

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

Due Process Hearing for PC

Date of Birth: xx/xx/xx

ODR File Number: 7016/06-7/AS

Dates of Hearing: December 4, 2006,

January 4, 2007, February 8, 2007, February 22, 2007

Parties:

M/M

West Chester School District
Spellman Admin. Bldg.
829 Paoli Pike
West Chester, PA 19380

Date Final Transcript/Exhibits Received:

Date Closing Statements Received/
Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Ms. Catherine Reisman, Esq.
Montgomery McCracken
123 S. Broad St.
Philadelphia, PA 19109-1030

Andrew Faust, Esq.
Sweet Stevens Katz
331 E. Butler Ave.
PO Box 5069
New Britain, PA 18901

February 28, 2007

March 7, 2007

*March 26, 2007
By agreement of counsel

Joy Waters Fleming, Esq.

Background

Student is currently in the fifth grade at the Private School. From kindergarten through a portion of fifth grade he attended school in the West Chester School District “District”. In October of 2006, Student’s parents “Parent or Parents” unilaterally placed him at the Private School, a private school. They seek compensatory education and tuition reimbursement on grounds that the District violated its child find obligations.

Issues

Is the District required to provide compensatory education services to Student for school years 2004-2005 onward for failing in its Child Find obligation and/or for its failure to timely evaluate Student?

Is the District required to reimburse Parents for tuition at the Private School in which they unilaterally placed Student for the 2006-2007 school year, based on their assertion that the District conducted an inappropriate evaluation?

Findings of Fact

1. Student, is currently xx years of age and in the fifth grade at the Private School.
2. Student attended kindergarten through a portion of fifth grade in the West Chester Area School District, “District”. (Joint Stipulation-I, “Jt. Stip”-I)
3. Student began attendance at the Private School in October 2006. (P-52)
4. After the completion of kindergarten, the District invited to attend summer school based on his reading difficulties. (K)
5. From first through fourth grades, Student struggled with the acquisition of basic reading skills. (Jt. Stip. I)

6. During the 2002-2003 school year, Student was a first grader in the District. (J-1)
7. In April 2003, Student scored below grade level in all areas of reading on the Qualitative Reading Inventory “QRI III” resulting in an invitation to summer school and the scheduling of Title I reading support for second grade. (J-1 p.1)
8. The QRI is a criterion referenced assessment that closely approximates reading demands placed on students in school; however, it that does not provide normative data. (N.T. 185-186)
9. After completing the first grade, Parents hired Student’s first grade teacher to tutor him in reading and writing during the summer. (N.T. 420)

2003-2004

10. During the 2003-2004 school year, Student was a second grader in the District. (J-2)
11. During his second grade year, Student began receiving Title I remedial reading support thirty to forty-five minutes, two to five times a week. (J-1, p. 1, J-2, p.7, N.T. 178)
12. The District’s Title I programs are designed to assist children in first through fifth who are not performing on grade level in reading and/or math. (N.T. 287)
13. During the year, the Title I reading specialist, worked with Student on word recognition and reading fluency. (J-2, p.7)
14. Throughout the school year, Student was administered a weekly Dynamic Indicators of Basic Early Learning Skills (DIBELS) assessment to determine his oral reading fluency. (J-2, p.3, N.T. 178)
15. The DIBELS is a norm referenced test yielding normative data. (N.T. 268)

16. On the TerraNova assessment administered in October 2003, Student received scores in the 21st percentile on the reading composite, 61st percentile on the language composite, 97th percentile for the math composite resulting in a total score in the 69th percentile. (J-2, p.1)
17. The TerraNova is a norm referenced assessment yielding norm referenced data. (N.T. 298)
18. In April 2004, based on the QRI III, Student progressed in one year, from a pre-primer level to a second grade level in reading. (J-2, p.9, N.T. 374)
19. According to the QRI III, by the spring of second grade, Student was instructional at a “low” second grade level. (J-4, p.1)
20. Based on the April QRI, Student’s oral fluency rate remained below grade level. (J-2, p.9, N.T. 374)
21. Student’s final grades for second grade, indicated that he was an early fluent reader who knew sight words but that he needed improvement in decoding and writing. (J-2, p. 5)
22. At the end of his second grade year, Parents hired Student’s second grade teacher to tutor Student in reading and writing during the summer. (N.T. 420)
23. Student’s oral fluency DIBEL’s word count per minute, “wcpm” scores increased from 28 in October 2003 to 49 in May of 2004. (J-4, p.7)

