

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

Pennsylvania  
Special Education Hearing Officer

DECISION

Child's Name: Student

Date of Birth: xx/xx/xx

Date of Hearing: May 27, 2010

**CLOSED HEARING**

ODR Case # 00962-09-10-AS

Parties to the Hearing:

Representative:

Pro Se

Cumberland Valley School District  
6746 Carlisle Pike  
Mechanicsburg, PA 17050

Karl Romberger, Esq.  
Sweet, Stevens, et. al.  
331 E. Butler Avenue  
New Britain, PA 18901

Date Record Closed:

May 27, 2010

Date of Decision:

June 11, 2010

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (“student”) is a pre-teen aged student who has been identified as student with a disability who receives learning support in reading and supports for organization and study skills. The student resides in the Cumberland Valley School District (“District”). The parties do not dispute that the student has a disability and qualifies for services under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup>. The student’s parents claim that, due to a vision irregularity, the student should receive vision therapy as a related service. The District maintains that vision therapy is not necessary for the provision of a free appropriate public education (“FAPE”) to the student under federal and Pennsylvania law.

## **ISSUES**

Must the District provide vision therapy to the student as a related service?

## **FINDINGS OF FACT**

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<sup>1</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §14.132.

1. The student attends a District middle school and receives supports in reading as well as organization and study skills. (School District Exhibit ["S"]-12).
2. The student has been seen by multiple doctors of optometry and been diagnosed as having amblyopia where the right eye achieves 20/20 vision but the left eye achieves 20/40 vision. The student also has "a distance astigmatism and near inability to focus". (S-5).
3. One of the doctor's reports indicates: "The near vision lack of accommodation....does not allow (the student) to read up close very well at all. The energy (the student's) eyes need to focus is extremely fatiguing". (S-5 at page 8).
4. The student has been prescribed eyeglasses without reported improvement. There are indications, however, that the student has not worn the eyeglasses. (S-5 at page 8; NT at 68-69).
5. The student's parents have concerns that the student cannot see clearly and, therefore, the student's concentration, reading, and comprehension are adversely affected. Parents report that the student complains of dry, aching eyes and headaches. The student has not registered such complaints with the learning support teacher. (Notes of Testimony ["NT"] at 82-83, 93).
6. The student has not complained to the learning support teacher that the student has visual difficulty or discomfort with reading or close-up work. (NT at 68-69).

7. In November 2009, the parents requested that the District provide vision therapy services to the student. (S-5 at pages 1-2).
8. The District issued a notice of recommended educational placement following an individualized education plan (“IEP”) team meeting in January 2010, denying the request for vision therapy. The parent disagreed with the District recommendation and requested due process. (S-13).
9. The type of vision therapy at issue in this proceeding is a modality where an individual undergoes specific eye exercises to strengthen musculature around the eyes, thereby alleviating certain eye conditions. The parents presented the results of a study by the National Eye Institute at the National Institutes of Health which indicated support for the success of vision therapy in such cases. The District countered with a joint statement from the American Academy of Pediatrics and a number of professional ophthalmological organizations that finds no evidence of the efficacy of vision therapy in the treatment of students with dyslexia and/or learning disabilities. (Parents’ Exhibit [“P”]-1, P-2; S-4, S-8 at pages 3-4).

## **DISCUSSION AND CONCLUSIONS OF LAW**

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), an IEP must be “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning.” Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

Under the terms of the IDEA, a child with a disability always requires special education as part of his or Student program. (34 C.F.R. §300.8). The child may also require related services, defined as “developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education”. (34 C.F.R. §300.34(a)). Specific types of related services and sub-definitions are part of the regulatory language (34 C.F.R. §300.34(b)(c)) and do not include vision therapy. Nothing in the statute or regulations, however, indicates that the related services at 34 C.F.R. §300.34 are an exhaustive list, excluding a developmental, corrective or other supportive service not contained in that section that might still be required to assist a child with a disability to benefit from special education.

In this case, both parties have presented compelling arguments. The student’s father ably represented the family’s interest and testified credibly as to his understanding of the student’s vision issues, as well as his perception of the student’s needs. (FF 2, 3, 4, 5). The District’s

witnesses also testified credibly that the student's vision needs, if any, do not appear to play a role in the instruction and progress of the student. (FF 4, 5, 6). In support of their positions, both parties presented opposing statements/research reports from respected professional bodies. (FF 9).

On balance, the record contains substantive evidence to support both parties' contentions. What is missing, however, is any contemporaneous evaluation report of whether the student has vision needs in the context of reading/close-up work. Therefore, under the authority of 34 C.F.R. §300.502(d), this hearing officer will order a vision services evaluation, particularly targeting whether the student requires support, intervention, or therapies in the context of reading/close-up work. The details of the evaluation process will be spelled out in the order below.

### **CONCLUSION**

The District will be responsible for obtaining an independent vision services evaluation for the student for consideration by the IEP team.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, and pursuant to the authority of a hearing officer to request an independent evaluation under the terms of 34 C.F.R. §300.502(d), the Cumberland Valley School District shall coordinate with its local intermediate unit (Capital Area Intermediate Unit 15) to arrange for an independent vision services evaluation. The scope and procedures of the evaluation shall be within the discretion of the vision services professional performing the evaluation, but the instructions provided to the evaluator must stress the need to evaluate the student's need for vision services for reading and close-up work.

The evaluation should be undertaken, and the evaluation report issued, as soon as reasonably possible, although the re-evaluation timeline will be governed by 14 PA Code §14.124(b). The IEP team shall meet within 10 calendar days of the issuance of the vision services evaluation report to consider its findings and recommendations.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

June 11, 2010