

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH-FY-07-12-036
IDPH-FY- 07-01-043
/ *Hooksett School District*

OPINION AND ORDER OF HEARING OFFICER

I. PROCEDURAL BACKGROUND

This consolidated matter was initiated on December 11, 2006, by the Parent of Student . . . , (“the Parent”) who filed a Complaint against the Hooksett School District (“the School District”) with the New Hampshire Department of Education. The Complaint was later amended effective January 2, 2007. The Parent’s Complaint, as amended, objects to the actions of the School District relative to the Parent’s request that she be provided a “weekly syllabus” relative to Student’s education and also objects to both the School District’s reevaluation of Student and its recent determination that Student was no longer eligible for special education services. On January 9, 2007, the School District filed its Complaint seeking an order affirming the November 29, 2006 IEP team decision that Student is no longer a child with a disability and, as a result, is not eligible for continued special education services pursuant to 20 U.S.C. § 1401(3), 34 C.F.R. § 300.8, RSA 186-C:2, I and Ed 1102.09. The School District’s motion to consolidate the two Complaints was granted without objection and this proceeding followed.

The Parent was initially represented by legal counsel, Raymond Foss, who appeared with the Parent at the prehearing conference on February 2, 2007. On February 17, 2007, however, Attorney Foss filed a Notice of Withdrawal. In light of the withdrawal of Attorney Foss, the Parent’s motion to continue the hearing scheduled for February 20, 2007 was granted. The hearing was ultimately rescheduled for April 19, 2007 to allow the Parent an opportunity to obtain alternative legal counsel. The Parent ultimately proceeded at the hearing on a *pro se* basis.

At the Hearing, the School District presented testimony from five witnesses, Speech Language Pathologist Jacqueline A. Perra, Science Teacher Barbara Thinnes, Fourth Grade Teacher Karen Roy, School Psychologist Cary Grant and Elementary Special Education Coordinator Justine Sheppard. The Parent testified on behalf of her son and did not call any other witnesses. In addition, the parties submitted a written exhibit packet with a rather voluminous amount of documentary evidence. At the conclusion of the hearing, the parties were authorized to submit post-hearing memoranda or requests for findings and rulings by no later than April 30, 2007. The School District, in response, timely filed its Proposed Findings of Fact and Rulings of Law and a Proposed Order. The Parent did not submit any post-hearing pleadings.

II. FINDINGS OF FACT

1. Student was born on November 13, 1996 and is currently attending Hooksett Memorial School as a fourth grader. (Ex. 1; Testimony Ms. Roy).
2. In October 2003, during Student’s first grade, . . . , Student’s mother, requested the Hooksett School District (the “School District”) to evaluate her son due to her concerns about his articulation and expressive language skills. With the Parent’s agreement, the

- School District conducted testing in the areas of academic achievement and communication and performed a hearing/vision screening in order to determine if Student was a student with an educational disability and in need of special education services. (Testimony Ms. Perra, Mr. Grant; Affidavit Ms. Sheppard ¶2; Exhibits 6, 9, 10, 11).
3. Subsequently, speech language pathologist Jacqueline Perra conducted speech language assessments and school psychologist Cary Grant conducted achievement testing. The Parent consented to the evaluation plan. (Testimony Ms. Perra, Testimony Mr. Grant; Affidavit Mr. Grant ¶3; Affidavit Ms. Perra ¶3; Exhibits 11, 12, 13, 132).
 4. The speech language assessment established that Student's overall language skills were below average with his auditory perceptual skills ranging from average to significantly below average. The assessment further indicated that Student's articulation skills were also below age level. (Testimony Ms. Perra; Affidavit Ms. Perra ¶4; Exhibits 13, 132).

1. The achievement test results documented academic skills in the high average to superior range, suggesting that Student should be able to perform in the regular classroom with relative ease. (Affidavit Mr. Grant ¶4; Exhibit 12, page 21, Exhibit 132)
2. On January 15, 2004, the School District identified Student as eligible for special education under the code of speech language impaired. The Parent consented to the identification. (Testimony Ms. Perra, Testimony Mr. Grant; Affidavit Ms. Perra ¶5, Affidavit Mr. Grant ¶5, Affidavit Ms. Sheppard ¶3; Exhibits 16, 17, 18, page 39)
3. Later in 2004, the team developed an initial individualized education program ("IEP") to address Student's speech and language skills as well as reading comprehension skills. The Parent agreed to the IEP which included sixty minutes of speech/language therapy and ninety minutes of special education language arts instruction in the resource room. (Testimony Ms. Perra; Affidavit Ms. Perra ¶6, Affidavit Ms. Sheppard ¶3; Exhibits 23, 24, 25, 35, page 68)
4. Approximately six months later, at the beginning of Student's second grade year, the Parent requested the team to amend Student's IEP to remove resource room assistance, the only specially designed instruction he was receiving. The team complied with this request. (Testimony Ms. Perra; Affidavit Ms. Perra ¶7, Affidavit Ms. Sheppard ¶4; Exhibits 36, 37, 38).
5. In response to the Parent's request that special education instruction be discontinued, the team also removed the language arts goal from Student's IEP at that time. (Affidavit Ms. Perra ¶8; Exhibit 38, page 85).
6. Over the course of the next three years, Student continued to make progress in the classroom despite receiving no specially designed instruction. (Testimony Ms. Perra, Testimony Ms. Sheppard, Testimony Ms. Thinner, Testimony Ms. Roy, Testimony Mr. Grant; Affidavit Ms. Perra ¶9, Affidavit Ms. Sheppard ¶¶3, 4, Affidavit Ms. Thinner ¶¶2, 6-9, 11, 12, Affidavit Ms. Roy ¶¶2, 4, 5, 6; Exhibits 27, 31, 35, 39, 41, 45, 54, 58, 77, 83, 84, 93, 120, 121, 124).

