

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

PT
Name of Child

Xx/xx/xx
Date of Birth

8165/07-08 AS
ODR File Number

December 11, 2007 and January 15, 2008
Dates of Hearings

February 6, 2008
Record Closed
Open Hearing

Parties to Hearing

Parent

Dates Transcripts Received:
December 24, 2007,
January 21, 2008

Parent Representative
Mark Voigt, Esq.
Plymouth Meeting Executive Campus
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Plymouth Meeting, PA 19462

Date of Decision:
February 11, 2008

School District
Director of Special Education
Phoenixville Area School District
301 Gay Street
Phoenixville, PA 19460-4417

Kenneth Rose
Hearing Officer

District Representative
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Sweet, Stevens, Katz & Williams
331 Butler Pike
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Background

The student is a xx year-old resident of the school district. He transferred from a Charter School in grade 4. In November 2003 he was found eligible for special education as a student with a specific learning disability (SLD) in reading. Symptoms of Attention Deficit/Hyperactivity (ADHD) were noted. Due to parental dissatisfaction with the student's academic progress, the parent unilaterally placed the student in a private school, the [redacted] School, for the 2007-2008 school year.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the Phoenixville Area School District.

Findings of Fact

1. The student started his schooling in a Charter School. He was teased while there. This caused him to move in with his father for a short time. Due to this and weak academic performance, the student transferred to his regular public school. The school district suggested retention but the parent disagreed. (NT-24-26)

2. The Evaluation Report (ER) of November 26, 2003 found the student eligible for special education as a student with a SLD in the area of reading based on a severe discrepancy between ability and achievement. He was found to have low average (87) ability. His verbal IQ was average (99) and his performance IQ was borderline (78). An Occupational Therapy (OT) evaluation was recommended. (NT-253, 254; S-1)

3. The parent agrees with the needs listed in the November 26, 2003 ER. (NT-26; P-17)

4. The April 19, 2004 Individualized Education Program (IEP) lists the student's reading as DRA Reading Level 28; QRI reading level as: word recognition 1, instructional 2-3, frustration 4th grade; oral reading: independent 1, instructional 2. Reading fluency was second grade. CORE Phonics was 5E-long and variant vowel spelling. This was grade 3. The parent agreed with the IEP. (NT-33, 34; P-2)

5. The parent saw the third grade school year (2003-2004) as an adjustment time to a new school. (NT-34, 35)

6. The Grade 3 Pennsylvania System of School Assessment (PSSA) showed the student to be in the third quartile in reading and second quartile in mathematics. (NT-35, 36; P-40)

7. An OT evaluation of March 8, 2004 found that the student did not qualify for OT services. (NT-254; S-2)

8. In fourth grade the parent was not satisfied with the student's handwriting or pencil holding. (NT-38)

9. The parent, by way of a Notice of Recommended Educational Placement (NOREP), approved the IEP of April 19, 2005 for the 2005-06 school year. (NT-38, 39, 256; S-3; P-4)

Grade 5

10. The student was in an after-school program in 2005-2006 and 2006-2007 to help with homework. (NT-241-243)

11. The student was offered the school district's "move ahead" summer program for 2006, but the parent rejected it. (NT-56)

12. The parent was not satisfied with the student's writing or spelling in fifth grade. (NT-41, 42; P-44)

13. The student's fifth grade PSSA indicated reading at Basic and mathematics at Below Basic. (NT-52; P-39)

14. At the end of fifth grade the student's reading level, using the QRI, was end of fifth transitioning into sixth grade level. He was mostly at Basic to Advanced in math. The parent was not pleased with the student's progress. (NT-46, 47; P-5)

15. In grade five the student ended the year with a B in reading, B in writing, B in grammar, A in word study, C in mathematics, U in handwriting, S in social studies, S in art and B in library. Grades were based on percentages from tests and homework. (NT-256, 265; S-6)

16. The parent was concerned about the student going to the middle school (grade 6), especially in math. (NT-45, 46; P-5)

17. During the summer of 2006, the parent sent the student to a YMCA reading program. (NT-50)

18. Progress monitoring of IEP goals show for grade 5:

- Oral Reading Fluency: the student progressed and almost achieved his goal (went from 101 to 117 words correct) The trend line was positive.
- MAZE-Comprehension (reading): the student progressed from 9 correct to 28 and almost reached his goal of 32 correct. The goal was substantially met.

