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DECISION

Due Process Hearing for Student

ODR File No. 5664/05-06 LS

Date of Birth: xx/xx/xx

Dates of Hearing: October 14, October 24, November 30, 2005;
February 14, April 19, May 26, 2006 – Closed Hearings

Parties to the Hearing:

Mr. & Mrs. Parent

Centennial School District
433 Centennial Road
Warminster, PA 18974

Hearing Officer: Debra K. Wallet, Esq.

Record Closed: July 3, 2006 (filing of reply brief)

Date of Decision: July 18, 2006

Representative:

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BACKGROUND:

Student is [an elementary school-aged] (date of birth xx/xx/xx) third-grade student whose parents reside within the Centennial School District [hereinafter School District]. He attended private school during his kindergarten year but was enrolled in regular education classes in the School District for his first- and second-grade years. Although Student is extremely bright, with a full scale IQ of 136, he has a need for specially designed instruction in reading and written expression. Parents rejected the School District's proposed IEP for the third-grade year and enrolled Student in the Private School].

Parents argue that for some time the School District has not been meeting all of Student's needs, particularly those relating to reading, spelling, and written expression and that they have been required to seek private tutoring and eventually a more appropriate Private School placement where Student could receive an integrated Orton Gillingham multi-sensory program. They request compensatory education for the second-grade year as well as tuition reimbursement beginning September 2005 for the Private School placement.

The School District maintains that the IEPs for the second- and third-grade years were appropriate and offered a free appropriate public education (FAPE) designed to confer meaningful educational benefit. The District further maintains that the Private School is not appropriate and does not constitute the least restrictive environment for Student. The parents were unreasonable, the District contends, in refusing to consider the District's IEP because they had already decided upon the Private School.

ISSUES:

1. Did the School District provide a free appropriate public education (FAPE) to Student during the second grade in the 2004-2005 school year?
2. Did the School District offer an appropriate third-grade program to Student for the 2005-2006 school year?
3. Are Parents entitled to an award of compensatory education?
4. Are Parents entitled to tuition reimbursement for the Private School placement during the 2005-2006 school year?

FINDINGS OF FACT:

Background

1. Student is [an elementary school-aged student] (date of birth xx/xx/xx) who resides with Parents within the School District. Student has completed the third grade in Private School.
2. On June 30, 2005, through counsel, Parents requested a Due Process Hearing.
3. Both parties participated in a pre-hearing telephone conference on August 9, 2005 during which there was general agreement about what must be decided by the Hearing Officer. The issues were confirmed in writing. (Hearing Officer Exhibits 1 and 2).
4. A hearing scheduled for August 16, 2005 was continued at the request of both parties. Hearings were held October 14, October 24, November 30, 2005; February 14, April 19, and May 26, 2006.
5. The following exhibits were admitted: Hearing Officer 1 and 2 (N.T. 14-15) School District Exhibits S-1 through S-25 (N.T. 527; 1236-1237) and Parents Exhibits P-1 through P-25; P-27 through P-31 (N.T. 1122; 1181; 1236).
6. The School District called 6 witnesses: a special education consultant, school psychologist, reading/language arts coordinator, occupational therapist, learning support teacher, and school principal. The Parents called 2 witnesses: mother and an expert in psychology and learning disabilities.

Initial Public School Evaluation

7. Mother testified that Student went to preschool for two years and kindergarten at a private school. The kindergarten teacher brought concerns to her about Student's difficulty with letters and learning to read. Mother also observed these problems. (N.T. 528-529).

8. During the summer before first grade, Parents secured private tutoring to work on Student's letters and to prepare him for reading. He attended tutoring sessions during that summer several times a week for 45 minutes to an hour at a time. (N.T. 531-533).

9. Initially the School District wanted to return Student to a full day kindergarten program. In lieu of that Parents had him tested by a psychologist, Dr. P. (N.T. 535-536).

10. In September 2003, Parents had language arts concerns and requested that Student be tested. The School District also noted that it had speech and language as well as occupational therapy concerns. (S-1).

11. Student was evaluated by the reading specialist for Title I services in September, 2003. At that time Student identified only 8 out of 100 sight words. (N.T. 240-241; S-13). Dr. F., the School District's reading specialist, concluded that at that time Student's writing skills were more reflective of a pre-schooler or a beginning kindergartener than a beginning first grader. (N.T. 241-242).

12. An initial Evaluation Report dated December 1, 2003 concluded that Student had a need for specially designed instruction to address specific disabilities in the areas of reading, language, and writing. In the area of reading, Student scored well below average in sight word recognition skills. A Speech and Language evaluation showed moderate to severe needs in the domains of expressive language, grammatical use and comprehension, and articulation. Twice weekly speech language services in a classroom support or small group setting were recommended. (S-3, p.7; S- 4).

13. An Occupational Therapy Educational Evaluation concluded that Student had difficulty with fine motor and visual motor skills to a degree that they interfered with Student's ability to meet expectations in the classroom. Direct occupational therapy services were recommended. (S-5; N.T. 340-341).

14. Dr. H., Au.D., conducted audiometric testing and a central auditory evaluation in January, 2004. His conclusion was that Student had a central auditory deficit based upon a battery of tests in which Student showed testing below expectations. (S-23).

15. In grade one Student placed "below basic" in the fall pre-test on the Harcourt Performance Assessment and "basic" in the spring post-test for grade one. (S-14).

