

**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 RC**

**Date of Birth: xx/xx/xx**

**ODR File Number: 7240/06-07/AS**

**Dates of Hearing: February 3, 2007, February 10, 2007**

Parties:

Representative:

Pro Se

Central Bucks School District  
16 Welden Drive  
Doylestown, PA 18901

Ms. Joanne Sommer, Esq.  
60 E. Court St.  
Doylestown, PA 18901

Date Final Transcript/Exhibits Received:

February 16, 2007

Date Closing Statements Received/  
Record Closed:

March 5, 2007

Date of Decision:

March 19, 2007

Hearing Officer:

Joy Waters Fleming, Esq.

## **Background**

Student, is currently xx years of age and in the eighth grade at the [redacted] School, "Parochial School". (FF. 1) Parents unilaterally placed Student at the Parochial School at the commencement of the 2006-2007 school year. The District has requested this due process hearing for purpose of establishing the appropriateness of program offered to Student for the 2006-2007 school year.

## **Issue**

Does the IEP offered to Student for implementation during the 2006-2007 constitute an offer of a free appropriate public education?

## **Findings of Fact**

1. Student, is currently xx years of age and in the eighth grade at [Parochial] School.
2. As a preschooler, the Bucks County IU found Student eligible for early intervention services on the basis of developmental delays in the areas of cognitive development, receptive language, social behavioral skills and fine motor skills. (SD-2, p.4)
3. In April 1998, the District evaluated Student before entry to kindergarten. (SD-2)
4. Student attended the Parochial School for kindergarten through fifth grade. (SD-2, p. 4-5)
5. During the 2004-2005 school year Student attended sixth grade in the District. (SD-2, p. 5)
6. In December 2004, Student received a private evaluation from certified school psychologist, Dr. V. (SD-2)

7. In that evaluation, Dr. V. credited Student with a verbal IQ score of 104, a perceptual reasoning score of 92, a working memory score of 62 and a processing speed score of 62 resulting in a full scale IQ of 79 determined not be a valid representation of his general intelligence. (SD-2, p. 11)
8. On the WIAT, Student exhibited grade level skills in reading, average math skills, below grade level performance in spelling and oral expression. (SD-2, p.13)
9. Dr. . was unable to obtain a written expression score. (SD- 2)
10. Based on her evaluation, Dr. V. diagnosed Student with Pervasive Developmental Disorder-Not Otherwise Specified and a R/O disorder of written expression. (SD-2, p.5)
11. On February 3, 2005 Parent consented to an evaluation of Student. (SD-2)
12. On May 4, 2005 the District completed its evaluation of Student. (SD-2, p. 3)
13. As part of the evaluation, the District conducted classroom observations, achievement testing, behavioral/social assessments, reviewed records, and obtained staff and private input. (SD-2)
14. After the evaluation, the team determined Student strength's as interested in social studies and science, superior verbal reasoning and concept formation, normal articulation skills, age appropriate expressive and receptive language skills and average math and reading skills. (SD-2, p.19)
15. After the evaluation, the team determined that Student had needs in pragmatic language, written language, reading fluency, attention, organizational skills, motor planning and writing speed. (SD-2, p. 19-20)
16. After the evaluation, the team concluded that Student was eligible for special education as a student with autism and a learning disability in written expression. (SD-2, p. 20)

17. As a result of the evaluation, the team recommended a variety of supports including that Student receive direct, systematic small group instruction in written language, support in writing in the general education curriculum and speech and occupational therapy as related services. (SD-2, p.21)
18. On May 24, 2005 the IEP team met to develop programming for Student. (SD-3, p.5)
19. On May 24, 2005, Parent approved the NOREP recommending that Student receive special education services and specially designed instruction. (SD-3, p.3)
21. Under the program, Student would receive resource room learning support for writing and reading. (SD-3)
22. On August 9, 2005, Parent approved the NOREP incorporating the revisions to Student's IEP. (SD-5, N.T. 31)

