

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.

Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: SH

Date of Birth: XX/XX/XX

Dates of Hearing: 10/31/08; 11/05/08; 12/03/08;
12/17/08; 02/09/09

CLOSED HEARING

ODR No. 9246/08-09 KE

Parties to the Hearing:

Representative:

Parents

Parent Attorney

Mr. & Mrs.

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School District

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Date Record Closed:

March 9, 2009

Date of Decision:

March 24, 2009

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student, currently a senior at [redacted] School, is IDEA eligible due to specific learning disabilities. After two years in a District funded private school, Student returned to the Exeter Township School District for 11th grade (2007/2008 school year). By the end of the school year, Student and Parents had become dissatisfied with Student's educational program because Student was still reading well below the level of Student's non-disabled peers and the District had declined to provide Student with either assistive technology or extended school year services. Parents were also dissatisfied with the District's progress monitoring and the transition services provided to Student during the 2007/2008 school year.

Convinced that Student is not on an academic path that will enable Student to attend college and prepare for a satisfying career, Parents commenced a due process hearing to require the District to provide intensive reading instruction for Student at the [redacted] Center and assistive technology in the form of software and equipment for reading and writing. Parents also requested compensatory education for the alleged procedural and substantive deficiencies in Student's special education program.

The due process hearing was held over five sessions between October 31, 2008 and February 9, 2009. Because the District provided all services necessary for Student to receive a free, appropriate public education (FAPE) and Student made meaningful progress during the 2007/2008 school year, Parents' claims will be denied.

ISSUES

1. Did the Exeter Township School District deny Student a free, appropriate public education for the 2007/2008 school year by:
 - a. failing to develop an appropriate IEP for Student;
 - b. failing to provide Student with appropriate assistive technology/devices;
 - c. failing to appropriately monitor Student's progress;
 - d. failing to develop and implement an appropriate post- school transition plan for Student

2. Did the Exeter Township School District inappropriately deny Student extended school year (ESY) services for the summer of 2008?

FINDINGS OF FACT

1. Student is an late teen aged child, born xx/xx/xx. Student is a resident of the Exeter Township School District and is eligible for special education services. (Stipulation, N.T. pp. 22, 23).

2. Student has a current diagnosis of specific learning disability in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii) (Stipulation, N.T. p. 22).

3. Student attends, and at all times relevant to the claims in this case attended, the regular District school, where Student is currently a senior. From the beginning of the 2007/2008 school year Student has received supplemental learning support services for reading, writing and math. (N.T. pp. 22 (Stipulation), 210).

4. Although Student and Student's family have resided in the District the entire time Student has been of school age, Student attended the [redacted] Private School during the 2005/2006 and 2006/2007 school years pursuant to an agreement between the parties. (N.T. pp. 318, 544, 545; P-8)

5. When Student was returning to the District, Parents requested, and the District agreed to fund, an independent psycho-educational evaluation by Dr. H, a certified school psychologist, who provided a report to the District dated September 27, 2007. (N.T. pp. 316; P-8)

6. Dr. H also completed a review of records during the summer of 2008 to assess Student's progress, and conducted additional testing of Student in October and November 2008. (N.T. pp. 316; P-9; P-29)
7. Dr. H's testing indicated that Student's intellectual capacity, phonological awareness and phonological memory were in the average range, but noted a weakness in working memory. In an assessment that isolates the components of memory (Children's Auditory Verbal Learning Test-CAVLT), Student exhibited considerable difficulty in retrieving auditory verbal information after a delay, indicating a significant weakness in encoding and organizing verbal information presented orally. (N.T. pp. 333—339; P-8)
8. Comparison of Student's scores on the Woodcock Johnson Tests of Achievement, 3rd Edition (WJ-III) between August 2007 and June 2008 revealed improvements in 12 of 15 areas measured at both the beginning and the end of the 2007/2008 school year. Although Student continues to exhibit mild to moderate impairments in reading and applied problems in math, math fluency and calculation tested within normal limits in 2008. Performance declined between tests in three areas: applied problems in math, passage comprehension and spelling (N.T. pp. 340—346, 388, 389; P-8, P-29)
9. The decline in Student's passage comprehension score likely arose from Student's memory issues and limited vocabulary, despite an increase in reading vocabulary between the spring 2007 and fall 2008 test sessions. (N.T. pp. 341, 342, 348; P-8, P-29)
10. Student's significant deficits in spelling arise from the combination of Student's phonological processing and orthographic deficits, and depress Student's ability to convey meaning in Student's writing. Student performs well with respect to the mechanics of writing and is able to write a coherent sentence. Student's writing fluency falls within the normal range when the task presented is arranging given words in a semantically and syntactically correct order. (N.T. pp. 343—345; P-8, P-29)
11. Comparison of the Gray Oral Reading (GORT) test scores between August 2007 and June 2008 indicates little improvement in Student's oral reading, but the increase in reading accuracy demonstrates that Student is beginning to apply the phonological rules Student has learned to read more efficiently and fluently. Overall, Student's grade equivalencies on all components of the GORT increased between 1.2 and 2 levels between August 2007 and June 2008. (N.T. pp. 346, 347, 368—370; P-8, P-29)
12. Dr. H concluded that Student made progress during the 2007/2008 school year as measured by the increase in Student's own standardized test scores between the 2007 and 2008 assessments, but did not make significant progress toward closing

