

[student] through her mother, Petitioner

vs.

DOUGLAS COUNTY SCHOOL DISTRICT RE 1, Respondent

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DECISION AND FINDINGS

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INTRODUCTORY STATEMENT

The matter was heard weekdays beginning Wednesday, August 5, 1998 and ending Wednesday, August 12, 1998 in the Division 4 Court Room of the Justice Center Building, 4000 Justice Way, Castle Rock, Colorado. Jurisdiction is conferred by the Individuals With Disabilities Education Act (IDEA) , 20 U.S.C. Sec. 1401 et. seq, 34 C.F.R. Sec. 300 et. seq., and under Part B of the Colorado Department of Education State Plan for the Individuals With Disabilities Act.

Petitioner appeared through her mother. Though earlier advised of having the right to be represented by an attorney, the mother elected to appear pro se. She was assisted at the hearing by Ms. C. G. LaScala, a child advocate.

Respondent Douglas County School District (DCS) appeared through attorneys Thomas C. Crabb and Cheryl M. Karstaedt of the law firm of Caplan and Earnest. Present on behalf of DCS was John Stanek the District's Special Education Coordinator.

Petitioner filed a request for a Due Process Hearing on June 15, 1998. The 45 day hearing completion date was waived. Fourteen issues were listed by Petitioner, setting forth in some detail, the alleged failures of the District to provide student with a free appropriate public education, the alleged deficiencies being namely charges of failure to properly develop and implement student's IEP.

PRE-HEARING RULINGS

1. Petitioner submitted Motions for Determination prior to the Hearing commencing. Those Motions and my decisions are:

- A. Motion to exclude exhibit (Z) - (Denied)
- B. Motion to Amend Witness List - (Granted)

2. Respondent submitted Motions for Determination prior to the Hearing commencing. Those Motions and my decisions are:

- A. Response to Petitioners statement of issues and proposed remedies to be presented at Due Process Hearing - (Denied)
- B. Motion to dismiss and exclude issues from Due Process proceedings - (Denied)
- C. Combined response to Petitioner's witness list, exhibit list and Motion to exclude - (The parties agreed to exclude Petitioners Exhibit 1 and to the admission of Respondent's Exhibit A, both being the student's most recent IEP). With the exception of the stipulation, the motions were Denied.

DECISION CONCERNING RESPONDENT'S MOTION TO DISMISS AT CONCLUSION OF PETITIONERS  
CASE

At the conclusion of Petitioners case Respondent moved to Dismiss. This IHO ruled that as to the issue of whether the District should be required to provide the student with Extended School Year (ESY) services the requisite burden of proving students qualification because of regression had not been met. Petitioners complaint regarding ESY, Issue 4 was thereupon Dismissed. As to all other of Petitioner's issues the Motion was Denied.

FINDINGS OF FACT

1. The student is a 7 year old female qualifying for special education services because of a diagnosed Attention Deficit Hyperactive Disorder (ADHD) and a Speech/Language problem. Her mother administers Dexedrine at home for the ADHD disability. Student also uses an Albuteri inhaler for asthma on an as-needed basis. School personnel report her as being a happy, and well adjusted child. I.Q. is considered to be in the low average range. School personnel see her as progressing in her IEP goals and objectives remarkably well while her mother disagrees and alleges the school staff does not recognize all of her needs or adequately provide services as called for.

2. Parent has resourcefully located and enlisted additional help for her child through utilization of school and other non-school related resources. Those outside sources include counselling, occupational therapy aid through Children's Hospital, and speech therapy and counselling through Aurora Mental Health. The parent has enlisted an imposing support group which includes maternal grandparents, a child advocate and attorneys.

3. To craft Exhibit D, the April 1997 triennial IEP review, three separate staffing meetings were held. Beside the school staff the sessions were attended by Petitioner's attorney (2 meetings), students grandmother (2), a mental health clinician (1) as well as the parent, school team members and other school resource personnel. A transcript of the 4/23/97 staffing session is a part of this record (Exhibit UU). Before the third staffing meeting Petitioner's attorney submitted to Respondent's attorney a six page document (exh. N), detailing suggested changes in the IEP that Petitioner was requesting. The final meeting was held on 5/13/97 and a detailed 43 page IEP was adopted.

4. Approximately four months later Petitioner was sending correspondence regarding changes, modifications, and allegations of non-compliance with the IEP to the students school team (exh. T-03 - T-6). Then on October 1, 1997 the mother sent the school team a written notice that verbal communication between parent and staff was to cease (exh. T-10). The team reply is exh. T-11.

5. Though verbal communications had ceased, IEP review staffing meetings were subsequently convened for various purposes in November 1997, December 1997, and February 1998.

6. Next, the annual IEP staffing for student's second grade was held on 4/14/98, 4/28/98 and 5/12/98. The first two sessions were recorded. They are Exh. WW and XX. Attorneys for Petitioner and Respondent were in attendance. The mother, a team member, did not agree with the school team members decisions and requested this due process hearing.

DECISION

In hearing this matter, considering the numerous staffing meetings held with Parent, grandparent, attorneys for both Petitioner and Respondent, advocates, and professional care-givers being nearly always in attendance, this IHO believed it necessary to examine the proceedings with care in order to determine whether, in preparing and implementing each modification to the students IEP the staffings adhered to federal and state due process requirements and if malice or intimidation interfered with the crafting of the IEP's.

"Insofar as a State is required to provide a handicapped child with a 'free appropriate public education' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP." Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982).

