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## Due Process Hearing

Student DS. (#8803/07-08 AS)  
Date of Birth: xx/xx/xx  
Date of Hearing: May 21, 2008  
Open Hearing

### Parties to the Hearing

Parent  
Ms.

Representative  
pro se

Transcript Received  
May 27, 2008

### Date of Decision

May 28, 2008

Charter School  
Commonwealth Connection  
Academy

Representative  
Jeffrey Champagne, Esq.

Hearing Officer

David Y. K. Lee

## **II. BACKGROUND**

Student is a xx-year-old student enrolled in the Commonwealth Connection Academy which is a Cyber Charter School (hereafter School). Student transferred to the School, after completing sixth grade, from the Harrisburg School District where he was receiving special education services. For the current 2007-2008 school year, Student is an eighth grade student. Student is eligible for Extended School Year (hereafter ESY) in the summer of 2008. The parent disagreed with the amount of ESY reading instruction proposed by the School and requested a due process hearing.

## **III. FINDINGS OF FACT**

1. Student, whose date of birth is xx/xx/xx, is an eighth grade student in the School. (N.T. 84-85. P. #1 @ 1.)

2. Student is receiving special education services with the primary disability category of Specific Learning Disability. (P. #1 @ 14.)

3. The Individualized Education Program (hereafter IEP) dated November 30, 2007, determined that Student is eligible for ESY services for the summer of 2008. (N.T. 16. P. #1 @ 12-13.)

4. The only issue before this Hearing Officer is the amount of ESY reading instruction that Student is to receive. (N.T. 11, 13.)

5. The IEP revision of May 1, 2008, identified a total of 24 hours of ESY reading instruction. (N.T. 91-93. P. #5 @ 9.)

6. The ESY instruction in reading is to be provided by Student's current tutor continuing with the Orton-Gillingham reading program. (N.T. 91.)

7. The parent is of the opinion that the ESY should consist of 11 hours per week of reading instruction over a period of eight to ten weeks. (N.T. 11, 22-23.)

8. A due process hearing session was held on May 21, 2008.<sup>1</sup>

#### **IV. ISSUE**

1. Is the ESY proposed by the School appropriate? (F.F. #4.)

#### **V. DISCUSSION AND CONCLUSIONS OF LAW**

Extended school year services.

(a) General.

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

34 CFR §300.106

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<sup>1</sup> The parties elected to submit closing statements in writing. Closing statements from the parent and the School were received on May 22<sup>nd</sup> and May 23<sup>rd</sup> respectively. (N.T. 101.)

The issue before this Hearing Officer is very narrowly defined. The parties are not in disagreement with regards to Student's need for special education services and for ESY. There is also no dispute regarding the type of services to be rendered in ESY. Student has been instructed during the school year using the Orton-Gillingham reading program. (N.T. 57-58.) The parties agreed that Student's reading instruction will continue to be provided by the same reading tutor using the Orton-Gillingham reading program. (F.F. #6.) The parent is of the opinion that Student's ESY reading instruction should last eight to ten weeks with 11 hours of such instruction each week. The School's proposal is for a total of 24 hours of said reading instruction to be scheduled as deemed convenient by the parent. e.g. three hours per week over eight weeks, four hours per week over six weeks, or some other combination. (N.T. 93.)

This Hearing Officer notes that Student's eligibility for ESY was determined on an individual basis, in accordance with his IEP, and at no cost to the parent in accordance with §300.106.

In 22 PA Code §711.44(2), regulations pertaining to ESY further indicate as follows:

A child with disabilities is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment capacity, or other factors, makes it unlikely that the student will *maintain [emphasis added]* skills and behavior relevant to established IEP goals and objectives.

Regression and recoupment are defined in §711.44(1) as follows:

Regression—Reversion to a lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occur as the result of an interruption in educational programming.

Recoupment–Recovery of skills or behavioral patterns, or both, specified on the IEP to a level demonstrated prior to the interruption of educational programming.

The expressed purpose of ESY is to *maintain* a level of skills so that there will not be a need for a lengthy recoupment period at the beginning of the school year beyond the usual review due to skills lost over the summer months. In the instant matter, the provision of ESY in the area of reading is to enable Student to continue with his Orton-Gillingham reading program at the start of next school year without the need for extensive re-teaching due to regression and recoupment factors. The parent opined that ESY is for the purpose of bringing out “emerging skills”, and to bring Student within one to one-and-one-half year behind his peers. (N.T. 19-20.) The parent mentioned a listing of cases without offering any analyses for such claims. (N.T. 45.) The parent’s understanding of “meaningful education benefit”, while advantageous, was without legal authority. (N.T. 20-21.)

Is the amount of reading instruction proposed in the ESY reasonably calculated to enable Student to maintain his level of reading skills? The answer must be in the affirmative. During the 2007-2008 school year, reading instruction was provided by a tutor using the Orton-Gillingham reading program for four hours each week<sup>2</sup>. (N.T. 36, 92.) The proposed reading instruction in ESY is a continuation of the regular school year program with the same tutor using the same material. This Hearing Officer notes that the proposed 24 hours is equivalent to three hours per week for eight weeks over the whole summer break. Without evidence to the contrary, this is reasonably calculated<sup>3</sup> to maintain Student's reading skills. The parent's position that the reading instruction in ESY should be 11 hours per week is almost three times the amount Student was receiving during the regular school year. The parent may indeed find this to be desirable and wish to have Student progress further in the reading program over the summer, the IDEA simply does not mandate the District to do so in an ESY program.

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<sup>2</sup> Student's IEP notes "3 hours per week minimum". (P. #1 @ 12.) The differential is not at issue.

<sup>3</sup> See Board of Education v. Rowley, 458 U.S. 176. An appropriate program is one "reasonably calculated to enable the child to receive educational benefit". The standard is not what a parent may believe as being best for the child.

It is, therefore, the determination of this Hearing Officer that the District's proposed ESY reading instruction totaling 24 hours is appropriate.

Accordingly, it is hereby ordered:

**VI. ORDER**

The LEA is ordered to take the following action:

The District is to provide Student with ESY reading instruction totaling 24 hours in a manner to be scheduled between the parent and the tutor.

May 28, 2008

Date

David Y. K. Lee

David Y. K. Lee  
Hearing Officer