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DECISION

Due Process Hearing for G.B.

ODR File No. 7821/06-07 AS

Date of Birth: xx/xx/xx

Dates of Hearing: August 27, August 29, and September 26, 2007 – Open Hearing

Parties to the Hearing:

Representative:

Catherine Reisman, Esq.
Montgomery, McCracken, Walker
& Rhoads
123 South Broad Street
Philadelphia, PA 19109-1030

Garnet Valley School District
80 Station Road
Glen Mills, PA 19342-1284

Gina DePietro, Esq.
Sweet, Stevens, Tucker & Katz
P.O. Box 5069
New Britain, PA 18901

Hearing Officer: Debra K. Wallet, Esq.

Record Closed: October 10, 2007

Date of Decision: October 25, 2007

BACKGROUND:

Student is a xx-year-old (date of birth xx/xx/xx) entering kindergarten at the [redacted] School [hereinafter Private School]. Student's parents reside within the Garnet Valley School District [hereinafter School District].

Student has been diagnosed with childhood apraxia of speech and received early intervention services from the intermediate unit consisting of speech therapy and occupational therapy. When Parents failed to approve the proposed IEP for kindergarten placement in the regular classroom with pull-out services, they enrolled Student in Private School.

The issue is whether or not the School District offered an appropriate program and placement. If not, should Parents' request for tuition reimbursement be granted?

ISSUES:

1. Did the School District offer Student a Free Appropriate Public Education (FAPE) based upon the July 18, 2007 revised IEP?
2. Are Parents entitled to reimbursement for Private School tuition?

FINDINGS OF FACT:

Background

1. Both parties participated in a pre-hearing telephone conference on August 20, 2007.
2. A hearing scheduled for August 10, 2007 was continued by agreement of the parties. Hearings were held August 27, August 29, and September 26, 2007. The record was closed upon receipt of written briefs from both parties.

3. The following exhibits were admitted: Hearing Officer 1 (Stipulations), Parent Exhibits P-1 through P-5 and P-9 (N.T. 528) and School District Exhibits S-1 through S-16 which are to be considered joint exhibits. (N.T. 23-24).

4. Nine witnesses testified at hearing: the director of special education for the School District, School District psychologist, School District speech and language pathologist, Mother, speech and language pathologist who evaluated student, School District occupational therapist, evaluating neuropsychologist, elementary school principal, and elementary special education teacher.

5. The Hearing Officer adopts the following Stipulation of Facts entered into by the parties on August 27, 2007:

- a. Student, date of birth xx/xx/xx, resides with his Parents within the Garnet Valley School District.
- b. Dr. M. of [redacted] Hospital for Children has diagnosed Student with childhood apraxia of speech. (S-4, pp. 15, 20).
- c. Student began receiving special education services from the Delaware County Intermediate Unit in July, 2005 pursuant to the IEP identified as Exhibit P-1.
- d. The School District received permission to evaluate Student on February 13, 2007. (S-3, p. 1).
- e. The District issued its Initial Evaluation Report on May 14, 2007. On May, 15, 2007, Parents provided additional evaluations for consideration. (S-4). Sometime prior to June 8, 2007, the District provided a revised Evaluation Report to Parents. On June 8, 2007, Parents requested inclusion of their comments in the Evaluation Report. (S-4, p. 22; S-6, p. 29).
- f. On June 20, 2007 the District issued a second revised Evaluation Report including the parental letter of attachment. (S-6, p. 1a).
- g. The District proposed an IEP and issued a NOREP on June 12, 2007. (S-8; S-9).
- h. On June 15, 2007, the Parents notified the District that they did not approve the proposed IEP and placement, explained their reasons, and indicated that they would be requesting a due process hearing. (S-9).
- i. On June 21, 2007, the Parents filed a Due Process Complaint Notice and attached a Complaint for Due Process Hearing. (S-10).
- j. On July 3, 2007, the Parents provided the District with the neuropsychological evaluation completed by Dr. R. (S-11). On July 18, 2007, the IEP Team met and produced a revised IEP. (S-13). The District issued a NOREP on July 20, 2007 and the Parents indicated that they did not approve the proposed program and placement. (S-14).

