

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Parents:

pro se

Appearing on behalf of the Board of Education:

Attorney Rachel Kuschel
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Appearing before:

Attorney Deborah R. Kearns
Hearing Officer

FINAL DECISION AND ORDER

ISSUES: Whether the parent is entitled to reimbursement for the cost of out-of-district tutorial services parent provided for the Student?

PROCEDURAL HISTORY: PROCEDURAL HISTORY: The parent made a claim for Due Process seeking reimbursement for sums spent on private tutorial services with an out-of-district provider. The matter was consolidated with Case No. 07-353, regarding Student's sibling. It was determined and agreed, the parties could adhere to a format which provides for a separate hearing, record, and decision for the individual students. The parties agreed to extend the date for mailing the final decision to accommodate scheduled hearing dates and briefs. The following witnesses testified at the hearing: Peter Bartoli, Kathy Baird, Brenda Schideler, Maureen Sullivan, Barbara Denver and the parent. The date for mailing the final decision is November 15, 2008.

SUMMARY: The Student was identified as a child in need of special education and related services from the second grade to the eighth grade. He was exited from special education at the parent's request on October 25, 2007. Student earned average grades, when he fully participated, in the school district's special education program. In September 2006, Student's parent excused him from attending the resource room portion of his special education program. Seven months later, the parent enrolled Student in a tutorial program with an out-of-district provider. After eleven months of tutoring, the Student's grades improved, but his standardized test scores for Reading declined. The parent claims the school district should be responsible for the cost of the out-of-district tutor.

FINDINGS OF FACT

1. The parties agree Student is identified as disabled and eligible to receive specialized instruction and services pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.*, as amended. Student was initially identified when he was in the second grade. Student was exited from special education at the parent's request on October 25, 2006. (Ex. B-1, B-2, B-3, B-5, B-38, B-39, B-40) Check
2. A psychological evaluation dated, January 31, 2001, concludes Student has average intelligence, with a nineteen point discrepancy between his lower verbal score and his higher performance score. The lower verbal score is expected to have an impact on his scholastic aptitude. Student's freedom from distraction is average. Student's processing speed is in the low-average range. He demonstrates a weakness in long-term memory, verbal comprehension, verbal concept formation, visual matching, and information processing speed. On the Jordan Left-Right Reversals Test, he demonstrates significant problems with reversals. Student's reading achievement scores are lower than his ability score. He has difficulty with phonological memory. Feelings of insecurity interfere with Student's classroom function. With appropriate interventions, Student should be able to progress. He demonstrates some difficulty with learning through auditory channels. He requires adult support to complete work. (Ex. B-5, P-5)
3. A psychological evaluation, dated December 2003, concludes Student has average ability. He has average ability in word knowledge and fact retrieval; average verbal and nonverbal reasoning abilities; and average verbal and visual attention. His visual sequencing was weak. On the Listening Test, Student's scores are in the borderline range, well below that of same age peers. It is predicted, Student will have difficulty following the main idea of a story to make inferences or draw a conclusion. He benefits from a program where learning material can be presented more than once. On the test of Auditory-Perceptual Skill-Revised (TAPS), the Student scored in the low-average range. His ability to recall rote, non-meaningful, and sequential verbal matter is in the borderline range. He may have difficulty with interpreting and recalling directions. In Reading, Student's word recognition and comprehension are in the low-average range. He has average ability to recognize and decode words, but reading comprehension is about 1.5 years below grade-level. Grade-level reading material will be difficult for the Student. He does not show a discrepancy between his ability and achievement. Student's weakest area is reading comprehension and spelling. (Ex.P-10)
4. A Speech and Language Evaluation dated April 27, 2004, concludes Student has a moderate receptive and expressive language disorder. Verbally presented, learning material requires visual support and repetition. The visual supports and repetition will assist Student's receptive and expressive language performance. (Ex. B-19)
5. On the Student's Grade 6, Connecticut Mastery Test (CMT) dated September 15, 2004, the Reading score is below basic. The comment states students, who score at

this level, will comprehend with varying degrees of difficulty, materials written below a sixth grade level. The CMT predicts the Student requires modified reading material. (Ex. B-22)

