

*This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.*

**PENNSYLVANIA**

**SPECIAL EDUCATION HEARING OFFICER**

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## HEARING OFFICER DECISION/ORDER

Name: M.Z. (7650/06-07 KE)

Date of Birth: [redacted]

Type of Hearing: Closed

Date(s) of Hearing: 6/6/07; 6/25/07; 6/26/07

For the Parents:

Parent[s]

For the School District:

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Date Last Transcript Received:

Date of Decision: August 1, 2007

Hearing Officer: Vicki A. McGinley, Ph.D.

## Background Information

Student is [a pre-teenaged] identified child residing in the Bethlehem Area School District. Student receives Pennsylvania Chapter 14 services as a child identified with Speech Language Impairment and Autism (PDD-NOS). [Redacted.] On May 7, 2007, a Due Process Complaint Notice was filed from Parent indicating disagreement with the proposed Individualized Education Plan (hereafter IEP) dated May 31, 2007, 2007. Thus, the focus of the dispute was on services received through IDEIA and Pennsylvania Chapter 14 regulations. On May 31, 2007 a Resolution Meeting was held, however, matters were not resolved and as such parties proceeded to Due Process on June 6, 2007. The Due Process Hearing lasted three sessions, concluding on June 26, 2007. Prior to the Resolution Meeting and the first session of the Due Process Hearing, a telephone conference call was held with both parties on May 21, 2007 lasting approximately forty-five minutes in length. During this call, issue(s) to be addressed in the potential upcoming scheduled Due Process hearing were discussed and agreed upon by both parties, as well as all procedures for proceeding to due process. Another telephone conference call was held on June 4, 2007 following the Resolution Meeting. This call lasted a total of one hour, again covering Due Process Hearing procedures and issue to be addressed (N.T. 374) relevant background information pertaining to the Due Process Hearing follows:

On March 6, 2007 a Reevaluation Report (S.D. 2) was completed to address Parent's request to assess comprehension of oral instruction, ability to stay on task and complete assignments, skills in handling emotional and relationship issues, current level of generalization of speech language therapy goals, planning and organizational skills and impact of noise in the classroom. In addition to the review of records and present data, an updated Wechsler Individual Achievement Test – 2<sup>nd</sup> Edition (WIAT-II) was performed. Scores from the subtests from this standardized test place student predominantly in the high average to superior range. In one subtext, Oral Expression student placed in the average range. Curriculum based assessment data from the Reevaluation Report placed student at the 5<sup>th</sup> grade mastery level in both Reading and Math with comprehension (an area of concern) at 100% accuracy. For behavior, an area of concern, the Behavior Assessment System for Children, Second Edition (BASC-2) was implemented. Student's teacher ratings are all in the average range except for hyperactivity and withdrawal, which was scored, as at-risk, and Atypicality which was scored as being clinically significant. Parent scores were notably different with most behaviors being scored as at-risk (i.e., hyperactivity, withdrawal, adaptability, social skills, leadership, functional) and a number of behaviors being scored in the clinically significant range (i.e., depression, attention problems, and activities of daily living). On the Conner's' Rating Scales, similar to the BASC-2, observation and teacher input note hyperactivity/off task behavior as an area of concern for student. Parent and teacher noted these behaviors as concerns, as well as social skills and social problems. However, on the Social Skills Rating System Parent scored student in the below average range and Teacher scored student in the average range. The Behavior Rating Inventory of Executive Function (BRIEF) was chose to assess student's Executive Functioning Skills,