- the gap between Student's academic skills and the skills expected of Student's non-disabled peers. (N.T. pp. 351, 381, 388, 389, 393; P-29)
13. Dr. H recommended five reading programs that she believes would serve as appropriate, research-based interventions for Student, including the SRA program that the District used for Student's reading instruction in the 2007/2008 school year. Dr. H favors the Lindamood Bell program because it addresses all components of Student's reading disability. (N.T. pp. 351, 352, 354—356, 393; P-29)
 14. Since the Private School had not developed a post-secondary transition plan for Student, the transition planning process began in the fall of 2007, when Student re-enrolled in the District. (N.T. pp. 54, 430—433, 449, 595; P-11, P-19)
 15. Through its transition coordinator, the District began transition planning for Student by assessing Student's interests and finding opportunities for Student to see first hand the daily activities of jobs in some of the broad areas which appeared to coincide with Student's interests as identified by various assessments, as well as to identify the skills needed to function effectively in such jobs. (N.T. pp. 142, 230, 231, 432—436, 450—460, 593, 594—596; P-19)
 16. As a result of the various interest and skill assessments Student took in the early part of the 2007/2008 school year, career clusters emerged in the areas of education and training, health occupations, hospitality and tourism, and working with animals. Student decided that Student did not want to explore job possibilities in the tourism/hospitality industry. (N.T. pp. 436, 438, 454, 461, 462)
 17. Since para-educator is a job within an area of recurring interest for Student, and since Student had some flexibility in Student's schedule at the beginning of the 2007/2008 school year, the District transition coordinator placed Student in the life skills classroom as an intern. Such school-based work experience served as another step in the process of assessing Student's career interests. Student determined from that experience that working with disabled students is not a viable choice for Student. (N.T. pp. 436—438, 443—447, 460, 461)
 18. To more closely examine a potential career choice in the medical/health field, the District provided Parents and Student with a community college brochure describing the pre-requisites for obtaining a position in the field of diagnostic medical sonography, which include completing a post-secondary program of integrated education and supervised clinical experience leading to an associate's degree in applied science and a competency certification qualifying the student to become a registered sonography technician. (N.T. pp. 45, 47, 231—233; P-2)
 19. After reviewing the requirements of the sonography program, Parents and Student became concerned about whether Student's school program was adequately