6. The Student's sixth grade report card shows passing grades for core academic courses as follows: Reading C, Mathematics C-, English B-, Science B-, and Social Studies B+. Student has special education support and a modified program. (Ex. P-25)
7. The seventh grade IEP provides for seven hours of special education services in regular education classes. Student's regular education class is a teacher-assisted class which has an aide to assist all the special education students assigned to the class. Student is assigned to the resource room 1.5 hours per week. The IEP has goals and objectives to improve reading comprehension skills, editing, and writing revision skills. Progress is measured by passing grades and standard test scores. Student has reading comprehension exercises to demonstrate his understanding of assigned material. He is assigned 1-2 page papers to practice editing skills. He receives support for science and social studies. (Ex. B-24)
8. In the fall of 2005, Student was missing the classes in the resource room. The special education teacher placed a call to the parent to discuss attendance. The parent notified the school by a letter dated September 28, 2005, that she excused Student from attending classes in the resource room. In the letter, the parent did not express dissatisfaction with the special education services. Parent did not meet with school staff or request revising the IEP to meet Student's changing needs. The letter states she would inform [school personnel] should there be a change. (Ex. B-24, B-27, Testimony Mrs. Baird, Testimony Parent)
9. On October 4, 2005, the IEP was corrected to reflect elimination of resource room services. Student continued his placement in the teacher-assisted classes without change to the services provided in the class. (Ex. B-20, B-24, B-28)
10. Seven months after the student was excused from attending the resource room, the parent and special education teacher had a phone conversation about the Student's performance in the seventh grade. The parent testified she spoke of her intention to have an out-of-district evaluation. Student began tutoring at an out-of-district program. (Testimony, Parent; Testimony, Mrs. Baird, Ex. B-27, P-6)
11. The out-of-district tutoring program conducted diagnostic assessments, dated April 13, 2006, to determine Student's current performance levels. On the Gray Oral Reading Test-3 (GORT 3) the Student scores below average with grade equivalencies for Reading Rate (7.8) and Reading Comprehension (3.5). On the California Achievement Test -5 (CAT-5), the grade equivalencies for Vocabulary (6.1), and Comprehension (5.0). The Total Reading score is at the 5.7 grade equivalency. (Ex. P-1)

12. On the seventh grade report card, Student earns passing grades in core academic courses, mostly B and C grades the lowest grade is a C-. In the third marking period, core subject grades are C-, C, C-, B+ and B-. In the fourth quarter his grade are C+, C, B-, B+, and C+. Report card comments state Student has good effort and conduct. The comments on psychological evaluations state Student demonstrates good behavior, manners, works hard, and has a positive attitude. (Ex. B-36, P-26)
13. In seventh grade, Student meets the criteria commonly used to measure progress. Student earns passing grades, earns promotion to the next grade, and demonstrates improvement on the CMT, standardized tests. On the CMT, Student's reading skills improved two levels from the below basic level (sixth grade) to the proficient level (seventh grade). Student continues to be weak in Reading Comprehension, the Total Reading Comprehension raw score is 23 of 40 points. The CMT improvement is documented prior to enrollment in the out-of-district tutorial program. On the Writing and Mathematics sections, Student's scores are below basic level. (Ex. B-29, B-36, P-11, P-26, P-27)
14. Student shows progress on the tutorial program assessments reported on Exhibits P-5 and P-6. Student benefits from the support provided by the out-of-district tutorial service. Student's eighth grade report card compared to the seventh grade report card shows more B grades than C grades. On the eighth grade CMT, the Reading performance drops to the basic level. (Ex. B-36, B-42, B-49, P-26, P-27)
15. Student's eighth grade IEP, dated April 25, 2006, provides support for phonological memory, verbal comprehension, concept formation, long-term deadlines, notebook checks, class participation, grammar, and writing. He requires help in identifying the main idea for written material or discussion. He can benefit from special education help and accommodations for assignments that require he make inferences and draw conclusions. The regular and special education teacher are to monitor progress through passing grades and task achievement. The IEP provides for Student to have special education services delivered in the regular education classes, and 1.5 hours per week of resource room support. The IEP goals support Reading and Language Arts while included in the regular, eighth grade Language Arts class. Student has support with vocabulary, spelling, punctuations, verb tense, sequence, cause and effect, and words in context. Student is in a teacher-assisted class with modified assignments. The class assistant is to monitor Student's class performance. The special education teacher and regular education teacher are to collaborate to address Student's needs. The Student told parent that resource room is a homework period. The resource room teacher testified participants work independently when they are able. The teacher is there to provide support when needed. The teacher understands resource room participants may feel stigmatized. The resource room was scheduled to coincide with study hall. The program did not remove Student from regular education classes. Student did not attend the resource room and was exited from special education early in the eighth grade. (Testimony, Parent; Testimony, Mrs. Baird)

