

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

Child's Name:

A. C.

Date of Birth:

[redacted]

CLOSED HEARING

ODR File 18777 16 17

Dates of Hearing:

5/31/17, 7/19/17, 8/7/17

Parent(s):

[redacted]

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Date of Decision:

8/29/17

Hearing Officer:

Michael J. McElligott, Esquire

INTRODUCTION

Student¹ is an elementary school age student who resides in the Greater Latrobe School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with a specific reading disability in reading

Parent claims that the student was denied a free appropriate public education (“FAPE”) for a portion of the 2014-2015 school year (specifically, from February 2015) and the entire 2015-2016 school year related to allegations of deficiencies in failing to identify the student’s disability prior to and in the student’s reading programming over that period. Parent seeks a quantitative/hour-for-hour compensatory education as a remedy.³ Parent also seeks reimbursement for certain therapies and services.

The District counters that it timely identified and responded to the student’s reading disability. Additionally, the District asserts that at all times its programming was designed to provide FAPE to the student and, when implemented, provided FAPE for the period of parent’s allegations. As such, the District argues that the parent is not entitled to a compensatory education remedy or any reimbursement.

For the reasons set forth below, I find in favor of the District.

¹ The generic use of “student”, rather than a name or gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

³ Notes of Testimony at 37-42.

ISSUES

Did the District meet its obligations
to provide FAPE to the student
over the period
February 2015 through the end of the 2014-2015 school year
and the 2015-2016 school year?

If this question is answered in the negative,
is the student entitled to compensatory education
and/or reimbursements?

FINDINGS OF FACT

Kindergarten: 2014-2015 School Year

1. The student entered District schools in kindergarten in the 2014-2015 school year. (Notes of Testimony ["NT"] at 102-103, 226).
2. In kindergarten, the student did not present as a student with academic, social, or behavioral difficulties, although the student exhibited anxiety toward task completion and a degree of inattention. (NT at 102-151, 225-300).
3. In late February 2015, the student underwent a private neuropsychological evaluation, resulting in a March 2015 neuropsychological report.
4. The March 2015 neuropsychological report found that the student's assessments were solidly in the average range: verbal and nonverbal reasoning skills were high-average; attention, working memory, and processing speed were low-average; reading achievement was average; math achievement was high-average; and aside from letter-writing speed, the student was above grade level on academics. (School District Exhibit ["S"]-1).
5. Results of assessments for attention deficit hyperactivity disorder ("ADHD") in the March 2015 neuropsychological report showed that the student's mother and kindergarten teacher indicated that the student was below diagnostic criteria for ADHD/inattention and ADHD/hyperactivity-impulsivity. Anecdotal input related to the student's focus and evaluator observation, however, led the evaluator to diagnose

the student with ADHD/combined-type. The evaluator also opined that a formal anxiety disorder diagnosis should be explored, and the student began to see a therapist for individual and family therapy. (S-1; S-19 at page 3; NT at 225-300).

6. In the recommendations section of the March 2015 neuropsychological report, the evaluator cautioned the parent that, as a kindergartener, the student was very young and indicated that “from my perspective, there seems to be a lot of expectations placed on (the student) at this time”. (S-1 at page 4).
7. In March 2015, nearly contemporaneously with the issuance of the neuropsychological report, the parent requested that the District evaluate the student and, in mid-March 2015, parent provided permission for the evaluation. (S-4).
8. In May 2015, the District issued its evaluation report (“ER”). (S-19).
9. The District school psychologist incorporated the findings of the March 2015 neuropsychological evaluation into the May 2015 ER. Additionally, the May 2015 ER included input from the student’s mother, kindergarten teacher, and private counselor, a classroom observation by a District special education administrator, and an updated behavioral assessment. (S-19).
10. The updated behavioral assessment in the May 2015 ER, as completed by the teacher, indicated that the student exhibited clinically significant scores on the anxiety subtest and internalizing problems index. The report contained the teacher’s input describing the strategies and accommodations (separate or small-group testing) the teacher utilized to address the focus and anxiety issues the student exhibited. (S-19 at pages 9-10).
11. The May 2015 ER also included the indication that the student was receiving private occupational therapy (“OT”) services. As part of the May 2015 ER, the student was evaluated by the District for OT. The OT evaluator recommended that the student receive OT services for 30 minutes once per week to address holding a writing utensil, letter-printing, and letter-size. (S-19 at page 9).
12. The May 2015 ER contained benchmark academic assessments in early literacy skills (first-sound fluency, phoneme segmentation, and nonsense word fluency). The student met benchmark levels at all times in first-sound fluency and phoneme segmentation. The student’s scores in nonsense word fluency score was initially below benchmark levels, but by May 2015, the student had surpassed all expected levels of

achievement. The math benchmarks showed that, as of January 2015, the student was achieving at the advanced level and was making progress through the math curriculum. (S-19 at pages 11-12; S-54).

