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DECISION

Due Process Hearing for RG

Date of Birth: xx/xx/xx

File Number: 7398/06-07 AS

Dates of Hearings:

4-23-2007, 5-21-2007, 6-12-2007, 7-16-2007, 7-26-2007

CLOSED HEARING

Parties:

Mr. and Mrs.

School District of Philadelphia
440 North Broad Street
Philadelphia, PA 19130

Date Transcript/Exhibits Received:

Date of Decision:

Hearing Officer:

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7-31-2007

8-7-2007

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I. BACKGROUND

Student is a xx and a half year old male resident of Philadelphia who is currently attending grade 3 of the [Private School], a private school for children with learning differences. The student has a lengthy history of a non-verbal learning disability, an attention deficit disorder, inattentive type, impaired non-verbal memory, deficits in communications and in social skills, concrete thinking, and difficulty with comprehension, abstraction, dysgraphia, executive functioning difficulties, and a significant emotional overlay which affects his behaviors. He had an Individual Educational Plan for Early intervention. He is currently receiving psychiatric treatment at parents' expense for depression and for low self-esteem.

The student has never attended a public school. The Philadelphia School District offered the parents an Individual Educational Program (IEP) in November, 2006 with subsequent revisions at a public school four blocks from the student's home. The parents do not believe that this IEP provides a free, appropriate public education for their son. The parents assert that the student is making meaningful progress in his current, private school placement, a school for students with reading disabilities, and they are requesting tuition for this private school placement and reimbursement for expenses for related services.

The Philadelphia School District asserts that the student, a third grade student at the time of the initiation of this due process procedure, never attended a public school, and it was never the intention of the parents to allow placement at the neighborhood public school, just four city blocks from the student's home. Instead, the School District asserts that the intention of the parents is to gain public school funding for the private school placement and related educational services.

Findings of Fact

1. The student began to have difficulties with speech production at two and a half years of age, and when he could not express himself, he would bang his head against the wall (NT 25).
2. At about three years of age, the student began speech therapy and participated in a pre-school program for a year in which he had difficulty interacting with peers (NT 25, 27-28).
3. The parents' private psychologist observed the student in the pre-school and recommended a different educational setting with better acoustics and more student-teacher interaction (NT 28-29).
4. The Early Intervention evaluation performed by [Agency], dated 10-30-01, reported that the student functioned within normal limits on personal-social development, on self-help and adaptive behavior skills with some distractibility, with sensory issues and with cognitive skills; however, the student demonstrated delays in gross, fine and perceptual motor areas, and a 25% delay in communication development (NT 31, P 1).

5. The Early Intervention report, dated 10-30-01, recommended enhancement of communication and motor skills in a community based setting (P 1).
6. An occupational therapy report, dated August and September, 2002, described the student as delayed in motor skills, in pre-writing skills and as having an attention problem, tiring quickly when his motor skills are challenged (NT 32; P 2).
7. A sensory integration occupational therapy report, dated 11-29 and 11-30-2002 reported that the student is a child with a low level of frustration tolerance, visual-motor deficits, auditory processing difficulties, and decreased strength, factors which impact upon his ability to interact with adults and peers and to perform successfully in his environment (NT 36, P3).
8. An IEP, developed by Agency on behalf of the School District, dated February 22, 2003 provided speech and language services and occupational therapy in addition to the regular preschool program that he was attending (NT 38; P 4).
9. In a regular preschool program with no special services or accommodations in which the parents enrolled the student, the student had difficulty in interacting with other students in play activities, in attending to small group activities, in relating with other students, in small motor activities and in verbal expression and auditory reception (NT 39-45).
10. In preschool, the student also demonstrated the need for sensory integration development in that high noise levels caused anxiety for the student, leading him to become anxious and to stop and stare (P 47, 49).
11. The parents placed the student in a private boys' school for kindergarten and provided speech and occupational therapies privately, services which continued during the summer after the kindergarten year (NT 52).
12. From the student's kindergarten year until grade 2, the parents provided private reading tutoring to develop pre-reading skills which were not provided by the student's private kindergarten program (NT 53-4).
13. The student had difficulty transitioning from his kindergarten to his first grade program due to increased academic demands of his private boys' school (NT 55).
14. In first grade, the student had difficulty with math concepts, with reading comprehension even though he did very well on spelling tests, with handwriting and with homework (NT 56-57).
15. When troubled with homework, the student would berate himself by calling himself "stupid" or an "idiot," a behavior which has stopped since his attendance at his current private school placement which offers accommodations for the student's areas of difficulty (NT 63).
16. A private psychological evaluation of the student in May and June, 2005, initiated by a request from the private school that the student attended, described difficulty in auditory processing and in copying information from the chalkboard while other activities are going on and a need for preferential seating, continuation with a math tutor and consideration of

