

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.

K. C.

Child's Name

xx/xx/xx

Date of Birth

6073/05-06 KE

ODR File Number

January 3, 2006, January 18, 2006, January 25, 2006

Dates of Hearing(s)

February 8, 2006

File Closed

Closed Hearing

Parties to Hearing

Parents

Dates Transcripts Received:
January 17, 2006; February
1, 2006; February 2, 2006

Parent Representative
Pro Se

School District
Jane Brown
Upper Perkiomen School District
201 West 5th Street
East Greenville, PA 18041

Date of Decision:
February 13, 2006

District Representative
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Wisler Pearlstine
484 Norristown Rd.
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Blue Bell, PA 18422

Kenneth Rose
Hearing Officer

Background

The student is a [teenaged] resident of Upper Perkiomen School District. She is an eligible student in need of Physical Support. The student has a history of medical problems since birth. [Redacted.] Her medical problems are life long.

For school years 2003-2004 and 2004-2005, the student attended two different regular education private schools. The family and the school district have a history of disagreements, including at least four previous due process hearings.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the School District.
3. The student is identified as having orthopedic impairment.
4. The assistive technology and the occupational therapy (OT) being given are appropriate.

Findings of Fact

1. On June 13, 2005, the parents informed the school district that the student was returning to the school district and requested an Individualized Education Program (IEP) meeting. (NT 235; P-21; S-8)

2. Upon learning the student was re-enrolling in the school district, on July 5, 2005 the school district issued a Permission to Reevaluate the student. The areas for reevaluation were Speech and Language, Adaptive Physical Education, Physical Therapy and Occupational Therapy. Another permission was issued on July 13, 2005 adding a Central Auditory Processing Evaluation. Permission to Evaluate was given July 29, 2005. It was sent to the school district August 9, 2005. (NT 97, 98, 100, 153, 580, 581, 582; S-8, S-9, S-10)

3. The first day of school was August 29, 2005. (NT 131; HO-1)

4. The student and parents need to learn to deal with the student's medical problems. They may improve, but won't go away. (NT 494, 533)

5. On August 25, 2005 a Reevaluation Report (RR) was issued. This report included information from previous evaluations and a private regular education school. A new Physical Therapy (PT) evaluation, OT evaluation and Central Auditory Processing evaluations were included. An evaluation by Ms. H, a private audiologist contracted by the school district, was also included. The student was found to be eligible for special education as having Orthopedic Impairment and Speech/Language (S/L) Impairment.

Strengths and needs were listed. Twenty-one program modifications and specially designed instruction (SDI) items were listed. Adaptations for physical education (PE) classes were listed. Adaptive PE once a week for twenty minutes was listed. Classroom and assignment modifications were listed. A communication notebook was listed. Related services of PT once a week for thirty to forty minutes and OT individually once a week for thirty to forty minutes and fifteen minute weekly consultations were also listed.

The needs established were to produce legible written work, increase speed and efficiency in typing, remembering and following multi-step directions, maintaining organization of materials and assignments, self-regulated pressure for writing and maintaining accurate notes. (NT 100-112, 322, 324, 325; S-1, S-3, S-4, S-6, S-7, S-12, S-13, S-14, S-19)

6. The RR of August 25, 2005 lists the student as having S/L Impairment. The school district maintains this was listed to satisfy the parents. The S/L evaluation was not completed by this time. (NT 87, 325; S-19)

7. On August 25, 2005 a meeting was held to review the RR and develop an IEP. The IEP was issued to the parents on August 26, 2005. The parents waived their right of a ten day period between the issuing of the RR and the IEP meeting. (NT 41, 112, S-16, S-18)

8. On August 25, 2005 an IEP meeting was held. At the meeting the parents circled the PE activities the student could not participate in.

At the August 25, 2005 IEP meeting it was decided that the student would meet with the school counselor to assist with adjustment. This was to be once a week for a month or as needed.

The IEP team felt the student's Adapted PE needs could be addressed in regular PE with modification to the curriculum and alternate activities. The student cannot participate in all PE activities due to her health impairment. Provisions for Adapted PE are in the SDI's and notated PE Curriculum.

The IEP of August 25, 2005 calls for S/L and Adaptive PE evaluations to be done after the start of school. At the time of the August 25/September 6 IEP meetings, the Speech and Language Pathologist did not have enough information to write S/L goals. It was placed in the IEP to conduct a S/L evaluation.