another area of concern by Parent. On this assessment, both Parent and Teacher rated student as clinically significant in the areas of Global Executive, Behavioral Regulation, Inhibit, Emotional Control, and ability to Monitor. Parent additionally rated child as clinically significant in Metacognition, Shifting, Working Memory and Organization of Materials. On the Beck Youth Inventory, student was found to have much lower than average skills. In the area of Behavior, records indicate only two incidents during the year, one consisting of the use of profanity and the other of bullying another child. During classroom observations on 1/1/6/07, 1/1/7/07 and 1/19/07 performed by the school psychologist, the Behavioral Observation of Students in Schools (B.O.S.S.) was utilized to measure level of engagement in academic tasks. Overall, results indicate that student exhibited similar levels of engagement as peers and off task behaviors were noted but indicate a mild area of concern since levels of off task did not indicate that attention difficulties were a significant concern. Peer group cooperation was evidenced. The Audiological report indicated hearing within normal limits A Functional Listening Evaluation yielded a score that "would not effect education". On the Fisher's Auditory Checklist, students score was above average for age and grade. In the area of Speech Language Pathology, on the Language Processing Test-Revised (LPT-R), as well as on the Test of Pragmatic Language (TOPL) student scored within the average range on all subtests. In the Test of Problem Solving 3: Elementary (TOPS3: Elementary), areas of concern were tested and some problem area were noted, such as lower then average performance on Making Inferences, Problem Solving and Determining Causes. In the area of Occupational Therapy, student scored within the average range of performance on the Beery Buketnica Developmental Test of Visual Motor Integration-VMI except for the Motor Coordination Component, which places [student] slightly below average, as when speed in increased, student does not do as well in handwriting. Student is independent for mobility, and all fine motor tasks. As a result of the Reevaluation Report student needs were identified in the area of social skills, organization and planning skills, on task behavior and decreasing hyperactivity, self-monitoring skills, coping skills and self esteem, increasing vocal volume, pragmatic skills, inferences, problem solving and cause and effect. Behaviors have not impeded educational performance as student is noted as having consistently achieved "A" and/or "O" grades while at [student's] elementary school, and the ability achievement discrepancy analysis model was utilized to determine significant differences between student's ability and achievement test scores; no educationally relevant discrepancies were noted between student's ability and achievement.

Following the Reevaluation Report a series of meetings and revisions to the IEP occurred (April 17, 2007 IEP and May 31, 2007 (IEP). An Invitation to Participate in the IEP team meeting was generated on March 13, 2007 and an IEP was developed on March 28, 2007 and subsequently the Notice of Recommended Educational Placement (hereafter) was generated on March 27, 2007 (S.D. 2, S.D. 3, S.D. 5). An updated Audiological Reevaluation Report as performed on April 9, 2007 (S.D. 4). Another Invitation to Participate in an IEP team meeting was sent on April 3, 2007, and a new NOREP was developed and dated on April 17, 2007 (S.D. 10, S.D. 11). Parent provided input and new goals and were developed and incorporated on April 17, 2007. The final meeting

and IEP were developed on May 31, 2007. It is this IEP that is under contention at this time (S.D. 14).

### **Findings of Fact**

### **Stipulations**

1. Student is [a preteenaged] child who is a resident of the School District where [student] has been served since Kindergarten.
2. Student is identified at Speech Language Impaired [and] Autistic (PDD-NOS) [redacted.]

### **Facts**

1. Student had a comprehensive Reevaluation Report performed on March 6, 2007 (S.D. 2), which noted that students continues to need speech language pathology services, social skills instruction and behavior. (S.D. 2). Occupational therapy, speech language pathology, audio logy, and counseling services were recommended.
2. On March 13, 2007 an invitation to participate in the IEP Team meeting was sent to Parent and signed. On March 28, 2007 an IEP meeting was held (S.D. 3).
3. On 4/4/07, Parent disapproved of the proposed March 28, 2007 IEP. At 4/17/07 meeting, Parental issues were addressed by multidisciplinary team. (S.D. 9).
4. On 4/3/07 an Invitation to Participate in the IEP meeting was sent and signed by Parent on the same date (S.D. 5). The meetings were held on 4/17/07 at which time component so the revelation reports was revised and incorporate into the IEP. Additionally, Parent presented checklists, concerns and potential goals for consideration (S.D. 5, p. 13-17) to include, a “quieter and small classroom”, teacher in service training in CAPD, transportation issues, peer interactions during lunch, and confidentiality issues were raised.
5. On 4/9/07 an updated Audiological Evaluation was conducted (S.D. 4) which indicated that student’s auditory abilities should be slightly, if at all, compromised by the classroom learning environment.
6. On April 27, 2007 a Due Process Hearing request was made to the District (S.D. 8) and subsequently filed by the District to the ODR on 5/7/07.
7. On May 31, 2007 a Resolution Meeting was held which again resulted in changes to the May 31, 2007 IEP (S.D. 15). Another NOREP was generated at this time.

**Issue(s):**

Is the IEP dated May 31, 2007 appropriate to provide meaningful educational benefit to student, particularly in the areas of prediction, inferencing, drawing conclusions, listening comprehension, planning, organization, time management, classifying concepts, classroom noise and eye contact?