### **2005-2006 school year**

23. During the 2005-2006 school year, Student attended [redacted] middle school, an out of the District placement, enrolled in a full-time Aspergers autistic support seventh grade program.(SD-4, N.T. 153-154, 211)
24. The Middle School is located in the [redacted] School District. (N.T. 33)
25. At the beginning of the school year, Student's social behavior was isolated; however, his academic performance was in the upper end of the classroom of eight students. (N.T. 155, 156)
26. During the 2005-2006 school year Student attended "exploratories", art, music, technical education, keyboarding, physical education, lunch in the regular education setting. (N.T. 157,168-169)
27. In addition to the teacher, Student's classroom was supported by an instructional aide. (N.T. 157, 168-169)

28. As a seventh grader, Student followed the [redacted] School District curriculum for social studies, science, reading and English with modifications made to instruction. (SD-23, p. 3)
29. On the KTEA II administered to Student in October 2005, he received the following grade equivalent scores: letter/word recognition-5.3, reading comprehension-7.5, math concepts-7.2, math computation-7.11, written expression-2.2, spelling-4.5, oral expression-6.8 and listening-3.8. (SD-3, p.20)
30. In October 2005, Student along with two other students, accompanied by an educational assistant, began receiving math instruction, without accommodation, in a regular education classroom where his final grade was in the eighties. (N.T. 165-168)
31. On October 31, 2005, the IEP team convened for consideration of revisions to the IEP. (SD-6, N.T. 35, 159)
32. In February 2006, Parent met with the District to discuss her concerns about Student's math progress, concerns in the home and social development. (N.T. 213)
33. On May 3, 2006, the IEP team met to discuss Parent concerns about academic progress and inappropriate behaviors. (N.T. 40)
34. At that meeting, Parent requested that Student have a one-to-one assistant and a shorter school day. (N.T. 46-47)
35. On May 12, 2006, the District met with Parent and agreed to conduct a functional behavioral assessment of (FBA) Student because of parental concerns about lack of focus and engagement. (SD-14, N.T. 41, 176, 217)
36. On the KTEA II administered to Student in May 2006, he received the following grade equivalent scores: letter/word recognition-12.6, reading comprehension-8.8, math concepts-9.8, math computation-10.8, written expression-7.2, spelling-3.8, oral expression-9.8 and listening-9.6. (SD-3, p.20)

37. The FBA concluded that Student's inappropriate behaviors were motivated by escape from task and some self-stimulatory input and recommended that he receive visual reminders on his desk to assist with refocusing and preferential seating away from distractions. (SD-14)
38. On the 2006 PSSA Student received proficient scores in both reading and math. (SD-16, p. 1, N.T. 64, 176)
39. Student received primarily A's and B's in his academic courses during the 2005-2006 school year. (SD-13, N.T. 169)
40. Student achieved his IEP reading, organization, social skills and spelling goals by the conclusion of the 2005-2006 school year. (SD- 6, N.T. 172-175)
41. Student did not achieve his writing goal by the end of the 2005-2006 school year. (N.T. 171, 196)
42. On June 14, 2006, the IEP team convened and discussed the results of the FBA, a behavior support plan and Student's progress based on the KTEA II. (SD-8, SD-18, N.T. 48, 52-55, 128, 218)
43. On July 19, 2006, Parent met with the District and requested one-to-one instruction, partial day attendance at [Parochial] School, a shortened school day and instruction in the home. (N.T. 59, 61)
44. At the conclusion of the meeting, the District presented Parent with a NOREP recommending placement in a part-time autistic support classroom at the Middle School. (N.T. 60)
45. Parent signed the NOREP disapproving the recommendation and requested a due process hearing. (SD-9, N.T. 62)
46. On July 26, 2006, Parent filed a request for a due process hearing. (ODR records)

