DECISION

COVER SHEET

DUE PROCESS HEARING

DOCKET NUMBER:	D12-006
RESPONDENT/SCHOOL DISTRICT (LEA):	[redacted]
SCHOOL DISTRICT COUNSEL:	[redacted]
STUDENT:	[redacted]
PARENTS:	[redacted]
COUNSEL FOR STUDENT/PARENT	None (Pro Se)
INITIATING PARTY:	Parent/Student
DATE OF DUE PROCESS COMPLAINT:	October 7, 2011
SCHOOL NO. 1:	[redacted] (Respondent)
SCHOOL NO. 2:	[redacted]
SCHOOL NO. 3:	[redacted] (Private School)
RESPONDENT'S AUTISM CONSULTANT:	[redacted]
RESPONDENT'S AUTISM PROGRAM DEVELOPER	[redacted]
DATE OF HEARING:	January 17, 18 and 19, 2012
PLACE OF HEARING:	[redacted]
OPEN vs. CLOSED HEARING:	Closed
STUDENT PRESENT:	No
RECORD:	Verbatim-Court Reporter
DECISION TYPE:	Written
DUE DATE FOR DECISION:	March 6, 2012
HEARING OFFICER:	James Gerl, Certified Hearing Official

DECISION

DUE PROCESS HEARING

Docket No.: D12-006

PRELIMINARY MATTERS

Subsequent to the hearing, both parties filed written briefs and proposed findings of fact. All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Prior to the hearing, the parents filed a motion to amend their due process complaint. In the original due process complaint, the parents sought relief in the

form of reimbursement of tuition for a unilateral private placement for the period from October 2009 to June 2010. In the proposed amendment to the complaint, the parents sought to expand the period for reimbursement from October 2009 to June of 2011. Respondent filed a response to the motion. Respondent did not oppose the amendment but instead requested an adjustment to the timelines. The motion to amend was granted for good cause shown by letter on January 6, 2012. Said letter is incorporated by reference herein. Respondent's request for an extension of the timelines was denied except to the extent that Respondent was permitted to schedule another resolution session.

Prior to the hearing and pursuant to discussions at the prehearing conference by telephone convened herein, Respondent made a motion to continue the decision deadline for this case to March 6, 2012. The parents did not oppose said motion. The motion was granted by letter on November 8, 2011. Said letter is incorporated herein by reference. There have been no other extensions of the decision deadline in this case.

Subsequent to the hearing, Respondent filed a motion to strike the testimony of Respondent's former special education director. The former special education director testified at the hearing under subpoena served by the parent. The former special education director contested the subpoena at the beginning of his testimony,

claiming that it had not been properly served and that he had not been given his statutory witness fee. To the extent that the witness claimed a lack of notice, the motion to quash the subpoena was denied because the witness had received actual notice, as he appeared at the hearing for purposes of testifying. The hearing officer did, however, order the parents to provide the witness with his statutory witness fee. The basis of the motion to strike the witness' testimony is that Respondent alleges that the parents have still not paid the witness fee to the witness. The parents have not responded to the motion, so it is assumed that the parents do not contest the facts alleged by respondent. It would not be in the interest of justice under the circumstances to strike the entire testimony of the witness, and therefore, the motion is denied. However, the parents were ordered to pay the statutory witness fee to the witness and that order remains in effect. The parents remain liable to the witness for the statutory witness fee as ordered at the due process hearing. The parents are hereby ordered once again to pay the statutory witness fee to the former special education director if they have not yet done so. Except to the extent that the parents are again ordered to pay the statutory witness fee to the former special education director, Respondent's motion is denied and the testimony of Respondent's former special education director remains a part of the record of the due process hearing.

NOTE: Personally identifiable information, including names of parties, schools and consultants used by the school district, and similar information, is provided on

the cover sheet hereto, which should be removed prior to distribution of this decision. FERPA, 20 USC §1232g; and IDEA §617(c).

ISSUES PRESENTED

The issues presented in this due process hearing, as identified by the parties in the prehearing conference and the prehearing memorandum, are as follows:

1. Are the parents entitled to reimbursement for a unilateral private placement?

   A. Did Respondent deny a free and appropriate public education to the student?

   B. Was the private school selected by the parents appropriate?

   C. Do the equities favor reimbursement to the parents?

2. Did Respondent violate its child find duty?

3. Did Respondent fail to evaluate the student in all areas of suspected disability?

4. Did Respondent deny FAPE to the student by failing to provide extended school year services?

FINDINGS OF FACT

Based upon all of the evidence in the record, the hearing officer makes the following findings of fact:

1. The student's date of birth is January 29, 2006 (R-1, p.38). (References to exhibits shall hereafter be referred to as "P-1," etc. for the Petitioner's exhibits; "R-1," etc. for the Respondent's exhibits; references to testimony at the hearing is hereafter designated as "T".)

2. The student was born at 28 weeks gestation with a birth weight of two pounds six ounces following a pregnancy complicated by a maternal bacterial infection and water breaking. The student remained in the hospital for 40 days post-delivery due to related complications. (P-2A)

3. Shortly after the student's birth, the student's mother had a severe case of meningitis. As a result she has some problems with her memory to this day. (T of mother)

4. The student received services from West Virginia Birth to Three, the West Virginia IDEA Part C provider. The student was released from the West Virginia Birth to Three program because he met the goals contained on his Individualized Family Service Plan. (T of father; T of Petitioner's speech language pathologist)

5. Children who are released from the West Virginia Birth to Three program are not referred to school districts, such as Respondent, as potential special education students. (T of Respondent's special education director)

6. Respondent's child find program includes the following outreach activities: respondent places advertisements in a magazine called *OV Parent* that is given to students and placed in doctors' offices and grocery stores in the area and is available free of charge. Respondent runs advertisements in the newspaper for screenings concerning possible developmental delays. Respondent works with outside agencies such as Starting Point/Parents as Teachers, and Head Start, and it receives referrals from within the school system. Respondent conducts a back-to-school fun fair that is attended by thousands of people every year and provides information about screenings. (T of Respondent's special education director)

