PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

HEARING OFFICER DECISION/ORDER
File No. 6002-0506

Name: S.D.

Date of Birth: xx/xx/xx

Type of Hearing: Closed

Date(s) of Hearing: 2/10/06; 4/12/06; 4/18/06

For the Parents:

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Date of Decision: May 15, 2006
Hearing Officer: Vicki A. McGinley, Ph.D.

Background Information

Student is a xx-year-old, 9th grade eligible student residing in the Saucon Valley School District (hereinafter, District) where she has been served since kindergarten. She has been identified with Fragile X Syndrome. Student's current educational diagnosis is learning disability, however following a recent reevaluation; the District has recommended a diagnosis of mental retardation. Parents have filed a dissent to the Evaluation Report (ER) requesting an Independent Education Evaluation (IEE) and identifying this as one of the issues of this due process hearing. Presently, Student receives services in the learning support environment for language arts and mathematics, and science and related arts in the regular education environment. Student receives pull out services for speech two times per week.

Following the end of the first marking period for the 2005/06 school years, the District issued progress reports in late November 2005 indicating that certain goals and objectives, specifically in written expression and mathematics, were not introduced. In addition, progress on speech and language goals and objectives were left out of the progress report at that time, but later remedied by the speech language pathologist in December of 2005. Additionally, the implementation of reading comprehension goals was questioned. As such, Parents requested a due process hearing alleging a failure on the part of the District to implement Student's IEP goals and objectives as it relates to the language arts, reading comprehension, mathematics, and speech, in addition to the dissent of the most recent ER.

The Parents Position

- The District failed to implement the academic goals and objectives from the beginning of the 2005/06 school years, and as a result the District owes Student compensatory education.

- The District evaluated Student for speech and language services without Parent's prior written consent, in violation of regulations. The District changed the speech and language support services that were provided to Student pursuant to the IEP without the prior written consent of the parents. As a result, the District failed to provide FAPE and owes Student compensatory education.

- The District failed to conduct an appropriate evaluation for Student and therefore the Parents' request for an IEE at District expense is appropriate.

The District's Position

- Student is not entitled to compensatory education as the District fully implemented the goals and objectives related to reading comprehension, written expression, mathematics, and speech and language.

- The District appropriately changed Student's speech and language services from individual to small group session.

- The District's most recent reevaluation of the Student is appropriate, and therefore Parents are not entitled to an IEE at public expense.

- The Hearing Officer does not have the jurisdiction to award the remedies of staff training and supervision by an expert in Fragile X Syndrome.

Issues

Was Student offered FAPE during the 2005/06 school years specifically in the areas of reading comprehension, written expression, mathematics, and, speech-language-pathology?

Was Student evaluated appropriately and if not is she entitled to an IEE at public expense?

Findings of Fact

1. Student is a xx-year-old identified student eligible for services in the School District (S.D. 5)

2. Student's educational diagnosis is Learning Disability, however the most recent reevaluation recommends the disability category of Mental Retardation (S.D. 5). It is this reevaluation dated October 6, 2005, which Parents are contesting.

3. Prior to Student's 2005/06 academic school years in grade 9, Parents entered into a Settlement Agreement (S.D. 3). This agreement indicated that, the District shall reconvene the IEP team to review the Elwyn Report (P. 3), and to revise the

IEP (P. 15) as appropriate and provide 10 weeks of speech and language therapy two times per week for thirty minutes each session.

4. An Invitation to Participate in an IEP meeting was sent to Parents on October 17, 2005 (S.D. 6).

5. Permission to Evaluate was sent to Parents on November 18, 2005 for a Psychiatric Evaluation and to determine appropriate educational programming (S.D. 13).

6. An ER (P. 23) was performed on 1/4/06, which indicated that Student's full scale IQ was assessed at 47, with deficits in reading comprehension, written expression, mathematics, and social or pragmatic language. It was indicated that Student's performance levels are higher then her measured cognitive abilities.

7. Student's IEP dated October 17, 2005 (the first for the academic year being addressed in this due process) (P. 15; S.D. 6) includes participation in the learning support classroom and regular education environment. Student was placed in small group for Language Arts, Math and Social Studies. She was placed in regular education for Science and Related Arts. Student received speech and language services two times per week for thirty-minute sessions (S.D. 6; S.D. 10). Goals are in pragmatic language, reading comprehension, written expression, behavior, and mathematics.

8. Speech Language Pathology services are listed on the October 17, 2005 IEP as taken place at the School District (S.D. 6; P. 15). This was not changed with the November 18, 2005 IEP (P. 16; S.D. 10)).

9. On November 10, 2005 an Invitation to Participate in an IEP meeting was sent (S.D. 9) and a subsequent IEP meeting was held resulting in the November 18, 2006 IEP (S.D. 10). This new IEP included changes indicating collaboration with Parent and Special Education teacher and collaboration with Special Education Teacher, Regular Education Teacher and Speech Language Pathologist (S.D. 10). Otherwise, the IEP's contents remained the same as School District Exhibit Number 6.