## **2006-2007 School Year**

48. Student did not return to the District during the 2006-2007 school year and attends a parochial school at parental expense. (N.T. 73)
49. On September 11, 2006, the District offered Student a placement at [redacted] Middle School 2 in an autistic support setting with direct instruction in the resource room for English and reading, direct social skills instruction for thirty minutes, five days a week and mainstreamed with his peers for 68% of the day. (SD-17, 21, N.T. 68-69)
50. On October 12, 2006, the IEP team met at Parent's request to update the IEP proposed for implementation during 2006-2007 school year. (SD-23, N.T. 72)
51. At the October 12 IEP meeting, testing results and progress reports were discussed with Parent, goals and specially designed instruction was revised. (N.T. 72, 316-317)
52. Parent did endorse the NOREP indicating either approval or disapproval of the IEP proposed by the District. (SD-24, N.T. 77, 148)
53. On October 31, 2006, Parent withdrew her request for a due process hearing. (N.T. 74, ODR records)
54. The IEP proposed for the 2006-2007 school year contains five goals designed to address Student's writing, spelling, reading, communication and attention needs. (SD-23, N.T. 150)
55. The proposed IEP recognized that Student exhibited behaviors that impeded his learning and indicated that they would be addressed through IEP goals and specially designed instruction. (SD-23, p. 2)
56. The IEP proposed for the 2006-2007 did not include the behavior plan previously developed. (N.T. 49)

57. The IEP proposed for the 2006-2007 school year recognized Student as having strengths in math concepts and applications, dedication to completing work and math computation. (SD-23, p.3)
58. The IEP proposed for the 2006-2007 school year recognized Student as having needs in spelling, reading comprehension, written expression, communication and attending to task. (SD-23, p.3, N.T. 410)
59. Under the proposed program, Student would receive math social studies, math and science in the regular education setting with support, from an aide. (SD-23, p.15, N.T. 263-274)
60. Under the proposed IEP, Student would receive instruction in the special education resource room for English, Reading and social skills. (SD-23, p.15)
61. Under the proposed program, Student would participate with his non-disabled peers without an aide in lunch, specials and assemblies. (SD-23, p.15)
62. Under the proposed program, Student would receive speech and language instruction to address his pragmatic language skills. (N.T. 275)
63. Under the proposed IEP Student would receive prompting under a hierarchy to be implemented along with his IEP as a strategy to assist him in paying attention. (SD-23 pp.19-20, N.T. 183, 278-279)
64. The proposed IEP contained a variety of specially designed instruction including extended testing time, social skills training and paraprofessional support. (SD-23, p. 11.)
65. Relationship Development Intervention, "RDI" is a methodology developed by Dr. G to be implemented in the home to address the deficits of autism primarily in the areas of social reciprocity, problem solving and perspective. (N.T. 215)
66. RDI does not have peer reviewed research in support of its efficacy. (N.T. 215, 279)



67. Prompting is in conflict with RDI principles. (N.T. 243, 279)
68. On December 22, 2006, the District requested a due process hearing. (ODR records)

## **Discussion and Conclusions of Law**

### **Jurisdiction**

Prior to the commencement of this due process hearing, the hearing officer, *sua sponte*, raised the issue of whether jurisdiction existed to decide this issue. In July 2006, Parent requested a due process hearing after rejecting a NOREP offering a special education program and placement to Student. (FF.43-46) Parents later withdrew that request for a due process hearing. (FF. 53) Student did not return to the District at the commencement of the 2006-2007 school year, yet in December 2006, after the Parents failed to indicate either written assent or dissent to a NOREP offering a program and placement, the District filed this request for a due process hearing seeking to establish the appropriateness of the program it offered. (FF. 48, 50-52, 68) This case was assigned to this hearing officer for disposition.

The law that governs special education is clear. A parent or public agency may request a due process hearing to resolve a dispute concerning the identification, evaluation, or educational placement of a child with a disability or for issues concerning the provision of FAPE to the child. 20 U.S.C section 1415(b)(6), 34 C.F.R. § 300.507. From a legal standpoint, this dispute is still alive and ripe for disposition as Parents have neither agreed or disagreed to the program and placement offered by the District. In fact, the last definitive action by Parent was a rejection of programming offered by the District. (FF. 45) Although, Parents withdrew their request for a hearing, disagreement to a proposed program was last communicated through a NOREP of July 19, 2006. (FF. 45) A due process hearing is appropriate, at this juncture, based on the District's request for a determination of the appropriateness of the programming offered.