2004-2005 School Year

24. During the 2004-2005 school year, Student was a third grader in the District. (J-3)
25. During his third grade year, Student received Title I reading services. (J-3, p.8)

26. Between September 2004-December 2004, Student's wcpm fluctuated from a low of 45 wcpm to 72 wcpm. (J-3. p. 9)
27. In December 2004, Student's fluency rate was determined to be 47 wcpm. (J-4, p.18)
28. In January 2005, Student was referred to the Child Study Team, the District's Instructional Support Team, because of concerns about reading fluency. (Jt. Stip. I, N.T. 179-180, 366)
29. The team comprised of District personnel and Parents set a goal for Student to reach a 2nd grade DIBELS benchmark in oral reading fluency of 90 WCPM. (J-3, pp.1, 10, N.T. 423-426)
30. After the meeting, Student was referred for a vision examination, received a prescription and Parents completed the Connors Rating Scales to determine the presence of attention issues. (N.T. J-3, p.2, N.T. 432)
31. In March 2005, the team reviewed Student's progress and decided to continue interventions for another 30 days because Student seemed more motivated to read and fluency appeared to be improving. The Connors Rating Scales showed no significance for attention issues.(J-3, p.2, N.T.)
32. In April 2005, although his sight vocabulary, retelling and literal comprehension were all proficient, Student was determined to be reading below grade level with a fluency rate of 71 wcpm. (J-4, p.18)
33. On the QRI III administered on April 25, 2005, Student's areas of needed growth were recognized as multi-syllabic decoding, understanding text structures and fluency. (J-3, p.7)
34. On the April QRI, Student's fluency rate was determined to be 71 wcpm with an average third grader reading at 110 wcpm. (J-3, p.7, J-6, p.2, P-50, p. 6)

35. On May 9, 2005, the IST convened to discuss Student's progress. (N.T. 441)
36. By May 2005, Student exhibited grade level decoding and comprehension skills but did not achieve his fluency goal. (J-4, pp.1-2, 7, J-5, p.3, 18, J-6, p.3)
37. After the May IST meeting, Parents requested that the District conduct a multi-disciplinary evaluation of Student. (N.T. 442)
38. On the third grade PSSA, Student received a score of proficient in reading and advanced in mathematics. (J-3, p.3)
39. At the conclusion of his third grade year, Student received A's in social studies, science and math, a "C" in writing and a "D" in reading. (J-3, p.11)
40. According to the DIBELS, Student's oral reading fluency progressed from 45 wcpm to 74 wcpm during his third grade year. (J-4, pp. 1,7)
41. According to the QRI, Student's instructional level in reading progressed from a low second grade to low third grade level during his third grade year. (J-4, p.1)
42. In August 2005, the District conducted its evaluation of Student. (J-6, N.T. 210-211, 442-443)

2005-2006 School Year

43. During the 2005-2006 school year, Student was a fourth grader in the District. (J-4)
44. As a fourth grader, Student received Title I reading support from the building reading specialist, Ms. L. (J-4, pp.24-26, N.T. 179, 402)
45. In December 2005, the District completed its evaluation of Student. (J-6)

46. On the WISC-IV Student received a verbal comprehension score of 119, a perceptual reasoning score of 129, a working memory score of 86, a processing speed score resulting in a full scale IQ score of 114. (J-6, p.4)
47. Using the general abilities index (GAI) method of computation, Student received a score of 127. (J-6, p.)
48. Student was noted to demonstrate deficits in auditory working memory and the ability to form sound-symbol relationships and that he had a large discrepancy among his composite scores and that his full scale IQ was not representative of ability.
49. As a component of the evaluation, Student received standard scores on the WCJ-III ranging from 93 in passage comprehension to 119 in math calculation. (J-6, p.8)
50. The evaluation concluded that Student did not display a learning disability because no significant discrepancy between overall ability and achievement was evident. (J-6, p.7, N.T. 211-212, 445)
51. The evaluation recommended that an occupational therapy consultation occur, that he receive enhancements and enrichment in math and science. (J-6, p.7)
52. On February 9, 2006, Parent approved a NOREP proposing that Student did not qualify for Chapter 14 special education services but that he did qualify for Chapter 15 services. (J-4, pp.3-4)
53. In February 2006, Student received a 504 service agreement to assist with self-monitoring and to help with desk cleaning and organizational needs. (J-4, p.16)
54. In April 2006, Student's reading fluency was determined to be 54 wcpm with the norm being 118 wcpm. (J-4, p.18-19)
55. On the DIBELS, during the fourth grade, Student's oral fluency wcpm progressed from 70 in September to 82 in June. (J-5, p. 3)

