

*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: Student

Date of Birth: xx/xx/xx

Date of Hearing: September 1, 2009

OPEN HEARING

ODR No. 9904/08-09 LS

Parties to the Hearing:

Representative:

Parents:

Pro Se

School District:

School District Attorney:

Indiana Area School District  
501 East Pike  
Indian, PA 15701

Patricia Andrews, Esq.  
Andrews & Price  
1500 Ardmore Blvd., Suite 506  
Pittsburgh, PA 15221

Date Record Closed:

September 4, 2009

Date of Decision:

September 19, 2009

Hearing Officer:

Daniel J. Myers

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (Student) <sup>1</sup> is an teen-aged high school senior in the Indiana Area School District (District) with autism, speech and language impairment and a specific learning disability in math. Student complains that, for the 2008-2009 school year, the District has denied a free and appropriate public education (FAPE) by failing to implement properly Student's individualized education program (IEP). As described below, the District prevails in this case because Student's IEP is appropriate and Student's teachers credibly described how they appropriately implemented the IEP.

### **ISSUE**

Whether the District denied FAPE to Student for the 2008-2009 school year?

### **FINDINGS OF FACT**

1. Student, whose date of birth is xx/xx/xx, is a senior in high school. (NT 25) <sup>2</sup>  
 Student has been diagnosed with autism, speech and language impairment and a specific learning disability in math. (D1; NT 55) Student's IEP contains goals in math, functional academics, occupational guidance and preparation, and social skills. (D8) Among other things, Student's IEP also provides that tests will be

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<sup>1</sup> 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/Student privacy.

<sup>2</sup> References to "HO," "D" are to the Hearing Officer, and District exhibits, respectively. References to "N.T." are to the transcripts of the hearing conducted in this matter.

- read orally to Student and administered in an alternate area with extended time. (D2,p.13)
2. In May 2008, when Student's 2008-2009 IEP was being developed, the District proposed that Student attend basic math and general level social studies classes, as preparation for Student's goal to become a kindergarten teacher. (NT 57, 75) Believing that Student needed to master more basic skills, however, Student's Parent requested that Student be placed in lower level math and basic history classes instead. (NT 58-59, 75) Accordingly, the District placed Student in a pre-algebra class that applies basic pre-algebra skills to daily living, which is a lower level than the basic math class originally proposed (NT 58), and in a lower level social studies course. This curriculum, however, is not designed to prepare students for college. (NT 163)
  3. During the 2008-2009 school year, Student received group and individual speech and language instruction, working on understanding body language, tone of voice and facial expressions. (NT 100) Student participated in job-shadowing a kindergarten teacher. (NT 81) An instructional assistant helped Student with homework and tests. (NT 121-122, 137)
  4. Outside of school, Student has a job babysitting for 2-3 hours at a time. (NT 44-45)
  5. During the 2008-2009 school year, Student got along with peers and was observed by teachers walking to and from classes with peers. Teachers did not observe Student feeling frustrated at school. (NT 102, 155) Teachers observed Student become more expressive and self-advocating and confident as year

- progressed. (NT 156) While teachers and aides allowed Student's tests to be taken in alternative settings and to have tests and assignments read orally to Student, no teachers or aides gave away or hinted test answers to Student. (NT 139, 157)
6. In health class, after Student failed a test, Student's teacher told Student that Student should be more prepared for tests. (NT 123) Student, however, had recently experienced a death in the family. Student had not informed the health teacher of the family death at the time that the teacher originally told Student to be more prepared for tests. When the health teacher became aware of that fact, the teacher allowed Student to retake the test. (NT 123)
  7. On April 2, 2009, Student's parent filed a Due Process Complaint Notice alleging that the District had not complied with a May 19, 2008 Hearing Officer Order requiring compensatory education and a neuropsychological examination, and also complaining that the current IEP was not being implemented.
  8. On April 8, 2009, I agreed in part with the District's sufficiency challenge and determined that the portion of the complaint concerning implementation of a Hearing Officer Order was not within my jurisdiction. (HO 2) The District conceded to jurisdiction over the issue regarding implementation of the current IEP.
  9. In May 2009 the parties conducted an unsuccessful resolution session. (NT 50)
  10. A due process hearing was conducted on September 1, 2009. Exhibits D1-D9 and HO1 and HO2 were admitted into the record. (NT 176-177) All of the District's witnesses were credible.

