

**BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF COLORADO
CASE NO. ED 2001-6**

DECISION UPON STATE LEVEL REVIEW

In the matter of:

**[STUDENT] through [PARENT] and [PARENT],
Petitioners,**

v.

**MOUNTAIN BOCES, [SCHOOL DISTRICT],
Respondent.**

This state level review is being conducted by Administrative Law Judge Lisa A. Coughlin (ALJ) of the Division of Administrative Hearings. Petitioners, [STUDENT] (the student) and [PARENT] and [PARENT] (her parents), seek review of the January 26, 2001, decision of an impartial hearing officer (I. H. O.) which denied the Petitioners' request for reimbursement for private school placement costs. The I.H.O. ruled in favor of the District and found that the District had offered [STUDENT] an appropriate educational program as of August 2, 2000. For the reasons stated below, the ALJ affirms the decision of the I.H.O.

ARGUMENTS ON APPEAL

Petitioners contend that the I. H. O.'s ruling denying reimbursement either misconstrued or ignored evidence of the educational impact upon [STUDENT], who has been diagnosed with a learning disability and attention deficit/hyperactivity disorder (ADHD). Petitioners also contend that the I. H. O. erred by ignoring certain alleged deficiencies in the student's individual educational program (IEP).

The Respondent contends that the issue before the ALJ is whether, based upon the record below, petitioners carried their burden of proving that the District did not offer a free, appropriate, public education (FAPE) to the student.

STANDARD OF REVIEW

The ALJ's review consists of an examination of the entire record and written argument. 34 CFR 300.512 (b) (2). The ALJ is required to ensure that the procedures adhere to or are consistent with the requirements of due process in accordance with 34 CFR 300.512. There is no apparent dispute in this regard. The ALJ is also required to make an independent decision in accordance with 34 CFR 300.512 (b) (2). The ALJ does not consider or rule on matters that were not raised as issues before the I. H. O. Additionally, the factual and credibility determinations made by the I. H. O. (the original fact-finder) are given deference by the ALJ unless independent review of the record shows them to be clearly erroneous.

FINDINGS

1. The parties entered into a joint stipulation of facts which is incorporated here by this reference.

2. The student in this case, [STUDENT], has difficulties with reading and writing skills even though she has a full-scale IQ of 106. Colorado regulation's refer to [STUDENT]'s disability as a perceptual or communicative disorder (PCP). A PCP is a disorder in the psychological process that affects language and learning and typically results in a significant discrepancy between the student estimated intellectual potential and actual levels of performance. This disorder significantly impairs achievement in the areas of reading and writing. Some witnesses and exhibits referred to [STUDENT]'s disability as "dyslexia" or a "learning disability." [STUDENT] has a dual diagnosis, specifically a learning disability and ADHD.

3. [STUDENT] is significantly below grade level in several areas despite two years at [Private School], an out-of-state private special education school. The [Private School] provided a good environment for [STUDENT]; however, [STUDENT] is still not working at grade level for basic reading, spelling, and written expression.

4. [STUDENT] needs special education in reading and writing skills. She does not need special education in geometry, physical education, or in a laboratory-based hands-on science class.

5. A student with a dual diagnosis of learning disability and ADHD can attend public school if the school targets the student's specific learning needs.

6. Historically, [STUDENT] made poor progress as a student in the [School District] public school system.

7. [STUDENT] is characterized as a "bright dyslexic." She has a relatively mild form of ADHD which is controlled by medication. While in school she does not fidget, get out of her seat, or run about the classroom. Occasionally, she does need to be redirected by her teachers to stay on task.