16. Student is a child with a specific learning disability in reading and writing. (S-3, p. 6).

17. Student has a central auditory processing deficit. (S-23; N.T. 326).
18. Student is in need of specially designed instruction. (S-3, p. 6).

Individualized Education Program

19. The first IEP team meeting occurred January 14, 2004 and resulted in an IEP with two goals, one each in reading and language arts. The reading goal was to “develop decoding and comprehension skill at the Pre-Primer level as measured by curriculum-based assessment.” The language arts goal was “improve the quality of . . . writing to a Kindergarten level in order to dictate and copy (and then independently write) 4 sentences.” Student was to receive occupational therapy at the rate of thirty 30-minute sessions per year and speech and language therapy at the rate of sixty 30-minute sessions per year. Parent approved these recommendations. (S-6).

20. Parents approved the January 14, 2004 Notice of Recommended Educational Placement (NOREP). (S-6, p. 17).

21. The IEP was revised June 18, 2004 to state that Student was not eligible for Extended School Year services and to add an objective under language arts regarding spelling first grade core and priority words 80% of the time on spelling tests. (S-6, pp. 18-19; N.T. 39).

22. When the June 2004 IEP called for “multi-sensory activities,” this was a reference to the VAKT program, standing for visual, auditory, kinesthetic, and tactile. (S-6, p. 6; N.T. 398, 363).

23. The IEP team met on September 13, 2004 and again recommended program modifications and specially designed instruction as well as related services in speech/language therapy and occupational therapy. Student would spend 21% to 60% outside of the regular education classroom in the learning support environment for reading, math, and language arts. The goals were language arts: “By June 2005 . . . will improve the quality of his writing to a 1st grade level in order to independently write a 5 sentences (sic) earning at least 2-3 points on the 1st grade rubric” and reading: “By June 2005 . . . will acquire and use a variety of tools and strategies to develop decoding and comprehension skills at a first grade level with 80% accuracy as measured by curriculum-based assessment.” (S-7).

24. Parents approved the September 13, 2004 NOREP. (S-7, p. 2).

25. Occupational therapy was discontinued November 16, 2004 but no reason was given. Mother initialed the form indicating her approval. (S-8; N.T. 372-373).

26. Mother testified that had she known that the occupational therapy was addressing Student's handwriting, she would not have agreed to discontinue occupational therapy. (N.T. 554).

27. There was no IEP meeting at the time that occupational therapy was discontinued. (N.T. 451-452).

28. The IEP team met May 26, 2005 to consider a placement for the third grade year. Parents requested placement at the Private School for the 2005-2006 school year. The School District refused and Parents, by letter of June 3, 2005, notified the School District that they intended to seek reimbursement for the Private School placement. (S-9, pp. 3-4; N.T. 575). Parent testified that she received no response to her letter (N.T. 576).

29. Parents did not approve the NOREP and requested a pre-hearing conference. (S-9, p. 2).

30. The May 2005 through May 2006 IEP recommended reading and language arts be delivered in a learning support environment twelve hours per week with itinerant speech and language support of 60 minutes per week. The goals and objectives included two areas: language arts and reading. The language arts goal stated that Student would earn two or three points in each of the five sections on the School District second grade writing rubric. The reading goal stated that Student would be given second grade reading passages to read silently and would answer comprehension questions with 80% accuracy. Among the program modifications were sixty 45-minute sessions beginning September 19, 2005 in a "Multisensory Reading Approach." Under supports for school personnel related to Student's needs, Multisensory Reading Instruction was to take place in both home and school with weekly monitoring beginning September 19, 2005. (S-9).

31. Reference to the central auditory processing disorder should have been included in the IEP (S-9), but it is not. (N.T. 327-328).

32. The IEP does not specifically state that multi-sensory reading instruction would be provided to Student in math or science class. (S-9; N.T. 128).

33. The Orton Gillingham name is not mentioned in the proposed third grade IEP. (N.T. 111; S-9, *see* pgs. 10-11).

34. A need for OT screening was included in the third grade IEP because of the quality of the handwriting in the writing samples. (S-9, p. 7; N.T. 383).

35. The 2005-2006 IEP relied upon a reading evaluation done in late April, 2005 by Dr. F. She concluded that Student had "made significant progress in reading since the fall of 2004." Dr. F. administered a Phonemic Awareness Inventory, letter/sound identification, Botel Test, a running record analysis, and a retelling analysis. She concluded that Student was reading

independently at a pre-primer/primer level (first half of first grade), instructionally at level J, a 2-1 level, and met Student's frustration level at 2-2, level K. (S-9).

36. A pre-hearing conference was conducted on June 28, 2005. The IEP Team reviewed the evaluation report provided by Parents' expert, Dr. P. The Team felt the IEP was appropriate. Parent and Parent's attorney continued to request private school placement. (S-17).

District's Special Education Consultant

37. Dr. D. is a self-employed special education consultant who has been working with the School District for approximately 1½ years. He has a Masters in Special Education and a Doctorate in Educational Leadership. He has 35 years of experience as an educator, teacher, supervisor and administrator of special education and is certified as a teacher of the visually handicapped, social studies teacher, elementary principal, secondary principal, supervisor of special education, and supervisor of pupil services. (N.T. 26-28).

38. Based upon Dr. D.'s review of the records, Student was assessed in all areas of suspected disability. (N.T. 33). Dr. D.'s knowledge comes entirely from reviewing Student's educational records. (N.T. 62).

39. Dr. D. has not personally met Student and has not conducted any evaluations. He attended no IEP meetings but did attend the pre-hearing conference in June, 2005. (N.T. 64-65).