13. The May 2015 ER concluded that the student did not have a disability and did not require special education. The parent agreed with this recommendation. (S-19, S-20).
14. In late May 2015, the parents agreed to the creation of a Section 504 plan to address formally the accommodations already being implemented in the classroom and the OT recommendations. (S-18).
15. The May 2015 Section 504 plan included the OT recommendations, as well as encouragement in tasks/reassurance that making mistakes is okay, discreet redirection, extra wait-time for answers, testing in small groups, breaking down directions, extra time for assignment completion, and advanced notice of changes in routine, many of which had been shared as suggestions by the student's parent in the parental input gathered for the May 2015 ER. (S-9, S-18).
16. The student's kindergarten year ended with the student performing satisfactorily, or mastering, most academic tasks in reading and mathematics. (S-46; NT at 102-151).

1st Grade: 2015-2016 School Year

17. The student's teacher implemented the Section 504 plan in 1st grade, and those accommodations were successful in managing the student's attention issues and anxiety. (S-18, NT at 154-191).
18. The student's 1st grade teacher indicated at the outset of the school year that the student did not exhibit academic difficulty. (NT at 154-191).
19. The student's benchmark assessment in reading at the start of the school year was in the basic range. By late September, the benchmark reading assessment was below benchmark with support recommended. (S-54).
20. The parent indicated that she was concerned the student was having academic difficulty and suspected dyslexia in the student. In late September 2015, parent obtained an independent reading assessment. The reading assessment largely aligned with the student's achievement evidenced at the end of the kindergarten year, with phonics mostly mastered, and correctly identifying 9 out of 15 consonant-vowel-consonant words. The assessment indicated that the student was "not

able to read”. The evaluator did not identify the student with dyslexia but recommended a visual efficiency evaluation. (S-22; NT at 225-300).

21. At some point thereafter, the parent obtained an undated independent visual efficiency evaluation. The student obtained largely age-equivalent scores but exhibited a large number of reversals when writing numbers and letters. On a test for dyslexia determination, the evaluator characterized the student as “mildly severe” in two sub-tests and indicated in a third “unable due to lack of sight word knowledge”. (S-23).
22. In late October/early November 2015, the student’s parent requested that the student be evaluated given parent’s concern about dyslexia. Parent provided permission for the evaluation in mid-November 2015. (S-26).
23. Given parents’ concerns and in light of the request for an evaluation, in early November the District began to provide small-group intensive regular education support in reading to the student. (S-51; NT at 302-333).
24. Over the period November 2015 – February 2016, when the student had been identified as needing special education and the District proposed an individualized education program (“IEP”) (see *Findings of Fact* 30 and 31 below), the student obtained a “strong pass” in each probe, except for two probes on January 7th and January 14th, and a probe on February 5th, where the student obtained a “weak pass” with an indication of weakness in reading fluency. (S-51; NT at 302-333).
25. In January 2016, the District issued its ER. (S-19).
26. The January 2016 ER included parental input and the results of the private reading and visual efficiency evaluations. (S-27 at pages 2-5).
27. The January 2016 ER included updated present levels of performance from the OT sessions delivered under the Section 504 plan. (S-27 at pages 5-6).
28. The January 2016 ER included a classroom observation. (S-27 at page 6).
29. The January 2016 ER included extensive achievement testing and speech and language testing. (S-27 at pages 5-18).
30. The achievement testing in the January 2016 ER indicated that the student exhibited a severe discrepancy between ability and achievement

in reading, especially in decoding and sight word reading, which impacts not only reading fluency but reading comprehension as well. The student was identified as a student requiring special education to address a specific learning disability in basic reading and reading fluency. (S-27 at pages 19-26).

