

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

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Appearing before: Attorney Gail K. Mangs, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the school district provide a free and appropriate program to the Student during the 2001-2002 and 2002-2003 school years?
2. If an appropriate program was not provided to the Student during either or both of these school years, is the Student entitled to compensatory education, and if so, how should the compensatory education be provided?

PROCEDURAL HISTORY:

This hearing was requested on June 9, 2003. A prehearing conference was convened on June 17, 2003 at which hearing dates were scheduled for July 9 and August 6, 12, and 15, 2003. July 9 was postponed to allow Parents to meet with co-counsel and pursue settlement. The hearing went forward on August 6 and 12. On August 15 the parties engaged in further settlement discussion. The hearing concluded on September 16, 2003. Briefs were submitted on October 10, 2003. The Parents called the following witnesses: The Student's Mother; the Student's Father; and Alice Jackson, school district Assistant Superintendent. The school district called the following witnesses: Alice Jackson; and Colleen Ferris-Kimball, school district Coordinator of the Tutoring Center.

SUMMARY:

The Student, who is now 20 years of age, has a history of Lyme disease and learning difficulties; he is identified as Other Health Impaired. He began receiving special education services in the seventh grade. He attended a private residential special education school from April, 1999 through the end of the 1999-2000 school year. From September, 2000 through January, 2001, the Student attended the Tilton School. He left the school in January, 2001 for reasons that are not clear. Upon his return to the school district, he attended the local high school in a program the Parents deemed inappropriate. The Student did not attend school from September, 2001 through the spring of 2002 although the reason is vague. The Parents filed a complaint with the State Department of Education; this resulted in a finding that the Student had been denied a Free and Appropriate Public Education during the 1999-2000, 2000-2001 and 2001-2002 school years; corrective action was ordered. During the 2002-2003 school year, the Student attended the school district's Tutoring Center earning almost enough credits to qualify for his high school diploma. The Parents have objected to the programs offered during the 2001-2002 and 2002-2003 school years and have sought funds for additional schooling.

FINDINGS OF FACT:

1. The Student, who was born on October 20, 1983, has a history of Lyme Disease and difficulties with short-term memory, work completion, attention and organization. When the Student was in the seventh grade and attending school in a different state, he was identified as eligible to receive special education as a student who is other health impaired ("OHI"). (Exhibits B-1, B-3, P-32)
2. During the eighth grade, the Student's family relocated to the current school district where he was found eligible for special education services as OHI. He attended regular education classes and received three hours per week of structured study support in the resource room. At that time, the Student was prescribed Paxil and Neurontin for depression and anger. (Exhibit B-12)
3. During the 1998-1999 school year (ninth grade), the PPT met frequently to discuss and modify the Student's program. His classes were changed from basic level courses to college preparatory courses to alternative studies where he received 15 hours per week of special education services. He had several detentions for smoking and seemed to be more depressed. The Student reported that he had stopped taking his medications and refused to resume the course of treatment. On the PPT's recommendation, he began meeting with the school psychologist on a weekly basis. (Exhibits B-14, B-15, B-16)
4. After an evaluation at the Danbury Hospital, the Student was placed at the Access Program in Danbury, Connecticut, a private special education program. The PPT concurred in this placement at a meeting convened on January 27, 1999. The IEP for that date notes that the Student's disability is serious emotional disability; there is no indication as to the basis for the change in identification (from OHI). The Student only attended the Access Program for one day although it is not clear why. The Parents

requested a residential placement; homebound tutoring was provided during this period. (Exhibits B-17, B-19, P-33)

5. The Student was placed by the PPT at the Academy at Swift River, a private residential school, in April, 1999. Presenting issues at the time of his enrollment included oppositional defiance, obsessive compulsive disorder, learning differences, drug and alcohol use and difficulty controlling his temper. He ran away from the Academy almost immediately after which he was sent to a three week intensive program in Idaho. After his return to the Academy for the 1999-2000 school year (tenth grade) he had some adjustment problems, but eventually passed all his courses and received positive comments from his teachers. It was recommended by the Academy at Swift River that the Student enroll at a boarding school to complete his high school education rather than return to the school district high school. (Exhibits B-24, B-25, B-29, B-31)