- preparing Student for that type of medical training program. (N.T. pp. 45—48, 234)
20. In general, Parents and Student questioned whether Student was able to read and write effectively enough to attend college to obtain the training Student would need to pursue employment in any area of interest. (N.T. pp. 35—57, 232)
 21. Those concerns were magnified by two incidents which occurred during the 2007/2008 school year as part of Student's transition activities, a day arranged by the District for "job shadowing" an ultra sound technician at a local hospital, and an interview with an admissions counselor at a local community college. (N.T. pp. 35—38, 43, 44, 55, 57, 140, 218, 232; P-2)
 22. Student and Parents were dismayed by Student's inability to effectively complete a questionnaire about the sonography position after the day at the hospital in terms of both reading/understanding the questions and composing answers that were grammatically correct and without misspelled words. (N.T. pp. 36—38, 232, 233, P- 3)
 23. After taking a reading test at a local community college, Student learned that Student could not begin to take college level classes until completing non-credit remedial reading and math courses until such time as Student could pass the college entrance level reading and math tests. (N.T. pp. 48—53, 218, 219, 440—442: P-22, P-23)
 24. Student's writing, however, was found to be at an acceptable level of development to take a basic college writing class for credit. (N.T. pp. 218, 219, 241; P-22, P-23)
 25. Although Parents' independent evaluator, Dr. H, questioned whether career goals that require college are realistic for Student given the nature and severity of Student's learning disabilities, she expressed the belief that even with Student's current reading level, Student could go into a college setting with the accommodations many colleges provide for students with learning disabilities. (N.T. p. 365—367, 395, 396)
 26. When it became obvious to the District transition coordinator that all of Student's career interests would require post-secondary education, she recommended to the IEP team that Student be placed in regular education classes on a college prep track. Student's English class was changed at the end of the first quarter of the 2007/2008 school year. (N.T. pp. 454, 455)
 27. After the community college placement test revealed areas of weakness in math, the transition coordinator also examined Student's educational program to assure that Student was receiving instruction in basic math skills, such as percents,

- decimals and fractions, as well as solving word problems, since those areas are covered in math placement tests for college. (N.T. p. 442)
28. In December 2007, March 2008 and June 2008, Parents obtained evaluations of Student's reading from the Center in [redacted], PA. The evaluator administered a series of standardized tests which revealed significant deficiencies in Student's ability to read and confirmed that Student was reading well below grade level (N.T. pp. 74, 83—97, P-6, P-7)
 29. The Center testing in March and June 2008 showed that Student improved from a grade level of 7.5 to 12.6 in word attack skills as measured by the Woodcock Reading Mastery test. The improvement likely resulted from the direct instruction in decoding Student received in that period. (N.T. pp. 97; P-6, P-7)
 30. The Center employee who testified about the evaluation results recommended that Student enroll in a 12—16 week intensive program of daily instruction in reading at the Center, with some instruction in a Center math program. The Center instruction would substitute for Student's classes in the District due to the length of the daily instruction and the distance, and for approximately 6 weeks would substantially diminish the amount of math instruction Student received. (N.T. pp. 79, 11, 112, 114, 120, 123; P-6, P-7)
 31. The final version of Student's 2007/2008 IEP, dated 11/07/07, included goals for encoding/decoding previously presented, phonetically regular words with 90% accuracy, as well as goals for reading fluency and reading comprehension at a 6th grade level. The 06/04/07 IEP, developed for Student prior to the beginning of the school year, included reading goals at a 5th grade level. (N.T. pp. 521—525; S-5, p.13, S-15, p. 14)
 32. During the 2007/2008 school year, Student's reading teacher assessed Student's reading fluency every two weeks by means of DIBELS testing, which also included a comprehension component. (N.T. pp. 499—503; S-35, pp. 2—7)
 33. Student's reading comprehension was also assessed within the SRA reading program in which Student was instructed during a daily 42 minute period throughout the 2007/2008 school year. (N.T. pp. 503—506, 508, 510)
 34. Although Student's performance on reading assessments fluctuated considerably during the 2007/2008 school year, Student began the SRA reading program at a 3rd to 4th grade level and moved to a 5th to 6th grade level by the end of the school year. DIBELS assessments at the end of the 2007/2008 school year and the beginning of the 2008/2009 school year showed no significant decrease in Student's fluency score and in one component of comprehension (accuracy), which remained above Student's 2007/2008 goal, as well as a steady or slightly increased score on the second component of comprehension (re-tell). (N.T. pp. 506, 512, 518, 526—530; S-35, pp. 2, 5—7)

