

*This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

**PENNSYLVANIA**

**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: J.M.  
ODR #6145/05-06 AS

Date of Birth: xx/xx/xx

Dates of Hearing:  
January 18, 2006 – 4:00 to 8:30 pm  
February 15, 2006 – 4:00 to 7:30 p.m.  
February 22, 2006 – 4:00 to 7:30 pm

CLOSED HEARING

Parties to the Hearing:  
Parent

Mr. John Murphy  
School District of Philadelphia  
1100 East Mt. Pleasant Avenue, Ground Floor  
Philadelphia, Pennsylvania 19150

Representative:  
David Painter, Esquire  
McAndrews Law Offices  
30 Cassatt Avenue  
Berwyn, Pennsylvania 19312

Deborah DeLauro, Esquire  
Office of General Counsel  
440 North Broad Street  
Philadelphia, Pennsylvania 19130

Date Transcript Received:

February 27, 2006

Date of Decision:

March 6, 2006

Hearing Officer:

Linda M. Valentini, Psy.D.

## Background

Student is a [preteenaged] eligible student residing in the School District of Philadelphia (hereinafter District) and enrolled in the [Redacted] School, a private school for students with learning disabilities. Although Student's mother, (hereinafter Parent) sent Student to and paid tuition for private schools from Pre-Kindergarten on, following a parentally-funded independent evaluation that found that Student had a learning disability the Parent sought an evaluation through the District to explore what the District had to offer Student. The District evaluated Student and produced a report in a timely manner in accord with statutory requirements, albeit after the Parent had already placed Student in the private school. The original IEP meeting, at which a draft IEP was presented, was aborted as the District did not have essential personnel present. The Parent asked that, rather than requiring her attendance at another IEP meeting, the District provide her with a finalized IEP for her review. Although the District had made some changes to the draft IEP available at the first IEP meeting the District did not hold an IEP meeting in the Parent's absence to complete the IEP. Instead, an IEP that the District's attorney characterized in writing as a draft IEP was mailed to the Parent.<sup>1</sup> The District contends that this IEP represents the offer of a free, appropriate public education (FAPE) to Student; the Parent contends that the IEP is inappropriate and requests tuition reimbursement<sup>2</sup> for the 2005-2006 year at the private school.

## Issues

1. Did the School District offer Student a free, appropriate public education?
2. If the School District did not offer Student a free, appropriate public education is the placement unilaterally selected by the Parent appropriate?
3. If the School District did not offer Student a free, appropriate public education and the parentally-selected placement is appropriate, are there equitable considerations that would affect the amount of the District's liability for tuition reimbursement?

## Findings of Fact

1. Student is an eligible student residing in the School District.

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<sup>1</sup> P-16

<sup>2</sup> Through her counsel, the Parent has informed the District that she has applied for various scholarships to fund the child's tuition. She has not yet secured any funding through these sources. The parties are in agreement that any hearing officer award of tuition reimbursement by the District will cover only the actual amount, if any, that the Parent ultimately pays from her personal funds, that is, the amount that is not reimbursed or otherwise provided by a third party. (NT 430-431)

