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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: AO
ODR # 6973/06-07 KE

Date of Birth:
Xx/xx/xx

Dates of Hearing: November 14 2006, November 29, 2006,
January 4, 2007, January 5, 2007, January 10, 2007
February 8, 2007, February 12, 2007, March 6, 2007 1

OPEN HEARING

Parties to the Hearing:
Mr. and Mrs.

Mr. Sam Ewing
Central Bucks School District
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Doylestown, PA 18901

Representative:
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Date Transcript Received:

March 11, 2007

Date of Decision:

April 16, 2007

Hearing Officer:

Marcie Romberger, Esquire

1 Parties requested written closings. The record remained open until March 30, 2007.

BACKGROUND

Student is currently in Second Grade at the [redacted] School for the Deaf. She was placed there by the Central Bucks School District when she was in Kindergarten and has continued there until the present. In October, 2006, the Central Bucks School District offered an IEP and a placement for Student for the 2006-2007 school year in an Intermediate Unit program located in a neighboring school district than the one Student resides. Student objected to the IEP and placement and requested this due process hearing.

FINDING OF FACTS

1. Student is currently xx years old and in second grade. S-7; N.T. 1007.
2. Student was diagnosed at birth with a hearing loss caused by Cytomegalovirus, a congenital infection in newborns. N.T. 33, 1494. As a result, Student has a profound sensory neural hearing loss in the right ear and a moderate sloping to severe sensorineural hearing loss in the left ear. S-5; N.T. 371, 1495.
3. Student currently wears a hearing aid in her left ear. S-5.
4. The natural course of Cytomegalovirus is that a person's hearing decreases over time. N.T. 1509.
5. During the fall of 2004, Student lost her hearing completely. N.T. 1351. Since then, Student's hearing abilities have varied. S-27, P-51, 53; N.T. 1351, 1352, 1458.
6. Although Student has a hearing loss, she does respond to sound by using her residual hearing and with use of her hearing aide. N.T. 120, 371-372, 378. A person with normal hearing responds to sound between 0 and 20 dBs across the frequencies. N.T. 370. With a hearing aide, Student is able to hear within the normal range although she does not hear normally. N.T. 378, 389.
7. Student's primary mode of communication is sign language, but she is able to use her speech to communicate. N.T. 120, 125-126. She can communicate by sign only, by sign and voice, and by voice only. Id., 149. Her spoken and sign language is sometimes intelligible to those who are familiar with Deaf speech. S-5; N.T. 121, 149, 160, 396-397. However, her thoughts may not be expressed appropriately. S-5; N.T. 657, 968, 1127. She also tries to lip-read and can do it fairly well. N.T. 657, 1571.
8. Student can benefit from auditory input, but she gets greater clarification when it is accompanied by signing. N.T. 1062. Student has to have a visual cue in order to retain information. N.T. 1390.

9. Instruction via Total Communication is appropriate for Student. N.T. 129.
10. Student was placed for Kindergarten by the Central Bucks School District (hereinafter "District") in the [redacted] School for the Deaf in [state redacted] (hereinafter "redacted") during the 2004-2005 school year. N.T. 36.
11. Although it did not prepare an IEP for Student for the 2005-2006 school year, the District continued Student's placement at School for the Deaf for Student's first grade year. N.T. 47, 902, 903.
12. Student's mother and step-father questioned whether Student made meaningful educational progress during her first grade year. N.T. 59, 63-64, 209.
13. In January, 2006, Student's family requested a neuropsychological evaluation which the District approved. P-24; N.T. 1681. However, because of delays on behalf of the District, the neuropsychological evaluation by Dr. C did not commence until May, 2006. P-23, 24, 25; N.T. 1682.
14. Student's mother raised a concern with Dr. C that Student was not making progress at School for the Deaf. N.T. 1238. Student's father expressed concern that Student "closes up" and isolates herself in an environment primarily with hearing individuals. S-7.
15. Student also received a speech/language evaluation by Ms. B in May, 2006. S-5, P-18. All information through the evaluation was provided to Student orally and with sign language. S-5, P-18. Ms. B determined that Student had significant deficits in expressive and receptive language skills. S-5, P-18.
16. Student's speech/language therapist for the past few years agreed with Ms. B's recommendations. N.T. 1360.
17. Also in May, 2006, an IEP meeting was held to discuss Extended School Year (hereinafter "ESY"). P-5N.T. 62. It was decided that the goals and objectives in Student's ESY IEP would carry into the school year until the results of the neuropsychological were received. N.T. 62.
18. The goals in the May, 2006 IEP are very limited and do not meet all of Student's needs. P-5.
19. During ESY, the use of an interpreter was attempted at the request of Student's parents. P-32. It did not go well because Student could not follow the interpreter like normal Deaf children. S-23; N.T. 1690-1692, 1776, 1777.
20. During ESY 2006, Student was barely able to write a sentence. S-9.

