

DEPARTMENT OF EDUCATION, SPECIAL EDUCATION
STATE OF COLORADO

Case NO. L2000:135

DECISION

[Student], by and through his parent [Parent]

Petitioner's,

v.

JEFFERSON COUNTY SCHOOL DISTRICT R-1

Respondent

INTRODUCTORY STATEMENT

The matter was heard March 6 and 7, 2001, before this Impartial Hearing Officer, in Room 1554 the first day and Room 1552 on the second day, in the Jefferson County Building, 100 Jefferson county Parkway, Golden, Colorado. Jurisdiction is conferred by the Individuals With Disability Education Act (IDEA), 20 U.S.C. Sec. 1450, 34 C.F.R. Sec. 300 et. seq., Part II, A, VII et. seq., and is governed by the Colorado Department of Education Rules for The Administration of the Exceptional Children's Educational Act.

Student, [Student] represented by his parent, [Parent] appeared as Petitioner. While advised of the right to be represented by an attorney [Parent] elected to appear pro se. [Parent] was assisted in her presentation by her mother, grandmother of [Student].

Respondent Jefferson County School District appeared through [Assistant Director], Assistant Director of Special Education with Cheryl Karstaedt, esq. and Julie Tishkowsky, esq. of the law firm of Caplan and Earnest, LLC.

Petitioner's filed a request for a Due Process Hearing on December 8, 2000. The 45 day hearing completion date was waived.

Petitioner's claimed [Student] was being denied a Free

Appropriate Public Education (FAPE) because the Respondent failed to provide [Student] with technological support to help him overcome his disability. After filing the request for a due process hearing Petitioner's added allegations regarding the school district failing to implement IEP modifications to [Student]'s IEP following his return from an expulsion and further alleging that goals agreed upon for the latest IEP were not listed in the IEP itself and were not being provided.

PRELIMINARY MATTERS

A series of pre-hearing meetings were held. The first was a conference held in the Jefferson County School District's Administration Building on January 18, 2001. This conference set the hearing date and times within which issues were to be submitted and lists of witnesses and exhibits were to be exchanged. Later telephone conferences were held on February 21 and 26 to clarify and/or resolve pre-hearing matters requiring resolution before the hearing itself would begin. These meetings, with their resultant agreements and orders were memorialized by this IHO immediately thereafter, except for Respondent's Motion for Dismissal which was denied before the hearing began.

FINDINGS OF FACT

1. Student is a 16 year old male. It is admitted he is an identified student eligible for services under the IDEA. All parties agree the physical disabilities which affect his cognitive functioning, referred to as dysgraphia, also seriously and severely impact his social and emotional states.

2. Student had been in a more restrictive school setting in a previous school. When he transferred to [High School], the transition was one to a less restrictive Environment (LRE). His October 27, 1998 IEP indicates that he "had difficulty making the transition to a high school environment. His behavior included a high incidence of tardiness, frequent classroom disruptions, storming out of class shouting obscenities at teachers, bizarre behaviors allowing students to punch him for cigarettes" (exh. 2 pg.3). His progress in this environment has been mixed. Parent and school believe some progress is being made except in the area of his ability to write.

3. An updated IEP was prepared and implemented in October of 1999 ((exh 5). Some goals were deemed to have been attained but the majority of objectives were not.

4. Three addendums to the 1999 IEP (exh. 5) were made between then and the triennial review of October 24, 2000 (exh. 24).

5. Prior to the triennial review two Individualized Education Evaluation (IEE) tests were given student, one in January and the other in October of the year 2000. Summaries of both are set forth in exhibit #24. Testimony and the tests themselves showed Student's emotional states were calm, interested and cooperative with the first test and surly and uncooperative with the second.

6. In addition, the school district's Adaptive/Assistive Technology Assessment Team (ATAT) met with student and tested him to see if there were tools which he might use and which might aid him in writing. The referral forms indicated the schools and parent's concern were with the student's "Inability to write and formulate sentences. A lot (of) frustration when writing" (exh 17). In their September 27, 2000 report the ATAT team observed that student was able to use the personal computing devices. He either refused to try or expressed no interest in using any of the other tools brought by the ATAT team except for expressing a desire to use the computer (exh. 16)

7. Student's triennial IEP meeting took place on October 24, 2000. The plan there formulated is the one presently in effect for this student (exh. 24). Based on the ATAT teams report indicating a computer would be helpful and student/son's expressed desire, parent requested the district provide [Student] with a home computer with which to do his homework. [Parent] believed she had received such a commitment from the school district and that they would add keyboarding instruction and computer training as part of student's IEP as well. Parent and school team members strongly disagreed with each other over this issue. The meeting adjourned with [Parent] and teachers firmly entrenched in their positions.

Exhibit 24 shows an additional meeting was held on December 8, 2000 with the IEP team to discuss "possible augmentative strategies available for (student's) writing skills." The team recommended not to provide [Student] with a home computer. [Parent] disagreed with the team. Addendum to 10/24/00 IEP, (exh. 24).

ISSUES

1. Was student denied a Free Appropriate Public Education because the School District failed to proved technological

support in the form of a computer with Co:writer and Write:Outloud software programs?

The providing of assistive technological support devices is governed by 34 CFR Sec. 300.308.

"Each Public Agency shall ensure that assistive technological devices as defined in Sec. 300.5-300.6 are made available to a child with a disability if required as a part of the child's

- a. special education under Sec. 300.24;
- b. related services under Sec.300.22; or
- c. supplementary services under Sec. 300.26 & 300.550(b)(2)"

A review of Sec. 300.24 informs us that the term special education as there used refers to specially designed instruction conducted in the classroom and in the home. The related services of Sec. 300.22 refers to the furnishing of supportive services required to benefit and assist children in their education. Sec. 300.22 concentrates on orthopedic, auditory, speech language and visually impaired children. This student's impairments are both psychological and dyslexic in nature. Supplementary services under Sec. 300.26 and 300.550(b)(2) refers to the providing eligible students with supplemental aids in regular education classrooms or other education-related settings in accordance with directives concerning the appropriate and least restrictive environment placement for the student.