2. Student attended regular education private schools (Pre-Kindergarten at [Redacted] School, Kindergarten through 3<sup>rd</sup> grade at [Redacted] School) and a special education private school ([Redacted] School) beginning in 4<sup>th</sup> grade. These educational placements were funded by the Parent. (P-9)
3. In mid through late April 2005, Student's 6<sup>th</sup> grade year<sup>3</sup> at [Redacted] School, the Parent obtained a private psychoeducational evaluation from [a] Medical Center. The psychologist, Dr. J, who is Pennsylvania school certified and licensed, concluded that Student had a specific learning disability, with ability/achievement discrepancies in word reading, spelling and written expression. (P-2)
4. Dr. J also found that Student exhibited a relative weakness in abstract verbal reasoning skills/ categorization skills, interfering with inferential thinking and the assimilation of new information into existing knowledge structures, and a concrete thinking style. (P-2)
5. Student's auditory processing skills were found to be at the 5<sup>th</sup> percentile of her same-aged peers who had been administered the test. This deficit interferes with Student's overall learning process as she has difficulty deriving meaningful information from information shared in an auditory format and consequent difficulty in short-term working memory. (P-2)
6. Dr. J found that Student requires instruction in a classroom with a reduced student-teacher ratio, small group instruction for core academic work, increased opportunities for repetition of/multiple exposures to core curricular concepts, visual cues and referents, a high degree of structure in academic tasks, unlimited time to complete tests and assignments, chunking/step-by-step support in tasks requiring more abstract reasoning skills, development of more consistent skills in letter-sound correspondence/phonics, improved sight word vocabulary, development of more consistent skills in number knowledge/numerical operations/math problem-solving, instruction to improve inferential thinking skills in relation to reading comprehension, instruction regarding organizational strategies to improve writing skills, and instruction regarding organizational skills and study skills. (P-2)
7. Made aware of special education programs through a notice the District's Regional Office placed in a community newspaper as part of its Childfind activities, on June 24<sup>th</sup> the Parent requested an evaluation from the District. The District issued a Permission to Evaluate on June 27<sup>th</sup>, and the Parent signed the Permission to Evaluate on July 11<sup>th</sup>, all in 2005.<sup>4</sup> (NT 165-166; S-10, P-1, S-4, P-3, P-4)

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<sup>3</sup> However, [Redacted School] considered Student as being "ungraded". (P-2)

<sup>4</sup> There was considerable testimony regarding when and how the Parent's request was delivered and when and how the District received the Permission. Regardless, as the request was made at the end of the school year and the District's evaluation was completed by the end of the third week in September, the evaluation

8. The Regional Case Manager telephoned the Parent at the time of issuing the Permission to Evaluate and let her know that if the Permission were returned quickly there was an opportunity for Student to be tested during a two-week window in the summer when the District was doing a limited number of evaluations. (NT 166-168, 172-173)
9. In a later conversation or conversations, when the signed Permission was not yet returned, the Regional Case Manager told the Parent that the window of summer testing opportunity had passed but that the Permission form was still needed for testing to take place in September. (NT 170)
10. By letter dated August 19, 2005 to the Special Education Director of the appropriate Regional Office, the Parent noted, "The District has not provided a program for Student to meet all of her learning needs for the upcoming school year. I intend to enroll Student in the [Redacted] School program in [Redacted], PA for the 2005-2006 school year to address her learning needs. She will not be attending the [District] School next school year". The Parent included her expectation that, "the District will support Student's program at the [Private] School next year". The Regional Case Manager saw this letter in September. (NT 171-172; P-6)
11. By letter dated September 12, 2005 the Regional Case Manager informed the Parent that Student's needs could be met within the District and that the District would not support the placement at the private school. (NT 174; P-22)
12. The District completed its evaluation and produced an Evaluation Report (ER) and a Psychological Evaluation, both dated 9-23-05. Dr. P, the District's psychologist, is Pennsylvania school certified and licensed. In the ER Dr. P reported background information, WISC-IV results, WIAT-II mathematics and spelling results, and the Test of Auditory Reasoning and Processing (TARPS) results from Dr. J's private evaluation. (S-4, P-9)
13. In addition, Dr. P observed Student in her reading class at the private school, repeated the word reading and reading comprehension subtests of the WIAT-II previously administered by Dr. J and repeated the written expression subtest of the WIAT-II previously administered by Dr. J. (S-4, P-9)
14. Dr. P concluded that Student has a specific learning disability with a severe discrepancy between ability and achievement in the areas of word recognition,

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is deemed to be timely. The hearing officer notes that the IDEIA (IDEA 2004) effective July 1, 2005 calls for an evaluation to be completed in 60 days, as opposed to the previous 60 school days. As implementing regulations for the IDEIA are not yet available it is unclear how the legislature intended to have Districts handle summers. Given no other guidance, this hearing officer has adhered to the previous federal and state regulations regarding timelines.

