

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH-FY 06-04-055 / Derry Cooperative School District

DUE PROCESS HEARING DECISION

I. Introduction.

This matter involved a dispute between the Parent and School District relative to three issues. The first, the Parent disagreed with changes made in the Student's Behavior Modification Plan. Secondly, the Parent disagreed with changes made by the Team to the IEP. Thirdly, the parties disagreed regarding placement of the Student. A Pre-Hearing Conference was held on May 24, 2006 and a Pre-Hearing Order was issued subsequent to the Pre-Hearing Conference. The matter was heard on July 17, 2006 and July 19, 2006. The District presented first and called two witnesses. The Parent called one witness. Both parties were represented by counsel. The District was represented by Gordon Graham, Esquire and the Parent by Richard O'Meara, Esquire.

II. Procedural Violations.

The Parent alleges that there were two procedural violations. First, the Parent alleges that the Team made changes to the Behavior Modification Plan without permission from the Parent as a necessary team member. Secondly, the Parent alleges that the District made changes to IEP without the permission of the Parent. The Parent believes that those procedural violations would justify the provision of compensatory education for the Student.

III. Discussion.

Christine Morse, Behavior Specialist for the District was the first witness. Ms. Morse has a MS degree from Northeastern University in Behavioral Analysis and is a board certified Behavioral Analyst and has worked for a number of school districts, both public and private. She began working with the Student in 2002 when the Student repeated first grade. She worked with the Student for that first grade as well as second grade and then returned to the District in the spring of 2005, and worked with the Student until the Student left the school in the spring of 2006. She assisted in developing the IEP for the 2005/2006 school year. She described the student as having a complex presentation including speech language delays, social delays, compulsiveness, a short attention span, minimum safety skills and delays in all academic areas. The Student has sensory issues, is easily overwhelmed and is severely disabled. Ms. Morse described the Student also as cute, endearing, friendly, energetic, fun loving, and strong willed. Ms. Morse was involved in developing the behavior areas of the IEP and referenced section 1f of that portion of the IEP which provides that "minor tweaks to the behavior plan can be made without a team meeting. The behaviorist will highlight changes for the team. Any major changes will be discussed with the team to get input." The Behavior Plan is set out and was described as a very detailed Plan covering the Student's entire school day. Ms. Morse was working with the Student for this school year 7 ½ hours per week, which is substantially more than Ms. Morse would work with other identified students. She felt that this was an exceptional case given the amount of time she was devoting to the Student. The Student also had a full-time assistant. In August, 2005 Ms. Morse did an

assessment of the Student known and the Assessment of Basic Language and Learning Skills (ABLLS), and that essentially disclosed that the Student had very limited skills in group instruction and in following classroom routines. Data is compiled on the Student by the full-time aide and then reviewed by Ms. Morse describing problematic behavior in various objective ways. There was also an entire volume of documents comprised primarily of this data of approximately 351 pages. The data collected involved problem behaviors. The Student was using a tent for time outs in the classroom however, by the fall of 2005 people working with the Student were getting injured trying to get the Student in and out of the tent. As a result an e-mail was sent to the Parent from Christopher Kellen, Special Ed Director regarding the need for a Functional Analysis due to the increase in aggression and danger to others. According to Ms. Morse the Parent refused to allow the Functional Analysis to take place and so it never occurred. Mr. Kellen was concerned that the tent was being used as a mechanical restraint which is not allowed unless provided for in the agreed upon IEP. Ms. Morse responded that the tent had always been used for timeouts and that it was not held closed when the student was in it.

A follow up meeting with the Special Ed Director and Ms. Morse was held with respect to the District policy on restraint and the State Guidelines for physical restraint and Ms. Morse felt that neither policy required a change in the existing tent set up. Ms. Morse described the star system used with the Student wherein the Student was given four stars at the beginning of each thirty minute interval and would be given a reward at the end if the Student was able to retain at least one star. Ms. Morse monitored the Behavior Plan and kept consultation notes for the staff throughout the year. She also trained the staff with respect to the Behavior Modification Plan and it was her opinion that the staff did follow the plan. Ms. Morse had weekly consults with the Team including the Parent and kept records. She also met one time per week with the Team to review all areas of the IEP, not just behavior issues.

