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Due Process Hearing for Student

Date of Birth: xx/xx/xx

ODR File Number: 6772/06-07/AS

Dates of Hearing: April 19, 2006, May 11, 2006, September 19, 2006,
October 13, 2006, November 14, 2006, December 1, 2006

CLOSED HEARING

Parties:

Montgomery County IU/EI
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M/M

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Date Transcript/Exhibits Received:

December 11, 2006

Date of Closing Statements/Record
Closure:

December 21, 2006

Date of Decision:

*January 9, 2007

Hearing Officer:

Joy Waters Fleming, Esq.

*By agreement of counsel

Background

Student is currently xx years of age and receiving pre-school services through the Montgomery County Intermediate Unit, "IU". Student previously received services early intervention services and turned xx years of age a few weeks before the commencement of this due process hearing.

Issues

1. Are Parents entitled to reimbursement for the behavioral assessment performed by Ms. M?
2. Are Parents entitled to reimbursement for their privately funded ABA/VB home based program?
3. Is the IU's proposed program and placement appropriate although it does not specify consultation and training hours needed to conduct the ABA/VB home-based program?
4. Does the IU's proposal of a 16 week SIOT clinic with re-assessment after 12 weeks constitute FAPE to Student?
5. Is the IU's proposed program and placement appropriate although it does not provide DIR/Floortime to Student?
6. Is Student entitled to compensatory education for therapies missed under the pendent IFSP?

Findings of Fact

1. Student is currently xx years of age and receiving services through the Montgomery County Intermediate Unit, "IU".
2. Student is eligible for early intervention/preschool services as a child with Autism and Apraxia. (P-1-P-4, P-6, P-15, P-35, P-47, IU-5, II)
3. On July 23, 2004, Student received his first Individualized Family Service Plan, "IFSP" from the IU. (P-1)

4. In January 2005, Student began receiving home based behavior therapy services through the IU provider, [redacted]. (P-17, P-21, P-75 p. 136)
5. On July 12, 2005, Parents and the IU met to determine programming for Student. (P-19, IU-1)
6. After the July meeting, Parents and the IU met on several occasions to update and amend the IFSP resulting in 11 direct service hours to Student. (P-21, P-24, P-28-29, P-32, IU-3)
7. On November 29, 2005, Parent consented to an evaluation of Student to prepare for his transition to the preschool program. (IU-2)
8. As part of the evaluative process, Parents completed a detailed questionnaire outlining their concerns about Student's development. (IU-2, pp. 43-52, Book I)
9. On February 2, 2006, the IU presented the completed evaluation report to the Parents. (P-33, IU-4)
10. The IU evaluation contained the results of an observation of Student, an occupational therapy report, an occupational therapy six-month update, a physical therapy evaluation as well as assessment conclusions from the Developmental Assessment of Young Children. (P-33)
11. In the evaluation report, Student's needs included redirection and reinforcement with play activities, sensory needs, balance, personal care, speaking and the ability to recognize important people in his life. (P-33, p.25)
12. After the evaluation, the IU concluded that Student was eligible for special education as a child with autism. (P-33, p. 21)
13. The February evaluation concluded that Student exhibited at least a 25% delay in cognitive, communication, social/emotional and physical development. (P-33, p. 20)

14. The evaluation recommended that Student receive education, speech therapy, occupational therapy for four months to determine baseline for educational purposes, occupational and physical therapy evaluations. (P-33, p. 21)
15. On February 20, 2006, upon Parent's request, Ms. M, a board certified associate behavioral analyst conducted and observation an assessment of Student's behavior. (P-38)
16. After administering the Assessment of Basic Language and Learning, "ABLLS", Ms. M suggested goals for home and school and recommended that Student receive a functional behavioral assessment. (P-38)
17. The ABLLS is an assessment of skills as well as a curriculum. (N.T. 431, 447)
18. After the evaluation, Ms. M recommended that Student receive ABA/VB for two and half hours a day for a total of 25 hours a week along with 10 consultation hours per month for team meetings, observations and trainings and up to 15 hours for initial staff training and program start-up. (P-38, p. 6, N.T. 439)
19. ABA or applied behavioral analysis is sanctioned by the U.S. Surgeon General as well as the National Institutes of Mental Health as method to teach children with Autism. (N.T. 515)
20. ABA/VB is a research established methodology that looks at the function of language based on "Skinner's Analysis of Verbal Behavior. (N.T. 115-116, 516)
21. On February 23, 2006, Student received an independent occupational therapy evaluation from Ms. J because of parental concerns with sensory processing. (P-39, N.T. 173)
22. As part of the evaluation, Ms. J performed a two hour clinical observation and videotape analysis of Student interacting with his Parent. (P-39, p. 14)
23. Ms. J concluded that Student exhibited extensive sensory needs that affected his social and play interactions and behaviors. (N.T. 173)