35. The SRA program is research-based, provides for direct instruction and has been successful for students with dyslexia. The SRA program addresses phonemic awareness, reading words both in isolation and in context and fluency (N.T. pp. 506—509)
36. Parents obtained an assistive technology evaluation of Student from [redacted] Rehabilitation Hospital in [redacted], PA which was completed during five 60—90 minute sessions. (N.T. pp. 40—42, 167—171, 189; P-15)
37. The Hospital evaluator concluded that Student would benefit from assistive technologies for both reading and writing, such as computer software that would permit Student to dictate writing assignments in order to concentrate on composition and other software/devices that change the visual display of written materials and/or reads back to Student. The evaluator believes that Student needs the recommended assistive technologies in order for Student to be fully functional in society. (N.T. pp. 172, 173, 175—183, 193, 194; P-15)
38. The Hospital evaluator helped the family obtain loans of software and equipment for Student to practice with at home and provided information concerning Bookshare, a free service that provides scanned, electronic versions of books, including textbooks. The evaluator conceded that Student was initially reluctant to use the recommended devices/software for writing, but believed that Student began to appreciate the value of the dictation software when Student became more familiar with the commands, and that Student would ultimately find the assistive devices/software very helpful. (N.T. pp. 68—70, 171, 172, 193; P-15)
39. Student did not like using the assistive technology. Student had some equipment difficulties and was unhappy about Mother requesting homework from teachers in order to practice with the devices. Student's opportunity and willingness to work with the devices, therefore, was limited. Student noted, however, that Student would make an effort to get used to the equipment in order to become independent in Student's Student work. (N.T. pp. 241, 243—245)
40. The District obtained an assistive technology evaluation from the Berks County Intermediate Unit's assistive technology consultant, who reviewed Student's records and concluded that Student did not need assistive technology for reading and writing in order to receive FAPE. (N.T. pp. 40, 575; P-24)
41. The IU assistive technology evaluator noted that although the reading software recommended in the Hospital evaluation could provide access to textbooks above Student's reading level, books on CD could serve the same function. The District can provide Student with access to recorded books. (N.T. pp. 616, 617, 620; P-24)

42. Student testified that Student had access to recorded books for some classes during the 2007/2008 school year, but did not like using them because Student lost focus and could not comprehend the content. (N.T. pp. 240)
43. Dr. H, who evaluated Student in August 2007 and re-tested Student in June 2008 to assess progress, agreed that assistive technology can help Student find ways around Student's disabilities, and might provide useful and necessary accommodations for college, but believes that learning disabilities such as Student exhibits are best addressed and remediated by direct intervention. (N.T. pp. 359, 360)
44. The District declined to purchase the software and equipment recommended in the private assistive technology evaluation for Student based upon the recommendation of the BCIU consultant and no indication from any District member of Student's IEP team that Student needed assistive technology in order to receive FAPE. (N.T. pp. 39, 571, 575—577)
45. Student's eligibility for extended school year services (ESY) was discussed at an IEP meeting on March 10, 2008, at which Student's IEP team determined that Student was not eligible for ESY. (N.T. pp. 58, 59, 566—568 ; S-17)
46. Student's Mother was unexpectedly unable to attend the March 10 IEP meeting due to injuries from an automobile accident that occurred two days before the meeting. Although Parent believed that the meeting would be re-scheduled after she notified the District of her injury, Student's IEP team met as originally scheduled to consider ESY eligibility. The District offered to reconvene an IEP team meeting when Mother was able to attend. Student's IEP team re-visited ESY eligibility at meetings in April and in May, but the conclusion that Student was ineligible for ESY was unchanged. (N.T. pp. 59—62, 130—132, 138, 146, 147; S-17, S-21, S-22, S-26)
47. Student's math teacher for the 2007/2008 school year provided Student with a packet of assignments to complete during the summer to permit Student to continue practicing the math skills Student had learned during the school year and familiarize Student with the materials to be taught in the 2008/2009 school year, when she expected to continue as Student's math teacher. (N.T. pp. 62—64, 265, 266)
48. Student was pleased with the work Student was doing in math class during the second half of 11th grade (2007/2008 school year), felt that Student had made progress and wanted to keep up with the skills Student was working on. (N.T. pp. 62, 224, 225, 229, 239)
49. Based upon a placement pre-test, Student began 11th grade with an SRA math program focusing on fractions, decimals and percents. Student completed that portion of the program during the first half of the school year. Student's math