6. Although the Parents requested a residential placement, the PPT, at a meeting convened on May 24, 2000, recommended that the Student return to the school district high school for the 2000-2001 school year. (The IEP for that date notes that the Student's disability is again OHI.) The Parents requested due process; a settlement was reached whereby the school district agreed to private residential placements for the 2000-2001 and 2001-2002 school years. The Student began attending the Tilton School, a private college preparatory school in Tilton, New Hampshire, in September, 2000. In January, 2001, the Student was asked to leave Tilton. There is conflicting testimony as to why the Student left. The Mother told the school district that the Student left for medical reasons. During the hearing, the Parents claimed that Dr. Robert Chiappetta, then the Director of Pupil Personnel Services, had been in contact with Tilton without their permission and told Tilton that the Student had a serious emotional disability. According to the Parents, Tilton responded that they did not accept such students and asked the Student to leave. There was also testimony from the Student's Father that the Student was asked to leave due to smoking violations. The Parents requested that the school district provide homebound tutoring on January 29, 2001. The PPT convened on February 14, 2001 at which time the parties agreed to a placement in the school district high school with 3.75 hours of special education support. Modifications included extra time for tests, folders to hold work, assignment pads, guided study sheets, and the monitoring of assignments and work in progress. (Exhibits B-27, B-30, B-40, B-41, B-43, B-44, B-49, Testimony of Mother, Father)

7. On May 3, 2001, the PPT met to review the Student's program. His Parents stated that the placement was not successful and requested an independent psychoeducational evaluation. The school recommended that the evaluation be performed by school district staff. In June, a letter from the high school indicated that the Student had lost credit towards graduation for two classes due to excessive absence. The PPT reconvened on June 18, 2001 and agreed to provide an independent neuropsychological evaluation although they requested that the Parents seek insurance payment with the school district paying the remainder. The PPT also agreed to pay for 20 hours of summer tutoring at the school district's rate, but an IEP for the 2001-2002 school year was neither planned nor discussed. (Exhibits B-53, B-55, B-59)

8. Dr. Leo J. Shea III, a clinical psychologist/neuropsychologist, performed a neuropsychological evaluation in June, 2001. On the Weschsler Adult Intelligence Scale III the Student received a verbal score of 130, performance score of 100 and full scale score of 117. Dr. Shea stated that the Student's "...neurofatigue, reduced attention and concentration, especially for complex material, slowed speed of mental processing, impaired visual memory, impaired word generativity and communication abilities, reduced multi-tasking capabilities and his increased emotional vulnerability with marked depression, suggest the need for interventions to assist him in developing strategies that will support his efforts to achieve greater functional and academic goals." (page 9 of Exhibit B-64) Dr. Shea described the Student's neuropsychological deficits as a consequence of the Lyme Disease. He recommended cognitive remediation, individual psychotherapy, psychiatric consultation, a customized academic accommodation plan, and another neuropsychological evaluation in a year. (Exhibit B-64)

9. The Student did not return to the high school in the fall of 2001. The school district sent the Parents a letter dated October 9, 2001 stating that the Student would be withdrawn from school because he had not been attending. The Parents did not contest this withdrawal as they were unsure of what to do. On October 20, 2001, the Student turned 18. From September, 2001 until April, 2002, the Student shuttled between New Jersey, where he stayed with a friend, and his home in Connecticut although it is unclear how much time was actually spent in Connecticut. (Exhibits B-61, B-62, P-16, Testimony of Mother)

10. By early March, the school district was aware that the Student was within the school district although it is not clear if they tried to locate him or schedule a PPT. On April 4, 2002, the Parents and Student registered him at the school district high school. On May 7, 2002, a letter was faxed to the school district from Dr. Alexander Isgut, the Student's family doctor, recommending home tutoring and participation in sports or any other extracurricular activity as the Student felt able. Dr. Robert Chiappetta, on May 8, 2002, wrote to the Parents explaining that a PPT would have to convene to discuss this recommendation as the Student remained eligible for special education. (Exhibits B-70, B-74, B-75, Testimony of Mother)

11. On April 23, 2002, the Parents filed a complaint with the State Department of Education Bureau of Special Education and Pupil Services ("SDE") alleging that the school district had failed to provide a free and appropriate education to the Student

during the 1999-2000, 2000-2001 and 2001-2002 school years. On September 24, 2002,

the Bureau of Special Education and Pupil Services responded to the Parents' complaint.

