

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.

Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: A. B.

Date of Birth: xx/xx/xxxx

Dates of Hearing: 10/2/2008, 12/22/2008

CLOSED HEARING

ODR No. 9026/07-08 AS

Parties to the Hearing:

Parents:

School District:
Susan L. Bigger, Superintendent
East Lycoming School District
349 Cemetery Street
Hughesville, PA 17737-1028

Representative:
Drew Christian, Esq.
Attorney-at-Law
801 Monroe Avenue
Scranton, PA 18510

School District Attorney:
Jeffrey Champagne, Esq.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Dates of Hearing:

October 2 and December 22, 2008

Date Record Closed: January 16, 2009
 Date of Decision: January 30, 2009
 Hearing Officer: Daniel J. Myers

INTRODUCTION AND PROCEDURAL HISTORY

(Student)¹ is an adolescent student of the East Lycoming School District (School District). Student's Parents contend that, since the 2006-2007 school year and through the current 2008-2009 school year, Student's (Individualized Education Programs) IEPs have been inappropriate and Student has not been placed in the least restrictive environment (LRE). After two due process hearing sessions and review of the parties' written closing arguments, I find for the School District for the reasons described below.

ISSUES

Whether the School District failed to provide a free and appropriate public education (FAPE) to Student for the 2006-2007 school year?

Whether the School District failed to provide FAPE to Student for the 2007-2008 school year?

Whether Student's current 2008-2009 program and placement are appropriate?

FINDINGS OF FACT

1. Student, whose date of birth is [Redacted], is a 13 year old eighth grade School District student with Tetrasomy 18p, a genetic condition that manifests in Student

¹ All future references to Student will be generic and gender-neutral. These impersonal references to Student are not intended to be disrespectful but rather to respect his/her privacy.

as mental retardation (P5, p.5; N.T 35, 352)², behavioral problems (P5, p.2), deficits in motor skills, and multi-sensory needs including overstimulation in the presence of many people or a great deal of activity. (N.T. 354) One year ago, in February 2008, Student's reading and math levels were at the 1st grade level. (SD21) The School District provides to Student special education services in reading, writing, math and life skills, as well as physical therapy, occupational therapy, and speech and language services. (SD32; P8) Student also receives from a local mental health agency therapeutic staff support (TSS) services both in school and outside of school. The TSS works on social skills in school, as well as daily living and safety skills outside of school. (N.T. 153, 373, 384-385)

2. Student's IEPs were typically developed in the middle of the school year and designed to cover the second half of that school year and the first half of the following school year. The relevant IEPs in this case are:

- a. February 21, 2006 covering ½ of Student's 5th grade (2005-2006) and ½ of 6th grade (2006-2007) school years (P2);
- b. February 15, 2007 covering ½ of Student's 6th grade (2006-2007) and ½ of 7th grade (2007-2008) school years (P6);
- c. February 8, 2008 covering the last half of Student's 7th grade (2007-2008) school year (P8); and
- d. September 19, 2008 covering Student's 8th grade (2008-2009) school year. (P15; SD32)

² References to "HO," "SD" and "P" are to the Hearing Officer, School District, and Parent exhibits, respectively. References to "N.T." are to the transcripts of the October 2 and December 22, 2008 hearing sessions conducted in this matter.

3. In February 2006, Student knew the alphabet and could read some sight words. (P2, p.5) In February 2007, Student could read at least 60 sight words. (P6,p.4) By the end of 2006-07, Student's knowledge of sight words had increased to 120, which was mid-kindergarten level. (N.T. 167, 186-187) In February 2008, Student was reading at a beginning first grade level, learning 4-5 new sight words per week, correctly answering 3 out of 5 comprehension questions, and acquiring all of the basic reading skills on the Assessment of Basic Language and Learning Skills (ABLBS) except decoding. (P8,p.1) By June 2008 Student had mastered the pre-primer reading curriculum, and sight word vocabulary had increased to 217 words. (N.T. 182, 184, 200-201) In September 2008, Student could recognize 16 out of 70 high frequency Dolch words, name 43 letters in one minute on the Dynamic Indicators of Basic Early Literacy Skills, and Student's Woodcock Johnson achievement test results were:

