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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: EL
ODR #6958/06-07 LS

Date of Birth:
Xx/xx/xx

Dates of Hearing:
November 13, 2006
January 2, 2007
January 22, 2007
January 30, 2007
March 2, 2007

CLOSED HEARING

Parties to the Hearing:

Mr. and Mrs.

Central Bucks School District
20 Welden Drive
Doylestown, PA 18901

Date Last Transcript Received:
Date Record Closed:
Date of Decision:
Hearing Officer:

Representative:

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March 6, 2007
March 14, 2007
March 27, 2007
Linda M. Valentini, Psy.D.

Background

Student is a xx-year-old eligible student who resides with Mr. and Mrs. , her parents (hereinafter Parents) in the Central Bucks School District (hereinafter District). This case involved an allegation of denial of a free appropriate public education (FAPE) for the 2005-2006 school year and a consequent request for compensatory education, specifically that Student needed and was not provided with speech/language services, needed and was not provided with a behavior support plan, and was not appropriately instructed in the areas of reading, mathematics and written expression. The case also involved an allegation that the IEP offered for the 2006-2007 school year was inappropriate, leading to a request for tuition reimbursement related to Student's unilateral placement at the Private School.

Issues¹ and ²

1. Did the Central Bucks School District fail to offer Student a free, appropriate public education by means of an appropriate IEP that was appropriately implemented during the 2005-2006 school year, specifically in the areas of speech/language services, a behavior support plan, and effective instruction in reading, mathematics and writing?
2. If the Central Bucks School District failed to offer Student a free appropriate public education for the 2005-2006 school year, is she entitled to compensatory education, of what type and in what amount?
3. Did the Central Bucks School District fail to offer Student an appropriate IEP for the 2006-2007 school year?
4. If the Central Bucks School District failed to offer Student an appropriate IEP for the 2006-2007 school year, was the placement unilaterally chosen by the Parents appropriate?
5. If the Central Bucks School District failed to offer Student an appropriate IEP for the 2006-2007 school year, and the placement unilaterally chosen by her Parents was appropriate, are there any equitable considerations that might reduce the District's responsibility for tuition reimbursement?

¹ Given the Parent's burden of proof under Schaffer v. Weast, 126 S. Ct. 528, 537 (2005) the Issues are stated in the negative.

² The Parents' written Closing Argument adds the issue "Did the District err in its conclusion that Student has Asperger's Disorder?" This was not an issue presented in the opening statements, nor was it included in the hearing officer's statement of issues on the record. As discussed below this hearing officer did not offer a conclusion regarding a second classification for Student who has been previously classified as having a specific learning disability.

Findings of Fact

1. Student is a xx-year-old eligible student residing in the Central Bucks School District.
2. Student's family moved into the District in July 2004. (NT 41)
3. Upon registration the Parents informed the District that Student had an IEP from [redacted state], and had behavioral and learning issues. (NT 43)
4. Upon her enrollment in the District, having previously discussed the matter with her teachers in [redacted state], the Parents made the decision to have Student repeat first grade, because [she would have been] one of the youngest in a second grade class and they believed she was far behind behaviorally and emotionally.³ (NT 44-45)
5. The District saw that Student, placed in repeating first grade, was having reading difficulty and almost immediately placed her in the Reading Recovery or Stars Program. (NT 47)
6. Student began having difficulty in math and received in-class assistance, modification of lessons, and simplification of tests to help her stay on task. (NT 47)
7. Student had behavioral and social issues – trouble getting along with students and following the teacher's directions. The teacher communicated this to the parents early on. (NT 47)
8. Peer problems included talking over the other students and being bossy on the playground. (NT 48)
9. The District evaluated Student in November and December 2004 and produced a report dated January 2005. The District evaluation team concluded that Student demonstrated a specific learning disability in the areas of reading, math and language. It was also noted that Student exhibited “a significantly low level of on-task behavior” during classroom observation and that a record review from her previous records indicated that Student had “struggled with attention, concentration, focus and organization since kindergarten”. The Parents agreed with the Evaluation Report. (P-5)

³ Contrary to the statement in the Parents' written Closing Argument the Parent testified that she did not discuss this with the staff at the Central Bucks District.

