

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: CN

Date of Birth: xx/xx/xxxx

Dates of Hearing: January 16 and 27, 2009

CLOSED HEARING

ODR No. 9434/08-09 LS

Parties to the Hearing:

Parents:

Dr. Jerry W. Shively, Executive Director
Montgomery County Intermediate Unit
23

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Date Record Closed:

February 16, 2009

Date of Decision:

February 27, 2009

Hearing Officer:

Daniel J. Myers

INTRODUCTION AND PROCEDURAL HISTORY

CN (Student)¹, and his parents filed a due process hearing request on November 10, 2008, complaining that the Montgomery County Intermediate Unit (IU) failed to timely evaluate Student's needs in October 2006, and failed to offer Student an individualized education program (IEP) between January 2007 and Student's transition to Student's school district of residence. As relief, Student's parents request \$36,590 reimbursement for their costs in privately securing evaluations and educational services, and Student requests compensatory education for services that were not provided and not replaced. Due process hearing sessions were conducted on January 16 and 27, 2009. The record was closed with submission of written closing arguments and stipulations on February 16, 2009.

ISSUES

- Whether or not the IU properly discharged its Child Find obligation through appropriate and timely screening, evaluation and programming for Student since January 2007; and
- If not, what is the appropriate remedy?

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xxxx, has been diagnosed with Autism, pervasive developmental disorder-not otherwise specified (PDD-NOS) and Attention Deficit Hyperactivity Disorder (ADHD). (P23; P29) Student resides in the Lower Merion School District (School District) which is served by the IU. Student currently attends kindergarten at one of the School District's elementary schools in a part-time autistic support classroom. (Joint 1)²

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.

² References to "N.T." are to the notes of transcripts of the hearings in this matter. References to "HO", "P" and "IU" are to the Hearing Officer, Parent, and IU exhibits, respectively. References to "Joint 1" are to the Joint Stipulations of Fact that are attached to Student's post hearing brief.

2. On October 24, 2006, Student's parent contacted the IU for assistance because Student was exhibiting behavioral difficulties at Student's private preschool. (IU2; IU3; IU4; N.T. 50-51, 224-225, 400, 402) At that time, Student was not yet old enough to attend the School District schools, and Student had not yet been identified by either the IU or the School District as a child with a disability. Thus, Student was attending, at parental expense, a private preschool – WH.³ The WH tuition cost for which Student's parents seek reimbursement is \$6,363. (N.T. 223)
3. When the IU receives a parental request for assistance, it is the IU's standard procedure to screen the child first before conducting an evaluation. As the first part of that screening, the IU sent to Student's parents a Child and Family Profile and a Teacher/Caregiver Questionnaire. (N.T. 403)
4. On November 9, 2006, the IU received the completed Profile and Questionnaire. (N.T. 51, 225; P1; IU3; IU4) The Teacher/Caregiver Questionnaire raised concerns regarding Student's social interaction, verbal communication, and impulsivity. (N.T. 77)
5. On or about December 5, 2006, Student's parents paid \$2,425 for a behavioral consultation by psychologist Dr. JF. (P4; N.T. 58-63, 162) Dr. JF is properly credentialed and qualified as an expert to conduct the evaluation and make recommendations contained in P4. (Joint 1) Dr. JF found that while Student displayed at least average cognitive skills, Student showed behaviors characteristic of children with attention deficit hyperactivity disorder (ADHD) of the combined type that includes hyperactivity and impulsivity. Dr. JF also concluded that Student was experiencing difficulty regulating behavior, most noticeably in the classroom setting, and that Student became increasingly disinhibited and aggressive as the environment became more stimulating and the structure was decreased. (P4)
6. In January 2007, preschool WH assigned one of its teachers as a one-to-one aide to Student in response to Student's behavioral difficulties. (N.T. 236-237) In addition, preschool WH hired a speech therapist to informally evaluate Student. The speech therapist concluded that Student had comprehension problems. (N.T. 52; IU4)
7. On January 31, 2007, the IU called Student's parents to schedule a screening appointment. (N.T. 58, 404-405, 408; IU 2) The screening was scheduled for March 14, 2007. (N.T. 405, 411-413) In the meantime, Student's parent informed the IU that the parent would check with a psychologist to determine whether a screening was necessary. (IU1 IU2; N.T. 61-62, 407-408)

³ To protect Student's confidentiality, references to the three private educational programs at issue in this case will be to those programs' initials: WH; BH; and LP.

