

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH-FY-07-06-076 / Derry Cooperative School District

DECISION

I. Introduction.

A Pre-Hearing Conference was held on August 14, 2007, and a Pre-Hearing Order issued in accordance therewith. The only issue to be determined at the Due Process Hearing involved the Parent's request for compensatory education based on the 2006/2007 school year. The matter was heard over a three day period and the Parents presented their witnesses first.

II. Procedural Violations.

There were no procedural violations raised in the context of this hearing.

III. Discussion.

There is a companion case to this case involving the same parties and same student and the context of this case (the comp. ed. case). The parties agreed to use their best efforts to refrain from repeating the testimony that was provided in the prior (IEP) case. Many of the same individuals testified at both hearings.

Tina LaPointe testified as the first witness for the family as she had in the IEP case. She provided services for the Student in District as a behavioral consultant in the last quarter of the 2006/2007 school year. Her invoices are set out at P. 303 - 305 and she worked between April 13, 2007 and June 13, 2007. Amassing approximately 58.5 hours time. Ms. LaPointe did provide modeling services but no direct social skills training during this period. Tom Benjamin and Becky Roberts were the two other behaviorists working with Ms. LaPointe during this time. She indicated that she received no training from District personnel regarding behavioral

strategies for the Student. She had the opportunity to observe the special education teacher, Ms. Patt, interact with the Student and in Ms. LaPointe's opinion the level of instruction was lower than the Student needed. She was concerned that Ms. Patt was not able to meet the Student's needs fast enough and also indicated that the Mother did not interfere with Ms. Patt's instruction of the Student. Ms. LaPointe provided some observation recommendations which appear at P. 1321 and 1322, so that Ms. Patt could use these in the resource room setting. It was Ms. LaPointe's opinion that Ms. Patt was too sweet working with the Student and not assertive enough (i.e., she did not a strong enough voice tone with the Student). Ms. LaPointe did modeling for Ms. Patt including taking her place for a session while Ms. Patt observed. She indicated that she requested Ms. Patt's lesson plans to use in modeling and received very little from her. P. 1323 references an observation done by Ms. Lapointe on May 9, 2007 for a full day. She felt that Ms. Patt was trying very hard to help the Student be successful. The report also references specific observations and comments to help Ms. Patt do a better job with the Student. According to Ms. LaPointe, Ms. Patt wanted Ms. LaPointe to give her a specific list of "definite no's" regarding the Student and this was not possible to do. As a result, Ms. LaPointe was concerned about Ms. Patt's ability to make judgment calls when working with the Student. P. 832 and 833 includes additional recommendations from Ms. LaPointe to Ms. Patt regarding providing better services for the Student. According to Ms. LaPointe, Ms. Patt did not want any "scenes" to occur in the class and therefore allowed the Student to do as the Student pleased in order to avoid causing a scene. Ms. LaPointe felt that this was very problematic as it allowed the Student to take advantage of the situation. Mr. Benjamin wanted Ms. LaPointe to take over as the lead teacher, however, this was not an option as her schedule would not permit. She felt that Ms. Patt was not "getting it" and was too dependant on the behavioral consults. Ms. Patt was

convinced that there no problems in the resource room and Ms. LaPointe disagreed. On or about June 6, 2007, Ms. LaPointe tried to provide training to Ms. Patt and indicated that Ms. Patt was not cooperative or interested in working with Ms. LaPointe and had a poor attitude.

Subsequently (P. 916) Ms. Patt sent an e-mail calling Ms. LaPointe a liar and copied the team on the e-mail. On or about June 7, 2007, Tom Poleseno set up a meeting between Ms. LaPointe and Ms. Patt to discuss the issue. Ms. Patt was very defensive at the meeting and argumentative. Ms. Patt initially indicated that she could not work with Ms. LaPointe but then changed her mind and said she would try.

On cross examination Ms LaPointe acknowledged that she was aware that the Mother had asked for a number of District employees to be removed from working with the Student or fired outright. She also agreed that Mr. Benjamin was the lead behaviorist in the spring of 2007, and acknowledged that the Student was aware that the Mother was constantly present in the school. She agreed that Ms. Patt did provide a lot of positive things in working with the Student and that Ms. Patt may have gotten conflicting information in working with three different behaviorists. She further agreed that the Mother was highly critical of Ms. Patt and shared her feelings with the team. Finally, she agreed that it is not possible to preplan every aspect of the Student's day and sometimes it is necessary to go with the flow.