SD describe an incident that occurred on or about October 26, 2005 , where the Student allegedly hit another student and struck an instructor and then grabbed another instructor's glasses and broke them. As a result of that incident a meeting was held regarding a possible change in the modification plan and SD modified Plan which was revised October 28, 2005 as a result of the incident described above.

Ms. Morse described several of the behavior strategies employed including taking breaks, taking deep breaths, hitting a pillow as opposed to hitting a person, taking walks and many others. Ms. Morse described the Student's behavior as unstable but gradually escalating after Christmas. SD includes a list of aggression and disruptive behaviors during the school year. SD describes another incident that occurred February 14, 2006, when the Student allegedly screamed "I can't take this anymore" and banged the Student's head on the floor purposefully and then grabbed a pencil and jammed it into the hand of an instructor and struck another instructor grabbing that instructor's wrist and clawing her hand and breaking the skin. As a result of that incident a team meeting was held on February 24, 2006 SD Behavior Plan was changed to provide for a two person CPI to physical manage the Student and the Behavior Plan was modified and revised dated February 17, 2006 . The Student returned from February vacation and the Parent sent an e-mail voicing her concerns over the Behavior Modification Plan and the CPI restraint method which she felt were inconsistent. Ms. Morse indicated that the revision of the

Plan dated February 17, 2006 was not a major change from the original Plan in that the only change was two person versus one person in physically managing the Student. SD Book 2A, Exhibit 264 identifies and incident that occurred on March 10, 2006, where the Student was allegedly out of control and kicked two staff. The class had to be evacuated. Ms. Morse indicated that the Team followed the Behavior Plan and that the incident was handled in the same manner as it would have been in the Fall. The Student was suspended for one day as a result of that incident. The staff was tired of getting hurt and was tired of being nervous in dealing with the Student. The staff was also concerned that the Student would get injured. The Student returned on March 15, 2006 after the one day suspension and Ms. Morse kept notes of what occurred that day. The Team met with the Parent on March 15, 2006 and Ms. Morse requested that the Student have a neurological evaluation. She also felt that the Student was getting reinforcement from the class for her disruptive behavior and gave examples of the Student's gasping over language heard from the Student and whispering among themselves after observing the Student's problematic behavior. The Team recommended a temporary change in programming for the week of March 16, 2005 through March 20, 2006 , to provide that the Student receive individual instruction during guided reading and content areas in a pull-out setting to increase direct instruction by the behavior specialist by an additional hour per week. The Parent disagreed with that proposal. The Team met again on March 17, 2006 relative to a dispute over the Behavior Modification Plan. At this point the Student was being kept out of school by the Parent. The Parent's concerns regarding the Behavior Plan are set out at SD, and Ms. Morse's responses. The Parent continued to meet with the Team for the consult meetings weekly and the Team continued to attempt to modify the Behavior Modification Plan at these meetings. Another meeting was held on March 23, 2006 to go over the Behavior Modification Plan line by line. Another meeting was held on March 27, 2006 and another one on March 28, 2006 . SD Book 2B, 113 are Minutes from the meeting on March 31, 2006 relative to modification of the Plan. The final modified Plan dated March 31, 2006 and Ms. Morse supported that Plan and felt that it could meet the Student's needs and allow the Student to make progress. The difference in the March 31, 2006 Plan was that there would be a timeout room used with two staff members to provide physical escort. Because the Behavior Modification Plan had been revised again, Ms. Morse felt that the IEP also needed to be modified. Two meetings were held on April 6, 2006 in the morning meeting the Parent left during the meeting and did not return. The Parent also did not return for the afternoon meeting. The Team felt that the Student was not participating much in regular education classes and was over stimulated. The negative behaviors depleted the Student's education as well as the education of the other students in the class. Ms. Morse testified that she had never seen a Student with this Student's profile educated in a regular education classroom. The Team proposed educating the Student on a one to one with new skills with minimal distractions and that any generalizing should be done in a small group. The Team offered an interim Plan with a shorter school day. The Team then had a placement meeting. The Parent was present for that meeting and the Team recommended placement at the Lighthouse School . The Parent walked out of the meeting. The Team considered an in District placement but none existed.

