

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

LM
Child's Name

Xx/xx/xx
Date of Birth

8441/07-08
ODR File Number

April 15, 2008, May 28, 2008, June 4, 2008
Dates of Hearing

(Record Closed June 16, 2008)

Closed Hearing

Parties to Hearing

Parents

Date Transcripts Received:
April 28, 2008, June 4, 2008,
June 9, 2008

Parent Representative
Frederick Stanczak, Esq.
179 North Broad Street
Doylestown, PA 18901

Date of Decision
June 23, 2008

School District
Director of Student Services
2040 Washington Blvd.
Easton, PA 18042-3890

District Representative
Jennifer Donaldson, Esq.
Sweet, Stevens, Katz & Williams
3331 E. Butler Ave.
PO Box 5069
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Kenneth Rose
Hearing Officer

Background

The student is an elementary age student residing in the school district. Student is an eligible student identified with a Specific Learning Disability (SLD) in reading and written expression. Also, Student has Speech/Language (SL) needs.

The student attended a parochial full-day kindergarten. The parents repeated the student in the school district kindergarten due to their concerns about Student's academic progress. Student received Instructional Support Team (IST) in kindergarten and until Student was identified in first grade as having a SLD. The parents withdrew the student at the start of second grade and placed Student in [redacted] School, a private school for children with learning disabilities and learning needs. The parents seek tuition reimbursement for the placement from January 1, 2008 forward.

By way of a settlement agreement the parents waived claims prior to January 1, 2008.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the Wilson Area School District.
3. The student is eligible for special education as a student with a SLD.
4. The tuition for School for the one hundred and ten school days from January to June 2008 is \$9,845 and \$16,000 for the 2008-2009 school year.

Findings of Fact

1. The parents became concerned with the student's development at age two because Student was not talking appropriately. The student then received S/L services in Early Intervention (EI) through the Intermediate Unit (IU) starting at age 2. EI services were provided by [another] IU when the student moved to the school district. (N.T.-30-32, 81, 405; P-16)

2. The student attended full day kindergarten in 2004-05 in a private parochial school where Student received EI for S/L. Student attended this program because the parents wanted a full day kindergarten. (N.T.-31, 32; P-18)

3. The parents chose to repeat the student in kindergarten when they enrolled Student in the school district. They felt Student was not ready for first grade. (N.T.-478)

4. The student started kindergarten in the school district in 2005-06 school year with an Individualized Education Program (IEP) to address Student's needs in speech articulation. (N.T.-34; P-17)

5. In kindergarten in the school district the student received services through IST because Student was struggling. IST is a pre-referral process that attempts to remediate students' needs prior to referral for evaluation. (N.T.-37, 130)

6. At the end of kindergarten (2006) in the school district, a meeting was held between the parents and school district. The parents expressed their concerns about the student's reading, falling out of Student's chair, walking on toes and other concerns. (N.T.-42)

7. The student was referred for an evaluation in the IST process and parental concerns. The Permission to Evaluate was issued at a May 2006 IST meeting. The parents requested that the evaluation not be done in June.

The school psychologist communicated with the parents over the summer on what tools the school psychologist, a Licensed Psychologist in PA and a Certified School Psychologist in PA, was using. The school psychologist waited for the parents to provide all of their reports before he wrote Student's report. (N.T.- 83, 143, 147-149; P-15)

8. In July 2006, the school psychologist phoned the parents to get information about the student for Student's evaluation. At that time the parents stated they were getting an evaluation by Dr. and that they didn't want the school district doing one. (N.T.-83).

9. Dr. evaluated the student at the request of the parents in August 2006 and August 2007. (N.T.-224)

10. For Dr.'s August 31, 2006 evaluation, she reviewed the school's S/L information and administered a variety of tests. On the Wechsler Intelligence Scale for Children (WISC IV) Student scored a Verbal Comprehension Index of 121, Perceptual Reasoning Index of 125 and a Full Scale I.Q. of 116. This is in the average range. This reflects the range between Verbal Comprehension and working memory on the Woodcock Johnson test of Achievement. The results were:

Woodcock Johnson Tests of Achievement – Third Edition

<u>Subtest and Scores</u>	<u>Grade Equivalent</u>	<u>Percentile</u>
Letter Word Identification	1.2	69
Passage Comprehension	K.0	1
Word Attack	1.7	90
Picture Vocabulary	K.7	46
Calculation	2.1	94

Applied Problems	1.2	67
Math Fluency	1.5	82
Spelling	K.7	39
Writing Sample	1.3	78
Academic Knowledge	3.0	94
Story Recall	2.0	72
Understanding Directions	1.7	94
Oral Comprehension	2.6	85
<u>COMPOSITE SCORES</u>		
Oral Language	1.8	76
Oral Expression	1.1	56
Listening Comp	2.2	85
Broad Math	1.6	88
Math Calculation	2.0	95
Basic Reading Skills	1.5	84
ACADEMIC SKILLS	1.3	80
ACADEMIC APPS	K.3	17

Dr. was concerned that the Achievement Test scores were low for the student's age and services Student had received. Student could not read a sentence.