24. After the evaluation, Ms. J recommended a variety of interventions including that Student receive OT using a sensory integrative approach, “SIOT” twice a week for 60 minutes within his educational setting coupled with 30 minutes a month of consultation with team members as well as DIR (floor time) for 1 hour a week. (P-39)
25. The DIR model embraces developmental capacities that integrate essential cognitive and affective processes; individual differences in motor, auditory, visual-spatial; and other sensory processing capacities; and relationships that are a part of the child/caregiver and family interaction patterns. (P. 39, p.14)
26. On February 24, 2006, the IU provider issued its program summary and IEP recommendations for Student. (P-40)
27. The behavioral evaluation performed by Ms. M and the OT evaluation conducted by Ms. J were provided to the IU. (P-38, P-39)
28. On February 28, 2006, Parent provided the IU with a an “evaluation report review” with a page by page analysis of suggestions, questions and clarifications to the IU conducted evaluation. (P-33, pp. 22-25)
29. On March 1, 2006, the IEP team and proposed programming for Student’s transition to the preschool program. (P-43, pp. 3, IU-7)
30. On March 2, 2006, Parents wrote to the IU requesting mediation and a due process hearing because of their disagreement with the proposed programming. (P-45)
31. On March 8, 2006, Parent signed the NOREP indicating they did not accept the programming offered by the IU. (P-43, P-45, IU-8, IU-10, p.194)
32. On March 24, 2006, Student transitioned from the early intervention to the IU preschool program with his pendent IEP in place.
33. On April 6, 2006, Parents consented to a second evaluation of Student by the IU. (IU-12, book I)

34. As part of the second evaluation, the IU conducted a developmental assessment, a speech evaluation, an occupational therapy evaluation, a functional behavioral assessment and a physical therapy evaluation. (IU-5, book II)
35. On April 19, May 11, June 7, 2006, due process hearing occurred based on Parent's disapproval of the March 8, 2006 NOREP.
36. On May 15, 2006, Dr. F of the IU conducted a functional behavioral assessment of Student as part of the evaluative process. (IU. 15, p.16)
37. On May 19, 2006, Mr. C, OTR/L conducted the sensory-motor evaluation of Student on behalf of the IU for inclusion in the ER. (IU-3)
38. After the OT evaluation, IU concluded that Student demonstrated deficits in sensory processing specifically in proprioceptive, tactile, vestibular, motor planning and modulation. (IU-3, p. 4, N.T. 316)
39. Based on the evaluation, the OT recommended that Student would benefit from a clinic based, skilled sensory motor-based program for 16 weeks, two times a week and re-assessment at the end of the period. (IU-3, p.4, N.T. 352)
40. The 16 week recommendation was made in order to monitor Student's progress and determine whether that level of intervention was successful before investing an entire year into a program that was not appropriate. (N.T. 317-318)
41. Additional due process hearings were scheduled for June 13, June 22, and June 29, 2006.
42. On June 20, 2006, the IU issued a second evaluation report. (P-63, IU-5)
43. The second evaluation report recognized Student as disabled and recommended that he receive services in an autistic support classroom for 10 hours and 20 minutes a week, 14 hours of weekly behavioral therapy, speech and occupational therapy two times a week, SIOT two times a week for four months and PT for four months pending a new PT evaluation. (IU-5, p.25, Book II)