21. The District performed assessments in July, 2006. Some of the tests, the Comprehensive Assessment of Spoken Language and the Peabody Picture Vocabulary Test, are not appropriate to use with a Deaf child. S-23; N.T. 1125-1126.
22. Student had difficulty with focus and distractibility during the testing. S-23.
23. The neuropsychological evaluation conducted by Dr. C was completed in August, 2006. S-7. Dr. C found Student had poor decoding skills, very poor comprehension, and very impaired spelling and writing. N.T. 1128-1129. Her ability to use syntax and structure her sentences in a grammatical way in English or in ASL was also impaired. N.T. 1138. Dr. C diagnosed Student with a mixed receptive-expressive language disorder. N.T. 1143.
24. Dr. C noted Student's expressive language through sign and through voice was limited and at times Student's signed and voiced different words and sentences simultaneously. S-7.
25. Some of Student's oral speech and signs were unintelligible to Dr. C. S-7.
26. Student's executive functioning ability is less than a normal Deaf child. N.T. 1140-1141. Student also has difficulty with organization and self-control. S-7. Dr. C diagnosed Student as a child with a rule out executive dysfunction disorder which should be monitored over time. N.T. 1141, 1144.
27. Dr. C determined Student was functioning within the borderline to low average range of intelligence. S-7; N.T. 1137. This is significantly less than her average range performance in the past. S-7; N.T. 1137. The decline may be as a result of Student's language disorder. Id.
28. Dr. C felt Student generally demonstrated a good ability to establish focus, at times demonstrated the ability to attend to more than one stimulus figure, and to shift between different stimuli. N.T. 1243-1244. However, Student's ability to function without a structure is relatively ineffective. N.T. 1125.
29. Student has difficulty understanding or comprehending multiple commands or multiple pieces of information. S-5, 7; N.T. 1669. When she does not understand, Student becomes frustrated and emotionally upset for a long time. S-3, 9; N.T. 1671-1672. She needs to be encouraged to try things. S-3.
30. When a child cannot use his/her primary language, he/she can appear frozen or panicked. N.T. 1504. The child can become oppositional, angry, and withdrawn as a result of not understanding their environment. Id.
31. Dr. C's evaluation found that Student does not understand language. N.T. 1149. Student's speech therapist agrees. N.T. 1391, 1392.

32. Dr. C agrees that being able to voice in an intelligible way, use an interpreter, and speech read is beneficial to Student; however, she believes Student cannot do these things without first becoming fluent in a language. N.T. 11, 49, 1269, 1271.
33. In order for a child to use an interpreter, a student needs a good attention span, and the ability to understand the language the interpreter is signing. N.T. 739.
34. Dr. C recommended Student learn Pidgin Sign English first and when she has solidly learned Pidgin Sign English, then she should be taught another language. S-7; N.T. 1253.
35. Dr. C believes Student should be taught reading, spelling, and writing via a sight-based approach. S-7.
36. Prior to the August 9, 2006 IEP meeting, the District testified that it requested baseline information and progress monitoring data from School for the Deaf regarding Student's progress, but School for the Deaf was unable to provide the information. N.T. 806. However, there is no evidence to prove the District actually requested any information from School for the Deaf. N.T. 894.
37. Student only provided the District with an audiological evaluation from 2003. N.T. 383-384. Student did not provide, nor did the District request, an updated audiological evaluation. N.T. 385-386.
38. During the August 9, 2006 IEP meeting, Dr. C reviewed her report with the IEP team. N.T. 72-73. The District paid for Dr. C's attendance at this meeting. P-8; S-13; N.T. 765.
39. The IEP team met again August 23, 2006. The purpose of the meeting was to review Student's progress at Extended School Year, review the recommendations from Dr. C's evaluation, and to amend the IEP if necessary. N.T. 768.
40. Although the District told Student that it would not pay for Dr. C to attend this meeting, Student invited Dr. C. S-8; N.T. 116.
41. The District opened the August 23, 2006 meeting by requesting that Dr. C again review her evaluation report and findings. N.T. 266, 271. School personnel asked Dr. C questions during the meeting. N.T. 272.
42. As a result of her participation at the meeting, Student requested the District fund Dr. C's attendance, but the District refused. S-10, 13, 14, P-23; N.T. 116.
43. Student's teachers at School for the Deaf were not present at the IEP meeting. S-11; N.T. 875. Instead, the District considered a District special education

- supervisor who is also a certified elementary school teacher as Student's regular education teacher. N.T. 875.
44. There is no evidence that an invitation to Student's IEP meeting was ever sent to teachers at School for the Deaf. N.T. 876.
 45. An administrator from School for the Deaf was present at the August 23, 2006 IEP meeting at Student's request. S-11. She provided the District with an Instructional Guide which consisted of only subjective data regarding Student's progress. S-3; N.T. 850, 851.
 46. Student's mother and step-father requested parental education in sign language as a related service to teach them conversational sign language skills since Student's primary mode of communication is sign language and Student's skills are better than theirs. N.T. 67-68, 114, 211-212. The District declined. N.T. 68.
 47. Student's mother and step-father also requested individual sign language tutoring for Student to increase her sign language skills based on Dr. C's evaluation. N.T. 86, 241, 1179-1180. The District refused this request. S-13.
 48. She also recommended direct instruction in language so Student can learn the paradigms of language. N.T. 1147. Student needs to be taught that sign language and English are two separate languages and how the two languages can be combined. N.T. 694.
 49. Student's mother and step-father requested an itinerant teacher for Student to assist Student with organization, redirection, and processing. N.T. 110, 236-237. The District rejected this request. N.T. 501.
 50. Student also believes an aide on the bus is necessary for her safety since the bus driver does not know sign language. N.T. 110-112, 907, 1178, 1265. This was in response to an incident where the bus driver was lost and could not understand Student when she tried to give him directions. N.T. 792-793. This request was also denied although the District agrees communication between Student and the bus driver would be difficult. S-13; N.T. 792, 907.
 51. At the August 23, 2006 IEP meeting, three placement options were discussed: resource room at Student's neighborhood school, Hearing Impaired classroom at [redacted Elementary School], and School for the Deaf. N.T. 1709. Student's family did not believe any of the options completely met Student's needs without modifications, but the District would offer no other placement options. S-10; N.T. 1709, 1710, 1711.2

² In July, 2006, Student was researching placement options for the 2006-2007 school year outside placement at School for the Deaf. P-32.