Subtest	Standard Score	Percentile	Grade Equivalent
Letter word identification	33	0.1	1.0
Applied problems	27	0.1	K.0
Dictation	26	0.1	1.0
School Skills Cluster	14	0.1	K.8

(P15,p.4)

4. In Math, in February 2006 Student could identify numbers from 0-29, and Student could identify some coins but did not know their values. (P2, p.5) In February 2007 Student could rote count to 100, count objects to 20, read numbers up to 30, and match numbers and amounts up to 20. (P6,p.4) In February 2008 Student could count up to 100 items, read numbers in the hundreds, add up to 3 digit numbers without regrouping, name coins and their values, and tell time to the hour. (P8,p.1) In September

2008 Student mastered one digit addition but was inconsistent with two digit addition.
(p15,p.14)

5. In writing, Student's February 2006 IEP goal was to demonstrate effective writing conventions using proper size, space and time orientation. (P2, p.14) Student's February 2007 writing goal was to write independently a simple sentence about a given topic. (P6, p.10) By February 2008, however, Student showed little progress in writing and had not acquired most basic writing skills. (P8,p.1) At that time, Student could spell 25 words verbally and in writing. (P8,p.1) Student's February 12, 2008, IEP writing goal was to improve the mechanical processes of writing, i.e., legibility, line orientation, letter formation and spacing. (P9, p.12) By the end of the 2007-08 school year, Student had improved, both with regard to writing individual numbers and letters and with regard to writing sentences with appropriate spacing. (N.T. 204-205)

6. In Life Skills, Student was dependent in February 2006 upon adults for basic safety, grooming and everyday living skills. (P2, p.5) In February 2008 Student was independent in going to the restroom, but not in hand washing, and Student could run errands throughout the school with little assistance. (P8,pp.1-2)

7. In Speech and Language, Student had mastered in February 2007 receptive and expressive labeling of letters, receptive letter sounds, matching words to pictures, words to words and letters to letters, and filling in missing letters of words. (P6,p.4) In February 2008 Student could utter spontaneous 5-6 word utterances. (P8,p.2) The School District also used, at parent recommendation, the ABLLS to assess Student's progress and to drive instruction. (N.T. 198-200)

8. In Social Skills, Student's teacher, the School District's occupational therapist (OT), and the local agency TSS worked together to implement the TSS's behavior plan. (N.T. 170) They used role playing exercises as well as the lunch period and lunch-line routines to work on social manners and lunchroom skills. (N.T. 207, 211)

9. Finally, with respect to Student's placement in the LRE, the parties experimented over the years with more and less restrictive placements. When Student appeared to react to the overstimulation of greater inclusion in 5th grade (2005-2006) by picking at the seams of Student's clothing so compulsively each day that Student's clothing was literally coming apart at the seams, the parties made Student's February 2006 and February 2007 IEPs more restrictive, with Student educated outside of the regular education classroom for 61% or more of the time. (P2, p.18, 19; P6, p.14, 16; N.T. 36,161-163) In addition, Student started receiving 32 hours per week of TSS services for the purposes of redirecting Student and helping Student reduce stress levels. (N.T. 104-105, 160, 371-374)

10. By May 2007, however, because Student was no longer picking at clothes, Student's Parents and the School District agreed to increase inclusion during Student's 7th grade (2007-2008) school year. (N.T. 160-161, 223-224; SD17) Student attended some regular education classes at the junior high school, while returning to the elementary school (which is next door to the junior/senior high school) for special education (life skills) class with seven students, 4th through 7th graders. (N.T. 85, 96, 152, 171-173, 234, 371) Student also continued to receive TSS services within the school. (N.T. 104, 150) When Student reinitiated the compulsive seam-picking

behavior, however, Student's February 2008 was revised so as to become more restrictive again. (N.T. 160-161; P9,p.20,22)

