

Specific Learning Disability. The student's primary health issues include a seizure disorder, chromosomal issue and apraxia. The non-verbal learning disability exhibits itself in weaknesses in visual perception and hands on activities. The student's verbal performance is much stronger than the student's hands on skills. The most recent intelligence testing (Page 144) clearly shows a pattern of performance since the student was a young child. Over the years the student has received speech and language therapy, physical therapy, counseling, assistance in the resource room, assistance from a LD specialist as well as educational assistants. As the student entered high school there were aides available. The student is in a resource room class with aides, and an additional assistant to meet with the student every day at the end of day. Academically, the student has earned fourteen (14) credits to date (SD-177) with an overall average of 73.3 and an overall ranking of 331 out of 474 students. Homework has been a problem going back to elementary school. The student generally resists doing homework and tries to get around it. Homework will continue to become more difficult for the student as the student takes higher level classes. The student has adopted an attitude of fighting the homework. The student enjoys history, particularly the United States Constitution, physics and Harry Potter. The student dislikes english, math, and writing and as described by Ms. Palle as a minimalist. The tenth grade IEP provided for small classes, individual speech and language, individual counseling and individual occupational therapy. The speech language was to address written language and social pragmatics. With respect to the student's social skills relative to peers and teachers, Ms. Palle described the student as a person who talks a lot and answers a lot of questions and is greeted daily. However, Ms. Palle has come to understand from the Parents that the student has only one friend. The student's attendance was described by Ms. Palle as great. She did indicate that the student has an unusual speech tone, which she described as sluggishness. Ms. Palle reviewed the proposed changes between the IEP proposed in the tenth grade IEP indicating that the student would continue in the resource room program for seven and one half (7 ½) hours a week and continue with thirty (30) minutes per week of counseling. The OT proposed was an additional thirty (30) minutes over the previous IEP. The speech language consult would remain the same as with the OT consult. There would be a social skills speech language group for one hundred eighty (180) minutes per week as opposed to ninety (90) minutes in the previous IEP. Otherwise, the student would have regular classes with modifications. Ms. Palle felt that the technology proponents of the IEP set out at Page 12 of the IEP were fully appropriate to meet the student's needs. Ms. Palle indicated that the special education teacher and aide aspects of the IEP at Page 12 and 13 adequately addressed the student's disabilities in conjunction with the agreed upon proposed revisions to the July 7, 2005 IEP set forth in the documents submitted at the beginning of the hearing. With respect to the behavior support provisions of the IEP at Page 13 and 14, she indicated that this was a new section on the IEP which in her opinion would provide positive support and reinforcement for the student and that these adequately addressed the student's disabilities and needs. Ms. Palle further felt that the transition services at Page 15 and 16 of the IEP were adequate and that the short term objectives and benchmarks on the present level of performance were appropriate. The self advocacy portion of the IEP was removed by agreement of the parties in the documentation submitted to the Hearing Officer at the start of the hearing. Ms. Palle reviewed the short term goals and objectives and present levels of performance with respect to academic independence and self advocacy skills at Pages 12 and 13 of the IEP and opined that these were adequate to address the student's needs and disabilities. Ms. Palle further felt that the social skills provisions in the IEP at Page 23 which had been submitted by the counselor were appropriate given the student's disabilities. Overall, Ms. Palle felt that the IEP was appropriate for the student and that the team did consider the Parents objections. Ms. Palle denied that the District committed any of the procedural violations alleged by the Parents and indicated that she had reviewed those allegations.

On cross examination, there was discussion back and forth as to what discovery material had been provided to the Parents. Based on the cross examination with respect to that issue, the Hearing

Officer is unable to determine that the District failed to provide the necessary discovery. Ms. Palle indicated that she decided to file for Due Process because the Parents had rejected the IEP, and Assistant Superintendent Prohl was away on vacation and she had to make a decision so decided to file. Ms. Palle acknowledged that the Parents had difficulties with Karen Arnold as the Occupational Therapist and denied that she had told the Parents that the District would pay for Health South to provide the OT services. Ms. Palle acknowledged that she was aware that the student had never been invited to a party, had never been invited to visit anyone's home and never gotten a phone call from any friend. She also agreed that the monotone sound of the student's voice clouds the student's intelligence. Ms. Palle denied that the District refused to pay for speech therapy services. There was then extensive questioning regarding e-mails which the Hearing Officer finds to be irrelevant and of no assistance in attempting to make a determination regarding the proffered IEP. Ms. Palle felt that the Parents' concerns kept shifting with respect to the IEP so that she reached a point where she could not believe that the parties would be able to reach agreement and consequently, she filed for Due Process.