56. Student received final grades of A's and B's at the conclusion of the 2005-2006 school year. (J-4, p.21)
57. On the PSSA administered during Student's fourth grade year, he received below basic status in reading and advanced in mathematics. (J-4, p. 3)
58. During the summer of 2006, Parents hired Ms. L to tutor Student in reading. (N.T. 458)

2006-2007 School Year

59. On August 22, 2006, Dr. K conducted an independent educational evaluation of Student for which the District reimbursed Parents. (P-50, N.T. 460-461)
60. As part of her evaluation, Dr. K administered a variety of assessments including the K-BIT/2, TONI-3, WIAT-II, Woodcock-Johnson Psycho-Educational Battery-III and CTOPP, a review of parent and teacher input and a classroom observation of Student. (P-50)
61. According to the IEE, Student's results in reading on the WIAT-II were in the 19%ile and indicative of severe academic underachievement in basic reading skills. (P-50, p. 19)
62. According to the IEE, Student's results in mathematics on the WIAT-II were in the 63%ile with errors attributable to paper-and-pencil math problem solving tasks that interfered with the accuracy of the math calculations. (p-50, p. 20)
63. According to the IEE, Student's results in written language were in the 8%ile evidencing difficulty in organizing and synthesizing thoughts for written expression. (P-50, p. 20)
64. According to the IEE, Student presents with double-deficit dyslexia because of severe impairments in both the phonological and orthographic aspects of language processing and symbol recognition. (P-50, p. 24)

65. After the IEE, Dr. K concluded that Student demonstrated statistically significant academic strength in oral expression and statistically significant weaknesses in basic reading skills, written expression and math calculation and should be considered learning disabled in those areas. (P-50 p. 24)
66. Dr. K recommended that Student receive an intensive program of specially-designed instruction as a learning disabled but also provision of gifted/enrichment services pursuant to Chapter 16 regulations. (P-50 p. 25)
67. On the DIBELS administered in September 2006, Student's oral reading fluency was determined to be 92 wcpm. (J-5, p.3)
68. Between September 2005 and September 2006, Student's oral reading fluency increased from 70 wcpm to 92 wcpm. (J-5, pp.1,3)
69. On September 29, 2006, Parents informed the District that they would remove Student on October 16, 2006 and place him at the Private School. (SD-52)
70. Through their letter of September 29, Parents completed a signed Permission to Evaluate and requested a due process hearing. (SD-52)
71. In November 2006, the District issued its evaluation report determining that Student displayed deficits in intellectual abilities consistent with a learning disability in phonological processing, fluency and written expression. (S-12)
72. The District issued evaluation concluded that testing suggests Student to be functioning in the gifted range but that he did not require additional academic enrichment. (S-12)
73. Based on the evaluation, the District concluded that Student displayed deficits in intellectual abilities consistent with a learning disability in phonological processing and fluency. (S-12, p.17)
74. Based on the evaluation, the District concluded that Student's working memory deficits, low skills on the portions of the WIAT and difficulty

with writing assignments suggested the presence of a learning disability in written expression. (S-12, p. 18)

75. After the evaluation, the District concluded that Student was a child with a disability and in need of specially designed instruction. (S-12, p. 19)

Discussion and Conclusions of Law

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

Child Find provisions under IDEA require the state to ensure that:

“...All children with disabilities residing in the State, including children with disabilities who are homeless children or wards of the State, and children attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.” 20 U.S.C. § 1412(a)(3); 34 CFR § 300.111.