Ms. Morse has visited the Lighthouse School in Chelmsford , Massachusetts and felt that the Lighthouse School could implement the modified IEP for the Student.

On cross-examination, Ms. Morse agreed that the fourth grade year was a more complex environment than the first grade. In the first grade Ms. Morse provided ten hours of direct teaching with the Student and five hours of consultation. Ms. Morse agreed that the Student received FAPE in the first grade. She further agreed that the behavioral support has been reduced each year since first grade and that in the fourth grade the Student received seven and one half hours per week which is exactly half of what the Student was receiving in the first grade. Ms. Morse agreed that there were times in the fourth grade when the student was able to be successful in the regular class for up to fifteen minutes at a time with a great deal of assistance. Lunch break was successful as it was a small group of 2-4 other students. Ms. Morse disagreed with the suggestion by Parent's counsel that the Student benefited from modeling the behavior of other students, and Ms. Morse felt that she never observed the Student model other student's behaviors. She felt that the Lighthouse School was appropriate even though all the students have behavior problems. She agreed that the problem solving book wasn't put into use until the last month that the Student attended in District. She acknowledged that the aide that was taking the behavioral data information down was also helping care for the Student's safety at the same time. She agreed that the aide used physical prompts to guide the Student into the tent. She acknowledged that the Student has an in-home program with tutorials and services but in her opinion this is a problem because the Student is unable to handle two different behavior plans. Although the Parent had indicated that the Student was doing "great" at home, Ms. Morse testified that the Parent refused to videotape the home sessions so that the Team could view the behavior. She testified that she saw the Student strike the Student's father when the father was picking the Student up after school. She agreed that in February, 2006 she sent an e-mail to the Parents indicating that things had never been better for the Student, however, there was a major blowup on Valentine's Day in that the situation got progressively worse throughout the year with respect to the Student striking staff and people getting hurt. She acknowledged that the Parent was not allowed to attend the CPI Training. Ms. Morse felt that the Student needs an IEP that provides no access to mainstream peers for any period of the Student's day. With respect to the Lighthouse School Ms. Morse could not say how many eleven year olds were in attendance as she had no idea of the percentage of males to females in the population.

Scott Bartis from the Lighthouse School testified as a the last District witness. He is the coordinator of program and technical services and has been at the Lighthouse School since 1985. Lighthouse is a special needs day school for students of ages three to twenty-two. Most referrals are due to behavior difficulties in the public schools. Lighthouse is a clinical program and not a behavior model. The staff is trained clinically so that the staff can be familiar with student's specific needs. These are individual and family therapy and a crisis support line available at all times. There are full-time speech/language and occupational therapists. In Mr. Bartis' opinion the Parents are a critical link in the Student having success at Lighthouse. Family therapy occurs at a minimum of once per month. The total enrollment is 230 students with approximately 75 percent male. There is no behavioral specialist at the Lighthouse School . Mr. Bartis had no idea whether this Student would be appropriate for the Lighthouse School . The school includes students with autism, bi-polar disorder, depression and other disabilities. There is a mentoring program for older children and younger ABA is not used for behavior management and

students cannot have one to one aides. The District rested at the close of the testimony from Mr. Bartis.