The Mother testified as the second witness. She indicated that in the fall of 2006, there were no direct behavioral support services provided and testified about several e-mails sent to the School District with respect to goals she wanted in the IEP. She indicated that when Ms. Heald left due to a pregnancy leave there was a gap in behavioral support services and indicated that the Student reacted with more aggression causing more restraints. The Mother testified about several other e-mails that she sent to the school (P. 523, and P.485) complaining about the lack

of direct behavioral services and indicating that “a lot of damage can occur in a short time.” SD. 271 is the written prior notice signed by the Mother asking for comp. ed. services due to the lack of direct behavioral services being provided. In her opinion twenty-four hours of direct behavioral support services were missed (sixteen weeks at one and a half per hour per week).

With respect to the issue of the speech language consult Judy McCommie had been providing these services but was unable to continue to do so. The Mother suggested Kathy Booth take over in August, 2006. The Mother then testified about the lunch bunch socialization group that was part of the 2005/2006 IEP but not provided in 2006/2007. As a result, the Student was not getting sufficient practice in speaking to peers. The Mother indicated that she asked that the lunch bunch be reinstated but it was not. In addition, the speech language consult time has never been replaced since Judy McCommie left.

The Mother then testified regarding the lack of staff training and indicated that ADHD training had not occurred nor had executive functioning training. She testified about several consult meetings (SD. 560 and SD. 564) when she complained that the training still had not occurred. It was her opinion that the classroom teacher did not participate in many of the trainings that ultimately did occur and that the gym teacher was not trained either.

With respect to several of the other issues raised in the request for comp. ed. she testified that it was a very slow start to the 2006/2007 school year and that the Mother was willing to pre-teach the Student if she was provided the curriculum but that that never occurred. By January, 2007 it was the Mother’s opinion that Ms. Patt had a really good relationship with the Mother. The crisis management plan was almost ready in March, 2007 and the Mother indicated that she was ready to begin removing herself from the school, however, she did not because she was fearful that the programming was not going to be in place.

It is noteworthy that as in the companion case the Mother's testimony was frequently rambling off point and non-responsive to the questions asked by counsel thereby making it extremely difficult for the Hearing Officer to understand the testimony of the Mother. The Mother was directed to attempt to stick to the question asked but was unable to do so and would frequently give lengthy unresponsive answers providing material and information totally unrelated to the question posed. The Mother indicated that as of April, 2007, the Student was getting along well with Ms. Patt although, the quality and quantity of work was not as high as the Mother would have liked. There was an incident (SD. 699) when the Mother had to restrain the Student in a science class. SD. 744 is an example of a lengthy e-mail provided to the school principal by the Mother describing an incident in May involving the teacher's lounge which began the falling out between the Mother and Ms. Patt. There was a meeting with Mr. Poleseno on May 31, 2007, and according to the Mother, Ms. Patt wanted the Mother out of the building and indicated that she was depressed and on meds as a result of the whole situation. The Mother ultimately pulled the Student from school due to the conflict between herself and Ms. Patt. Finally, in response to counsel's questions regarding the relief being requested, the Mother indicated that there should be twice as much direct service provided to the Student to make up for lost time, that this could be provided by Tina LaPointe that additional speech language services were necessary, that more staff training is necessary, that there must be a rubric with respect to training and it must be followed and enforced, there must be more inclusive experiences, there must be a summer program and a disability awareness assembly for staff and students.

On cross examination the Mother acknowledged an e-mail (SD. 608) to Mr. Poleseno indicating "good team this year and work well together." In addition, SD. 620 is a note from

February 17, 2007, indicating that there was much improvement from the prior year. SD. 661 is an e-mail to Mr. Kellan from April 3, 2007 indicating “we have a good program in place this year.” Another correspondence to Mr. Kellan, SD. 680 references having a program that is working right now. SD. 701/702 is an e-mail indicating that things have gone so well this year an I want the positive to continue.” There is an e-mail dated May 28, 2007, indicating that Ms. Patt does a lot of positive things with the Student and they have a great relationship in the resource room setting. SD. 910 is an e-mail indicating that the Mother appreciated the enormous amount of work the District had put in to the Student’s programming. SD. 939 references a successful year with a lot of ground having been made up emotionally and socially. The Mother was unable to recall if she wanted Ms. Heald to provide training in the executive functioning.