- placement of the student in another school program to meet his needs (NT 64, 73, 456, 994-995; P 5).
17. The student's auditory processing problems and low frustration tolerance led him to slap another student after that student called him names in the lunchroom of his private school, and the student had difficulty in adjusting to a new teacher who replaced a teacher with whom the student had a good rapport (NT 68-69).
 18. In grade two, school personnel notified the mother that the student attempted to harm himself in the classroom, and the parents initiated play therapy for the student with a psychiatrist (NT 69).
 19. In grade two, the student continued to have difficulty with writing legibly, and he also had difficulty with written expression unless a teacher worked with him directly (NT 71).
 20. During the summer between second and third grade, the student attended a private school program for children with learning disorders (NT 73).
 21. The student support team and the school psychologist of the student's private boys' school recommended to the mother that the student should attend a school for children with learning differences (NT 73,456, 994-994).
 22. The parents registered their son in the local neighborhood public school on the last day of school of the 2005-2006 school year, several weeks after their applications to three private schools in April or May, 2006, only because of their concern that he would not be accepted by the private schools for children with learning differences. (NT 75, 461-462, 487, 995, 998).
 23. When the student's mother attempted to register the student in his neighborhood school on the last day of the school year, before the summer vacation, a school secretary told her that she could not register at that time; however, a school guidance counselor provided the necessary registration information (NT 77-78, 667).
 24. The student's father delivered the private psychologist's psycho-educational evaluation report to the neighborhood public school on the day after the mother's initial contact (NT 78).
 25. During the summer of 2006, no one from the Philadelphia School District contacted the parents with regard to the student (NT 510).
 26. The student was accepted to the private school he now attends in July, 2006 while he was attending the summer program of that school and the parents responded to the acceptance with the required tuition deposit in July, 2007 (NT 489).
 27. During a meeting with school district personnel in September, 2006, the mother explained that the student was going to be evaluated by a private neuropsychologist in October, 2006 and that the parents would provide the results of that evaluation when they were available (NT 493).
 28. The mother asked the private neuropsychologist to observe the local public school placement only after the initiation of the due process hearing (NT 495).

29. The parents rejected the November 29, 2006 IEP presented by Philadelphia School District personnel because of their concerns about the noisy atmosphere of the school and the school's playground in light of the student's auditory processing difficulties (NT 471).
30. Philadelphia School District personnel provided additional modifications of the draft IEP of November 29, 2006 on January 8, 2007 and on February 13, 2007 (NT 474, P 11, P23., P 30).
31. The IEP of December 8, 2006 included a one to one assistant for the student and more integrated speech services during his school day (NT 475).
32. After consultation with the child's private neuropsychologist and speech therapist, the mother concluded that the addition of a one to one assistant for a child with auditory processing difficulties would be distracting for the student (NT 476).
33. The student participates in seasonal team sports and is now taking drum lessons (NT 80).
34. The private neuropsychologist that evaluated the students at the parents' request is well trained and has extensive experience in her relatively short career (NT 110-123, P 6).
35. During the neuropsychologist's observation of the student in his current educational placement, the student was at times behaviorally explosive and acted in a socially immature, inappropriate manner, making noises, having both gross and fine motor control problems, and difficulty in understanding and responding to social cues of other students (NT 135- 140, 189).
36. In his current placement, the student is in a class with a one to five teacher to pupil ratio (NT 143, 320).
37. Academically, the student exhibits strength in reading fluency and spelling and he has deficits in mathematics, processing speed and motor manipulation of objects (NT 153).
38. During formal assessment, the student also had difficulty with visual memory tasks and with fine motor tasks and demonstrated intellectual rigidity (NT 156-163; P 7).
39. The student's difficulty in attending to tasks during formal assessment necessitated frequent breaks and may have depressed his formal assessment scores (NT 160-162).
40. When frustrated during formal assessment, the student threw things, crawled underneath the desk and refused to continue working, telling the neuropsychologist that he hated the work, behaviors consistent with descriptions of parents and teachers (NT 165-166),
41. The student's attention problems, hyperactivity, social interaction problems, memory problems and fine motor and visual motor skill problems all indicate a non-verbal learning disorder with a mathematics learning disorder (NT 175-176).
42. Teaching the student keyboarding will make written expression, an area of difficulty for the student, easier and may increase written expression (NT 191, 232-233).