Cognitive Functioning

10. As reported in January 2005, on the Wechsler Intelligence Scales for Children – Fourth Edition (WISC-IV) Student's Full Scale IQ was 87 (low average range). Verbal Comprehension was 87 (low average range), Perceptual Reasoning was 92 (lower half of the average range), Working Memory was 86 (low average range) and Processing Speed was 94 (lower half of the average range). (P-5)
11. A reevaluation conducted in spring of 2006 and reported in an RR dated June 14, 2006 found that on the Differential Ability Scales (DAS) in terms of standard scores Student received a General Conceptual Ability (GCA) score of 85 (low average range) a Verbal score of 100 (average range), a Nonverbal reasoning score of 84 (low average range) and a Spatial score of 78 (borderline range). (P-10)
12. The June 14, 2006 RR also reported scores from the Woodcock-Johnson Tests of Cognitive Abilities – Third Edition (WJ-III). Cluster standard scores were as follows: Term Retrieval 76 (borderline range), Auditory Processing 99 (average range), Visual-Spatial Thinking 91 (lower end of the average range), Phonemic Awareness 112 (high average range). Two clusters, Processing Speed and Cognitive Fluency, at 68 (deficient range) and 79 (borderline range) respectively, needed to be interpreted with caution due to the influence of one questionable subtest. (P-10)

Program and Placement 2005-2006 – Second Grade

13. An IEP was developed for Student on February 11, 2005. This was the IEP in effect during the first half of the school year in dispute regarding provision of FAPE (2005-2006 – second grade). (P-7)
14. The February 2005 IEP presents present levels of educational performance, strengths and needs, goals and measurable objectives addressing reading fluency and comprehension; writing focus, content and organization; and, mastery of secure math skills, as well as methods of evaluation and progress reporting. Specially designed instruction includes a variety of tools to assist Student in the instructional setting. The IEP provided for direct and consultative Occupational Therapy. (P-7)
15. In January 2006 the District developed a new IEP for Student. This IEP was in effect during the second half of the school year in dispute regarding provision of FAPE (2005-2006 – second grade). (P-9)
16. The January 2006 IEP presents extensive present levels of educational performance, strengths and needs, goals and measurable objectives addressing reading accuracy, decoding, fluency and comprehension; writing focus, content, conventions and organization; increasing mastery of secure math skills; improvement of handwriting; and, improvement of sensory processing skills. Specially designed instruction includes a variety of tools to assist Student in the

- instructional setting. The IEP provided for direct and consultative Occupational Therapy. (P-9)
17. From the beginning of the 2005-2006 school year Student received direct instruction in the Multisensory Reading Instruction Program (MRI), a comprehensive systematic approach to instruction in the areas of alphabet and dictionary skills, reading, spelling and handwriting. (NT 1086)
 18. Student's second grade reading program included the use of leveled texts, high-interest illustrated books, use of the Fry word list, vocabulary development and multisensory instruction. (NT 1086-1092)
 19. Student's second grade mathematics program included use of a modified version of the Everyday Math Program, and her progress was checked through the Secure Skills Checklist. (NT 1100-1104)
 20. Student's second grade writing program in second grade included planning, brainstorming, rough copy, use of graphic organizers and editing. Student was instructed on a one-to-one basis as she was orally fluent and could talk about her ideas but had difficulty putting them on paper. (NT 1093-1097)

Academic Achievement

21. As reported in January 2005, on the Wechsler Individual Achievement Test – Second Edition (WIAT-II) Student's standard scores were as follows: Reading Composite 76 (borderline range), Mathematics Composite 72 (borderline range), Written Language Composite 87 (low average range) and Oral Language Composite 87 (low average range). (P-5)
22. As reported in June 2006, on the Peabody Individual Achievement Test – Revised (PIAT-R) Student's standard scores were as follows: Total Reading 75 (borderline range), Mathematics 82 (low average range), and Written Language Composite 75 (borderline range) (P-10)
23. The standard score comparisons⁴ in the area of reading reveal meaningful educational progress in that Student kept pace with her age peer cohort over the eighteen month period between the first testing and the second. In order to maintain the same standard score (76/75) over an eighteen month period she had to progress eighteen months in ability. (NT 375-376)
24. During Student's second grade year in the District she progressed in knowledge of sight words as assessed by the Fry Instant Word List; in September 2005 she recognized 51 words and in June 2006 she recognized 131 words. (NT 487)

⁴ Comparisons are made with the understanding that given the Standard Error of Measurement scores are accurate within a range, with a significant difference beginning at about one standard deviation, that is about 15 points.