7. The student was referred to Respondent on February 17, 2009 as a potential special education student by Starting Points/Parents as Teachers, a grant funded agency that works with parents. The parents' oral consent to the evaluation was noted on the referral form. (T of Respondent's special education director; R-1 pp. 4-5)

8. Respondent's preschool special needs teacher received the referral concerning the student on February 24, 2009. On February 24, 2009, Respondent's

preschool special needs teacher scheduled a meeting of the student assistance team for the student for March 13, 2009. (R-1, pp. 5-9)

9. On March 13, 2009, the student assistance team for the student met. Attending the meeting were Respondent's school psychologist, two of Respondent's speech therapists, two of Respondent's preschool teachers, the Parents as Teachers worker who was working with the student, and both of the student's parents. (R-1, pp. 10-11)

10. The SAT conducted observations of the student on March 13, 2009 and determined that the student would be evaluated for occupational therapy and that a recent speech language evaluation of the student be reviewed. (R-1, pp. 10-11)

11. On March 20, 2009, Respondent's occupational therapist conducted an evaluation of the student. The occupational therapist recommended that the student receive occupational therapy to address his deficits.(R-1, pp. 18-20; T of Respondent's occupational therapist)

12. On March 20, 2009, Respondent's speech language pathologist reviewed a recent speech language evaluation for the student that had been conducted by Easter Seals on March 12, 2009, as well as information from the parents. Respondent's speech language pathologist concluded that the student had a need for speech language therapy. (R-1, p. 17)

13. The Respondent convened an eligibility committee meeting for the student on March 27, 2009. Present at the meeting were both parents, the Parents as Teachers worker for the student, Respondent's school psychologist, Respondent's speech therapist, Respondent's two preschool teachers, and Respondent's occupational therapist. At the March 27, 2009 meeting, the eligibility committee determined that the student was eligible for special education and related services as a preschool special needs student with developmental delays and it was determined that he would receive occupational therapy and speech language as related services at Respondent's preschool (R-1, pp. 15-16; T of Respondent's special education director).

14. On April 1 and 2, 2009, Respondent's preschool staff sent by e-mail to the parents a number of proposed goals and objectives to be included in the student's IEP. (R-1, pp. 43-44)

15. On April 6, 2009, the student's IEP team met. In attendance at the meeting were both parents, Respondent's occupational therapist, Respondent's school psychologist, the student's Parents as Teachers worker, Respondent's speech therapist, and Respondent's transportation director. The IEP developed on that date included a determination that the student needed extended school year services. The parents checked the box indicating that they accepted the extended school year services. The IEP includes detailed present levels of performance for the student and a number of

objectives and goals for the student's educational program. The IEP calls for direct instruction in the special education environment three times per week at 720 minutes, as well as 60 minutes per week of speech language therapy and 30 minutes per week of occupational therapy and special transportation for the student. The IEP provides that the student will receive his IEP in a separate special education class. Both parents signed the April 6, 2009 IEP indicating consent for the initial special education placement. The parents informed the IEP team at the April 6, 2009 meeting that the student was to be evaluated at Children's Hospital in Pittsburgh during the month of May. (R-1, pp. 22-32)

16. April 20, 2009 was the student's first day of school at Respondent's preschool, School No. 1. (R-1, p. 45)

17. During May of 2009, Respondent's autism consultant, who is a board certified behavioral analyst, observed the student in Respondent's preschool classroom. Respondent's autism consultant met with the student's mother at this time and discussed the student. (T of Respondent's autism consultant; T of respondent's special education director)

18. The student made progress in Respondent's preschool program. In particular, he gained independence and demonstrated the ability to follow directions and he made advances in parallel play. He showed improvement and responded well to the structure and interventions used.(R-1, p. 51; P-2A)

19. On May 13, 2009, the student was evaluated by Children's Hospital of Pittsburgh. During the evaluation, the psychologist administered structured play activities intended to assess certain social and communicative behaviors from the Autism Diagnostic Observation Schedule. In addition, the psychologist administered a child behavior checklist completed by the parents and reviewed a report from the student's teacher, and had the parents complete a social communication questionnaire. The psychologist concluded that the student had global developmental delay and provided a diagnosis of autistic disorder. The psychologist also suggested ruling out attention deficit hyperactivity disorder. The report of the evaluation notes that the student "...has been responding well to the structure and interventions in the school setting, and both parents and teachers have noticed improvement in the very brief time he has been there." The evaluator recommended strongly that the student continue to receive special education, and stated that the student needs occupational therapy and speech therapy. The evaluator recommended that it was important that the student's intervention plan ensure social interaction needs are met on an ongoing basis, that the student needed regular opportunities to develop social skills and experience social successes as an integral part of a structured educational program. The evaluator recommended that applied behavior analysis or discrete trial training be considered as a teaching approach for the student. (P-2A)

20. The parents sent a letter to Respondent on April 14, 2009 requesting an IEP meeting to discuss extended school year services. The parents stated the student was eligible to receive extended school year services. The April 6, 2009 IEP provided that the student would receive extended school year services (R-1, pp. 63 and 23)

21. An IEP meeting was convened on May 29, 2009 for the student. Present at the meeting were the student's father, the student's preschool teacher, the speech therapist of Respondent, and Respondent's school principal, who served as chairperson. The parents had requested that the Respondent's special education director be present for the meeting, but he was unavailable on the date that the meeting was scheduled and the parents opted to go ahead without the special education director rather than reschedule the meeting. At the IEP team meeting, the team considered the evaluation of the student by the Pittsburgh Children's Hospital on May 13, in which he was diagnosed with an autistic disorder. The student's father raised concerns at the meeting concerning whether occupational therapy should be a critical skill for purposes of extended school year programing. (R-1, pp. 70-80; T of father; T of Respondent's former special education director)

22. The student received extended school year services during the summer of 2009 that included occupational therapy and speech language therapy, as well as classroom instruction at Respondent's preschool, School No. 1. (R-1, p. 81; R-2; T of father; T of Respondent's special education director)

23. On approximately June 3, 2009, the parents sent a memo to Respondent. The memo requested an additional IEP team meeting for the student. The memo notes that the student made progress in speech and in motor control but states that the improvements were limited. Respondent proposed several dates for IEP team meetings at which the then current special education director could be present, but none of them were convenient for the parents. (R-1, pp. 82-87; T of father)