On the Speech and Language Evaluation Scale, the student scored average. On the Test of Language Development-Primary-Third Edition, Student scored average to superior except for Phonetic Analysis where Student scored below average. On the Wilson Assessment of Decoding and Encoding Student was weak in vowel sounds. On the Attention Deficit Disorder Evaluation Scale some distractability was found. The parents completed the Behavior Rating Inventory for Executive Function. No great concerns were found.

From the (Audiologist) report, Dr. noted that the student has apraxia that interferes with ability to sound words and reproduce them. Student's receptive language is better than Student's expressive language.

Dr. was concerned about the student's reading. Dr. found Student to have a "Reading Disorder-Reading Comprehension and Decoding" and "Learning Disorder NOS-auditory and visual processing." A number of recommendations were made to the parents and school. A multi-sensory, phonetic reading approach was recommended, along with assistive technology in learning. Dr. felt the student needed private reading instruction. (N.T.-227-238, 261, 264; P-2)

11. In the summer of 2006 the parents obtained an Independent Educational Evaluation (IEE) from Dr. because they didn't think the school district would find the student eligible. (N.T.-45)

12. Dr. did not observe the student in Student's classroom for either exam nor did she get information directly from the school district. (N.T.-263, 268)

13. When the parents received Dr.'s report, they provided it to the school district. (N.T.-47)

14. The school psychologist who evaluated the student was aware of Student since the student was in the IST process. (N.T.-130)

15. The school psychologist's initial ER of November 14, 2006 was a full evaluation. It relied heavily on reports from the IST team and Dr.'s IEE. Dr.'s testing was not repeated by the school district's evaluator because they were recent and retesting with the same instruments would not be valid. The school psychologist did an assessment of behavior and behavioral characteristics, but the parents requested that it not be scored. The school psychologist observed the student in class.

Using the discrepancy model, the student was found to have a SLD in reading and written expression. Also, Student was identified as having a S/L impairment. (N.T.-132-143, 150, 151, 343; P-2, P-15; S-5)

16. The student's draft IEP of December 18, 2006 was based on the ER of November 14, 2006. The parents had an advocate at the December 18, 2006 IEP meeting. There was a goal to read the first one hundred first grade high frequency words. As agreed to, a baseline was established after the IEP was implemented. The goal to improve reading from pre-primer to grade one was supported by four objectives/benchmarks. This utilized a phonetic approach. A goal was written to increase legible words from eight to fifteen words.

The goals were supported by twenty-two program modifications and SDIs. Some of these promoted phonics and multi-sensory approaches. The Horizons program was discussed at the IEP meeting. The advocate was familiar with it. (N.T.-491-509; S-3, S-5)

17. Baselines for the December 18, 2006 IEP are from the ER of November 14, 2006. (N.T.-541, 542; S-3, S-5)

18. The IEP of December 18, 2006 was revised January 26, 2007 to include updated Present Levels. It was further revised June 7, 2007 to add assistive technology. At the June 7, 2007 meeting the audiology report was reviewed.

An IEP was developed for the student on December 18, 2006 and revised June 7, 2007 to add assistive technology. Also, on January 26, 2007, the parents updated the Present Levels to reflect tutoring help. At the June revision the parents wanted the Wilson Reading Program to be specified in the IEP.

On June 7, 2007 the parents approved the Notice of Recommended Educational Placement (NOREP) for part time LS and S/L and the adding of an assistive technology device.

The June 7, 2007 IEP was approved by way of a NOREP. (N.T.-49, 51, 52, 55, 88, 89, 90, 345, 348, 349; P-14; S-2, S-3, S-4, S-6)

19. The December 18, 2006 IEP was implemented at the start of February 2007. The delay in implementation was ongoing discussion with the parents about the IEP. The issues holding up implementation were parents' insistence of the Wilson Reading Program by a Wilson certified instructor and a classroom amplification system. This was settled by an agreement that the school district would pay for one hour a week of private Wilson instruction and that an audiological assessment would be done. (N.T.-389, 390)

20. On September 11, 2006 the student was evaluated by a Pediatric Optometrist. This was done on the recommendation of Dr.. Problems were found in focusing and eye teaming skills; eye movement skills; lateral awareness and directional concepts and visual-motor integration. Recommendations were made to the parents and school.