40. Dr. D. was unaware that on January 6, 2004, a document purported to describe Student's placement as the learning support class. This was before the initial January 14, 2004 IEP meeting. (N.T. 78-80; P-1).

41. Dr. D. stated his opinion that the School District offered a free and appropriate public education in the least restrictive environment during the 2003-2004 and 2004-2005 school years. He opined further that Student made progress on each of his goals. Dr. D. was of the opinion that the IEP and placement offered for the 2005-2006 year was reasonably calculated to provide meaningful educational benefit in the least restrictive environment. (N.T. 56-58).

42. Dr. D. conceded that there was no information in the June 2004 IEP under present levels of performance to tell whether Student had developed sound symbol association skills or progress in identifying beginning consonant sounds, the objectives in the prior IEP. (N.T. 95; *see* S-6, p.4).

43. There were no occupational therapy goals contained in the January 2004 IEP. (N.T. 99-100; S-6). There were no occupational therapy goals contained in the September, 2004 IEP. (N.T. 100-101; S-7).

44. Dr. D. agreed that there was nothing in the record to state why occupational therapy had been discontinued in November, 2004. (N.T. 100-101).

45. Dr. D. believes that an Orton Gillingham program is appropriate for Student. (N.T. 105).

46. Dr. D. had a version of Dr. P.'s report that contained only six recommendations. Two additional pages of recommendations were missing from the report Dr. D. reviewed. (N.T. 122-124).

47. The Hearing Officer accepts the testimony of Dr. D. to the extent that it represents a professional review of the records. His opinions will be given little weight inasmuch as they go to the legal issues which must be decided by this Hearing Officer, namely whether or not the IEPs were appropriate under existing legal standards. Dr. D. has no personal knowledge of the Student, the programs actually provided to Student, or the programs and services to be provided to Student under the proposed IEP.

Other District Witnesses

48. Ms. M. is a licensed school psychologist with a Masters Degree in Psychology who has worked for the School District for approximately five years. She has prior experience in working with disabled children. (N.T. 148-150).

49. Ms. M. participated in the development of the IEP for the May 2005 through May 2006 year (S-9). (N.T. 155).

50. The IEP team utilized teacher observations, curriculum based assessments and information from the reading specialists. (N.T. 155-156).

51. According to Ms. M., the IEP Team understood that the School District would be implementing an Orton Gillingham approach. She testified that it was customary to put a general description of the program as opposed to using the "brand name" of the program. (N.T. 157-158).

52. The IEP Team added references to the multi-sensory approach and updated the language arts and writing goals. (S-9; N.T. 161).

53. Ms. M. confirmed that the last two pages of the Dr. P. report were not discussed at the IEP meeting. The team had only recommendations 1 through 6. (N.T. 164-165).

54. According to Ms. M., the May, 2005 IEP (S-9) took steps to make sure the multi-sensory program would be utilized throughout the day by training staff. She believed it would be used in math, social studies, science, and in direct tutoring instruction sessions. (N.T. 167).

55. Ms. M. later conceded that she would have to defer to Dr. F., who would be in charge of the Orton Gillingham program, to determine whether Student would be provided with this instruction in science class. (N.T. 203-204).

56. Ms. M. has not personally evaluated Student or conducted any observations of him. (N.T. 185-186). She had no involvement with Student during the 2004-2005 school year. (N.T. 187).

57. Ms. M. did not see any of the raw scores or protocols from the Woodcock Johnson administered by Ms. B. (N.T. 189-190).

58. Ms. M. ran the raw scores from the WIAT-II and confirmed the scores with the exception of reading comprehension. Ms. M.'s scores are higher than those of Dr. P. (N.T. 170-171).

59. Ms. M. compared the 2003 Woodcock Johnson results administered by Ms. B. with the 2005 WIAT-II administered by Dr. P. (S-22, pg. 3). Ms. M. is of the opinion that the Woodcock Johnson scores tend to be elevated in comparison to the WIAT-II. (N.T. 174-175).

60. Ms. M. found that Student is within average range at the end of second grade in mathematics. (N.T. 178-179). Student is considered average on reading comprehension. Word attack jumped up to average and spelling remained in the slow learner range. (N.T. 175-176).

61. Ms. M. concluded that Student had improved in all areas of reading: reading comprehension, sight word recognition, decoding, and written expression. (N.T. 179).

62. Ms. M. believes Dr. P.'s recommendations 1 through 15 are appropriate for Student. (N.T. 204).

63. Ms. S. has been an occupational therapist with the intermediate unit since 1999. She holds a Masters of Science degree in occupational therapy and is certified in occupational therapy. She has worked in the field since 1998. (N.T. 339-340).

64. Ms. S. discharged Student from occupational therapy in November, 2004 because he was using proper letter size and word spacing, he had improved his ability to cut on curved lines and lines with corners, and had developed shoe tying skills. (N.T. 342). No occupational therapy goals and objectives were specifically included in the January, 2004 IEP. (N.T. 348).

65. When presented with a sample of Student's handwriting from April 2005, the occupational therapist conceded that it did not represent copying upper and lower case letters with proper formation, letter alignment, and size. (N.T. 351; P-3).

66. When confronted with a May 2, 2005 handwriting sample, the occupational therapist agreed that this sample did not reflect proper formation, letter alignment, and size for Student's age. (N.T. 354; S-12, p. 6).

