

*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: TT

Date of Birth: XX-XX-XXXX

Date of Hearing: August 31, 2009

CLOSED HEARING

ODR No. 00034-0910AS

Parties to the Hearing:

Parent:

School District:  
Mimi Rose, Esq.  
Office of General Counsel  
School District of Philadelphia  
440 North Broad Street, 3rd Floor  
Philadelphia, PA 19130-4015

Date Record Closed:

September 4, 2009

Date of Decision: September 18, 2009

Hearing Officer: Daniel J. Myers

### **INTRODUCTION AND PROCEDURAL HISTORY**

“Student” (Student)<sup>1</sup> is a resident of the Philadelphia School District (District) whose parent complains that the District did not follow through with Child Find regulations, did not provide a free appropriate public education (FAPE), and did not appropriately program for Student’s reading disability. As relief, the Parent requests an independent evaluation, Sylvan learning center tutoring, summer reading assistance, Wilson Reading training for Student’s current reading teacher, and a research-based program. Because Student’s parent did not appear at the scheduled due process hearing, despite appropriate notice, no evidence was produced to support Parent’s complaint. Accordingly, this matter is dismissed.

### **ISSUE**

Whether the due process hearing may be dismissed where Parent had notice of the due process hearing, opportunity to attend the hearing, and did not attend the hearing?

### **FINDINGS OF FACT**

1. Student is a resident of the District. (NT 7)<sup>2</sup>
2. On or about June 10, 2009, Student’s parent filed a due process complaint notice alleging that District did not comply with Child Find regulations, did not provide

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<sup>1</sup> All future references to Taylor will be generic and gender-neutral. These impersonal references to Student are not intended to be disrespectful but rather to respect his/her privacy.

<sup>2</sup> References to “HO” are to the Hearing Officer exhibits. References to “N.T.” are to the transcript of the hearing conducted in this matter.

- FAPE and did not properly identify Student. The complaint alleges that Student was found to have a Learning Disability and Student's progress has been stifled because Student was not receiving assistance. The relief requested was: an independent evaluation to follow up with the current school's recommended placement; Sylvan learning center tutoring and summer reading assistance; Wilson Reading training for Student's current reading teacher, and a research based program. The complaint states that Parent would prefer to resolve the dispute, but due process is needed if resolution is not possible.
3. In response to a June 10, 2009 due process hearing request filed by Student's Parent, a due process hearing was scheduled for August 31, 2009 at 6:00 p.m. (HO 2)
  4. Pursuant to federal regulations at 34 CFR §300.510, the District attempted at least three times to contact Student's Parent to resolve their dispute. (NT 7)
  5. Parent never appeared at a resolution session. (NT 7)
  6. Before opening the August 31, 2009 due process hearing, the hearing officer left messages for Student's Parent by telephone and by email at the numbers and addresses on the due process hearing complaint. (NT 5)
  7. In Parent's absence, the hearing was considered to be a closed hearing (not open to the public) so as to protect Student's confidentiality. (NT 6)
  8. Parent never appeared at the August 31, 2009 due process hearing. (NT 9)

### **DISCUSSION AND CONCLUSIONS OF LAW**

The United States Supreme Court has held that, in a special education administrative hearing, the burden of persuasion (which is only one element of the larger

burden of proof) is upon the party seeking relief, whether that party is the disabled child or the school district. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005) If one party produces more persuasive evidence than the other party (regardless of who seeks relief), then the Supreme Court's ruling is not at issue – in that case I must simply find in favor of the party with the more persuasive evidence. In this case, the Parent bears the burden of persuasion because she seeks relief in the form of an independent evaluation, Sylvan learning center tutoring, summer reading assistance, Wilson Reading training for Student's current reading teacher, and a research-based program.

Both parties had legally sufficient notice that the due process hearing was to be held on August 31, 2009. The Hearing Officer properly opened the record as a "closed" hearing (i.e., not open to the public). It is not an abuse of discretion to commence the hearing when the Parent fails to attend. Parental absence does not preclude the hearing.

Of course, because Student's Parent did not appear for the hearing, no evidence was produced to support the allegations in the complaint. Consequently, Student's Parent failed to satisfy her burden of proof. Accordingly, this matter shall be dismissed and considered closed, with no action required of the District.

### **CONCLUSION**

Student's Parent failed to appear for the duly scheduled due process hearing. Consequently, Student's Parent failed to satisfy her burden of proof and this matter is dismissed, with no action required of the District.

**ORDER**

This matter is DISMISSED and considered CLOSED.

No action is required of the District.

*Daniel J. Myers*

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Daniel J. Myers  
HEARING OFFICER

September 18, 2009

“Student”  
Philadelphia School District  
ODR No. 00034-0910AS