A copy of the report was given to the school district. (N.T.-73, 74; P-4)

21. The IEP of December 18, 2006 has measurable goals for reading, vocabulary, expressive language (writing fluency) and S/L. These are supported by twenty-two program modifications and SDIs. The reading goal was to progress from pre-primer to grade 1. (N.T.-404-410; S-3)

22. The gap between developing the December 18, 2006 IEP and implementing it on February 2, 2007 was due to waiting for the parents to approve the NOREP. (N.T.-616)

23. Throughout the discussions over the December 18, 2006 IEP, the parents insisted that the student receive the Wilson Reading Program by a certified Wilson instructor. The student received no S/L services during the impasse that ended with the May 4, 2007 agreement. (N.T.-359)

24. The December 18, 2006 IEP was written to be revised September 28, 2007. This was to allow time to have the school determine the student's progress and needs for developing a new IEP for second grade. (N.T.-87, 347, 348; S-3)

25. The parents provided information from [redacted] Educational Center at the December 18, 2006 IEP meeting that was added to the ER of November 14, 2006. (S-5)

26. The parents think the SDIs on the December 18, 2006 IEP are vague. (N.T.-118; S-3)

27. The speech therapist and LS teacher communicated on the student's progress on Student's S/L goals. The LS teacher noted progress. (N.T.-286, 500-504, 512, 513: S-7)

28. The school district uses the Horizons Reading Program. The Horizons Program is direct individual instruction that is phonetically based and multi-sensory. The student was instructed in it daily after Student's IEP was implemented. The LS teacher is trained in the Horizons program. (N.T.-97, 510-514)

29. The student's core reading program under Student's IEP was Horizons which was phonics, vocabulary, comprehension and fluency done in the LS room through individual instruction. It was multi-sensory. It is a supplemental to the Wilson Reading Program that focuses on early phonics and multi-sensory approach. This was in addition to the Foundations Reading Program in the regular classroom. (N.T.-413, 414, 444, 445)

30. The first/second grade teacher was trained in the Foundations Reading Program. The program has built-in assessments. (N.T.-600, 601)

31. The first grade reading series starts at the pre-primer level. The student moved quickly through the first three books of the Horizon Reading Program to first grade level. (N.T.-546, 547)

32. On Student's end of year first grade report card the student was grade proficient or making progress in all areas "consistently forms letters and numbers." (N.T.-604; P-24)

33. On June 7, 2007 the IEP was revised to add an assistive technology device (FM System) to the IEP. The FM System was not to be used in the LS class because this was one-to-one instruction. (N.T.-516-518; S-3)

34. [redacted] owns the [redacted] Educational Center, a private tutoring service. She is a certified teacher in Pennsylvania and a certified Wilson instructor. (N.T.-287-289)

35. In the summer of 2006 the parents brought the student to the Educational Center because of their concern over the student's reading. [owner] evaluated the student. She found Student to be too stressed by the first tests, Wilson Assessment of Decoding and Encoding (WADE), to finish it. She assigned scores based on her experience. She found Student's sound to be pre-K and comprehension was K-1. She

utilized the reports of Dr. and the optometrist in the report she prepared, at parents' request, for the school district (November 27, 2006).

[owner] recommended Wilson Reading and Language Program and Lindamood-Bell Auditory Processing Programs for the student. (N.T.-291-298, 320, 321; P-10, P-11)

36. At the Educational Center the student was instructed in the Wilson Reading and Language Program and the Lindamood-Bell Auditory Processing Visualization and Verbalizing Program. The Lindamood-Bell Program was integrated into the Wilson Program. Between May and November 2006, the student is said to have made significant progress. (N.T.-323, 327; S-5)

37. Initially, the student had two one hour sessions a week at the Educational Center. At first [owner] was the tutor and later another teacher took over. This teacher is a certified special education teacher, but not a certified Wilson instructor. The student stopped attending when Student started School. (N.T.-303-305, 332)

38. During the student's time at the Educational Center, Student left and was instructed in the Orton-Gillingham Program at the [redacted facility] in [redacted city] and then returned to the Educational Center. (N.T.-333-335)

39. The student did some work on written expression at the Educational Center. This was done through dictation. Written expression was not pushed. (N.T.-311, 312)

40. The student's attendance at the Educational Center in early first grade was sporadic due to financial issues. The parents saw improvement in the student's reading while at the Educational Center. During the summer of 2007 the parents claim the student could not read pre-primer books. (N.T.-464-466)

41. At the Educational Center, Student did not make as much progress as [owner] would have liked. Student went up to the start of book five out of twelve. Student showed frustration. (N.T.-306, 307, 310, 315)

42. On January 18, 2007 the school district wrote a letter to the parents outlining the student's history in the district and stated their willingness to pay for tutoring at the Educational Center, implement the initial IEP and provide an audiological evaluation. (N.T.-345; S-1)

43. Dr. recommended that the parents look at the School. She views this as a good setting for the student to meet Student's needs in light of Student's apraxia. (N.T.-258-260, 275)

44. The learning support teacher has been familiar with the student. She was Student's IST case manager in kindergarten. (N.T.-485)

45. The high frequency sight word vocabulary list for first grade is two hundred to two hundred and fifty words. (N.T.-543)