25. In the area of phonological awareness Student received a standard score of 82 on the C-TOP in February 2005, and a standard score of 112 on the Woodcock Johnson in May 2006. (NT 489)
26. On the Developmental Reading Assessment (DRA) Student went from Reading Level Three in January 2005 to Reading Level Twelve in June 2006⁵. (NT 490-491)
27. The standard score comparisons in the area of mathematics reasoning⁶ indicated meaningful educational progress in that Student kept pace with her same age peer cohort over an eighteen month period (87/82). (NT 368-369)
28. In mathematics, on the District's Secure Skills Checklist Student had mastered eight secure skills by January 2006 and she had mastered sixteen skills by June 2006. (NT 488)
29. The written language composite scores on the WIAT-II and the PIAT-R are not validly comparable. However, on the spelling portions, Student received a standard score in the 3rd percentile on the WIAT-II and eighteen months later a score in the 14th percentile on the PIAT-R. (NT 372-374; P-5, P-10)

Speech/Language

30. In December 2004 Student's speech and language functioning was assessed through the Comprehensive Assessment of Spoken Language (CASL). Her Core Composite score was 90 (average range), her Receptive score was 92 (average range) and her Expressive score was 88 (average range). Her Lexical/Semantic score was 83 (below average range), her Syntactical score was 86 (average range) and her Supralinguistic [use of social language] score was 93 (average range). (P-5)
31. In December 2004 further speech/language evaluation was done through portions of the Test of Language Development – Primary:3. Student's functioning on both Grammatical Understanding and Grammatical Completion was in the average range. (P-5)
32. The speech and language evaluator found that while Student's skills across all language areas were not equally developed, she was not a student with a speech and language disorder and that her global language abilities were commensurate

⁵The QRI was also administered to assess Student's reading progress but results were not used in this decision because there seemed to be a discrepancy between the District witness' testimony and the information in a document. While the witness' testimony suggested a modest gain on the QRI, the document showed a much greater gain. (NT 487-488; P-10)

⁶ For the WIAT-II, math reasoning rather than the math composite is used because the nature of the instruments makes this method of comparison of this test with the PIAT-R valid. Were the WIAT-II math composite score used there would have been an inflated rate of progress suggested and the District psychologist was commendably careful to be accurate in her interpretation of data. (NT 364-365)

- with her ability level such that she did not require speech/language support to access the curriculum. (NT 53-54; P-5)
33. During the 2004-2005 school year Student's social language issues were addressed within the resource room and she was included in the "Lunch Bunch" under direction of the guidance counselor. (NT 248)
 34. Via a letter dated August 1, 2006 the Parents requested that the District conduct another speech/language evaluation of Student. This is the first time the Parents had requested another speech/language evaluation. (NT 154; S-24)
 35. The speech/language evaluation, dated September 22, 2006 noted that although on the standardized CASL, where Student's receptive and expressive language skills were age-appropriate and her core composite score of receptive, expressive and social language scores were all within normal limits, on the District's pragmatic language rubric Student had needs. (NT 227-228)
 36. The speech/language evaluator reviewed the results of the December 2004 evaluation and discussed the findings of that evaluation and her own findings with the former evaluator. (NT 263)
 37. A comparison of the previous District speech/language evaluation and the second one revealed that although Student was making gains and growth in the area of pragmatic language, she was not making as much growth as would be expected for her age and was not keeping up with same aged peers. She was slightly below average expectations in that specific area. (NT 230)
 38. The second speech/language evaluator concluded that she concurred with the results and recommendations of the first evaluator who found Student not eligible, but that given that Student's social language skills had not kept pace as revealed by a comparison of scores at the beginning and the end of an eighteen-month span, she now met eligibility criteria. (NT 264-266)
 39. The speech/language evaluator concluded that Student needed speech language services to keep pace with her same-aged peers and recommended that the service be delivered in the resource room in a small group setting and that there be consultation between the speech therapist and Student's teachers. (NT 234, 242, 244-245)