Pennsylvania regulations require school districts to not only conduct awareness activities to inform the public of special education programs and the means by which to access services, but further that districts also have an obligation to “find” children suspected of having a disability and to conduct an initial screening process prior to referral for special education. *See 22 PA*

Code §14.122. If screening activities have produced little or no improvement within sixty (60) school days after initiation, the student should be referred for evaluation. 22 Pa. Code §14.122(d)

The evidence adduced at hearing has conclusively established that Student is learning disabled and that he has struggled with aspects of reading since early in his academic career.¹ (FF. 1-5) The pivotal point at which the District should have recognized the existence of any “normative deficits” leading to this conclusion is the outstanding issue for resolution. Parents contend that at certain points in his early elementary years, Student should have been identified as learning disabled and that the District neglected its child find responsibilities in not doing so.²

Parents first contend that this Student should have been referred for an evaluation to determine the necessity for special education by the end of his second grade year. Based on the evidence presented, Parents have not established that the District failed in its child find responsibilities for that time frame.

Student attended kindergarten in the District and during that year had some difficulty with phonic skills. (FF. 4-5) However, that difficulty did not garner any particular concern as he appeared to be developing typically in most other areas. (FF. 4-5) He did, however, attend 18 days summer school to strengthen his language art and mathematics skills. (FF. 4) Toward the end of his first grade year, Student’s reading difficulties became apparent when, on the QRI-III, Student’s reading level was determined to be “pre-primer” because of difficulties in all areas of reading. (FF. 6-8) Throughout that year, his language arts grades ranged from “progressing” to a “satisfactory +” by the last quarter of the year. (FF.6) His other grades were indicative of “satisfactory” to “very good” academic performance but not “outstanding”. (FF. 6) The District invited Student to attend summer school and referred him to the District’s Title I reading program for the next school year. (FF. 6) At this point, Student’s referral to summer school and the Title I program, as method of addressing his emerging reading needs

¹ Although Parents had the burden of proof in this proceeding pursuant to *Shaffer v. Weast*, with the exception of Dr. K’s testimony, the District assumed the burden of production. (N.T. 36)

² The first hearing session was devoted to determining the applicability of the statute of limitations pursuant to 20 U.S.C. §1415(f)(3)(c). After the hearing, the hearing officer granted the District’s Motion in Limine limiting the timeframe for potential recovery to September 29, 2004 onward. (Hearing Officer Opinion Letter, 12/26/06)

revealed no flags that he may have required specially designed instruction, In re: The Educational Assignment of P.S., Spec. Ed. Op. No. 1722. The District's actions were appropriate.

During the second grade, Title I reading services were implemented and Student did demonstrate improvement in decoding and comprehension. (FF. 10-15) Despite those gains, Student's oral reading fluency remained below grade level standards (FF. 14) In other academic areas his overall language arts grade went from "progressing" for three marking periods to "needing improvement" while in math he moved from "satisfactory" to "outstanding". (FF. 21) Student's TerraNova scores and cited by Parents as indicative of a "normative deficit", while on the low end, did not trigger the obligation of on behalf of the District to evaluate, in light of the other measures of progress. (FF.16-19) For example, Student's DIBELS scores, although inconsistent, overall revealed progression in oral reading fluency. (FF. 23) By the end of his second grade year, reading progress was evident and the interventions put in place appeared to be resulting in improvement. (FF.20, 23) Parents did not introduce the testimony of the reading specialist who worked with Student; however, based on the evidentiary record, no alarms were ringing loudly enough for the District to suspect that this second grader may have a learning disability.

Next, Parents contend that the District's child find duty should have been triggered by May 19, 2005, the end of Student's third grade year. As a third grader, Student again received Title I reading intervention. (FF. 24-27) However, by December of that school year, his lack of improvement in reading fluency prompted a referral to the District IST process. (FF.27-28) The IST team comprised of District personnel and Parents set a goal for Student to reach a 2nd grade DIBELS benchmark in oral reading fluency of 90 WCPM. (FF.29-30) In March 2005, at a follow-up IST meeting, the team reviewed Student's progress and decided to continue the reading interventions for another 30 days because Student seemed more motivated to read and fluency appeared to be improving. (FF. 31)