67. Ms. M. has been employed with the School District since 1993. She has been the Principal at Student's school since May 2004. She is certified in early elementary and has a principal certificate. (N.T. 465-466).

68. In December 2004, the Principal investigated a complaint regarding Student giving other students money at lunchtime. The Principal spoke to the students involved and believed that the matter had been resolved. There were no continuing problems. (N.T. 470-471; 515).

69. As a result of the investigation, Student was told not to lend other students money or food, the children involved were to be separated at lunch, and the money was to be repaid. (N.T. 499-500).

70. Mother disputed the return of the money and stated that the children were not separated at lunch based on her personal observation. (N.T. 564-565).

71. Mother complained to Principal M. that Student did not want to go to school and felt sad at times. (N.T. 509-510). No effort was made at that time to evaluate Student to determine his emotional status. (N.T. 510).

72. Regarding the allegations concerning lunch money or food, there were no written reports and no children were disciplined as a result. (N.T. 521-522).

73. Ms. N. has been a special education teacher since 1991 and holds a Master's in Science degree in special education. She is certified in special education. (N.T. 357-358).

74. Ms. N. was a part of the IEP team that developed the first grade IEP. (S-6; N.T. 361).

75. In first grade, Student was placed in Ms. N.'s learning support class with one teacher and full-time aide. Student received reading and language arts instruction in the learning support classroom. All other subjects were offered in the regular classroom. Ms. N. supervised math tests. She worked with six to eight students in reading and language arts from January to June, 2004. Student received a lot of one-on-one attention because Student was unable to work independently. (N.T. 365-367).

76. In the 2004-2005 school year there were 10 students in the learning support room; in reading Student was taught in a group of three. (N.T. 379).

77. Progress reports were prepared by Ms. N. from January to June 2004, but copies cannot now be located. (N.T. 401-402).

78. Ms. N. agreed that the goals and objectives for writing in September 2004 are essentially the same as the ones for January 2004. (N.T. 416-417).

79. By June 2004 Student was writing sentences that were complete thoughts but the subsequent IEP used some of the same objectives. (N.T. 417).

80. As of April 30, 2005, the IEP contains no information about whether or not Student is scoring points on the first grade rubric, but by the fourth quarter he is listed as scoring 2 to 3 points on the first grade rubric. (N.T. 425 - 427).

81. Examining the first grade Holistic Reading Assessment (P-4), Ms. N. thought it was legible but conceded that the capitalization and punctuation were spotty. (P-4 pp. 7, 13; N.T. 429-430).

82. The learning support teacher did not know how many first grade core words student could spell. There is nothing in the progress reports to confirm his level of spelling ability. (See S-10; N.T. 432-433).

83. Many of the documents are missing, but Ms. N. did not know if Student had met the objective of being able to spell the first grade core words. She doubted that he could spell all of them. By way of summary, the learning support teacher could not describe whether Student had met the 2003-2004 goals and objectives in writing, use of the writing rubric, or spelling of first grade core words. (N.T. 435-437).

June, 2005 Psychoeducational Evaluation

84. Dr. P. is a licensed psychologist with a Ph.D. in psychology from Temple University. She is presently in private practice and previously served as the Director of Psychological Services for the Institute for Cognitive Prosthetics in Bala Cynwyd. She is currently an Adjunct Assistant Clinical Professor of Neurology at the Thomas Jefferson University Hospital and has written extensively in the areas of the reading disabled and learning disabled student. (P-22).

85. Dr. P. was offered by Parents to testify as an expert in psychology and in learning disabilities. (N.T. 670).

86. Dr. P. first met Student before he went to kindergarten but she did not perform any evaluations at that time. (N.T. 670-671).

87. In 2005 Dr. P. did perform a psychoeducational evaluation at the request of the Parents and completed her report June 22, 2005. Dr. P. administered a number of tests, including the Wechsler Intelligence Scale for Children, fourth edition (WISC-IV), the Wechsler Individual Achievement Test, second edition (WIAT-II), the Temple University Word Recognition Test, Burns and Roe Informal Reading Inventory, and the Test of Written Language, third edition (TOWL-III). (S-17, p. 6).

88. Dr. P. viewed the WISC-IV scores as showing Student's intellectual functioning in the Very Superior Range with a full scale I.Q. of 136. Student's working memory and processing speed fell within the above average range. Relatively slower speeds of processing were detected and determined to relate to difficulties with graphomotor facility. (S-17, pp. 7-8).

89. On the WIAT-II, Student's lowest areas of performance were in word recognition, writing, and spelling. Student's relative strengths were in understanding and expressing vocabulary concepts, verbal fluency and expression of ideas in logical discourse. Student struggled with word recognition skills and experienced the greatest difficulty with spelling. With the exception of only a very few words, Student attempted to spell most words phonetically. (S-17, p. 9).

90. Using the Burns and Roe Informal Reading Inventory, Dr. P. determined that Student currently had "no reading level where he is independent." According to Dr. P.: "Even though [Student] has some sight vocabulary at the pre primer, primer, and first grade levels, he becomes completely overwhelmed by the task of reading if [Student] must read sentences and paragraphs. [Student] prefers to read orally, struggling word by word, reading very slowly." (S-17, pp. 10-11).