- Written Expression: the student did not show progress at end of the year,

but did during the year. He started at 47 Total Words Written, was at 57 Total Words Written in May but at 33 in June. Score went up and down over the school year.

- Curriculum Based Measurement (Letter Sequence): the student started at 105 in January and ended in June at 102, but achieved 120 in May. The goal was 122. The trend line was positive.

IEP monitoring reports state moderate progress in all goals over the year. (NT-256-265; S-7)

19. On April 27, 2006 an IEP was developed for the 2006-2007 school year. The parent approved it by way of a NOREP. The IEP team recommended co-taught classes for reading and math, but at parent's request, reading, math and language arts were to be in the learning support class. (NT-52, 266, 267; S-5; P-5, P-6)

20. The parent claims not to have any input into the goals or modifications and specially designed instruction (SDI) in the April 27, 2006 IEP. (NT-47-49; P-5)

Grade 6

21. On November 1, 2006, the parent wrote the school district expressing frustration over communication and the student's lack of progress. The district responded by calling an IEP team meeting. (NT-58-60; P-27)

22. On November 2, 2006 a Reevaluation Report (RR) was issued. On the QRI reading was fourth grade level instructionally, independent at sixth grade level and frustration at seventh/eighth grade level. This placed him at fourth/fifth grade. Oral comprehension was independent at fifth grade level and instructional at sixth grade level. His math was at the sixth grade level. His academic skills and ability to apply them were in the average range. (NT-60-64, 270; S-10; P-19)

23. The parent says she was not asked for input into the November 2, 2006 RR. (NT-62)

24. An IEP revision was started November 11, 2006 and continued to another date because more time was needed for discussion. The parent did not reject it in the NOREP.

On November 16, 2006 the parent, by way of a NOREP, approved the program and placement of the student. She states she didn't know any better than to sign even though she didn't like it. The parent states she was not satisfied with the IEP meeting of November 10, 2006. She didn't think the student was getting the help he needed.

In November 2006 the student was moved to a higher level math class. (NT-66-68, 69-70, 176, 177, 270; S-11; P-7, P-8)

25. On December 1, 2006, the IEP was revised. (The parent approved the IEP by way of a NOREP.) It was agreed to do an OT evaluation, an assistive technology evaluation and an Independent Educational Evaluation (IEE). SDIs were added for a homework assignment notebook, books on tape, textbooks at home, homework review, dictionary in language arts class and direct instruction in capitalization and punctuation. The parent had an advocate at the IEP meeting. The parent, by way of a NOREP, approved the December 1, 2006 IEP and placement. (NT-70, 72, 73, 270, 273; S-12, S-13; P-9)

26. An OT evaluation report was issued in January 2007. The student was not found to be eligible for services. Recommendations were made to improve cursive writing. This was reviewed again in March 2007 with the same result. (NT-272-274; S-15)

27. On January 29, 2007 there was an incident when the student may have had suicide ideation. The parent was informed. The parent was not pleased with the way it was handled. The school district's psychologist met with the student three times on this and did not detect suicide ideations. The parent terminated the sessions because the student did not like them. (NT-82, 83, 181, 197, 198; P-26, P-29, P-30)

28. On February 13, 2007 an IEP was developed. The parent objected to the nine stated goals. The reasons were baselines were too low, grade levels weren't explicit, lack of printouts, desire to see tests or not understanding the goal. She objected to the modifications and SDIs because she felt the student wasn't progressing.

He was found eligible for ESY because he could benefit from additional review and support in math and written expression.