The IEP team considered Ms. H's report. It addressed auditory processing needs through SDI's on the IEP.

The school district's PT evaluator attended the August 25, 2005 meeting. The IEP team determined PT is not needed to access the curriculum or school environment.

A final decision on PT was put on hold awaiting a clear copy of [a] report [by] Mr. K, a private physical therapist who evaluated the student and issued a report on October 31, 2005. (NT 47, 48, 49, 263-271, 297, 298, 299, 300, 301, 302, 303, 354, 432, 433, 454, 455, 637, 638; S-24, S-25, S-26, S-38, S-53)

9. The parents hand-delivered Ms. H's summary letter at the August 25, 2005 IEP meeting. (NT 496, 497; S-12)

10. During the first four days of school the staff implemented strategies in the IEP proposed August 25, 2005 and used input from the parents until the September 6, 2005 IEP was issued. (NT 175)

11. The IEP of September 6, 2005 states, under Related Services, that an adaptive PE evaluation will be done by October 31, 2005. It was completed.

The IEP called for meetings with the guidance counselor to help with adjustment to the new school. These occurred.

The IEP, under Related Services, called for a S/L assessment by October 31, 2005. This was done.

Changes were made to the August 25, 2005 IEP at the written request of the parents.

The IEP of August 25/September 6, 2005 was to be used until October 31, 2005 by which time the school district would revise the IEP. (NT 43, 45, 47, 127, 128, 129, 168; S-20, S-21, S-24)

12. The IEP of August 25/September 6, 2005 reflects the needs and SDI's stated in the RR. (NT 123, 124; S-24)

13. The IEP meetings of August 25 and September 6, 2005 had proper IEP team members. (NT 172; S-24)

14. On August 25/September 7, 2005 the parents approved the program and placement on the September 6, 2005 IEP by way of a Notice of Recommended Educational Placement (NOREP).

The parents were given the Procedural Safeguards Letter dated September 6, 2005. (NT 126, 127, 680; S-23, S-25)

15. The last agreed upon IEP is the one of August 25/September 6, 2005. (NT 174)

16. On August 28, 2005, the parents, in a letter to Mr. D, Supervisor of Pupil Services, raised questions and concerns about the IEP of August 25, 2005. The parents

questioned the lack of a beginning and duration date. This was corrected by the school district. The parents wanted changes made to the IEP to better reflect discussions at the meeting. The school district made the changes. The parents wanted changes to the IEP [and] these were also done. These changes were included in a revised IEP of September 6, 2005. (NT 116-125; S-20, S-22, S-24)

17. On September 14, 2005 the parents requested, in writing, an IEP meeting to clarify the wording in the IEP. They had concerns about a revised spelling list, lack of daily organization checks and auditory processing recommendations. They asked that their expert be at the meeting. Ms. H's presence was requested. The school district issued an invitation to participate in an IEP meeting on September 19, 2005. The date set was September 21, 2005.

There were difficulties on both sides setting a meeting date. An IEP meeting was held on October 25, 2005. (NT 49, 54, 131-134; S-27, S-28, S-31, S-33, S-36)

18. The school district's Speech/Language Evaluation was given to the parents prior to the October 25, 2005 IEP meeting. (NT 236; S-29)

19. A proposed IEP revision was reviewed by the IEP team on October 25, 2005. Current academic achievement and a current reading assessment were listed as well as present levels of functional performance. Accommodations were made for Pennsylvania System of State Assessment (PSSA) testing. SDI's were revised in auditory processing and Adapted PE. Supports for school personnel were updated to provide training in auditory processing. Recommendations from a recent adaptive PE evaluation were included.

No direct S/L service or PT was listed because the need was not established.

Ms. H participated in the October 25, 2005 IEP meeting by telephone. She was asked to provide specific auditory processing goals for the student. The suggestions received from Ms. H were general and not specific to the student.

At the October 25, 2005 IEP meeting the parents had the S/L and Adapted PE evaluations prior to the meeting. They also had the August 25/September 6, 2005 IEP.

The Supervisor of Special Education shared her notes prepared for the October 25, 2005 IEP meeting with the Director of Pupil Services when she left the meeting.