24. In response to the parent request, the student's IEP team meeting convened on June 18, 2009. Present at the meeting were both parents, the student's preschool teacher, the Parents as Teachers worker for the student, Respondent's speech therapist, Respondent's occupational therapist, and Respondent's school principal, who served as chairperson. At the IEP team meeting, the speech therapy and occupational therapy to be received by the student during extended school year was discussed, as well as the summer school program attended by the student. (R-1, pp. 88-93)

25. Respondent's autism consultant is a board certified behavior analyst, and a national consultant on autism programming. He has a doctorate in education/neurotypical development. He works for a number of school districts across the country, including districts in New Jersey, Texas, Louisiana, New York and West Virginia, concerning autism and programming. He has written or coauthored

two books and eleven articles on autism. He has given scores of presentations on autism and related topics (R-5; T of Respondent's autism consultant)

26. Respondent's autism program developer is a board certified behavior analyst and a consultant to Respondent. She has a masters degree in child clinical psychology. (T of Respondent's autism program developer)

27. Petitioners' speech language therapist expert is not a board certified behavior analyst. She has a bachelors degree in speech language science. She has had experience providing applied behavior analysis services to students with autism at School No. 3, and she has had training through the Lovaas Institute. (T of Petitioners' speech language therapist)

28. Respondent's autism consultant provided Respondent with a variety of discrete trial training programs and a developmentally based menu for selecting appropriate programs for individual student needs. (T of Respondent's autism consultant)

29. Under the supervision of Respondent's autism consultant, Respondent's autism program developer, in conjunction with a team including the student's preschool teacher, the student's speech language therapist and Respondent's school psychologist, prepared a program book for the student involving discrete trial training for the program at School No. 2. Respondent's autism program developer trained the

autism teacher and autism mentor who would work with the student at School No. 2 in discrete trial training. (T of Respondent's autism program developer)

30. During the 2009 summer school program attended by the student, Respondent utilized the discrete trial training method to instruct the student. (R-2; T of Respondent's autism consultant)

31. On August 17, 2009, Respondent's occupational therapist who was working with the student made an entry into her notes stating, "teacher reports parents trying to get waiver program and then will enlist/enroll at (School No. 3)." (R-2, p. 6; T of Respondent's occupational therapist)

32. On August 31, 2009, the student's father met with Respondent's preschool teacher to discuss the program at School No. 2. The student's father agreed to have the student attend said program for the coming school year. (R-1, p. 94; T of father)

33. On August 31, 2009, the student's IEP was amended by agreement of the parents and Respondent. The only change to the IEP was that the student was to receive four days of school per week at School No. 2 totaling 1,200 minutes, plus 90 minutes per week in the home environment. The parents agreed to this amendment to the student's IEP. The parents and Respondent discussed an October IEP team meeting at this time. (R-1, p. 95; T of father; T of Respondent's special education director)

34. On September 8, 2009, the student began attending the applied behavior analysis preschool program at School No. 2, along with two other students. (T of Respondent's special education director; T of Respondent's teacher at School No. 2; R-3)

35. The program at Respondent's School No. 2 primarily used discrete trial training as a methodology. (R-3; T of Respondent's autism expert)

36. Applied behavior analysis (ABA) involves three components. "Applied" includes the evidence-based strategies to be used with certain populations. "Behavior" looks at the social behavior of people and changing that behavior. The "analysis" part looks at measurable outcomes and data to support the applied part. ABA can be used with gamblers or weight loss or with organizational management. Discrete trial training is a method or strategy of applied behavior analysis. Discrete trial training works well with some but not all children on the autism spectrum. (T of Respondent's autism consultant)

37. The ABA preschool program at Respondent's School No. 2 included a teacher who was certified in autism and an autism mentor. A typical day for the student at School No. 2 would include learning to properly hang up coats; circle time where students would gather together; four hours of discrete trial training by one-on-one instruction, including work on generalization of skills being acquired; lunch and recess with neurotypical peers; playtime and use of a visual schedule. The program

utilized ABA methodology during most of the school day. The program at School No. 2 included frequent visits to regular education preschool classrooms for interaction with neurotypical peers. An important part of the program was a weekly home visit by the autism teacher and autism mentor, which included parent training on discrete trial training as well as discussion of the child's progress. (T of Respondent's teacher at School No. 2; T of Respondent's autism mentor at School No. 2; T of Respondent's special education director; R-3)

38. In order to ensure the accuracy of the data collected during its discrete trial training program, Respondent utilized interrater reliability checks. During this process, two staff members compared data collected for discrete trial training responses. A comparison is made to ensure that the ratings of the child's responses are reliable. (T of Respondent's autism program developer; T of Respondent's autism consultant; T of Respondent's teacher at School No. 2)

39. The student was making good progress at Respondent's School No. 2 in August of 2009. He was the most successful of the three children in his class at the ABA preschool program at School No. 2. He made nice progress in occupational therapy. (T of Respondent's teacher at School No. 2; T of Respondent's autism mentor at School No. 2; T of Respondent's occupational therapist; T of Respondent's autism program developer; T of Respondent's autism consultant; R-3)

40. On September 29, 2009, the student's parents signed a contract with a private school, School No. 3. The tuition at the private school is $3,000.00 per month. As of the date of the hearing, the parents owed $98,438.00 to School No. 3. (P-3A; P-4; T of father)

41. The program at School No. 3 involves 30 to 35 hours per week of intensive discrete trial training in a one-on-one environment. The program provides year-round services. The program at School No. 3 does not involve any interaction with neurotypical peers. The student receives no occupational therapy or speech language therapy at School No. 3. The student has attended School No. 3 from October 19, 2009 through the present. (P-1; P-3; P-4; T of father; R-4, p. 51)

42. On October 5, 2009, the student's father dropped off a letter at Respondent stating that he was providing the Respondent with ten days prior written notice that the parents were withdrawing the student and placing him in School No. 3. (R-4, p. 25)

43. On October 12, 2009, Respondent's then special education director sent a letter to the student's parents expressing a desire to work with the parents concerning their areas of concern. The letter includes a request to have the Respondent's autism consultant evaluate the student and offer any observations and recommendations that he may have. Said letter also included a notice of an IEP team meeting for October 26, 2009 and a statement that Respondent's autism consultant

would be invited to attend the meeting and assist in preparation, review and revision of the student's IEP as appropriate. (R-4, p. 26)