The parent had an advocate. The parent approved the IEP by way of a NOREP. (NT-82-87, 277, 278; S-18; P-10)

29. On February 20, 2007 the school district received Dr. C's IEE. Dr. C is a Certified School Psychologist and a Licensed Psychologist. The student was found to have average cognitive ability (IQ 106). Weaknesses were found in reading comprehension, expressive writing skills, quantitative reasoning and verbal working memory. Dr. C was not called to explain her IEE. (NT-275; S-14)

30. On March 6, 2007 an Assistive Technology Observation Report was issued. The student did not qualify. Recommendations were made. (NT-273; S-19)

31. An IEP meeting was held March 22, 2007 to review the IEE. Adjustments were made to the IEP based on the IEE in areas of reading comprehension and reading fluency check-ins. (NT-278, 279; S-10)

32. The NOREP of April 2, 2007 calls for direct instruction in language arts in a learning support (LS) classroom. All other instruction was to be in regular education classes, with reading and math in a class co-taught by a special education teacher. The parent disagreed. (NT-184, 185; P-11)

33. On April 16, 2007 an IEP meeting was held. The OT and speech evaluations were reviewed. Recommendations were discussed. Earobics was set up in the LS classroom. Psychological services were ended at the parent's request. The parent had an advocate at the IEP meeting. By way of a NOREP, the parent approved the IEP.

The parent is not satisfied with the twenty-six SDIs in the April 16, 2007 IEP. She views them as vague. At the suggestion of her advocate, the parent wrote the school district on April 16, 2007 expressing a desire for a more inclusive setting. (NT-189, 190, 280, 281; S-22; P-12, P-55)

34. On May 30, 2007, the school district's Speech Therapist issued a report. The school district found the student's receptive and expressive language skills to be average. (NT-197, 198; P-25)

35. On May 31, 2007 an IEP meeting was held. The IEP was revised. SDIs were added. ESY was provided for 2007. The parent did not reject the IEP by way of a NOREP. The student was moved into some co-taught classes. The parent had input into the ESY program, but was not pleased that writing skills were not included. The parent had an advocate at the meeting. (NT-198, 199, 281, 282, 283; S-25; P-14)

36. In grade six, the student's PSSA was reported as Basic in reading and mathematics. Areas of weakness were identified. (NT-208; P-41)

37. On June 9, 2007 the student took the Secondary School Admission Test (SSAT) as part of his application to the (redacted) School. His verbal score was 1%ile, math was 7%ile and reading was 5%ile, compared with students who took the SSAT. When compared to students nationally these scores are estimated by the test producer to be verbal 40%ile, math 78%ile and reading 55%ile; all in the average or above range. (NT-208, 233; P-38)

38. The student's final sixth grade grades were in the 84% to 90% range, except for Latin which was 65%. The parent thinks the grades are inflated. (NT-209, 210, 285, 286; P-43)

39. Progress Monitoring for 2006-2007 school year shows

- Oral Reading Fluency started at 113 words correct and ended in May at 150 words correct. This was near the goals. There was fluctuation during the year. The student was moved to a higher reading level in February. The trend line was positive.
- MACE-Comprehension (reading) Responses correct started in September at 14 and ended in May at 21, with fluctuation as high as 24. The goal was 30 responses correct. The student was moved to a higher level in November. The trend line was positive,
- Curriculum Based Management (Letter Sequence)-The student went from 87 words correct to 131 by June, meeting the goal of 131.
- Written Expression-The student in correct work sequence (CWS) progressed from 30 in September to 37 in May, but with instances as high as 56. The goal was 48. The trend line was positive to May when a drop occurred. (NT-285; S-28)

40. The student's report card for grade six shows final grades of 85% to 90% for all subjects (S-27).

41. The school district provided ESY services for the summer of 2007 as an effort to address the parent's concern over the student's progress. (NT-283, 284)