44. On June 28, 2006, counsel for the parties indicated a settlement occurred and Parent withdrew their request for a hearing after entering into a verbal agreement that Student would receive a 25 hours a week of home based ABA/VB from July 10, 2006 through August 2006 (N.T. 15-16)
45. The ABA/VB programming was to be provided by [redacted] an[other] IU contractor. ((P-61, P-68, P-69, P-74, N.T. 15-22, N.T. 582-582)
46. On July 12, 2006, after an inability to confirm commencement of the home based ABA/VB IU provided programming, Parents secured the services of Ms. M to implement a home based program ABA/VB program and notified the IU of their decision. (P-61, P-68, P-69, P-74, N.T. 15-22, N.T. 582-582)
47. Since July 2006, Student has received ABA/VB therapy from behavioral therapists contracted through Ms. M. (N.T. 112-161)
48. The 15 hours of training time recommended in Ms. M's evaluation has not occurred. (N.T. 130)
49. The ABA/VB program currently implemented consists of manding, ITT time (intensive teaching time) with goals designed from results from the ABBLS as well as the data charting. (N.T. 112-161)
50. On July 13, 2006, Parents reinstated their request for a due process hearing and a separate file number was assigned by the Office for Dispute Resolution. (N.T. 5, P-69)
51. On July 31, 2006, the IU issued a third and final IEP to Parents (P-70)
52. The August 2006 IEP contained an offer of 25 hours of home based ABA/VB programming until the start of school then changing to 15 hours a week. (P-70, IU-11, N.T. 550)
53. The August 2006 IEP contained an offer of two, thirty minute sessions a week, of SIOT at a clinic site. (IU-11, p. 48)

54. The August 2006 IEP contained an offer of preschool for four days a week for two hours and thirty five minutes each day.
55. The August IEP contained offers of transportation, individual speech, occupational and physical therapy, integrated speech therapy and occupational therapy consultation. (IU-11)
56. Since receiving the ABA/VB program, Student has made some progress. P-38, (N.T. 152, 155-159)
57. In the past, Student has experienced skill regression when a change or lapse in his programming has occurred. (P-19, P-28, p.2; P-72, P-75, p. 33 (128), p. 53 (150-151), p. 181-182, N.T. 496)

Discussion and Conclusions of Law

Early in his life, Parents expressed concerns about the development of their son. As a toddler, he was diagnosed with an autistic spectrum disorder an apraxia. (FF. 2) At sixteen months of age, Student began receiving services through the IU early intervention program. (FF. 3) In March 2006, Student transitioned from the early intervention program and started receiving preschool services (FF. 7, 32) At the time of his transition, he was receiving a variety of interventions designed to complement his individual needs. Currently, Student receives a full menu of specialized services including speech, occupational and physical therapy as well as behavioral interventions under a pendent IEP. This hearing encompasses the issuance of two evaluation reports, a number of privately obtained evaluations and three different IEP's.

The IDEIA requires that states provide a “free appropriate public education” “FAPE” to all students who qualify for special education services. 20 U.S.C. §1412. In Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Rowley standard is only met when a child's program provides him or her

with more than a trivial or *de minimus* educational benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988). This entitlement is delivered by way of the IEP, a detailed written statement arrived at by the IEP team which summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993). School districts are not required to provide the optimal level of services. Carlisle Area School District v. Scott P., supra. However, a program that confers only trivial or minimal benefit is not appropriate. Polk. In the Commonwealth of Pennsylvania, preschool children ages three to five with developmental delays or disabilities are entitled to the same substantive and procedural rights as their eligible school aged counterparts. Additionally, under state law, an eligible young child is afforded additional protections.¹ Consistent with Shaffer v. Weast, 126 S. Ct. 528 (2005), Parents have the burden of proof in this proceeding.

Although this case originally went to due process some time ago, the parties were fortunately able to resolve many differences. (FF. 30, 35, 51) At this point, the remaining issues pertain to the intensity and duration of existing specific services, the efficacy of a particular methodology and reimbursement to Parents for a privately obtained evaluation and the subsequent implemented home-based program.

First, Parents contend that the District conducted evaluation was inadequate and that they are entitled to reimbursement for the evaluation conducted by Ms. M, a certified associate behavioral analyst. Under the implementing regulations² that govern the provision of special education, a Parent is entitled to reimbursement for a privately obtained evaluation in certain circumstances, as follows:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.