- k. Exhibit P-1 accurately describes Dr. R's training and credentials and the parties agree that she is qualified to testify as an expert in the area of neuropsychology and school psychology.
- l. To the extent that tuition reimbursement is otherwise an available remedy in this case for any violation of IDEA, the parties stipulated that the District received timely written notification of such placement.

(HO-1).

6. Parents have withdrawn their request for reimbursement for the evaluation completed by Dr. R. (Parents' written closing statement, p. 11).

Student's Diagnosis and Early Intervention

7. Childhood apraxia of speech is defined by the American Speech-Language Hearing Association ("ASHA") as a neurological childhood speech sound disorder in which precision and consistency of movements underlying speech are impaired in the absence of neuromuscular deficits. (S-17, p.3). According to ASHA's recent Technical Report, although apraxia is thought to require specialized and relatively intensive treatment, there are few reports of treatment efficacy findings due to the lack of a standard definition of apraxia, difficulties in differential diagnosis, and changing symptomology over time. Because most of the studies have been conducted in clinical rather than school settings, their applicability to school practice is questionable. (S-17, p. 48).

8. In order to treat apraxia, ASHA recommends intensive therapy, defined as three to five individual sessions per week, with "more sessions, less time" preferred over less sessions for more time (e.g., four 30-minute sessions vs. two 1-hour sessions). (S-17 p. 55-56).

9. The County Office of Early Intervention performed an initial intake of Student in February, 2005. At that time, Student made animal sounds, babbled, and panted. The only word in his vocabulary was "no." When developmental milestones were assessed, speech was Student's only delay. The family was already noticing frustration because of Student's inability to express his wants and needs. (P-2, pp. 1, 2, 4).

10. During the 2005-2006 school year, Student attended an Easter Seals program pursuant to the intermediate unit IEP and [redacted] Montessori for day care. In the [day-care] program, there were approximately 11 children, with two full-time teachers and one aide. One of the teachers knew sign language. In the Easter Seals program, there were 8 to 10 students, one teacher and two assistant teachers. In addition, therapists were in the classroom throughout the day. (N.T. 280-282).

11. For the 2006-2007 school year, Student continued to receive services through the intermediate unit. (S-2). He attended the Easter Seals program three afternoons a week.

His class had 8 to 10 students, one full-time teacher, two assistants, and therapists who entered the classroom throughout the day. (N.T. 283-284). The Easter Seals program was a reverse mainstream classroom. (N.T. 69). Student also attended a pre-school program at [redacted] Montessori, in a class of 15 students, with two full-time teachers and one aide. Both teachers in the Montessori pre-school class knew sign language. Student was with nondisabled peers, and interacted with them similarly to the peers at Easter Seals. (N.T. 284-285, 332-333).

12. In February 2007, Student's parents began the process of transitioning Student to school-age programming. On February 13, 2007, an Early Intervention transition meeting was held. The transition meeting was attended by Student's mother, the School District's Director of Special Education, the School District's school psychologist, and a representative of the DCIU. (S-3, p.2). At that meeting, the Parents signed a release of records, and the School District was provided with a copy of the most recent Early Intervention Evaluation Report and IEP. (N.T. 28, 65). Mother indicated at that meeting that she was in the process of obtaining outside evaluations. (N.T. 35, 70-71).

13. On May 15, 2007, the Parents sent the School District a copy of the [Hospital] evaluations, as well as the (Private School) evaluation. (S-4). In the meantime, on that same date, in order to comply with timelines, the School District had issued its first draft Evaluation Report. (S-3, p. 7; N.T. 104). After receipt of the Parents' outside evaluations, on May 22, 2007, the School District issued a revised Evaluation Report that incorporated the information contained in the outside evaluations. (S-3, p.4).

14. The Private School evaluation consisted of observations and standardized assessments in the area of speech and language. (S-4). Test results revealed deficits in articulation and expressive language. The evaluation did not include any formal testing in the area of OT. Nevertheless, the evaluation reports that "it appears that [Student] has mild sensory processing deficits." (S-11, p. 22).