After a thorough investigation, it was determined that the school

district had failed to provide FAPE for the 1999-2000, 2000-2001 and 2001-

2002 school years. For the 1999-

2000 school year, the PPT failed to

implement the March 18, 1999 IEP recommendations

and failed to write an IEP for

the 1999-2000 school year. The school district was unable

to document its

application procedures with regard to placing the Student in a residential

facility

as recommended by the PPT. In addition, the school district sought a financial

contribution from the parents for the 1999-2000 residential placement; conditioning

FAPE on parental contribution is a denial of FAPE. Next, it was determined that FAPE

had not been offered for the 2000-2001 school year because a complete and timely IEP

was not prepared for the entire school year. It was also found that FAPE was not offered during the 2001-2002 school year because an IEP was not completed nor was a PPT convened to plan for the year. The Student also failed to attend school during that school year while still under 18 years of age. Evidence was not presented by the Parents that he was receiving an equivalent education elsewhere, yet the school district did not pursue a truancy referral; instead, they “withdrew” the Student, an action that can be taken only by a Parent. Also, it appears as though the school district again conditioned the provision of FAPE on parental funding; i.e., the school district asked the Parents to first submit the bill

for the neuropsychological evaluation agreed to by the PPT to their insurance.

Additionally, it was found that the Student’s disability category had been changed from OHI to SED in January, 1999 without documenting information used as a basis for the change, and that the school district did not attempt to conduct the triennial due in

January, 2000 until March, 2001. Finally, concern was expressed because Dr. Chiappetta had been

in contact with the Tilton School, a unilateral placement, without the Parents’ permission. (Exhibits B-73, B-79)

12. The SDE ordered the following required corrective action: 1. Reimburse the Parents for the cost of Dr. Shea’s independent evaluation; 2. The school district is to provide and pay for all services necessary to ensure that the Student meets graduation requirements and earns his high school diploma; 3. The school district shall train all staff with regard to school district responsibility to provide services to students who may require residential placement for educational purposes; 4. The school district will compose and distribute a memo to all administrators as to the mandatory school attendance provisions and procedures for truancy referrals; 5. The school district shall compose and distribute a memo to all administrators and all personnel who serve as administrators at PPT meetings to immediately cease any activity that might be construed to condition FAPE on parents making financial contributions for the proposed service; 6. The Bureau of Special Education and Pupil Services will monitor the school district with regard to these issues. The school district began compliance efforts in the fall, 2002. (Exhibits B-79, B-82, B-87, P-31)

13. A PPT was convened on June 13, 2002. It was determined that the Student required 12 credits in order to graduate including 2 English credits, 1 economics credit, 1 physical education credit, 5 electives and incompletes to be made up in math, English and Marketing for Success. The Parents requested homebound tutoring but the PPT recommended tutoring at the tutoring center at Fairfield Hills (a renovated state hospital) for 2 to 3 hours per day. The goals were as follows: 1: The Student will successfully complete the 12 credits needed for graduation by completing assignments and communicating his physical and learning needs to the tutor; 2: The Student will self-monitor his own level of understanding by asking appropriate questions (by evidence of the tutor); 3: The Student will develop consistent strategies to organize his work and materials by collaborating with the tutor to figure out his personal organizational style; and 4: The Student will prepare for future needs and education by recognizing his interests and their relevance to careers, by the Student and his Parents meeting with the career center to investigate post-secondary possibilities, by the Student and his Parents

attending college fairs, and by applying to colleges with the guidance of the Student's guidance counselor and the career center staff. Modifications included additional test time and a scribe for bubble tests. In addition, one on one tutoring would be provided to allow instruction to be modified to meet the Student's needs. (Exhibit B-77, Testimony of Alice Jackson)

14. The June 13, 2002 IEP required the tutor to send progress reports home on a bi-weekly basis with a PPT to be scheduled if the Student had 2 consecutive negative reports, missed more than 5 days of tutoring or if the tutoring was not working for him. Tutoring was planned to start in the fall of 2002 at which time he would first make up his incompletes and then move on to Senior English and 3 electives. In the spring, 2003 it was planned that the Student would take economics, senior English and 2 electives. Physical education was to start in the fall with the need to complete 40 hours of a monitored physical activity. Summer tutoring was offered but the Parents reported that the Student wanted to work during the summer. (Exhibit B-77, Testimony of Alice Jackson)

