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## **Decision**

Due Process Hearing for AT  
Date of Birth: xx/xx/xx  
File Number: 8250/07-08AS

Dates of Hearings:  
January 28, 2008; February 4, 2008; April 23, 2008

### **CLOSED HEARING**

Parties:

Mr. and Mr.

Unionville-Chadds Ford School District  
740 Unionville Rd  
Kennett Square, PA 19348-1531

Date Transcript Received:  
Closings Arguments Received:  
Date of Decision:  
Hearing Officer:

Representatives:

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May 1, 2008  
May 19, 2008  
June 14, 2008  
David F. Bateman, PhD

## **I. BACKGROUND**

Student is a xx year-old eligible resident of the Unionville-Chadds Ford School District (District) with a learning disability, whose Parents requested this Hearing on two specific issues. Parents allege a denial of child find by the District, and they seek an award of compensatory education for inappropriate services from 2005 to the present. The District alleges their program is appropriate and that since it has provided an appropriate program the various reimbursements sought are unwarranted.

This Hearing was delayed due to a resignation of the attorney for the Parents, a pregnancy by the new attorney for the Parents, and an illness by the Hearing Officer.

## II. FINDINGS OF FACT<sup>1</sup>

### A. Background

1. Student was born on xx/xx/xx. She is currently xx-years of age (S-5, p. 1).
2. Student is a resident of the District (S-5, p. 1).
3. Student is eligible for special education and related services as a student with a learning disability (S-5).
4. The District completed an Instructional Support Team (IST) report on Student on February 14, 2005 (S-19). She was referred for IST because of slow progress in reading, lack of focus on independent work, and frequent emotional outbursts. This report states Student appears to need a lot of reassurance.
5. The District completed an IST follow-up log on April 15, 2005 (S-20, p. 5). The report indicates 22-24 words per minute reading.
6. The Parents requested a multidisciplinary evaluation on November 29, 2005 (P-2).
7. The District forwarded a permission to evaluate on December 12, 2005 (S-17).
8. The District completed an IST meeting on January 12, 2006 (S-21).
9. The District completed an initial evaluation on March 13, 2006 (S-16). This evaluation report found her eligible for special education and related

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<sup>1</sup> References to notes of testimony will be designated "NT" followed by the relevant page number. References to District evidentiary exhibits will be designated "S" followed by the relevant exhibit number. References to Parents' evidentiary exhibits will be designated "P" followed by the relevant exhibit number. Findings of Fact will be designated by "FF" followed by the relevant fact number.

services as a student with a non-verbal learning disability (S-16, p. 21).

10. The District completed an IEP on April 4, 2006 (S-15). This was Student's initial IEP (NT 61-62). Student received services for reading, spelling, writing, and math for three hours a day (S-15, p. 17). She was to receive three hours of learning support a day, two hours of language arts and one hour of math (NT 282).
11. The District offered a Notice of Recommended Educational Placement (NOREP) on April 4, 2006 (S-14). The placement recommended was for a resource placement for learning support.
12. The District requested an occupational and physical therapy evaluation on April 27, 2006 (S-13). The reason for the evaluation was poor visual-motor integration, spatial reasoning, and visual processing.
13. Student's report card for second grade indicates she consistently demonstrated most of the goals and academic content (S-24, p. 4-6).
14. The extended school year (ESY) progress report for the summer of 2006 indicate she attended all 18 days, along with a slight decrease in words per minute (S-29).
15. The District held an IEP meeting on September 25, 2006 (S-12). This IEP is basically the same as the IEP found at S-15 (NT 252-253). The purpose of the IEP meeting was to introduce the Parents to the new teacher (NT 284).

16. The District issued a NOREP on September 25, 2006 for a learning support classroom. The Parents approved this NOREP (S-11).
17. The District issued a NOREP on October 26, 2006 for a learning support classroom. The Parents approved this NOREP (S-8).
18. The District held an IEP meeting on February 9, 2007 (S-7). This is basically the same IEP as found at S-9.
19. The District issued a NOREP on February 9, 2007 for a learning support classroom. The Parents approved this NOREP (S-6).
20. During the spring of 2007 Student met with the guidance counselor as a part of a lunch bunch group (S-27).
21. An IEP was held on March 21, 2007 (S-5). This IEP was in place for the end of Student's third grade year.
22. The District issued a NOREP on March 21, 2007 for a learning support classroom. The Parents approved this NOREP (S-4). This NOREP found her eligible for extended school year services.
23. During the 2006-2007 school year Student visited the nurse numerous times (S-31, pages 1-136). Records indicate over 65 visits to the nurse for the 2006-2007 school year.
24. Progress reports for the 2006-2007 school year indicate some progress on her goals and also some goals not obtained (S-18).
25. Student's scores in third grade on the PSSA's indicate proficient levels for both reading and mathematics (S-22).

26. The District issued a permission to evaluate on October 25, 2007 (S-3). The Parents signed they agreed to the evaluation but did not want the evaluation to occur until May (S-3, p. 2).
27. The District publishes annually a notice of special education services in the newspaper (S-34; NT 418-419).

### III. ISSUES PRESENTED

- 1) Is Student eligible for compensatory education for lack of child find, and
- 2) For inappropriate services for a denial of a free appropriate public education from April 2005 to the present?