¹ 22 Pa. Code § 14.153-§ 14.155, § 14.157

² The federal Part B Pre-School regulations largely incorporate the requirements of the regulations that govern disabled school-aged students. 34 C.F.R. Chapter 300.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) Initiate a hearing under §300.507 to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

34 C.F.R. 300.502

Consistent with the above regulations, a four part analysis to determine whether a Parent can be reimbursed for an IEE follows. Those components are: 1) Whether the Parent expressed disagreement with the evaluation provided by the District; 2) Did the District, without unnecessary delay, initiate due process proceedings to determine the appropriateness of its evaluation; 3) Is the District's evaluation appropriate; 4) Is the Parent's IEE appropriate ?

The regulations define an “independent educational evaluation” as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education in question...” 34 C.F.R. 300.502. Noticeably absent from the regulations is an identification of what type of assessment, evaluation or examination qualifies for the designation of an “educational evaluation”.

Upon parental request, in February 2006, Ms. M conducted what is captioned as an “Intake Report”. (FF.15-20) As part of the evaluation, the ABLLS was administered. (FF. 16-17) In her report, Ms. M provided a detailed portrayal of the problematic behaviors displayed by Student an encountered by Parents. (FF.15-20) At the conclusion, she summarized her concerns regarding the lack of behavior modification implementation and made a variety of recommendations regarding manding, instructional strategies and ABA/VB service levels. (FF. 15-20) The evaluation also recommended that a functional behavioral assessment be conducted. (FF. 15-20) Finally, the report proposed goals consistent with Student’s demonstrated functioning on the ABLLS. (FF. 15-20) Although this evaluation was conducted in February 2006, it now forms the basis for Parents’ current demand for continued home based ABA/VB programming implemented by Ms. M.

Under the first part of the reimbursement analysis the following information must be considered. The IU completed its first evaluation of Student on February 2, 2006 ostensibly to prepare for his transition to the IU preschool program. (FF. 8-13) On February 20, 2006, Ms. M conducted her evaluation of Student. (FF. 15) Shortly thereafter, on February 28, 2006, Parent wrote to the IU with an extensive list of clarifications an amendments she sought to the ER. (FF. 28) This communication clearly evinced concerns with the IU conducted ER in general and specifically the lack of an “education/behavioral program such as an ABA program”. (FF. 28) Parent expressed disagreement with the IU conducted evaluation, thus the first part of the reimbursement test has been satisfied.

Under the second requirement, the IU, did not agree to fund the private evaluation; nor did they “without unnecessary delay” commence a due process hearing to defend the evaluation that they provided. Instead, the Parent on March 2, 2006 requested a due process hearing citing a variety of reasons including insufficient related services. (FF. 31) As the parties were already on their way to due process where the District would have had to defend its evaluation this element has been satisfied.

The third requirement requires a determination of the appropriateness of the District ER of February 2006. A properly conducted evaluation is critical for the development of responsive programming and must assess a child in all areas of suspected disability. 20 U.S.C. §1400 et seq. In this case, the chief complaint lodged by Parents is that the IU conducted evaluation of

February 2006 did not recognize Student's need for a behavioral assessment. As a result, they contend, subsequent development of the necessary ABA/VB program was compromised.

Although the IU's evaluation attempted to be both comprehensive in both breadth and depth, it was inadequate in identifying Student's behavioral needs. By the time the evaluation was completed, the IU had access to or knowledge of Student's behaviors that impeded his learning. (FF. 2, 3,4,6,8) Yet no comprehensive assessment of Student's behavioral functioning occurred as part of the IU's February evaluation. This information was necessary to fully and completely understand Student's behavioral deficits so that individualized programming could be developed. Student has complex needs as acknowledged by the IU and he requires intensive programming. (FF. 3,4, 6,8, 12) However, the evaluation conducted by the IU did not go far enough to recognize Student's behavioral needs. Although the IU ultimately offered 25 hours of ABA/VB programming, their initial offer on the heels of its February evaluation was reflective of their lack of understanding of Student's behavioral needs.³ (FF. 29) Although in depth information concerning Student's needs could have readily been known, the IU did not access this knowledge nor did it take the requisite steps to ensure thoroughness and completeness of its evaluation report. The February IU evaluation was not sufficiently appropriate. 34 C.F.R. 300.304, 300.305.

The final requirement requires a determination of the appropriateness of the evaluation sought for reimbursement. Ms. M's behavioral evaluation although not perfect did provide useful insight into Student's functioning at that time in his life. As part of her evaluative process, through administration of the ABBLS and the observation, she was able to make specific recommendations regarding instructional approaches to be utilized at home and as a carry over into subsequent educational environments. (FF. 15) Ultimately, her evaluation served to form the basis for Student's current ABA/VB program. (FF. 47)Based on the foregoing, Parents are entitled to reimbursement for the expenditure made for Ms. M's evaluation.