**Discussion and Conclusion of Law**

Since Parent brought this case forward challenging the IEP dated May 31, 2007, the burden of proof lies with the Parent as to whether or not the IEP is appropriate (*See Schaffer v. Weast*, \_\_\_ U.S. ----, 126 S. Ct. 528, 536 (2005)). Prior to the Due Process Hearing, in two telephone conference calls, and again, in a prehearing meeting with an interpreter present, both parties agreed to the issue of this Due Process Hearing as whether or not the proposed IEP was appropriate to address needs in the following areas: prediction, drawing inferences, drawing conclusions, listening comprehension, planning, organization, time management, classifying concepts, classroom noise and eye contact (N.T. 18-19). The Hearing Officer confirms the above stated issue as throughout questioning of witnesses, pro se Parent brought up other issues of concern, for example, particularly the use of a checklist she developed (N.T. 340) and proposed methodology for the classroom (S.D. 5). These issues were not addressed, particularly where Parent deals with proposed appropriate methodologies as methodology is left to the discretion of the District (*The Educational Assignment of D.S., Spec. Ed. Opin. No 1584 (2005)*; *The Educational Assignment of Y.D., Spec. Ed. Opin. No. 1502 (2004)*).

In order to make this Decision, this Hearing Officer had to apply the standard as to whether or not the IEP was *reasonably calculated to enable the student to receive meaningful educational benefit*" (*Board of Education v. Rowley*, 458, U.S. 176, 206-07 (1982); *M. C. v. Central Regional School*, 81 F. 3d 389 (3d Cir. 1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3d Cir. 1988)).

On March 6, 2007 a comprehensive Reevaluation Report was performed to assess student's needs, including all of those "needs" as identified by Parent—particularly those areas at issue in this Due Process Hearing. The District has served student since kindergarten; a number of professionals who testified in the Due Process Hearing having served student since the beginning of [student's] academic career, did not agree that all needs addressed by Parent and the proposed methodologies. This is evident from testimony. However, despite the differences of opinion, District proceeded to carry out a comprehensive Reevaluation Report, addressing all identified areas, and continued to consider information after the completion of the Reevaluation Report, with the information provided through the update Audio logical Report.

As indicated above, in the Test of Problem Solving 3: Elementary (TOPS3: Elementary), areas of concern were noted with lower than average performance on Making Inferences, Problem Solving and Determining Causes. However, Curriculum Based Assessment data, of which this Hearing Officer gives more weight due to the

ongoing nature (vs. on snapshot data collection) placed student at the 5<sup>th</sup> grade mastery level in both Reading and Math with comprehension (an area of concern) at 100% accuracy. In addition, as student is noted as having consistently achieved “A” and/or “O” grades consistently while at [student’s] elementary school (S.D. 1). Of note, is that Inferencing is addressed as an IEP goal (N.T. 338, S.D. 15), even though it is sketchy as to whether or not this goal area should be made priority in terms of a goal for student. In the area of Prediction, student score in the average range (S.D. 2, N.T. 336-338, 391-392). In the areas of Planning, Organization and Time Management, areas of concern for Parent and an issue in this Due Process Hearing, these needs were disputed by the professionals (N.T. 251-254; N.T. 355-360) as well as on standardized assessment (S.D. 2). However, based upon Parental concern, a self-monitoring chart was developed (S.D. 5) and is proposed for continuation in the contended IEP.

In terms of smaller classroom needs, an Educational Audiologist, Ms. D as well as an outside Audiologist, Dr. P, concluded essentially the same results, that is that student may be more sensitive to environmental noise (S.D. 2; S.D. 4; N.T. 21-29; N.T. 195-196; N.T. 213), however, this does not mean that student will need and/or learn better in a quieter environment (N.T. 44-46). Mr. O. testified that student does not have problems with oral comprehension in the classroom (N.T. 142-144) and assessments and grades show that student comprehends. However, the proposed IEP incorporates numerous SDI’s to ensure access to oral language comprehension (S.D. 15), including an annual Acoustical Assessment of the classroom environment and in service training for all teachers on Central Auditory Processing Disorders.

Finally, eye contact was proposed as an area of need. However, no witnesses supported this contention (N.T. 157-167; N.T. 310-316; N.T. 345-348) as student, according to professionals as student has been observed looking at teacher and other student’s faces in the classroom.

Based on the evidence and testimony, this Hearing Officer supports the District in that of students needs is being addressed in the May 31, 2007 IEP.

### **Order**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby

ORDERED this 1st day of August, 2007 that School District is ordered to take the

following action:

Implement the May 31, 2007 IEP for student.

Vicki A. McGinley, Ph.D.  
Hearing Officer  
7/31/2007