Jane Cogswell, Special Education employee at the high school testified as the next School District witness. She works with the social skills group that the student presently attends. The most important social skills are practiced weekly in a small group setting with a group of four (4) students. The group involves students with difficulties in social interaction, listening, and learning to listen. The student is part of the group and does an excellent job in the group both in terms of listening and avoiding changing the subject. The student needs to practice eye contact and to initiate conversations. Ms. Cogswell has no problems understanding the student though she does acknowledge that the student has a monotone delivery. Other students in the program understand the student. In her opinion, the student is good natured and happy in the group.

On cross examination, Ms. Cogswell acknowledged that the Parent was willing to work with her in the social skills group and she further denied that a group of eight (8) students would be better than a group of three, four, or five (3,4,or 5). She was not surprised that eye contact has been a goal for the student for a number of years.

Jonathan Clancy, Speech Language Pathologist testified for the District and his resume is at SD-2. He has been involved with the student since ninth grade working on language skills including written language and pragmatic language. The pragmatics focus on not repeating one-self, not using stereo type language, not interrupting, looking at a speaker when speaking to him/her, listening and appropriately participating in group. Mr. Clancy has been involved in both the contested IEP and prior IEP's, he provided an evaluation of the student in the Spring of 2005, which is set out at SD-129. Mr. Clancy focus is primarily on english and he indicated that twice so far this school year the student has done a rough draft of a project and arrived with it completed, whereas, last year that would not have been the case. Mr. Clancy felt that the student is more invested in writing this year and he further agreed that the goals and objective and benchmarks relative to pragmatic skills were appropriate.

On cross examination, Mr. Clancy acknowledged that in prior IEP's the student's rate and tone of speech were objectives to be worked on. This was also the case in the social skills group. Mr. Clancy acknowledged that the student's voice is a monotone, and that changing one's voice tone can be difficult to learn. Mr. Clancy did not agree that people in general would form a negative impression of the student based on the student's vocal tone. He acknowledged that transition is an obligation that the District must fulfill and he could not say whether or not vocal tone should be part of the transition plan, but that if another professional recommended that it be so, then he would not contest that. He also indicated that he learned in September, 2005 that the Parents were looking for speech therapy for vocal tone and articulation so that issue was not raised by the Parents at the IEP meetings. Mr. Clancy further agreed that the student tends to get over excited and this is part of the student's disability such that the student tends to speak too fast when excited about a favorite topic. Mr. Clancy was not aware that the student was a social outcast.

Karen Arnold testified as the last District witness. She is the Occupational Therapist and her resume is at SD-1. She had known the student since sixth grade and has worked with the student both directly and on a consult basis. She was involved in IEP development since the sixth grade was further involved in the contested IEP. The contested IEP calls for occupational direct individual therapy ninety (90) minutes per week with an OT consult of thirty (30) minutes per week and an additional 2.5 hours per month. Ms. Arnold would be involved on the transition plan set out at Page 15 and 16 of the IEP, and she felt that the OT portions of the IEP were sufficient to accommodate the student's disabilities.

On cross examination, Ms. Arnold acknowledged that job shadowing was part of the DOE Complaint and found that student had not been provided with job shadowing as he was supposed to have been, though the IEP at Page 15 indicates that the District had in fact provided the job shadowing. With respect to the student's ability collate paper, it was Ms. Arnold's position that the student can do so, although with some difficulty. She felt likewise regarding the student's ability to file items in the student's folder and she agreed that Parent Exhibit 22 was a sample of the student's handwriting. It was her feeling that the student needs OT services to help with coordination and visual perceptual skills. At the close of Ms. Arnold's cross examination the District rested.