ABA/VB

Under the final IEP proposed in August 2006, Student would have received 25 hours of home-based ABA/VB behavioral therapy from implementation until the start of the 2006-2007 school year. (FF. 51) After

³ The first IEP offered Student programming in an early intervention classroom; however, the net effect would have been a drastic decrease in direct service hours. (FF.)

that, his therapy would have decreased to 15 hours a week. (FF. 52) Parents take exception to the proffered IEP and seek reimbursement for privately arranged, home based, ABA/VB program their son has been receiving since July 2006. In addition to the ABA/VB program, Parents also seek an additional 10 hours of monthly consultation time and 15 hours of training for staff and start-up as necessary. Parents have sustained their burden of establishing that the current home based ABA/VB program currently in effect is necessary to provide FAPE to this Student. ABA/VB is a methodology sanctioned by the U.S. Surgeon General as well as the National Institutes of Mental Health to teach children with autism. (FF. 19-20) Verbal behavior can be a component of an ABA program. (FF.19-20)

There is no dispute that Student needs an ABA/VB program. (FF. 33-34, 36, 42-4352) The area of contention in this case primarily concerns the provider and the demand for consultation and training hours. Parents resorted to contracting with the current provider after withdrawing their initial request for due process on the promise that their son's ABA/VB program would commence on July 10, 2006. (FF. 41, 45-46) A variety of circumstances ensued that interfered with that implementation as planned. (FF. 45-46) Parents' frustration turned to action and they contacted Ms. M who had originally performed the behavioral evaluation. (FF.46) Ms. M was ready, willing and able to provide an ABA/VB program and within a matter of days, Student began receiving an ABA/VB program. (FF. 46, 49) Because both parties agree that ABA/VB is necessary, the inquiry at this point must address the efficacy of changing providers and the necessity of the additional hours sought by Parents. Although Student has an established relationship with the current providers of the ABA program, that alone is not determinative of this issue. Parents have established that transitions and lapses in services can be difficult for Student. (FF. 56-57) That factor coupled with the benefits of continuing the programming this Student has received since July 2006, leads to the conclusion that a disruption would interfere with the provision of FAPE. Overall, the evidence has established that Student is making progress and that the continued provision of the 25 home hours of ABA/VB are necessary so that he can acquire and generalize skills he needs to transfer to an educational setting.

With respect to the Parents request for 10 hours of consultation hours a month, the IU's proffered IEP contained no such provision. Parents have established that this level is necessary in order to provide FAPE to Student. Consultation hours contribute a vital part to the ABA/VB program. (FF. 18,

26) While receiving services behavioral services through [the first IU Provider], monthly team meetings occurred to incorporate strategies and techniques that the behavior consultants were using. (FF. 4) Parents have established that these hours, with their current provider, are necessary for regular team meetings, observations, goal review and revision and consult time with all individuals invested in Student's treatment. As a result, this training time is necessary for the provision of FAPE.

Parents also seek a set-aside of 15 hours for staff training, if needed, to train new therapists. Parents contend these additional hours are necessary in order to train new or current therapists on an unfamiliar goal or program. Parents have not presented evidence that this expenditure has already occurred so reimbursement of this cost is not appropriate. (FF.48) However, inclusion in the IEP of a set-aside of hours in the event a change in therapists occurs is reasonable and designed to protect the delivery of FAPE. Accordingly, Student's IEP should be amended to incorporate the requested consultation and training hours.

SIOT

In the proposed IEP, the IU has offered to provide Student with sensory integration occupational therapy (SIOT) for sixty minutes a week. (FF. 53-55) These sessions would occur twice a week, in thirty minute sessions, for a sixteen week period. (FF. 37-40, 53) After the initial sixteen weeks, under the proposed IEP, Student would be re-assessed to determine the necessity of continued SIOT. (FF.53) Parents obtained an independent OT evaluation shortly after the IU's first evaluation report was issued.⁴ (FF. 21-25) Consistent with their private evaluator's recommendation, Parents seek SIOT twice a week for 60 minutes, along with 30 minutes of consultation time for the duration of the school year. SIOT is designed to address Student's sensory needs and provision of this therapy is distinct from individual occupational therapy. (FF. 24)