43. The student is benefiting from the use of assistive devices and motivational, game-type, teaching activities (NT 194, 201-205, 216).
44. The student's teachers and school psychologist in his current, private school placement use a positive behavior modification program with a token economy (NT 218).
45. Most of the student's current classmates have adequate social skills (NT 220).
46. The written description of the student prepared by the School District's psychologist is consistent with the findings of the neuropsychologist (NT 228; P 9).
47. During her visit to the public school proposed for the student, the neuropsychologist found the public school classroom proposed for the student to have 25 students with a high level of noise in the classroom and in the entire school environment (NT 237, 243,; P 10A).
48. While a one to one assistant may be of benefit to the student, the assistant would have to be trained to work with children with non verbal learning disorders (NT 245; P 10A).
49. The proposed Individual Educational Plan (IEP) for the student does not specify training for aides and professionals working with the student or the setting in which various activities and services are provided (NT 248, 250-251; P 11).
50. Medication prescribed by a pediatric psychiatrist led to improvements in the student's attention and behavior, but not with social interaction, emotional and intellectual rigidity, and his non-verbal learning disorder (NT 85, 267-269).
51. The school psychologist of the student's private school program was informed by the school psychologist who worked at the private school during the summer of 2006 that the student had difficulty with the summer program at the private school (NT 300; P 12).
52. At the beginning of his school year at the private school, the student required a small instructional group and also individual attention and redirection and could not perform school tasks independently (P 12).
53. The student made his anxiety concerning an upcoming medical and an upcoming dental procedure known to his educational staff (P 12).
54. Parent teacher conference notes for the summer program of 2006 also recommend consideration of speech and language and psychiatric consultations (P 12).
55. Despite the concern of the private school staff regarding the student's inappropriate behaviors during the summer session of 2006, the staff did not perform a complete functional behavior assessment for the student at the beginning of his school year at the private school to establish baseline behavior for targeted inappropriate behaviors (NT 308)
56. The occupational therapist of the private school provided for the student a sensory diet of activity to limit self stimulatory behavior and to encourage appropriate stimulation and movement (NT 310).

57. The private school staff had difficulty in establishing a menu of positive reinforcements for the student to motivate appropriate behaviors, and during his first few months at the private school, the student's behavior was inconsistent and rarely compliant (NT 312, 317-319).
58. Football related reinforcements in school and time to use a Gameboy at home did motivate the student to perform appropriately in the private school situation (NT 312).
59. The only formal assessment of the student at the private school was the use of the Woodcock-Johnson Test of Achievement, a standardized test, at the beginning and at the end of the school year. No classroom assessments were charted to assess the student's progress during the school year (NT 313, 356-357; P 13).
60. The private school's psychologist assessed the student in a small room with minimal distraction over several assessment periods, providing extensive cueing and redirection to task (NT 315-317).
61. Only one of the two staff members in the student's class of ten students at the private school is identified during these proceedings as a certified, special education teacher (NT 320).
62. The student has made progress with social communication and interaction with peers; however, no systematic, objective data was gathered to demonstrate this gain (NT 348-349, 4-17-418, 428).
63. The student is also receiving intensive instruction in reading comprehension, especially with inferences, abstractions, and multiple meanings of words (NT 351-356).
64. The student is benefiting from a multisensory writing program which minimizes graphomotor activity (NT 360).
65. The student receives occupational therapy in his private school program to address sensory integration issues such as his level of arousal and to address small motor activity such as writing (NT 362-363, 365-366).
66. The student also requires a specially designed, multisensory program for instruction in mathematics (NT 367-369).
67. The student demonstrated minimal gains in his performance on the Woodcock-Johnson Achievement Test administered toward the end of his current school year when compared with his performance on this instrument at the beginning of the school year; however, it is difficult to assess whether this gain is the result of his increased cooperation with assessment at the end of his current school year (NT 313, 372-373; P 13, P 16).
68. On an individual, voluntary basis, some of the student's educational staff provided formal rating forms and anecdotal information to the student's psychiatrist so that the psychiatrist could assess the student's reactions to medication that he was taking; however, ratings are not consistent and several teachers elected to provide no data (NT 389-392).
69. At his current private school program, the student receives occupational therapy and speech services funded by his parents in addition to those