91. Dr. P. concluded that Student is of very superior intellectual potential with a significant discrepancy between intellectual ability and academic achievement in the areas of reading, writing, and spelling. Student meets the criteria for developmental reading disorder and disorder of written expression. Based on these criteria, Dr. P. determined Student is in need of special education services and that the public school cannot adequately accommodate and address Student's needs. She made 15 specific recommendations in her written report. According to Dr. P., Student's remedial program should be based on an intensive, multisensory program, such as the Wilson or Orton Gillingham approaches paced to accommodate Student's difficulties with central auditory processing. Classroom size must be small, the environment should be highly structured and consistent, and there should be intensive remedial instruction in phonics, spelling, and the writing process. (S-17, p. 18; last two pages of her report--which are unnumbered).

School District's Language Arts Specialist

92. Dr. F. has been employed with the School District since September 1996. She holds a Bachelor's in Elementary Education with a reading concentration, a Masters Degree in Library Science, and a Masters in Education and Research and Evaluation. She holds a Ph.D. from the University of Pennsylvania in Reading, Writing and Literacy. She has taught first through fifth grades and ninth grade as well as acted as a reading specialist K through 12. She teaches reading specialist courses as an adjunct professor in several graduate schools of education. She holds a certification in Elementary Education K to 8, Library Science K to 12, and Reading Certification K to 12. She has worked with disabled children for 14 years. (N.T. 217-219).

93. Dr. F. evaluated Student for reading and writing needs in May 2005. (N.T. 219-220).

94. According to Dr. F., on the Botel Test Student scored independent at the primer level, instructional at 1.2 to 2.1, and frustrational at 2.2. (N.T. 224-225).

95. Dr. F. concluded that Student was an extremely bright child experiencing a major reading disorder. There was a significant discrepancy between his intellectual ability and his reading and writing performance. Because Student continues to deal with persistent decoding, encoding, and expressive language difficulties, Dr. F. recommended a language based, multi-sensory, structured, sequential, cumulative, cognitive, flexible, and emotionally sound reading approach. (N.T. 234-235).

96. Dr. F. explained that she did not write “Orton Gillingham” because it is not the School District’s tradition to use brand names. The descriptors she used are words used by the International Dyslexia Association. (N.T. 235).

97. Based upon the 2005-2006 IEP (S-9), Student would receive sixty 45-minute sessions in the multi-sensory reading approach during the third grade year. One person at the elementary school other than Dr. F. was educated in the approach. If she did not take on Student, then Dr. F. would have been Student’s instructor. (N.T. 248). Based upon progress monitoring, the School District “would have worked with the rest of [Student’s] teachers to incorporate multi-sensory approaches across the content area.” (N.T. 250).

98. The School District was planning to administer the Orton Gillingham based approach one-on-one. (N.T. 262-263).

99. Although Dr. F. testified that the instruction would be one-on-one there is nothing in the IEP which provides for one-on-one instruction. (N.T. 326).

100. Dr. F. has 22 reading courses in which Orton Gillingham phonics-based approaches were addressed and she went through additional training during the summer of 2005. (N.T. 251-252).

101. Dr. F. is currently completing Level I certification for Orton Gillingham. (N.T. 275).

102. Dr. F. expressed concern that because Student is extremely bright that Student participate and have access to the regular education curriculum. She also recommended that Student be evaluated for the gifted program because of Student’s high intelligence. (N.T. 263).

103. Dr. F. believed and testified as to how the School District offered a program in conformance with all of D P.’s 15 recommendations. (See N.T. 262-267).

104. A multi-sensory program which is not structured, sequential, and cumulative, would not qualify as an Orton Gillingham program. (N.T. 307-308).

105. Because Student's phonological awareness was intact, Dr. F. concluded that Student's dyslexia was rooted in a lack of instruction and not a neurological condition. (N.T. 309).

106. Student had Orton Gillingham based tutoring provided by his Parents during the summer of 2003, through the 2003-2004 school year, and during the summer of 2004 for at least an hour to an hour and one half per week. (N.T. 531- 533; 550; 685-686; *See* N.T. 311-312).

107. Dr. F. was of the opinion that the multi-sensory remedial reading and writing program would be carried out in the regular education curriculum as well. (N.T. 322-324).

108. The Orton Gillingham approach incorporates writing. (N.T. 326).

Testimony of Mother

109. Mother observed that Student's attitude toward school changed from being a happy child in kindergarten to being upset, distraught, and angry in first grade. (N.T. 541).

110. During the 2003-2004 school year, Parents continued private tutoring once per week for an hour. (N.T. 542-543).

111. After first grade, the tutoring was three times per week for an hour and Student attended a two-week program through LaSalle for enrichment in math. (N.T. 543-544).

112. Mother advised the School District about this tutoring. (N.T. 550).

113. Parents sent a series of letters to Student's elementary school requesting services for Student from August 13, 2004 through June 3, 2005. (P-11; N.T. 544-546).

114. In August 2004, Mother wrote to Principal M. and requested a meeting. Mother wanted Student to have two periods of one-on-one instruction focusing on reading and writing skills with a reading specialist and wanted the School District to provide the tutoring currently provided by Parents at their own expense. (N.T. 548; P-11, p. 1).

115. Approximately two months into the 2004-2005 school year, Student began having headaches and stomach aches. Student hated school. The doctor could find nothing physically wrong. (N.T. 555, 573).

Orton Gillingham Program

116. The Orton Gillingham program would be new to Student's school in the 2005-2006 school year. (N.T. 196-197; 397).

117. Dr. D. testified that during the summer of 2005 the School District has taken steps to train staff in the Orton Gillingham Multi-Sensory Reading Program. This training will continue during the school year. (N.T. 52).