15. The Parents agreed with the School District's Evaluation Report. (S-6, p.30).

Student's Needs

16. In the area of speech and language and functional communication, Student exhibits the following needs:

- a. A need for intensive and distributed speech therapy. (S-6 pp. 2, 16; N.T. 197-198). Student requires supportive programming with a major focus on speech (N.T. 210-211), articulation, expressive language, prosody, and rate of speech (N.T. 112-113).
- b. Student's "educational planning and instruction should be managed by teachers and speech and language clinicians who are knowledgeable and experienced with similarly language impaired children." (N.T. 130).

- c. The IEP must address impaired functional communication skills, because others cannot understand what he is saying. (S-6). On a scale of 0-7, Student's intelligibility was a 2. (N.T. 127). These difficulties could interfere with Student's communication interactions with peers. (N.T. 417). During the weeklong trial placement at the Private School, the speech pathologist there observed Student getting frustrated and not being understood on a daily basis. (N.T. 259-262). According to his Mother, Student's frustration is increasing as he gets older and more aware of his surroundings. (N.T. 261-262).
- d. The need to address the concern that Student will "shut down" after an unsuccessful communication attempt. (N.T. 128-129; 347-348).
- e. Treatment focus should be on increasing Student's communication skills while fostering a carryover of techniques to the family and school. Student needs a program with fully integrated speech and language goals. (S-6; N.T. 115-116; 475).
- f. A low student teacher ratio, close monitoring, and immediate and individualized feedback in a personal context when Student attempts to communicate. (N.T. 133; *see also* N.T. 477-478 (explaining need for small class size)).
- g. In addition, "[b]ased on [Student's] significant deficits in articulation, he needs an educational program that focuses on speech development . . . to bring [Student's] articulation skills commensurate with his cognitive and language skills." (S-6, p. 14; *see also* N.T. 478 (explaining Student's need for a program where expressive language is prioritized)).

17. In the area of sensory integration:

- a. Student has mild to moderate sensory integration needs. This is based upon the Private School report on which School District Occupational Therapist Ms. S relied. (N.T. 451).
- b. It will be important to implement a sensory diet for Student. (N.T. 447).
- c. Ms. S believes that the only statistically sound and thorough evaluation instrument to identify sensory integration needs is the Sensory Integration Praxis Test ("SIPT"). (N.T. 434).
- d. Despite the fact that the ER should identify and evaluate all of a student's needs, Ms. S did not complete the SIPT for inclusion in the ER. (N.T. 454-455).
- e. Ms. S testified that her initial recommendations for services, presented at the June 12 IEP meeting, were based in part upon the Private School report and feedback from the Parents. (N.T. 444). However, the only contact she had with the Parents was at the July 18 IEP meeting. (N.T. 455-456).
- f. Because Ms. S had not done the sensory integration evaluation prior to the finalization of the ER, she did not have enough information to craft a

sensory diet for Student as of the July 18, 2007 IEP meeting. (N.T. 447-448). Ms. S plans to amend the IEP to address Student's acknowledged sensory needs after she does the SIPT evaluation. (N.T. 455).

18. The School District did not give the Parents a request for permission to evaluate for sensory integration issues until the July 18, 2007 IEP meeting. (N.T. 151-152). The sensory integration testing would be completed by November 26, 2007. (S-15, p. 1). Parents declined the School District's offer. (N.T. 151-152).

19. On May 15, 2007, the Parents provided additional evaluations for consideration. (S-4). The final evaluation report, Exhibit S-6, incorporated verbatim the information provided by the Parents. (N.T. 144).

20. Despite all of the new information received from the Parents (*see* S-4), Dr. V's recommendations remained substantially the same. (N.T. 161; 268) (only difference in recommendations was the addition of "reinforcement of mathematics" and "review and repetition as necessary").

21. Dr. V adopted some, but not all, of the recommendations in the Private School evaluation. She rejected the recommendations that would preclude programming for Student in the public school, which she considers to be the least restrictive environment. (N.T. 119).