31. In February 2016, the student's IEP team met to design the student's IEP. (S-29).
32. The February 2016 IEP contained six goals, three in reading (sight-word reading and oral reading fluency), three in OT (the same goals from the Section 504 plan, involving grip, letter-formation, and letter-size), and one in written expression. (S-29 at pages 26-31).
33. Program modifications in the February 2016 IEP included the Section 504 accommodations for the student's attention issues and anxiety. (S-29 at pages 32-34).
34. The February 2016 IEP indicated that the student would continue to receive the small-group intensive reading intervention the student had been receiving since November 2015. (S-29 at pages 33, 37; NT at 302-333).
35. In early March 2016, the student's parent obtained an independent diagnostic report to see if a second neuropsychological evaluation was warranted. The evaluator confirmed the prior identifications of ADHD/combined-type and specific learning disabilities in basic reading and reading fluency (which the evaluator characterized as "consistent with a diagnosis of dyslexia"). The evaluator opined that, given the fact "since (the student) has undergone two thorough evaluations in the past year resulting in (those identifications), this psychologist did not see the utility in conducting additional assessment at this time." (S-33, generally and at page 5).
36. In mid-March 2016, the student's parents approved the notice of recommended educational placement to begin the provision of services under the February 2016 IEP. (S-31).
37. In April 2016, the student had met the sight-word goal, which was revised. (P-35 at page 27).
38. Over the period February – May 2016, the student moved into reading instruction geared specifically to fluency. The student continued to receive passing scores on the instructional units, although the achievement was less pronounced. There were five units where the student received "strong pass" and four units where the student received

“weak pass”. On two units, one on March 4th and one on May 10th, the student did not receive a passing mark. Those “no pass” levels were remediated before the student could continue in the unit progression. (S-51; NT at 302-333).

39. In addition to the sight-word goal mastery, the student made progress on the reading fluency goal and written expression goal. (S-35 at pages 27-30).
40. The student qualified for extended school year services in the summer of 2016. (S-29, S-32, S-34; NT at 225-300).
41. In August 2016, the student’s parent obtained an updated reading evaluation from the private reading evaluator who had assessed the student in September 2015. The student showed progress in every assessment measure. (S-40).

WITNESS CREDIBILITY

All witnesses testified credibly, and no one witness’s testimony was accorded materially more or less weight than any other witness.

DISCUSSION AND CONCLUSIONS OF LAW

Denial of FAPE

School districts are under a “child-find” obligation to identify students who may potentially qualify under IDEIA as students with disabilities. (34 C.F.R. §300.111; 22 PA Code §§14.121, 14.123). Where a student may potentially qualify as a student with a disability, that student must undergo an appropriate evaluation process—once parental permission has been obtained—

to see if the student should be identified as an eligible student under IDEIA. (34 C.F.R. §§300.300, 304-306; 22 PA Code §§14.102(a)(2)(xxiv-xxv), 14.123).

Once identified as a student with a disability, to assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her needs (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 197 L. Ed. 2d 335 (2017); Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (Andrew F.; M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).⁴

Here, the parent’s claims have two aspects—an alleged failure of the District in its child-find obligation and alleged failure to provide FAPE for the period between the identification of the student in January/February 2016 through the end of the 2015-2016 school year. The District met its obligations to the student in both regards.

Regarding the child-find/evaluation claim, the record in its entirety fully supports the finding that the student’s kindergarten year did not present any need to the identification of the student as a student in need of special

⁴ While in some parts of the United States the recent U.S. Supreme Court decision in Andrew F. presented a new and higher standard to gauge the appropriateness of special education programming, the standard laid out in Andrew F. has been for all intents and purposes, the longstanding standard enunciated by the Third Circuit Court of Appeals and has been the applicable standard to judge the appropriateness of special education programming in Pennsylvania.

education. Even with the benefit of later evaluation data, the student has never struggled with letter-identification or phonemes/phoneme segmentation. The student made progress in the kindergarten language arts curriculum for this very reason—it did not present any challenges for the student. Therefore, nothing in the experience or evaluation of the District—or even the private neuropsychological evaluator in March 2015—would lead any educator to conclude that the student had a specific learning disability at that time. Overlaying this, too, is that evaluator’s wise caution that the student was very young (having just turned six at the time of the private evaluation) and that as a school-based learner, the student’s educational journey had just begun. Accordingly, there is no legal error in the conclusion by the District in its May 2015 ER that the student was not eligible for special education.

