a breakfast and lunch program and social skills group. (P-3 pp. 17-22)
27. Behavioral information was also part of the November 2014 IEP, and the team developed a PBSP to be provided in a highly structured environment. The PBSP included goals addressing remaining on task and completing assignments, decreasing disruptive behaviors, and compliance with directives. (P-3 pp. 8-9, 21; P-4)
28. The District conducted and reported on an FBA in January 2015. Behaviors of concern identified included work refusal, noncompliance with directives, verbal and physical outbursts and aggression, elopement, and lack of attention; behavioral incidents and their durations were not reported to be consistently displayed. A number of skill deficits, including academic and communication skills, were noted as related to the behaviors of concern. Strategies that had been used were listed in detail but none were reported to be consistently effective in reducing problematic behavior. The hypothesis for the function of Student's behaviors of concern was to avoid non-preferred tasks and to gain adult or peer attention. (P-2; S-19)
29. The District issued another RR in February 2015. The RR, limited to a records review because of the Parent's failure to return signed consent, contained information from the APS that Student was significantly below grade level in academic performance and continued to exhibit behavioral difficulties (including noncompliance, physical and verbal aggression, and defiance). A classroom observation and some input from the Parent were also included. The District concluded that Student was eligible for special education on the basis of Emotional Disturbance. (N.T. 120; P-1; S-18)
30. Needs identified in the February 2015 RR included letter and letter-sound identification, reading comprehension, improving speech, handwriting skills, counting and basic mathematics calculation skills, as well as attentional and behavioral weaknesses. The only substantive recommendation to the IEP team was to include a PBSP and/or behavioral goals. (P-1 pp. 8-9)
31. Student has a PBSP at the APS. Student's behaviors have improved since enrolling at the APS, although Student continues to exhibit problematic behavior. (N.T. 62-63, 65, 84-87)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### General Legal Principles

Broadly speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parent who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). There were only two witnesses at this one-day hearing, one of whom (the Parent) had more personal knowledge about this case than did the other (a District representative). This hearing officer found that these witnesses testified to the best of their recollection and were generally credible with respect to facts necessary to decide the issues. In reviewing the record, the entirety of the testimony and the content of each exhibit were thoroughly considered.

### IDEA Principles

The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20



U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. In this case, there is no question that Student is IDEA-eligible and has been a resident of the District throughout the time period at issue. Thus, the District was required under the IDEA to provide Student with a “free appropriate public education” (FAPE). 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood, supra* at 247.

Local education agencies, including school districts, meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). First and foremost, of course, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. An appropriate education encompasses all domains, including behavioral, social, and emotional. *Breanne C. v. Southern York County School District*, 732 F.Supp.2d 474, 483 (M.D. Pa. 2010) (citing *M.C. v. Central Regional School District*, 81 F.3d 389, 394 (3d Cir. 1996)). Further, a child’s educational placement must be determined by the IEP team based upon the child’s IEP, as well as other relevant factors. 34 C.F.R. § 300.116. All local education agencies are required to make available a “continuum of alternative placements” to meet the educational and related service

needs of children with disabilities. 34 C.F.R. § 300.115(a); 22 Pa Code § 14.145(5).

Also critical is the IDEA obligation for eligible students to be educated in the “least restrictive environment” which permits them to derive meaningful educational benefit. 20 U.S.C. § 1412(a)(5); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000). In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1205 (3d Cir. 1993), the Third Circuit adopted a two-part test for determining whether a student has been placed into the least restrictive environment as required by the IDEA. The first prong of the test requires a determination of whether the child can, with supplementary aids and services, successfully be educated within the regular classroom; and the second prong is that, if placement outside of the regular classroom is necessary, there must be a determination of whether the school has included the child with non-exceptional children to the maximum extent possible. *Id.* In evaluating the first prong, the efforts the school district has made to include the child, a comparison of the benefits to the child of placement in a regular classroom versus a separate special education classroom, and the effect on the other students, must be considered. *Id.*

### The Parent’s Claims

The first issue is whether the District provided Student with FAPE beginning in November 2012 and continuing through the APS placement in October 2014. The record compels no other conclusion than that it did not.