- teacher then moved to an SRA algebra book and provided additional instructional materials to prepare for the PSSA tests in March 2008 (N.T. pp. 257—263, 273, 284, 295; S-15)
50. Student’s IEP for the 2007/2008 school year had two math goals:
- a. Fluency in basic operations (addition, subtraction, multiplication, division) to a minimum of 40 facts correct/minute; by the end of the 2007/2008 school year, Student made significant progress toward reaching the expected level of achievement with respect to math facts, although Student did not reach them by the end of the school year. Student had begun the school year below the benchmark with respect to addition and multiplication facts, and well below the benchmark with respect to subtraction and division facts.
 - b. Math calculation--Solving equations with a single variable, equivalent ratios and simplifying ratios with 80% accuracy. By the end of the 2007/2008 school year, Student exceeded the expected level of achievement.
(N.T. pp. 274—283, 290, 291 ; S-15, p.16; S-35, pp. 22—29)
51. Student began the current school year where Student had finished in the SRA math book at the end of the 2007/2008 school year. After expressing frustration with math class at the beginning of the current school year, Student was moved to a different, level class after approximately the first month of the school year. Student again feels that Student is making progress in learning new math skills.
(N.T. pp.226—228, 268—271)
52. Student’s IEP for the current school year includes the same math fluency and calculation goals that appear in the 2007/2008 IEP and adds three additional goals:
- a. dividing four digit numbers by two digit numbers;
 - b. adding fractions with unlike denominators and
 - c. multiplying decimals.
- Student was reported to be making good progress on all goals during the first quarter. (S-28)
53. Student’s IEP for the 2007/2008 school year provided for progress monitoring via quarterly report cards and progress reports. Parents received quarterly progress reports and discussed Student’s progress at IEP team meetings between reporting periods. Student’s grades were also available online and were accessed by Parents. (N.T. pp. 66, 67, 142, 562—565; S-35)
54. Student has the option of “banking” Student’s diploma in order to continue Student’s school education and receive additional instruction to improve reading and math skills for post-secondary education. (N.T. pp.443)

DISCUSSION AND CONCLUSIONS OF LAW

Substantive Legal Standards

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) in accordance with an appropriate IEP, *i.e.*, one that is “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). “Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3RD Cir. 1999). Consequently, in order to properly provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley*; *Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his/her program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, an LEA is not required to provide an eligible with services designed to provide the “absolute best” education or to maximize the child’s potential. *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

The dispute in this case centers on the difference between appropriate services, designed to assure that an eligible student makes meaningful progress, and a type and

level of services that the Student and Parents believe are necessary, but would actually provide Student with the opportunity for optimal rather than appropriate progress.

Issues in Dispute

2007/2008 School Year

The specifics of the issues in dispute were somewhat uncertain in this case at the time the record closed. The District suggested in its written closing argument that the statement of the issues placed on the record at the opening session of the due process hearing was more limited than the issues asserted in the complaint. (*See*, Exeter Township School District's Written Closing Argument at p. 5) The overarching issue in this case, however, was whether the District provided Student with FAPE during the 2007/2008 school year, including the summer following the school year. Parents contended throughout the hearing that the District's educational program for Student was deficient in basic skill areas, particularly reading instruction; that the District's transition plan did not meet the standards required by IDEA; that Student's progress was not appropriately monitored; that Student was denied assistive technology and ESY services that Student needed in order to make academic progress commensurate with Student's intellectual abilities. Although all components of Parents' denial of FAPE claim were not specifically stated on the record prior to beginning testimony, that omission did not limit Parents' ability to prove all aspects of the alleged deficiencies in Student's program for the 2007/2008 school year.

2008/2009 school year

As the District also pointed out in its written closing argument (pp. 4, 5), there was some dispute between Parents and the District at the first hearing session concerning the scope of the issues to be heard. Specifically, the District contended that Parents should not be permitted to challenge the appropriateness of Student's program for the current school year (2008/2009) because those issues were not fairly raised in the due process complaint. Despite a ruling that the appropriateness of the IEP for the current school year was encompassed by the due process complaint and would be considered, (N.T. pp. 9—12; S-29), Parents did not ultimately pursue such claims in either evidence or argument.

§504 claims

Via the list of issues in their written closing argument, Parents suggested that they are asserting a claim that the District violated §504 of the Rehabilitation Act of 1973, 29 U.S.C. §793 *et seq.* by failing to provide Student with FAPE. (*See* Plaintiffs' Closing Argument at p. 2) Parents, however, adduced no explicit evidence of discrimination on the basis of disability, and did not argue that the evidence established a separate and distinct claim under §504 in addition to the District's alleged violations of IDEA. To the extent that Parents intended to pursue a §504 claim, it is deemed abandoned or waived based upon the lack of evidence/argument.

Appropriateness of 2007/2008 IEP

Basic Skill Areas—Reading

Parents' claims with respect to Student's lack of progress in basic skill areas focused primarily on the fact that Student was still well below grade level in reading by the end of the 2007/2008 school year. Contrary to Parents' contentions, however, that

uncontroverted fact does not lead inevitably to the conclusion that the District failed to assure that Student made reasonable progress and derived meaningful benefit from Student's 2007/2008 special education program provided by the District.