Christopher Kellan, Direct of Student Services testified as the first District witness when the undersigned Hearing Officer’s Decision came out in the summer of 2006, he immediately set out to rebuild the room for the Student at an approximate cost of thirty thousand dollars (\$30,000.00). He then developed a full day schedule for the Student and began advertising to hire a one on one special education teacher for the Student. He also hired Kim Heald as the behaviorist. He indicated that the District was ready implement the schedule fully, from the beginning, although, initially the Student returned on a part-time basis only. The District paid for after school services with Tina LaPointe. Mr. Kellan described direct behavioral services as primarily observation, consultation, feedback, and modeling, not one on one work at all times with the child. He indicated that the Mother wanted the prior behaviorist Kristine Morse fired. Mr. Kellan is aware that the Mother wants the behaviorist to work directly one on one in instruction with the Student. In his opinion the Student made phenomenal progress in 2006/2007

compared to previous years. With respect to the behavioral services (SD. 1033), Mr. Kellan indicated that in March and April, 2007 the services exceeded the amount called for in the IEP.

With respect to the issue of the speech language observation by an outside provider this service was previously provided by Judy McCommie and when she was unavailable the Mother wanted Kathy Booth to do the observation and Ms. Booth had not taken the necessary examination to be qualified and consequently was not chosen. Mr. Kellan indicated that the Mother has filed a number of due process requests seeking compensatory education going back to 1999. He felt that the lack of his speech language observation did not negatively impact the Student as the Student had one of the Student's best years. In addition, the speech language goals at SD. 447 demonstrate good progress during the school year in question.

With respect to the issue of the Student losing services because the Mother had to remove the Student for the Student's own safety as a result of the altercation between the Mother and Ms. Patt, Mr. Kellan indicated that the Student was never in any danger around Ms. Patt and that a complete investigation was performed. The Mother again demanded that Ms. Patt be transferred to a different school and the District refused to accommodate the Mother's request. The Mother has removed the Student from school in the past over disagreements with the School District and Mr. Kellan noted that the Student has never been injured at school despite all of the Mother's claims regarding the child's safety. Again, Mr. Kellan referenced a list of fourteen people that the Mother has requested be removed from the team or fired outright.

With respect to the issue of training Mr. Kellan indicated that staff was trained on the behavior plan, the sensory diet, and presentation of materials and although no formal ADHD or executive functioning training occurred these are common issues that the staff would be exposed to on a regular basis. With respect to the executive functioning training a Dr. Jacobs was going

to perform this and the Mother rescinded her permission, the Mother wanted Peg Dawson to do this training and Ms. Dawson was unavailable. Mr. Kellan felt that the training was adequate. In addition, the Mother was insistent that physical intervention occur early on when the Student was misbehaving or acting out and that this is not possible legally as intervention cannot occur unless either the Student or others are at risk of harm. The Mother was insistent that intervention occur before that and the District is unwilling to agree. Another individual was suggested (Frank S.) to do staff training and the Mother refused to allow this individual to be involved. Although the Mother was looking for training to be specific to the child in question it was Mr. Kellan's position that this is not appropriate training in that a workshop should not be specific to one individual student. Mr. Kellan further indicated that the only people who were only critical of Ms. Patt were the Mother and Tina LaPointe. He took the position that the Mother's opinions are not reliable because she has a history of disagreeing with staff when she doesn't get her way. Mr. Kellan felt that the District had an exceptional year educating the Student in question.

On cross examination there was much discussion about behavioral services and in addition Mr. Kellan agreed that the speed language consultation/observation did not occur. However, the issue is whether or not the Student was negatively impacted as a result. In addition, Mr. Kellan agreed that the ADHD and executive functioning trainings did not occur but again the issue is whether this resulted in a negative impact to the Student, thus, calling in to play the need for compensatory education services.

