

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

**Student/Hollis/Brookline Cooperative School District
IDPH-FY-11-08-007**

ORDER

I. INTRODUCTION

This due process proceeding was initiated by the Hollis/Brookline School District (“District”), and received by the Department of Education on August 20, 2010. The hearing was originally scheduled for September 17 and 20, 2010 with a decision date of October 1, 2010.

A prehearing conference was held on September 3, 2010 at the Walker Building Hearings Office in Concord, New Hampshire. Parents did not attend, but subsequently requested a continuance of the prehearing conference and hearing. A second prehearing conference was held on September 20, 2010, and the hearing was rescheduled to September 27 and 29, 2010.¹ The Parent participated telephonically at his request, but did not examine any witnesses, nor did he present any evidence.² In a written submission just prior to the first day of hearing, Parent requested that this matter be determined by summary judgment. As the District was prepared to present witnesses, it was decided that the witnesses would be permitted to testify, but that the Parent would be given the opportunity to interview those witnesses and submit written affidavits. Parent chose not to do so. Both parties filed post-hearing statements. The second day of hearing was cancelled.

The issues for due process are whether a secondary identification of speech and language impairment is appropriate, and whether speech-language and reading services are required to provide [] (“Student”) with a free appropriate public education (“FAPE”).

At the due process hearing on September 27, 2010, the District’s previously submitted Exhibits 1 – 47 were made part of the record. Parent’s Exhibits A – D were submitted post-hearing as part of his summary judgment motion. The following four witnesses testified: Beverly Morshed, Speech-Language Pathologist; Samantha McElroy, English teacher; Amanda Delaney, Case Manager; and Maryanne Rotelli, Science teacher. All witnesses had significant experience in their fields and were familiar with Student’s educational history, performance and progress.

II. FACTS

Student is a []-year-old [] grader at the Hollis-Brookline High School. Student is eligible for special education and related services by virtue of a specific learning disability³ and receives services pursuant to an Individualized Education Program (“IEP”). During the 2009-2010 school year, Student attended the Hollis-Brookline High School. [] has achieved good grades and has maintained excellent attendance.

Prior to the 2009-2010 school year, Student received reading support from the Reading Foundation, a private provider. In June of 2009, it was determined that the District’s proposal to provide reading support in the District was appropriate. *See Student/Hollis-Brookline School District, IDPH-FY-09-04-039*, (NHDOE 2009). Parents did not permit the District to provide reading support during the 2009-2010 school year.

¹ A written order relative to the continuance was issued on September 15, 2010; that same day, I left voicemail messages for both parties advising them of the new dates and times for the prehearing conference and hearing.

² At approximately 2:05 p.m., upon becoming aware that Parent had disconnected from the teleconference, I left a message on his voice mail inviting him to call back. He did not do so.

³ As noted above, the District’s view that Student should receive a secondary identification of speech-language impairment is contested by the Parent and is at issue in this case.

Throughout the 2009-2010 school year, the IEP team met on numerous occasions in an attempt to address the provision of reading and speech-language services believed necessary by the District members of the team and rejected by the Parents. Finally, on May 20, 2010, the District proposed, among other things, a speech-language goal, reading services for 2.25 hours per week in a small-group setting, speech-language services for 45 minutes per week, and a speech-language consultation to staff. The Parents accepted the proposed IEP, with exceptions to the proposed identification of speech-language impairment, the speech-language goal and services and reading support.

In March of 2010, Student was evaluated by an independent speech-language pathologist. The results of this test showed that Student was in the below-average range in areas of idiomatic language, sentence comprehension and ambiguous sentences. SD Exh. 15; Testimony Morshed. Student had difficulty with social interaction, self-advocacy, communication, reading comprehension, abstract thinking and writing which adversely affects his educational performance. Testimony McElroy. Without reading and speech-language services, Student will continue to struggle. *Id.* Student continues to have a speech-language impairment which adversely affects his educational performance and which requires the provision of the proposed special education and related services. Testimony Morshed, Delaney, McElroy. In order to make adequate educational progress on his IEP goals and objectives, Student requires speech-language and reading services. Testimony Rotelli. According to Ms. Delaney, Student did not master any of his IEP goals and objectives; Ms. Delaney believed Student would have made adequate educational progress on those goals and objectives if [] had been receiving reading and speech-language services. Testimony Rotelli.

III. DISCUSSION

The Individuals With Disabilities Education Act (“IDEA”) requires that school district provide all students with a FAPE; the primary vehicle for delivery of a FAPE is the IEP, which is individually designed to provide educational benefit to a handicapped student. *See Lessard v. Wilton-Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008).

In this case, Parent had the burden of proof to show that Student would be denied a FAPE if the District is allowed to provide speech-language services. *See Shaffer v. Weast*, 44 IDELR 150 (U.S. 2005); *Student/Londonderry School District*, IDPH-FY-06-11-032 (NHDOE 2006).⁴

Parent relies heavily on Student’s report cards in support of the proposition that Student is making adequate progress in school. While Student’s grades are undeniably good, they are not the only indicators of whether FAPE is being provided. *See, e.g., Mr. I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007). Additional sources of data such as classroom observation, in-class work, teacher/staff reports and testing data properly informed the District team members’ recommendation for the identification and services.⁵ Staff’s comparison between Student’s in-class work and the far more polished work completed at home is particularly suggestive of a heightened degree of assistance with homework. The clear weight of the evidence warrants a determination that despite certain indicia of success in some areas, Student experiences difficulties in other areas relative to speech and language, which difficulties adversely impact his educational performance and require speech-language and reading services to enable him to benefit from his educational program. The evidence also supports a finding that accommodations, while assisting the Student in obtaining good grades, are not by themselves sufficient to provide him with a FAPE.

Parent argues that the District agreed not to request due process and is legally prohibited from doing so. However, neither the weight of the evidence nor the law substantiates this position. Parent’s reliance upon 34 C.F.R. §300(b)(4) is misplaced, as that provision applies where the Parent revokes consent to *all* special

⁴ In this case, even if the burden were upon the District, the outcome would be the same.

⁵ Parent’s reliance upon comparison of percentile ranks in his interpretation of the March 2010 Comprehensive Assessment of Spoken Language is not supported by the evidence.

education and related services. Where, as here, the Parent has refused consent only to a secondary identification and certain services, but not the entire IEP, the District was *required* to initiate due process. *See* Ed 1120.05(e).

Finally, as the District acknowledges, the case at hand involves a challenge to the IEP proposed in May of 2010 for the upcoming school year, and that the due process request was not filed until after the 2010-2011 school year started. While the appropriateness of the District's proposal must be viewed in light of what was reasonable in May of 2010, *see Roland M. v. Concord School District*, 910 F.2d 983, 992 (1st Cir. 1990), there is ample evidence from the current school year attesting to Student's ongoing performance and needs.⁶

IV. CONCLUSION AND ORDER

In light of the above, I find that a secondary identification of Speech-Language impairment is appropriate, and that the May 20, 2010 proposed IEP, including speech-language goal, speech-language and reading services and speech-language consultation to staff as proposed by the District is appropriate and necessary to provide Student with a FAPE.

The District is the prevailing party.

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.

Date: October 14, 2010

Amy B. Davidson, Hearing Officer

⁶ The Parent does note his dissatisfaction with the District's late-summer due process request, but only in the context of his contention that the District reneged on its agreement not to request due process at all. In addition, I note that the Parent himself requested a continuance, which would have extended the time frame even further.