15. The school district members of the PPT determined that the placement and program offered in the June 13, 2002 IEP was the least restrictive environment in which the Student could be appropriately educated. The Tutoring Center, which had been moved from the town library, was created so tutors, all of whom have college degrees, could work under the supervision of a certified teacher. The curriculum and textbooks are the same as is offered in the school district high school. The Tutoring Center serves most students on a temporary basis and provides content for core academic classes needed for graduation. It is located in the same building as the Alternative High School which serves regular education students who need more assistance; at times, students from the Alternative High School and the Tutoring Center share classes. Placement at the Tutoring Center allowed the Student, who needed one on one instruction to meet his special education needs, to have some peer interaction; there was no specific evidence that the Student required homebound tutoring for any reason. In addition, the PPT determined that the Tutoring Center offered instruction flexible enough to allow the Student to finish his incomplete courses, accommodate his absences and move on to senior courses as he completed his junior year coursework, even if that occurred in the middle of a semester. (Testimony of Alice Jackson, Colleen Ferris-Kimball)

16. By a PPT convened on September 24, 2002, the Student had completed and passed the Marketing for Success course and was awarded one credit. Alice Jackson offered the Student use of her office computer (in the same building as the Tutoring Center) for Internet access. Computers were also available at the alternative high school but the Student could not use them unless he was accompanied. At the PPT convened on October 29, 2002, it was reported that the Student had almost completed a math credit and had completed a difficult American literature paper. The Student was then taking a 4H independent study, creative writing, and economics and 3D Art (both to begin the next day). The school district was continuing to look for another physical education tutor as the Student did not care for the tutor who was first assigned. There was also a discussion of the Student exploring career options at the career center and the possibility of his taking the SAT test, although the Student stated that he did not want to take the test. The PPT convened again on October 31, 2002. The Student requested that he take

mythology during the current semester and move creative writing to the spring semester; the PPT agreed to this. There was also discussion about the possibility of the Student taking classes at the high school; because classes at the high school are scheduled on a rotating basis and do not meet at the same time each day, the PPT considered it too confusing. (Exhibits B-80, B-86, B-88)

17. PPT's were also convened on January 23, February 11 and March 31, 2003. At the January 23, 2003 PPT meeting, the team reviewed the results of the neuropsychological evaluation: the Student's reading and math skills fell within the average range, auditory memory was stronger than visual memory and his verbal skills fell within the superior range. During these PPT's, credits were awarded for passing grades in the 4H independent study, economics, art and mythology. Parents expressed concern that the Student's tutors were not certified teachers; it was explained that the tutors work under the supervision of a certified teacher and have a background in the specific subject. The Student also asked to take weight training at the high school; it was explained that the course was over subscribed. The Student complained about the nature of the Tutoring Program including its location and his isolation, the student-teacher ratio, and that he could not take the courses he wanted. The Student also would have preferred to have instruction in art rather than independent study. He was not given access to an art studio; later, the family learned there was an art studio in the building. (Exhibits B-93, B-95, B-96, P-40, Testimony of Mother)

18. After the March 31, 2003 PPT, the Student attended the tutoring on a sporadic basis. The Parents apparently informed the school district that the Student had left the state and no longer wished to participate in the tutoring program. The Parents canceled three PPT meetings before attending the PPT on May 27, 2003. By that time, the Student required only one credit to graduate; this was due to credits that had been earned at the Academy at Swift River but only recently discovered by the school district. This meeting appears to have been quite acrimonious with the Parents objecting to various aspects of the Student's tutoring program. They stated that the Student had been moved back from Math III to Math I due to large gaps in his math skills, that there was no tutoring in math and that the financial management textbook was not the same as that used in the high school. During testimony, it was indicated that the textbook was the same but that the tutor had supplemented the text with a college-level text. Various ways of having the Student complete the remaining credit were discussed including attendance at the local community college, home tutoring or a community art course. It was finally planned that the Student would be tutored at home in either art or music; the Student was to determine which he wanted to study and notify the PPT. The Student eventually chose guitar lessons. A guitar tutor, who was a certified music teacher, scheduled appointments to meet with the Student, but the Parent apparently canceled them. (Exhibits B-98, B-99, Testimony of Mother, Alice Jackson)

19. In a letter dated April 10, 2003, Dr. Alexander Isgut, the Student's family doctor, stated that the Student required a one year sabbatical to focus on intensive therapy support to "...prepare him for the lengthy and substantial process that will enable him to recognize and appreciate his own abilities and reevaluate his goals in life." (Exhibit P-38, page one)

20. During the hearing, Parents alleged that the building housing the Tutoring Program is dangerous due to the presence of asbestos. In opening arguments, the Parents stated that the building is not approved for use as an educational facility. A report was offered as evidence (Exhibit P-30) but no specific evidence or expert testimony was presented with regard to the asbestos. The report indicates the presence of asbestos but does not state that the building is not habitable. The building also houses the alternative high school and the school district central administrative offices. (Exhibit P-30)