From a public policy standpoint, this issue is more problematic. Parent raises the issue of the appearance of school district strong arming an

unrepresented parent to a due process hearing to defend a program that does not appear to be in dispute. Certainly the parent of a child eligible for special education has the right to select a private or parochial school for their child without interference or fear of having to defend that personal decision a governmental entity. However, that right must be balanced with the District's obligation to offer and provide FAPE. For purposes of child find, the IDEA imposes an affirmative duty on school districts to locate and identify children in need of special education services. 20 U.S.C. §1412(a)(10)(A) Furthermore, all children with disabilities residing in the Commonwealth, even those attending private schools, who are need of special education and related services, must be identified, located and evaluated and a practical method must be developed and implemented to determine which of those children are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(10)(A) As a result, the District certainly has an interest in establishing whether their proffered program is in fact appropriate.

### **Proposed IEP**

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. The *Rowley* standard is only met when a child's program provides him or her with more than a trivial or *de minimus* educational benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988). This entitlement is delivered by way of the IEP, a detailed written statement arrived at by the IEP team which summarizes the child's abilities, outlines goals for the child's education, and specifies the services the child will receive. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993). School districts are not required to provide the optimal level of services. Carlisle Area School District v. Scott P., *supra*. However, a program that confers only trivial or minimal benefit is not appropriate. Polk.

The appropriateness of the IEP is judged based on information known at the time it is drafted. Fuhrman v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993). Under the IDEA and its implementing regulations, an IEP for a child with a disability must include present levels of academic achievement and functional performance, measurable annual goals, progress reporting toward those goals, a description of related services and supplementary aids, an explanation regarding the child's participation with non-disabled peers, a list of appropriate accommodations and the date for beginning of the services along with the frequency, location and duration. 34 C.F.R. § 300.320.

In this proceeding, the District requested the due process hearing. Pursuant to Schaffer v. Weast, 126 S. Ct. 528 (2005), the District, has the burden establishing the propriety of the offered programming.

### **2006-2007 School Year**

Student is currently eligible for special education and related services on the basis of his diagnosis as a child with an autistic spectrum disorder and a specific learning disability in writing. (FF. 1-3, 6-16 ) He does not attend school in the District but is enrolled in the Parochial School where he has spent the bulk of his academic career. (FF.4-5) At issue is the autistic support program in the resource setting proposed by the District to be implemented at Student's home middle school. For the following reasons, the IEP proposed by the District for implementation in the 2006-2007 school year is calculated to provide meaningful educational benefit and a free appropriate public education to Student.

If Student had returned to the District at the commencement of the 2006-2007 school year, the IEP from the previous school year would have been in place until the IEP team met on October 12, 2006 and proposed a new IEP. (FF. 31) The IEP from the previous school year was essentially the same as the program and placement offered on October 12. (FF. 31, 50) The ensuing discussion encompasses both of those documents.

The proposed IEP is responsive to both the individual identified needs and strengths of Student. The proffered IEP contains five goals designed to address writing, spelling, reading, communication and attention. (FF.54-64) Under the present levels section Student's academic and functional needs are

all matched by the goals ultimately developed by the team. (FF. 54) This present levels information came not only from previous evaluations but also from parental input and performance data from the previous school year. (FF. 54 ) As a result, the goals are individually tailored to address Student's unique configuration of needs.

In writing, although Student narrowly missed achieving this goal last year, the new goal appropriately raised the benchmark expectation and proposed to continue with intensive instruction. (FF.41, 54 ) Based on his performance on the KTEA, Student made dramatic progress in written expression and remains fully capable of continued, measurable strides in this area. (FF. 29, 54) This goal is appropriate.

