

Supervisor of Special Education Programs for “CHSD”

The following individuals were called to present testimony of behalf of xxxxxxxx
xxxxxxx:

1. xxxxxxxx
Mother
2. xxxxxxxx
Father

SUMMARY OF ISSUE

Was Ms. xxxxxxxx denied a free appropriate public education (FAPE) by “CHSD”’s refusal to provide a one-on-one paraprofessional for Ms. xxxxxx, and the placement of Ms. xxxxxxxx in seventh grade exploratories.

EXHIBITS

All of the pre-marked exhibits of “CHSD”, Exhibits 1-22 were admitted. Additionally Exhibit 23 a letter from Ms. xxxxxxxx to Dr. Woodruff dated 09/22/05 was admitted as Exhibit 23.

The following exhibits of the parents were admitted:

- | | |
|------------|---|
| Parents’ 1 | Exemplars of xxxxxxxxxxxxxx’s Schoolwork |
| Parents’ 2 | Report Card of xxxxxxxxxxxxxx of 05/03/06 |
| Parents’ 3 | Progress Report for xxxxxxxxxxx of 05/09/05 |
| Parents’ 4 | Letter to Mr. Stone from xxxxxxxx of 11/01/05 |
| Parents’ 5 | Letter to Mr. Stone from xxxxxxxx of 02/15/06 |
| Parents’ 6 | Speech Language Therapy Progress Report for xxxxxxxx of 04/18/05,
with attachments |
| Parents’ 7 | Minutes of Conference re xxxxxxxx of 05/05/04 |
| Parents’ 8 | Handwritten Notes |

PRELIMINARY MATTERS

1. "CHSD" in their closing argument renewed their objection to the parent's exhibits because the exhibits were not disclosed to "CHSD" at least five days before the hearing.

"CHSD" claims no prejudice as a result of the admitting into evidence of the parents exhibits, and could not claim prejudice, as "CHSD" was not prejudiced. The lack of prejudice when coupled with the parents being pro se, and attempting to navigate the procedures of a due process hearing, leads to the conclusion that the panel did not commit error in admitting the parents' exhibits identified-above into evidence.

2. The parents have filed letter objections to the "CHSD" closing argument. The references to the IEP team meeting of June 15, 2006 in "CHSD" closing argument are stricken, having occurred subsequent to the Due Process Hearing Panel's hearing of May 10, 2006.

The balance of the parent's letter of June 21, 2006 appears to be rebuttal to "CHSD" closing argument and is stricken, as the scheduled called for simultaneous closing arguments without reply or rebuttal arguments.

FINDINGS AND CONCLUSIONS

1. Ms. xxxxxxx at the time of the hearing was a sixth grade student at xxxxxx Middle School in the Cape Henlopen School District.

2. Ms. xxxxxxx is currently classified as Trainably Mentally Disabled (TMD). She is in an xxxxxxxxxx classroom which contains 7 students, a certified special education teacher and two paraprofessionals, one of whom is assigned to another individual student, and one is assigned to the classroom generally. Ms. xxxxxxx is assigned to the sixth grade.

3. Ms. xxxxxxx leaves the xxxx for lunch, exploratory classes and sustained silent reading (SSR). Her exploratory classes have been with seventh graders, her lunch and SSR have been with sixth grade students.

4. Ms. xxxxxxx's classification was changed from EMD (Educably Mentally Disabled) to TMD (Trainably Mentally Disabled) following a review of an independent educational evaluation (IEE), performed at A.I. duPont Hospital for Children on November 14, 2005, which had been requested by the parents, and indicated that Ms. xxxxxxx has a full scale I.Q. of 51. TMD students function at a slightly lower level than EMD students.

5. By all accounts Ms. xxxxxxxxxx is a pleasant, co-operative, attractive, well-groomed

child who is not a behavior problem. She is performing at or above the level to be expected from a child with her disability. Ms. xxxxxxx has been a special education student since she was four years old. Her parents have signed each of her IEPs indicating their agreement.

6. Mr. and Mrs. xxxxxxx are well-intentioned, well-meaning, concerned parents. They believe that a dedicated paraprofessional would enable xxxxxxx to “close the gap” between xxxxxxx’s level of performance and those of her sixth grade peers.

7. Unfortunately, xxxxxxx’s performance is already at or above her ability level, and she is not going to “close the gap”. It is a credit to xxxxxxx and the “CHSD”, that xxxxxxx is not falling further behind her sixth grade peers. If xxxxxxx can remain at the same level behind her peers as she currently maintains, it would be an exceptional accomplishment for a child with her disability.

8. Ms. xxxxxxx is entitled to a free appropriate public education (FAPE) under the Individuals with Disability Education Act (IDEA). FAPE does not require the best education possible, but one calculated to maximize the child’s educational potential. Lewisville Indep. Sch. Dist. v. Charles, W., 81 Fed. Appx. 843 (5th Cir. 2003). The IEP must provide services necessary to permit the child to benefit from the educational program. S.H. v. State-Operated Sch. Dist., 336 F.3d 60 (3rd Cir. 2003). The lead case in this area, Hendricks Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982), provides that the IEP must be reasonably calculated to provide meaningful educational benefit.

9. There has been no credible evidence introduced to show that Ms. xxxxxxx is not receiving a FAPE. The evidence instead supports the finding that Ms. xxxxxxx’s IEP is providing her with a FAPE.

10. Specifically, the refusal of “CHSD” to provide Ms. xxxxxxx with a one-on-one paraprofessional is not a violation of IDEA, and provides Ms. xxxxxxx with a FAPE. The evidence demonstrated that Ms. xxxxxxx was performing at or above the level expected from her, based on her I.Q. of 51, without a paraprofessional. No evidence was presented that Ms. xxxxxxx requires a one-on-one paraprofessional to receive a FAPE. The educators are unanimous in their opinion that a one-on-one paraprofessional would be counter-productive to Ms. xxxxxxx’s acquiring the skill to function independently, and to develop socializations skills, and independent functional life skills.

11. Ms. xxxxxxx’s placement in the seventh grade exploratories without sufficient

accommodations, especially with regard to music, is regretful. However, this failure to accommodate Ms. xxxxxxx's disabilities, especially in music, does not amount to a denial of FAPE when viewed as a small portion of Ms. xxxxxxx's total educational experience. See Conecuh County Sch. Bd., 27 IDELR 112 (SEA AL 1997). Ms. xxxxxxx's total educational program pursuant to her IEP is without question providing her with a FAPE.

DECISION

Based on the facts established at the hearing by testimony and exhibits, and the current law and regulations, it is the decision of the hearing panel that "CHSD" is providing a FAPE to xxxxxxxxx.

RIGHT TO APPEAL

The decision of the Hearing Panel is final. An appeal of this decision may be made by any party by filing a civil action in the Family Court of the State of Delaware or United States District Court within thirty days of the receipt of this decision.

DATED: _____

NORMAN E. LEVINE,
Hearing Panel Member

MR. KENNETH ROSE,
Hearing Panel Member

MS. PAT TOLAND,
Hearing Panel Member

cc: Michael P. Stafford, Esquire
Mr. & Mrs. xxxxxxxxx
Ms. Martha Toomey