The Parents presented their case on October 14, 2005 . The mother testified in response to questions from the father. The mother took the position that the IEP is not appropriate and does not address all of the student's needs. With respect to the Health South evaluation, Parents Exhibit 23, the mother took the position that Karen Arnold agreed with the evaluation's findings that there were deficits in visual, perceptual skills, motor performance/coordination and processing skills as well as fine motor control, visual special organization, perceptual reasoning and processing speeds. The mother took the position that with all of the deficits the goals and objectives of the IEP were not appropriate and there were critical deficits. The OT services would not sufficient to address the needs in those areas. Further, the mother opined that the IEP did not reflect long standing weaknesses and issues of visual attention and motor planning as well as perceptual reasoning. She argued that there was a significant decrease in performance in the student's WISC evaluations between 1997 and 2004 and that the IEP does not accurately address this issue. She complained that the OT person had the reports from Health South for over a month before the IEP meeting, yet did not draft goals and objectives to address those deficit areas.

The mother further took the position that the student has significant deficits in social skills areas and that with respect to the ninety (90) minute per week speech pragmatics group, that the student could only take that for one semester and would therefore lose it for the second semester. It was the mother's testimony that the student made progress over the summer during ESY working five (5) hours per day on speech pragmatics and that to reduce that to ninety (90) minutes per week for one semester would be insufficient. She took the position that articulation and tone and rate of speech were other issues that needed to be addressed in the IEP. She further felt that Mr. Clancy had insufficient experience in dealing with children with speech articulation problems and speech tone problems that the student faces. With respect to the 7.5 hours of small group, this is the same amount of time as in the previous IEP and all of the related services are supposed to take place within that 7.5 hours, which the mother believes is not sufficient. The Parent further opined that there is not enough structure in the prep., resource room, and that the student is on the computer, not performing assignments, too often. The class rank of 331 out of 474 is in the bottom twenty-five percent (25%) of the class, whereas the middle school the student was performing with A and B grades. In her opinion, the District has taken the position that the student is making a good transition to high school, where his grades do not reflect this. In addition, the Parent was concerned that the IEP would not be implemented even if agreed upon because last year's was not, which resulted in the complaint to the Department of Education. (Parent's Exhibit 28). With respect to the use of Karen Arnold as the OT specialist, the mother felt that there was a lot of miscommunication between Ms. Arnold and outside agencies, and that there have been claims

that the student has cerebral palsy when in fact the student does not, and that in addition, Ms. Arnold has claimed that the student is a typical fifteen year old, whereas the mother believes that the student is not. In addition, Ms. Arnold has indicated that the student chooses to wear shoes that do not have to be tied, whereas in fact the student is unable to tie the student's own shoes. The mother felt that Ms. Arnold failed to set up the volunteer job at Concord Hospital correctly, and that as late as April, 2005 (Parent Exhibit 23) Ms. Arnold had again told Health South that the student has cerebral palsy. She further stated that Donna Palle had agreed that Health South would provide OT services. She felt that the special education staff was not communicating with the regular education teachers as required in the IEP, and that at a recent back to school meeting, the math teacher indicated that he could not speak to the Parents about the IEP because "you'll have to ask special education people."

On cross examination, there was reference to a handwritten letter outlining rejection of the IEP dated July 29, 2005 . The mother acknowledged that no where in the letter was there any mention of speech therapy for speech articulation and the mother further indicated that she was not aware as to whether or not tapes of the team meetings would include a request for speech therapy or speech articulation therapy. She further agreed that the tenth grade IEP which was agreed to by the Parents (Parent Exhibit 3) had no goals for speech therapy or articulation therapy. With respect to the report form McLane Hospital, Parent Exhibit 34, the mother acknowledged that this reporter was the only person who has examined the student in the last two years who indicated that the student needed speech therapy for articulation and speech skills and the report was not provide to the District until October 4, 2005, although the IEP was rejected several months before that time. In addition, the mother was critical of John Clancy for not using measurable items in the present level of performance (Page 10 of the IEP) yet, the McLane Report (Parent Exhibit 34) had no measurable items because of the level of performance either.