Student began attending the District in first grade, the 2011-12 school year, and lasted only two or three days before Student’s Parent was called to collect Student from school, and the District at that time recommended a partial hospitalization program. After Student’s discharge, no educational service of any form was provided by the District until January 2012 when the only placement offered was instruction in the home/homebound instruction for five hours per

week. That limited amount of instruction continued through the fall of 2012 except for a very short period of time when a modified day was unsuccessfully attempted. While this series of events occurred prior to the time period that was at issue in this case, these circumstances set into motion a pattern of providing Student with the absolute minimum level of instruction permitted under the law, in a very restrictive setting, without addressing Student's significant behavioral and emotional needs.

The limited instruction provided to Student through the 2012-13 and 2013-14 school years remained unchanged. Regardless of whether Student was provided with homebound instruction or instruction in the home,<sup>5</sup> on the spectrum of a continuum of special education services, Student was provided one of the most restrictive alternatives. It is also evident that no approaches other than those that kept Student out of the school building and away from peers were meaningfully considered,<sup>6</sup> and none of the principles of LRE and *Oberti* were part of Student's placement decisions. The Parent's agreement to try cyber instruction was not, as the District suggested, an obstacle to its efforts to program appropriately for Student, but rather merely reflects her acquiescence to the District's insistence that it could not educate Student anywhere but in Student's home. Substantively, the five hours or less of instruction each week was focused solely on a few academic areas and included no special education services identified in Student's various IEPs. Tellingly, Student began the fourth grade year in the fall of 2014 at a very beginning academic level in all areas, including reading and mathematics, strongly

---

<sup>5</sup> There was some evidence that the Parent considered home-schooling Student. (N.T. 70-71, 73-74, 92-93; S-23) S-23 is hereby admitted over objection because it helps to explain the circumstances in the fall of 2011, the first point in time when the only placement options made available to Student were those at home. However, the Parent's signature in November 2011 does not establish that the Parent actually followed through with home-schooling Student and, in any event, by January 2012 it was clear that Student's education was the responsibility of the District.

<sup>6</sup> Although there was testimony that the District would not have required Student to have a TSS in order to return to school for a modified day (N.T. 137), the documents themselves clearly conditioned that option on the availability of such support.

supporting the conclusion that the educational services that had been provided to Student by the District were not effective or beneficial. Simply put, Student's educational program throughout the entire time period at issue was not appropriate or meaningful, and constitutes a clear denial of FAPE.

The above determinations lead to the next issue, the Parents' request for compensatory education. It is well settled that compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. *M.C. supra*. Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school district to correct the deficiency. *Id.* In addition to this "hour for hour" approach, some courts have endorsed a scheme that awards the "amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE." *B.C. v. Penn Manor School District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) (awarding compensatory education in a case involving a gifted student); *see also Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005) (explaining that compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.")). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Having concluded that that the limited instruction that was provided was not appropriate and failed to address Student's emotional, behavioral, and academic needs in any meaningful way, the next question is how to calculate the remedy. The record contains no evidence from

which a *B.C.* award, designed to place Student in the position Student would be in had FAPE been provided, may reasonably be derived. Thus, Student shall be awarded five hours per day<sup>7</sup> of compensatory education for every day that school was in session from November 21, 2012 to the first day that Student attended the APS in the fall of 2014. Although the Parent seeks additional compensatory education for the time period after Student began attending the APS because Student is academically far below grade level, this hearing officer concludes that the award should equitably provide Student with the very educational services that Student should have received during the time period at issue, consistent with the *M.C.* standard.

The hours of compensatory education are subject to the following conditions and limitations. Student's Parent may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional/behavioral and/or academic needs. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age fifteen (15).

There are financial limits on the parents' discretion in selecting the compensatory education; the costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the average of the hourly salaries and fringe benefits that would have been paid to the District professionals who

---

<sup>7</sup> See 22 Pa. Code § 11.3, providing for 900 hours of instruction for students in grades 1-6.

did and would have provided educational services to Student during the period of the denial of FAPE.