11. In September 2008, the parties once again increased inclusion for Student's 8th grade (2008-2009) IEP. (P15, p.19; SD13, p.2; N.T. 134) Student spends considerably more time with regular education peers this school year than in the past. (N.T. 101, 273-274, 376; P15; SD32) A special education teacher and a regular education teacher co-teach Student's regular education 8th grade science class, with differentiated instruction for Student. Student also receives differentiated instruction (with just a regular education teacher) in a regular education 8th grade social studies class. (N.T. 312-316, 379) Student does not appear frustrated by the adapted academic subject matter in those classes. (N.T. 340-341) Student also attends regular education art and regular education multi-trades classes. Student is accompanied by a TSS in regular education classrooms with nondisabled peers. (N.T. 272, 331-332)

12. The School District stopped using Read Naturally for reading fluency and reading comprehension when it determined that Student was not benefiting from that program. For the same reason, the School District stopped using the Everyday Math curriculum and replaced it with Connecting Math Concepts published by SRA. (N.T. 165, 195)

13. Student's parents have expressed concern that, as Student progressed into the junior/senior high school, the School District not reduce the academic content of Student's programming in favor of more life-skills instruction. (SD21; N.T. 140-142, 145-146)

14. Due process hearings were conducted on October 2, 2008 and December 22, 2008. The following exhibits were admitted into the record. (N.T. 422, 425)

Exh. #	Admitted	Not Submitted	Not Admitted	Exh. #	Admitted	Admitted over objection	Not Admitted
P1		√		SD1	√		
P2	√			SD2	√		
P3	√			SD3	√		
P4		√		SD4	√		
P5	√			SD5			√
P6	√			SD6	√		
P7		√		SD7	√		
P8	√			SD8	√		
P9	√			SD9			√
P10		√		SD10	√		
P11		√		SD11	√		
P12		√		SD12	√		
P13		√		SD13	√		
P14		√		SD14	√		
P15	√			SD15	√		
P16		√		SD16	√		
P17		√		SD17	√		
P18	√			SD18	√		
				SD19	√		
				SD20	√		
				SD21	√		
				SD22	√		
				SD23	√		
				SD24	√		
				SD25	√		
				SD26	√		
				SD27		√	
				SD28		√	
				SD29		√	
				SD30	√		
				SD31	√		
				SD32	√		
				SD33	√		
				SD34	√		

DISCUSSION AND CONCLUSIONS OF LAW

Students with disabilities are entitled to FAPE under both federal and state law. 34 C.F.R. §§300.1-300.818; 22 Pa. Code §§14.101-14 A school district offers FAPE by providing personalized instruction and support services pursuant to an IEP. FAPE does not require IEPs that provide the maximum possible benefit or that maximize a student's potential, but rather FAPE requires IEPs that are reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or de minimis educational benefit. Whether an IEP is reasonably calculated to afford a child educational benefit is to be determined as of the time it is offered to the student and not at some later date. 20 U.S.C. §1412; Board of Education v. Rowley, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999); Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988) Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993); Daniel G. v. Delaware Valley School District, 813 A.2d 36 (Pa. Cmwlth. 2002) Additionally, the placement of a student with a disability must be in the least restrictive environment appropriate. 34 C.F.R. §300.114(a)(2); 22 Pa. Code §14.145(1); Oberti v. Board of Education, 995 F.2d 1204 (3rd Cir. 1993); L.E. v. Ramsey Board of Education, 435 F.3d. (3rd Cir. 2006)

The burden of persuasion, which is one element of the burden proof, is upon the party seeking relief. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); L.E. v. Ramsey Bd. Of Education, 435 F.3d 384 (3d Cir. 2006); In Re a Student in the Ambridge Area School District, Special Education Opinion No. 1763 (2006) In this case, Student bears the burden of persuasion because Student alleges that the School

District has denied FAPE since the 2006-2007 school year and that the current 2008-2009 program and placement are inappropriate.