22. On July 3, 2007, the Parents provided the School District with the neuropsychological evaluation completed by Dr. R. (S-11; N.T. 56). In crafting the IEP at issue here, in addition to the ER, the School District relied upon Dr. R's report. (N.T. 125; 56).

23. Dr. R, testifying as Parents' expert, provided the following information about Student:

- a. Student has an even profile of cognitive abilities in the average range. (N.T. 465).
- b. Student's performance is within age-expected range for attention and executive functioning. (N.T. 466).
- c. Student's visual spatial skills were average or above average. (N.T. 466-467).
- d. Areas of Student's sensory motor function fell in the low average range. (N.T. 466).
- e. Student managed receptive language demands well and performed in the above average range for readiness skills for reading. (N.T. 467-468).
- f. Student demonstrated marked variability in the expressive and receptive language tasks on the Comprehensive Assessment of Spoken Language. Given his much better performance on receptive language tasks, the core

composite score is not an accurate reflection of Student's strengths and weaknesses. (N.T. 470-471).

- g. On the Bracken Basic Concept Scale test for school readiness (receptive form), Student demonstrated average readiness for kindergarten. (N.T. 472-473).
- h. Dr. R recommends that Student's educational planning and instruction be managed by teachers and/or speech/language clinicians who are knowledgeable about and experienced with similarly language-impaired children. (S-11 p. 10). Dr. V agrees with this recommendation. (N.T. 130).

The Relevant IEP

24. The School District proposed implementing Student's IEP in his home elementary school in a regular kindergarten class, with resource level learning support services. (S-14).

25. The July 18, 2007 IEP contains two goals related to speech and language:

- (i) The "Expressive/Pragmatic Language" (S-13, p. 11) goal provides:

Within a structured therapy setting, fading to unstructured naturalistic classroom tasks, [Student] will comment on immediate and remote events; request items, assistance, or additional information; deny/refuse items or activities; and respond to "wh" questions while utilizing accurate [sic] word order and age appropriate syntactic structures in 80% of given opportunities when provided with fading cues and prompts.

- (ii) The "Speech" (S-13, p. 12) goal provides:

During structured therapy activities, fading to unstructured naturalistic classroom tasks, [Student] will accurately produce 1) repetitive CVCV syllables; 2) complex consonant production synthesis in CVC words, syllables; 3) front-to-back and back-to front synthesis . . . ; and 4) maintain accurate vowel production in the above stated syllable shapes in 80% of given opportunities when provided with fading cues and prompts.

26. School District personnel maintain that communication and frustration levels are addressed in specially designed instruction. (N.T. 50-51, 134). The relevant specially

designed instruction is: “Staff should monitor [Student’s] frustration and motivation levels, as his difficulty communicating results in a tendency to give up.” (S-13, p. 16; N.T. 134).

27. The specially designed instruction also provides for “immediate response to communication attempts . . .” in all classes. However, it is not clear who will be able to do this in the regular classroom setting. (S-13, p. 16; N.T. 51-52).

28. Not one of the School District witnesses testifying that the IEP (S-13) is appropriate for Student has even met Student. (N.T. 112, 182, 436, 456).

29. Ms. Z would be the lead speech therapist for Student. She knew that she would not be providing all of Student’s speech therapy, but she could not identify other staff who would be providing therapy to Student. She did not know if a single staff person would be responsible or several therapists would be involved. (N.T. 199-202).

30. At the time the IEP was proposed, the School District could not tell Parents what experience Student’s teachers had had with apraxia. (N.T. 46, 131).

31. At the time the IEP was proposed, the School District did not know what the student/teacher ratio would be in Student’s kindergarten class. (N.T. 25, 511-512).

32. Despite the fact that the annual expressive and pragmatic goal relates to functional communication in the classroom, there are no objectives that will be measured in that environment. (N.T. 238-239). At this point, the program does not specifically explain how this goal will be implemented in a distributed manner -- in the classroom as well as the therapy room. (N.T. 239-240). Although this is an annual goal, Ms. Z is positive that it “would not last an entire year.” (N.T. 240).