16. The Parent requested the child not attend the resource room during in the eighth grade. The IEP dated April 25, 2006, was amended on October 17, 2006, to reflect the parent's request for the Student to be exited from Special Education. The termination became effective on October 25, 2006. (Exhibit B-38, B-39, B-40, B-41)
17. Scores on the Connecticut Mastery Test (CMT) administered March 5, 2007, are Reading (basic level), Mathematics (proficient level), and Writing (basic level). (Exhibit B-42)
18. The out-of-district program conducted diagnostic assessments after 108 hours of tutoring. Student's CAT-5 performance improved, with the following grade equivalencies: Vocabulary (8.2), Comprehension (8.6), and Total Reading (8.2). (Exhibit P-1, P-2, B-37)
19. The Student's eighth grade report card shows more B than C grades. Final grades are language Arts B-, Reading C+, Math B, Science B-, Social Studies B-. (Exhibit B-49)
20. The parent wrote a letter on May 6, 2007, in response to a meeting with a school administrator. The letter states the Student was tested at Sylvan Learning Center because he was having a difficulty with homework, concentration, and failed tests. The parent was surprised to learn [Sylvan evaluations conclude] Student's reading level is 2.5 years, below grade-level. For eleven months, the Student attended a total of 180 hours of tutoring. The out-of-district tutor reports Student attended 108 hours of tutoring services. (Exhibit P-1,P-2, P-3, P-5, P-8, B-43)
21. A psychoeducational evaluation, dated July 27, 2007, makes the following findings: Background information notes, Student plays soccer and enjoys swimming with friends. Student's cognitive ability is low-average. Student has a significant discrepancy between his average Verbal Comprehension, and his low-average Processing Speed. The evaluator explains, Student should be able to process classroom instruction that is verbally presented. (Ex. B-50)
22. The evaluation states, Student has a low-average ability for nonverbal thinking, visual-motor coordination, and ability to discern essential from non-essential details. Student's weakness in Fluid Reasoning can impact his ability to deal with novel situations. Visual Processing deficits suggest Student performs better with concrete visual material. Student's low-average, spatial processing abilities can make mathematics skills, interpreting graphs, diagrams, charts, and maps difficult for the Student. Test results indicate Student can benefit from oral explanation when the teacher is using visual demonstrations in the classroom. (Ex. B-50, P-11 p.4)
23. Low-average, processing speed impacts Student's ability to quickly perform paper and pencil tasks. Student may have difficulty with note taking, problem solving on tests, or understanding directions for homework assignments. The working memory

portion of the evaluation indicates Student has both strengths and weakness which results in inconsistent performance on tasks. (Ex. B-50, P-11)

24. On the Wechsler Individual Achievement Test-Second Edition (WAIT-II), Student's Reading Composite score is in the low-average range. An area of significant weakness is reading comprehension. Math skills are significantly below grade-level. On the Broad Written Language Test, Student scores in the average range for spelling and the borderline range for written expression. The evaluator recommends specific instruction and encouragement when attempting written assignments. Slow, processing speed can interfere with academic skills. Student can be confused by complicated, multi-step directions. (Ex. B-50, P-11)
25. The Psychoeducational Evaluation has several recommendations as follows:
1. Increase reading comprehension by paraphrasing, summarizing, and formulating questions.
 2. Large assignments should be broken into manageable components. The amount of structure can be reduced as Student becomes more proficient.
 3. Note taking and copying are difficult tasks for Student. He may need handouts from teacher to study at his own pace.
 4. He should use a calculator on assignments.
 5. Student can benefit from review of basic math skills.
- (Ex. B-50, P-11)

CONCLUSIONS OF LAW

1. The Student is identified as a child with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400 and Section 10-76(a) of the Connecticut General Statutes. There is no dispute between the parties as to the child's eligibility to receive a free and appropriate public education (FAPE). The Student was eligible to receive special education services from the second to the eighth grade. The parent requested Student be exited from special education effective October 25, 2006.
2. The IDEA regulation at 34 C.F.R. 300.17 provides that special education and related services are to be provided at public expense; the education must meet the standards of the state educational agency; the education is in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.
3. In Connecticut, Section 10-76h-14 of the Conn. Agencies Regs., assigns to the public agency the burden of proving the appropriateness of the child's program or placement. This burden shall be met by a preponderance of the evidence.
4. Whether a program is appropriate is determined by the two-prong test articulated in *The Bd. of Education of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the procedural requirement of IDEA must be