The independent evaluator chosen by Parents assessed Student's reading skills before and after the 2007/2008 school year using the same standardized tests and found that Student had improved in almost all of the areas measured, and also made progress in applying reading strategies Student had learned. (F.F. 8, 11, 12; *See also* the District's curriculum-based assessments of progress, F.F. 31—34). In addition, the independent evaluator testified in some detail concerning how the severity of Student's learning disabilities adversely affected skill development in the few areas in which Student's performance declined. (F.F. 9, 10) That testimony corroborates the District's testimony that Student will always have learning disabilities for which Student compensates very well, but which will continue to affect Student. (*See, e.g.*, N.T. pp. 603, 604) Although Student did not make such substantial gains in reading that Student approached the level of achievement expected of students without learning disabilities, the applicable legal standard requires meaningful progress, not a guarantee of complete remediation of an underlying disability. Both standardized testing and internal, District measures of Student's progress in terms of Student's own substantially improved performance after the 2007/2008 school year establish that the District's educational program for Student amply met that standard.

In addition, Student returned to the District for the 2007/2008 school year reading well below grade level after spending two years in a District-funded private school placement that Parents requested. According to the uncontradicted testimony of the

District's assistant supervisor of special education, it appeared that Student had made less than two years of progress in reading during the two years Student was out of the District. (N.T. p. 555) It is unrealistic for Parents and Student to expect that one year of specially designed instruction in the public school would bring Student to grade level in reading. It is doubtful that it would even be possible for the District to provide instruction at a level and intensity that would accomplish that goal. Certainly none of Parents' witnesses suggested that Student would be reading at grade level within a year if she did receive the intensive reading instruction at the Center requested by Parents.

Finally, if Student were again removed from the District for another private program selected by Parents in the hope of spurring extraordinary progress in reading, Student could not attend regular education classes to work toward meeting the standards for school graduation with respect to English, science and social studies. Student would also lose weeks of math instruction which Student also needs. (F.F. 30)

The record in this case establishes that Student made at least one year's progress in reading during the 2007/2008 school year. (F.F. 11, 12, 34) Parents' argument that such progress is insufficient given Student's average intelligence, which should permit Student to achieve grade level performance, does not account for Student's specific learning disability in reading arising, in particular, from deficiencies in phonemic awareness and working memory. Absent a disability, Student could be expected to read at grade level, and although it is certainly the goal of special education services to provide students with the means to minimize the effects of their disabilities to the greatest extent possible, learning disabilities often cannot be completely eliminated via special education services.

Student's learning disabilities mean that it will either take Student considerably longer to achieve a reading level commensurate with Student's average intellectual ability, or that Student may always require accommodations because Student cannot entirely overcome the effects of Student's disabilities. Parents' and their expert witness from Center may be entirely correct that additional intensive instruction in that method might permit Student to progress farther and faster than the District's methods, but that does not mean that the District is required to provide such type and level of reading instruction. Student demonstrated significant, and, therefore, meaningful progress in learning to read by means of the instruction Student has received from the District. Student has, therefore, received more than a trivial educational benefit from the reading program provided by the District. Whether or not optimal progress may be achieved by means of other methods of instruction, the District has fulfilled its IDEA obligation to provide Student with an appropriate education with respect to reading.

Writing

The same type of pre-entrance examination at a local community college that revealed that Student will need to take remedial reading courses to attend college also demonstrated that Student could take a basic college writing course for credit. (See F.F. 10, 23, 24; N.T. p. 219: "...[M]y writing was like on a college—a step away from a college level.") As noted by Parents' independent evaluator, Student's ability to compose written work does not equal Student's knowledge of the mechanics of writing. (F.F.10) It is difficult to understand, however, how the District can be expected to completely remediate, within one school year, Student's orthographic and phonological processing deficits, which lead to extreme difficulty with spelling, as well as the limited vocabulary

that continue to adversely affect Student's ability to produce written work. (F.F. 9, 10) Parents have suggested no specific additional interventions to further improve Student's ability to write other than assistive technology to permit Student to concentrate on what Student wants to say rather than the mechanics of writing. Student's greatest difficulties with writing, however, arise from limitations imposed by Student's learning disabilities that technology cannot overcome.