- written expression and spelling. Dr. P also found that Student demonstrated below average auditory reasoning and processing skills. (S4, P-9)
15. By Invitation dated October 12, 2005 the District convened an evaluation team meeting on October 24, 2005, one month after the completion date of the District's psychological evaluation and the ER. (P-8)
  16. Dr. P and the evaluation team<sup>5</sup> agreed that Student requires specially designed instruction in the areas of word recognition, written expression and spelling. The ER identified needs in development of word recognition skills, skill development in written expression including punctuation, organization, linking words, concluding sentences, theme development and vocabulary, as well as clarification of directions, having her repeat directions and allowing extended time on tests. (S-4)
  17. The Parent declined to sign a waiver of the ten-day period between the evaluation meeting and the IEP meeting, but was invited, and agreed, to attend an IEP meeting on November 3, 2005. (P-11)
  18. The IEP team convened on November 3<sup>rd</sup> as agreed and the District provided the Parent with a draft IEP. There was no regular education teacher in attendance at the meeting. (P-13)
  19. The IEP meeting was aborted when the District's special education liaison learned in a telephone call to the Regional Case Manager during the meeting that regional representation must be at meetings to discuss placement options for children who are outside the District who are coming in to the District for placement. (NT 176-178).
  20. In a telephone conversation with the Parent the Regional Case Manager specifically informed the Parent that the IEP was a draft and would not be finalized until, "we came back to the table and met again to look at it". (NT 178)
  21. On December 6, 2005 the District through its counsel forwarded a "draft" IEP to the Parent asserting however that the District had "provided a Free Appropriate Public Education (FAPE) for your daughter in the School District". (P-16, P-22 pp. 23-45)
  22. The Regional Case Manager confirmed that this draft IEP was the District's final offer of FAPE to Student. (NT 248-249)
  23. Although according to the District psychologist Student's word recognition was at the 5.9 Grade Equivalency and her reading comprehension was at the 8.0 Grade

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<sup>5</sup> Members signing and indicating agreement were the District's psychologist, a special education teacher, a regular education teacher, the LEA and the Parent.

- Equivalency, the proffered IEP postulates that her “Overall Reading Level” is 8.3 Grade Equivalency, and notes this 8.3 as a “strength”. (P-22 pp. 23-45)
24. Despite the discrepancy between Student’s word reading abilities (5.9) and her reading comprehension abilities (8.0), the proffered IEP contains an annual Literacy goal of increasing her overall reading level by one year, from 8.3 to 9.3 with 80% accuracy. (P-22 pp. 23-45)
  25. Although word recognition (sight vocabulary) was identified as a need in both the private psychoeducational evaluation (Grade Level 4.2) and the ER (Grade Level 5.9) there is no goal or objective in the proffered IEP addressing word recognition.<sup>6</sup> (P-22 pp. 23-45)
  26. Although spelling was identified as deficient in the private evaluation, and determined to be at a Grade Level of 3.2 as calculated by the District psychologist based on the private psychologist’s data, there was no goal or objective addressing teaching Student spelling (encoding)<sup>7</sup> in the proffered IEP. (P-22 pp. 23-45)
  27. According to the proffered IEP, Student’s progress on the Literacy goal is expected to be “one year with 80% accuracy” and the objectives provide that she will “decode... with 80% accuracy 25% of the time”, “identify (word parts)... with 80% accuracy 25% of the time”, and “correctly answer 5 out of 6 (comprehension) questions in 3 out of 4 cases 35% of the time”. (P-22 pp. 23-45)
  28. According to the proffered IEP, on the Writing objectives, Student is expected to write sentences with certain elements with 80% accuracy 30% of the time, write sentences with other elements with 80% accuracy 30% of the time, and edit selections with 80% accuracy 4 out of 5 times with 30% of the time. (P-22 pp. 23-45)
  29. In the proffered IEP, progress on the Literacy goal and the Writing goal is to be evaluated by standardized tests, classwork, homework, observations, participation, assignments and teacher-made tests. (P-22 pp. 23-45)
  30. Despite the private evaluator’s findings and recommendation that Student needs assistance with organizational and study skills, the District psychologist did not include these areas as needs in her evaluation, and provided no basis upon which she excluded them. Hence the proffered IEP contains no goals and objectives

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<sup>6</sup> Possible reasons for the difference between the scores obtained in the two administrations of the same test over a five-month time span are practice effect, salutary benefits from the summer reading program in which the Parent enrolled her daughter at her own expense, variation in examiner approach and manner and variability of the child’s attention, energy level and motivation. Nevertheless, both examiners found Student to have a significant discrepancy in word reading between her ability and her achievement.