On July 19, 2006 , the Parent testified. The Parent has done extensive research with respect to the Student's disabilities and feels that she knows the Student better than anyone. The Student is in the tenth percentile for both height and weight and was described by the Parent as petite. The Student has delays in all cognitive areas and is diagnosed with ADHD, is deficient in areas of executive functioning, has speech and language issues and has an extensive gap between expressive and receptive language. The Parent described the Student's presentation as complex but not impossible and indicated that the Student does very well at home an in the community including going to the museum, the library, the movies, bowling, having friends visits, shopping for clothes and food and other "normal" day to day activities. The Parent disagreed with Ms. Morse's position that the Student has minimal safety skills. She further disagreed with Ms. Morse's testimony that the Student is so strong willed that the Student can't handle the word "no." The Student is not aggressive at home or in the community and will be aggressive in school if the aggression is reinforced. The Parent denied that the Student's father was ever struck by the Student at school and indicated that the incident never occurred. The Student loves school and is eager to attend every day. The Parent denied that the Student's interests are different from the Student's peers. As an example, the Student watches age appropriate movies and plays age appropriate board games and does model language from peers. Academically the Student is at the kindergarten or first grade level. The Parent pre-teaches the content areas of the curriculum and reads novels to the Student at home. The Parent described the Student's weaknesses primarily as distractibility, impulsiveness, attention issues, and executive functioning issues. Presently the home tutor/teacher can provide direct services to the Student for up to forty minutes before the Student needs a break. Three years ago the Student could not go one minute without needing a break. The behaviors described by Ms. Morse do not occur during the home education. The Parent disagreed that she was being secretive with the School District and indicated that in the last school year both Kathy Jones and Kathy Kozak came to the home to observe the program. The Parent also disputes ever denying to allow the Student to be videotaped and indicated that she had asked the Team to come to the home and look at the program. The Parent reflected back to the preschool program where the District reduced the special ed services to two and one half hours a day to one hour per day with no speech therapy services. The mother filed for Due Process and ultimately put the Student in a private program at Riviere College for two years. The Student was transitioned back to the District school for first grade and at that time (the first grade that had to be repeated) the one on one aide had no training, the behaviorist was not helpful, the teacher was out for nine weeks and an individual named John Moran was brought in to consult and recommended that the Student benefit from a structured ABA program because the Student was over stimulated. The Team wanted to remove the student from public school, however, the aide broke her foot and so the Parent became the Student's aide and the situation improved. The Student went to a special education summer program after the first first grade, and that program was not successful. The director of the program told the parent that the Student needs to be with peers. For the second first grade, Christine Morse was brought in as a result of a settlement agreement and things went much more smoothly for the Student. In the second grade Ms. Morse was only

available Monday, Wednesday, and Friday so services were cut and as a result behavior decreased. The second grade was not as successful and the Parent wanted to have the Student repeat second grade, however, the District refused and the Student was promoted to third grade.

Third grade was described as a “really good year over all.” The teacher was an ex-air force member who ran a tight class and this was beneficial to the Student. The Student and the student's peers got along better and the teacher helped facilitate good peer relationships. The Parent and home teacher had worked with the Student the entire summer before third grade pre-teaching all the content material. The behaviorist took over part of the resource room time as the Student and resourced room teacher were not compatible. The resource room teacher was replaced and the replacement had a great working relationship with the Student for the remainder of the year such that the third grade year was a successful one.