44. On October 13, 2009, Respondent's autism consultant observed the student at the ABA preschool program at School No. 2 as a part of a long-scheduled visit to Respondent. (R-1, pp. 126-128; T of Respondent's autism consultant)

45. In response to the letter from the former special education director of Respondent, the parents returned the evaluation request form with the box "do not evaluate/reevaluate the student" checked. In addition, in a letter received by Respondent on October 20, 2009, the student's father declined Respondent's request to conduct an evaluation of the student and declined to attend the October 26th IEP team meeting. (R-4, pp. 27-28)

46. Although the October 26, 2009 IEP team meeting did not occur because the parents did not attend, Respondent's staff had prepared a draft IEP for the October 26, 2009 meeting. Said draft IEP was prepared in order to more accurately reflect the program attended by the student at School No. 2. (R-4, pp. 33-50; T of Respondent's special education director)

47. On July 13 and September 19, 2011, the student was evaluated by Nationwide Children's Hospital. The purpose of the evaluation was to determine the student's current developmental status, as well as help for behavior management at school and at home. The parents provided all background information. The report

notes that the student has a long history of inattentive, hyperactive and impulsive behaviors. The evaluator recommends that the student continue individualized and structured applied behavior analysis programming at school as the best chance of leading to an optimal outcome. The evaluator concluded that the student is in the mild to moderately delayed range, including significant symptoms of autism. The evaluator recommended ongoing speech therapy and that the speech therapy be coordinated with his ongoing applied behavioral analysis therapy and school programming. The evaluator makes a similar recommendation for occupational therapy. The report contains additional recommendations concerning home programs, as well as school activities. Said evaluation was conducted well after Petitioners withdrew the student from Respondent's school system and was never shared with the Respondent prior to the due process hearing document exchange. (P-2B; T of father)

48. The parents filed their due process complaint by leaving a copy with Respondent's superintendent of Respondent on October 7, 2011. (T of father)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. The student is a child with a disability for purposes of the Individuals with Disabilities Education Act (hereafter sometimes referred to as "IDEA"), 20 U.S.C. Section 1400 et seq., and he is an exceptional child within the meaning of West Virginia Code Section 18-20-1 et seq., and Policy 2419, Regulations for the Education of Students with Exceptionalities (West Virginia Department of Education – effective January, 2010)(hereafter sometimes referred to as "Policy 2419").

2. The student is entitled to a free appropriate public education (hereafter sometimes referred to as "FAPE") within the least restrictive environment under the meaning of IDEA, 34 C.F.R. Section 300.1 et seq., and Policy 2419, Chapter 1.

3. In order to receive reimbursement for tuition for a unilateral private school placement, three elements must be established by the evidence in the record: 1) that the school district has denied FAPE to the student or otherwise violated IDEA; 2) that the parent's private school placement is appropriate; and 3) that equitable factors do not preclude the relief. School Committee Town of Burlington v. Department of Educ., 471 U.S. 359, 105 S. Ct. 1996, 103 L.R.P. 37667 (U.S. 1985); Florence County School District Four v. Carter, 510 U.S. 7, 114 S. Ct. 361, 20 IDELR 532 (U.S. 1993); Forest Grove Sch. Dist. v. T. A., 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (U.S. 2009)

4. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public

education to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA") and an analysis of whether the Individualized Educational Plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable a child to receive educational benefit. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); School Board of Henrico County v. Z.P., 399 F.3d 298, 42 IDELR 299 (Fourth Cir. 2005); Strum v. Bd. of Educ. of Kanawha County, 51 IDELR 192 (W. Va. S. Ct. December 2, 2008)(Purposes of Policy 2419 similar to IDEA); Student with a Disability 111 LRP 40554 (SEA W.Va. May 31, 2011).

5. IDEA does not require the very best education possible for a child with a disability. Instead, all that is required is that the basic floor of educational opportunity be provided. Rowley, supra; Sumter County Sch Dist A v. Heffernan ex rel TA, 642 F.3d 478, 56 IDELR 186 (Fourth Cir. April 27, 2011) Bd. of Educ. of the County of Marshall v. J.A. by Mark A. and Fran A., 56 IDELR 209 (N.D. W.Va. March 31, 2011); District of Columbia Public Schs 111 LRP 24663 (SEA DC January 15, 2011).

6. A court or hearing officer may reduce or deny reimbursement for tuition for a unilateral placement in a private school if prior to removal of the student from

public school, the school district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation. Policy 2419, Chapter 8, Section 4(B)(1); IDEA §612(a)(10)(C)(iii)(II); 34 C.F.R. § 300.148(d)(2).

7. IDEA imposes a "child find" duty upon school districts such as Respondent. Districts must have in place policies to ensure that all children with disabilities who are in need of special education and related services are identified, located and evaluated and that a practical method is developed and implemented to determine children needing special education. IDEA § 612(a)(3); 34 C.F.R. §§ 300.111(a)(c); Policy 2419, Chapter 2. The standard for triggering the child find duty is suspicion of a disability rather than actual knowledge of a qualifying disability. See, Regional School District Board of Educ. v. Mr. and Ms. M. ex rel. MM, 15 IDELR 8 (D. Conn. 2009); Torrance United School District v. E.M., 51 IDELR 11 (M.D. Calif. 2009); District of Columbia Public Schs, 111 LRP 25929 (SEA DC March 25, 2011). Under the West Virginia regulations, a school district has eighty days from the date of parental consent for an initial evaluation to conduct the evaluation and convene the eligibility team. Policy 2419, Chapter 3, section 2A.

8. To the extent that violations of IDEA are procedural violations, they are only actionable when they cause educational harm to the student or seriously impair

the parent's right to participate in the IEP process. IDEA § 615(f)(3)(E)(ii); Gadsby v. Grasmick, 109 F.3d 40, 25 IDELR 621(Fourth Cir. 1997); Lesesne ex rel BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.D.C. Cir. May 19, 2006); District of Columbia Public Schs, 111 LRP 23798 (SEA DC January 28, 2011).