8. [STUDENT]'s August 2000 IEP was individualized based on her assessments and performance. This IEP accurately focused on several areas of concern. It accommodates [STUDENT]'s mild ADHD and addresses her severe reading and writing problems. This IEP would have been administered in the least restrictive environment. [STUDENT] would have been educated close to home in a public school with other children who are not disabled in geometry, physiology, history, literature, and physical education. Supplementary aides and services consisting of a tutor, two-to-one services focusing specifically on her disability, two history classes (one designed for [STUDENT] in a small group), and team teaching in a content class, would have allowed [STUDENT] to participate in regular classes in the school she would attend if non-disabled, close to her home. The District's educational services to [STUDENT] would be provided in a coordinated collaborative manner by the key stakeholders. Monthly status meetings would be used to discuss necessary modifications and accommodations.

9. While [STUDENT] continues to demonstrate severe problems within decoding and word identification, the District's FAST (Foundations of Analysis and Synthesis and Thoughtfulness) 25-step program can address these problems. The FAST program is a multi-

modality reading curriculum that uses visual manipulatives to teach reading and reading comprehension. The program focuses on decoding and word attack. As a result, a student's spelling and reading comprehension are improved. This program was designed for bright dyslexic students like [STUDENT] The FAST program has been shown to be short, concise, consistent, and effective.

10. The District's language theory class and reading tutorial can address [STUDENT]'s additional deficits in grammar, punctuation, and sentence structure.

11. The August 2000 IEP provided [STUDENT] with a specially designed program of instruction and supportive services. It was reasonably calculated to enable [STUDENT] to improve her reading and writing skills, achieve passing grades, and advance from one grade to the next.

CONCLUSIONS with Discussion

The ALJ has jurisdiction to conduct this review pursuant to the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. Section 1400, et. seq. and the Colorado Exceptional Children's Education Act, Title 22, Article 20, C.R.S.

Under certain circumstances, the IDEA authorizes reimbursement of unilateral parental placements in private schools. *School Comm. Of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 2002 (1985); 20 U.S.C. Section 1415 (e)(2). The threshold issue in a reimbursement case is whether the school district's IEP provided the student with some educational benefit. See, *Cypress-Fairbanks I.S.I.D. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997).

A free public education need only consist of an education that is specifically designed to meet the child's unique needs, supported by services that will permit her to benefit from the instruction. See e.g., *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *Board of Education of East Windsor Regional Sch. Dist. v. Diamond*, 808 F.2d. 987, 991 (3rd Cir. 1986), *Board of Education of School District 21 v. Illinois State Board of Education*, 938 F.2d 712, 715 (7th Cir. 1991); *Kerkam v. Superintendent, D.C. Public Schools*, 931 F.2d 84, 86 (D.C. Cir. 1991).

[STUDENT]'s August 2000 IEP was individualized and based on her assessments, test results, and class performance. Nothing more is legally required. *Id.* [STUDENT]'s IEP accurately focused on several areas of concern and addressed her mild ADHD and severe reading and writing problems. Supplementary aides and services consisting of a tutor, two-to-one services focusing specifically on her disability, two history classes (one design for [STUDENT] in a small group), and team teaching in a content class, would have allowed [STUDENT] to participate in regular classes, in the school she would attend if non-disabled. While [STUDENT] continues to demonstrate severe problems within decoding and word identification, the District's FAST program could address these problems.

Petitioners have the burden of proving the IEP was inappropriate. See e.g., *Johnson v. Independent Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir. 1990). After review of the record, the ALJ concludes that Petitioners have not met their burden. The August 2000 IEP met the applicable legal standard for a FAPE. Specifically, it provided [STUDENT] with specially designed instruction and supportive services to assist in her educational advancement in the least restrictive environment. The IEP was reasonably calculated to enable [STUDENT] to

improve her skills, achieve passing grades, and advance from one grade to the next. The IEP did not need to provide [STUDENT] with the best possible education and it did not need to maximize her educational potential. See, *Rowley and Kerkam, supra*.

DECISION

After review of the entire record, including the briefs filed by the parties, the ALJ finds and concludes that the decision of the I. H. O. is AFFIRMED.

This decision is final except that the parties have the right to bring a timely civil action in an appropriate court of law.

Dated: _____

LISA A. COUGHLIN
Administrative Law Judge