8. On March 14, 2007, Student was ill, and the screening was rescheduled to May 2, 2007. (N.T. 407, 410-413, 413; IU2; IU6)
9. On May 2, 2007 the IU case manager assigned to Student's case screened Student and reported the results to Student's parent immediately thereafter. (IU6; N.T. 462-463; Joint 1) The screening comprised an AGS Early Screening Profile, observation by the case manager of Student at the screening setting, and a parent interview. It did not include observation or assessment of Student's behaviors or functioning in a classroom environment, nor did include screening for autism or ADHD. (N.T. 77, 196) The IU case manager concluded that Student was not developmentally delayed and that no further testing was required. (N.T. 415; P8) The case manager then referred Student's parents to Medical Assistance and Behavioral Health Services for any additional public services. (N.T. 81, 426-428; P9)
10. In September 2007, preschool WH continued to pay an employee to serve as Student's one-to-one aide. Student's one-to-one aide at preschool WH did not have any specialized training in dealing with a child like Student, whose behavioral problems were becoming increasingly difficult. (N.T. 239) At that time in September 2007, Student's parents contacted the IU case manager and requested a "shadow"⁴ for Student at school. (N.T. 98-99, 102; IU26)
11. On or about September 24, 2007, Student's parents paid \$750 for an evaluation of Student by psychologist Dr. D. (P11; IU9; N.T. 224, 236, 242-245) Dr. D is properly credentialed and qualified as an expert to conduct the evaluation and make recommendations contained in P11. (Joint 1) Dr. D concluded that Student had significantly delayed social skills, was disconnected from same-aged peers, had difficulty sustaining interaction with peers during free play and on the playground, was absorbed in fantasy world, had significantly delayed pragmatic (social) language skills, displayed highly impulsive behavior in unstructured settings, engaged in compulsive behavior, was easily distracted, had transition difficulties and had possible sensory kinesthetic issues. Dr. D recommended that Student receive direct social skills instruction through a social skills class with a small group of peers, a highly structured preschool with specialized instruction, daily sensory activities, a small teacher-to-student ratio, a sensory diet prescribed by an occupational therapist (OT) and an evaluation by a developmental psychiatrist. (P11)
12. Between October 1 and October 3, 2007, Student's parent and the IU case manager exchanged telephone messages. Parent's message stated that Dr. D had determined that preschool WH was not an appropriate placement for Student and that Dr. D had recommended specialized education settings and other related services for Student. (N.T. 99-100, 432-436; IU26) The case manager's message

⁴ For purposes of this the discussion within this decision, and throughout the record in this case, I do not distinguish between a "shadow" and a one-to-one aide.

stated that Student did not qualify for services from the IU and referred parents to a partial hospitalization program funded by a different agency. (IU26; N.T. 432)

13. On October 9, 2007, preschool WH informed Student's parents that, because Student's behaviors were threatening physical harm to self and other children in the classroom, Student could not return to school. (N.T. 107-108, 248-249; P12)
14. Student's parents then enrolled Student in a private, special education preschool program, BH that Dr. D had recommended. Parents paid \$6,232 in BH tuition. BH educates children of all races and of all religious backgrounds and disabilities. (N.T. 110, 273, 276, 297) Student's classroom was self-contained, with a student-teacher ratio of 2:1. BH's head teacher was a properly licensed and certified speech pathologist who shared the classroom with another speech language pathologist as well as three assistant teachers in the classroom. The teachers in Student's BH classroom had at least twenty years experience in special education. BH provided a highly structured program with a very predictable schedule for the children and substantial visual cueing. The program incorporated the use of a sensory room to address Student's sensory needs and incorporated sensory strategies throughout the school day. It was housed within a typical preschool facility, permitting Student to interact with typical peers during recess. (N.T. 273-275, 278, 294-295) At BH, Student received socialization with typical peers and instruction towards goals relating to classroom participation, behavior, pragmatic language and sensory processing. (N.T. 311-312)
15. Also in October 2007, Student's parents paid \$1,000 for an evaluation of Student by child psychiatrist, Dr. FF, who observed Student at school, reviewed records and interviewed parents. (P18; N.T. 96-97, 249-250, 286) Dr. FF is properly credentialed and qualified as an expert to conduct the observation and make recommendations contained in his report. (Joint 1) Dr. FF found that Student was impulsive, defiant, resistive to adult authority, and disruptive, required a one-to-one approach to control behavior, displayed hyperactivity and had difficulty engaging in play or other interactions with peers appropriately. Dr. FF diagnosed Attention-Deficit/Hyperactivity Disorder, Not Otherwise Specified, presenting with atypical patterns of development. Dr. FF recommended special education services, including a special classroom placement, and a therapeutic staff support. (P18)
16. On October 8, 2007, while Student was attending preschool BH several times per week, Student's parents paid \$425 for Student to attend a separate social skills program, LP, which met three afternoons per week and was located in the same facility as BH. LP was developed by one of the BH teachers for children with behavioral issues. (N.T. 109, 318, 320) LP concentrates strongly on peer relationships and appropriate classroom behaviors. (N.T. 316, 318, 320, 326-327, 338) Dr. D had recommended both the BH and LP programs. (N.T. 320; P11)