52. No determination regarding placement was made at the August 23, 2006 IEP meeting. N.T. 779. The District expressed a willingness to work with School for the Deaf to maintain Student's placement if possible. N.T. 779.
53. In September, 2006, the District sent the IEP to the Intermediate Unit and School for the Deaf and requested confirmation that both places could implement Student's IEP. N.T. 790, 791. The Intermediate Unit responded that it could implement Student's IEP, although the teacher at Elementary School had concerns that Student's IEP had so many goals and objectives that, without additional assistance, all she would be doing is assessing Student and not teaching the regular curriculum. N.T. 662-663, 665, 667.
54. School for the Deaf was unsure if it could implement Student's IEP. Its concerns were: 1) the IEP goals made specific reference to the District's curriculum and the District did not provide School for the Deaf with its curriculum; 2) the progress monitoring tools were unfamiliar to them; 3) some specially designed instruction terminology. S-17, 19; N.T. 193, 195, 196, 790, 803.
55. The District had offered to train School for the Deaf in the progress monitoring tools listed in the IEP, but the District never sent anyone to School for the Deaf. S-17; N.T. 193, 815, 906. School for the Deaf was willing to provide training to teachers in progress monitoring. N.T. 905.
56. The District was losing confidence that School for the Deaf could meet Student's needs and provide her with an appropriate education. N.T. 810.
57. Through a phone call from Student's family to the District on August 30, 2006, Student's family discussed their "significant concerns" with the August 23, 2006 IEP. P-37.
58. By letter dated September 18, 2006, the District rejected Parents' concerns. S-17.
59. In October, 2006, Student provided the District with specific comments and recommendations to the IEP. S-15; N.T. 795. The Supervisor of Special Education for the District alone reviewed Student's comments to determine whether the recommendations were appropriate. N.T. 797.
60. The District did add information to a new IEP issued on October 17, 2006. The added information was in bold. N.T. 821-824. In addition, the District offered a placement at Elementary School to begin immediately in the middle of the school year. N.T. 832, 927. This placement was decided by the supervisor of special education for the District and not discussed in an IEP meeting or with the IEP team, including the parents. S-13, 16.
61. Prior to offering IEPs to Student in August or October, no one from the District or Intermediate Unit observed Student at School for the Deaf. N.T. 433. The first

- time anyone from the District or Intermediate Unit observed Student at School for the Deaf was after the hearing had begun. 3
62. The District's offered placement at Elementary School was in response to Student's request for a due process hearing. N.T. 847.
 63. The District believes that care is necessary in transitioning Student from School for the Deaf to Elementary School, yet the IEP does not discuss transition or have a transition plan. S-23; N.T. 929.
 64. Student was not satisfied with the August 23, 2006 IEP and the October 17, 2006 IEP for a number of reasons: it lacked information from Dr. C's report; the goals and objectives focus on articulation for an oral child which Student is not; and the IEP did not provide an itinerant teacher or an aide on the school bus. N.T. 76-80, 197, 198, 199-200, 263.
 65. Dr. C believes the IEP offered by the District is not appropriate for Student because it focuses on vocabulary (a strength of Student's), articulation, phonological development and awareness, and speech intelligibility instead of focusing on language and helping her understand and make meaning of language. N.T. 1156, 1157, 1158, 1169. She also believes the IEP needs additional specially designed instruction. N.T. 1200.
 66. The IEP does not contain goals to teach Student how to organize language in general sentence structure. N.T. 1704.
 67. Although Student did not master the short term objective in the May, 2006 IEP regarding prediction, there is no goal or short term objective for such in the October, 2007 IEP. S-9, 23.
 68. Organizing sight words into sentences to assist Student with her writing is not included in the October, 2006. S-7, 9, 23.
 69. Student's former speech/language therapist does not believe Student has enough oral functional language to be able to communicate with non-disabled peers or teachers who don't sign. N.T. 1480.
 70. Student's mother and step-father have decided the appropriate way to teach Student was in sign language due to Dr. C's report. N.T. 81-83, 240-241.

3 It is ironic that the District refused to permit Student's evaluator and step-father to observe the Elementary School program citing that the due process hearing had already begun, yet the District's only observation at School for the Deaf of Student occurred after the hearing begun and for the sole purpose of preparing for the hearing. N.T. 575, 929-930, 932. The District also did not inform Student that it was observing although the District would not permit Student's family to observe without someone accompanying them from the District or Intermediate Unit. N.T. 930.

71. Many of Student's teachers say Student can be easily distractible and disorganized. S-3; N.T. 125, 229, 1053. Dr. C also found low average range performance in attention and concentration. S-7. It is important that not a lot of other things are going on while she is trying to learn. N.T. 125.
72. As a result of Student's executive dysfunctions and her distractibility, a small class size is important to Student. N.T. 956-957.
73. Student attends a social skills program at School for the Deaf because she does not read people well and because she has difficulty organizing and planning her verbal exchanges. S-7; N.T. 132, 1386.
74. Dr. C does not believe Student should be taught with an emphasis on hearing while she still has an ability to hear. N.T. 1294-1295. Student's physician disagrees suggesting the ideal situation would be to utilize her hearing capacity to the greatest extent now while she still has her hearing. N.T. 1509, 1510, 1573. However, Student's physician does not believe a concentration should be on developing her oral skills because of her language diagnosis. N.T. 1574.

School for the Deaf

75. All Students at School for the Deaf have a hearing loss of some degree. N.T. 37. As a result, the entire campus of School for the Deaf is equipped for children with hearing impairments. N.T. 39.
76. All students at School for the Deaf sign. N.T. 38, 960, 961-962. All staff members sign and all teachers are fluent in sign language. N.T. 37, 93, 97, 960, 1054.
77. Class sizes are small. N.T. 37, 93, 97, 1054.
78. Students receive daily instruction in reading, writing, math, science, and social studies. N.T. 144.
79. Students are instructed in Deaf culture. N.T. 129, 131. Students attend Deaf events and Deaf people from the community come to the school to present. N.T. 37, 1053. When the students attend programs in the community, an interpreter is used. N.T. 1053.
80. All students at School for the Deaf are issued an Instructional Guide/Annual Review to identify those items covered in class. S-3; N.T. 40, 171. The content goals identified in the Instructional Guide/Annual Review are on grade level, the same for all students, and very generic. S-3; N.T. 122, 1034. There are no specific criteria to determine baselines or progress. N.T. 178-179, 184-185. School for the Deaf does not intend for this document to be an IEP. N.T. 189.