CONCLUSIONS OF LAW:

1. Both parties agree that the Student, who has been identified as other health impaired, is entitled to a Free and Appropriate Public Education (“FAPE”) with special education and related services as provided for under the provisions of Connecticut General Statutes Sections 10-76 et seq, and the Individuals with Disabilities Education Act (“IDEA”) 20 U.S.C. 1401 et seq.
2. During the prehearing conference, the Parents alleged a denial of FAPE, violations of the LRE requirement, violations of the Family Educational Rights and Privacy Act (“FERPA”) and a denial of appropriate modifications. After discussions on the first day of hearing, it was determined that except for possible FERPA violations, the issue of FAPE for the two school years in question, 2001-2002 and 2002-2003, included the other allegations. The Student’s Mother testified that the Parents were seeking compensatory education in the form of monetary compensation so that the Student can complete his education when he is available for learning; presumably, this is intended to mean psychologically prepared. The Parents’ brief expanded this to a request for funds to cover an independent evaluation, tutoring, and an out of district placement for one, preferably two, years of schooling.
3. On the first day of hearing, the school district stated that it would not contest denial of FAPE for the 2001-2002 school year in light of the SDE investigation and findings. However, the school district contends that they have followed the corrective action the SDE ordered to remedy the violations found for that school year and therefore there is no compensatory education due for that year.
4. In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the Supreme Court set forth a two part test for determining whether FAPE has been provided. First, it must be shown that the procedural requirements of the IDEA have been met and second, the individualized program must be reasonably calculated to enable the child to receive educational benefit.
5. The IDEA also requires that children with disabilities be educated in the least restrictive environment (“LRE”) and are to be removed from regular education only when “...the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (20 U.S.C. Section 1412(a)(5)(A)). In order to meet this requirement, school districts must “...ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”

(34 C.F.R. Section 300.551(a)) These alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. (34 C.F.R. Section 300.551(b)(1)) Therefore, the IDEA contemplates the necessity of a wide range of placements in order to appropriately meet the individualized needs of disabled students.

6. Although the school district acknowledges that FAPE was denied during the 2001-2002 school year, their belief that their later actions cured the violations rendering the issue moot is incorrect. As the SDE found, there was no IEP in place for the 2001-2002 school year (see Finding of Fact No. 7). When the Student did not show up for school, a truancy referral was not made and the school district mistakenly “withdrew” the Student from school. Even after the Parent reregistered the Student on April 4, 2002, a PPT was not convened until June 13, 2002 resulting in at least three months of a failure to provide *any* education. Furthermore, the SDE investigation of the Parents’ complaint during this period does not justify the failure to provide educational services; obligations under the IDEA are not suspended pending the outcome of an investigation. The school district actions and inactions amounted to a gross violation of the IDEA and as such should result in an award of compensatory education (Garro v. State of Connecticut, 21 IDELR 126 (2d Cir. 1994).

7. However, it is also clear that the Parents did not cooperate with the school district. For whatever reason, the Student’s whereabouts from September through the end of March, during most of which time he was over the age of 18, were unknown to the school district. The Parents did not make the Student available for education for approximately 7 months of the school year. In addition, the Parents refused summer tutoring. In Patricia P. v. Board of Education of Oak Park, 203 F.3d 462 (7th Cir. 2000), the Court refused reimbursement for a private placement where the parent had not made their child available for evaluation. The Court noted the IDEA’s preference for a cooperative placement process and stated that they would look “harshly” on a party’s failure to cooperate with another’s attempt to fulfill their rights and obligations under the IDEA. Therefore, the Student is entitled to compensatory education for the three months (April, May and June, 2002) during which he was clearly available to the school district but educational services were not provided.

8. If the education provided during the 2002-2003 school year had truly ameliorated any harm to the Student, as the school district believes, then perhaps compensatory education could be quite limited. But the 2002-2003 school year did not provide FAPE to the Student in the LRE. The school district was correct in determining that the Student did not qualify for homebound tutoring which is to be provided only when “(1) A physician has certified in writing that the child is unable to attend school for medical reasons and has stated the expected date the child will be able to return to the school. (2) The child has a handicap so severe that it prevents the child from learning in a school setting, or the child’s presence in school endangers the health, safety or welfare of the child or others. (3) A special education program recommendation is pending and the child was at home at the time of referral. (4) The child is pregnant or has given birth...” R.C.S.A. Section 10-76d-15(b). None of these provisions apply to the Student. The letter submitted by his doctor (see Finding of Fact No. 10) was vague and did not certify that medical reasons prevented school attendance.

