

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**IDPH-FY-11-12-026** / Hudson School District

**DECISION**

**I. INTRODUCTION**

This due process proceeding was initiated on December 15, 2010 by the Hudson School District (“District”). A prehearing conference was held on December 30, 2010; the due process hearing took place on January 7 and 14, 2011. The following individuals testified credibly: Meghan Glaude, Language Arts teacher; Deb Shearer, Directed Study paraprofessional; Sara Rondeau, School Psychologist; Michelle Cochrane, Learning Disability Specialist; Mark Bell, Assistant Principal; Parent; and Irene Sousa, Special Education Director. The District submitted proposed findings of fact and rulings of law.

The sole issue for due process was whether Student continued to be eligible for special education and related services by virtue of a specific learning disability and/or a speech-language impairment.

**II. FACTS**

Student currently resides with --- parents in the Hudson School District, and is a -- - grader at the --- School. The District first identified Student as a child with a disability in December of 2007; -- primary coding was a specific learning disability with a secondary code of speech-language impairment. Student's current IEP calls for Directed Study four times a week. It also calls for placement in classes where there is a paraprofessional. As a related service, Student receives one session of speech language services in a group setting.

Directed Study is not specially designed instruction; rather, it resembles a study hall where concepts covered in the classroom are reinforced and students are assisted with organizational skills. Student rarely avails --self of the paraprofessional’s assistance, often assisting other students with their work. Student is also enrolled in classes where there is a classroom paraprofessional, although --- works independently for the most part and does well in all of --- classes.

Student receives Orton-Gillingham tutoring, which is nearly completed. At that point, Parent does not intend to request that these services continue. The Orton-Gillingham tutoring is not contained in Student’s IEP or offered as part of --- special education program, but is being provided in accordance with a mediated agreement

between the District and the Parents. The District did not believe that this tutoring was necessary for Student to benefit from --- education, and continues to take this position.

In the fall of 2010, with the Parent's permission, the District conducted the required three-year reevaluation of Student. The following evaluations were completed: a speech language assessment, a classroom observation, intelligence testing, and academic testing. On October 27, 2010, the IEP Team met to discuss the results of these evaluations. As neither Ms. Cochrane nor Ms. Pooler, Student's case manager were able to attend, Parent agreed that they could be excused from this meeting. Parent is certified in the area of learning disabilities.

The speech-language testing indicated that Student's language skills fell within the average range, from which the evaluators determined that --- does not have a speech-language impairment. Intelligence testing results document Student's average cognitive abilities and absence of a processing deficit connected to academic struggles, to the extent that Student struggles academically at all. The academic achievement testing placed Student in the average range in every area assessed, including reading comprehension and fluency. Student's academic performance in language arts is consistent with the results of the standardized testing. --- does not have fluency problems relative to --- peers and ---comprehension ability exceeds that of --- peers. The classroom observation supported the conclusion that Student is succeeding in school and in --- language arts class. --- does not receive modified instruction or special education in this or any other class.

Assistant Principal Bell testified that, at the conclusion of the October 27, 2010 meeting, Parent advised that the speech-language coding could be dropped. The District members of the team did, however, conclude that Student no longer qualified as having a specific learning disability. The Parent disagreed and requested that the Team reconvene so that Student's Orton-Gillingham tutor could be present.

Assistant Principal Bell reconvened the Team on November 2, 2010. At that meeting, the team reviewed the previous decision to discharge Student from special education. The Orton-Gillingham tutor expressed concerns with respect to Student's performance in certain areas, but did not provide the team with any specific supporting data or written documentation at that meeting or since then. Meeting notes do not reflect any disagreement on the tutor's part regarding the decision to discharge Student from special education. Once again, the District members of the team determined that Student no longer qualified for special education.

However, the District did offer to refer Student for 504 consideration. If the 504 team determines that Student is a student with a disability, a plan will be developed which would include any accommodations deemed necessary and appropriate for Student. Assistant Principal Bell also offered to permit Student to continue in Directed Study for the remainder of the school year. During testimony at the due process hearing, it was clear that District personnel were assuring that Student's needs would be met regardless of the outcome of these proceedings.

### **III. DISCUSSION**

Specially designed instruction is defined as adapting the content, methodology or delivery of instruction, to address a student's unique needs or to enable a student to access the general curriculum. 34 C. F. R. 300.39; Ed 1102. 05. *See also* Mr. I v. Maine Sch. Admin. Unit No. 55, 47 IDELR 121 (1<sup>st</sup> Cir. 2007) In this case, neither Directed Study nor placement in classes where there is a paraprofessional can be considered specially designed instruction. Speech-language is a related service and not specially designed instruction. Although Student is not receiving specially designed instruction, -- continues to benefit from --- education. 34 C. F. R. 300. 304(b); Ed. 1107. 01.

The District properly conducted a reevaluation of Student that supports the Team's determination that Student no longer qualifies as having a speech-language impairment or a specific learning disability. The District used a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the student, including information provided by the Parent and the Orton-Gillingham tutor. With the exception of a single assessment tool where the results were considered anomalous, the educational, intelligence, and speech language evaluations, combined with Student's success in the classroom without modifications or specialized instruction all demonstrate that ---does not require specially designed instruction in order to benefit from her education.

### **IV. PROPOSED FINDINGS AND RULINGS**

Parent: None submitted

District: Proposed findings of fact numbered 1 – 6, 9, 10, 13 – 15, 17 – 21, 24, 27, 28, 30 – 32, and proposed rulings of law numbered 1 – 4 are granted. The remainder are neither granted nor denied as written, except that to the extent that they are inconsistent with this Decision, they are denied.

### **V. CONCLUSION AND ORDER**

This Student is enjoying a notably successful educational experience. Although -- is no longer eligible for special education, the District has offered to evaluate Student to determine eligibility under Section 504. Additionally, the District has represented that it would continue to make Directed Study available to Student; this is clearly important to Student and --- Parents and it is expected that --- will be allowed to utilize Directed Study for the remainder of the school year. Likewise, the Orton-Gillingham reading services will continue until completion, as previously agreed.

**V. APPEAL RIGHTS**

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parents have the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parents or School District, seeks judicial review of the hearing officer's decision.

So ordered.

*Signed,*  
*Amy B. Davidson*

Date: January 21, 2011

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Amy B. Davidson, Hearing Officer