81. The instructional strategies section of the Instructional Guide does identify strategies used with Student. S-3; N.T. 1442.
82. Regarding speech, if there were strategies on the form that were not used with Student, the strategies were deleted before it was printed. S-3; N.T. 1442.
83. It is difficult to ascertain if teacher comments regarding progress on the Instructional Guide are based on any formal or informal assessments since the method of evaluation is not identified. S-3.
84. School for the Deaf personnel told Student's family that Student's numerical grades are an interpretation of where personnel subjectively thought Student was functioning. S-6.
85. Because there is not an agreed upon IEP for this year, Student's teacher is focusing her instruction on the Instructional Guide/Annual Review. N.T. 1019.
86. No extra-curricular activities are available for children Student's age. N.T. 123-124.
87. There are six students in Student's Second grade class. N.T. 124, 186. All of the students are working at a second grade level in the curriculum except in math and reading/language arts. N.T. 124-125, 953.
88. During math instruction, children are working on different levels simultaneously in the same classroom, but with separate instructors. N.T. 1063.
89. Student is taught reading with five students. N.T. 1089. Those students are not on the same reading level although Student's teacher teaches them all from the same book. Id.
90. In addition to the teacher, three aides work in Student's class at different parts of the day. N.T. 954. One aide works one-on-one with Student in reading to refocus Student and reinforce instruction. N.T. 955. For math, two aides work with the children in addition to the teacher. N.T. 955. Two of the aides are Deaf/Hearing Impaired. N.T. 954-955.
91. Student has an aide in the beginning and end of the school day to assist her with organization and an assistant in reading/language and math class. S-17; N.T. 105, 138-139.
92. Dr. C was impressed with Student's program at School for the Deaf because there is a focus on language and elements of language. N.T. 1166-1167. However, she did not believe aides providing reinforcement and repetition to Student were sufficient for Student's needs. N.T. 1277-1278.

93. Student's teacher uses total communication – signing and speaking at the same time – in the classroom. N.T. 127-128, 968. Student's teacher uses Pidgin Sign English with a focus on teaching English word order. N.T. 964-965. However, during the course of the day, Student is exposed to American Sign Language with no voice, sign with speech support, speech with sign support, and speech only. N.T. 161, 963.
94. The daily teaching of PSE and ASL is contrary to Dr. C's recommendations. S-7.
95. Student's teacher believes she can implement the IEP offered to Student in October, 2006 but she thinks some of the goals are not attainable at this time. N.T. 992.
96. Student has a behavior intervention plan which is the same for all the children in her class. N.T. 1045, 1046.
97. When asked if Student is making meaningful educational benefit at School for the Deaf, Student's mother answered, "Yes. We're getting there." N.T. 104.
98. Student's teacher believes Student is making meaningful progress in reading measured in a subjective manner. N.T. 971. Student's teacher also believes Student has made marked improvement in math based upon a cumulative inventory, and believes Student has made progress in writing though language stories. N.T. 974-976. Student's teacher believes Student is making progress in social studies and science because she actively participates in class. N.T. 978, 979.
99. There are no criteria to ascertain what constitutes the skill indicators on Student's report card. S-22, P-47; N.T. 1068. Progress is based mostly upon subjective teacher observation. N.T. 1068-1069.
100. Although Student is taught with a larger group at School for the Deaf than she would at Elementary School, the students who work together do the same work at the same level at School for the Deaf. N.T. 1907 - 1909. This is not the case at Elementary School. N.T. 1909.
101. School for the Deaf believes Student should learn to read phonetically and that Student is not consistent when recognizing basic sight words. S-3.
102. Student reading phonetically in class is inconsistent with the school's whole language philosophy and inconsistent with Dr. C's recommendation. P-45.
103. In 2005-2006, Student received speech/language therapy four times per week. S-3. Speech worked on articulation, auditory memory, comprehension, phonemic awareness, and expressive language. S-3.

104. Student also received occupational therapy two times per week during the 2005-2006 school year. S-3. Although Student met her goals in therapy sessions, she was not transferring the skills to the classroom, so it was recommended that occupational therapy continue during the 2006-2007 school year two times per week. S-3.

Intermediate Unit program at Elementary School

105. The Hearing Impaired classroom run by the Intermediate Unit is located at Elementary School which is not in Student's school district. N.T. 290-291.

106. Currently, the Elementary School program serves eight children with one teacher. An additional teacher provides language arts to two of the older students for an hour and a half per day. N.T. 332, 594, 600. There is also an instructional aide in the classroom which reinforces concepts with the children. N.T. 599. There are also three sign language interpreters who accompany the Hearing Impaired children to mainstreamed classes and provide reinforcement in the Hearing Impaired classroom of instruction assigned in the mainstreamed classes. N.T. 328-329, 594, 595.

107. If Student were to attend the Elementary School program, it is assumed that additional staffing would be placed in the classroom but it has not been confirmed. N.T. 331, 510, 511-512, 515, 516.

108. The staff in the class may be different next year based on the number of students in the class. N.T. 674.

109. The typical staff to student ratio is one staff to two students although there are times where there is one staff to four student ratio. N.T. 622.

110. Pull-out therapies are scheduled during academic time when a student is in the Hearing Impaired classroom. N.T. 626, 712, 719.

111. The children in the class fall between completely oral students and completely manual students; all but one child uses both speech and signing, although some use little sign language. P-49; N.T. 589-590.

112. The children in the class range between Kindergarten and Fifth Grade. N.T. 593. The age ranges of the children may be an even greater differential than the normal five to ten years of age. N.T. 1679. There are no Second graders in the class which is the grade Student is in. Id.