9. A school district such as Respondent is required to evaluate children with disabilities in all areas of suspected disability. IDEA § 614; 34 C.F.R. § 300.304(b)(4); Policy 2419, Chapter3, §4A.

10. Extended school year services are necessary to provide a FAPE only when the benefits a disabled child gains during the regular school year will be significantly jeopardized if he or she is not provided with an extended school year program. J.H. by J.D. and S.S. v. Henrico Co. Sch. Bd., 326 F.3d 560, 38 IDELR 261 (4th Cir. 2003); (MM v. School District of Greenville County, 303 F.3d 523; 37 IDELR 183 (4th Cir. 2002); In re Student with a Disability, 108 L.R.P. 25080 (SEA W. Va. November 12, 2007); Policy 2419, Chapter 5, § H.

11. In the instant case, Respondent has not denied FAPE to the student or otherwise violated IDEA, the federal regulations promulgated thereunder, or Policy 2419.

DISCUSSION

Issue No. 1: Are the parents entitled to reimbursement for a unilateral private placement?

The United States Supreme Court has developed a three-pronged test for cases involving a request for reimbursement for a unilateral private placement by a student's parents. In order to receive reimbursement for unilateral placement, the record evidence must establish three elements: 1) that the school district has denied FAPE to the student or otherwise violated IDEA; 2) that the parent's private school placement is appropriate; and 3) that equitable factors do not preclude the relief. School Committee Town of Burlington v. Department of Educ., 471 U.S. 359, 105 S. Ct. 1996, 103 L.R.P. 37667 (U.S. 1985); Florence County School District Four v. Carter, 510 U.S. 7, 114 S. Ct. 361, 20 IDELR 532 (U.S. 1993); Forest Grove Sch. Dist. v. T. A., 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (U.S. 2009).

As the analysis below reveals, the parents in this case are not entitled to reimbursement for a unilateral placement.

A. Did Respondent deny FAPE to the student?

The United States Supreme Court has established a two-part test for determining whether a school district, such as Respondent, has provided FAPE to a

student with a disability. There must be a determination as to whether the school district has complied with the procedural safeguards as set forth in IDEA and analysis of whether the student's IEP is reasonably calculated to enable a child to receive some educational benefit. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982); see, School Board of Henrico County v. ZP, 399 F.3d 298, 42 IDELR 299 (Fourth Cir. 2005); Strum v. Bd. of Educ. of Kanawha County, 51 IDELR 192 (W. Va. S. Ct. 2008); Student with a Disability 111 LRP 40554 (SEA W.Va. May 31, 2011).

In the instant case, the parents and their witnesses testified that the student's program at Respondent was not reasonably calculated to confer educational benefit. The parents did not allege or identify any substantial procedural violations by the Respondent. In contrast, the testimony of the witnesses called by Respondent was that the program developed for the student by Respondent was reasonably calculated to confer educational benefit.

At the time that the student was withdrawn from Respondent's schools by his parents for purposes of the unilateral placement, he was attending School No. 2. The program he was participating in was designed by a team that was led by Respondent's autism program developer under the supervision of Respondent's autism consultant in conjunction with the student's preschool teacher at School No. 1 and the related

services providers working with him, including an occupational therapist and a speech language pathologist. The program at School No. 2 primarily used the discrete trial training method – a type of applied behavior analysis – to instruct the student. The student received four hours of discrete trial training on each of the four days a week that he was at school. The program also utilized applied behavior analysis during the rest of the school day. Both Respondent's autism program developer, and her supervisor, Respondent's autism consultant, are board certified behavioral analysts. The parents of the student approved of his participation in the program when the program was explained to them by Respondent. The student's parents and Respondent modified the student's IEP by agreement on August 31, 2009 to permit the student to attend the program developed for him by Respondent at School No. 2. It was discussed at that time that there would be a follow-up IEP meeting in October of 2009 to review the student's IEP. In addition to the programming four days a week at school, the program included a weekly home visit by the student's autism teacher and autism mentor. The program also included visits to regular education preschool classrooms so that the students could interact with their neurotypical peers. Respondent included in the student's program interrater reliability checks in order to ensure the accuracy and validity of the data collected during the discrete trial training program.

Although the student was only in Respondent's program at School No. 2 for a short period of time, he was making substantial progress in the program. His teacher testified that he was the most successful of the three children in the program at School No. 2. His autism mentor testified that he progressed a lot while he was in the program. His occupational therapist testified that he made nice progress in occupational therapy during that time. Respondent's autism program developer testified that the student was doing great at School No. 2 and that he was making good progress. Respondent's autism consultant who observed the student twice at Respondent, including once at the program at School No. 2, testified that the student was making progress.

To the extent that the testimony of Respondent's witnesses conflicts with the testimony of the parents' witnesses, it is concluded that the testimony of Respondent's witnesses is more credible and persuasive than the testimony of the parents' witnesses. This conclusion is based upon an observation of the demeanor of the witnesses, as well as the following factors:

The testimony of the student's father on cross-examination was very evasive and combative. In addition, the student's mother candidly admitted during her direct testimony that she has memory problems resulting from a severe illness. Both of these factors diminish the credibility of the parents' testimony.

In addition, the testimony of the parents is impaired by a number of contradictions. For example, despite their testimony that the student did not progress in Respondent's program, the parents informed the psychologist who performed the child development evaluation of the student on May 13, 2009 that the student was responding well to the structure and interventions in the school setting and that they had noticed improvement in the time that he was in Respondent's school system.

In addition, the parents testified that they were optimistic about Respondent's program at School No. 2; however, the parents told one of the student's teachers at Respondent on August 17, 2009 that they had already decided to enroll the student in the private school, School No. 3. The student did not begin the program at School No. 2 until September 7, 2009.

In addition, the parents testified that they received no notice of an IEP team meeting in October 2009 that would include Respondent's autism consultant and that Respondent had ignored their requests to have their autism consultant available to meet with them. However, it was the unrebutted testimony of Respondent's autism consultant and Respondent's current special education director that the autism consultant observed the student in his classroom in May 2009 and talked to the student's mother at that time, and that the October visit by the autism consultant was

scheduled before the May 2009 visit. These contradictions further impair the credibility of the parents and their witnesses.