33. With regard to Student’s occupational therapy needs, Ms. S acknowledges that Student has sensory needs, but she cannot program for them because the necessary testing has not been completed. (N.T. 447-448).

34. Dr. R is a neuropsychologist and school psychologist, although she has never worked for a public school district. Dr. R is not a speech and language therapist, nor is she an occupational therapist. (N.T. 485, 486, 488). Dr. R does not consider herself an expert in the area of speech and language, occupational therapy, or childhood apraxia of speech. (N.T. 486). She has not been trained in how to treat childhood apraxia of speech and was not aware of what ASHA’s recommendations for the treatment of apraxia are. (N.T. 487, 488). Student is the only student she has ever evaluated whose sole diagnosis is childhood apraxia of speech. (N.T. 486).

35. Dr. R’s report shows that Student’s intellectual ability is in the average range. (S-11; N.T. 465). In addition to his speech needs, Dr. R’s testing revealed weaknesses in

motor planning and fine motor skills. (N.T. 466-467). Student's early readiness skills in the area of reading are above average. (N.T. 467-68). According to Dr. R's report, "[Student] clearly benefits from exposure to typical peers." (S-11 p. 10. She made numerous recommendations regarding the treatment of Student's speech needs. (S-11, pp. 10-11).

Private School

36. The Private School is a school for speech and language disordered children. It uses an eleven-area curriculum, including the Association Method. (N.T. 398-399).

37. The Association Method is a multi-sensory, phonetics-based, incremental system for teaching oral and written language. This method includes numerous short-term goals and objectives, specifically designed with a child's cognitive capabilities in mind. There is carryover from the therapeutic environment into the classroom environment. Private School staff constantly monitors spontaneous language interactions and maintains data on those interactions. (N.T. 398-405).

38. There will be seven students in Student's Private School class ranging in age from five to ten, including two others who have apraxia as a primary diagnosis. The class is staffed by a full-time regular education teacher and a full-time special education teacher. At least one speech and language therapist will be in the classroom on a daily basis. An occupational therapist visits the classroom approximately three hours per week. (N.T. 399-405, 418-420).

39. The speech and language pathologist who evaluated Student at the Private School and who will serve as his speech pathologist (along with one other) has a Certificate of Clinical Competence from ASHA and holds an Instructional II Certificate in Pennsylvania for speech language impaired children. She suggested that any IEP specify particular sounds that everyone would be working on with Student. (N.T. 379-380, 404-405, 410, 423-424).

40. The Private School speech and language pathologist believes that age three is a critical time for speech and sound development. The hope is that the earlier the intervention the more likely it is that the child can be mainstreamed. (N.T. 428-430).

41. Parents enrolled Student at the Private School and made the first installment of tuition the week of August 20, 2007. (N.T. 320-321).

42. The Private School is an appropriate placement for Student.

CONCLUSIONS OF LAW

1. Student's proposed IEP for the 2007-2008 school year fails to satisfy the legal requirements of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 *et seq.*, [hereinafter IDEIA].

2. As a matter of law, the Private School is an appropriate placement.

3. Parents are entitled to reimbursement for tuition to the Private School for the 2007-2008 school year.

4. There are no equitable considerations which would weigh against or reduce tuition reimbursement.

DISCUSSION OF ISSUES

1. Did the School District offer Student a Free Appropriate Public Education (FAPE) based upon the July 18, 2007 revised IEP?

The educational standard to which the School District's action must be compared is established by our state and federal courts. The IDEIA does not require states to develop IEPs that "maximize the potential of handicapped children" but merely requires the provision of "some" educational benefit. *See Board of Education v. Rowley*, 458 U.S. 176, 189 (1982).

Congress did not intend that an IEP provide an "optimal" benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 181 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).; *Brett S. v. West Chester Area School District*, 2006 WL 680936 at 10 (E.D. 2006)("However, the IDEA does not require that a school district create the ideal IEP or provide the best possible education to the disabled child."). Nevertheless, the Third Circuit has defined the standard to mean that more than "trivial" or "de minimus" benefit is required. *See Polk*, 853 F.2d at 180-184.