113. The Hearing Impaired classroom is broken into four sections: independent desk work area, calendar/group meeting area, group instruction area, and small

- group instruction area. N.T. 619-622. All areas are separated by “makeshift walls” comprised of an easel, computer and art supply carts, and bookcases. N.T. 620, 1589.
114. The Hearing Impaired program utilizes the Total Communication approach. This approach allows the teacher to use any or all modalities when working with a child: sign language, sign-supported speech, speech only, and/or speech reading. N.T. 310-312.
115. The teacher at Elementary School does not sign everything she says. P-49; N.T. 1645, 1721, 1868. This is different than School for the Deaf where everything is signed, even when teachers are not speaking directly to a student but to another adult. N.T. 1868.
116. The teacher at Elementary School says the reason she does not always sign is to see if her students can follow a one-step direction without sign support. N.T. 1938. However, the teacher also does not sign discussions between herself and other hearing people. N.T.
117. The Elementary School program works on audition, or auditory training, which is trying to get a child to use his/her residual hearing. N.T. 314. Elementary School also devotes a lot of time working on speech skills and speech reading. N.T. 315, 740.
118. Children in the Elementary School program attend functions with other Deaf students only once or twice a year. N.T. 326-327.
119. There are no Deaf individuals working with the students nor are there Deaf Individuals in positions of leadership in the school. N.T. 1845-1846.
120. Elementary School’s Hearing Impaired classroom uses the school’s reading curriculum, Harcourt Brace series, in the classroom. N.T. 1994.
121. A significant part of language arts is devoted to vocabulary concepts from the general education classes. N.T. 341.
122. If Student went to the Elementary School program, she would need to learn how to use an interpreter since others in the school outside the classroom, including the nurse, cannot sign. N.T. 353-354, 359, 464, 497, 498.
123. An interpreter is on call during lunch; there is not one available in the cafeteria or at recess unless a student requests it. N.T. 354, 616, 618, 2017.
124. Students at Elementary School can take a sign language class after school one time per week, but it is not open to second graders, the grade Student is in.

- N.T. 635, 637. Student would not be able to converse with another second grader without the use of an interpreter. N.T. 723-724.
125. There is also a sign language class for parents two times per month. N.T. 638-639.
126. Elementary School is not equipped for Hearing Impaired children. It does not have smoke and fire alarms specifically designed for Hearing Impaired children, nor are the classroom floors carpeted, even in the Deaf/Hearing Impaired classroom. N.T. 497, 1589, 1600, 1602. Carpeting helps reduce background noise. N.T. 1589. Some mainstream classrooms also do not have balls on the feet of the chairs to reduce background noise. N.T. 1602, 1644.
127. If a student needs a reduction of background noise through the use of tennis balls, it needs to be written in the IEP in order for it to be provided. N.T. 1934.
128. Student's mother and step-father do not believe the Elementary School program is appropriate for Student because the students in the program are various ages, impairments, and abilities. N.T. 90, 91.
129. A typical day in the Hearing Impaired classroom is as follows:
- 8:45-9:00 – come to school, unpack her bag
 - 9:00-9:30 – order lunch, hearing aide check, morning work if a student has some, down time if a student has no work, (N.T. 1844), no direct instruction provided (N.T. 704-705)
 - 9:30-10:00 – calendar time
 - 10:00 – 10:30 – snack
 - 10:30 – 12:00 – academic time
 - 12:00 – 1:00 – lunch and recess
 - 1:00 – 1:30 – academic time
 - 1:30 – 2:00 – class meeting to discuss what occurred in school, no direct instruction provided (N.T. 715)
 - 2:00 – 3:00 – academic time. (N.T. 603-608).
- A total of three hours of direct instruction occur daily. N.T. 716-717.
130. Informal assessments would occur after Student transitioned to Elementary School and a new IEP would be developed within six weeks. N.T. 611, 612.
131. The teacher in the Elementary School classroom is not a certified special education teacher nor is she personally familiar with executive dysfunction. N.T. 677, 679. None of the children in the class have been diagnosed with executive functioning disorder. N.T. 681, 1840-1841.

132. The teacher of the Elementary School program testified that two or three levels of instruction can be going on at one time, but it would be done with more than one “instructor.” N.T. 697-698. However, she also testified that it is very common for her to simultaneously teach two students at different skill levels. N.T. 335, 1909.
133. In fact, there are times when three students simultaneously study different subjects with her. N.T. 1976. At one point, the teacher was giving a vocabulary test to one student, teaching a science lesson to another student, and social studies to a third student simultaneously. N.T. 1609-1610, 1975. Two of the students were watching the student doing the science project and not focusing on their own studies. N.T. 1612. The student taking the vocabulary test had nothing to do while the teacher was working with the student doing the science project. N.T. 1724.
134. Dr. C does not believe teaching different subjects simultaneously is appropriate for Student. N.T. 1908-1909.
135. Student has a video phone at home. Elementary School does not have one. If it was necessary for her to have it at school, it needs to be placed in the IEP. N.T. 730-731. It is not in the IEP. S-23.
136. If Student attended the Elementary School program, she would be transported alone. N.T. 793-794.
137. Speech therapy was being provided to two students at the same time who were doing separate instruction. N.T. 1608, 1655. One student did not get much attention. N.T. 1608.
138. Dr. C does not believe Elementary School is an appropriate program for Student because the program focuses on oral language, speech reading, and speech discrimination. N.T. 1848-1849, 1850. No sight-based approach to learning, especially in reading, was being done. N.T. 1848-1849. Rather, a phonological approach to reading was being done. N.T. 1849. Also, there was an emphasis on English vocabulary rather than on grammar and structure of language, weaknesses of Student. N.T. 1849.
139. Dr. C also had concerns that interpreters were being used not only as interpreters, but as teachers/aides and preteaching, postteaching, and reinforcing instruction. N.T. 1856. She believes the use of an interpreter in this fashion confuses the role of an interpreter to students. Id. The District considers it appropriate to use the interpreters, known as educational interpreters, as aides/tutors. N.T. 1922.