10. Progress reports were issued in November 2005 indicating that certain goals and objectives in the areas of written expression and mathematics were not introduced (S.D. 24). On the same progress report, speech and language goals and objectives were left out, but later remedied by the speech language pathologist in December 2005 (S.D. 24; S.D. 30; P 22; N.T. 447-448).

Discussion and Conclusion of Law

Parents contend Student is entitled to compensatory education from August 2005 to the present. In November 2005, prior to the start of this hearing, the United States Supreme Court, in Schaffer v. Weast, ___ U.S. ___, 126 S. Ct. 528 (2005), held that the party seeking relief –in this case the Parents—has the burden of proof in administrative

hearings**. In other words, Parents must establish by a preponderance of the evidence that the District has failed to provide Student with an appropriate evaluation and educational program and is therefore entitled to compensatory education and an IEE at public expense.**

Is Student entitled to compensatory education for goals and objectives related to reading comprehension, written expression, mathematics, and speech and language in the Student's then current IEP during the 2005/06 school year?

Parents contend that the District failed to implement the goals and objectives in Student's IEP related to reading comprehension, written expression, mathematics, and speech and language (N.T. 24). The IEP must meet procedural and substantive regulatory requirements and provide meaningful educational benefit. *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),* and is fully executed for the period in which it is in force. *In re: The Educational Assignment of E.Z., Special Education Appeals Panel No. 1569 (2005).* Parent's primary support for nonimplementation was based upon receipt of the November 2005 progress reports (N.T. 533-536), which indicated that certain goals and objectives in mathematics and written expression were not introduced, as well as class and home work brought home by Student. In addition, it was evident from testimony that a main concern of the Parents centered on instructional procedures used in the classroom and related skills being addressed in relation to goals and objectives. In particular, Parents alleged that Student's math teacher did not use

manipulative during instruction and was not relating instruction to real life application problems. In addition, instruction in written expression did not address Student's level of need. Student's math teacher testified that she based her initial instruction on baseline assessment data, which showed weaknesses in the area of division and slight problems addition and subtractions (N.T. 63), and wherever possible she would teach these skills relating them to measurement, time, and money. Instruction after computation, took the form of simple word problems, again being taught in real life situations (N.T. 69). Student's math teacher testified that since she did not work initially on goals and objective during the first marking period, thus, she did not report on them (N.T. 75). Evidence, particularly progress reports, indicates that Student continues to make moderate progress in all areas but one in mathematics (S.D. 28).

Language Arts was where Student received direction instruction in reading comprehension and written expression. There was no evidence or testimony directed at why implementation of Student's goals and objectives in reading comprehension were being questioned. However, Student's written expression goal, like mathematics, was designated as "Not Introduced" during the first progress report marking period. Again, Student's teacher chose to work on what could be construed as a more basic skills (i.e., sentence formation), as evidence suggests Student's capable of writing full paragraphs. Student's teacher testified that she made the decision to work on more complex sentences as it was assessed that Student displayed considerable difficulty when attempting to use more complex sentences and writing in general on topics of less interest to her. In addition, in order for Student to master her writing goals of completing the 8th grade writing standards, the teacher testified that it was necessary to focus on complex

sentences. However, the teacher also testified that within her instruction, Student worked on grammar (N.T. 148-149) one of her goals, as well as paragraph writing in journals.

In speech and language, Parents alleged that the District failed to implement Student's goals and objectives. The District testified that the goals and objectives were introduced; however, there was a procedural accident when the case manager sent out the progress reports prior to the speech language pathologist giving her input. Corrected progress reports were issued (N.T. 431-432; 447-448; S.D. 24; P. 22). Evidence (S.D. 30) and testimony indicate that Student had met all of her goals and objectives by the end of the first marking period. Additionally, Parent's are concerned with the change in placement of speech services (P. 22) as well as the procedures around the implementation of the speech language pathologist evaluation.

Overall, it is unclear to this Hearing Office why the mathematics, as well as the teacher for Language Arts indicated that goals and objectives were not implemented during the first quarter as it is clear from the data collection produced as evidence in this hearing that in fact, some paragraph writing did occur and certainly real life word problems are evident (S.D. 27; S.D. 28). It is clear that instruction may not have occurred in the manner in which Parents felt necessary. Again, however, teachers testified that manipulative were used at appropriate times and writing was done consistently, particularly in journals. What is evident also, is that progress is being made. Parents had Dr. S as an expert witness to testify that the District's team members were not implementing an appropriate program, and did not evaluate Student appropriately (discussed below). This Hearing Officer is not disputing Dr. S's expert knowledge of Fragile X Syndrome, however I could not give much weight to Dr. S's testimony as she

was testifying without having spoken to any of the District's IEP team, without having done any observations of Student in the school setting, and without complete knowledge of the IEP and ER in question in this due process hearing (N.T. 402) as she indicated that she did not read the documents very closely. In fact, when questioned, Dr. S indicated that all of her information came from Parents (N.T. 377-383).