Behavior

40. As part of the evaluation completed in January 2005, both mother and teacher completed the Conners' Rating Scales. Ratings were concordant, with both raters endorsing the same types of behaviors, with a higher level of dysfunction found in the school setting. Student was rated as being "very much above normal" in the area of Emotional Lability by both raters; as being "very much above normal" in the area of ADHD by the teacher and "above normal" by the mother; and as being

“very much above normal” in the area of Restless-Impulsive by the teacher and “above normal” by the mother. (P-5)

41. The same raters completed the Behavior Assessment System for Children (BASC). There was some inter-rater concordance; again more behaviors were endorsed at higher levels in the school setting, with the exception of Aggression, which the mother rated at the Clinically Significant level while the teacher rated it at the lower At-Risk level. (P-5)
42. Overall, responses to behavior checklists “suggested a moderate to significant level of difficulty with behaviors related to emotional lability, social interactions and compliance”. It was suggested that Student might benefit from “informal behavior management strategies including positive reinforcement, redirection, consistent structure, routine, expectations, limits and consequences” and that “continued participation in a small group emphasizing social skills” would “enhance Student’s peer relationships”. (P-5)
43. Student did not have or require a formal behavior support plan during second grade because she was functioning in the classroom and making progress. (NT 1065-1067)
44. On February 16, 2005 Student was evaluated at [redacted] Hospital’s Center for Management of ADHD. The evaluating psychologist concluded there was “enough evidence of inattentiveness, distractibility, and impulsivity to warrant a diagnosis of Attention Deficit/Hyperactivity Disorder, Combined Type”. The evaluator noted that the recommended treatment for ADHD includes the use of medication and indicated that the Parents might want to explore this with Student’s pediatrician. (NT 64; P-6)
45. The Parents shared a copy of the [Hospital] report with the District at the beginning of April 2005, almost immediately after they received it.⁷ The teacher reviewed the report to see if the IEP needed to be changed and determined that all relevant recommendations were already incorporated into the IEP and classroom procedures. (NT 202, 1072-1079)
46. Medication treatment with Strattera did not begin until September 2005. The school was informed. Although Student later stopped taking the medication in December 2005, the school was not informed of this change until an IEP meeting at the end of March 2006. (NT 198-200, 445 1019)
47. Although at the time of the March 2006 at IEP meeting there had been two notable incidents between Student and her peers during the time she was off medication, this did not represent a frequent occurrence of significance that would trigger a formal behavior management plan. (NT 338, 445, 1067-1071)

⁷ The timing is not remarkable as it is common for evaluation reports from clinical settings to be written a month or so after the patient has been seen.

48. The District did discuss strategies for helping Student with her behavior. (NT 339)
49. Student's behaviors were further addressed by the employment of behavior point sheets in the regular and special education settings; the point sheets were used for rewards for Student and provided daily data for behavioral analysis if and when needed. (NT 339-340, 1031-1048)
50. Although a behavior specialist consulted in Student's resource room on a monthly basis to observe and assist in progress monitoring the need never arose for this specialist to become involved with Student's programming during second grade. (NT 1028-1029)
51. Student's teacher noted that Student made "huge progress" in socialization during second grade. (NT 1107-1108)

Program/Placement Offered for 2006-2007

52. Student was reevaluated by the District during April, May and June 2006. The reevaluation report was issued on June 15, 2006. (NT 290)
53. On June 14, 2006 an IEP was developed for the coming school year (2006-2007). (P-11)
54. The June 2006 IEP presented extensive present levels of educational performance, strengths and needs, goals and measurable objectives addressing reading accuracy, decoding, fluency and comprehension; writing focus, content, conventions and organization; increasing mastery of secure math skills; and, improvement of bilateral coordination and sequencing skills. Specially designed instruction includes a variety of tools to assist Student in the instructional setting. The IEP provided for direct and consultative Occupational Therapy. (P-11)
55. The June 2006 IEP adds specially designed instruction as follows: use of a visual cross-off schedule, use of homework binder for organization, student/point checklist, social storytelling with flexibility and rewards for being flexible, chunking information and pairing visual/auditory and visual/abstract, calculator for math computation, math recipe book, highlighting strip for visual tracking, visual reminder of expectations for good listening, task completion checklist for writing activities and visualization strategies for spelling. (P-11)
56. As at the time of the January 2006 IEP development, at the time of the June 2006 IEP development the District psychologist concluded that Student did not require a specific formal behavior plan, as her behaviors could be addressed through strategies developed by the teacher and through consultation with specialists within the District and with the Parents. The psychologist also noted that if Student began to evidence significant behavior problems a functional behavioral

assessment could be performed and a written behavior plan might then be utilized. (NT 336-340)