As described in greater detail below, I find for the School District in this case because the preponderance of evidence demonstrates that Student's IEPs, while imperfect, were reasonably calculated to enable Student to achieve meaningful educational benefit. In addition, the preponderance of evidence demonstrates that the School District appropriately educated Student in the least restrictive environment, and appropriately considered and adjusted Student's placements based upon Student's behavioral reactions to the placements.

Student complains that FAPE was denied because Student's IEPs were not based upon any standardized achievement testing, did not require objective progress monitoring or reporting, did not contain measurable written expression goals, and did not address Student's phonemic awareness, sensory needs, adaptive skills or Student's inappropriate dependence upon adults. I conclude, however, that Student's IEPs were appropriately designed to provide meaningful educational benefit in terms of educational improvement commensurate with academic ability.

While it is true that the February 2006 and February 2007 IEPs contain no standardized intelligence, achievement, adaptive behavior, emotional, social or assistive technology assessments³ (P2; P6; N.T. 91), standardized assessments are not a statutory or regulatory requirement. Rather, IEPs must include statements of the child's present levels of academic achievement and functional performance. 34 CFR §300.320(a)(1) I find that the IEPs at issue in this case did contain, and were based upon, statements of

³ The February 2008 IEP is based upon the standardized assessments described in the February 2008 ER. (P9; P8)

present levels of educational achievement and functional performance. (P2, p.5; P6,p.4; P9, p.4;P15,p.4)

Similarly, while Student complains that the IEPs did not require objective progress monitoring or reporting, they are only required to describe how and when progress toward meeting goals will be measured. 34 CFR §300.320(a)(3) I find that the IEPs at issue in this case did describe how and when progress monitoring was to be performed, in the forms of trials, probes and evaluations with expected outcomes. (P2, pp.12-13; P6, pp.9-12; P9,pp.10-14; P15, pp.10-15)

Where written expression goals are concerned, the parties' experience since 2006 suggests that Student's cognitive writing abilities are limited and that more mechanical and functional, rather than academic, written expression needs must be addressed. Academically, Student's February 2006 IEP goal was to demonstrate effective writing conventions (P2, p.14) and the February 2007 writing goal was to write independently a simple sentence about a given topic. (P6, p.10) By February 2008, however, Student showed little progress in writing and had not acquired most basic writing skills. (P8,p.1) This is the only evidence in the record regarding Student's writing abilities, and it persuades me that substantive or academic written expression goals are not required. It further persuades me that Student's more functional or mechanical written expression needs are appropriately addressed in the related services OT portion of Student's September 2008 IEP. (P15,p.15)

Regarding phonemic awareness, the record supports the School District's conclusion that Student is more proficient in whole word reading than in decoding (phonemic awareness). Between February 2007 and June 2008, Student's sight word

vocabulary increased from 60 to 217 sight words. (P6,p.4; N.T. 182, 184, 200-201) In February 2008, Student was reading at a beginning first grade level, learning 4-5 new sight words per week, correctly answering 3 out of 5 comprehension questions, and acquiring all of the basic reading skills on the ABLLS except decoding. (P8,p.1) Similar to my conclusions regarding written expression, I conclude that the evidence in this record supports the School District's position that reading instruction is appropriately focused upon sight word reading rather than upon decoding. Accordingly, I find that the IEPs' reading goals were, and are, appropriate.

Student also argues that the IEPs should have contained explicit goals regarding Student's sensory needs, dependence upon adults, and social skills. After reviewing the record, I simply find no evidence in the record that Student has either unaddressed sensory needs or a need to reduce dependence upon adults. Thus, I conclude that Student's IEPs are not required to address either sensory needs or dependence upon adults.

Regarding social skills, the School District contends that, despite the absence of written goals, it did provide social skills instruction to Student, and the School District argues that Student would not have obtained any greater benefit had social skills goals been written in the IEPs. (N.T. 44, 103, 150) I agree with the School District. Student's teachers, OT, and the local agency TSS worked together regularly, using the lunch period and lunch-line routines to work on social manners and lunchroom skills. (N.T. 207, 211) Further, Student's teacher and Student's speech therapist modeled appropriate language skills associated with initiating friendly conversations with non-disabled peers. (N.T.