The IEP considered the PT evaluation. (NT 61, 62, 63, 86, 138-142, 163, 198, 253, 297, 299, 501-505, 558; S-32, S-38; P-11, P-15)

20. After the October 25, 2005 IEP meeting, the parents took the draft used at the meeting. After more information was received from Ms. H and Mr. K, the school district discussed these with the parents by phone. The parents wanted changes to be made to the

October 25, 2005 IEP after the school district received additional reports from Ms. H and Mr. K. These were received by the school district in early November, 2005. No revisions resulted. (NT 238, 239, 252, 564, 565; S-45)

21. The school district offered several IEP meeting dates in November 2005 and finally selected November 29, 2005. The parents rejected the meeting. There was never a meeting in November 2005 to discuss PT or S/L despite school district efforts. (NT 288, 289, 291; S-47, S-49, S-52)

22. An IEP meeting was held November 29, 2005 without the parents. The adaptations for physical education were discussed. The IEP still did not include PT or S/L. The school district maintained the student did not qualify for PT at school.

On November 29, 2005 the school district re-issued the IEP with revisions in the SDI for PE. (NT 217, 218, 295, 296, 317, 318; S-24, S-53, S-54)

23. Parents chose not to attend November 29, 2005 IEP meeting. (NT 548; S-47)

24. The parents have consistently maintained the student needs PT. They see a need for PT to manage the student's [physical disability]. It prevents her muscles from tightening. The student is not currently receiving PT at home. (NT 214, 518, 519, 531; P-12)

25. Concerns and questions expressed by the parents over time were responded to. (NT 284-286, 289; S-41, S-42, S-43)

26. The school district performed a PT evaluation of the student on August 16, 2005. It does not recommend PT in the school environment. The school district PT evaluation was comprehensive and thorough including input from the parents. (NT 39, 47, 630, 636, 666, 670; S-14, HO-2)

27. The school district's PT evaluator has provided PT to the student in the past. (NT 629, 649, 650)

28. The original PT evaluation report by Mr. K was illegible so the school asked for another report with more detail. This report was used at a subsequent IEP meeting. The Mr. K report does not change the school district's PT evaluator's opinion that the student does not need PT in the school setting. The Mr. K evaluation follows a medical model. (NT 200-204, 208, 640; S-11, S-39, S-47)

29. PT was discussed at all IEP meetings. (NT 679, 680)

30. By way of a NOREP, the school district offered to provide PT as a "goodwill" gesture and "peace offering" to the parents. When the school district offered PT to the parents in November 2005 they still did not recognize a need for PT in school. Discussions of this ended when the parents filed for the due process hearing. The offer

was made by telephone prior to the NOREP of November 18, 2005. The PT was to be by consultation. The parents did not follow up on the school district's November 18, 2005 offer of PT. (NT 207, 210, 215, 216, 218, 597, 599, 671, 672; S-45, S-50)

31. The student is currently not receiving physical therapy at home. (NT 471)

32. The SETT meeting (an assistive technology meeting) was November 9, 2005. Present were the school district's Supervisor of Special Education, the student, the parents, the Director of Pupil Services, a regular education teacher and the I.U. Assistive Technology Coordinator. The meeting resulted in getting the student a new Alphasmart.

The school district discussed Earobics with the student and parents. It addresses auditory processing concerns. Earobics is a computer program that works on auditory training, auditory memory, sequencing, auditory closure and other auditory skills. It can be used in different settings including classroom, library, and computer lab. (NT 227-231, 279, 280, 346, 347, 348, 512-515; S-40; P-17)

33. The student uses her Alphasmart for school work. Sometimes she chooses to do the work by hand. (NT 469, 470)

34. A S/L report was issued on September 21, 2005. The student's S/L skills were found to be normal for age and not in need of S/L therapy to succeed in her educational environment.

The S/L Pathologist is qualified and experienced in understanding auditory process evaluations. (NT 51, 61, 328, 336, 357; S-29, S-34)

35. Ms. H is a private audiologist whom the school district contracted with to perform a central auditory evaluation. Ms. H found improvement since May 2004 in auditory figure/ground perception and selective attentions. Difficulty still existed for tasks involving auditory closure, memory and sequencing.

She made recommendations to the school district to develop the IEP.