17. On October 23, 2007, Student's parents paid \$385 for an occupational therapist evaluation. (P14; IU10; N.T. 96) The OT is properly credentialed and qualified as an expert to conduct the evaluation and make recommendations contained in P14 and IU10. (Joint 1) The OT determined that Student had a "definite difference" for sensory seeking, was deficient in bilateral motor integration and was in the 2nd percentile for grasping, 9th percentile for visual-motor integration and had a fine motor quotient in the 2nd percentile. The OT concluded Student needed sensory integration therapy to address sensory seeking behaviors and arousal level, help to self-regulate, develop play and organizational skills necessary for school, and recommended six to twelve months of sensory-based occupational therapy services. (P14)
18. On November 12, 2007, Student was asked to leave the LP program due to difficult behaviors. At the same time, BH informed Student's parents that Student must have a one-to-one aide in order to remain in the program. Student's parents then paid \$6,080 for a 1:1 aide at BH. (N.T. 118-119, 279-280, 325-326)
19. On November 13, 20, and 27, 2007, Student's parents and the IU case manager communicated by phone either through voicemail messages or directly. Student's parents requested IU services, stating that Student had been asked to leave the LP program and that the BH program was requiring that Student be accompanied by a shadow. (NT 121; IU26) The case manager requested parents to send copies of all evaluative material, and stated that the IU would review them within 30 days and either provide services to Student or conduct its own evaluations. (N.T. 130-131, 441)
20. In the meantime, Student's parents paid \$750 for an evaluation and behavior plan from a behavioral consultant. (P17; N.T. 122-124) The behavioral consultant is properly credentialed and qualified as an expert to conduct the evaluation and make recommendations contained in the behavior plan. (N.T. 124-125; P17; Joint 1) The behaviorist observed that Student's behaviors at BH included running from others, falling to the floor and flailing arms and legs, spinning, jumping and making loud noises. The behaviorist recommended interventions for both school and home which included positive reinforcement, anticipation of trigger events, a visual schedule, visual reinforcements, verbal prompts, calming escalation by responding calmly and by sensory activities, and preserving safety for everyone when Student displays oppositional behaviors. The behaviorist concluded that if interventions were not provided, Student risked of disrupting the classroom and negatively impacting the learning of both Student and others. (P17; N.T. 122)
21. On December 17, 2008, Student's parent sent all evaluation reports to the IU case manager by overnight delivery. (N.T. 132-133, 440; P20) The IU received the materials on December 18, 2007. (N.T. 442)