<sup>7</sup> SDI contains “PC for spelling/word processing as available”.

- addressing Student's deficits in organization skills and study skills. (P-2, P-9, P-10, P-22 pp. 23-45)
31. The private school is a private school for children with learning differences. All the students in the school have been diagnosed as having a language-based learning difference. (NT 81; P-18)
  32. The basis of the program at the private school is that children need to be able to use language effectively in order to be successful in school. (NT 80)
  33. A good number of the teachers at the private school are reading specialists. (NT 80)
  34. Student receives reading instruction for a double period each day in a class of six students taught by a reading specialist. (NT 80-82)
  35. Student receives a class in study skills wherein she learns how to study for tests, how to research and how to write term papers. In this class the students develop their vocabularies and study grammar. (NT 84)
  36. At the private school Student is in classes which are from six to ten students in size. She receives extra time to complete her work and or has shorter assignments, works with concrete materials to assist in learning abstract concepts, and is taught specific study and organizational skills such as note taking, outlining and keeping track of notes and materials. (NT 81-83)

#### Credibility of Witnesses

This hearing officer found the private psychologist highly credible. She was well trained, very knowledgeable and spoke persuasively about Student's needs. The representative from the private school provided a credible and succinct account of what that program offers Student. The Parent presented as a concerned and caring parent whose testimony was credible. The regional case manager's testimony was credible, as was that of the special education director for the region. These individuals were knowledgeable and were able to speak convincingly and with assurance in their testimony. Neither the special education liaison nor the District's psychologist were very credible witnesses, as neither seemed to have a good grasp of her role and/or subject matter, neither seemed assured when her testimony was questioned and both seemed easily led.

#### Discussion and Conclusions of Law

##### Legal Basis

Evaluations: Federal law, namely the Individuals with Disabilities Education Improvement Act (IDEIA), reauthorized in 2004, at Section 612 under CHLDFIND provides that

IN GENERAL – All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

At Section 614 the IDEIA provides that

IN GENERAL -- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

REQUEST FOR INITIAL EVALUATION – Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

PARENTAL CONSENT – The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

FAPE: Having been found eligible for special education, pursuant to an evaluation by the District, Student is entitled by federal law, the Individuals with Disabilities Education Act as Reauthorized by Congress December 2004, 20 U.S.C. Section 600 *et seq.* and Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP).

A student's special education program must be reasonably calculated to enable the child to receive meaningful educational benefit at the time that it was developed. (Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. PA. 1996)). The IEP must be likely to produce progress, not regression or trivial educational advancement [Board of Educ. v. Diamond, 808 F.2d 987 (3d Cir. 1986)]. Polk v. Central Susquehanna IU #16, 853 F.2d 171, 183 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing Board of Education v. Diamond, 808 F.2d 987 (3<sup>rd</sup> Cir. 1986) held that “Rowley makes it perfectly clear that the Act requires a plan of instruction under which educational *progress* is likely.” (Emphasis in the original). The IEP must afford the child with special needs an education that



would confer meaningful benefit. Additionally, the court in Polk held that educational benefit “must be gauged in relation to the child’s potential.”

Districts need not provide the optimal level of service, or even a level that would confer additional benefits, since the IEP as required by the IDEA represents only a basic floor of opportunity. Carlisle Area School District v. Scott P., 62 F. 3d at 533-534. What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” Tucker v. Bayshore Union Free School District, 873 F.2d 563, 567 (2d Cir. 1989). If personalized instruction is being provided with sufficient supportive services to permit the student to benefit from the instruction the child is receiving a “free appropriate public education as defined by the Act.” Polk, Rowley. The purpose of the IEP is not to provide the “best” education or maximize the potential of the child. The IEP simply must propose an appropriate education for the child. Fuhrman v. East Hanover Bd. of Educ., 993 F. 2d 1031 (3d Cir. 1993).