By the end of his third grade year, Student made progress in reading fluency but did not achieve his fluency goal. (FF. 32-24) He did, however, experience improvement in other areas of reading. (FF. 36, 38-41) At this point, Student had received two years of Title I reading services as well as IST intervention. Although he was experiencing a degree of success with these interventions, a referral for an evaluation should have occurred to

simply rule out any underlying causes for his lack of progress. Parent did request an evaluation and arrangements were made to initiate the testing before commencement of the next school year. (FF. 35, 37)

Based on the evidence presented, the District's actions of referral to the Title I reading program, to the IST and the commencement of a multi-disciplinary evaluation were appropriate and did not constitute a violation of its child find responsibilities. 22 Pa. Code §14.122

During the fourth grade, Student once again received Title I reading instruction. (FF. 43-44) However, his third grade PSSA results, established Student to be "proficient" in reading. (FF.38) By December, the District completed its evaluation. (FF.45-53) However, rather than clarify the source of Student's fluency difficulties, it served to create more confusion as the evaluation concluded that he did not display a learning disability (FF.50) Parents contend that this evaluation, finalized in the middle of Student's fourth grade year, was legally inadequate and failed to identify Student as learning disabled in light of the IEE and second District evaluation both which reached an opposite conclusion.

The District's evaluation confirmed that Student was bright but did little to explain his reading struggles and inconsistent performance in the area of reading fluency. (FF. 45) Although he achieved in other areas of reading, by April of his fourth grade year, Student's reading fluency was determined to be only 54 wcpm not even close to the fluency benchmark for a second grader. (FF. 54) Although this evaluation did not yield the result ultimately determined by the independent evaluation and the District's second evaluation, that in and of itself is not enough to find it legally insufficient. The District satisfied its child find responsibility by conducting an evaluation. That evaluation, although it took four months to complete, satisfies all legal requisites. 34 C.F.R. §300.304

Throughout the 2005-2006 school year, Student continued to demonstrate inconsistent performance in reading fluency. (FF. 54-55) However, measurable growth in both Student's decoding and comprehension occurred. (FF. 54-55) Based on the evidence presented, Parents have not sustained their burden of establishing that the District violated its child find responsibilities during this time frame. On the contrary, the District responded in appropriately, successive, intensive measures with regular

education remediation, IST intervention and finally an evaluation in compliance with statute and regulation.

At the commencement of the 2006-2007 school year, Parents requested and the District assented to reimbursement for an independent educational evaluation conducted by Dr. K. (FF.59-66) That evaluation concluded that Student demonstrated statistically significant academic strengths in oral expression and statistically significant weaknesses in basic reading skills, written expression and math calculation.(FF. 65) Dr. K concluded that Student should be considered learning disabled and in need of specially designed instruction. (FF. 66) After receiving the IEE, the District promptly and appropriately re-evaluated Student, incorporating many of the findings of Dr. K and confirming the presence of a learning disability. (FF. 70-73) Parents, after years of privately contracting with District personnel to tutor their son and searching for answers as to why their obviously bright son could not achieve commensurate with his demonstrated abilities, placed him in a private school. (FF. 9, 22, 49, 56, 58, 66, 69, 72)

Based on the evidence presented, the Parents have not established that FAPE was denied their son during this period of time. Overall, Student's made progress in reading fluency, albeit it was not meteoric, but he responded favorably and consistently to the regular education interventions put in place by the District. (FF. 23, 40-41, 55, 66-68) As a result, the District's response, within the context of regular education, with Title I reading intervention, the IST process, the evaluation that determined no eligibility and ultimately their re-evaluation incorporating the results of the IEE was appropriate. Consistent with W.B. v. Matula, 67 F. 3d 484 (3d Cir. 1995), Student was identified and evaluated within a reasonable period of time. No denial of FAPE occurred consequently no award of compensatory education or tuition reimbursement shall be made.

ORDER

AND NOW, this 26th day of March 2007.

1. The District did not violate its child find responsibility toward Student.

2. The District is Ordered to convene the IEP team to develop a program and placement for Student commensurate with his needs as delineated in the District's evaluation report of November 27, 2006.

By: *Joy W. Fleming*
Joy Waters Fleming, Esq.
Special Education Hearing Officer
March 26, 2007