118. As of the October 24, 2005 Hearing, Ms. N. had not had any Orton Gillingham or Wilson method training. (N.T. 399).

119. The Hearing Officer finds, based upon the testimony of Drs. D., F., and P., that Student is an extremely bright child who struggles with persistent language difficulties and dyslexia who is in need of a multi-sensory approach to remediate those needs. (*See, e.g.*, N.T. 268-269).

Private School

120. Student visited the Private School April 19 and 20, 2005. Student was accepted with conditions. The admission profile noted Student was independent at a pre-primer level but had difficulty responding correctly to questions on the primer level. (P-12). This is confirmed by the documentation on a Burns and Roe test dated April 20, 2005. (P-13).

121. The Private School is a non-profit coeducational facility with approximately 95 students ages 7 to 14. The school focuses on the development of reading, writing, speaking and listening skills. It is licensed by the Commonwealth of Pennsylvania and has a pupil/teacher ratio of 6 to 1. (P-14).

122. In July 2005, after participating in a summer program at the Private School, the school reported Student at the primer level and progressing in all areas. (P-15). Mother stated that Student liked to go to this private school and talked about wanting to go there. (N.T. 583; *see also*, P-25).

123. The parties stipulated to the credentials of the teachers at the Private School: Classroom teacher Ms. D. is certified as an elementary teacher K to 6 and as a reading specialist; classroom teacher Ms. R. is certified as an early childhood instructor, in elementary education, and as a teacher of the mental and/or physically handicapped; and Ms. C. is certified as a reading specialist. (N.T. 1053-1054).

124. Public transportation is provided to and from the Private School through the School District at no cost to the Parent. (N.T. 592-593).

125. Student receives speech therapy but not occupational therapy at the Private School. (N.T. 632-634).

CONCLUSIONS OF LAW

1. Student's IEP for the 2004-2005 school year satisfied the legal requirements of the IDEA statute and regulations. Specifically, the IEP was designed to provide meaningful educational benefits in the areas of reading and language arts.

2. Student's IEP for the 2005-2006 school year failed to satisfy the legal requirements of the IDEA statute and regulations. Specifically, the IEP was not individualized nor designed to provide meaningful educational benefits in the needed areas of reading and language arts after the experts agreed that Student needed an Orton-Gillingham type multi-sensory approach.

3. Parents are not entitled to compensatory education services.

4. At the time the selection was made by Parents, the placement at the Private School was "reasonably calculated" to provide Student with educational benefit.

5. There are no equitable considerations which would require the denial of tuition reimbursement.

6. Parents are entitled to reimbursement for tuition and other costs associated with Student's attendance at the Private School for the 2005-2006 school year.

DISCUSSION OF ISSUES

1. Did the School District provide a free appropriate public education (FAPE) to Student during the second grade in the 2004-2005 school year?

The educational standard to which the School District's second grade IEP (S-7) must be compared is established by our state and federal courts. The IDEA does not require states to develop IEPs 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 Third Circuit has defined that standard to mean that more than “trivial” or “de minimus” benefit is required. *See Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 179, 184 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). However, 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 provides meaningful benefit necessary to satisfy the IDEA’s FAPE standard. *See Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 242 (3d Cir. 1999). One of the issues, then, is whether or not the School District has shown that it provided a meaningful benefit to this Student, gauged in terms of demonstrated progress within the educational program.

The IEP for each child with a disability must include certain information which is spelled out by federal regulation, including a statement of the child’s present levels of educational performance; a statement of measurable annual goals, including benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals; and an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 CFR §300.347(a)(1) through (7).

This IEP has all of the required subparts, but this alone is not sufficient. Parents contend that S-7 is deficient because it has a sparse Present Levels of Educational Performance, has only three objectives for reading, two of which were identical, contained vague, non-specific goals and objectives, and did not set forth specially designed instruction to address Student’s needs.

Certainly the IEP is not perfect and there are areas that could have been much better. However, the Present Levels of Educational Performance section does attempt to address the goals from the previous IEP focusing on identification of letters and sight words. The reading and language arts goals are fairly specific and seem to be individualized to Student's particular problems. The Hearing Officer does not agree that the objectives are vague; they could have been more extensive in reading, but both the reading and language arts goals seem quite capable of determining satisfactory completion. For example, "will correctly spell first grade core words" with "80% accuracy." (S-7, p. 6).

With respect to the program modifications and specially designed instruction, they do appear to be individualized and do address Student's needs based on the information available at that time. The Hearing Officer finds that these are indeed designed to provide meaningful educational benefit.

The Hearing Officer is not convinced that the School District knew, or should have known, that Student's educational program was not entirely appropriate at the beginning of the second grade year. This was primarily due to the very limited skills with which Student first entered public school. The first grade year was essentially a remedial one and the second grade year was designed to provide instruction which would result in Student mastering first-grade skills. The Hearing Officer can find no fault with the School District's efforts with respect to S-7 sufficient to result in a conclusion that FAPE was denied.

Therefore, the Hearing Officer concludes that Student's IEP for the 2004-2005 school year satisfied the legal requirements of the IDEA statute and regulations. Specifically, the IEP was designed to provide meaningful educational benefits in the needed areas of reading and language arts.

2. Did the School District offer an appropriate program to Student during the 2005-2006 school year?

By contrast to the second-grade IEP, the third-grade IEP should have been much different than the prior years because the School District by that time had a vastly more extensive fund of information about Student. To a large degree, the offer of FAPE in S-9 boils down to the difference of opinion between the Parent's psychologist and the School District's reading/language arts coordinator. Both women testified knowledgeably and candidly regarding their test results, the scoring of the tests, and their respective conclusions concerning Student's reading levels. Both were impressive witnesses who are genuinely interested in helping Student.