Kelley Kasila, Speech Language Pathologist testified as the next District witness. She works with Michelle DeCosmo in the co-treat (SLP/OT) services for the Student. SD. 447 includes the goals and objective that Ms. Kasila graded for the Student and it was her opinion that overall speech language progress was slow and steady but good overall. There was an

increase in functional communication. Ms. Kasila worked with the Student in the lunch bunch social skills program the previous year and the Student had slow progress and was inconsistent from day to day depending on the Student's interest level. Ms. Kasila felt that the Mother's presence was an impediment to the Student making progress in the lunch bunch group. She indicated that the co-treat services were still available to the Student after the Mother pulled the Student from school in June, 2007. Ms. Kasila was involved in the weekly consults and on occasion the Mother would keep the consult going long enough to cause the co-treat services to be missed on that day. Ms. Kasila received behavior treating from Kim Heald and has attended ADHD and executive functioning workshops. Ms. Kasila has never seen erratic or problematic behavior by Ms. Patt or between Ms. Patt and the Mother.

On cross examination Ms. Kasila agreed that she never observed Ms. Patt and the Student working together in class.

Kim Heald, prior behaviorist until April, 2007 testified as the next District witness. She indicted that direct behavioral services were imbedded in her work with the Student. Those services were broken up over the week and Ms. Heald did modeling with the Student to teach the Student how to do different things and indicated that a one to one pull out for direct behavioral services would not be productive. According to Ms. Heald the Student made progress in 2006/2007 and Ms. Heald implemented the behavior plan. Ms. Heald felt that Ms. Patt did a good job working with the Student during the year in question and understood basic behavioral principles and was very receptive to Ms. Heald's advice and training and had good behavior instincts. She referenced an e-mail from the Mother (P.853-856) which was a list made up by the Mother for Ms. Heald.

On cross examination Ms. Heald indicated that a request was made in January, 2007 for additional consult time between Ms. Heald and Ms. Patt and that as of January 12, 2007 (SD. 582 and 587) the Mother was still waiting for answers regarding training sessions. As of March, 2007 Ms. Heald was doing less modeling with the Student due to her pregnancy and acknowledged that there were occasions where a shift in the task at hand would cause Ms. Patt to struggle in working with it. She indicated that Ms. Patt was getting “constant feedback” from the Mother and that by April, 2007 Ms. Heald was concerned that Ms. Patt was contacting her too often regarding the case and asked the school principal to limit these contacts.

On redirect Ms. Heald indicated that the Mother impacted Ms. Patt’s ability to work with the Student and as a result Ms. Patt would hold back in her efforts.

Tom Benjamin testified as the next District witness. He began providing services to the Student in April, 2007, one time per week on Fridays including a consult. He provided direct services including observation, modeling, feedback, consultation, data analysis, and review and program development. He observed Ms. Patt working with the Student and felt that Ms. Patt was caring, compassionate, and competent. He did not observe the Student being unsafe at any time when being instructed by Ms. Patt and he did not believe that Ms. Patt was incompetent. SD.737 was an e-mail from Mr. Benjamin referencing Ms. LaPointe modeling for the student. He observed Ms. Patt in the resource room with the Student and things were in his opinion “going fine.” The Student primary areas of need were not in the resource room but in other areas such as hallways, lunch, etc. He felt Ms. Patt was doing the best she could. On cross examination Mr. Benjamin indicated that the Mother was always present when Mr. Benjamin observed the Student.

Kathleen Riordan, Student's Fourth Grade Teacher as the next witness. When the Student was in Ms. Riordan's class the Student rarely participated and would often wonder the perimeter of the class. Ms. Riordan observed Ms. Patt working with the Student and felt that Ms. Patt was compassionate but did not have the ability to be strong in working with the Student. The Mother would remove the Student "the minute" the Student acted up in any way. This impeded Ms. Riordan from working as effectively as she could have with the Student. Ms. LaPointe came in to Ms. Riordan's class one time to model and it did not go well. On cross examination Ms. Patt acknowledges that she was not certified in the CALM training due to physical limitations. She acknowledged that the Student's attention span was shorter than any student she has worked with in the past.