- occupational therapy services provided by the school as part of his educational programs (NT 406).
70. The student's behaviors are different from those of his classmates in his current private school program (NT 412-413).
 71. The "dramatic progress" that the student made at the current private school program is relative to his own performance in the summer and fall of 2006 and is supported by anecdotal, not by objective measures (NT 414-415, 432-433).
 72. The student's progress at his current private school placement coincided with the removal of his adenoids in October, 2006 and the initiation of psychiatric treatment in November, 2006 (NT 415, 482).
 73. The parents were not notified of the student's having been accepted to his current private school placement until the school received its license to operate in July, 2006 (NT 426).
 74. The speech therapist for the School District has a Master's degree plus 60 additional credits of graduate work and a Certificate of Clinical Competence in speech pathology from the American Speech and Hearing Association, has had 9 years of work experience at the student's neighborhood school and presents as an experienced, credible expert witness (NT 524-528, 530).
 75. Speech and language services provided by the School District's speech therapist are individualized, depending upon the needs of individual students (NT 529).
 76. At an intake meeting in early September, 2006, the parents asked the speech therapist not to repeat already performed evaluation techniques when assessing the student (NT 534, 551-552).
 77. The father stated to the speech therapist and School District educational staff that he had no intention of enrolling the student in a public school program, and he inquired about reimbursement procedures for the student's previously completed private evaluations (NT 535, 673, 676, 846, 954).
 78. During the School District's speech therapist's first observation of the student in his private school placement, the student's social interaction and social communication with peers were inappropriate; however, during her second visit to the private school to assess the student's pragmatic language, his social interaction and social communication were greatly improved (NT 537, 544, 606-609).
 79. Although the results of the private speech therapist indicated scatter of strengths and weaknesses which were subsequently demonstrated in a consistent manner, the student functioned generally in the average range on various assessment techniques of the private speech therapist and of the School District's speech therapist (NT 553-557; P24).
 80. The School District's speech therapist had adequate data to formulate IEP goals for grammar, but she stated that she needs to observe the student more in his specific educational situation to formulate social communication and interaction goals (NT 557-559, 567, 591-592, 596; P 11, 23).

81. The parents and school district personnel agreed that the student had a social language pragmatic disorder (NT 567).
82. The School District's speech therapist has studied with Michelle Garcia Winner, the current leading expert on social pragmatic language disorders, the language therapist whose work provides the model for language therapy at the student's private school (NT 571-572).
83. The playground of the neighborhood public school that the student would attend is an area as large as a baseball field, and the School District's speech therapist stated that the noise level is no different from sports fields on which the student plays (NT 579 ; P10A).
84. Students with communication and social interaction disorders may choose an alternative to the school yard for recess (NT 580).
85. At the neighborhood public school proposed for the student no stigma is attached to the many students who come to class and leave class for various services during the course of the school day (NT 581).
86. At the neighborhood public school that the student would attend, visual scheduling prompts are provided in classrooms in which students require such presentation of daily events (NT 582).
87. At the neighborhood public school that the student would attend, many students have a set of school books kept in school and a set of school books kept at home, and augmentative support systems are provided to students who require them (NT 584).
88. Individual aides for students use nonverbal cues when necessary to avoid distracting the student, and assistive devices are available as necessary to help the student focus on the classroom tasks (NT 585).
89. At the neighborhood public school that the student would attend, the lunchroom has poor acoustics, and students with problems in this situation are provided with alternative settings for eating their lunch prior to going to outdoor activities (NT 586-587).
90. The proposed IEP, dated November 29, 2006 discussed with the parents did not indicate a one to one aide for the student and provision of visual cues and simplified directions (NT 593-594; P 23).
91. It is unusual for a child of almost 9 years of age to cover himself in a one to one speech therapy evaluation (NT 621-622).
92. Teacher reports documented in various assessments of the student indicate difficulties with attending, invading personal space of others and in misinterpreting social cues of others and acting in a disruptive manner (NT 630-634, 651).
93. All versions of the IEP offered by the School District indicate the frequency of reporting of data on the student's progress, not the frequency of gathering that data (NT 640-643; P11, P 23, P30).
94. At the IEP meeting with personnel of the Philadelphia School District, the parents did not provide their own input for the development of their son's IEP (NT 557, 657, 658,659).
95. During the summer of 2006, the school's counselor notified the special education case manager for the neighborhood public school of the parents'