In addition, the parents presented the testimony of a speech language pathologist to attack the program created by Respondent for the student. The testimony of the parents' speech language pathologist is not as persuasive or credible as the testimony of Respondent's autism consultant and Respondent's autism program developer, both of whom are board certified behavior analysts. Petitioners' speech language pathologist is not a board certified behavior analyst. Moreover, the testimony of Petitioners' speech language pathologist was impaired by the fact that most of her testimony dealt with autistic children in general, rather than the unique individual needs of this particular student. For example, she testified that no child with autism could learn in a classroom with other autistic children present.

The parents, in their post-hearing filings, attack the testimony of Respondent's autism consultant as biased because he helped design the program at School No. 2 and, therefore, had a vested interest in defending the program. This argument is rejected. Respondent's autism consultant is a nationally recognized expert in autism programs for children, and he has outstanding credentials. He contracts with numerous school districts in the United States concerning autism programs. He has written or coauthored two books and numerous articles on the topic. He has also

given scores of presentations on autism and related topics. His demeanor was credible during his testimony, and he has not demonstrated any signs of bias. In addition, the other evidence in the record supports his conclusion that the student's program at School No. 2 was reasonably calculated to, and did, provide educational benefit for the student. The parent's argument that Respondent's autism consultant is biased is rejected.

Moreover, the testimony of Respondent's witnesses concerning the progress made by the student is corroborated by the documentary evidence in the record. Both the extensive documents concerning the discrete trial training program that the student attended at School No. 2 and the report of the student's strengths issued by his preschool teacher at School No. 1 show that the student was making substantial progress under the educational program provided to him by Respondent.

For all of these reasons, the testimony of Respondent's witnesses is determined to be more credible and persuasive than the testimony of Petitioners' witnesses.

When boiled to its essence, it appears that the argument being put forth by the parents and their witnesses is that the education that the student receives at the private school, School No. 3, is better than that offered by the Respondent. The student's mother testified to this proposition. The parents' expert speech language pathologist testified concerning the potential of children with autism. While it is

understandable that well-meaning parents want the very best education possible for their child, IDEA does not require this much of the school district. A school district is not required to maximize the potential of students with disabilities or provide the best education possible. Instead, all that is required is that the basic floor of educational opportunity be provided. Rowley, supra; Sumter County Sch Dist A v. Heffernan ex rel TA, 642 F.3d 478, 56 IDELR 186 (Fourth Cir. April 27, 2011) Bd. of Educ. of the County of Marshall v. J.A. by Mark A. and Fran A., 56 IDELR 209 (N.D. W.Va. March 31, 2011) (which found credible and persuasive in that case the testimony of Respondent's autism program developer in this case); District of Columbia Public Schs, 111 LRP 24663 (SEA DC January 15, 2011).

The other theme that emerged from the parents' testimony was that they clearly felt disrespected by the staff of Respondent. The father testified, for example, that he was upset more by the adversarial nature of certain dealings with Respondent than any specific component of the student's education. The father testified that certain particular employees of Respondent were respectful of the parents, implying that others were not. In particular, the father became emotional during his testimony when he described a "crappy look" given to him by the student's first pre-school special needs teacher at School No. 1 when he told her that he had prayed for God to touch his son and cure his autism. Perhaps this testimony describes a very bad and

unproductive relationship between the parents and school staff. It does not, however, constitute a denial of FAPE.

Accordingly, it is concluded that the educational program provided by Respondent to the student was reasonably calculated to, and in fact did, confer educational benefit upon the student. Accordingly, it is concluded that Respondent provided FAPE to the student. Therefore, the parents' request for reimbursement must be denied.

B. Is the parents' private school appropriate?

The second prong of the analysis in a unilateral placement case involves an analysis of whether the private school at which the parents unilaterally placed the student is appropriate.

In the instant case, the parents placed the student in a private school, School No. 3. The educational program provided by School No. 3 is similar to that provided by Respondent in that it focuses upon discrete trial training as the primary methodology. The student's father testified, however, that School No. 3 provides no occupational therapy or speech language therapy for the student as related services. It is abundantly clear from the record that the student needs both speech language therapy and occupational therapy as related services. Because the private school

selected by the parents fails to meet the student's individual needs, it is not appropriate. Accordingly, it is concluded that the record evidence reveals that the private school selected by the parents for the unilateral placement of the student is not appropriate. Reimbursement for the unilateral placement must be denied.

C. Do the equities favor reimbursement?

The third prong of the analysis in a unilateral placement case involves an analysis of whether the equities, based upon the facts and circumstances of the particular case, justify reimbursement.

In the instant case, Respondent raises as an affirmative defense, an allegation that the parent did not make the student available for evaluation. A court or hearing officer may reduce or deny reimbursement for a unilateral placement in a private school if prior to removal of the student from public school, the school district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation. Policy 2419, Chapter 8, Section 4(B)(1); IDEA § 6212(a)(10)(C)(iii)(ii); 34 C.F.R. § 300.148(d)(2).

In the instant case, the unrebutted evidence presented by Respondent was that the student's father notified Respondent in writing on October 5, 2009 that the parents intended to withdraw the student from Respondent's school system and place him at School No. 3. On October 12, 2009, the then current special education director of Respondent sent a letter to the student's parents requesting that the student be evaluated by an autism expert to offer any observations and recommendations that he may have. The autism expert is Respondent's autism consultant. The parents notified the Respondent in writing both by returning the evaluation consent form marking the box "do not evaluate the student" and by letter on October 20, 2009 stating that the parents declined the request by Respondent to conduct an evaluation of the student. On October 19, 2009, the student began attending the private school, School No. 3.

The request for evaluation was reasonable and appropriate in view of the parents' decision to remove the student from Respondent's school system. Respondent was offering the parents an opportunity to receive more information concerning the student's educational needs and to incorporate the information into his IEP where appropriate. The parents did not offer any good reason for refusing to let Respondent's autism consultant evaluate the student at that time.

Accordingly, even assuming arguendo that the parents were entitled to reimbursement under the analysis above, the reimbursement would be subject to a substantial reduction in view of the fact that the parents refused to permit Respondent to have their autism consultant evaluate the student.