The next issue is whether the District has appropriately evaluated Student and, if it did not, whether Student should be provided with an IEE at public expense. The IDEA sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i).

In conducting the evaluation, the law imposes certain requirements on local education agencies to ensure that sufficient and accurate information about the child is obtained:

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b). The evaluation must assess the child “in all areas related to the suspected disability.” 34 C.F.R. § 300.304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B).

Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability

category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 300.304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3).

When parents disagree with a school district’s educational evaluation, they may request an IEE at public expense. 34 C.F.R. § 300.502(b); 20 U.S.C. § 1415(b)(1). An IEE may be an appropriate remedy if the District’s evaluation was not appropriate. 34 C.F.R. § 300.502(d); *see also Schaffer, supra*, at 61 (noting that an IEE can afford parents “a realistic opportunity to access the necessary evidence” and information relating to an appropriate program and placement for their child). Hearing officers may also order an IEE as part of a due process hearing. 34 C.F.R. § 300.502(d).

The District’s most recent reevaluation of Student did not meet the IDEA standards of sufficient comprehensiveness to identify all of Student’s special education and related service needs. Input from the Parent, in whose home the Student spent most of Student’s school career, was basic and limited, and little if any effort was made to obtain her consent to conduct critical cognitive and achievement testing or to consider any further assessment that may have been indicated. Skill deficits were identified in the FBA conducted around the same time, but were not explored for the RR. Moreover, recommendations to the IEP team were minimal and lacked any real substantive guidance. While it is perhaps not surprising that the District lacked sufficient information about Student to provide meaningful direction to Student’s IEP team given its limited interaction with and instruction of Student over the course of Student’s tenure in school-aged programming, such does not relieve the District of its obligations to comply with the applicable law in comprehensively evaluating Student to enable it to provide Student with FAPE. An IEE will provide the IEP team with an impartial assessment of Student’s strengths and needs

so that it will have a sound basis for making team decisions about Student's current and future educational programming. Student will therefore be awarded an IEE at public expense.

## **CONCLUSION**

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District denied FAPE to Student throughout the time period in question and is entitled to a significant award of compensatory education. The District's most recent evaluation of Student was also deficient and provides a basis for awarding an IEE at public expense.

## **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District denied FAPE to Student from November 21, 2012 until the first day that Student began attending the APS in the fall of 2014.
2. The District shall provide Student with five (5) hours of compensatory education, to address Student's social/emotional/behavioral and/or academic needs, for every day school was in session from November 21, 2012 and continuing through the first day that Student attended the APS in the fall of 2014, subject to the conditions and limitations set forth above.
3. Within ten days of the date of this Order, the District shall provide to the Parent, in writing, a list of not less than three qualified individuals to perform an Independent Educational Evaluation of Student. The qualified individuals shall have experience in making recommendations for educational programming for students with emotional disturbance.
  - a. Within ten days of receipt of the District's list of qualified individuals to perform the Independent Educational Evaluation, the Parent shall notify the District, in writing, of the selection.



- b. If the Parent does not notify the District, in writing, of the selection of the evaluator within ten days of receipt of the District's list of qualified individuals, the District shall make the selection from that same list.
  - c. The selected evaluator shall determine the scope of the evaluation including what assessments and observations are necessary, including at the APS.
  - d. The selected evaluator shall provide a written report of the Independent Educational Evaluation within a reasonable time, not to exceed 60 days from the date of engagement, unless otherwise agreed by the parties.
  - e. The Independent Educational Evaluation shall be at public expense.
4. Following completion and receipt of the Independent Educational Evaluation Report, Student's IEP team shall meet to consider the Report and all other relevant information and make necessary revisions to Student's IEP.
  5. Nothing in this Order should be read to preclude the parties from mutually agreeing to alter any of the directives set forth in this Order.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

*Cathy A. Skidmore*

---

Cathy A. Skidmore  
HEARING OFFICER

Dated: March 16, 2015