- attempt to register their son in late June, and the special education case manager invited the parents to a meeting on September 6, 2006 (NT 668).
96. The father called the special education case manager in August or early September, 2006 to discuss the student's registration in the public school and on September 5, 2006, the special education case manager issued an invitation to participate to meet and discuss the parent's requests for an IEP (NT 669-671; P 25).
 97. During a meeting with School District personnel on September 15, 2006, the father stated that he was looking for tuition reimbursement for his son who was attending a private school and that he had no intention of his son's attending the neighborhood public school (NT 535, 673, 676, 846, 974).
 98. At the initial meeting with School District personnel, the parents raised the issue regarding availability of a one to one aide if the student required that type of service (NT 675).
 99. At the meeting with School District personnel on November 29, 2006, parents did participate in the development of a functional behavioral assessment (NT 684).
 100. The special education case manager brought a draft of an IEP for the student to the November 29, 2006 meeting with the parents at which the educational report was discussed; however, the speech therapist's input was not yet entered into the draft IEP (NT 687-688; P 23).
 101. The special education case manager gave the father a copy of this draft as it existed on November 29, 2006 because he requested the copy (NT 689).
 102. After the November 29, 2006 meeting, the father again inquired of the special education case manager about tuition reimbursement and equitable participation funding (NT 690).
 103. Upon receipt of the rejected NOREP, the special education case manager set up an appointment for the father to discuss equitable participation with the case manager who is expert in that topic; however, the parents did not attend that meeting and told School District personnel by phone that they had retained an attorney (NT 694-695, P 29).
 104. School District personnel revised the draft IEP of November 29, 2006 to include the speech therapist's input and to add a one to one aide in response to the parent's request about a one to one aide for their son (NT 696: P 30).
 105. The special education case manager scheduled an IEP meeting through the School District attorney with the parents' attorney for January 29, 2007 (NT 704, 744).
 106. The final IEP copy, marked," proposed," due to computer software problems, was sent by fax to the parents' attorney on February 13, 2007 (NT 708, 721).
 107. Due to computer software limitations, the IEP team had to handwrite specific information, individualized for this student (NT 711).
 108. In spite of the requests of School District personnel for the parents' input in the development of all three versions of their son's IEP, the parents did not provide input (NT 716).

109. In initiation of the psychological evaluation of the student, the School District psychologist, a well trained, experienced, highly qualified professional, obtained information from psychologists and educational staff who had previously worked with the student and spent a day observing the student in his private school setting due to social functioning and pragmatic language issues (NT 758-65, 767-768, 779-782).
110. The School District's psychologist observed that while the student still appeared distractible and at times inattentive, his behavior had improved from the time of the speech therapist's first observation (NT 775, 896-897).
111. The student was able to adjust to different, structured teaching styles during the course of his school day (NT 776-778).
112. In a lunch area and in the playground, the student was engaged with other students, and the student did not have difficulty tolerating loud noises (NT 778-779).
113. The School District psychologist concurred with previous evaluators that the student is a child with a specific learning disability, a non-verbal learning disability, and other health impairment, attention deficit/hyperactivity disorder and that the student's disabilities are severe enough to have warranted a recommendation for a one to one aide in the regular classroom (NT 782-783, 785).
114. With itinerant supports both in the regular education classroom and outside the classroom, a one to one aide in the regular education program, and with an extensive special education program, the neighborhood public school is capable of providing the student with a free, appropriate, public education (NT 789).
115. If the student had entered the neighborhood public school in September, 2006, school staff would have made special provision to meet his educational needs until the evaluation report and the IEP would have been developed (NT 790).
116. The multidisciplinary team of the School District developed an IEP that is reasonably calculated to confer educational benefit for the student (NT 791-816, 837).
117. The private school which the student attended for grades 1 and 2 offered no supports or accommodations for students with special needs (NT 817).
118. In her report of her observation of the neighborhood public school, the private neuropsychologist did not consider the modifications that the public school would make to accommodate the student in that program (NT 826; P 10A).
119. In his current private school setting, the student deals with noisy situations appropriately as a part of his school day (NT 826).
120. Because of the diversity of students with varying educational and physical needs at the neighborhood public school, there is no discrimination of any one child's special needs (NT 828).
121. The private neuropsychologist declined the invitation of the School District psychologist to observe a student at the neighborhood public school with a one to one aide (NT 830).