22. On February 4, 2008, after two months of attending BH with a privately secured “shadow”, Student’s behaviors improved to the point where the LP staff invited Student back into its program, three afternoons per week, provided that the shadow accompany Student. Student’s parents paid \$5,280 for the shadow. (N.T. 325-326, 486)
23. On February 25, 2008, the School District in which Student lived issued an initial evaluation report (ER) in preparation for Student’s transition from preschool to school age education in September 2008. The ER concluded that Student was a child with a disability and in need of special education, with a primary disability category of Autism and a secondary disability category of Other Health Impairment. (N.T. 135-136; P23; IU15,p.21) Student’s parents sent a copy of the School District’s ER to the IU. (IU26)
24. On March 10, 2008, the School District convened an IEP team and developed an IEP, to begin in September 2008, providing special education services to Student for one-half day in an Autistic Support classroom and one-half day in a regular education kindergarten, and offering related speech and language services in a group setting for thirty minutes, one time per week. (IU16; IU17; P24; P25; N.T. 138)
25. On March 18, 2008 Student’s Parents left a phone message for the IU case manager, relating the School District’s disability findings and requesting financial assistance for private services. (IU26, p.2)
26. On or about April 2, 2008, the IU case manager’s supervisor asked parents to resend all the information previously sent to the case manager, as well as the School District’s ER and IEP. (N.T.139-41; IU21)
27. On April 7, 2008, the IU issued a request for permission to evaluate Student, proposing to use parent input as well as review of current records and evaluations. Student’s parents signed the requested permission on April 8, 2008. (IU18; P27; N.T. 141)
28. On May 22, 2008 Student’s parents told the IU case manager that, because Student would be going to the School District’s school in September, Student’s parents were no longer interested in receiving IU services, preferring instead IU reimbursement of Student’s privately secured services as well as for an upcoming summer camp. They stated that they were paying for services themselves, they wanted to keep those privately secured personnel in place, and they only wanted the IU to pay for summer camp. (IU26, p.2-3; N.T. 467-68, 484-85) While the IU case manager acknowledged that summer camp reimbursement was a possibility if IU permission was granted, no such permission was ever granted and no reimbursement occurred. (IU26; N.T. 484-484)

29. On June 17, 2008, the IU issued its own, initial ER concluding that Student was eligible to receive special education services under the disability categories of Autism (PDD-NOS) and Other Health Impairment (ADHD-combined type). (P29; N.T. 150, 451) No IEP team was ever convened and no IEP was ever developed.
30. By the end of the 2007-2008 school year, Student was better able to fit into a classroom situation at BH and LP. (P28) Student's classmates began to approach Student more often, and the LP staff was able to get Student to play with the other children in the classroom. (N.T. 333-334)
31. Student started attending School District classes on September 3, 2008.
32. In October 2008, the IU passed an early intervention verification by the Pennsylvania Office of Child Development and Early Learning (OCDEL), which is the state agency responsible for Early Intervention, both Birth-to-Three and preschool. (N.T. 343-344) The verification has no specific relationship either to Student or to the IU's provision or failure to provide FAPE to Student. (N.T. 378-379)
33. On October 4, 2008, parents paid \$600 to Vosburgh Educational Consulting, apparently for advice regarding the IU's FAPE liability.
34. Student's parents seek reimbursement of \$3,000 in nonspecific transportation costs.
35. On November 10, 2008 Student's parents requested a due process hearing alleging that the IU failed to timely and appropriately screen and evaluate Student's eligibility as a child entitled to services under the IDEA services and seeking reimbursement of costs that parents incurred, as well as compensatory education for any required services beyond those privately secured by Student's parents. (P30)
36. On November 19, 2008, the parties conducted a resolution meeting but no resolution was reached. The due process hearing was held in two sessions on January 16 and 27, 2009. The record was held open until February 16, 2009 for the receipt of the parties' written closing arguments, which included the stipulations in Joint1.
37. Exhibits admitted into the record are as follows.

Exhibit	Admitted w/o objection	Exhibit	Admitted w/o objection	Admitted over objection	Withdrawn
P1	✓	IU1	✓		
P2	✓	IU2	✓		

Exhibit	Admitted w/o objection	Exhibit	Admitted w/o objection	Admitted over objection	Withdrawn
P3	✓	IU3	✓		
P4	✓	IU4	✓		
P5	✓	IU5	✓		
P6	✓	IU6	✓		
P7	✓	IU7	✓		
P8	✓	IU8	✓		
P9	✓	IU9	✓		
P10	✓	IU10	✓		
P11	✓	IU11	✓		
P12	✓	IU12	✓		
P13	✓	IU13	✓		
P14	✓	IU14	✓		
P15	✓	IU15	✓		
P16	✓	IU16	✓		
P17	✓	IU17	✓		
P18	✓	IU18	✓		
P19	✓	IU19	✓		
P20	✓	IU20	✓		
P21	✓	IU21	✓		
P22	✓	IU22	✓		
P23	✓	IU23	✓		
P24	✓	IU24			✓
P25	✓	IU25	✓		
P26	✓	IU26		✓	
P27	✓	IU27	✓		
P28	✓				
P29	✓				
P30	✓				
P31	✓				
P32	✓				
P33	✓				
P34	✓				
P35	✓				
P36	✓				
P37	✓				
P38	✓	HO 1	✓		
P39	✓				
P40	✓	JOINT 1	✓		