46. At the end of the 2006-2007 school year the student increased accuracy reading the one hundred first grade sight words from 86% to 98%. Decoding and reading fluency improved. The student read forty correct words with 98% accuracy. Comprehension was good. Student wrote with use of capital letters and periods. Student showed no anxiety about school. By the end of first grade the student was progressing toward mastery of Student's goals. (N.T.-498-501, 521, 522; S-7)

47. The student entered first grade without knowing the alphabet, letter sounds or identifying letters. Student had not mastered the kindergarten words. (N.T.-578)

48. After the implementation of the December 18, 2006 IEP the student had a half hour of phonics instruction in Student's regular education class as well as math, science, social studies, specials and lunch. Student went to the LS class for reading, spelling, language arts and written expression.

During regular education IEP goals and SDIs were addressed. (N.T.-574, 578).

49. The Horizons Reading Program has built-in measures. (N.T.-552)

50. The first grade regular education teacher noticed progress by the student in all areas.

The student related well with Student's peers. (N.T.-578-583)

51. An auditory processing problem was identified by [Dr.] , PhD, audiologist, in May 2006. The audiologist made recommendations including continuation with Education Center, explore Earobics, ADD assessment, possible developmental assessment and a reevaluation in one year. The report was given to the school district.

In a follow up letter the audiologist suggested increased phonemic awareness and knowledge, trial use of a FM System, slower speaking by clinician, preferential seating and altered teacher presentation. (N.T.-63-68; P-4)

52. The parents shared the August 14, 2007 audiological evaluation with the school district. (N.T.-460; P-3)

53. The school district conducted an audiological evaluation of the student February 27 to April 30, 2007. The evaluator recommended an individual FM sound pack be used by the student in Student's regular education classes. This system was used in a trial with the student. The parents agreed. (N.T.-390-394; S-3, S-4, S-6)

54. The private audiological evaluation was followed up by the school district and an audiology consultation was done. Auditory processing needs were confirmed. A FM System trial was recommended and classroom/teacher adjustments were recommended.

The parents met with District's audiologist and discussed the report and the FM System. It was working well. (N.T.-69, 70, 125; P-6; S-6)

55. In first grade the parents wanted an all room sound system for the student. Also, they felt the school's approach was eclectic rather than a single program. The parents preferred a classroom wide FM System because they feared with headphones Student would miss things and the using of headphones would hurt Student's self-esteem. (N.T.-459, 461, 462)

56. The student reacted well to the FM System. It aided Student's attention. (N.T.-586, 587, 595, 608)

57. The parents requested Extended School Year (ESY) for 2007. The school district reviewed the request and denied it. However, the school district did agree to pay for continued reading tutoring at the Educational Center. The district did this "in the interest of compromise." (N.T.-349-356; S-9, S-10, S-11)

58. The student received tutoring at the Educational Center in the spring and summer of 2006. Student also did Earobics in the summer twenty minutes a day. (N.T.-48)

59. The parents do not think the school district is properly implementing the Foundations Reading Program. (N.T.-96, 97)

60. On May 4, 2007 the school district and the parents entered into a settlement agreement that states:

1. All issues of facts and law between the school district and the parents are settled for the period of January 2, 2007 to January 1, 2008.
2. The school district agreed to pay for tutoring at the Educational Center.
3. ESY eligibility would be settled by May 1, 2007.
4. The school district did not admit its reading program was inappropriate.

(N.T.-357, 358; S-11)

61. The settlement agreement of April 28, 2007/May 3, 2007 had the parent waiving all educational claims against the school district prior to January 1, 2008. The school district agreed to pay for the Educational Center's reading tutoring. (N.T.-56; S-11)

62. The parents had Dr. reevaluate the student in August 2007 to check on Student's progress and needs. The reevaluation was provided to the school district. (N.T.-71, 72; P-1)

63. Dr. reevaluated the student in August 2007 and issued a report on August 31, 2007. A variety of reports were reviewed and tests administered. On the Woodcock Johnson Test-Third Edition the student scored:

<u>Woodcock Johnson Tests of Achievement-Third Edition</u>		
<u>Subtest and Scores</u>	<u>Grade & Equivalent</u>	<u>Percentile</u>
Letter Word Identification	2.0	56
Passage Comprehension	1.5	36
Reading Fluency	1.4	28
Word Attack	2.3	66
Reading Vocabulary	1.5	32
Picture Vocabulary	3.6	77
Calculation	2.4	81
Applied Problems	2.6	75
Math Fluency	1.7	38
Spelling	1.3	26
Writing Sample	1.3	19
Academic Knowledge	4.0	90
Story Recall	1.3	38
Understanding Directions	2.1	54
Oral Comprehension	3.5	79
<u>COMPOSITE SCORES</u>		
Oral Language	2.9	73
Oral Expression	2.9	68
Listening Comp	2.9	74
Broad Reading	1.7	38
Broad Math	2.4	74
Basic Reading Skills	2.1	62
Reading Comprehension	1.5	32
Math Calculation	2.2	68
ACADEMIC SKILLS	1.9	50
ACADEMIC APPS	1.7	42

On the Gray Oral Reading Test Student scored low for Student's age but at first grade level. The student could not read a paragraph.