122. The private neuropsychologist focused on situations as they existed during her observation rather than situations as they may be modified to meet the student's individual needs (NT 831).
123. The private school that the student attends for grade 3 is a noisy environment (NT 833).
124. If the student does, indeed, suffer from a central auditory processing disorder, he is not being treated for this condition at his current private school (NT 835).
125. The private neuropsychologist did speak with the special education teacher of the neighborhood public school, but she did not observe a special education class (NT 835).
126. The parents did not participate during IEP meetings that the School District's psychologist attended, nor did they raise questions about the proposed IEP or related services (NT 840, 844-845).
127. The School District's IEP was based upon the reports and recommendations of the private school's psychologist and the private neuropsychologist (NT 841).
128. The initial date of the private neuropsychological examination is September 14, 2006, and the parents signed a permission to evaluate form for the School District on September 15, 2006 without mention of the private examination which was initiated the day before (NT 857; P 26).
129. The parents received the School District Evaluation Report within 60 school days of the parent's permission to evaluate the child (NT 860).
130. The term, "proposed" on School District IEPs is a result of limitations in the District's computer program for generating IEPs (NT 861-863).
131. The student is attentive in class when the lesson is engaging and involves hands on activity (NT 873, 966).
132. The student did interact appropriately in a discussion during class with one of his classmates; however, his conversational skills would be limited regardless of the educational or social setting (NT 873-875).
133. When not engaged in a learning activity or attempting to avoid an activity, the student will cover his head, fidget, look away, stare into space or whine (NT 878-879, 882).
134. During both assessment and instructional periods, the student requires varied activities and physical interaction to remain engaged in the task (NT 909-913).
135. The baseline behaviors charted in a functional behavior analysis must be observed in the situation in which the behavior is to be modified (NT 922).
136. Both parties stipulate that the parents were not asked to sign a waiver of the ten day waiting period between the review of the educational report and the development of the first IEP (NT 937).
137. During a discussion between School District staff and the father, the father would not discuss changes with regard to the third version of his son's IEP (NT 955).

138. The Specially Designed Instruction (SDI) portion of an IEP does not have to contain specific teaching strategies or day to day instruction activities (NT 969).
139. The parent did not want to discuss with the School District's psychologist medication that the student was taking (NT 974-975).
140. At the first IEP meeting, the parents asked for a copy of the proposed IEP after School District staff told them that the IEP was not the final copy (NT 976).
141. The School District psychologist was surprised that a one to one aide was not listed in the first draft of the student's IEP (NT 977).
142. Even after School District staff attempted to elicit comment or recommendations from the parents about the first version of the IEP, the parents refused to respond (NT 978).
143. The IEP offered part-time special education placement which varies in the actual time provided outside the regular education class, depending on the needs of the individual child (NT 982).
144. The father's first contact with the public school was next to the last day of school of the 2005-2006 school year (NT 73,456, 994-995).
145. The parents had no knowledge of the process to enroll their child in a public school program of special education (NT 996-997).
146. The School District's special education case manager explained to the father during a telephone conference the necessary steps required to place a child in a special education program of the School District (NT 1010-1011).
147. The father offered to provide School District personnel with the various reports of the student to that point in time, and the father accepted an appointment to meet on September 15, 2006 (NT 1011).
148. The father inquired about "streamlining" the IEP process since the child has had years of special services (NT 1012).
149. On September 6, 2006, the father contacted the School District's attorney to determine if there is a process alternative to the one that the School District's case manager had previously described (NT 1013).
150. At the meeting with the case manager, the father signed Permission to Evaluate the child (NT 1016).
151. The father asserts that he and his wife were cooperative and forthcoming during the September 15, 2006 meeting with School District personnel (NT 1021).
152. Because the parents had not received the Educational Report (ER) by November 19, the father called the School District psychologist, and she sent the copy of the ER with her input and without occupational therapy information to the parents by email on November 21, 2006 (NT1023).
153. The father also received the ER from the School District on November 21, 2007, and the missing occupational therapy component was delivered on November 28, 2007 (NT 1025).
154. When the parents attended the meeting with School District personnel on November 29, 2006, the parents had not yet retained counsel (NT1027).