42. In the 2007 ESY, the teacher worked on IEP goals involving writing, capitalization, grammar, punctuation, editorial review, spelling and math. There was communication with the parent. There were pre- and post tests that showed progress. The student did not show difficulty in writing in cursive. (NT-330-348; S-26)

43. The parent was dissatisfied with the 2007 ESY program. She felt work was not sent home and the student was being criticized in front of others. (NT-216; P-33)

The Private School

44. The parent started contacts with the Private School on November 27, 2006. (NT-288; S-41)

45. On March 22, 2007 the parent requested that the school district enroll the student at the Private School. She felt the student would benefit from their curriculum. The school district refused stating the student's program and progress was appropriate. (NT-181, 182; P-29)

46. The Private School was recommended to the parent by a student advocacy group, ARC. The parent started the process of applying in December 2006. The student was accepted in July 2007.

On August 3, 2007 the parent notified the school district she was "unilaterally" placing the student in the Private School and requested tuition

reimbursement. She also requested compensatory education for the 2005-2006 and 2006-2007 school years. Also transportation was requested. (NT-213-217; P-33)

47. The parent also explored enrolling the student in the School. (NT-230, 231)

48. The Private School has both regular education and special education students. It is a school for boys. The student/teacher ratio is eight to one. The school population is one hundred and thirty students in grades seven through a post graduate year. A quarter of the students board there. Academic support classes have a maximum of four students.

There is an advisory program where one teacher serves as liaison for about six students. The curriculum is slow-paced and concrete. Computers are used in instruction. Weekly assignment sheets are used to communicate with parents. There is a code of conduct. Counseling is provided. The Private School has written structured curricula.

At the Private School the student's needs as listed in the IEP were communicated with his teachers. This is done through a matrix shared with the staff. The school reviewed reports given to them by the school district.

At the Private School the student's ASP English teacher is not a certified teacher; the pre-algebra and reading teachers' certification status is not known. (NT-98-100, 103-107, 108-110, 115-119, 146; P-51)

49. The student is seen as focused in class at the Private School. Early in his year he had difficulty turning in homework assignments, being prepared for class and punctuality. These improved over time. (NT-119-122)

50. Upon entering the Private School, the student was administered the Wide Range Achievement Test (WRAT). His reading was 5.9 grade level (30%ile), mathematics was 9.8 grade level (75%ile) and nonverbal reasoning was at the ninth percentile. (NT-111, 112; P-50)

51. The student's first quarter grades at the Private School were: physical education A, reading A, pre-algebra B, general science B, geography C, ASP English B. Second quarter grades were: physical education B+, reading A, pre-algebra C, general science D-, geography B, ASP English A. He is viewed as polite and respectful. The Private School opines the student has made progress there. (NT-129-132, 140; P-50)

52. The parent feels the student is making progress at the Private School. Writing problems continue. He has adjusted well socially. The classrooms are carpeted. (NT-218-224, 226)

53. On August 6, 2007 the school district rejected the parent's request for tuition reimbursement to the Private School and offered an IEP meeting to address concerns. (NT-217; P-33)

54. The school district is currently transporting the student to the Private School. (NT-227)

55. The tuition at Private School is \$18,500 plus \$2000 for his special English class. (NT-141, 142, 227; P-56)

Other

56. The parent is not satisfied with the student's work product. The parent wants the student to use more and better cursive writing style. The parent was in constant communication with the school expressing dissatisfaction with the help the student was getting. This was especially true in the areas of reading and writing. (NT-178-181, 183, 201-203; P-29, P-44)

57. The parent does not feel the student's grades reflect his work. The parent thinks the grades are artificially high. (NT-184)

58. The student's cursive and printed handwriting is sometimes quite good. (NT-236, 237; P-57, P-58)

59. The parent used two parent advocates in her dealings with the school district. (NT-234, 235)

60. Earobics was not done because the parent supported the student's desire not to use it. (NT-239, 240)

61. The parent states that what the school sees as ADD, the student's doctor sees as a hearing problem that affects auditory processing. He is distracted by sounds in a large room. (NT-22, 61)