In the fall of 2015, as the student’s 1st grade year unfolded, signs began to appear that, in processing text, the student might be struggling. Nearly simultaneously in late September 2015, the student’s mother undertook a private reading assessment at the same time that benchmark reading assessments in the District took place. Both indicated that the student was struggling to process text—and not just letter-sound/phonemes—fluently. Thereafter, ostensibly sometime in October 2015, the visual efficiency assessment indicated that the student might have markers of dyslexia and by mid-November 2015, the parent had requested another evaluation and provided permission for it.

The January 2016 ER was timely issued, and identified that student as a student with specific learning disabilities in basic reading and reading fluency. Again, the record in its entirety supports the conclusion that the District met its obligations to recognize and identify the student as a student who required special education. Again, nothing in the kindergarten year would indicate that the student would struggle to read text, as the curriculum was not yet a ‘reading curriculum’.⁵ But by the middle of 1st grade in January 2015, as reading fluency became a more important, and necessarily employed, skill and reading text became the focus of the curriculum, the District timely evaluated and identified the student’s needs.

In sum, the District met its child-find obligations for the student, and there is no error in the processes or conclusions of the District’s May 2015 or January 2016 evaluation reports.

Regarding the programming issues for the student, first and clearly, the experience of the kindergarten year established that the student had attention issues and potential anxiety in the classroom. This, however, was not only recognized but addressed in the Section 504 plan put in place following the May 2015 ER. These were regular education accommodations, but those accommodations were varied and comprehensive and, as they were largely

⁵ Revealing in this regard are the comments of both private evaluators—the reading evaluator and visual efficiency evaluator— respectively noting that the student “is unable to read” and couldn’t identify sight words. While both were presciently able to identify that the student might struggle with emergent reading fluency, in September and October of a student’s 1st grade, being a ‘non-reader’ of text is not necessarily a clear marker of disability. (S-22, S-26). As the months wore on in 1st grade, the student’s struggle came into clearer focus, but the record does not support a finding that in the first few weeks of 1st grade the District had somehow failed in its child-find obligation.

implemented in the following school year (1st grade), were shown to be very successful in addressing the student's attention/anxiety needs. Those accommodations were in place throughout the 2015-2016 school year (1st grade) under the Section 504 plan and then the February 2016 IEP, and were wholly appropriate for and effective with the student.

The student's needs in reading were also appropriately and effectively addressed in the 2015-2016 school year (1st grade). Importantly, with its own data in hand and a request for an evaluation, the District began intensive regular education interventions in early November 2015. Through mid-December, as the student progressed through the units of instruction, the student not only achieved "strong pass" scores, those scores were perfect (4 of 4, or 5 of 5). Passing grades continued in the intervention until the units of instruction began to focus more on fluency in mid-February 2016. By then, though, the student's IEP team had crafted goals and structured the specially designed instruction and program modifications in reading (and in all areas of the student's needs) required by the student.

All too often, educators seem paralyzed in attempting different interventions or strategies for students who are in the midst of an evaluation process. Waiting for evaluation results, months can pass without any change in a student's programming while everyone waits for those results. Even more time may pass by the time an IEP is approved for a student whose evaluation reveals that special education is required. Here, the District was proactive and did not wait. It implemented intensive regular education interventions, and

those interventions not only helped to maintain and build on the student's phonemic and blending skills but set the stage for continued progress through goal-driven instruction in sight words and reading fluency. In the spring and summer of 2016, the student made progress, as clearly supported in the progress monitoring under the IEP and the private reading evaluator's assessment in August 2016 showing improvement across the board in the student's reading.

In sum, the District responded intensively and appropriately from November 2015 through February 2016 as the evaluation process unfolded and the student's IEP team met to design the initial IEP. And beginning in March 2016, the District provided FAPE under the terms of the February 2016 IEP, including the summer of 2016. In terms of its programming, the District met its obligations to the student.

Because the District did not deny the student FAPE in either its child-find/evaluation processes, or in the student's programming, the parent is not entitled to a compensatory education remedy, or to reimbursement.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District did not deny the student a free appropriate public education. Accordingly, no compensatory education or reimbursement remedy is owed.

Any claim not specifically addressed in this decision and order is denied.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

August 29, 2017