Dr. expanded her diagnosis to include a "Writing Disorder."

Recommendations were made to the parents and school. These included using Wilson Reading or Orton-Gillingham instruction, Earobics, Handwriting Without Tears, Fast For Words, use of computers and small class size. The parents were encouraged to explore private and public school options. (N.T.-238-251; P-1)

64. Dr. opines that the student needs more time in a learning support setting to improve Student's reading. (N.T.-256, 257)

65. Dr. , in comparing achievement testing between her two evaluations, notes improvement although reading problems continue with analogies and verbal comparisons. The student's apraxia continues to be a problem. Progress was made in math; Student was on level. Spelling was just in the average range. Student's knowledge was commensurate with Student's ability.

Dr. indicates substantial progress in developing basic reading and coding skills. She feels more progress can be made in the student's reading. (N.T.-239-241, 269-271, 280, 281, 283-285; P-1, P-2)

66. On August 18, 2007, the parents wrote to the school district that they were thinking of enrolling the student in the School. They felt strongly that the student needed an Orton-Gillingham or Wilson program. (N.T.-360; S-13)

67. On August 18, 2007 the parents wrote a letter to the school district expressing concerns about the program for the student. The school district responded by telephone on August 22, 2007 suggesting an IEP meeting. On August 24, 2007, the parents wrote their withdraw letter. On August 27, 2007 the school district issued an invitation to an IEP meeting. (N.T.-57-60, 91-95; S-13, S-14, S-15, S-16)

68. On August 24, 2007 the parents withdrew the student from the school district effective September 5, 2007 and Student will then attend School. They stated this would be at public expense. (N.T.-362; S-14)

69. An IEP meeting was called for September 4, 2007 to discuss the parents' concerns. (N.T.-362; S-15, S-16)

70. At the September 4, 2007 IEP meeting it was obvious to the school district that the parents intended that the student would attend School. (N.T.-419)

71. At the IEP meeting of September 4, 2007 the Present Levels were updated. Current independent reading of the first 100 high frequency first grade words were 86/100 with accuracy. In February it was 67/100 and in June 2007 it was 98/100.

Reading fluency went from 22 in March 2007 to 44 in June 2007. DIEBELS assessment showed good progress in Letter Naming Fluency, Nonsense Word Fluency, and Retell Fluency. Oral Reading Fluency had slower progress.

Revisions did not proceed beyond this. (N.T.-366, 367; S-17)

72. After the LS support teacher reviewed Dr.'s August 2007 report it did not change her opinion about the IEP of September 4, 2007. (N.T. 525)

73. If the student had stayed in the school district, full additional measures of progress would have been made and an IEP would have been developed by September 28, 2007. (N.T.-374, 375)

74. The student started the 2007-2008 school year in the school district. Student was withdrawn the day before the School started its term. (N.T.-102)

75. On the day of the September 4, 2007 IEP meeting, everyone knew it was the student's last day in the school district. The parents had indicated the student would be at School for about three years. The September 4, 2007 IEP revision was to demonstrate the student's progress. (N.T.-421, 592, 593, 597, 614; S-17)

76. On September 4, 2007 the parents, by way of a NOREP, did not approve the school district's proposed program and placement. They did not request any meeting, mediation or due process hearing. (N.T.-367; S-18)

77. After the parents filed for the due process hearing, an IEP meeting was called for February 8, 2008. [The private] School records were requested of the parents.

At the IEP meeting parent information was reviewed. Present Levels were developed based on School records and previous information from the school district. Some School information was added after the meeting. The school district did not feel they were given enough information to fully understand the student's goals or progress at School. The IEP was being developed with the understanding it would be open to revision as they got to re-know the student. Goal levels were increased to second grade.

School reported: 1st grade independent reading level, 2nd grade instructional reading level, and 1st grade frustration reading level. A frustration level below instructional level was confusing to the school district. These are below Dr.'s findings of August 2007. (N.T.-370, 371, 395-402, 427-436, 448, 449-451; P-23; S-20, S-21)

78. [owner of Educational Center] saw the student about March of 2008 and did some partial testing. She opines Student was more confident, had good self-esteem, reading improved and Student could focus. She opines the student is not ready to return to public school. This testing was done because the parents wanted the student to stay at School. (N.T.-316, 318, 335, 336)

79. On January 28, 2008 an invitation for an IEP meeting was issued. The meeting was held February 8, 2008.

At the meeting Parent stated Student would not return to the school district. Parent says the statement was made due to personal stress. A NOREP was issued that the parents took to their attorney. (N.T.-103-105; S-20, S-21)