62. The parent helped the student with school work at home. She was advised by the school she was making matters worse. The student resisted doing school work with the parent. (NT-53, 54)

63. The student's PSSA in grade five was Basic in reading and Below Basic in mathematics. For grade six the reading remained at Basic and mathematics improved to Basic. (S-39, S-41)

64. The parent does not understand the AIMS WEB charts used by the school district to chart progress in reading comprehension, reading fluency and math computation. (NT-173, 174)

65. Progress Monitoring Reports do not always show changes in levels of instruction. The trend lines are illustrative of progress. (NT-256, 319; S-7, S-28)

66. The parent feels the student needs OT to help with his handwriting. The school district did not see a need for OT. (NT-187; P-12)

67. In April 2007 the parent had an Auditory-Language Processing Evaluation done by Ms. Y, a certified and licensed audiologist and speech pathologist. She found a significant auditory processing deficit with processing spoken language in noise, rapidly spoken words, auditory overload and suprasegmental, inflectional cues. Recommendations were made including a specific auditory training program, speech/language services, structure, preferential seating, careful selection of teachers and other ideas.

This was emailed to the school district. There is a question of whether the school district received it. It was discussed at an IEP meeting. (NT-197, 198, 239, 247, 248, 287; P-23, P-24)

Issues

1. Was the student provided FAPE for the 2005-2006 school year?
2. Was the student provided FAPE for the 2006-2007 school year?
3. Is the student due tuition reimbursement for 2007-2008 school year?
4. Is the student due compensatory education for 2005-2006 school year?
5. Is the student due compensatory education for 2006-2007 school year?
6. Is the student due compensatory education for 2007-2008 school year?
7. Is the parent entitled to transportation for 2007-2008 school year?

Discussion and Conclusions of Law

The student was first identified as an eligible student with a learning disability (FF 2). His ability has been measured between low average and average at different times (FF 2, 29). The student's reading in the spring, grade three, was in the second to third grade range (FF 4). The parent participated in the IEP for grade five and approved it (FF 9). The heart of the parent's claim of a failure to provide FAPE is whether the IEPs were appropriate and was progress made on IEP goals in grades five and six.

In grade five, the student's PSSA scores were Basic in reading and Below Basic in mathematics (FF 13). By the end of fifth grade the student's reading was at fifth grade transitioning to sixth grade level (FF 14). His report card grades were 'B' in reading, 'B'

in writing, 'B' in grammar, 'A' in word study, 'C' in mathematics, 'S' in social studies, 'U' in handwriting, 'S' in art and 'B' in library. Progress monitoring of IEP goal achievement shows a positive trend of progress, although achievement of goals was not made in all areas. Moderate progress was reported (FF 18).

The parent approved the IEP for grade six (FF 19). At the parent's request, reading, mathematics and language arts were delivered in the more restrictive LS class (FF 19). The parent approved the IEP (FF 19). During grade six the student was reevaluated (FF 22). The RR showed reading was grade four for instruction and grade six for independent reading (FF 22). Oral comprehension was fifth to sixth grade level (FF 22). The IEP was revised at least six times during the year (FF 24, 25, 28, 31, 33, 35). The parent had an advocate at most of the IEP meetings and approved the IEP (FF 24, 25, 28, 31, 33, 35). Throughout the IEP revisions changes were made in the IEPs. The student's math class level was raised, reading IEP adjustments were made, SDIs expanded, Earobics recommended and some classes changed to regular education setting (FF 24, 26, 31, 35). The student was provided ESY to address parent's concerns (FF 41).

Progress monitoring of the IEP goals shows positive trend lines in all goals, although there was fluctuation in scores (FF 39). The report card showed grades of 84% to 90% (FF 40). Of interest is the SSAT administered by the School which showed the student scoring at the 55%ile in reading and the 78%ile in mathematics when compared to students nationally (FF 37).