For fourth grade essentially the entire Team changed. There was a different coordinator, different resource room teacher, different behavior specialist, and different classroom teacher. The mother felt that the star program was not designed to be successful. If the Student lost all four stars early in the one half hour session there was nothing to look forward to for the remainder of that half hour. In addition, this was not the program that the Student had used in the past. The fourth grade classroom was a completely different setup from the third grade and much less organized. The room was too small and the Student's cubby was set up right next to an open door causing constant distraction. In addition, the teacher reorganized the class set up on a number of occasions and this had not occurred in the third grade as the class remained consistently setup the same way. The aide was seldom on time for school each morning and this caused problems for the Student. The Parent felt that the coordinator of the weekly consult meetings did not keep accurate minutes, nor did that person carryover information from the previous week so that many of the ideas discussed at the consult meetings were never implemented. With respect to the Behavior Plan it was the Parent's position that the sensory diet was not monitored or formalized on the Student's schedule. Prior to fourth grade the Student rarely had to be in the tent for more than three minutes. The Student was in the resource room more in the fourth grade than in the third grade. SD Minutes from October, 2005 IEP Team Meeting, wherein the Team agreed that the least restrictive environment for the Student would be in a regular class with some individualized instruction in a separate setting. The mother indicated that the ABLLS was not even presented to the Team or incorporated into the IEP. It was clear from the mother's testimony that the mother was very active in participating in planning the Student's program. Another IEP Team Meeting was held on October 14, 2005 and at that time the Team agreed that the Student was able to participate in class, go to the Student's cubby if necessary and then return to the group successfully. On October 17, 2005 behavior became an issue for the first time. The mother referenced the IEP indicating that it points out that the Student enjoys going to school, benefits from typical age appropriate peer models, and has an increased participation level in class.

The Parent felt that the Behavior Modification Plan was not designed to support inclusion in the public school setting. She felt that occupational therapy was not successful in the fourth grade because the Behavioral Modification Plan didn't allow for it. The Parent felt that the Team never modified the IEP to reflect the findings of the

ABLIS done by Ms. Morse. Clearly by October 2005, the Team was not working as well together as it had been in the previous year.

The Parent described the incident that occurred on October 26, 2005 and indicated that this was the first day of Ms. Morse's schedule change and the entire class had setup certain projects on their desks without the Student's knowledge so that the Student walked into a very different environment having come from the guided reading in the resource room and that set the Student off. The Parent testified that she brought this to the attention of the Team but there was no follow up. She also testified about a behavior that occurred during a lockdown drill and was not surprised that the Student was upset by this as this was not part of the routine and no one tried to prepare the Student for the lockdown drill. With respect to the Behavior Modification Plan it was the Parent's position that telling the Student to "take a break" constantly will do no good, and will only set up the Student for a reaction. The Parent testified relative to the Student participating successfully in the Running Club and interacting appropriately in the Running Club with the Student's peers. The Parent did not agree to a functional analysis because the Team was not dealing with information that it already had and that the Plan for the functional analysis was to segregate the Student and give her distractions and then observe her behavior, which the Parents felt was "non-sense." In addition, although the ABLIS had been completed that information had never been used. The Parent wanted to attend the CPI Training but was not allowed to, she indicated that the lunch bunch was successful for the Student. The mother wrote to the Team Coordinator in December indicating that in her opinion crucial data was not provided and was not being used for the Student's program. The Student also participated in a Ski Club and had to ride a bus with peers and had no behavior problems either on the bus or skiing. The Parents took the position that the revised Behavior Modification Plan is too rigid and takes away the opportunity to be successful. She felt that the behaviors were not being used properly and that the behaviorist's time was consistently decreased from first grade on. The Parent further pointed out the e-mail from Ms. Morse indicating that the Student was doing extremely well and better than ever and that this constituted a wonderful step for the Student. This information was provided in February, 2006. In a consult on February 3, 2006 it was disclosed that the Student had stayed in silent reading for eight minutes which was a positive development and that there were a low number of aggressive behaviors. Clearly, it appears as of February that the Student was doing well. In consult in February 6, 2006 and February 10, 2006 it was reported that the Student was doing well on each occasion. Things changed as a result of the Valentine's Day incident and the Parent took the position that the Student was not prepared for this day and Ms. Morse was not around for it. As a result of that incident the District for the first time raised the issue of the tent not being appropriate. The Team agreed that a one person CPI intervention was not safe because the Student was too tall and in addition, CP is an entire process not simply a hold technique and should not be used piecemeal. The Team decided as a result to wait the Student out when the Student was misbehaving and not guide the Student into the tent. The Parent testified regarding an allegation made by Ms. Morse that the Student at one point was in the tent for twenty-three minutes and disputed this indicating that she was in the process of "waiting out" for twenty-three minutes and was not in the tent and this would be consistent with the policy set forth as a result of the Valentine's Day incident. A meeting scheduled for February 21, 2006 was canceled by