In *Sinan L, et al. v. School District of Philadelphia*, 2007 U.S. Dist. LEXIS 47665

(E.D. Pa. 2007), the court, in denying a parent's tuition reimbursement claim, described the standard as a "minimum baseline standard," concluding:

As any good parent, Sinan's parents understandably want the very best for their son. Unfortunately, given financial and practical constraints, Congress and the legislature have not imposed the obligation on our public school systems to satisfy the desires of every child and parent who seeks their services. Instead, schools are held to a minimum baseline standard, a standard that may fail to meet the expectations of the parents of disabled and non-disabled children alike. Whatever the substantive merits of this standard may be, it is the standard that the Court is bound to enforce.

Id. at 40-41. Thus, it is clear that students with disabilities are not entitled to the best possible educational program available, but only an appropriate one. It is against these legal standards that the facts of this case must be applied.

There is no dispute that Student is entitled to special education and related services for a significant speech and language deficit. By all accounts, Student's need for intensive speech and language therapy is significant. His progress in the intermediate unit program was described as slow and he had only 20 to 25 intelligible words in the summer of 2007. (S-9, p. 2).

Parents spend a great deal of time arguing both that the IEP was not reasonably calculated to provide meaningful educational benefit and that the IEP itself was deficient in the sections required by statute. *See* 34 C.F.R. §300.347. This Hearing Officer is not inclined to conclude that the IEP was deficient in all procedural areas, but it does appear that the goals for speech and language and functional communication are bare-bones and not well documented. The IEP goal for "Expressive/Pragmatic Language" (S-13, p. 11) is simply not tailored to a

child who is still learning to make intelligible sounds. This goal underscores the fact that those who wrote the goal have never even met the child. Based upon all of the testimony, particularly that of Dr. R and Ms. C, it is crucial for this student to have his speech and language goals addressed throughout the school day. (N.T. 481-482). He needs focus on individual sounds and consistently making those sounds. While therapy with Ms. Z will likely be intensive and goal oriented, there appears to be no one individual responsible for monitoring Student's communication attempts throughout the day and no real mechanism to collect data regarding his progress in the classroom with normal peers.

If there is anything definite here, this Student absolutely needs meaningful, continuous, and significant support in order to help him obtain the ability to speak. Early experiences in elementary school are going to be critical to this child's success in school. The IEP merely provides support "as needed" and this level of support strikes this Hearing Officer as insufficient given all of the testimony about Student's fundamental requirements to learn to speak. *In re: Educational Assignment of N.B.*, Special Education Opinion No. 1685 (2005) ("The IEP merely provides for such support 'as needed,' when it should require that the support will be continuous." at p. 7). Inclusion with non-disabled peers is a laudable objective, but this Hearing Officer does not believe that the concept of "least restrictive environment" trumps the significant needs of this Student for intensive therapy to learn how to engage in basic communication. *Id.* at p. 10.

The speech goal (S-13, p. 12) is not sufficiently specific about sound sequences or specific phonemes that will be emphasized by *all of those teachers and support personnel* working with Student. Every expert seems to agree that repetition and immediate feedback are

crucial, but it is troubling indeed that Student's parents could not be assured of exactly who would be responsible to work on these problems in the regular classroom.

Class size is problematic. The school psychologist, Dr. V, agreed with Dr. R that Student needs a small class, close monitoring, and immediate and individualized feedback in a personal context. (N.T. 133, 477-478). At the time the IEP was proposed, no one seemed to know how many students would be in the class, exactly who the teacher would be, or precisely what training the teachers and support staff would have in dealing with a child diagnosed with apraxia. A class size of 16 to 20 students with one trained teacher will make it very difficult for Student to receive the kind of intensive therapy needed by him to learn to communicate at a rudimentary level, no matter how many extra support staff may be assigned.

Finally, the IEP does not address Student's sensory integration needs at all. The School District contends that it was prevented from evaluating in this area, but it was not until the July 18, 2007 IEP meeting that the School District provided Parents with a Permission to Evaluate. The transition process started in February and seemed to take a very long time. It is no wonder Parents were frustrated. Moreover, the required sensory evaluation would not even be completed, by the School District's own estimate, until the end of November 2007. (S-15).