DISCUSSION AND CONCLUSIONS OF LAW

A child with a disability who is between the ages three and the “age of beginners” (meaning the age that the local school district begins education residents) is considered, under the state regulations applicable to this case, an “eligible young child.” 22 Pa. Code §14.101 Such children are entitled to be identified, evaluated and provided special education and related services under the state and federal regulations applicable to this case. 22 Pa. Code §14.151; 34 CFR §300.8(b) Identification of an eligible young child is considered “Child Find.” 22 Pa. Code §14.152; 34 CFR §300.311

The IU is required to have a “Child Find” screening process to enable it to identify eligible young children. 22 Pa. Code §14.122 That screening process is required to include, for children with behavioral concerns, a systematic observation of the child’s behavior in the classroom or area in which the student is displaying difficulty. 22 Pa. Code §14.122(c) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be referred for evaluation. 22 Pa. Code 14.122 (d) Of course, screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities. 22 Pa. Code 14.122 (e)

Evaluations of eligible young children are mandatory and must be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development. 22 Pa. Code §14.153

Burden of Proof

The United States Supreme Court has held that, in a special education administrative hearing, the burden of persuasion (which is only one element of the larger burden of proof) is upon the party seeking relief, whether that party is the disabled child or the school district. 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) If the evidence is not in equipoise, but rather one party has produced more persuasive evidence than the other party (regardless of who seeks relief), then the Supreme Court’s ruling is not at issue – in that case I must simply find in favor of the party with the more persuasive evidence. In this case, Student bears the burden of persuasion because Student alleges that the IU failed to timely evaluate Student’s needs in October 2006, and failed to offer Student an IEP between January 2007 and Student’s transition to the School District.

The IU failed to discharge its Child Find obligations in a timely manner

Student argues that, after being contacted by Student's parents in October 2006, the IU should have evaluated and begun programming for Student's disability by January 2007. The IU argues that it was appropriate to require a screening first, before a full evaluation, that there is no time limit for screening, that Student's parents prevented a more timely screening, and that the screening itself was conducted appropriately. I reject the IU's arguments and I agree with the Student.

On October 24, 2006, Student's parent contacted the IU for assistance because Student was exhibiting behavioral difficulties at Student's private preschool. (IU2; IU3; IU4; N.T. 50-51, 224-225, 400, 402) On November 9, 2006, the IU received the completed that it had requested as part of its screening process. (N.T. 51, 77, 225; P1; IU3; IU4) At that point, on November 9, 2006, the IU should have taken prompter action.

Instead, the IU waited until January 31, 2007 before calling Student's parents to schedule a screening appointment March 14, 2007. (N.T. 58, 404-405, 408, 411-413; IU 2) The IU argues that parent delayed the screening, or perhaps withdrew consent for the screening, by stating on January 31, that the parent wanted to check with a psychologist to determine whether a screening was necessary. (IU1 IU2; N.T. 61-62, 407-408) In fact, however, the March 14, 2007 screening remained scheduled – parent's statement did not impact the timing of the screening.

In this case, I believe it would have been reasonable for the IU to have finished its screening and begun the more formal evaluation process of Student within two weeks of receiving the completed Profile and Questionnaire on November 9, 2006. The screening consisted simply of an AGS Early Screening Profile, observation by the case manager of Student at the screening setting, and a parent interview. The screener was able to reach a decision on the day of the screening. (IU6; N.T. 462-463) The screening reasonably should have been completed by November 23, 2006.

The IU was required to evaluate Student within 60 days after receiving written parental consent. 22 Pa. Code §14.153(4)(i) Had the screening occurred by November 23, 2006, and accurately identified Student as a child suspected of having a disability, Student would have been formally evaluated, identified and offered services by January 23, 2006.