In addition, the equities do not favor reimbursement because the parents did not give Respondent's program at School No. 2 a chance. Indeed, the documentary evidence in the record, as well as the testimony of Respondent's occupational therapist, demonstrates that the parents told one of the student's teachers at Respondent on August 17, 2009 that they were going to enroll the student at School No. 3, the private school at which they eventually unilaterally placed the student. The student did not begin the program at School No. 2 until September 8, 2009. Also, the parents signed a contract with School No. 3 on September 29, 2009, just three weeks into School No. 2's program. Thus the parents announced their intention of placing the student at School No. 3 before the program at School No. 2 began, and signed an actual contract with School No. 3 just three weeks after Respondent's program had begun. It is clear from the evidence in the record that the parents had no intention of giving the new program at School No. 2 of Respondent a chance to succeed. It must be concluded that the parents intended to enroll the student in the private school, School No. 3, all along. See, JS & AG ex rel JG v. Scarsdale Union Free Sch Dist, 58 IDELR 16 (S.D. N.Y. November 18, 2011) (reimbursement reduced where parents

made the decision to place the student in a private school before the public school program was determined.) The balancing of the equities in this case does not favor reimbursement.

Based upon all three elements of the analysis, the parents' request for reimbursement for the unilateral placement must be denied.

Issue No. 2: Did Respondent violate its child find duty?

It is noted at the outset that the child find issue raised by the parents would seem to be well beyond the two-year statute of limitations period applicable to IDEA cases. Although Respondent raised the statute of limitations as an affirmative defense in its response to the complaint, Respondent did not mention the statute of limitations affirmative defense in its post-hearing brief. Accordingly, it is concluded that Respondent has waived the statute of limitations as an affirmative defense in this case.

In this case, the student was in the West Virginia Birth to Three program prior to becoming a student at Respondent. West Virginia Birth to Three is the IDEA Part C provider in West Virginia. The student was dismissed from the West Virginia Birth to Three program prior to his second birthday because he met all of the goals on his Individualized Family Service Plan. The unrebutted testimony of Respondent's

special education director was that students who are not being served by the Part C program are not referred to Respondent as potential special needs children. Accordingly, Respondent was not alerted to the fact that the student was served under the Part C program. The parents' contention that Respondent should have known of the student's disability because of their participation in the West Virginia Birth to Three program is rejected.

Respondent makes substantial efforts to comply with its child find duty. In addition to receiving referrals from other agencies, Respondent places advertisements in a magazine that is given to Respondent's students and placed in doctors' offices and grocery stores. Respondent also places advertisements in local newspapers for child screenings. In addition, Respondent has a back-to-school fun fair every year with information about child screenings available at the fair.

In the instant case, the student was referred to Respondent through the Parents as Teachers program on February 17, 2009. The parents' consent was included on the referral form on the same date. Parents as Teachers is a grant-funded agency that serves parents. It is not a Part C provider under IDEA. Respondent scheduled a meeting of the student assistance team for the student for March 13, 2009. The meeting was scheduled on February 24, 2009, the same date that Respondent's preschool teacher received the form. Respondent then conducted an observation of

the student, as well as an occupational therapy evaluation. In addition, Respondent's speech language pathologist reviewed a recent speech language evaluation of the student. On March 27, 2009, the student's eligibility committee met and the student was determined to be eligible for special education and related services.

It appears that Respondent appropriately reacted to the referral regarding the student and properly observed its child find duty with regard to the student. Respondent conducted the evaluation and eligibility meeting well within the eighty days from the date of consent it was allowed under the West Virginia regulations. Policy 2419, Chapter 3, §2A. Accordingly, it is concluded that Respondent has not violated its child find responsibilities with regard to the student.

In their posthearing filings, the parents contend that Respondent violated Policy 2419, Chapter 2, §3(D) which requires an SAT to conduct a review meeting within ten school days of receipt of a written referral. In this case the documentary evidence shows that the referral for the student was received on February 24, 2009. There is no evidence in the record concerning Respondent's school calendar for school year 2008-2009, so it is impossible to determine whether the subsequent actions were timely. Assuming that there were no school holidays or snow days during the relevant period, in this case the SAT team meeting would have been due by approximately March 10, 2009. The SAT team met on March 13, 2009. Thus, the

meeting may have been up to three days late under the regulation quoted above. To the extent that the SAT meeting may have been late, this would constitute a procedural violation. A procedural violation of the Act is only actionable under IDEA if there has been resulting educational harm or a serious impairment of the parents' right to participate in the process. IDEA § 615(f)(3)(E)(ii); Gadsby v. Grasmick, 109 F.3d 40, 25 IDELR 621(Fourth Cir. 1997); Lesesne ex rel BF The District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.D.C. Cir. May 19, 2006); District of Columbia Public Schs, 111 LRP 23798 (SEA DC January 28, 2011). In the instant case, to the extent that there may have been a procedural violation, there is no evidence showing educational harm to the student or serious impairment to the parents' right to participate as a result of the late SAT meeting. Accordingly, there is no actionable procedural violation, even if the meeting was late.

One matter raised by the parents with regard to this issue is rather troubling, however. Petitioner presented the testimony of the parents, as well as an acquaintance of theirs who attended the observation of the student with them. The acquaintance mainly attended for purposes of moral support. The acquaintance, and the parents, testified that at the meeting where the observation took place, a representative of Respondent made a statement to the effect that there was no room for the student in Respondent's special needs program. This would an egregious violation of the law if the student had been excluded from special education for this

reason. However, the record evidence indicates that the student was determined eligible for special education and related services and that he began attending Respondent as a special education student after his April 6, 2009 IEP was developed. Given the fact that the student was not excluded from special education and related services because of a lack of room or for any other reason, the argument raised by the parents is moot. It is concluded, by virtue of the fact that the student was accepted as a special education student and provided with an IEP, that the parents and their acquaintance must have misunderstood the statement made. It goes without saying that refusing to provide special education based upon space limitations is a gross violation of IDEA. It is concluded that that did not happen here.

Respondent has not violated its child find duty.

Issue No. 3: Did Respondent fail to evaluate the student in all areas of suspected disability?