Having reviewed the testimony and the exhibits, including the audio tapes of meetings I find that due process procedures were followed. Testimony and the tape recording of the triennial meeting of 10/24/00 (IEP exh. 24 and audio tape exh. 46A1, A2 and 46C) confirm the meeting was spirited and confrontational. A majority of the team members decided that student was able to, if he applied himself, to complete his homework assignments either with or without using available school computers while at school. He has access to computers with the Co:writer software at school and has taken little advantage of them. The team also felt that student had not fully explored his ability to write in his own hand. They believed his frustration in writing by hand was more emotional than physical and that he ought to be further encouraged to overcome this problem. Parent strongly disagreed and advocated for a home computer, advising student was interested in the computer, predicting a frustrated and failing student if the requested computer and software were not provided. I commend all team members, including the parent member, for

concentrating in the meeting on the student's needs, the goals he should seek to achieve, and the strategies for helping him work toward them.

"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).

The evidence produced supports the proposition that a FAPE was and continues to be offered student.

2. Did the District fail to implement IEP modifications following student's return to school following expulsion?

It should be noted that this Pro se Parent listed her second issue as being the "providing of correspondence courses over the spring break". Deeming this to be a remedy rather than an issue, this IHO made the revision of the issue as noted above, based upon Parent's written explanation of her request to hear this as an issue. This IHO denied Respondent's Motion to Strike and allowed this issue, as so revised, to be heard.

The student "expulsion" referred to by parent in this proceeding was not an expulsion as defined by 34 CFR 300.121(a) but was instead a "suspension" as it was for less than 10 days, governed by a state policy applying to all school students. 34 CFR 300.121(d)1) allows the school to suspend services to student during his suspension. I find a violation of FAPE therefor did not occur in this instance.

Also, Petitioner's failed to produce competent evidence establishing the District failed to implement IEP modifications following student's "suspension". Uncontradicted testimony regarding implementation was to the contrary.

I find that Petitioner failed to prove her allegation.

3. Were goals agreed upon but not listed in the last IEP document which are not being provided?

Parent testified to a conference which was held before the IEP team conference and her understanding of agreements made at that time for inclusion in the IEP. Testimony from the special education assistant director and exh. 14 show that a meeting did occur and that certain recommendations were made and communicated to student's teacher's in written form which they read and signed off on. Exhibit 14 listed student's responsibilities for work completion, attendance, taping of classes and communication. Exhibit 14 information was not included in his 10/24/00 IEP. To the extent the student's responsibilities could be considered as goals Parent is correct. Testimony however did show student's teachers attempting to help student to act responsibly to meet his goals. Though not listed in his IEP, the error, if indeed it was erroneous to leave them out, is harmless. An inspection of the need strategies (goals) listed in student's 10/27/99 IEP (exh. 5) and his 10/24/00 IEP (exh. 24) vary slightly in the wording except that three additional goals appear on the later IEP.

This issue being one of fact, I find Petitioner's allegation to be without sufficient merit to warrant any action.

Parent alleged as a sub-issue that the Independent Educational Evaluation (IEE) which she had requested and which was done 10/19/00 was not done by an independent evaluator qualified to test children with dyslexia as she and the school district's representative had agreed upon.

The same tester gave both the January 2000 IEE test and the one in October of the same year. She is an employee of the school district. From the sometimes confused testimony of the witnesses this IHO believes the facts to be that Parent wished an evaluation to be done by a tester familiar with testing for dyslexia. The special education assistant director and the parent discussed this point. Stories differ somewhat as to how independent the tester would be. Both acknowledge agreeing not to have student tested by anyone working directly with staff at the school student attends. In any event, the tester, who normally works in another part of the school district, and who tests many dyslexic children, tested student a second time without objection from the Parent until after she requested this Due Process hearing.

As the testing was concluded before the 10/24/00 IEP meeting (exh 24) and this issue was not earlier raised, though purporting to be crucial to the IEP meeting and decisions there to be made, Petitioner's failure to so raise the issue acts as an estoppel. I

find the school district acted in good faith in employing the tester they did. Petitioner's failed to raise the issue in a timely fashion. Further, The evidence fails to suggest that Petitioner's due process rights were violated.

CONCLUSION

It appears the teacher members of the IEP team believe this student to have the capability of writing in his own hand. It will require physical training and student working through his emotional frustrations while learning to do so. If this is so then student will not need a home computer. Further, he has failed to demonstrate that he will effectively use those computers which are available to him at school. The home computer requested is at this point a "want" and not a "need".

A home computer may very well be helpful to this student. confess to being tempted to award the home computer as it has the possibility of being helpful to this student. However, it appears to be the considered, collective judgment of a team which works closely with student and knows far better than I what is best for this student.

From the testimony I am convinced that, in spite of the frustrations of Petitioners and school educators, mainly brought about by what has been referred to as student "making bad some choices" there is educational progress being made.

All parties testifying before me appeared to be dedicated, caring individuals trying to do their very best for this student. They do not always agree but they are nevertheless working toward a common goal.

DECISION

The evidence does not support the allegations of the Petitioner's. A free appropriate public education is being provided by the school district. I therefor find in favor of the school district as to each of the issues raised by Petitioner's.

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 a court of appropriate jurisdiction if

dissatisfied with the final order.

This Order is entered this 21st day of March, 2001.

Impartial Hearing Officer