While it is the IU's standard procedure to screen the child first before conducting an evaluation (N.T. 403), there is no excuse for the IU's failure in this case to have waited until May 2, 2007 before completing its screening. (IU6; N.T. 462-463; Joint 1) Further the right of a child with a disability to an evaluation does not depend upon the accuracy of the screening. The completed Profile and Questionnaire raised concerns regarding Student's social interaction, verbal communication, and impulsivity. (N.T. 51, 77, 225; P1; IU3; IU4) Indeed, when the IU eventually issued its own evaluation of Student on June 17, 2008, it found, contrary to the screening two years earlier, that Student was a child with a disability entitled to special education services. (P29; N.T. 150, 451)

Thus, by waiting so long to conduct the screening, and then by reaching an incorrect screening conclusion, the IU's own behaviors resulted in its failure to discharge properly its Child Find obligations regarding Student.

The IU's denial of FAPE to Student began January 23, 2006

As noted above, when the IU eventually issued its own evaluation of Student on June 17, 2008, it found that Student was a child with a disability entitled to special education services. (P29; N.T. 150, 451) This, of course, was a correct conclusion, it is corroborated by substantial evidence in the record, and it should have been reached much earlier than June 17, 2008.

The IU concedes that it probably should have issued a request for permission to evaluate after receiving all of the private evaluation reports that Student's parent sent to the IU case manager by overnight delivery on December 17, 2008. (N.T. 132-133, 440, 442; P20) The IU estimates that such request could have been issued, perhaps, by January 4, 2008, and that an evaluation should have been issued, perhaps, by March 7, 2008. The IU argues, therefore, that FAPE denial started March 7, 2008 and lasted for the remaining 65 days that the IU remained responsible for Student's education before becoming the School District's responsibility.

The IU was required to evaluate Student within 60 days after receiving written parental consent. 22 Pa. Code §14.153(4)(i) While it is the IU's standard procedure to screen a child first before conducting an evaluation (N.T. 403), there is no excuse for the IU's failure in this case to have waited until May 2, 2007 before completing its screening. (IU6; N.T. 462-463; Joint 1) Further the right of a child with a disability to an evaluation does not depend upon the accuracy of the screening.

The November 2006 completed Profile and Questionnaire raised concerns regarding Student's social interaction, verbal communication, and impulsivity. (N.T. 51, 77, 225; P1; IU3; IU4) The record is full of other evaluators' findings of disability. See reports of Dr. JF (P4); Dr. D (P11; IU9); Dr. FF (P18); an OT evaluation (P14; IU10); a behavioral consultant evaluation (P17); School District ER (P23; IU15) Even the IU itself eventually concluded that Student was a child with a disability. (P29) The facts that the IU waited until May 2, 2007 before completing its screening, and then erred in its screening results, cannot be blamed upon Student's parents.

The IU's evaluation and programming responsibility begins from when it reasonably should have suspected a disability. From the record in this case, I conclude that the IU should have completed its screening and issued a request for permission to evaluate by November 23, 2006. Had the screening occurred by November 23, 2006, and had it accurately identified Student as a child suspected of having a disability, Student

would have been formally evaluated, identified and offered services by January 23, 2006. Accordingly, I find that the IU had denied FAPE to Student since January 23, 2006.

Remedies

Student requests tuition reimbursement for preschools WH, BH and LP, totaling \$13,020. Student also requests reimbursement for the various private evaluations secured by parents, totaling \$5,900. Student also requests reimbursement for 1:1 aide services at BH and LP, totaling \$11,360, and for privately secured OT services, totaling \$3,300. Finally, Student requests reimbursement for transportation, presumably to and from school, totaling \$3,000.

Under any claim by parents for tuition reimbursement, determining that the intermediate unit denied FAPE to Student is the necessary first step in the 3-step analysis outlined by Supreme Court in Burlington School Committee v. Department of Education, 471 U.S. 359 (1985) and Florence County School District v. Carter, 511 U.S. 7 (1993) (hereinafter “Burlington-Carter”); L.B. v Wyomissing School District, Special Education Appeal No. 1145 (2001)

In this case, where the IU did not provide FAPE at all, and where the IU did not conclude until June 17, 2008 that Student had a disability, the first step in the 3-step Burlington-Carter analysis is met.

The second step requires that the private placement(s) be appropriate to the Student’s needs. Further, reimbursement of privately secured evaluations involves a similar determination as to whether the private evaluation answered questions not previously raised by the IU, provided essential new information, or added something to the IU’s understanding of the child’s disability. See Warren G. v. Cumberland County Sch. Dist., 190 F.3d 80, 87 (3d Cir. 1999); In Re G.T. and the Palmyra Area School District, Special Education Opinion No. 1808 (2007)

The IU argues that the private preschool placement at WH is not reimbursable because it was inappropriate and initiated before parents even contacted the IU. The IU argues that the BH placement does not involve proper statutory notice to the IU, and was inappropriate because the teachers were speech pathologists rather than special education teachers. Finally, the IU contends that preschool is not required as a part of FAPE.