1. During this time, the Parent signed each annual IEP and specifically requested that Student receive no treatment different than afforded his peers. (Testimony Ms. Perra; Affidavit Ms. Perra ¶¶10, 11, 13, 15; Exhibits 38, 43, 55, 56, 78, 82).
2. Speech language therapy is a related service not specially designed instruction. In general, the School District does not provide special education services unless a student

- requires specially designed instruction. (Affidavit Ms. Perra ¶9, Affidavit Ms. Sheppard ¶18).
3. On September 26, 2006, Ms. Perra wrote to the Parent and offered dates to meet to discuss the reevaluation process and what assessments the School District intended to conduct. The Parent authorized the team to meet without her. (Affidavit Ms. Perra ¶18; Exhibits 92, 94, 95, 96).
 4. On October 16, 2006, the Parent granted permission to evaluate Student's academic performance and communication skills. The team proposed, and the Parent agreed, to utilize the same assessments the School District had performed for the initial evaluation. These assessments included the Test of Written Language ("TOWL), the Comprehensive Evaluation of Language Fundamentals, 4th edition (the "CELF") and the Woodcock-Johnson III. An IQ test is not customarily performed on a student who is suspected of having a speech language evaluation. (Testimony Ms. Perra, Testimony Mr. Grant; Affidavit Mr. Grant ¶¶6, 7, Affidavit Ms. Perra ¶¶19, 20, 26, Affidavit Ms. Sheppard ¶13; Exhibits 95, 97, 98, 101, 117).
 5. On November 17, 2006, Marge Polak, the Director of Special Education for the SAU, sent the Parent a notice via certified mail of a team meeting scheduled for November 29, 2006 to review the results of the assessments. Ms. Polak also attempted to telephone the Parent to invite her to the team meeting, however the telephone number listed on the school emergency card was not in service. As of November 30, 2006, the Parent had not picked up the certified mail from the post office. (Testimony Ms. Sheppard; Affidavit Ms. Sheppard ¶7; Exhibits 102, 108, 113, 114).

1. The team met without the Parent, but sent her a written prior notice of the team's decision. The team proposed that Student is no longer a child with an educational disability as Student is achieving at the average or above average level in all areas, including communication. The team's decision was uniform. The team did support the provision of a 504 plan to address Student's ADHD. (Testimony Ms. Perra, Testimony Mr. Grant, Affidavit Mr. Grant ¶¶10-12; Affidavit Ms. Sheppard ¶9; Exhibit 116).
2. The results of the special education evaluations as well as Student's performance in class and on State and District-wide assessments confirm that he no longer has a speech impairment and does not require special education in order to benefit from his education. (Testimony Ms. Perra, Testimony Mr. Grant, Testimony Ms. Sheppard, Testimony Ms. Roy, Testimony Ms. Thinner; Affidavit Ms. Perra ¶22, Affidavit Mr. Grant ¶11, Affidavit Ms. Sheppard ¶¶12, 15, 16; Exhibits 57, 60, 62, 67, 81, 116, 117, 132).
3. On December 11, 2006, the School District reconvened a team meeting with the Parent to review the proposal with her. The Parent did not appear for the meeting but her attorney appeared on her behalf. At the outset of the meeting, her attorney delivered to the team a request for a due process hearing. (Affidavit Ms. Sheppard ¶10).
4. The Parent's Complaint in this matter centers on a dispute she has with the manner in which the School District notifies her of the instructional programming that will be occurring during the week. Student's current IEP, which the Parent signed, provides that "classroom teacher(s) and specialists (e.g., health) will provide parent with information about concepts, topics for discussion/instruction, key vocabulary and/or copies of reading selections in the areas of science, social studies and health in advance or concurrent with instruction." (Exhibit 78, pages 153, 156).