ISSUES

Is the IEP and placement offered to Student in October, 2006 for the 2006-2007 school year appropriate?

Should Student receive reimbursement for Dr. C's attendance at an August, 2006 IEP meeting?

DISCUSSIONS AND CONCLUSIONS OF LAW

Burden of Proof

Following [Schaffer v. Weast](#), 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (Nov. 14, 2005), and [L.E. v. Ramsey Bd. of Educ.](#), 435 F.3d 384 (3d Cir. 2006), the burden of proof is now borne by the party bringing the challenge. As Student filed for this due process hearing, she has the burden of proof for the above issues.

FAPE

The Individuals with Disabilities Education Act (hereinafter "IDEA"), entitles each child with a disability a free appropriate public education (hereinafter, "FAPE"). The IDEA defines FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge to the child's family. 34 C.F.R. § 300.17. Special education for a student with disabilities can include instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. 34 C.F.R. § 300.39. Although the IDEA mandates that all children with disabilities are educated with children who are not disabled to the maximum extent appropriate, it does provide for children with disabilities to be educated in special classes or separate schools, including residential facilities, if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(2).

October, 2006 IEP

The IEP is the cornerstone of the special education program of a student. The IEP must include comprehensive present educational levels; measurable annual goals which point toward the child's actual educational needs; 4 benchmarks or short term objectives

4 20 U.S.C. §1414(d)(1)(A), 34 C.F.R. §300.320. [Bernardsville Board of Education v. J.H.](#), 42 F.3d 149 (3rd Cir. 1994); [Battle v. Commonwealth](#) 629 F.2d 269 (3d Cir. 1980); [David P. v. Lower Merion S.D.](#), 1998 U.S. Dis. LEXIS 15160 (E.D. Pa. 1998);

relating to the goals to address the child's disability and from which progress can be monitored; 5 a statement of special education and related services and supplementary aids and services which meet the individual needs of the child as reflected in the CER and extend beyond mere classroom accommodations;⁶ and an explanation of the extent to which the child will be educated with non-disabled children. 20 U.S.C. §1414(d); Polk v. Central Susquehanna Intermediate Unit, 853 F.2d 171 (3d Cir. 1988).

An IEP must be "reasonably calculated to enable the child to achieve meaningful educational benefit." Board of Education v. Rowley, 458 U.S. 176, 207, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1983). An IEP need not provide the maximum possible benefit to the child, but should provide for "significant learning." Montgomery Twp. Bd. of Educ. v. S.C., 135 Fed. Appx. 534, (3d Cir. 2005); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 247 (3d Cir. 1999). More than a trivial educational benefit does not meet the meaningful benefit requirement. L. E. v. Ramsey Bd. of Educ., 435 F.3d 384 (3d Cir. 2006); Ridgewood.

Student raised many issues during the hearing in her claim that the IEP offered to her in October, 2006 was inappropriate. I address these issues below.

A. IEP Team

A District must ensure that the IEP Team for each child with a disability includes the following personnel: the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in regular education); not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. 34 C.F.R. § 300.321 (a). A teacher or provider mentioned above is not required to attend an IEP Team meeting if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related service is not being modified or discussed in the meeting. 34 C.F.R. § 300.321 (e). If the member's curriculum area is being modified or discussed, that member may be excused from attending an IEP meeting when the parent and the district consent in writing to his/her absence and the member submits in writing input into the development of the IEP prior to the meeting. Id.

Student's teachers were not invited by the District to either of the August, 2006 IEP meetings nor did they attend. S-23; N.T. 875, 876. There was no agreement in writing for their absence, nor did any teacher submit input into the development of the IEP prior to the meeting. There is also no evidence to prove the District ever asked requested baseline data or progress monitoring information from School for the Deaf. N.T. 894. At Student's request, an administrator from School for the Deaf did attend the meetings, but she was not very familiar with Student's program.

⁵ Kelsey B. v. Camp Hill School District, ___ F.Supp.2d ___ CV-01-1082 (M.D.Pa. 2003).
⁶ 20 U.S.C. §1414(d)(1)(A), 34 C.F.R. §300.320.

In addition, the District and Intermediate Unit assumed Student would be mainstreamed as part of two placement options for Student, yet no current regular education teacher was part of the IEP team. N.T. 875. There was no one at the IEP meetings from the District who had even observed Student's program at School for the Deaf to provide input. N.T. 433. This lack of teachers and/or their input into the development of the IEP was prejudicial to Student and to the development of her IEP as many of Student's needs were not addressed in the IEP goals and objectives.

B. IEP Considerations

In developing an IEP for a child who is deaf or hard of hearing, the IEP Team must consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. 34 C.F.R. § 300.324 (a)(iv).

To the degree that Student understands a language, it is primarily sign. N.T. 120, 125-126. Student's mother and step-father have chosen sign as her mode of communication due to Dr. C's report. N.T. 81-83, 240-241. Yet, the offered program at Elementary School emphasizes oral communication and speech reading, not sign. In fact much of what is said in the classroom is not signed. P-49; N.T. 1645, 1721, 1868.

C. IEP Goals and Objectives

An IEP must include measurable annual goals which point toward the child's actual educational needs⁷ and benchmarks or short term objectives relating to the goals to address the child's disability and from which progress can be monitored.⁸

"Only those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable." [C.M. v. Bd. of Ed., 128 F. App'x 876, 881 \(3d Cir. 2005\)](#). n26; [M.S. & D.S. v. Mullica Twp. Bd. of Educ.](#), 2007 U.S. Dist. LEXIS 26952, (D.C. N.J. April, 2007).

Although the IEP is ambitious,⁹ it misses some of Student's weaknesses that would result in a loss of educational opportunity for Student. Below is a list of missing elements from the IEP:

⁷ 20 U.S.C. §1414(d)(1)(A), 34 C.F.R. §300.320. [Bernardsville Board of Education v. J.H.](#), 42 F.3d 149 (3rd Cir. 1994); [Battle v. Commonwealth](#) 629 F.2d 269 (3d Cir. 1980).