9. It was not clear, however, why the Student's educational program could only be provided in the Tutoring Center. While less restrictive than homebound tutoring, the type of one on one tutoring the Student received at the Tutoring Center could just as easily have been provided at the school district high school. Had the tutoring services been delivered there, the Student would have had much better access to computers, art studios, other electives and extracurricular activities. He would also have been able to have directed rather than independent study in art. Furthermore, he would have had the opportunity to take classes deemed appropriate in addition to the tutoring, and would have had greater contact with regular education peers. Instead, the Student was denied many of the aspects of high school that contribute to a meaningful education.

10. Even if the high school was deemed inappropriate due to its rotating class schedules or to other educational or staffing reasons, there seems to have been no discussion of placement at the alternative high school that was in the same building with the Tutoring Center. One of the reasons the Tutoring Center was placed at Fairfield Hills was the possibility of some joint classes between the two programs. The Student was apparently never given the opportunity to do that.

11. Other aspects of the Tutoring Center contributed to its failure as the LRE. Access to computers for research was limited. While Alice Jackson volunteered the computer in her office, this is an awkward arrangement for a high school student. Computers in the alternative high school also seem to have been off limits. An art studio was located in the alternative high school but it appears that this was not made available to the Student.

12. Parents also objected to the use of uncertified tutors. However, this is not necessary where, as here, the tutor is fully supervised by a certified teacher. (Regulations of Connecticut State Agencies Section 10-145d-401(c)). Complaints were also made about the use of a book that was not a regular high school text; this book was apparently used only as a supplement to the regular textbook. In addition, Parents objected to the building itself due to the presence of asbestos. One exhibit was presented (Exhibit P-30) to show that asbestos was present in the building but no evidence or explanation was offered to show that the building was unsafe. In any case, it is not clear that hearing officers have jurisdiction in these matters.

13. Graduating from high school is not simply a matter of passing grades and amassing a sufficient number of credits. While it is clear that the Student obtained some educational benefit from the program provided at the Tutoring Center, it was not in the LRE appropriate and it was certainly not the type of program contemplated by the IDEA.

14. Parents also alleged FERPA violations. They allege that Mr. Chiappetta contacted Tilton without their permission resulting in their son leaving the school. This evidently occurred during the 2000-2001 school year, before the years at issue in this hearing. In addition, while Mr. Chiappetta did not have permission to speak with Tilton, it is not clear that this is what resulted in the Student's withdrawal.

15. Therefore, the Student is entitled to compensatory education for the 2002-2003 school year as well as the last three months of the 2001-2002 school year. The Parents

have requested an unknown sum of money to be used for an unknown educational placement at some unknown point in the future. A due process hearing officer does not have the ability to order a payment that is essentially an award of damages. What can be ordered, and what the Student actually requires in order to obtain a FAPE, is the following. First, for at least the last two years, the Student has attended school either sporadically, on a limited basis (the Tutoring Center) or not at all. It must be determined where gaps exist in the Student's skills and knowledge. An educational evaluation by an independent evaluator who is agreed to by both the Parents and the school district must take place. Next, this information is to be used by an independent consultant, who is also agreed to by both the Parents and the school district, to assist the PPT in designing an IEP that will meet the Student's educational needs in an appropriate LRE. This program will allow the Student to obtain his high school diploma through a meaningful program that takes into consideration the Student's age, interests, educational and transition needs. There is no reason why this program can not be community-based and use the facilities of the local community college, tutoring as necessary, and job shadowing and work experiences as is appropriate. The independent consultant, Parents, Student and PPT shall determine when the Student has attained his IEP goals and objectives and met all graduation requirements in order to obtain a high school diploma. While this order is in the form of compensatory education due to the denial of FAPE, the Student, as a student eligible for special education and related services, is entitled to an appropriate education until the end of the school year in which he turns 21 years of age or sooner if he graduates from high school. However, it is certainly possible that the Student's graduation will occur within the time constraints of this order of compensatory education.

FINAL DECISION AND ORDER:

1. The school district failed to provide FAPE during a portion of the 2001-2002 school year and all of the 2002-2003 school year.
2. The Student is entitled to compensatory education as described in Conclusion of Law Number 15. The PPT shall convene immediately to choose an independent evaluator and independent educational consultant to assist in planning the Student's IEP.