11. Student's Parent complains that Student does not have the basic skills necessary for either independent living or post-secondary education. (NT 21, 26, 34, 175) Parent believes that pre-algebra skills are not basic math skills and are not necessary for Student. (NT 42-43) In addition, Student is embarrassed about the possibility of going to community college rather than a four year college, Student is not interested in any vocational education, and, although Student wants to be a teacher, Student doesn't think college is required for such a profession. (NT 35, 47-48) As relief, Parent wants compensation with which to send Student to a private school. (NT 27, 37)

### **DISCUSSION AND CONCLUSIONS OF LAW**

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) If one party produces 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, the Student bears the burden of persuasion because Student seeks compensatory education due to alleged FAPE denial.

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the District is required to provide FAPE to all students who qualify for special education services. 20 U.S.C. § 1412 Districts need not provide the optimal level of service, or even a level that would confer additional benefits, since the IEP as required by the IDEA

represents only a basic floor of opportunity. Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3rd Cir. 1988); Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998)

In this case, Student's 2008-2009 IEP was appropriate. It contained goals in math, functional academics, occupational guidance and preparation, and social skills. (D8) It also provided that tests would be read orally to Student and administered in an alternate area with extended time. (D2, p.13)

In addition, Student's IEP was implemented appropriately. Student received group and individual speech and language instruction, working on understanding body language, tone of voice and facial expressions. (NT 100) Student participated in job-shadowing a kindergarten teacher. (NT 81) An instructional assistant helped Student with homework and tests. (NT 121-122, 137) While teachers and aides allowed Student's tests to be taken in alternative settings and to have tests and assignments read orally to Student, no teachers or aides gave away or hinted test answers to Student. (NT 139, 157)

The record does not support Parents' allegations regarding Student's 2008-2009 school experience. The IEP team did not ignore Student's post-secondary goals when it developed Student's 2008-2009 IEP. Rather, the District recommended basic math and general level social studies classes to prepare Student for postsecondary studies to become a kindergarten teacher. (NT 57, 75) Student's health class teacher did not discount the death in Student's family and tell Student to study harder for tests anyway. (NT 35) Rather, the teacher was unaware of the death at the time that he told Student to study harder, and after he learned of Student's circumstances, the teacher allowed Student

to retake the test. (NT 123) Student's instructional aide did not gesture or otherwise indicate when student's answers were incorrect on homework and tests; rather the aide asked all of the learning support students to think through their answers. (NT 28, 35, 139, 157)

In addition, District teachers credibly established that Student walked to and from classes with peers, and became more expressive and self-advocating and confident as year progressed. (NT 102, 156) Teachers did not observe Student feeling frustrated at school. (NT 102, 155) Student even worked outside of school, babysitting for 2-3 hours at a time. (NT 44-45)

The District originally recommended a more academic curriculum designed to prepare Student for the college courses required to become a teacher. Parents, however, requested placement in lower level math and basic history classes that are not designed to prepare students for college preparation. (NT 58-59, 75, 163) In addition, Student has contradictory expectations, believing both that college is not required to become a teacher, and being embarrassed about the possibility of going to community college rather than a four year college. (NT 35, 47-48) These Parental and Student contradictions are not necessarily uncommon or to be faulted, but they are not evidence of any failure by the District to implement the 2008-2009 IEP.

Accordingly, the record establishes that the District did not deny FAPE to Student for the 2008-2009 school year.

### **CONCLUSION**

The record does not support Parents' allegations regarding Student's 2008-2009 school experience. Student's IEP contains appropriate goals and program modifications.

Student's teachers credibly established that they implemented Student's IEP appropriately. Thus, the District did not deny FAPE to Student for the 2008-2009 school year.

**ORDER**

- The District did not deny FAPE to Student for the 2008-2009 school year.
- No action is required of the District.

*Daniel J. Myers*

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Daniel J. Myers  
HEARING OFFICER

September 19, 2009