⁸ [Kelsey B. v. Camp Hill School District](#), ___ F.Supp.2d ___ CV-01-1082 (M.D.Pa. 2003).

⁹ I agree with Student's teacher and speech therapist that some of the goals in the IEP are not attainable at this time. N.T. 992.

- No goal for learning how to use an interpreter although Student would need to learn how to use one if she went to Elementary School. N.T. 353-354, 359, 464, 497, 498.
- No goal to assist Student with her organization issues although Student currently has an assistant to help her with her organization. S-3,7; N.T. 125, 229, 1053.
- No goal to improve her signing abilities. S-5, 7; N.T. 121, 149, 160, 396-397, 657, 968, 1127.
- No goal to teach Student how to organize language in general sentence structure. N.T. 1704.
- No goal or objectives to work on Student's inability to follow multiple commands. S-5, 7; N.T. 1669.
- No goal or objective to assist Student in predicting a story although Student did not master a short term objective in the May, 2006 IEP. S-9, 23.
- No goal or objective to have Student organize sight words into sentences to assist Student in her writing as a specially designed instruction. S-7, 9.
- No Specially Designed Instruction providing Student a multisensory, research based reading program focusing on sight word instruction.
- No aide on bus or requirement that driver know sign language although Student would be transported alone if she went to Elementary School. N.T. 793-794.
- No specially designed instruction to assist in reducing background noise, i.e. tennis balls, carpeting, etc. N.T. 1934.
- No transition plan to transition Student from School for the Deaf to Elementary School although district agrees she needs it. N.T. 929.

S-23.

In general, the IEP offered by the District focuses on vocabulary although it is a strength of Student's, articulation, phonological development and awareness, and speech intelligibility instead of focusing on language and helping her understand and make meaning of language. N.T. 1156, 1157, 1158, 1169, 1849.

D. IEP Related Services

Related services is defined as transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 C.F.R. §300.34. Included in the list of possible related services is parent counseling and training. Id. Parent counseling and training includes assisting parents in understanding the special needs of their child, providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP. 34 C.F.R. §300.34 (C)(8)(a).

Student has requested parental education be placed in the IEP to teach her mother and step-father conversational sign language skills because Student's primary mode of communication is sign language and Student's skills at signing are better than theirs. N.T. 67-68, 114, 211-212. The District declined. N.T. 68.

Providing sign language instruction would assist Student's mother and step-father acquire the necessary skills to allow them to support Student and her IEP in many ways, including assisting Student become fluent in a language. Therefore, I agree with Student that parent training should be a part of Student's IEP to teach Student's parents Pidgin Sign Language. It is surprising that the District would be unwilling to provide this when there already is such a program at Elementary School two times per month. N.T. 638-639.

C. IEP Effective Date

At the beginning of each school year, each public agency must have in effect for each child with a disability within its jurisdiction an IEP. 34 C.F.R. § 300.323(a).

As a result of delays by the District, Student waited five months for the independent Educational Evaluation to commence. P-23, 24, 25; N.T. 1682. Had there been no delays, Student's evaluation could have commenced in February, 2006 rather than May, 2006 and would have been completed by the end of the 2005-2006 school year rather than completed in August, 2006. This would have given the parties ample time to develop an IEP for Student prior to the 2006-2007 school year and possibly resolve any disputes before the commencement of the 2006-2007 school year. Instead, a final IEP was not offered to Student until October, 2006. 10

D. Placement Decisions

The District offered Student placement in the Hearing Impaired classroom at Elementary School. This class instructs students from Kindergarten through 5th grade. Pennsylvania regulations limit the maximum age range in one class to 3 years in elementary school (grades K-6). 22 Pa. Code § 14.142 (f). "A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team and is justified in the IEP." Id. Student's IEP does not justify an exception to this rule, nor should it. S-23. With Student's range of needs, placement in a class where students range from five years old to potentially over 10 is unacceptable.

In addition, consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on

10 It was agreed that the ESY IEP would carry over into the 2006-2007 school year, but the ESY IEP was very limited in scope. P-5. No other IEP was provided to Student since Kindergarten.

the educational placement of their child. 34 C.F.R. § 300.327. A placement decision may be made by a group without the involvement of a parent if the public agency is unable to obtain the parent's participation in the decision. 34 C.F.R. § 300.501 (4).

It is clear from the record that Student was not involved in final discussions regarding her educational placement. Actually, it appears from the record that no group or team was involved in determining an appropriate placement for Student. Rather, the District's special education supervisor alone made the decision regarding Student's offered placement. S-13, 16. It is even questionable whether the placement decision was made because it was appropriate for Student or solely for other reasons. N.T. 847.

The District argues that no IEP meeting to discuss placement occurred because Student waived the right to an IEP meeting on October 16, 2006. S-21. Yet, the District was aware that Student had significant concerns about the IEP on August 30, 2006, yet it did not commence another IEP meeting to discuss placement with Student. Student finally requested due process on September 22, 2006.

In addition to the problematic manner in which a placement decision was made, the Elementary School program itself is not appropriate for Student for a number of reasons:

- Constant signing is necessary for Student to learn language and to assist her with signing. However, it is not done in this class. N.T. 1908-1909.
- Language arts is used to teach vocabulary from the general education classes, not writing and language syntax. N.T. 341. However, Student would not be in regular education due to her inability to use an interpreter and her needs are in writing and language syntax.
- The reading program is not sight based. N.T. 1848-1849.
- Teaching children of different levels or different subjects simultaneously is not appropriate for Student with her specific needs, including attention and distractibility. S-3,7; N.T. 125, 229, 1053.
- Lack of large portion of the day dedicated to learning. FF 129.
- Pull-out therapies scheduled during limited academic time when a student is in the Hearing Impaired classroom. N.T. 626, 712, 719.
- Concern about appropriate speech services. FF 139.