Lorraine Patt the Student's Resource Room Teacher for the last school year testified as the next witness. She has sixteen years teaching experience and is certified in New Hampshire and is working on her Alternative Four Certification through the Department of Education. She is certified in Texas as a special education teacher and taught for one year in the capacity in that state. The Student was working a pre-first grade level with Ms. Patt during the last school year. Initially, the Student would only work a few minutes at a time before needing a break but that gradually built up. In her opinion the Student's "choice time" ate up a lot of the time that should have been used for academics. Ms. Patt went to the home to observe Ms. LaPointe working with the Student and felt that the Student's behavior was similar at home to that at school, i.e., many distractions. At one point Ms. Patt attempted to increase the demands on the Student and the Student's behavior escalated. Ms. Patt felt that the Mother was critical of her work almost daily and this made things very difficult for her she felt she was constantly being second guessed. As an example she indicated that she would ask the Student to complete a task and the Student

would ask the Mother whether or not she should do so. On another occasion the Student went in to the faculty room and the Mother criticized Ms. Patt for allowing this to happen and the principal had to be called. She and the Mother disagreed about different areas of the school building that the Student should be allowed to travel to. Initially, Ms. Patt worked well with Ms. LaPointe and she indicated that Ms. LaPointe told her that the Mother was hindering the process. Ms. Patt wanted Ms. Lapoint to model in the classroom and Ms. LaPointe came in one time only and it was disastrous. She felt that Ms. LaPointe got defensive about this and the relationship between the two deteriorated.

On cross examination Ms. Patt agreed that during the first semester the Student was working only a few minutes per day in class and she had to restrain the Student only two or three time during the school year and on one occasion she had to call the principal to come and help due to the Student's acting out. In the spring Ms. Patt received a list of Ms. LaPointe's concerns over Ms. Patt's work with the Student (P. 1324). Ms. Patt acknowledged on cross examination that allowing the Student to go to the teacher's lounge was a mistake. She also acknowledged an e-mail (SD. 855) that she wrote to the Mother in May indicating that she did not want to have any scenes in class and therefore allowed the Student to do as the Student pleased.

Kim Shaefer, Special Education Facilitator testified as the next District witness. Her resume is at SD. 1012/1014 and she has been a special education teacher for twelve years. She provided instruction to the Student in the summers of 2003 and 2004. In June, 2007 she called Judy McCommie on a number of occasions with respect to doing the speech observation but never got a response. She acknowledge that ADHD and executive functioning training was not formally done in that Kim Heald was going to do this oe the spot. The team tried to retain Peg Dawson to provide this training but Ms. Dawson was not available. She then suggested Dr.

Jacobs however the Mother would not allow Dr. Jacobs to observe the Student at that time. She indicated that Dr. Jacobs ultimately did some training in the fall of 2007. The CALM training did not occur until February, 2007 because Ms. Heald was looking in to other methods first. Ms. Shaefer also testified about the goals and objective and charting of progress on the IEP. (SD. 26, 27, and 28).

On cross examination Ms. Shaefer indicated that in the summer of 2004 she would work with the Student for only a few minutes before a break was needed and the Student never got above being on task fifty percent of the time. She did not observe the Student in the resource room doing any academic work though she did observe choice time in that setting. She wrote no reports based on her observations. In her opinion the team agreed not to grade certain goals and objectives. However, no prior written notice was given to the Mother about this decision.

Michelle Decosmo the occupational therapist testified that as the next District witness. She did provide sensory training for the staff and also provided training in visual strategies. She attended the CALM training with the team and also attended ongoing behavior training and received some instruction in sign language. She indicated that the Student's progress was slow and inconsistent and she did observe Ms. Patt in the hallways with the Student who felt that Ms. Patt handled the situation smoothly. She then testified about the altercation between the Mother and Ms. Patt on June 12, 2007 that led to the removal of the Student from the school and the ongoing investigation. The Student missed eight days of cotreat when the Mother pulled her from the school in June, 2007.

On cross examination Ms. Decosmo agreed that she never observed the Student in the resource room or in Ms. Riordan's room.