5. The New Hampshire Department of Education found the Parent's allegation that the School District failed to provide her with a weekly syllabus to be unsubstantiated. The investigator concluded that "the Hooksett School District has provided necessary services and program modification by providing detailed curriculum information, combined with class schedules and assignments, in advance to the parent." (Exhibit 118, pages 237, 239, 242-44).
1. Testimony and exhibits demonstrate that the School District has provided weekly notification of ... 's instructional program consistent with his IEP. (Testimony Ms. Roy; Exhibits 79, 85, 86, 87, 88, 89, 90, 91, 112, 126, 135, 118, pages 237, 239, 244).
2. The School District made revisions in response to the Parent's Due Process Hearing Complaint challenging the measurability of the one goal and objectives of Student's stay-put IEP. At the hearing, the Parent did not submit any evidence challenging the measurability of the IEP. (Affidavit Ms. Perra ¶17, Affidavit Ms. Sheppard ¶20; Exhibits 78, 122, 123).

III. RULINGS OF LAW

1. Student does not require specially designed instruction, which is defined under Federal law as adapting the content, methodology or delivery of instruction, to address his unique needs or in order to access the general curriculum. 34 C.F.R. § 300.39; Ed 1102.47. *See Mr. I. v Maine Sch. Admin. Unit No. 55*, 47 IDELR 121, *9 (1st Cir. 2007); *Mr. and Mrs. N.C. v. Bedford Central Sch. Dist.*, 47 IDELR 95, *9-12 (S.D.N.Y. 2007); *Ashli v. State of Hawaii*, 47 IDELR 65, *6-10 (D.Hawaii 2007).
 2. Speech language therapy is a related service not specially designed instruction. A student is not eligible for special education unless he requires specially designed instruction. The provision of a related service alone does not qualify a student for special education. (Affidavit Ms. Perra ¶9, Affidavit Ms. Sheppard ¶18)
 3. Student does not qualify as a child with a disability. 20 U.S.C. § 1401(3), 34 C.F.R. § 300.8, RSA 186-C:2, I, Ed 1102.09. *See also In Re: Parent/District*, IDPH-FY-07-02-053 (SEA NH April 19, 2007).
 4. Student's stay-put IEP contains a measurable goal and objectives and is reasonably calculated to enable him to benefit from his education. 20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); RSA 186-C:2, III; Ed 1102.27, 1109.01; *Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200, 207, 102 S.Ct. 3034 (1982); *T.B. v. Warwick Sch. Comm.*, 361 F.3d 80, 83 (1st Cir. 2004).
1. The Parent has failed to establish that there was "no reasonable probability" that Student would benefit from the stay-put IEP and, accordingly, has failed to establish that the stay-put IEP was "inadequate". *Mr. G. v. Timberlane Reg'l Sch. Dist.*, 2007 DNH 002, 28 (January 4, 2007, D.N.H.); *Galina C. v. Shaker Reg'l Sch. Dist.*, 2004 DNH 058, 24 (March 30, 2004, D.N.H.).
 2. The Parent has not met her burden of proving that the School District failed to implement Student's IEP. In particular, the Parent has not proven by a preponderance of the evidence that the School District failed to provide the Parent with sufficient instructional information, and that such failure resulted in a denial of a free appropriate public education to her son. *Michal M. v. Pemi-Baker Regional Sch. Dist.*, 2004 DNH 128, 20 (August 31, 2004, D.N.H.) (the IDEA does not require a school district to flawlessly implement an IEP).

A. Legal Analysis

After considering all of the submitted evidence and testimony, it is clear that the School District has met its burden of proof that Student does not qualify as a child with a disability under Federal and State law. The evidence clearly demonstrates that, as alleged in the School District's Complaint, Student no longer has a speech language impairment which adversely affects his educational performance to a degree that requires the provision of special education and related services for him to benefit from his education. In addition, the Parent has not carried her burden of proving her claim that the School District failed to properly develop and implement the student's IEP and, in so doing, denied Student a free appropriate public education ("FAPE"). For the record The School District's Requests for Findings of Fact and Rulings of Law are granted except as otherwise stated in this Opinion and Order.

B. Appeal Rights

If either party is aggrieved by the decision of the hearing officer as state above, either party may appeal this decision to a court of competent jurisdiction within 120 days in accordance with RSA 186-C:16-b, IV. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commissioner if either party, Parent or District, seeks a judicial review of the decision.

C. Statement of Compliance with Ed 1128.22(b)

If neither party appeals the decision of the hearing officer to a court, then the LEA shall, within 90 days, provide to the office of legislation and hearings and the hearing officer a written report describing the implementation of the hearing officer's decision and provide a copy of the report to the opposing party. If the opposing party does not concur with the LEA's report, he or she shall submit his or her own report to the office of legislation and hearings.

SO ORDERED.

Date: May 11, 2007

Peter T. Foley, Esq.
Hearing Officer