I agree with the IU that the WH placement is not reimbursable. The 1:1 aides were not trained in providing assistance to children with Student’s behavioral needs. (N.T. 236-239) On October 9, 2007, preschool WH informed Student’s parents that, because Student’s behaviors were threatening physical harm to self and other children in the classroom, Student could not return to school. (N.T. 107-108, 248-249; P12) Student’s own expert, Dr. D, concluded that WH was not appropriate to meet Student’s needs. (P11) Accordingly, the WH tuition of \$6,363 is not reimbursable.

The private BH and LP placements, however, were appropriate to meet Student's needs. Student's BH classroom was self-contained, with a student-teacher ratio of 2:1. BH provided a highly structured program with a very predictable schedule for the children and substantial visual cueing. Student's BH teachers had at least twenty years experience in special education. (N.T. 273-275, 278, 294-295) LP was developed by one of the BH teachers for children with behavioral issues. (N.T. 109, 318, 320) LP concentrates strongly on peer relationships and appropriate classroom behaviors. (N.T. 316, 318, 320, 326-327, 338) Further, Dr. D had recommended both the BH and LP programs. (N.T. 320; P11) Accordingly, both the BH and LP placements meet the second Burlington-Carter requirement.

The third step in the Burlington-Carter analysis involves a weighing of the equities. In this case, the equities favor the parents. Parents always provided the information requested by the IU, returning all permissions and other forms, even sending duplicate materials by overnight delivery. (N.T. 51-52, 132-133, 440; P20); See In Re J.H. and the Souderton Area School District, Special Education Opinion No. 1870 (2008) This satisfies the 3rd step of the Burlington-Carter analysis.

Thus, because the IU failed to offer FAPE to Student and the equities favor the Student, I will award tuition reimbursement for the appropriate programs, as well as for evaluations and services privately secured by Student's parents.

Student's parents also seek \$600 reimbursement for some educational consulting by a group called "Vosburgh Educational Consulting," as well as \$3,000 reimbursement for transportation expenses. Student fails to demonstrate a legal entitlement to such reimbursement, and the record lacks evidence sufficiently supporting these claims. Thus, I will not order reimbursement for these expenses.

Student also asks generally for compensatory education services for anything that Student's parents may not have provided privately. The IU argues that the Third Circuit has strongly suggested that efforts to obtain one or the other remedy are not permitted. See Lauren W. v. DeFlaminis, 480 F.3d 259, 273 (3d Cir. 2007) I agree with the IU. While Student is not actually seeking a "double-dipping" remedy, this record does not support a compensatory education award in addition to the reimbursements. Student's parents provided educational services and evaluations when faced with the IU's FAPE denial. Those services and evaluations, to the extent that they are appropriate and supported in the record, are being reimbursed. Student will not also be awarded compensatory education.

CONCLUSION

The IU failed to discharge its Child Find responsibilities in a timely manner. Further, by failing to evaluate Student until June 2, 2008 and by providing no special education services at all to meet Student's needs, the IU has denied FAPE to Student since January 26, 2006. I will award reimbursement for appropriate private placements as well as private evaluations and appropriate services. I will not award reimbursement for one of

Student's privately secured preschool placements which was not appropriate, nor will I award reimbursement for educational consulting and transportation expenses that are not sufficiently supported in the record and for which the Student has not provided sufficient legal authority.

ORDER

- The IU failed to discharge its Child Find obligations in a timely manner
- The IU denied FAPE to Student from January 23, 2006 until Student began receiving services from the School District
- The IU shall reimburse Student's parents the following amounts:
 - \$6,232 for BH tuition
 - \$425 for LP tuition
 - \$6,080 for 1:1 assistance at BH
 - \$5,280 for 1:1 assistance at LP
 - \$3,300 for occupational therapy services
 - \$2,425 for an evaluation by Dr. JF
 - \$750 for an evaluation by Dr. D
 - \$1,000 for an evaluation by Dr. FF
 - \$385 for an OT evaluation
 - \$750 for a behavioral consultation

Daniel J. Myers

HEARING OFFICER

February 27, 2009