On the one hand, Dr. F. identifies reading difficulties but concludes that Student has made progress during the period he attended public school in first and second grades. She agrees that Student needs a multi-sensory program, not necessarily Orton Gillingham. She clearly stated her opinion that Student would benefit by the placement, goals and objectives contained in the IEP dated May 26, 2005 (S-9). The School District argues that it did not have all of Dr. P.'s recommendations when it devised its June 28, 2005 IEP. (N.T. 259-260). Nevertheless, Dr. F. testified that the third grade IEP would provide all of those services recommended by Dr. P. (N.T. 262-267).

By contrast, Dr. P. is decidedly more pessimistic about Student's academic achievements and argues for private school placement to ensure adequate and appropriate supports and services which she believes cannot be provided in the public elementary school. (N.T. 749-751; 760-761). She argues for an intensive approach throughout the school day and emphasizes that intensive remediation will be required. (N.T. 767-768).

In part, this Hearing Officer is required to determine which of these two witnesses is more credible and to decide whether the School District can provide appropriate public education for this intellectually gifted but learning disabled child. Both women agree generally about Student's needs but disagree regarding an appropriate placement and necessary program. In larger part, the dispute surrounds whether or not Student has made progress in the second grade. Yet, even if he made progress--and the Hearing Officer is inclined to believe that he did make some progress in reading--it is impossible to conclude that this was a direct result of the school's program or more a result of the extensive one-on-one tutoring paid for by parents. The School District's logic is: "if he made progress, the program was appropriate" based upon *Ridgewood, supra*. The School District has succeeded on this argument with respect to the second grade IEP. This is not, however, determinative of the issue of whether or not the third grade IEP was legally sufficient.

Having heard six days of testimony comprising more than 1,200 pages of transcript, this Hearing Officer must conclude that the School District has failed to offer the kind of intensive programming that is required to bring Student's reading, spelling, and written expression to a level commensurate with his academic potential. Even if the reading program is deemed sufficient and appropriate, the efforts in spelling and written expression are decidedly inappropriate. The Hearing Officer understands that the School District is under no obligation to offer the *optimum* academic programming. *Rowley, supra*. Nevertheless, Student is so significantly deficient in the areas of written expression that unless intensive remedial efforts are provided now he is likely to fall further behind his peers and experience more of the emotional problems reported by his mother.

The experts apparently agree that Student requires an intensive multi-sensory program in

reading and written expression, such as Orton Gillingham or Wilson. While the Hearing Officer is not persuaded that the lack of reference to Orton Gillingham is a fundamental flaw in the IEP, the Hearing Officer is concerned about the manner in which a multi-sensory program will be implemented by the School District. First, the 2005-2006 school year would be the initial year for implementation of an Orton Gillingham program. Dr. F. has received substantial training, but she is not yet certified. More troubling, she is apparently the only teacher who has received direct Orton Gillingham training. She, in turn, will be training the other teachers who might have contact with Student. The way in which this entire process will be implemented and individualized for Student is not specified in the IEP as required. *See, In Re: The Educational Assignment of K. T.*, Special Education Appeals Panel Opinion No. 892 (1999).

Much has been made of whether or not Student has shown adequate progress in reading while with the School District in first and second grade. The Hearing Officer is inclined to believe that Student is more at a pre-primer or primer level than second grade. Be that as it may, aside from significant reading difficulties, this Student has severe written language problems. Even a quick glance at exhibits P-3; P-4, pp. 7, 13; S-12, p. 6; and P-16 would convince any educator that Student needs intensive work in the area of written expression, including handwriting.¹

The Language Arts goals and objectives are based upon the School District's writing rubric. They assume that Student is capable of writing sufficiently well to score points on the second-grade rubric. This assumption does not appear sound based even upon the Present Levels of Educational Performance contained in the IEP: Student is described as struggling with

¹ It is almost inexplicable why occupational therapy was discontinued when this Student can barely write legible letters. It is encouraging that the 2005-2006 IEP suggested that occupational therapy be reconsidered.

handwriting and his spelling and writing “continues to be inconsistent.” (S-9, p. 7). The Hearing Officer agrees with Parents that there is woefully little information under Present Levels of Performance to tell exactly how much progress Student made during the prior school year. One has to question how meaningful new goals and objectives can be devised when the team has so little information on which, if any, previous goals have been satisfied. We really do not know how well Student did spelling the first grade core words or on the first grade writing rubric; if the learning support teacher does not know, how can the rest of the IEP Team, including Parents? (N.T. 435-437).

Dr. P. has characterized Student’s writing disability as “severe.” (N.T. 861). There seemed to be no attention to handwriting except as an afterthought. Does it make sense to concentrate on sentence construction when Student can barely make legible letters?

Even if the School District made meaningful progress with Student in reading, there seems to be absolutely no evidence that Student has made any meaningful progress with respect to written expression. By the time the 2005-2006 IEP was being developed, the School District certainly should have noticed that attention must be paid to writing skills. Based upon the Test of Written Language (TOWL) (P-2, pp. 7-8), Student could not complete four of the subtests. The samples of handwriting (P-24) establish illegible handwriting, extremely poor spelling, and an entire story one sentence long. (*See* N.T. 725, 729). When Student failed to accomplish the objective of correctly spelling first grade core words (S-7, p. 4) more and more specific objectives should have been included in the subsequent IEP. They were not. There are simply no offers of increased services to address Student’s significant deficits in written expression during the 2005-2006 school year.