The IEP for each child with a disability must include a statement of the child’s present levels of educational performance; a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum and meeting the child’s other educational needs that result from the child’s disability; a statement of the special education and related services and supplementary aids and services to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals (and) to be involved and progress in the general curriculum...and to be educated and participate with other children with disabilities and nondisabled children; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class... 34 CFR §300.347(a)(1) through (4)

If an IEP does not address all areas of a child’s needs, if it does not contain measurable annual goals to monitor a student’s progress, or if it is inadequate in any material way, the IEP is not appropriate. *See e.g., Rose by Rose v. Chester County Intermediate Unit*, 24 IDELR 61 (E.D. Pa. 1996); *In Re: the Educational Assignment of T.K.*, Spec. Educ. Op. No. 892; and S.H. v. Newark, 336 F.3d 260 (3<sup>rd</sup> Cir. 2003). In the 2004 revisions to the IDEA, Congress has recently affirmed its position that de minimis procedural violations do not constitute a deprivation of FAPE. In Section 1415, it provides

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process...; or (3) caused a deprivation of educational benefits.

Tuition Reimbursement: Parents who believe that a district’s proposed program is inappropriate may unilaterally choose to place their child in an appropriate placement. The right to consideration of tuition reimbursement for students placed unilaterally by

their parents was first clearly established by the United States Supreme Court in Burlington School Committee v. Department of Education, 471 U.S. 359, 374 (1985). A court may grant “such relief as it determines is appropriate”. “Whether to order reimbursement and at what amount is a question determined by balancing the equities.” Burlington, 736 F.2d 773, 801 (1<sup>st</sup> Cir. 1984), *affirmed on other grounds*, 471 U.S. 359 (1985).

In 1997, a dozen years after Burlington the Individuals with Disabilities Education Act (IDEA) specifically authorized tuition reimbursement for private school placement:

(i) In General. – Subject to subparagraph (A) this part does not require a local education agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such a private school or facility.

(ii) Reimbursement for private school placement. -If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii)

Florence County Sch. Dist. Four V. Carter, 114 S. Ct. 361 (1993) had earlier outlined the Supreme Court’s test for determining whether parents may receive reimbursement when they place their child in a private special education school. The criteria are: 1) whether the district’s proposed program was appropriate; 2) if not, whether the parents’ unilateral placement was appropriate, and; 3) if so, whether the equities reduce or remove the requested reimbursement amount.

### Discussion

Student had never been educated in the public schools, and until the beginning of this school year the Parent had never requested that the District support her regular education or special education placements, or the private psychoeducational evaluation obtained in the spring of 2005. However, from the time the Parent requested that Student be evaluated by the District, the District had knowledge that Student was possibly a student with a disability who required specially designed instruction and took steps to discharge its responsibility to evaluate Student, offering to evaluate her in the summer if the Parent returned the Permission to Evaluate form quickly. In the absence of a rapid Parent response the District could not evaluate Student before the start of the 2005-2006 school year, but did evaluate her by the third week in September in accord with statutory regulations regarding timelines for evaluations.

However, in August 2005, before the District had even begun its evaluation, the Parent informed the District of her intent to enroll Student in a private school for children with

learning disabilities and of her expectation that the District would financially support this placement. Given that the Parent did not request an evaluation from the District until the end of the 2004-2005 school year, the District's September 23, 2005 evaluation was timely, and the Parent's decision to place Student in the private school, presumably at public expense, was precipitous. As of September 23, 2005 the District had proceeded correctly, and the Parent, though obviously concerned and caring, was not yet eligible for tuition reimbursement.

Once the District determined that Student was eligible for special education, based upon the private evaluation and its own evaluation, the District became responsible for offering FAPE to Student. However, at this juncture the District began, inexplicably, to proceed in a dilatory manner. First, the District waited one month post completion of its evaluation to convene an evaluation meeting. Second, when convening the IEP meeting the District did not have the appropriate individuals present to comply with the procedures the regional office set forth, and needed to stop the meeting and reschedule it. Third, the District did not complete an IEP and present it in final form to the Parent for approval or disapproval. The District's desire to engage the Parent in the IEP process was reasonable, particularly given that the District had no prior experience educating Student. However, after several weeks of trying to reconvene the meeting, the District should have fulfilled its obligation by providing the Parent with an Invitation to Participate in another IEP meeting and then moving forward with the meeting with an otherwise appropriately constituted IEP team if the Parent chose not to attend. Although the IDEA and accompanying federal regulations require a district to encourage parental participation, parental participation is not a requirement.