57. However, a revision to the June 2006 IEP was offered in an IEP dated August 31, 2006. The only change from the June 2006 IEP were the addition of a “learning to learn” (behavioral) goal regarding following directions, transitioning from one activity to another, and flexibility and cooperation in working with others and the addition of Pro-social skills training to the SDI. (P-13)
58. A revision to the August 2006 IEP was made on October 30, 2006 following a speech and language evaluation conducted in September 2006 by parental request. Specifically the October 2006 revision of the IEP included a speech/language goal, three speech/language specially designed instruction methods, the speech/language rubric and two new speech/language supports for school personnel. The Parents rejected the October 30, 2006 IEP. (NT 151-152, 154; P-14)

Credibility of Witnesses

A hearing officer is specifically charged with assessing the credibility of witnesses. Each of the witnesses in this matter was credible, with one exception, and two witnesses, although giving conflicting testimony, were exceptionally credible. The testimony of Student’s private psychologist, who was treating Student’s ADHD, defiance and noncompliance with psychotherapy and biofeedback, was troubling in that this individual had never observed the child at the public school or at the Private school, made definitive pronouncements that she did not support with data, was unclear about when or if she reviewed certain material, was not aware prior to June 2006 that Student was identified as having a specific learning disability, testified that Student did not make progress in the District and then testified that she did make progress, during a lengthy conversation with the school psychologist did not raise concerns about Student’s academic progress in the District, provided incorrect information about several testing instruments, attended no IEP meetings in the District, and held an incorrect belief about the neurobiological mechanism of the medication Student was taking. Thus her testimony was given no weight towards the Parents’ burden of proof, in fact detracted from their case, and was not utilized in writing this decision.

Both the District’s school psychologist and the Head of the Private School were determined by this hearing officer to be very credible, and they each provided clear, instructive and very interesting testimony, although their beliefs about Student’s classification/diagnosis were divergent from one another. The District psychologist was fairly recently trained and relied heavily on research and standardized, normed instruments to reach her conclusions about Student’s classification and needs. The Head of the Private School has extensive training and years of experience and supplemented her thorough knowledge of the research with her direct experience working with students

in a variety of roles and settings. The District psychologist believes that Student has Asperger's Disorder, while the Head of the Private School believes that although Asperger's is possible, there are other more likely conditions that offer a more parsimonious explanation of Student's features. It seemed to this hearing officer that the Parents' difficulties with the District crystallized around this diagnosis with which they disagree. Although considerable testimony was devoted to this topic, ultimately upon reflection it seemed irrelevant to the question of the provision of FAPE to Student at this point and for purposes of this decision this hearing officer decided not to resolve this aspect of the dispute. As Student proceeds into later school years a definitive diagnosis/classification will likely become less difficult to ascertain, one way or the other. At this juncture the particular classification is not essential, as her academic and social needs are clear, and programming would look the same regardless of the label.

Discussion and Conclusions of Law

Legal Basis

Special education programming and placement issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004).

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

Having been found eligible for special education, 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).

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... CFR §300.347(a)(1) through (4)

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 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing Board of Education v. Diamond, 808 F.2d 987 (3rd 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. The court in Polk held that educational benefit "must be gauged in relation to the child's potential." This was reiterated in later decisions that held that meaningful educational benefit must relate to the child's potential. See T.R. v. Kingwood Township Board of Education, 205 F.3d 572 (3rd Cir. 2000); Ridgewood Bd. of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999); S.H. v. Newark, 336 F.3d 260 (3rd Cir. 2003) (district must show that its proposed IEP will provide a child with meaningful educational benefit). The appropriateness of an IEP must be based upon information available at the time a district offers it; subsequently obtained information cannot be considered in judging whether an IEP is appropriate. Delaware County Intermediate Unit v. Martin K., 831 F. Supp. 1206 (E.D. Pa. 1993); Adams v. State of Oregon, 195 F.3d 1141 (9th Cir. 1999); Rose supra.