All parties agree that Student is in need of SIOT. (FF. 24, 39, 53) At this juncture, the dispute centers on the number of necessary weekly SIOT hours in order to provide FAPE as well as the duration of programming. Parents have not established the necessity of year long services, without quarterly assessment. In support of its offer, the IU provided the testimony

⁴ Parents are not seeking reimbursement for the independent OT evaluation.

of its OT, Mr. C who evaluated Student three months after the privately obtained OT evaluation. (FF. 37) In testimony, he credibly explained that re-assessment of Student should occur after 16 weeks of SIOT to determine whether the level of service was sufficient. (FF. 37-40) Assessment after four months was necessary, he opined, in order to review Student's needs and make any necessary changes or revisions to the level of service. (FF.37-40) This approach is feasible and could permit for the adjustment of service level to either decrease, remain static, or even increase if after assessment, Student's needs warrant. This approach allows flexibility to tailor the SIOT program to Student's specific and individual needs. Parents are undoubtedly concerned that an interruption of SIOT could lead to regression until assessment data is completed, reviewed and recommendations are made. However, reassessment could be ongoing as testified to by the IU or it could start and be completed by the end of third month. (FF. 37-40)

Parents also seek two, 60 minute sessions of SIOT for a total service time of 120 minutes a week. The IU has offered two, 30 minute sessions, a week. During testimony, the IU occupational therapist recommended that SIOT occur for a minimum of 45 minutes a week, two times a week, in a clinic based setting. Based on Student's profound needs as established during the hearing, Student requires SIOT for 120 minutes a week to address his deficits in gross and fine motor skills, visual perception, self-care and sensory processing. (FF.23, 38) Consistent with that provision of service, Parents have established that 30 minutes of consult time is also necessary for the provision of FAPE to Student. (FF.24)

DIR

Parents seek 1 hour a week of developmental, individual difference, relationship-based (DIR)/floortime therapy. Under the pendent IEP Student does not receive this programming and the IU has not offered DIR in its IEP. The DIR model embraces developmental capacities that integrate essential and cognitive processes; individual differences in motor, auditory, visual-spatial; and other sensory processing capabilities ; and relationships that are part of the child/caregiver and family interaction patterns. (FF. 25)

Parents contend that DIR is needed to address Student's social/emotional play and communication skills. I support of this contention., Parents offered the testimony of their independent occupational

therapist who offered that DIR could be delivered in the context of speech therapy, physical therapy or by a teacher or therapist. (FF. 23)

Based on the evidence presented, Parents have not sustained their burden of proof that the IU failed to offer FAPE because the programming offered to Student did not include DIR. Although DIR/floortime would undoubtedly be beneficial to Student, the requisite test is whether the IU has offered programming calculated to added some educational benefit. Parents expert based her recommendation of DIR on the results of a functional emotional assessment scale and a clinical observation. (FF. 24) Although the expert's report made educational, home and educational and clinical recommendations, overall it was unpersuasive that DIR was crucial to the provision of FAPE. Finally, Parents failed to introduce any persuasive scientific or clinical evidence to buttress their contentions that DIR is an acceptable intervention. As a clinical/private recommendation, Parents may certainly pursue this therapy; however, public funding is not necessary for the provision of FAPE.

Pendent Services

In its closing, the IU agrees to the provision of therapies missed or that lapsed under the pendent IEP. Accordingly, the Order will reflect the IU acknowledgement.

ORDER

Accordingly, as the Montgomery County IU/EI is ordered to provide the following:

1. Parents shall be reimbursed for the privately obtained evaluation of Ms. M;
2. Student shall continue to receive the home based ABA/VB program currently provided by Ms. M and her therapists;
3. Student's IEP shall be amended to include 10 hours of consultation time per month and 15 hours for initial staff training;

4. Student shall receive SIOT for 16 weeks with either continuous assessment to determine his response or a re-assessment to occur as determined by the IEP team. The purpose of the assessment is to determine the need for an adjustment of service level;
5. Student shall receive compensatory education for lapsed and missed therapies not provided during this proceeding.

By: Joy W. Fleming

Joy Waters Fleming, Esq.
Special Education Hearing Officer
January 9, 2007