Districts are required to offer and/or provide students with FAPE. When it is asserted that FAPE has not been offered, Districts are allotted a reasonable time period to rectify the situation. It is the finding of this hearing officer that although the District's approximate two-week delay of the evaluation meeting and the District's not including a regional representative in the first IEP meeting delayed an offer of/provision of FAPE, this delay, combined with that caused by the Parent's exercising her right to a ten-day period between the issuance of the ER and the first IEP meeting and the Parent's unwillingness to attend a third meeting (a second IEP meeting) due to her work responsibilities, constitutes the "reasonable time period". Thus, this hearing officer finds that the delays caused by the District's own faulty processes and by its attempts to re-engage the Parent did not deny FAPE to Student and in fact occurred during the reasonable time period which a district is permitted to rectify errors and develop an appropriate IEP.

However, this hearing officer finds that the line of demarcation at which the District clearly became responsible for offering/providing FAPE or not offering/providing FAPE falls precisely at the December 6<sup>th</sup> letter from District's counsel to the Parent, wherein the District through its counsel forwards an IEP, and characterizes this IEP as having "provided a Free Appropriate Public Education for (Student)" (P-16). Notably on the record under questioning by the hearing officer, the District's Regional Case Manager affirmed that this draft IEP was, as of December 6, 2005, the District's final offer:

*Question: “What I need to know is, was the District’s final offer that Ms. DeLauro sent the Parent what is contained at P-22, pages 23 through 45?”*

*Answer: “I believe so, yes.” (NT 248-249)*

The District’s fatal substantive error was that this IEP, forwarded to the Parent on December 6, 2005 by counsel for the District, was not in fact an appropriate IEP in several regards as follows.

- First, the IEP team did not include a regular education teacher.
- Second, although according to the District psychologist Student’s word recognition was at the 5.9 Grade Equivalency and her reading comprehension was at the 8.0 Grade Equivalency, the proffered IEP inexplicably postulates that her “Overall Reading Level” is 8.3 Grade Equivalency, and this 8.3 is listed as a “strength”. (FF 23)
- Third, although word recognition (sight vocabulary) was identified as a need in both the private psychoeducational evaluation (Grade Level 4.2)<sup>8</sup> (FF 6) and the ER (Grade Level 5.9)<sup>9</sup> (FF 14), there is no goal or objective addressing word recognition. (FF 25)
- Fourth, given Student’s deficient word recognition the annual Literacy goal of increasing her overall reading level by one year from 8.3 to 9.3 with 80% accuracy is inappropriate. (FF 24)
- Fifth, although spelling was identified as deficient in the private evaluation, and determined to be at a Grade Level of 3.2 as calculated by the District psychologist based on the private Psychologist’s data, there was no goal or objective addressing teaching Student spelling (encoding). (FF 26)
- Sixth, the description of the manner in which progress on the Literacy objectives will be assessed is incomprehensible. The overall expected annual progress is “one year with 80% accuracy”, which seems to imply that Student will make 8 months progress over the 10 months of the life of the IEP. Further, although the expectations that she will “decode... with 80% accuracy 25% of the time” and “identify (word parts)... with 80% accuracy 25% of the time” are too far from

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<sup>8</sup> The District’s psychologist determined the Grade Equivalents of the scores obtained by the private psychologist by entering the tables of the WIAT-II manual and extrapolating from the data provided since the Grade Equivalents were not reported by the Private psychologist.