Districts need not provide the optimal level of service, maximize a child's opportunity, 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.; Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996, 1001 (4th Cir. 1998); Lachman, supra. In creating a legally appropriate IEP, a School District is not required to provide an optimal program, nor is it required to "close the gap," either between the child's performance and his untapped potential, or between his performance and that of non-disabled peers. In Re A.L. v. Laurel School District, Special Education Opinion No. 1451 (2004) ; See In Re J.B. v. Pennsbury School District, Special Education Opinion No. 1281 (2002)

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). Under the IDEA parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student. M.M. v. School Board of Miami - Dade

County, Florida, 437 F.3d 1085 (11th Cir. 2006); Lachman v. Illinois Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988) 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. 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).

Discussion:

When Student entered the District as a repeating first grader in September 2004, her teachers almost immediately noted deficits in reading and mathematics and began to provide additional services. An evaluation was conducted in an appropriate and timely manner during November and December 2004, the evaluation report was issued in January 2005 and an IEP was in place by February 2005. The IEP, which covered the first half of the year during which the Parents are alleging a denial of FAPE (2005-2006 – second grade) was an appropriate IEP. It contained all the required elements described in the IDEA and in each part and as a whole was reasonably calculated to provide Student with meaningful educational benefit. Based upon experiences with Student during the first part of first grade, it was not deemed necessary to construct a behavior management plan for her. Based upon the results of a thorough Speech/Language evaluation completed in December 2004 Student was not judged to be in need of speech/language services.

Based upon an appropriate IEP the District provided instruction to Student in reading, writing and mathematics using systematic, research based methodology – the MRI Program and the Everyday Math Program. The District was not required to use a particular program or programs favored by the Parents. The IEP developed for the second half of Student’s second grade year built upon the previous IEP and was an appropriate IEP, offering meaningful educational benefit. During the 2005-2006 school year, which was second grade, Student was provided FAPE. Although she had some behaviors that were of concern, the concerns did not rise to the level of Student’s requiring a formal behavior management plan. In fact, the Parents did not start Student on Strattera until September 2005 and they discontinued the medication/allowed it to be discontinued without a replacement trial in December 2005.

Both normed, standardized testing done before and at the conclusion of the eighteen month period Student was educated under District IEP’s, and curriculum-based assessments performed before, during and after her second grade year, demonstrated that Student made meaningful educational progress, overall eighteen months progress in eighteen months. Although an IEP is not a performance contract, and progress made is not an exclusive criterion for the appropriateness of an IEP, Student’s progress under her IEP’s was commensurate with her ability.

When Student was reevaluated in spring 2006 and a new IEP developed the District again produced an appropriate document. In response to concerns about social skills, in August 2006 the scope of the IEP was expanded to focus more specifically on this area. When

the District provided Student's Parents with her proposed IEP in August 2006 the Parents had already made a commitment to her enrollment at the Private School. A parental request for a speech and language evaluation in August resulted in an evaluation's being completed in September 2006, after Student had begun the Private School. As a result of the evaluation, which found that Student had not kept pace with her peers in pragmatic language, speech/language goals and SDI were added to the IEP in a final October 2006 offer. The IEP as developed in June 2006 was appropriate; the additions in August 2006 and in October 2006 enhanced the IEP and again the IEP offered to Student was appropriate.

As Student was offered an appropriate program and placement in the form of an appropriate IEP for the school year 2006-2007, neither the question of whether the Parents' unilateral placement at the Private School was appropriate nor a consideration of the equities need to be addressed.

ORDER

It is hereby ordered that:

1. The Central Bucks School District did not fail to offer Student a free, appropriate public education by means of an appropriate IEP that was appropriately implemented during the 2005-2006 school year, specifically in the areas of speech/language services, a behavior support plan, and effective instruction in reading, mathematics and writing.
2. As the Central Bucks School District did not fail to offer Student a free appropriate public education for the 2005-2006 school year, she is not entitled to compensatory education.
3. The Central Bucks School District did not fail to offer Student an appropriate IEP for the 2006-2007 school year.
4. As the Central Bucks School District did not fail to offer Student an appropriate IEP for the 2006-2007 school year it is not necessary to address the issue of the appropriateness of the placement unilaterally chosen by the Parents.
5. As the Central Bucks School District did not fail to offer Student an appropriate IEP for the 2006-2007 school year, it is not necessary to address the issue of equitable considerations.

March 27, 2007

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.