A 'free appropriate public education' is an education that guarantees a reasonable probability of educational benefits at public expense." Board of Education of Community Consolidated School District No. 21, Cook County, Illinois, v. Illinois Board of Education, 938 F. 2d 712 (1991).

The evidence supports the proposition that a FAPE was and continues to be offered, that the students IEP is in compliance with the IDEA and is reasonably calculated to enable her to benefit educationally from that instruction.

Disagreement exists between the school authorities, the public agency held accountable for the student's education, and the parent. For instance, they differ regarding the extent of adult supervision necessary to supply sensory diet, health and safety needs. In each of these areas of parental concern the issues were considered and earnestly discussed. The school team members view some of the needs as not being ADHD related so much as being age appropriate and normal for all children at that age. The school members were more concerned about the student's dependency upon adults to tell her what to do. As one of the IEP team so aptly put it, a fine line exists between the student working independently, having to learn when to ask for help and her dependence upon being able to look to her special education teacher for guidance when she doesn't immediately know what to do. Both school and parent agree she needs to become more independent, the disagreement arises in how to accomplish the desired result.

The evidence to date is that the student is progressing well, due in no small measure to the efforts of the parent, grandparent, Children's Hospital, Aurora Mental Health as well as the school district.

The duty of this IHO is to determine if federal and state rules and regulations were properly followed within the spirit and intent of the law. I hold that to date they have been. The philosophical disagreement regarding objectives, goals and how to achieve them I leave to the experts formulating the IEP.

Petitioner's list of issues, as reworded by me, were:

ISSUE 1. Did the School District fail to comply with the requirements of IEP process for meaningful parental participation?

ISSUE 2. Did Respondent fail to comply with the 1997-1998 IEP?

ISSUE 3. Did Respondent fail to provide objective criteria, data collection, documentation and evaluation procedures?

ISSUE 4. Did Respondent err by failing to provide ESY services? (Hearing of this issue was dismissed at the conclusion of Petitioner's case.)

ISSUE 5. Did School District fail to consider whether student requires assisted technology devices and services?

ISSUE 6. Did Respondent fail to properly consider Independent Educational Evaluations?

ISSUE 7. Were Respondent's statements of students present levels of educational performance incorrect or deficient?

ISSUE 8. Does student's IEP lack meaningful goals and objectives?

ISSUE 9. Were student's placement and services predetermined (before the IEP Staffing?)

ISSUE 10. Did Respondent fail to include all special education and related services needed by student in her IEP?

ISSUE 11. Did School District fail to provide appropriate support for school personnel?

ISSUE 12. Did Respondent fail to address program modifications in the IEP?

ISSUE 13. Did School District fail to address supplementary aids and services in student's IEP?

ISSUE 14. Did Respondent fail to provide an educational program reasonably calculated to provide an educational benefit to student?

The Act creates a presumption in favor of the educational placement established by the child's IEP, and a party attacking its terms bears the burden of showing why the educational program so established is not appropriate. See Tatro v. Texas, 703 F 2d 830.

The Petitioner failed to carry that burden. The evidence establishes the IEP, while not fully agreed upon by the parent, attempts to provide the least restrictive environment and is appropriate.

There exists one other matter for disposition. Written communications were sent this IHO subsequent to his closing the Hearing on August 12, 1998. Before concluding the hearing neither party requested an opportunity to present further information.

This IHO rules that it would-be improper for him to review such communications. This Hearing must end and a decision made. He has sealed the documents in an envelope and placed them, duly marked, with the file.

CONCLUSION

The Petitioner has failed to prove her claims by a preponderance of the evidence. Petitioners request for relief is therefor denied.

While this ruling concerns the state of the student's education at this time, future events will tell whether the plan was effective. I am confident the parent will continue to monitor her child's progress, to participate in formulating her IEP's, and to assure that the school authorities provide the child with that opportunity to mature and grow educationally as the IDEA requires.

"The education of the children of this state should be a partnership between the parent and the state, or school district. The education of all our children is an important goal for the success of our society. It is best achieved by cooperation between the student, his or her parent, the teacher's and the school administrators involved in the child's education." In re Michael T., 1984-85 EHLR Dec.506:333.

"Discussion is an exchange of knowledge, an argument an exchange of ignorance"

Robert Quillen

It is hoped the parties will continue to adhere to such precepts as they move forward.

This decision and findings of fact will be mailed to the parent, the superintendent of the Douglas County School District RE-1 and to the Colorado Department of Education.

Either party may request a state level review by contacting the State Department of Education if dissatisfied with the decision and findings rendered by this Impartial Hearing Officer. An Administrative Law Judge shall be appointed to hear the appeal. Any party wishing to appeal the Impartial Hearing Officer's order, has the same rights as they had for this hearing. Either party may appeal to the court of appropriate jurisdiction if unsatisfied with the final order.

This Order is entered this 28th day of August, 1998.

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Impartial Hearing Officer

CERTIFICATE OF MAILING

I certify that on this 28th day of August, 1998, a true and correct copy of the forgoing Final Order along with a photostatic copy of Rule 6.03 (10) of the Rules for the Administration of the Exceptional Children's Educational Act as promulgated by the Colorado State Department of Education, was placed in the United States Mail, postage prepaid, addressed to the following:

Pearl McDuffie  
Special Education Services Unit  
Colorado Department of Education  
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Denver, Colorado 80203-1704

[parent]

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Raymond Lee Payne