283-284, 302) This evidence persuades me that the School District did not deny FAPE to Student in the area of addressing Student's social skills needs.

Finally, in finding as I have in favor of the School District with respect to Student's IEPs, I note that the School District was, at all times, monitoring the effectiveness of its various curricula in meeting Student's needs. The School District stopped using Read Naturally for reading fluency and reading comprehension when it determined that Student was not benefiting from that program. For the same reason, the School District stopped using the Everyday Math curriculum and replaced it with Connecting Math Concepts published by SRA. (N.T. 165, 195) These reading and math curriculum adjustments were appropriate pedagogical responses to Student's actual academic experiences. These curricular adjustments also were consistent with the concerns of Student's parents that, as Student progressed into the junior/senior high school, the School District not reduce the academic content of Student's programming in favor of more life-skills instruction. (SD21; N.T. 140-142, 145-146) The School District did not eliminate academic reading and math instruction, but rather it appropriately monitored and then used the monitoring results to inform instructional adjustments. Accordingly, I find no FAPE denials with respect to the programming content of Student's IEPs.

Regarding Student's placements, Student's parents argue that the School District placed Student in environments that were too restrictive. Student's parents argue that placements should have been in more regular education environments in 2006-2007 and 2008-2009 because Student's special education teacher was capable of teaching different levels of instruction in regular education classes, and a TSS was always available to help

Student if the regular education classes were distracting. Student's parents also complain that the February and September 2008 IEPs should have contained services to transition Student to a less restrictive placement. (P9; P15; N.T. 178) Finally, Student complains that the School District collected no data regarding the effectiveness of a less restrictive environment upon either Student's learning or that of other students.

Here again, I find for the School District. The evidence in the record persuades me that both parties have attempted diligently to find the proper mix of regular and special education classes for Student. When Student's compulsive picking appeared to be a reaction to the overstimulation of greater inclusion in 5th grade (2005-2006), the parties made Student's February 2006 and February 2007 IEPs more restrictive, and Student started receiving 32 hours per week of TSS services for the purposes of redirecting Student and helping Student reduce stress levels. (N.T. 36, 104-105, 160-163, 371-374; P2, p.18, 19; P6, p.14, 16) When Student was no longer compulsively picking at clothes in May 2007, Student was included in the LRE for a greater percentage of the day during Student's 7th grade (2007-2008) school year, while continuing to receive TSS services during the school day. (N.T. 160-161, 223-224; SD17) When Student then reinitiated the compulsive seam-picking behavior, the February 2008 was revised, appropriately, so as to become more restrictive again. (N.T. 85, 96, 104, 150, 152, 160-161, 171-173, 234, 371; P9, p.20, 22) Finally, in September 2008, the parties once again increased inclusion in Student's 8th grade (2008-2009) IEP with team-teaching techniques and TSS assistance. (P15, p.19; SD32; N.T. 101, 134, 273-274, 331-332, 376) These School District behaviors and IEPs persuade me that the School District satisfied its legal

requirement to provide Student's special education programming in the least restrictive environment appropriate.

CONCLUSION

The evidence in this case is insufficient to meet Student's burden of persuasion. Student's IEPs, while imperfect, were reasonably calculated to enable Student to achieve meaningful educational benefit. Present education levels, progress monitoring, and goal requirements were met, and periodic curriculum and LRE adjustments were appropriate. Accordingly, the School District did not deny FAPE to Student during the 2006-2007 and 2007-2008 school year, and Student's current 2008-2009 program and placement are appropriate.

ORDER

- The School District did not deny FAPE to Student during 2006-2007.
- The School District did not deny FAPE to Student during 2007-2008.
- Student's current 2008-2009 program and placement are appropriate.

Daniel J. Myers
Hearing Officer

January 30, 2009