It is noted at the outset that the evaluation issue raised by the parents would seem to be well beyond the two-year statute of limitations period applicable to IDEA cases. Although Respondent raised the statute of limitations as an affirmative defense in its response to the complaint, Respondent did not mention the statute of limitations affirmative defense in its post-hearing brief. Accordingly, it is concluded

that Respondent has waived the statute of limitations as an affirmative defense in this case.

A school district such as Respondent is required to evaluate students in all areas of suspected disability. IDEA § 6149b)(3); 34 C.F.R. 300.304(b)(4); Policy 2419, Chapter3, §4A.

In this case, the parents argue that Respondent conducted only an observation of the student before beginning his educational program. The parents' assumption in this regard is not correct. The record evidence reveals that Respondent also conducted an occupational therapy evaluation of the student and reviewed a recent speech language evaluation of the student that was performed by Easter Seals. In addition, the record is clear that when the parents provided Respondent with a copy of the report of the child development evaluation conducted by a psychologist that diagnosed the student as having autism, that Respondent duly considered said report.

The parents argue in their posthearing filings that Respondent did not consider the evaluation report they submitted from Children's' Hospital in Pittsburgh. In support, they allege that Respondent did not create an applied behavior analysis program, the only teaching recommendation contained in the report. Said evaluation provided the diagnosis of autism for the student and recommended applied behavior analysis for the student.

This argument misses the point. First, an evaluator cannot simply prescribe a program or methodology for a student with a disability; these are IEP team decisions. Marshall Joint Sch Dist No 2 v. CD by Brian & Traci D, 616 F.3d 632, 54 IDELR 307 (7th Cir 2010); County Sch Bd v. Z.P., 399 F.3d 298, 42 IDELR 229 (Fourth Cir 2005); District of Columbia Public Schs, 111 LRP 76506 (SEA DC September 23, 2011). Second, and more importantly, Respondent created and implemented a program for the student at School No. 2 employing applied behavior analysis and discrete trial training methodologies. Despite the argument in the parents' brief, Respondent provided exactly what the parents' evaluator had recommended. It is clear from the record evidence that Respondent considered the evaluation supplied by the parents.

In their posthearing filings, the parents also argue that the student should have received four specific evaluations from Respondent: a hearing test; an IQ test; psychological testing and an ADOS (Autism Diagnostic Observation Schedule). It is difficult to understand the parents' argument concerning the hearing evaluation. The parents' own expert speech pathologist testified that the student has no hearing problems. This argument has no relevance to the facts of this case or to this child.

Concerning IQ testing, Respondent's special education director provided persuasive and credible testimony that such testing is inappropriate for young children

with autism. IQ testing for such children could provide false scores indicating that a child may have a mental impairment when in fact he has autism. Respondent did not violate the law by failing to conduct IQ testing of the student.

As to the other two evaluations listed by the parents, the parents had the student evaluated by a psychologist at Children's Hospital in Pittsburgh on May 13, 2009. The testing by the psychologist included an assessment of behaviors from the ADOS according to the report of the evaluation. Thus, the evaluation was a psychological evaluation that included the ADOS. The parents have stated no reason why Respondent could not consider and rely upon the report of their own psychologist. There was no reason for Respondent to repeat the evaluation already provided by the parents. The parents' arguments that the student was not appropriately evaluated are rejected.

It is clear from the record evidence that Respondent properly evaluated the student, and that subsequent to the evaluations, the student received appropriate special education and related services from Respondent. Respondent did not commit any violation of IDEA by failing to properly evaluate the student.

Issue No. 4: Did Respondent deny FAPE to the student by failing to provide extended school year services?

It is noted at the outset that the extended school year issue raised by the parents would seem to be well beyond the two-year statute of limitations period applicable to IDEA cases. Although Respondent raised the statute of limitations as an affirmative defense in its response to the complaint, Respondent did not mention the statute of limitations affirmative defense in its post-hearing brief. Accordingly, it is concluded that Respondent has waived the statute of limitations as an affirmative defense in this case.

One of the continuing themes in the testimony of the student's father was that he resented Respondent's decision to not designate certain items on the student's IEP as critical skills. It is difficult to understand this argument because the record is clear that the student was permitted to participate in, and did in fact participate in, extended school year services and that he also received speech language therapy and occupational therapy over the summer in 2009. Accordingly, it must be concluded that any issue concerning extended school year services is mooted by virtue of the fact that the student received extended school year services and appropriate related services over the summer.

One item raised by the testimony of the parents in this regard requires further discussion. The parents testified that Respondent's occupational therapist said at the IEP team meeting concerning extended school year services that Respondent's personnel were not allowed to give related services to students during the summer. If this statement were true, the result would be a serious violation of the special education laws. The statement was denied in the testimony of Respondent's occupational therapist and the testimony of Respondent's witnesses is more credible and persuasive than the testimony of Petitioner's witnesses in this case. See discussion of credibility contained in the discussion of Issue No. 1 above. Thus, it is concluded that the statement was either not made or else was misunderstood by the parents. Moreover, even if the statement were made, no harm resulted from it in this case because the student received both extended school year services and related services over the summer in 2009. It is concluded that Respondent has not committed any violations of the law concerning extended school year services with regard to the student.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that all relief requested by the instant due process complaint is hereby denied, and that the complaint filed herein is dismissed with prejudice.

APPEAL RIGHTS

Any party aggrieved by the findings and decisions made herein has a right to bring a civil action in any state court of competent jurisdiction within ninety (90) days from the date of the issuance of the hearing officer's decision, or in a district court of the United States. Policy 2419, Chapter 11, § 3(N); IDEA §615(i)(2)(B); 34 C.F.R. §300.516(b).

ENTERED: March 6, 2012

James Gerl, Certified Hearing Official
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing DECISION by placing a true and correct copy thereof in the United States mail, postage prepaid, addressed as follows:

Jay and Gretchen Hercules
1210 Garfield Street
McMechen, WV 26040

Richard Boothby, Esquire
Bowles, Rice, McDavid, Graff & Love
501 Avery Street
Parkersburg, WV 26101

On this 6th day of March, 2012

James Gerl, Certified Hearing Official
Hearing Officer

SCOTTI & GERL
216 S. Jefferson Street
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