155. The November 29, 2006 meeting began about a half hour late due to an emergency that necessitated the immediate attention of the principal (NT 1028).
156. At the November 29, 2006 meeting, the father refused to sign an IEP or NOREP because neither he nor his private neuropsychologist had an opportunity to review these documents (NT 1032-1034).
157. The parents did not attend a meeting with School District personnel on December 27 due to a miscommunication (NT 1036).
158. School District staff did not notify the parents in writing in a timely manner of their intention to hold an IEP meeting on December 29, 2007 when they should have notified the parents' counsel of the meeting(NT 1036).
159. The parent attended a meeting at the local neighborhood school on January 29, 2007 to discuss the second version of his son's IEP which included a one to one aide, increased speech therapy time and consultation (NT 1039-1041).
160. When the father left the January 29, 2007 IEP meeting, he was unaware that there was further business to be conducted at that meeting which might have required his presence (NT 1044).
161. The father asserts that while his son's progress at the private school placement was improving, the parents would have considered a public school placement if they felt that the program was appropriate to meet their son's needs (NT 1046).
162. The parents had experience with the IEP process when the student received occupational therapy and speech services from the preschool provider for the School District NT 1046).
163. Neither the student nor his younger brother has ever attended a public school program (NT 1049-1050).
164. On December 1, 2006, following the November 29, 2006 IEP meeting, the father wrote an email to the special education case manager to inquire about the School District's funding of the student's education and related services at the private school he was attending (NT 158-159; P 35).
165. The father asserted that the testimony of three School District professionals was false when their testimony characterized his comment that he was not interested in public school placement (NT 535, 673, 676, 846, 954, 1060).

IV. ISSUES

1. Did the District offer the student a free, appropriate public education in a timely manner?
2. Is the private school, selected by the parents, providing an appropriate educational program?
3. Did the parents intend to enroll the student in a public school for instruction or to gain public tuition for private school placement?

IV. DISCUSSION AND CONCLUSION OF THE LAW

Both the personnel of the Philadelphia School District and the parents of Student agree that Student is a student with special needs. Specifically, this student is a child with a non-verbal learning disability, who has a specific learning disability, and who demonstrates Attention Deficit/Hyperactivity Disorder with both organizational and behavioral problems. Characteristics of this student's behaviors are difficulty with social interaction and social communication, intellectual and emotional rigidity and difficulty in adapting to change (Finding of Fact 43, 44, 64, 172).

The Philadelphia School District asserts that the parents never intended for their child to attend a public school program. The parents assert that the Philadelphia School District did not provide a free appropriate public education in a timely manner.

The parents had medical, psychological and educational documentation that the student had special needs as early as the student's third birthday. He had an Individual Education Plan and was receiving early intervention services from Agency, the early intervention service provider of the Philadelphia School District (FF 7, 9, 10, 11, 12). Yet, the parents chose to enroll the student in private, regular education programs for kindergarten, first and second grade (FF 14, 18, 21). During his second grade, the private school staff recommended a psychological evaluation as a result of the student's poor levels of performance, communication and social interaction problems (FF 23).

Mrs. testified that in April or May, 2006, during the student's second grade, the parents sought placement for their son at three different private schools for special needs students (FF 29). The mother explained that the parents attempted to register Student in the neighborhood public school on the last day of the 2005-2006 school year because he had not yet been accepted to any of the private school programs to which they had applied, and the parents were concerned about a school placement for their son for September, 2006 (FF 31).

The parents paid to have their son attend a summer program at one of the three schools to which they had applied, and in July, 2006, when that school received its license to operate a school program, the school accepted the student for the coming school year. The parents responded to this acceptance with a tuition deposit for the 2006-2007 school year (FF 35, 36).