80. The Director of Student Services drafted the IEP of February 8, 2008. The Present Levels were changed after a review of School records. Goal levels were changed also. (N.T.-562; S-22)

81. The SDIs on the December 18, 2006 and February 8, 2008 IEPs reflected a multi-sensory, phonetic approach. The number of sight words to be mastered on the IEPs was set to challenge the student. (N.T.-442, 443, 612, 613; S-3, S-22)

82. The LS teacher did not feel there was enough information on the student to write a final IEP at the February 8, 2008 IEP meeting. They hadn't seen the student for half a year. The proposed IEP would have been revised after the student arrived. (N.T.-526)

83. The parents brought work samples and reports to the February 8, 2008 IEP meeting. They had not yet had their progress meeting at School so they could only give their opinion on the student's progress. (N.T.-570)

84. The LS teacher opines that a student with an Independent Reading Level of PP and a Frustration Reading Level of Gr. 1 should not be Instructional Reading Level Gr. 2. (N.T.-531-533; P-23)

85. The parents state that "quickly after gazing over (the IEP)...it wasn't going to happen." (N.T.-476)

86. The parents feel the sight word goal in the February 8, 2008 proposed IEP is too low. They feel the student's reading goal is too low based on Student's age and intelligence. They claim not to understand PSSA measured areas. They object to the SDIs because no program is identified. They view the proposed program as an eclectic hodgepodge. (N.T.-471-475; S-20)

87. The school district was given the August 2007 [private psychologist's] evaluation at the September 4, 2007 IEP meeting. It was not reviewed by the school district until after the meeting. (N.T.-367, 395, 419)

88. The School is a private elementary (K-6) school for students with learning disabilities and learning differences. The school has 116 students. Class size is eight. It is not state licensed, but is certified by Middle States Association, Commission on Elementary Schools, National Association of Independent Schools, Council for

Advancement in Support of Education and the Association of Delaware Valley Independent Schools.

The average student stay at School is three years. (N.T.-172-174)

89. The goal at School is to prepare the student to return to regular public or private school. (N.T.-189, 190)

90. The head of the School found the school district's ER to be helpful. (N.T.-209)

91. While enrolling the student at School, the parents provided records. (N.T.-200)

92. The student is in a third grade class at School. There is one teacher and support from a language therapist, librarian and technology director. The teacher is a certified elementary teacher and is trained in Lindamood-Bell. She is not certified in special education.

The student receives individual and group S/L therapy from the IU. Student uses Earobics for auditory processing and phonics needs. Student is learning keyboarding. Student uses Project Read, an Orton-Gillingham synthetic and analytical phonics program. It is multi-sensory. Reading is taught across the curriculum.

Student's day consists of Project Read, Saxon Math, Handwriting Without Tears, spelling, written expression, science and social studies. On different days Student has art, physical education and language. Student's S/L therapy is a half hour every other week for articulation. (N.T.-177-185, 202, 203, 206, 207)

93. The head of School reports that the student has gone from a first to third grade instructional reading level and is at a fourth grade math level. Student is being instructed successfully on third grade level. Student's independent reading level is stated as first and second grade. This is based on standardized testing.

The student needs redirection to improve attention.

The Omni Petite FM System used in the student's classroom is helpful. (N.T.-190, 191, 212-215)

94. The student's teacher at School developed a written plan for the student based on information provided in the reports given by the parents. (N.T.-212, 213)

95. The parents claim the student has made tremendous progress at the School. Reading fluency has improved and self-esteem is better. They say School has told them Student's reading level is 3.1. (N.T.-467)

96. The parents told the school district that they anticipated the student would be at School for three or four years. (N.T.-369, 370)

97. The parents want one comprehensive system used across the board, not different approaches on different subjects. (N.T.-79)

98. The parents get a daily book from the teacher at the School that reports progress. The parents sign off in it. (N.T.-78, 79)

99. The student has made friends at the School. (N.T.-79)

100. The school district has not sought permission from the parents to contact School. (N.T.-468)

101. At School the student has no exposure to non-disabled peers. (N.T.-201)

102. Dr. evaluates many of the students at School. (N.T.-207)

103. [owner of Educational Center] many times works in conjunction with School. (N.T.-208)

104. The School was recommended by the parents' pediatrician. (N.T.-74)

105. The tuition at School for the 2007-2008 school year is \$16,000. The student qualified for financial assistance, but if the school district pays the tuition, no financial aid is available. The parents received a half tuition scholarship. (N.T.-80, 192, 193)

106. The school district opines that School is too restrictive an environment for the student. (N.T.-368, 369)

107. The parents want a research based reading program that is systematic. They prefer Orton-Gillingham based programs. (N.T.-75, 99)

108. The school district does not think the student needs special education in all classes. (N.T.-362)

109. Foundations is a reading program through Wilson. (N.T.-400)

110. Over the years, the parents have worked with the student using information they read. They worked with Student on Student's homework in first grade. The student resisted this. (N.T.-456, 457)

111. There are still some homework problems at present. (N.T.-481, 482)

112. The student got along well with Student's classmates. (N.T.-593, 594)

113. The parents never observed the student at school. (N.T.-524)

Issues

1. Is the IEP of June 7, 2007 appropriate in the areas of reading, writing, speech and language and auditory processing?

2. Is the IEP proposed on February 8, 2008 timely and/or appropriate in the areas of reading, writing, speech, language and auditory processing needs?