This is a difficult case because the School District has certainly tried to formulate an educational program which will meet Student's needs. However, the facts which tipped the balance in favor of the Parents include the lack of specificity of the IEP goals, the failure of the School District witnesses personally to evaluate Student rather than relying upon the records, and the absence of a reliable system for monitoring and providing immediate feedback to Student in the regular classroom. Consequently, Parents here have met their burden of

showing that the proposed IEP does not provide FAPE.

2. Are Parents entitled to reimbursement for Private School tuition?

An exceptional student is entitled to tuition reimbursement when (a) FAPE is denied, (b) the parent properly seeks privately secured placement, and (c) the balancing of equities lies in the parents' favor. *Florence County School District Four v. Carter*, 510 U.S. 7, 114 S. Ct. 361 (1993); *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359, 105 S. Ct. 1996 (1985); 34 C.F.R. §300.403.

A. Did the School District Offer an Appropriate Program?

As described in the preceding section, the Hearing Officer believes that the program offered by the School District in July 2007 was not an appropriate program and constituted a denial of FAPE. The revised IEP (S-13) does not contain goals designed to address this Student's speech and language needs.

B. Is Student's Private School Placement Appropriate?

Parents' choice for private school need not satisfy the IDEIA requirements in order to qualify for reimbursement. *See In Re: Educational Assignment of N.B.*, Special Education Opinion Number 1685 (2005). For this reason, the School District's argument that no IEP has yet been developed by the Private School must be rejected. The parties stipulated that the District received timely written notification of such placement. (HO-1). The standard to be applied here is whether the private placement was "reasonably calculated" to provide Student

with educational benefit. *In Re: Educational Assignment of J. Z.*, Special Education Opinion Number 1828 (2007); *In Re: Educational Assignment of M. K.*, Special Education Opinion Number 1445 (2004).

The Hearing Officer has no doubt the placement at the Private School will be reasonably calculated to provide Student with educational benefit. In fact, it may be to the credit of the Private School that an IEP will be developed only after the professionals have had a chance to evaluate and work directly with Student in the classroom. The Private School offers the kind of intensive therapy *throughout the school day* which is needed to help this Student learn to communicate. The intensely personal interaction between Student and teachers should be quite beneficial and provide the kind of consistent support which is lacking in the proposed public school placement.

It is hoped that this kind of intensive specialized schooling will be needed for only a short time. The ideal would be to transition Student back to greater association with normal peers. Even without such association with the non-disabled, the Private School is determined to be appropriate.

C. Do the Equities Favor Reimbursement?

The Hearing Officer heard nothing that would suggest anything other than a good faith effort on the part of the Parents. Similarly, this Hearing Officer finds nothing to support any parental assertion that they were denied the right to have a significant role in the IEP process. The Hearing Officer has seriously considered the contentions of the School District that the Parents were simply going through the motions and never had any intention of sending Student

to public school. The School District assigns much significance to the fact the Parents requested a Due Process Hearing “a mere three days after the initial IEP meeting” and used this fact to support their conclusion that Parents gave no genuine consideration to the School District’s offer. However, it seems clear that by receipt of the July 2007 revised IEP, nothing much had changed in the School District’s offer. The revised IEP was substantially the same as the earlier one and this Hearing Officer finds no fault with Parents reaching this same conclusion.

The Hearing Officer also rejects the notion that failure to return the permission to do the sensory evaluation indicated an unwillingness to work with the School District to develop an appropriate program. To the contrary, this offer of additional testing simply came too late in the process. Parents could not be expected to wait until after November for sensory evaluation results. For all of these reasons, the equities here do not weigh against the Parents such that they should be prevented from receiving tuition reimbursement.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the School District shall reimburse Parents for the cost of the Private School tuition for the 2007-2008 school year.

Date: October 25, 2007

Debra K. Wallet, Esq.
Hearing Officer
24 North 32nd Street
Camp Hill, PA 17011
(717) 737-1300