The school district's Speech and Language Pathologist reviewed Ms. H's reports as part of her evaluation process.

The school district reviewed Ms. H's suggestions. Some of her recommendations are on the IEP's. (NT 36, 37, 38, 219, 257, 320, 322, 619; S-5, S-12, S-13; P-15)

36. Auditory discrimination needs do not have to be addressed through S/L therapy. (NT 354, 355)

37. Success in meeting auditory processing needs can be measured by success in the curriculum. (NT 260, 261)

38. The school district has staff qualified to do auditory processing training to staff members. (NT 362)

39. Auditory processing difficulties are addressed in the IEP of October 25, 2005. Auditory processing concerns can be met in the classroom through the SDI's. (NT 88, 89, 366; S-38)

40. Auditory processing needs are in the SDI's on the IEP's. (NT 360, 361)

41. Ms. H's comments of November 8, 2005 were not based on the most recent IEP presented to the parents. The recommendations are not specific to the student. (NT 145, 147, 148; S-15, S-38)

42. An extensive Adaptive PE evaluation was done on the student. The student cannot participate in contact activities. It was recommended that she have a modified PE program avoiding games with heavy contact or collision; the PE teacher needs to be aware of the student's condition and she should have access to fluids. The student should have the choice of whether or not to participate in activities. Specific modifications in the PE program were made. (NT 54, 405-417, 440, 441; S-32, S-34)

43. The PE teacher is certified to teach Adapted PE. (NT 404)

44. The PE and Adapted PE areas of the August 25, 2005 IEP were based on parent input since school had not started and an Adapted PE evaluation needed to be performed. (NT 159-160, 539, 540, 543; S-24)

45. Eighty percent of the time the student participates in the regular PE curriculum. During the other time she is in alternative activities. These were under the supervision of the PE teacher and adjusted at the parents' request. The few times the student could not do a regular PE activity she was given an alternate activity, usually with other students.

Provision was made for an aide if the PE teacher could not observe an alternative activity. The PE teacher aide has supervised the student in alternate PE activities. (NT 420, 421, 424, 425, 430, 434, 435, 437, 462)

46. The student feels left out when she can't participate in a PE activity. (NT 460)

47. The student has a case manager who is responsible for the IEP being delivered, communicating with the student's teachers and communicating with the parents. He is trained to understand auditory processing. He works directly with the student on some of the goals and SDI's. He oversees her organizational skills. The student has an assignment book, class binders which are color coded by subject and an accordion file.

The student is sometimes reluctant to see the case manager.

The case manager consults frequently with the teachers. He checks the student's assignment book daily, meets with her and questions how school is going. (NT 369, 370, 374, 379, 380, 381, 398, 465, 466; S-25, S-35, S-53, S-59)

48. The case manager met with the student's teachers in a group and individually to discuss her auditory processing needs. (NT 390)

49. If the case manager would have seen the student was having problems, he would have called an IEP meeting. He has not had to do so. (NT 399, 400)

50. The student met with the school counselor two or three times. They discussed friends and class changes. There were encounters in the hall. (NT 452, 557)

51. A Due Process Hearing was requested November 16, 2005. (S-44)

52. The school district continued to implement the August 25/September 6, 2005 IEP through the process of the October 25 to November 29, 2005 revisions. (NT 574, 575; S-43)

53. The school district was responsive to letters from the parents.

The school district expressed their desire to meet with the parents on November 13, 2005 to discuss recent reports received and additions to the IEP. The parents did not reply. (NT 220-225, 576, 577; S-43; P-17)

54. The student does not like people knowing about her physical conditions. She feels people will like her less. (NT 445, 453)

55. The student is sometimes overwhelmed by school. She tries hard to be perfect. She feels she can't do well in other activities. She feels rushed to get to classes on time. Organizing her materials takes time. [There are physical challenges but] the student has never been late for class due to her disability. (NT 450-452, 455, 468)

56. The student gets tired at school and wants to rest when she gets home. (NT 453)

57. The student's reading level is 12.4 GE (78-96%ile range). She has mostly A's with B's in art and English. She is viewed by her teachers as having excellent study/work habits, cooperative good attitude, excellent effort and positive influence. (NT 385, 386, 450; S-35, S-57)

58. The school district reported student progress on IEP goals by way of on-line progress reports, charting, etc. Progress reports are published half way between report periods. (NT 246-249, 387; S-56, S-59)