Thus, in terms of this issue, the Hearing Officer finds in favor of the District.

Were Student's speech and language services appropriately changed from individual small group sessions?

The question to address here is whether or not the change of services for speech language pathology from individual to small group is a change in placement? However, additionally, whether or not FAPE was violated as a result of this change. The speech language pathologist testified that the language in the IEP that does not specify individual or small group is intentional so as to allow more flexibility for providing therapy as needed (N.T. 444-449). According to testimony by Parents and evidence presented, Parents first became aware of this change of placement in December 2005 (P.22) This Hearing Officer agrees that this is a change of placement, and that it a procedural error occurred on the part of the District. However, this is an appropriate placement for Student to learn pragmatic language skills, actually the most appropriate. Since several of Student's goals and objectives indicate that she needs to demonstrate skills in a social situation, it would make sense that Student would move to a group setting for speech services. Progress continues to be noted in this area. (S.D. 30).

Although there was a clear violation of procedure, which the District will need to correct, Student was not denied FAPE; movement to group services for speech is

appropriate (S.D. 34) for Student's specific goals and objectives. Although I don't find in favor of the District in this issue, since FAPE was not violated, this Hearing Officer cannot award compensatory education.

Was the District's most recent evaluation of Student appropriate?

IEEs must add further significant information to the understanding of a student's *disability In re: The Educational Assignment of D"Vette C., special Education Appeals Panel Opinion No. 584 (1992): In re: The Educational Assignment of Carrie H., Special Education Appeals Panel Opinion No. 605 (1993); In re: The educational assignment of Caroly S., Special Education Appeals Panel Opinion NO. 1140 (2001).* Therefore, the question posed for me is whether or not the District's evaluation was appropriate, assessed all areas of disability, and assists the IEP team in determining Student's educational program.

The District's most recent reevaluation of Student, dated January 4, 2006 assessed cognitive ability, academic achievement, social language, behavior, adaptive skills, and executive functioning (S.D. 5). Assessments performed included the Wechsler Intelligence Scale for children, Fourth Edition (WISC-IV), the Gray Oral Reading Test, Fourth Edition (GORT-4), the C-MAT, the Test of Written Language, Third Edition (TOWL-3), the Adaptive Behavior Assessment System (ABAS), the Behavior Rating Inventory of Executive functions (BRIEF), and the Behavioral Assessment Scale for Children (BASC). The reevaluation also included curriculum-based assessment, input from Parents and teachers, and a review of records. Parents raised several concerns to include: IQ obtained, the school psychologist's lack of knowledge of Fragile X

syndrome, alleged inconsistencies in the ER, and the administration of the Test of Pragmatic Language (TOPL).

Parents questioned the cognitive assessment scores, however it seems that they compared different statistics (N.T. 277-278; 284-285), as well as misinterpreted other information on the ER. When the school psychologist testified, he indicated that when comparing same statistics, Student's Full Scale was consistent. Another issue Parents had with the evaluation had to so with the experience of the school psychologist as the assessor, as Parents believe that someone with more experience with Fragile X syndrome needs to be involved in the assessment of Student. However, standardized tests need to be administered to all children in the same manner and are not dependent upon disability type. This does not make them invalid for the student. Student's characteristics are very similar to children exhibiting other disabilities and challenges (i.e., shyness, anxiety, etc.) and not specific to Fragile X syndrome. In addition, the school psychologist did not see any of these characteristics during the assessment and seemed to be very sensitive to Student's needs (N. T. 274-275; 327).

Parents again relied on Dr. S in their questioning of the appropriateness of the ER. However, again, Dr. S testified on things she could not possibly have known, such as whether or not the school psychologist made Student comfortable and/or whether or not Student was anxious (N.T. 388-391). Dr. S has never assessed Student and/or observed her in the classroom environment, thus her ability to comment on Student's skills was not give any weight by this Hearing Officer.

Finally, Parents questioned the assessment done by the Speech Language Pathologist as a procedural issue since they state that a Speech Language Pathology

evaluation was not indicated as an assessment to be performed, additionally, that the test used in the speech language pathologist's assessment (the TOPL) was inappropriate. While this Hearing Officer again sees this as a procedural error on the part of the District, not indicating specifically a speech language pathologist evaluation, as the District indicates in their closing summary, such an argument is one of semantics as the language used was curriculum based assessment, which the speech language pathologist indicates she performed. The TOPL, which measures pragmatic language skills, is the curriculum that Student is working on, and thus is an appropriate assessment. Although there was procedural error here, this is no way effected the outcome of Student's evaluation and/or educational program.

The Hearing Officer finds in favor of the District on this issue, as the reevaluation was appropriate.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED this 17th day of May 2006 that the School continue to offer FAPE to Student utilizing the results from the ER and most recent IEP.

Vicki A. McGinley, Ph.D.
Hearing Officer
5/17/06