### IV. DISCUSSION AND CONCLUSION OF THE LAW

#### Student's Educational Placement

The legal standard to which the District is held, in educational matters such as this, is clearly established by statute and the courts. The IDEA, as interpreted by the Supreme Court, does not require states to develop IEP's that "maximize the potential of handicapped children," but merely requires the provision of "some" educational benefit. *See Board of Education v. Rowley*, 458 U.S. 176, 189 (1982). The IDEA requires that the public school program provide access to specialized instruction and related services which are "reasonably calculated" to provide the student with some educational benefit. *Id.* at 207-208. What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). The Third Circuit has adopted this minimal standard for educational benefit, and has refined it to mean that more than "trivial" or "de minimus" benefit is required. *See Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). *See also Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d

Cir. 1995), quoting *Rowley*, 458 U.S. at 201; (School districts “need not provide the optimal level of services, or even a level that would confirm additional benefits, since the IEP required by IDEA represents only a “basic floor of opportunity”).

Moreover, the Third Circuit has determined that a student’s demonstrated progress in an educational program is sufficient to show that a school district’s IEP allows for significant learning and provides meaningful benefit as necessary to satisfy the IDEA’s FAPE standard. *See Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 242 (3d Cir. 1999). Given that progress is relevant to the determination of whether a student with a disability received an educational benefit, it is therefore also relevant to determining whether a reimbursement award is due.

The first issue in this case relates to whether Student was identified as a student with a disability in a timely fashion.

Child Find provisions under the IDEA require the state to ensure that:

All children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. 20 U.S.C. Section 1412(a)(3); 34 CFR Section 300.125.

The parents allege the District should have been identified as a student with a disability. There are several reasons why the Parents make this claim. Student attended kindergarten twice (NT 153-154). During first grade the District referred her for additional monitoring as a part of the IST process (S-19). She was not tested for special education during her first grade year. She was referred for additional

monitoring as a part of the IST process during her second grade year (S-21). She was eventually evaluated and found eligible for special education and related services in the later part of her second grade year (S-15).

Reports from her teachers during first and second grade indicate she was making progress, had friends, and was easy to work with. There are numerous reports of her going to the nurse (FF: 23), but there are also reports of her being immature for her age and needing additional nurturing. During second grade, the District again initiated the IST process at the end of the first marking period (NT 98). In December of her second grade the District at the request of the Parents initiated an evaluation report. In March 2006 the District found her eligible for special education and related services (S-16). The District provided an IEP in April 2006 (S-15).

Student was described as immature and the District initiated the IST process to work with her. IST interventions indicated some progress during the first grade year, and were initiated again in second grade when there were problems. This Hearing Officer feels the District sought to work with Student in regular education before using special education, and did so appropriately. There was no evidence or testimony presented in this case indicating the District did not identify Student in a timely fashion.

## **Student's Educational Placement**

### Parents Claim for Compensatory Education

Parents make a claim for compensatory education. Compensatory education may be an appropriate equitable remedy only when the responsible educational authority has failed to provide a child with a disability with an appropriate education as required by the IDEA. The purpose of compensatory education is to replace lost educational services. *See Todd v. Andrews*, 933 F.2d 1576 (11th Cir. 1991). *See also Lester H. v. Gilhool*, 916 F.2d 865 (3<sup>rd</sup> Cir. 1990); (An IDEA eligible student is entitled to an award of compensatory education only if FAPE is denied by the school district); and *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996). Here, Student did make meaningful educational progress during the school years in question.

This Hearing Officer has reviewed carefully the educational programs in effect for Student.<sup>2</sup> For numerous reasons as described below, this Hearing Officer concludes the IEP and program and services implemented during the this period were appropriate.

Parents now critique these IEPs, asserting that the annual goal is too brief, vague, and unmeasurable because they do not measure Student's disability areas. This runs contrary to the most recent change in the statute, which removes the requirement to observably identify the objectives and milestones within each broadly stated goal. This runs contrary also to the 1997 amendments to the statute,

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<sup>2</sup>The analysis of the content of the IEP is very similar to the analysis and content of the IEP as found in appeals panel decision of March 25, 2008. *In re G.B.*, Pa. SEA no. 1872.

which emphasized that achieving success in a school's general education curriculum was the "default" goal for all students with a disability.

A detailed review of the IEP at issue in this case reveals that it is reasonably calculated to provide meaningful educational benefit. Specific reasons for the conclusion follow:

The IEP contains all academic aspect of the present levels of performance section (PLOPS) such as cognitive, emotional/ behavioral, reading, spelling/ writing, and math, as well as recent classroom assessment results had been reported and the DIBELS assessment data. Another strength was to include the benchmark of 68-word count per minute in order to compare Student's scores with the norm. This concrete data will help to determine her needs.

Goal number one, weekly spelling words, was directly linked to the needs and the PLOPS. This goal is measurable and observable. Goals number two and three, English Language Arts, are good because it is observable and measurable. The other goals are also appropriate. They are also tied to her problems as described in the needs section.

The IEP contains all the legally required components, is tied to her weaknesses, and appears reasonably calculated to confer meaningful educational benefit for Student. Given this, the IEP and program offered by the District is appropriate.

**V. ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Unionville-Chadds Ford School District evaluated and found Student eligible in a timely fashion. Additionally, the program offered by the District was appropriate.

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Date

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Hearing Officer