59. The case manager views the student as educationally excellent, making a good adjustment to her new school and becoming more social. He sees no problem with her moving about the school or sitting. (NT 374, 375, 377, 378)

Issues

1. Did the district develop an appropriate IEP for the 2005-2006 school year?
2. Did the district revise and update the IEP?
3. Did the district implement the temporary IEP which they offered?
4. Did the district fail to provide speech and language therapy for the 2005-2006 school year?
5. Did the district fail to provide physical therapy for the 2005-2006 school year?
6. Did the district fail to provide an appropriate physical education/adaptive physical education program for the 2005-2006 school year?

Parents Suggested Resolutions

1. Have the district develop an appropriate IEP for the student immediately. This IEP should include auditory processing support, an appropriate physical education/adapted physical education program, speech and language therapy and physical therapy.
2. Compensatory education for speech and language therapy denied.
3. Compensatory education for physical therapy all denied .
4. Compensatory education for physical education/adaptive physical education allegedly denied.

Discussion and Conclusion of Law

The parents of the student informed the school district in June or early July 2005 that the student was returning to the school district in the fall. The school district then started a reevaluation process that resulted in the issuing of a RR on August 25, 2005. The RR was thorough. It used all information available to the school district including

previous evaluations and current ones (Ms. H's Central Auditory Processing Report of August 9, 2005, Ms. M's Physical Therapy Evaluation of August 16, 2005 and the Occupational Therapy Evaluation of August 16, 2005). The RR is in conformance with 20 U. S. Code §1414(a)(2). The IEP team met on August 25, 2005 and developed an IEP. On September 6, 2005 the IEP team reconvened to revise it in response to the parents' request. The parents, by way of a NOREP, approved the IEP and placement for the student. The IEP of August 25/September 6, 2005 stated that evaluations would be conducted in areas of Adaptive PE, Assistive Technology and S/L. The IEP was to be revised by October 31, 2005. PT was not included in the IEP since the school district's PT evaluation said it was not needed in the school environment.

On October 25, 2005 an IEP meeting was convened to revise the August 25/September 6, 2005 IEP. At that meeting the team decided that S/L therapy was not needed, that PT was not needed at school and that the student would be provided with an Alphasmart. Present levels were revised using current data. The student was to take the PSSA with accommodations. Central Auditory Processing needs were addressed through program modifications/SDI's. Her strengths and needs were stated. Goals were written for increasing typing speed, organization and task completion. Adapted PE was addressed through the SDI's. Staff was to be trained in Auditory Processing. The student's placement was determined to be Itinerant Physical Support.

The parents objected to the October 25, 2005 IEP. Numerous communications took place between the parents and the school district to resolve the IEP issues. No agreement was reached. The parents filed for due process on November 16, 2005. The school district had an IEP meeting on November 29, 2005 to make final the October 25, 2005 IEP. The parents chose not to attend the meeting. The school district issued an IEP on November 29, 2005 with changes from the October 25, 2005 IEP.

Under **Schaffer v. Weast**, 546 U.S. __ (November 14, 2005), the parents bear the burden of proof that the school district did not provide FAPE. They did not meet this burden.

The issues of the hearing will be discussed individually. Decisions are being made on substantive grounds and a preponderance of the evidence.

Issue 1. Did the district develop an appropriate IEP for the 2005-2006 school year?

IDEIA §614(d)(1)(A) defines an IEP as:

- (d) Individualized Education Programs –
 - (1) Definitions – In this title:
 - (A) Individualized Education Program –

(l) In General – The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes –

- (1) a statement of the child’s present levels of academic achievement and functional performance, including –
 - (aa) how the child’s disability affects the child’s involvement and progress in the general education curriculum;
 - (bb) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities; and
 - (cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (II) a statement of measurable annual goals, including academic and functional goals, designed to -
 - (aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (bb) meet each of the child’s other educational needs that result from the child’s disability;
- (III) a description of how the child’s progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child -
 - (aa) to advance appropriately toward attaining the annual goals;
 - (bb) to be involved in and make progress in the general education curriculum in accordance with subclause (l) and to participate in extracurricular and other nonacademic activities; and
 - (cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;
- (V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);
- (VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

- (bb) If the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why -
 - (AA) the child cannot participate in the regular assessment; and
 - (BB) the particular alternate assessment selected is appropriate for the child;

- (VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and....