In reading, the proposed program was designed to address concerns raised by Parent about Student's ability to discern inferential reading concepts. (FF. 42, 50, 60) Parent now contends this goal to be inappropriate because various performance measures indicate that Student requires grade level instruction in a regular education setting. Based on the KTEA II and his grades, Student made progress in reading comprehension throughout the 2005-2006 school year. (FF. 36, 38-40 ) However, the District has credibly established that this goal was developed in response to Parent's concerns that Student exhibited difficulty discerning implicit and explicit concepts in reading. (FF. 34, 42, 43, 49, 50) As a result, the proposed IEP incorporates a goal, similar to the previous year's expecting Student to increase his ability to answer questions based on a selected grade level reading passage. Although Student is working on grade level in this area, the proposal by the District to continue his programming in an autistic support setting does not deny Student FAPE. On the contrary, the District clearly proposes to instruct Student at his grade level and it has appropriately increased the expectation that Student will provide 3/4 instead of 2/4 correct answers after reading a passage. Student certainly has this ability and could, after progressing, receive reading instruction, along with his math in the regular education setting. This goal is also appropriate.

In spelling, the proffered IEP expects Student to spell all assigned words with 90% accuracy on bi-weekly tests. (FF. 54) On the KTEA II, Student's spelling performance, unlike other subject areas declined. (FF. 29, 36) As part of the language arts programming offered by the District, this spelling goal serves to complement the writing instruction Student would receive by teaching needed spelling skills. This goal is necessary and

appropriate as it fully rounds out the language arts programming proposed by the District.

The communication goal proposed by the District was designed to address Student's pragmatic language skills as a means to increase his social competence. (FF. 54 ) Under the proposed IEP, Student would receive daily instruction in social skills along with speech and language as a related service. (FF.62) The speech services would be delivered either via a small group setting within the classroom or on a pull-out basis with others of similar need. (FF. 54, 62) The previous school year, Student made impressive growth in this area and went from a child, who was withdrawn and isolated to enjoying jokes and spontaneous interaction with his peers. (FF. 25 ) Based on the evidence presented, the District's proposal for continued support and interaction in this area is necessary and appropriate.

The final IEP goal proposed by the District was designed to increase Student's auditory attention. (FF. 54) Both the District and Parent have indicated concerns about Student's ability to pay attention and stay focused. (FF. 19-22,32-37, 55 ) To address this need, the District proposed a goal to assist Student in developing skills in order to increase his auditory attention, eye contact and engagement. Successful achievement of the auditory attention goal would only if Student required no more than two prompts during a 45 minute. (FF. 54) Parent takes exception to this goal on grounds that a strategy relying on the prompting of Student runs contrary to the RDI methodology employed in the home. (FF. 65-67 ) Prompting is an effective strategy based on a variety of methodologies and utilized in a cross-section of educational settings. (FF.63 ) The District's use of a prompting strategy in no way renders the proffered IEP insufficient. Ideally, Parent and District should work together in a concerted effort to ensure a seamless transition from school to home. However, if this is not possible the District's obligation is to provide an appropriate education. The prompting strategy proposed by the District, is not unduly intrusive and was successfully implemented during the previous school year and remains an appropriate accompaniment to proposed programming initiatives. Without Student's attention to task, his ability to successfully move through the curriculum and achieve his goals is severely impaired. The District has satisfactorily established the necessity of prompting in order to deliver FAPE.

This IEP evolved over a period of time with ample participation from Parent. (FF. 17-19, 31-33, 35, 42, 49, 59 ) 34 C.F.R. §300. 501. Furthermore, under the previous year's IEP Student achieved success both academically and socially. (FF. 23-27, 30, 36, 39, 40) Based on the totality of evidence presented, the proposed IEP provides an expectation of achievement reasonably related to Student's needs and ability. The District has satisfied its burden of establishing that FAPE was offered.

**ORDER**

AND NOW, this 19th day of March 2007,

The educational program and placement proposed for implementation during the 2006-2007 school year is appropriate.

By: Joy W. Fleming  
Joy Waters Fleming, Esq.  
Special Education Hearing Officer  
March 19, 2007