The Hearing Officer does not feel it necessary to resolve many of the disputes about

Student's reading abilities because it is in the area of written expression that the IEP is glaringly deficient. To quote one Appeals Panel, "an IEP is either appropriate or it isn't." *In Re: The Educational Assignment of K. T.*, Special Education Appeals Panel Opinion No. 892, p. 5 (1999). If it is inappropriate with respect to written language, then it doesn't much matter whether it is appropriate in reading.

Orton Gillingham is both a reading and written expression program (N.T. 326), but there is virtually no information in the IEP as to how the Orton Gillingham program is to be implemented across the school day. Because only certain teachers are likely to be schooled in Orton Gillingham, it is not at all clear how this instruction is going to be implemented in math, science, and social studies. If the learning support teacher had not been trained after two months of school (N.T. 399), it is doubtful that any implementation could possibly occur across the curriculum. There was testimony that Student has had difficulty in his math class because Student has difficulty with the reading of math word problems. (N.T. 739). If the IEP is deficient--in an area besides how it addresses the written language deficits--it is in its failure to explain how the Orton Gillingham instruction will be provided on an intensive basis throughout the regular education classes.

In short, the third grade IEP does not meet the legal standards for appropriateness. The offered program, as described in the IEP (S-9), does not constitute FAPE.

3. Are Parents entitled to an award of compensatory education?

Compensatory education is a remedy designed to provide a student with the services student should have received pursuant to FAPE. When a student has been denied an appropriate educational program, compensatory education is an in-kind remedy. *Lester H. v. Gilhool*, 916

F.2d 865 (3d Cir. 1990), *cert. denied*, 499 U.S. 923 (1991). Having found that the School District offered and implemented an appropriate educational program for the 2004-2005 school year, there can be no award of compensatory education for that year.

4. Are Parents entitled to tuition reimbursement for the private school placement during the 2005-2006 school year?

The caselaw requires the Hearing Officer to engage in the standard three-step analysis set forth in *Florence County School District Four v. Carter*, 510 U.S. 7, 114 S. Ct. 361 (1993), and *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359, 105 S.Ct. 1996 (1985). The three-step Burlington-Carter tuition reimbursement analysis provides that parents shall be reimbursed for their private school tuition if: (1) the School District has failed to offer an appropriate program; (2) the parents' placement is appropriate; and, (3) the balance of the equities favors the parents' unilateral placement.

Did the School District offer an appropriate program?

As described in the preceding pages, the Hearing Officer believes that the School District has failed to offer an appropriate program for Student's third-grade year. The IEP (S-9) has significant deficiencies, particularly in written expression, as enumerated above. These deficiencies compel a finding that Student was not offered FAPE for 2005-2006.

Is Student's current placement appropriate?

Parents' choice for private school need not satisfy the IDEA requirements in order to qualify for reimbursement. The standard is whether the placement was "reasonably calculated" to provide Student with educational benefit. *In Re: M.K.*, Special Education Opinion No. 1445

(2004).

The Hearing Officer has no doubt that placement at the Private School would be “reasonably calculated” to provide Student with educational benefit. The Private School offers a small school environment devoted to students with learning disabilities in reading and written expression. The 6 to 1 pupil-to-teacher ratio is the kind of small-group environment which Student needs for intensive and remedial instruction. Further, the Private School can, and apparently does, offer a program designed to address Student’s unique disabilities across the curriculum using trained teachers.

The Hearing Officer understands that the test focuses on the appropriateness of the placement at the time the selection was made, *see Rairdan M. v. Solanco School District*, 1998 WL 401637 at 4 (E.D. Pa). The intensely personal interaction between Student and teacher using the Orton Gillingham method, as described by Dr. P., appears to be extremely beneficial to Student in hindsight. Even at the time the selection was made, this kind of placement would be “reasonably calculated” to provide Student with educational benefit.

The School District argues that the law requires that students be placed in the least restrictive environment that will provide meaningful educational benefit, citing *T.R.*, 205 F.3d. 572. This is an accurate understanding of the law. The Hearing Officer is convinced that the nature and severity of Student’s disability prevent the satisfactory provision of services in regular classes even with pull-out services as described in the third-grade IEP. Consequently, the Private School placement is appropriate as a limited, remedial measure.

Do the equities favor reimbursement?

The Hearing Officer heard nothing that would suggest anything other than a good faith effort on the part of the Parents. Obviously, these are loving parents who have placed high priority on the best interest of their child. They have worked with the School District to bring Student up to grade level, but they were disappointed that a consistent reading program had not been implemented. They wrote repeatedly to make suggestions about how services could be increased or improved. It is understandable that they are insisting on an intensive remedial program in both reading and written expression. Further, they provided reasonable notice to the School District that they intended to enroll Student in private school. There are no equitable considerations which would weigh against tuition reimbursement.

For all of these reasons, the Hearing Officer must conclude that the School District failed to offer FAPE for the third grade year, that the Private School is appropriate, and that there are no equities which would prevent the award of tuition reimbursement.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. Because Student's IEP for the 2004-2005 school year satisfied the legal requirements of the IDEA statute and regulations, Parents are not entitled to compensatory education services.

2. Parents are entitled to reimbursement for tuition and other costs associated with Student's attendance at the Private School for the 2005-2006 school year.

Date: July 18, 2006

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