Because the parents enrolled the student in their neighborhood public school on the day before the school closed for the summer and after School District computers necessary for registration were closed for the school year, personnel of the Philadelphia School District did not have the opportunity to assess the student in April or May of 2006 and to consider a free, appropriate public education for September, 2007. The private school in which the child was enrolled for a summer program at the parent's expense had a period of evaluation of classroom and school performance and behavior during the summer and the fall of 2006 to develop the appropriate strategies and motivational techniques to help the student benefit from its program (FF 94, 95, 96).

The student's educational progress, social interaction and communication began to improve only after a period of adjustment to that private school situation, psychological consultation, removal of the student's adenoids and psychiatric medication and therapy in the late fall of 2006 (FF 122, 123). Reports of the student's success are primarily anecdotal. Only some of the student's teachers provided rating forms on a voluntary basis (FF 116). It is, therefore, very difficult to ascribe the student's progress in that private school to the private school and its program for the student alone.

In her observation of the neighborhood public school which the student would attend if enrolled in the School District, the parent's privately retained neuropsychologist compared that public school situation with the private school in which the student had great difficulties in grades one and two. The private neuropsychologist also reported that the student cannot tolerate loud noises (FF 66); yet, the mother reported that the student is currently taking drum lessons and that the student does well in participating with organized sports teams (FF 38). The School District's psychologist observed the student participating in the general activity of a typically noisy recess period at the private school (FF 179).

In accordance with IDEIA (34 C.F.R. 300.148), the Philadelphia School District has demonstrated its ability to provide a program of specially designed instruction, individualized for the specific needs of the student (FF 134-138) as well as a willingness to revise its program based upon additional information that is gathered for the student. The Individual Educational Plan and its subsequent revisions were reasonably calculated to provide some educational benefit for the student in accordance with Board of Education of the Hendrick Hudson Central School District vs. Rowley, 458U.S. 176, 102 S.Ct. 3034 (1982) 1981-1982 EHLR 553: 656.

In considering whether the parents truly intended for their son to attend the neighborhood public school, it is significant to note that the parents sought placement in the neighborhood public school for their son only after having sought private school placement and in response to their concern that the private school placements that they chose may not have accepted their son. Had they enrolled their son in the School District at the same time that they had attempted to enroll their son in the private school programs in April, 2006, the School District would have had sufficient time to prepare a free appropriate program of education for their child for September, 2006.

There is ample testimony of school district personnel (FF 191) that the father made comments about completing the paperwork and assessments for the development of the ER and IEP to gain access to tuition reimbursement and to seek other avenues to "streamline" the process of gaining financial assistance for his son's related services and tuition in the private school placement.

The parents have failed to demonstrate that the School District did not offer a program of free, appropriate public education in the least restrictive environment for Student. The Philadelphia School District succeeded in demonstrating that the parents' prime concern

was to have the student educated in a private school placement at public school expense and that the IEP presented to the parents provided for the student a free, appropriate public education in the least restrictive environment. The parents are denied tuition reimbursement for their son's private school tuition and related services.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that:

1. The School District of Philadelphia will develop an interim Individual Educational Program of specially designed instruction for Student at the [redacted] Elementary School with appropriate related services for a period of sixty school days to commence on the first day of school of the 2007-2008 school year.
2. Prior to the student's entry into the neighborhood public school in September, 2007, School District personnel will provide a plan to assist the student in adjusting to this new educational situation.
3. During the period of the interim IEP, School District personnel will develop an Educational Re-Evaluation report to include a review of records and reports gathered during the 2006-2007 school year as well as new data as necessary to provide an IEP for the remainder of the 2007-2008 school year to include if necessary a Functional Behavior Assessment in the new educational setting, a Behavioral Improvement Plan if necessary, and a program of pragmatic language development if necessary.
4. Goals and objectives of the student's interim and annual IEPs will be written in a measurable manner to allow progress monitoring of those goals, and both summary written data and graphic representation of data of the student's progress will be presented to the parents in a meeting with the student's teacher and special educational case manager every six weeks during the school year.
5. If the Multidisciplinary Team deems it necessary, a team will be convened to study the student in relation to his school environment, the tasks to be completed in that environment, and the tools to be used in accomplishing those tasks (SETT Team) to determine if assistive devices are necessary for the student to benefit from his educational program.
6. If the Multidisciplinary Team deems it necessary to provide a one to one aide for the student, the members of the MDT team will confer with that aide so that the aide's intervention during the school day is provided to Student in a manner to improve classroom and school performance rather than to detract from such performance.

Date

Hearing Officer