E. Least Restrictive Environment

The IDEA requires a disabled child be placed in the least restrictive environment that will provide him/her with meaningful educational benefit. L. E. v. Ramsey Bd. of Educ. Least restrictive environment requires Districts to educate children with disabilities with children who are not disabled to the maximum extent appropriate. 34 C.F.R. §300.114. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or

severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Id.

Student claims placement in the Hearing Impaired classroom at Elementary School Elementary School is a more restrictive placement for her even though Elementary School would provide her with the opportunity to be educated with non-disabled peers, something School for the Deaf does not provide. The basis for the argument is that Student would not be able to communicate with anyone outside of the Hearing Impaired classroom as a result of Student's lack of using an interpreter and the lack of the majority of teachers, staff, and students at Elementary School knowing sign language.

The same issue came before the Court in S.H. v. State-Operated School District, 336 F.3d 260 (3d Cir 2003). The Court found,

“[e]ven considering the mainstreaming opportunities the School District points to, we agree with the ALJ that they are *de minimis*. Other than potential interaction at lunch or recess (in a uniform segregating the Bruce Street students from the nondisabled students), the School District points to art with sign interpreter and "after school sports with late bus" proving Bruce Street is the LRE. App. at A458. The LRE should be considered in light of I.H.'s specific educational needs. Geis v. Bd. Educ., 774 F.2d 575, 583 (3d Cir. 1985). As the ALJ noted, art with sign interpreter would provide almost no educational benefit to I.H. Therefore, any value from mainstreaming is marginal.

S.H. v. State-Operated Sch. Dist.,

Although technically Elementary School would provide more mainstreaming opportunities than in S.H., Student would be unable to derive meaningful benefit from the opportunities until she is able to use an interpreter.

School for the Deaf

Student would like me to find that School for the Deaf is an appropriate placement for Student. However, I cannot. Some of the same concerns I have with the Elementary School program are also being done at School for the Deaf.

- School for the Deaf is teaching both Pidgin Signed English and American Sign Language to Student daily against recommendations of Dr. C that she learn only one language at a time. S-7.
- No progress monitoring or formal/informal assessments are used to determine progress. While School for the Deaf's not using progress monitoring consistent with the District's is due to the District's lack of instruction, School for the Deaf

should be using objective evaluation tool to determine whether Student is making progress. N.T. 871, 974-976.

- The same reading level is taught to all students no matter their level or ability.¹¹ N.T. 1089.
- No research based reading instruction focusing on sight words is provided. Her teacher is teaching reading via a phonetics approach which is inconsistent with Dr. C's evaluation. S-3.

Conclusions Regarding Placement

Student requires a small, specialized, and highly structured educational program tailored to her functioning levels, hearing impairment, and specific language deficits. This program would provide developmentally appropriate curriculum, teachers specialized in working with hearing-impaired children, presentation of auditory training and facilitation of communication skills in Pidgin Signed English, and individual sign language tutoring in Pidgin Signed English. The focus of the instruction should be to teach Student English word order. N.T. 964-965.

Student also needs a multisensory, research based reading program with a focus on sight words. She should receive direct instruction in the elements of language and language syntax to assist her with writing. She needs to be taught all subjects in a small, homogenous group at her educational level – everyone in the group must be working on the same subject at the same level. An itinerant teacher may not be necessary for Student if she is being taught in a small, homogeneous group.

The placement needs to complete progress monitoring on a weekly basis and provide the data to Student for review.

If Student is removed from School for the Deaf, a transition plan needs to be in place to ensure a smooth transition. If Student is being transported to an educational placement where she is the only person on the bus, a person needs to be on the bus who is familiar with sign language in the event of an emergency. This could be the bus driver if familiar with sign language. Once Student can express herself better in writing or speaking, this is no longer a requirement.

Student's parents should receive training in Pidgin Signed English to assist Student with the goals in her IEP.

I agree with Student's mother and step-father that none of the placements offered in August, 2006 were appropriate without modifications. I am ordering the parties to meet at an IEP team meeting to locate a program for Student that will provide her with instruction that meets the above criteria and that can implement Student's October, 2006 IEP with the modifications described above.

¹¹ Although Student's teacher did say one child was removed for reading because that student was performing at a higher reading level, she testified that the other students were not on the same level but taught together.

It is possible that the Elementary School and School for the Deaf programs can become appropriate for Student if the modifications discussed here and in the above sections are done to meet Student's individualized needs.¹²

Reimbursement for Dr. C

Student requested reimbursement for Dr. C's participation in the August 23, 2006 IEP meeting. The District did provide funding for Dr. C's evaluation and for her attendance at the August 9, 2006 IEP meeting. Prior to the August 23, 2006 meeting, the District informed Student that it would not fund Dr. C's attendance at that IEP meeting. Student believes she should be reimbursed because the District requested she explain her report at the commencement of the meeting.

However, Dr. C had previously attended an IEP meeting where she discussed her test results and recommendations. As there was no additional information for Dr. C to review with the IEP team, I will not provide reimbursement to Student for her attendance at the August 23, 2006 IEP meeting.

¹² The Elementary School program has more changes to make to be appropriate for Student at this time because of her inability to use an interpreter.

ORDER

1. The District did not offer Student an appropriate IEP in October, 2006.
2. Placement at Elementary School is not appropriate for Student.
3. Placement at School for the Deaf is not appropriate for Student.
4. The IEP team is to meet within 30 days of this decision if no appeal is taken to make modifications to the IEP as identified on page 19 in this decision and to find an appropriate placement for Student for the remainder of the 2006-2007 school year consistent with page 23.
5. Student is not entitled to reimbursement for Dr. C's attendance at the August 23, 2006 IEP meeting.

Marcie Romberger, Esquire
Hearing Officer