The parent continually expressed her feeling that the student was not progressing in his academics as well as she thought he should (FF 8, 12, 16, 24, 28, 33, 43, 56). The parent expressed constant concern about the student's handwriting (FF 8, 12, 66). OT evaluations over the years did not qualify the student for OT (FF 7, 22).

Because of her dissatisfaction with the student's progress, the parent enrolled him in the Private School (FF 46). The Private School is a private school with a small student/teacher ratio (FF 48). It teaches both regular and special education students (FF 48). The student is doing well there (FF 50, 52).

The IDEA requires that FAPE be provided to all students qualifying for special education services. The Supreme Court, in *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), held FAPE is met by complying with IDEA's procedural requirements and by providing individualized instruction and support services to permit a child to benefit educationally from the instruction. This is further delineated in *Rose* by *Rose v. Chester County Intermediate Unit*, 25 IDELR 61 (ED.PA. 1996); *Board of Education v. Diamond*, 808 F. 2d 987 (3rd Cir.) and *Polk v. Central Susquehanna I.U. #16*, 853 F. 2d 171, 183 (3rd Cir.) While the law does not require school districts to offer optimal educational programs to maximize the child's potential, this standard is met only when the child's program provides more than a de minimus educational benefit.

The first two issues are whether FAPE was provided. A review of the IEPs shows that they are appropriate in content and procedure. The requirements found at 34 CFR §300.320, 321, 322, 323, 324 were met. Parent involvement was intense, the teams were properly constituted, the development and content met the regulations and revisions were made as needed. It is of note that the parent, in the crucial fifth grade, did not go it alone; she made use of advocates to help her through the process. The parent assertion that a LEA was not present at certain IEP meetings is not so. There were administrators, assistance principal, present with the authority to serve in this capacity. Any procedural flaws were minor and not fatal to the process.

Key to this decision is whether the student made meaningful progress as required and noted above. The school district's measures, whether using QRIs, progress monitoring, PSSAs, grades or other measures, show positive growth over time. It is recognized that some measures show variance, but when taken as a whole each year (grades five and six), meaningful progress was made. Some measures, like the SSATs, put him in the average range in his identified disability area of reading. Certainly progress is meaningful.

By a preponderance of the evidence it is my decision that FAPE was provided over the period of time covered by this hearing.

There are three prongs to the decision to award reimbursement for a unilateral placement of a student at a private school. First, the district must show that it has offered the student a free appropriate public education (FAPE). Second, the parents, if the district does not prevail on the first prong, must show that the private school selected is appropriate for the student, and third, the Hearing Officer must weigh the equities in the case. Burlington School Committee v. Massachusetts Department of Education, 1984-85 EHLR 556:389 (1985); Florence County School District 4 v. Shannon Carter, 510 U.S. 712, 126 L.Ed.2d 284, 114 S. Ct. 316 (1993)

Since the school district prevails in the first prong, that is FAPE was provided, we need go no further.

Compensatory education is an in-kind remedy. A child is entitled to compensatory educational services if the child is exceptional and in need of special education and related services (i.e., eligible for FAPE) and if through some action or inaction of the district, the child was denied FAPE. See *Lester H. v. Gilhool*, 916 F.2d 865 (3rd Cir. 1990), *In Re the Educational Placement of J. A.*, Opinion Number 1238. Compensatory education's specific purpose is to remedy a period lacking such benefit computed from when the district knew or should have known of the programmatic deficiency. See *M.C. v. Central Regional School District* 81 F.3rd 389 (3rd Cir. 1996) Thus, services must be over and above what is required for FAPE now and in the future. See *Id*, *John A*

Since the school district provided FAPE during the 2005-2006 and 2006-2007 school years, no compensatory education is due to the student.

The issue of transportation, since this is a unilateral placement, is not under my jurisdiction. State code and school district policies dictate this.

The LEA is ordered to take the following action

1. FAPE was provided; no action is ordered.

Date

Kenneth Rose
Hearing Officer