3. Are the parents entitled to tuition reimbursement from January 1, 2008 to the end of the school year?

Discussion and Conclusions of Law

The parents have long been concerned about the student's development. The student received EI services for S/L needs (FF-1). The student started Student's schooling in a full day private kindergarten. The parents chose to enter the student in the school district and repeat kindergarten (FF-3). The student continued to receive S/L services through an IEP (FF-4). During kindergarten and into first grade the student received IST services because of learning concerns (FF-5).

In May of Student's kindergarten year the parents and school district agreed to an evaluation of the student (FF-7). During this time, the parents decided to have an IEE done by Dr. , a private school psychologist (FF-8). On August 31, 2006, Dr. issued her report (FF-10). The report found the student to have a Verbal Comprehension Index of 121, a Perceptual Reasoning Index of 125 and a Full Scale I.Q. of 112 (FF-10). Batteries of achievement tests, S/L scale, language development test, reading test and AD/HD evaluation were given (FF-10). Dr. found the student to have a Reading Disorder-Reading Comprehension and Decoding (FF-10). She recommended a multi-sensory, phonetic reading approach with assistive technology and private reading instruction (FF-10). This report was provided to the school district.

The school district, on November 14, 2006, issued its ER. It was based in large part on Dr.'s report, as well as school district information (FF-15). The student was found to have a SLD in reading and written expression as well as continuing S/L needs (FF-15).

Using the ER, an IEP was developed on December 18, 2006 (FF-16). It has Present Levels based on the ER of November 14, 2006. Goals for reading, written expression and S/L were developed, as well as SDI to support the goals (FF-16,17,21). Much discussion continued through January due to the parents insistence on having the student receive the Wilson Reading Program provided by a Wilson trained instructor (FF-19,23). This was settled by a settlement agreement (FF-19). The IEP was implemented

February 2, 2007. The IEP was written to go to January 28, 2008 so that it could be revised when educational levels could be determined for second grade.

The first grade program under the IEP consisted of the Horizons Reading Program. This is a daily, individual phonetically-based and multi-sensory reading program provided by a trained instructor (FF-28,29). The student was in regular education for social studies, science, math and special subjects. Student also had a half hour of phonics instruction daily in Student's first grade regular class (FF-48).

Following audiological evaluations, an individual FM System was utilized by the student (FF-20,54,55,56). This was added to the IEP on June 7, 2007 (FF-35). No other IEP changes were made.

During first grade the student received sporadic private reading tutoring at the Educational Center (FF-38,40). This was a Wilson based program (FF-36). The director is a Wilson trained instructor, but a teacher who used some of the time with the student was not (FF-37). The director said the student made significant progress (FF-36). This was paid for by the school district (FF-42).

The student's progress at the end of first grade showed sight word reading increased to 86 to 98% accuracy, reading fluency improved, comprehension was good, Student wrote with capital letters and periods and Student progressed through the three Horizons books to grade one (FF-31,32,46). A comparison of Dr.s August 2006 and August 2007 achievement test results show significant progress in almost all areas measured (FF-10, 63,65).

On August 18, 2007 the parents informed the school district in writing that they were considering enrolling the student in the School and on August 24, 2007 wrote and withdrew the student with intention to enroll Student at School effective September 5, 2007 (FF-66,67,68). The school district requested an IEP meeting to discuss this (FF-69). On September 4, 2007 an IEP meeting was held. At the meeting the present educational levels were updated (FF-71). Revisions did not proceed since the parents made it clear that the student would attend School (FF-70,71).

The September 28, 2007 IEP revision meeting did not occur since the student had been withdrawn from the school district.

The School is a private school for students with learning difficulties (FF-88). Its program is based on Orton-Gillingham program's Project Read (FF-92). It is a center based program. The student was placed in third grade (FF-92). It is reported Student is doing well (FF-93). There is a classroom-wide FM System (FF-93). Student receives S/L therapy for thirty minutes every other week (FF-92).

After the parents filed for this due process hearing, an IEP meeting was called for February 8, 2008 (FF-79). The parents issues were discussed and revised Present Levels were developed (FF-79). The parents brought work samples and a report from the School

(FF-83). The School report puzzled the school district due to levels that seemed in conflict (FF-84). Goals and SDIs were developed, but recognized as open to review on the student's return and accurate data being gathered (FF-82). The school district, in its final issued IEP, utilized parent information and language (FF-80). The parents made it clear they did not plan to have the student return (FF-85).