Tom Poleseno principal of the school testified as the next District witness. Direct behavior services would be provided by the behavioral specialist. He felt that there was a significant improvement in the Student's behavior from the prior year although, the Student missed a number of school days due to decisions made by the Mother. He indicated that the team was prepared to have the Student full-time all day every day from the beginning of school. He then testified regarding the issues with the behavior training that ultimately led to the decision to train the staff in CALM. Mr. Poleseno did observe the Student reading a book with Ms. Patt and he felt that Ms. Patt had a great attitude in working with the Student. The problems between the Mother and Ms. Patt began in March, 2007 and continued until the escalation on June 12th that led to the Student's removal. He also agreed that the relationship between Ms. Patt and Ms. LaPointe soured over time. He met with the Mother and Ms. Patt over the friction going on between them and he wanted the Mother to stop her constant criticism of Ms. Patt. He felt that the Mother's criticism was very upsetting and that Ms. Patt's reaction to it was reasonable. Tom Benjamin told Mr. Poleseno that Ms. Patt was doing a good job in working with the Student. SD. 908 is another lengthy e-mail from the Mother which is very critical of the work the team was doing. SD. 928 is another e-mail where the Mother demands that Ms. Patt have no contact with the Student. Mr. Poleseno's opinion is that the Mother is insistent that she get her way regarding the education of the Student.

The Mother testified in rebuttal. She rebutted the testimony of Ms. Patt regarding the observation that occurred by Ms. Patt at the home and indicated that the Student worked a lot longer than Ms. Patt had recalled. She also felt that the Student participated well in recess. The Mother's rebuttal testimony concluded the matter.

IV. Request for Findings of Fact and Rulings of Law.

The Parents submitted extensive Request for Findings of Fact and it is noteworthy that the vast majority of these requests were lengthy and contained requests for finding that partially agreed upon and partially disagreed upon by the Hearings Officer making it impossible for the Hearings Officer to grant or deny many of them. In addition, a number of the Requests unfortunately accuse the School District witnesses of falsely testifying. Notwithstanding they are ruled upon as follows:

Request Nos. 2, 3, 4, 5, 9, 12, 15, 19, 20, 21, 24, 29, 37, 41, 42, 45, 55, 65, 66, 67, 69, 70, 72, 74, 83, 94, 119, 138 are granted.

Request Nos. 17, 28, 32, 34, 35, 36, 46, 47, 53, 58, 60, 77, 78, 79, 92, 93, 95, 100, 101, 102, 104, 107, 108, 115, 116, 130, 137, 145, 151, 157, 181, 182, 183, and 184 are denied. All other requests for Finding of Fact are neither granted nor denied or they are deemed to be denied to the extent that they are inconsistent with the decision below.

The Parents requested Conclusions of Law Nos. 1-5 are denied.

The District submitted Request for Findings of Fact and Rulings of Law as in the previous case, the number of Requests for Findings of Fact submitted by the District were excessive and the Hearing Officer declines to rule on each and every one due to the excess number submitted. To the extent that any request is inconsistent with the decision below it is deemed to be denied, if it is consistent it is deemed to be admitted. To the extent that any Request contains information that could be interpreted either way it is deemed to be neither admitted nor denied subject to the above parameters.

The District submitted Requests for Rulings of Law.

Request Nos. 9, 14, 15, 17, 23, and 24 are neither granted nor denied to the extent that they are inconsistent with the decision, they are deemed to be denied. All other requests are granted.

V. Decision

The Hearing Officer is not persuaded after almost three days of testimony that the Student is entitled to compensatory education as a result of the Student's academic year in District in 2006/2007. The testimony is persuasive that the Student made progress (albeit limited progress) through the implementation of the IEP and that there was a great deal of progress made in the area of behavior/acting out. The Hearing Officer finds that the School District implemented the IEP to the best of its ability despite being second guessed and criticized for virtually every decision it made. The District was never afforded the opportunity to fully implement the IEP each and every day in part because the Student was not allowed to attend from the beginning. The Parent's position was that the Student would not be safe if the Student attended without each and every service that the Parent wanted fully in place, yet there is absolutely no credible evidence that the Student was ever at risk of harm during the school year. In addition, the Parent unilaterally withdrew the Student from school after an altercation with Ms. Patt thereby deprive the Student of necessary services including speech/language and occupational therapy. The Student received education benefit notwithstanding her irregular and inconsistent attendance at school and the Hearing Office is persuaded that had the Parent allowed the District to implement the IEP beginning the first day of school on a full-time basis that the IEP could have been implemented with no degree of risk of harm to the Student. Accordingly, the Hearing Officer finds against the Parent and the request for compensatory education.

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: January 28, 2008

John P. LeBrun, Esquire
Hearing Officer