<sup>9</sup> There was considerable testimony on the record regarding the usefulness or lack thereof of Grade Equivalency scores, and this hearing officer who is a psychologist concurs with the Parent’s expert that standard scores offer the most reliable basis for comparison. However, given the District’s use of Grade Equivalents this hearing officer chooses to remain on the playing field chosen by the District for purposes of this decision.

clear to be acceptable, the expectation that she will “correctly answer 5 out of 6 (comprehension) questions in 3 out of 4 cases 35% of the time” presents a logistical maze that leaves this hearing officer and most likely this or any Parent baffled. (FF 27)

- Seventh, similar problems are present on the Writing objectives, where she is expected to write sentences with certain elements with 80% accuracy 30% of the time, write sentences with other elements with 80% accuracy 30% of the time, and edit selections with 80% accuracy 4 out of 5 times 30% of the time. (FF 28)
- Eighth, given the precise criteria for Student’s expected one-year gains in reading and in writing the District’s methods of evaluation, except for “standardized tests” are unlikely to yield the required data. “Classwork”, “homework”, “observations”, “participation”, “assignments” and “teacher-made tests” do not lend themselves to quantification in such a way as they could show increases in grade equivalents. (FF 29)
- Ninth, despite the private evaluator’s findings and recommendation that Student needs assistance with organizational and study skills, the District psychologist did not include these areas as needs in her evaluation, but provided no basis upon which she excluded them and the proffered IEP contains no goals and objectives addressing Student’s deficits in organization skills and study skills. (FF 30)

Having found that the District did not offer FAPE to Student as of December 6, 2005, the inquiry now turns to the question of whether the placement unilaterally selected by the Parent is appropriate. At the private school, a facility dedicated to instructing children with language-based learning differences, (FF 31) Student receives small group instruction (six to ten students per class) for all her subjects and a double reading period with five other students taught by a reading specialist. (FF 36) She receives specific instruction on writing including vocabulary development, grammar and organization. (FF 35) She receives instruction in study skills and in organization. (FF 36) As described by the representative from the school, the private school is deemed by this hearing officer to be an appropriate program for Student as it addresses her specific areas of need in a highly structured setting.

Having found that that the District did not offer Student FAPE, and that the placement chosen by the Parent is appropriate, we now turn to an examination of the equities. The Parent asked for an evaluation at the end of the 2004-2005 school year, the Parent did not return the Permission to evaluate in a prompt manner so as to insure that Student could be tested over the summer and the Parent enrolled Student in the private school prior to the District’s having the opportunity to evaluate Student. Further, the Parent declined to participate in a second IEP meeting. For its part, the District did not develop, finalize and offer an appropriate IEP, despite having ample time to do so. Weighing these circumstances this hearing officer concludes that the District is not responsible for the entire school year’s tuition, but rather for that portion of the year commencing December 6, 2005. Further, as discussed with the parties’ attorneys and briefly summarized on the

record, the Parent has applied for grants and scholarships to support Student's placement at the private school. Equitable considerations demand that any grant or scholarship money must be proportionately distributed over the time period for which the Parent is responsible for tuition (approximately one-third of the year) and the time period that the District is responsible for tuition reimbursement (approximately two-thirds of the year), such that if A equals the full tuition amount and B equals the total of any scholarship or grant money, the District's portion would be represented as being  $\frac{2}{3}$  of (A-B) and the Parent's unreimbursed portion would be  $\frac{1}{3}$  of (A-B).

#### ORDER

It is hereby ORDERED that:

1. The School District did not offer Student a free, appropriate public education from December 6, 2005 to the present.
2. The placement unilaterally selected by the Parent is appropriate.
3. The District's is responsible for reimbursing the Parent for that portion of Student's tuition that represents the cost for the proportionate number of school days from December 6, 2005 to the end of the school year.
4. The Parent is entitled to reimbursement only for the amount of tuition that she actually pays out of pocket, and not for any amount supplied as a grant or a scholarship from a third party. Any grant or scholarship money should be proportionately distributed over the time period for which the Parent is responsible for tuition (approximately one-third of the year) and the time period that the District is responsible for tuition reimbursement (approximately two-thirds of the year), such that if A equals the full tuition amount and B equals the total of any scholarship or grant money, the District's portion would be represented as being approximately  $\frac{2}{3}$  of (A-B) and the Parent's unreimbursed portion would be approximately  $\frac{1}{3}$  of (A-B).

March 6, 2006

Date

*Linda M. Valentini, Psy.D.*

Linda M. Valentini, Psy.D.  
Hearing Officer