The IEP of August 25/September 6, 2005 fulfills the statutory requirements. It has the required elements. The parents approved it. An appropriate IEP is one that meets the procedural and substantive regulatory requirements and is reasonably calculated to enable the child to receive meaningful educational benefit to the child at the time that it was developed. (Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. PA. 1996)). The IEP must be likely to produce progress, not regression or trivial educational advancement [Board of Educ. V. Diamond, 808 F. 2d 987 (3d Cir. 1986)]. The IEP must afford the child with special needs an education that would confer meaningful benefit. Polk v. Central Susquehanna IU #16, 853 F. 2d 171, 183 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989), citing Diamond, held that “Rowley makes it perfectly clear that the Act requires a plan of instruction under which educational progress is likely.”

The IEP meets procedural and regulatory requirements. Further, the facts of the case show the student is progressing well in school.

Issue 2 – Did the district revise and update the IEP?

Revisions of the August 25/September 6, 2005 IEP started in a timely manner. That a final IEP was not issued until November 29, 2005 is due to the school district’s attempt to respond to parental concerns and use of additional information as it was received.

Issue 3 – Did the district implement the temporary IEP which they offered?

The facts of the case show the August 25/September 6, 2005 IEP were substantially implemented. Any failures of implementation were minor and it is clear the student is doing well in school. The IEP continued to be implemented through the time when it was being revised and up to the present.

Issue 4 – Did the district fail to provide speech and language therapy for the 2005-2006 school year?

IDEIA 2004 §602(26)(A) defines related services.

(26) Related Services –

(A) In General – The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception – The term does not include a medical device that is surgically implanted, or the replacement of such device.

In re Educational Assignment of J. M. Special Education Opinion No. 1612 it states related services must be “required to assist [the eligible child] to benefit from special education.” The standard is not optimal benefit to the student.

The school district’s S/L therapist is very credible. Her report places the student within the normal range. There is no need for S/L therapy for the student to benefit from special education.

Issue 5 – Did the district fail to provide physical therapy for the 2005-2006 school year?

Physical therapy is a related service as described above. There is no question that the student has physical issues. She tires easily and on bad days finds climbing stairs difficult. The school does provide OT to address OT needs. The issue here falls into a PT need to benefit from special education or PT need for the student to access the school environment.

The school district is familiar with the student and her previously receiving PT. The Hearing Officer finds the school district’s physical therapist and her evaluation credible. The needs of the student do not hinder her ability to access the educational environment or to benefit from special education. She has not been late to class because of her physical limitations. She is doing well in school.

The waters of deciding this issue are muddied by the offer during discussions with the parents to provide PT at school. The Hearing Officer believes the school district when it says this was a “peace offering” not a change in its position that PT is not needed to provide FAPE.

Issue 6 – Did the district fail to provide an appropriate physical education/adaptive physical education program for the 2005-2006 school year?

Adaptation to PE so that a student can participate in regular physical education is a part of FAPE. 20 U. S. Code §1402(29)(B) lists instruction in physical education as part of special education. Oberti v. Board of Education of the Borough of Clementon, 995 F. 2nd 1204 (3rd Cir. 1993) makes it clear the students are to be included in the least restrictive environment (LRE) with appropriate supplemental aids and services. The school district had [redacted] Intermediate Unit conduct an Adaptive Physical Education evaluation on the student. Using this report the school district, through specific SDI's and an annotated copy of the school district's physical education curriculum, designed an adapted physical education program in all of the IEP's. The parents had significant input into what activities were safe for the student. During the IEP revision process, the Adapted PE program has been revised to change activities and provide supervision by an aide when needed. More work may be needed to have alternate activities more to the student's liking for the times she cannot participate with the rest of the class. The school district has shown a willingness to do this. She is benefiting from the Adapted PE and it is appropriate.

As stated above, FAPE is being provided to the student. Further, the IEP of November 29, 2005 is appropriate using the standards applied in Issue 1 and is to be implemented immediately. The parents have not met their burden of proof.

The LEA is ordered to take the following action

- 1. NO action needed.***

Date

* Amended February

Kenneth Rose
Hearing Officer