- met. The parent makes no claim of procedural violations. The second requirement is that the IEP must be reasonably calculated to enable the child to receive an educational benefit. The parent's claim is focused on the educational benefit derived from the individual education plan. The second prong of *Rowley* does not require a program that maximizes the potential of handicapped children, but opens the door of educational opportunity to provide for more than a "trivial advancement", *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998)(quoting *Rowley*, 458 U.S. at 189, 192, and *Mrs. B v. Milford Bd. of Educ.*, 103 F.3d 1114, 1121 (2d Cir. 1997)).
5. The IDEA regulation at 34 C.F.R. 300.101 (c) provides for evaluation of the Student's circumstances. "Each state must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade".
 6. The regulation requires objective evaluation of the Student's circumstances. Student has a history of success in special education supported classes. He spends most of his time in the mainstream or least restrictive environment. Student's sixth, seventh, and eighth grade, report cards document the student consistently earn average or above-average grades. His standardized test performance on CMT's is variable, but indicates the support provided in the IEP was appropriate for Student's needs. Student advances from grade to grade based on earned promotions.
 7. The IEPs for 2005-2006 and 2006-2007 include interventions to address the Student's needs, identified by triennial evaluations, annual CMT results, report cards, and class performance. The interventions are appropriate to support Student for reading comprehension, vocabulary, understanding directions, and written expression. The regular education teacher and special education teacher coordinate to monitor progress on IEP goals and objectives. IEP activities monitored in the mainstream can be addressed in the resource room should Student require supplemental support. Homework support in the resource room is appropriate for a Student who may need repetition or misunderstand directions for assignments. The IEP provides special education services tailored to meet the Student's individual needs.
 8. The parent claims she was unaware the Student was below-grade-level in Reading. (Ex.B-43). The Student scored below-grade-level on standardized tests contained in the school record from the second to the eight grades. Student's Reading Comprehension was below-grade-level. The out-of-district program assessments show improvement in Reading Comprehension. When Student was tested several months later, Reading Comprehension was below-grade-level, on both the CMT's and the triennial achievement test. Parent should not have been surprised about Student's Reading deficits.

9. The parent agreed to grant permission for Student to withdraw from the Resource Room. Student told parent he did nothing but homework in the program. He believed the other students required more help. The support provided may have been subtle, but it was an opportunity to monitor IEP goals and objectives.
10. The 2007, psychoeducational evaluation states Student plays soccer and “swims with friends”. Student is reported to have good behavior. He is motivated to perform in school. The decision to engage out-of-district tutoring indicates there must have been frustration for both Student and parent. The record, however, does not contain any reports of elevated frustration. There was no attempt to modify the program. Parent testified she did not express dissatisfaction with the IEP when she excused the Student from attending the resource room.
11. If parent was unable to obtain Student’s cooperation to attend the resource room classes, or, if the Student experienced difficulty with school work, the program could have been revised. The IDEA regulation, 34 C.F.R. 300.324 (a) (ii), requires the IEP team to consider the concerns of the parent in the development, review or revision of the IEP. The parent must, however, communicate the Student’s needs to the district. The parents of school children often decide to provide more than a school offers to benefit their child. Sometimes a child is more responsive to outside services. If the parent believes the IEP program was not appropriate and wants reimbursement, the parent must notify the school Staff. The time to notify the school of dissatisfaction was in when parent withdrew Student from special education support; or placed him with a private tutor, not in May 2007.
12. The IEP provides for appropriate education support in both the regular education class and the resource room. Even though Student’s school performance improved beyond that achieved prior to the out-of-district tutoring, the Student earned passing grades, prior to attending the tutoring program.
13. Student receives an educational benefit and makes progress in the IEP programs provided for both seventh (2005-2006) and eighth grades (2006-2007). The program meets the statutory and regulatory criteria necessary to provide Student with a free and appropriate public education during the time Student was eligible to receive mandated services.
14. The LEA has sustained its burden by a preponderance of the evidence that it provides an appropriate special education program for the Student. If the LEA’s program provides a FAPE, there is no authority for a hearing officer to order reimbursement of the parent’s tutoring expenses.

FINAL DECISION AND ORDER

1. The IEP for the 2005-2006 school year provides the child with a free and appropriate public education.
2. The IEP for the 2006-2007 school year provides the child with a free and appropriate public education.
3. The request for reimbursement for the cost of tutoring services provided by an out-of-district service is denied.