The heart of this case is a matter of tuition reimbursement. 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. 7 126 L.Ed.2d 284, 114 S.Ct. 361 (1993)

The Supreme Court in Rowley, 458 U.S. 176 (1982) held that FAPE is provided if procedural requirements under IDEA are met and the individualized instruction and support services offered would permit the student to have some education benefit. Under Susan N. v. Wilson School District, 70 F 3d 751 (3rd Cir. 1995), Carlisle Area School District v. Scott P., 62 F 3d 520 (3rd Cir. 1995) and Polk v. Central Susquehanna IU #16, 853 F 2d 171, 183 (3rd Cir. 1988) "benefit" was further defined as conferring meaningful benefit.

Having reached the first step under Burlington/Carter standard, the appropriateness of the parents' placement needs to be decided.

First we must decide if the student was provided FAPE by the school district. 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 IU # 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.

What constitutes "meaningful educational benefit" has been addressed by the Third Circuit in Polk v. Central Susquehanna Intermediate Unit #16, 853 F 2d 171 (3rd Cir. 1988). For the provision of a FAPE, the IDEA (IDEIA) requires that a disabled student receive more than just trivial educational benefit. The Act's use of the phrase "full educational opportunity" and its legislative history indicate an intent to afford more than a trivial amount of educational benefit, and heavy emphasis in the legislative history on self-sufficiency as one goal of education suggests that "benefit" conferred by Act must

be more than de minimus. However, Congress did not intend that an IEP provide an “optimal” benefit. See Polk, 853 F 2d at 181; 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.”)

Through the settlement stipulated, the parents waived all claims prior to January 1, 2007. Even with this being so, a fair resolution of this matter requires a review of the identification and programming for the student. The discussion above shows that the ER of November 14, 2006 meets the statutory requirements of 34 CFR §300.301-311. The ER relied extensively on evaluations and information provided by the parents. This was supplemented by information from the school. The student was properly identified.

When the IEP is reviewed it complies with 34 CFR §300.320-324. The Present Levels reflect the ER. The programming through the goals and SDIs follows the findings and recommendations of the ER. Contrary to parents’ assertions, the goals are measurable based on the Present Levels and the ER. The SDIs support the goals and provide for a phonetic and multi-sensory approach. The idea of having a shortened expiration date to allow for better second grade programming is a good one and appropriate.

The parents have a genuine concern over the reading and language development of the student. They have taken private action through tutoring and parental diligence. They were convinced that the Wilson Reading Program provided by a certified Wilson instructor was the only method that would work. It is curious that they supported instruction through a non-certified Wilson instructor at the Educational Center and later chose a private school that did not use Wilson, but rather a different Orton-Gillingham approach.

IDEA does not, as cited above, require that school districts offer the optimal program, but rather one that offers meaningful progress. The measures of the student’s progress through first grade have some conflicting results, but do show meaningful progress. Reading and written expression goals weren’t mastered, but progress was made. The report card for regular education shows progress. Dr. , the parents’ expert, reports significant gains in achievement. The parents’ school of choice, School, saw fit to place the student in third grade where Student is achieving well. The argument that the progress that has occurred has nothing or little to do with programming in the school district is not credible.

The school district attempted to develop an IEP after the parents entered their claim for tuition reimbursement. They utilized knowledge of the student, Present Levels available and parent input. They included parent language in the IEP. Goals and SDIs were upgraded. The argument that written expression needs are not met in the IEP fails. First, the argument that Appeals Panel Decision 1492, and others, makes using writing rubrics inappropriate does not fit the goal in this IEP. The goal using PSSA states “...improved proficiency toward PSSA measurable areas: focus, organization,

conventions, style, content.” Further the progress on this goal is measured by way of daily writing activities, observation and Curriculum Based Assessment (CBA). These are measurable. This is more than just applying the writing rubric. There were other goals and SDI’s that addressed written expression. Neither the IEP of December 18, 2008 and its revisions or the IEP of February 8, 2008 as issued has flaws that would rise to the level of fatal flaws. It was clear to all that the IEP would be revised as current experience was gained with the student. Also, it was clear that the parents did not intend to return the student to the school district.

Under Schaefer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2nd 387 (2005) the parents have the burden of proof in this case. They have not met this burden. To the contrary, the student has shown growth and meaningful educational progress in all Student’s IEP goals including S/L. Further, the school district’s FM System proved to be beneficial and appropriate.

This being so, there is no need to proceed to the two remaining prongs of Burlington.

The LEA is ordered to take the following action:

1. FAPE was provided and no tuition reimbursement is due.

Date

Kenneth Rose
Hearing Officer