the Team. The Parent wanted to observe the Student's program and was not allowed to do so. Another meeting was held on February 24, 2006 , and again there was discussion of the Student being too tall to be held by one person and that the CPI is an entire system and not a hold which can be used piecemeal. The Parent wrote to the Team wondering why she was not getting any responses to her concerns raised in her letters.

After the February vacation when the Student returned to school there was no aide available that day or the next so a substitute was put in place. The Parent told the staff to call her if there were any problems and in her opinion the Student did well during those days. However, on March 8, 2006 , the mother received a call indicating that the Student was having problems and that she needed to come and get the Student. She found the Student eating lunch with the substitute aide and didn't observe any inappropriate behavior. She was concerned that she was called to bring the Student home for no reason. As a result of the incident in March the Student was suspended for one day. With respect to that incident the Parent testified that the Student was allowed to roam in the building and was not put into the tent and that the escalation was predicted by the mother, and yet the mother was not called to come and get the Student that day. The Parent indicated that Ms. Morse was not in agreement that the Student should have been suspended. As a result of the suspension and at a meeting on March 13, 2006 the Parent again asked for more behavior help and more training. The Student returned to school on March 15, 2006 and the Parent was told at a meeting that the District wanted to have the Student removed from all academic areas, although the Parent felt that the behavior escalation was caused by the staff not reacting appropriately to the Student. The Parent disagreed with the decision of the Team to remove the Student from regular class instruction. On March 16, 2006 there was another incident and the police were involved. The mother made the decision that the District was not educating the Student appropriately and so she removed the Student. Between February 17, 2006 and March 16, 2006 the incidents continued to escalate in frequency and in intensity although the tent was not being used and the Team was using CPI inappropriately. In a meeting on March 21, 2006 the Team for the firm time disclosed that the Student was not benefiting from interaction with peers. The Team continued to meet almost on a daily basis although no real progress was being made. The star system was being left in place and there were not behavioral strategies they worked on with the staff. The Parent asked then for compensatory services. Yet another change in the Behavioral Modification Plan was then put into place and a change in the IEP was made which convinced the Parent that the District was intending on removing the Student from the public school setting. That became clear to her during the April 6, 2006 meeting in which she walked out and did not return.

The Parent took the position that being out of school is very difficult for the Student and that the family is in limbo. The Parent did visit the Lighthouse School and thoroughly rejected it. She felt that the clinical approach was not appropriate for the Student and that the school is primarily designed for students with family problems that need family therapy and that this does not fit this Student's profile in any way. In addition, the parent took the position that the Student does not need to learn poor behavior from other disabled students. There would be no mainstream peers at the Lighthouse School .

The Parent is requesting that the Lighthouse School be rejected as a placement, that the District model for physical prompting be corrected, the Student be educated in a smaller classroom if possible with more small group instruction, more rewards and sensory

breaks, behavioral support at all times and a highly trained staff. The Parent also wants the Student to repeat fourth grade.

With respect to the compensatory education request the Parent feels that the Student lost three or four months from the school year and should be provided with one month of ESY each summer for the next four summers.