The mother acknowledged that the stay put IEP did not provide for the social interaction/pragmatic peer group that the student is presently enrolled in however, the student is enrolled in that program notwithstanding. Counsel for the District indicated that with respect to the second semester and the student's inability to be involved in that group, that the District would change the schedule of the group so that the student can participate in it. As such, that commitment has been made by the District and is Ordered by the Hearing Officer. With respect to the neuropsychological evaluation, the mother acknowledged that the evaluation results have not yet been reported and would not be ready for several more weeks as of the date of her testimony. With respect to the miscommunication between Karen Arnold and ATEC, the mother acknowledged that there is a letter from ATEC to Donna Palle apologizing for miscommunication, although the letter was not in evidence. The mother acknowledged that in July she indicated that she was not looking for counseling for the student, yet her September 8, 2005 e-mail requests counseling.

The father testified next and indicated that the Parents would not have filed for Due Process and wanted to work things out with the District and felt that they had been dragged into the process. The father felt that in the prep resource room the student spends too much inappropriate time on the computer. The father was concerned about the social skills interaction group not continuing in the second semester however, that has already been addressed above and is Ordered by the Hearing Officer. The father would like Health South to provide the OT services and pointed out that after years of failing to learn how to swim, the student did learn how to swim when working with Health South. The father would like to see a true job shadowing plan implemented by someone other than Karen Arnold. In addition, the father indicated that there has been no job shadowing so far this academic school year. It was the father's opinion that the issues relative to articulation and speech therapy are not major issues, but have been made into them and he does not understand why. With respect to the prep resource room, 7.5 hours per week, the father indicated that the student is having trouble in physics and needs help, but is not getting any assistance during the prep. time. With respect to the Due Process Hearing it was the father's

position that things have gotten out of hand between the Parents and the District and that everything changed when the Parents filed a Complaint with the Department of Education. The parties have worked together for thirteen (13) years without a problem and he feels that as a result of the Complaint filed by the Parents with the Department of Education, the District is out for revenge and is not interested in settling when all past differences have been settled. It was his position also that the relationship between the parties is probably poisoned for the future. It was the father's position that the District is resistant to using Health South for OT service because the District likes to do things "in-house." The student's disability is not a common one, and in-house expertise is not likely to be sufficient. Outside expertise is particularly necessary in areas such as OT and transition. The student can easily read a long book, but cannot write a decent paragraph.

On cross examination, there was further dispute with respect to the use of the computer, and whether the student rushes through his homework so that he may use the computer for non-education purposes. Counsel for the District showed a letter to the father addressed to Laurie Lowd, wherein the father indicated that Ms. Lowd was doing an excellent job working with the student, and that the student was doing the student's homework.

Decision.

The Hearing Officer is satisfied that the IEP proposed by the District as amended by the agreed upon proposed revisions to July 7, 2005 IEP documents submitted to the Hearing Officer at the start of hearing is reasonably calculated to provide an adequate education and is therefore appropriate, Board of Education v. Rowley, 458 U.S. 176 (1982). It is clear from the testimony of all witnesses that the student is making adequate progress in high school and there is no justification in finding that it is necessary for occupational therapy to be provided by Health South or any other third party. The parties are encouraged to work together and not feel that their relationship has been poisoned as a result of this Due Process proceeding. It is clear to the Hearing Officer based on the testimony of the witnesses that the District is making every effort to provide FAPE to the student, that the student is progressing despite the student's education handicaps and that the offered program is adequate under the provision of the IDEA.

Appeal Rights.

If either party is aggrieved by the Decision of the Hearing Officer set forth above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commission of Education when either the District or the Parent seeks judicial review of the Decision.

Statement of Compliance with ED-1128.22 (b).

If neither party appeals this decision to a Court then the District shall within ninety (90) days provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

SO ORDERED.

Dated: 11/9/05 John P. LeBrun, Hearing Officer