Math

Parents did not identify any specific deficiencies in the District's math instruction, and Student's subjective feelings that Student significantly advanced skills and made good progress in math was confirmed by the District's assessments. (F.F. 48—52)

Assistive Technology

Although there was ample evidence by the Parents that assistive technology might be generally beneficial to Student in accommodating Student's disabilities, such evidence did not directly contradict the District's evidence that Student did not need assistive technology to receive FAPE. (F.F. 40, 44) Consequently, there is no evidence that under the applicable legal standards found at 34 C.F.R. §300.105(b), the District was or is required to provide the devices/equipment Parents requested. In addition, the testimony of the Parents' assistive technology evaluator and Student's own testimony fell far short of establishing that Student feels a real need for the kinds of devices recommended in the Hospital assistive technology evaluation in order to provide Student with better, more effective access to Student's educational program. (F.F. 38, 39)

Transition Plan and Implementation

Parents' dissatisfaction with Student's transition plan appears to center on the lack of detail about the transition plan in the IEP. There was, however, extensive testimony at the hearing which amply established that the District provided Student with a transition program that meets the legal requirements set forth in 34 C.F.R. §300.43. The evidence in this case established that the District provided Student with a coordinated set of activities based upon Student's individual interests and needs, and that the process was result-oriented and focused on improving Student's ability to pursue post-secondary goals. (F.F. 15—18, 26, 27) Parents' argued that the District did not appropriately implement the transition plan because the District provided insufficient employment possibilities and job shadowing opportunities, and that the transition planning process was deficient because it should have been started in the summer prior to the 2007/2008 school year. Such contentions, however, constituted no more than a list of ways in which the District's transition program and process fell short of Parents' ideal. The District, however, is required to meet the legal standards for an appropriate transition plan, not assure Parents' or Student's subjective satisfaction with all aspects of the transition plan or its sequencing and pace.

Progress Monitoring

The basis for Parents' contention that the District's progress monitoring was insufficient is still not entirely clear. There was no conflict in the evidence with respect to the progress monitoring requirements of Student's IEP or that the District followed those requirements. (F.F. 53) In addition, Student's Mother testified that she had other opportunities to discuss Student's progress. (F.F. 53)

Parents' concerns with the District's progress monitoring appeared to be centered on the lack of progress monitoring of Student's transition activities. Those activities, however, are not goals as to which progress can be tracked unless a particular transition activity becomes an IEP goal. (*See*, S-15, p.11)

ESY

Under the federal IDEA regulations, ESY services are to be provided to an eligible student if necessary to assure that s/he receives FAPE. 34 C.F.R. §300.106(a)(2). Pennsylvania regulations provide additional guidance for determining ESY eligibility, requiring that the factors listed in 22 Pa. Code §14.132 (a)(2) (i)—(vii) be taken into account. Those factors are:

- (i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).
- (ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).
- (iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.
- (iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.
- (v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.
- (vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.
- (vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

Moreover, school districts are not required to provide ESY based upon “The desire or need for other programs or services that, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.” 22 Pa. Code §14.132 (c)(3).

There was no evidence in this case that Student met any of the foregoing criteria for receiving ESY services. To the extent that Student lost any skills over extended breaks, which was certainly not established by a preponderance of the evidence, Student recouped them quickly. (F.F. 34) To the extent that Student needed/wanted additional work to maintain academic skills during the summer, it was available to Student. (F.F. 47, 48)

Parents’ primary complaint appeared to be that the district failed to take their views into account sufficiently in making the decision to deny ESY. (F.F. 45, 46). Without any evidence that Parent could have provided information that would have established Student’s ESY eligibility, such lapse had no effect on whether the District’s ultimate decision with respect to ESY was correct.

CONCLUSION

Because Parents did not establish that the District’s 2007/2008 special education program for Student failed to provide Student with FAPE, no compensatory education or other relief will be granted in this matter.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the Exeter Township School District provided Student with a free, appropriate public education in all respects during the 2007/2008 school year.

It is, therefore, hereby **ORDERED** that the Exeter Township School District is required to take no action with respect to:

1. Providing Student with assistive technology devices;
2. Providing Student with reading instruction at the Center or other facility;
3. Providing Student with compensatory education in any form or amount.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

March 24, 2009