On cross-examination the Parent reiterated her position that third grade was a successful one for the Student. She also reiterated her position that the star system was designed for failure. There was discussion which bordered on argumentation between the Parent and District counsel regarding reducing demands as opposed to allowing the student to opt out of working al-together. The Parent took the position that she put as much time as she did into the Student's program because the District simply wasn't doing so. The Parent was also quite defensive about questions relative to the Student injuring peers and staff. There was also discussion relative to the benefit of the CPI program being used in the piecemeal fashion rather than the entire program being implemented. The Parent wanted the Team to return to the policy of prompting the Student into the tent with behavioral support on a full-time basis. There was also discussion relative to the number of aggressions that occurred before February 17, 2006 and it was noteworthy that the staff was reporting up to that time that the Student was doing great. The Parent has scheduled a meeting with a neurologist for September, 2006. She also denied that she refused to produce a video for the Team.

The Parent rested at the close of the Parent's testimony.

V. Decision.

There is no adequate basis to find that the Student is entitled to Compensatory Education Services for the alleged procedural violations relative to changes in the Behavior Modification Plan and in the IEP. It is clear that the changes in the Student's Behavior Modification Plan were inadequate and insufficient to maintain the Student in the least restrictive environment and afford the Student FAPE. In addition, the Hearing Officer finds that the changes made by the Team with respect to the IEP resulted in the proposed change in placement from the local school to an out of district placement which ultimately was the placement requested at the Lighthouse School . The Hearing Officer finds that the Lighthouse School is unduly restrictive and is not an appropriate placement for the Student. The District is Ordered to do the following:

A. To development and implement an appropriate IEP that includes an appropriate reward based positive behavioral intervention plan that focuses upon improving the Student's behavior and increasing the Student's time in mainstream settings, contains a time out procedure appropriate for the Student's age and size, and does not provide for suspension from school except as a last resort;

B. To direct consultative behavioral support services by a qualified behaviorist, who has sufficient skills and availability to satisfy the Student's direct service needs, to provide ongoing revisions of her behavior intervention plan, as necessary, and to provide appropriate monitoring, observation, and training of staff, with the Student's parents invited to attend and participate in all such training. The Hearing Officer denies the Parent's request that Christine Morse specifically be removed as the behaviorist. She clearly is qualified and removal of a given teacher is a most extraordinary remedy which

is not justified in this case. Moubry Vs. Independent School District No. 696 , 25 IDELR 491 (U.S. Dist. Ct. 5 th Division 1996);

C. Give the Student an opportunity to repeat fourth grade with a different classroom teacher and no more than eighteen (18) peers, in a sufficiently large classroom reasonably proximate to the pull out/resource area at EDMES, support by one or more qualified special education teacher(s), other than Kathi Marshal, capable of instructing the Student successfully in pull out settings and accompanying her as her one of one classroom assistant when she enters inclusive learning settings.

The Student is entitled to be educated with and among typically developing peers to the maximum extent allowed by both Federal and State Law. Oberti Vs. Board of Education of Borough of Clementon School District , 995 F.2d. 1204 (3d. Cir. 1993). It is clear from the record that the Student had a successful third grade year both educationally and behaviorally and that the program and personnel changed dramatically for the fourth grade year and these changes turned out to be quite detrimental to the Student. However, the District's response was to inappropriately tinker with the Behavior Modification Plan and not accept and incorporate the suggestions and recommendations of the Parent relative to the Student's behavior issues. It also is clear from the record that the District reached a point where it determined that the safety of the staff as a result of the behavioral incidents mandated the ultimate removal of the Student from the in district program and the recommendation for placement at the Lighthouse School. While the record is replete with references to dozens of meetings and consultations during the fourth grade regarding the Student it is also clear that no meaningful meeting of the minds occurred regarding managing the Student's behavioral needs. Given that the District was able to appropriately educate the Student in the third grade there is no justification for the District's determination that it can not continue to do so and that an out of district placement is required.

VI. Appeal Rights.

If either party is aggrieved by the Decision of the Hearing Officer set forth above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commission of Education when either the District or the Parent seeks judicial review of the Decision.

VII. Statement of Compliance with ED-1128.22 (b).

If neither party appeals this decision to a Court then the District shall within ninety (90) days provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

SO ORDERED.

Dated: 8/7/06

John P. LeBrun, Hearing Officer