ILLINOIS STATE BOARD OF EDUCATION

IN THE MATTER OF	)	
THE SPECIAL EDUCATION OF	)	
	)	**No. 4331**
	)	
Jason A.	)	
	)	
v.	)	**Marie A. Bracki, Psy.D.**
	)	**Impartial Hearing Officer**
Chicago Public Schools	)	
District 299	)	

DECISION AND ORDER

This matter is before the undersigned for a Due Process Hearing concerning the disputed identification, placement, and services provided for the student. The Hearing Officer has jurisdiction to hear and decide the matter under 14-8.02 a (g) of the Illinois School Code, 34 C.F.R. 300.506-509 issued pursuant to the Individuals with Disabilities Act (IDEA), and 23 Illinois Administrative Code 226, Subtitle A, Subchapter F. The parties have been informed of their rights pursuant to these statutes and regulations.

Procedural History

The request for a Due Process Hearing was made by the parent in a letter dated December 9, 2004. A Hearing Officer was appointed. That Hearing Officer maintained the case and conducted a Prehearing Conference. She recused herself in February. This Hearing Officer was appointed in correspondence dated March 7, 2005 and received March 11, 2005. Another Preconference was set for and held on March 28, 2005. The Hearing was scheduled for May 16, 2005. The Parent requested a continuance. The Hearing was rescheduled for June 2, 2005. Another continuance was requested by both parties. Over the summer the Parent obtained representation by counsel. The Hearing was set for and held on September 22 and 23, 2005. Additional days were needed and the Hearing continued on September 27 and September 30, 2005. The Court Reporter transcribed the closing statements which were received on October 11, 2005.

The Parent submitted a Prehearing Motion regarding Stay-put on August 29, 2005. The District responded on August 31, 2005. A telephone conference was held on September 2, 2005. Discussion included possible interim placements for the student. The Parent was concerned about the length of the school day. The Parent agreed to a placement in the blended pre-k (kindergarten) class for both the morning and afternoon periods. An Order was not written since the parties had agreed to this placement.

Both parties requested that subpoenas be issued. Both parties sent the forms for signature which were returned to the parties prior to the Hearing.

Issues

In the initial request the Parent asserted that the School District failed to provide an appropriate placement for her son to begin the 2004-05 school year and further that there was a gap of four weeks of service because the receiving school refused to enroll him. Additional issues include disagreement about the District's proposed placement for this school year and whether a free and appropriate public education was denied during the 2003-04 and 2004-05 school years. The Parent's requested remedies include compensatory services, reimbursement for the tuition based program J attended during the fall term of 2004, and payment for services at the Puentes Program at a local hospital, and reimbursement for outside evaluations.

The District stated that it appropriately identified J's needs, provided a free and appropriate public education, and proposed a placement it believes in the least restrict environment given the student's needs. The District requested that the Parent's requests be denied and that an Order be made to implement the June 2005 IEP developed for J with placement in a self-contained classroom.

The parties are in agreement that J is a special education student who needs services. They agree that he needs a full day program. They further agree that speech and language needs are critical and that small group experience is essential. They disagree about the specific setting and whether the District met its burden to provide services during specific periods when the student has been in CPS.

Background Information

The Parent began making contact with the School District in March of 2004. She sent portions of an IEP to the case manager at Alcott School. She informed the District that she and her son would be moving to Chicago but it is not clear when the move would occur. In dispute is whether a request was made for an evaluation of the child in April 2004.

J was identified early in Texas as a student requiring services. An IEP was written in October 2003, but is not contained in the records submitted by either party. The IEP was developed on October 21, 2003 and was updated on November 19, 2003. An IEP was written on April 7, 2004 after a re-evaluation at the Parent's request. The IEP prescribed a half day placement for the following school year with no provision for extended school year. J attended school in Texas in a self-contained classroom for a half day during the 2003-2004 school year.

The student began school in the fall of 2004 at Alcott in a full day Pre-K program. This included an extended day with daycare and was tuition-based. Speech and language services were provided. A meeting was held on September 19, 2004 to discuss J's placement and his needs. The Parent signed a consent for evaluation. The domains identified for evaluation included all but motor skills.

For the beginning of this school year, the Parent and District agreed that J would begin in the blended pre-K program that he attended last year. When he attended, it was a full day program. This year it has a morning and an afternoon section. On the day he was to begin, the parties were informed that the program would not begin until the following week. He was placed in the kindergarten classroom for the first week. A special education teacher worked with him for three days.

Diagnoses have included, at various times, Pervasive Developmental Delay (PDD), Autism Spectrum Disorder (ASD), Learning Disability (LD), Emotional Disturbance (ED), and Speech/Language problems.

Findings of Fact

The Parent began contacting the District in March 2004 to begin to secure a school placement for J. The evidence submitted by the parties includes contact logs and letters written by the parent to several school district staff. The District was aware that J would be attending a district school. There is no evidence or testimony regarding the District's attempt to communicate directly with the Texas school district to obtain J's complete IEP. The Parent is the person who shared documents with the District, albeit in a piecemeal manner. The Parent claims that she signed a consent for evaluation on April 4, 2004. The District has disputed whether consent was actually signed at that time. He was enrolled in CPS on April 5, 2004 as noted in the school records. In fact, J had recently been evaluated again by the Texas school district and by a private provider at the parent's request. An IEP was developed in Texas on April 7, 2004. The Parent had the child evaluated again at Evanston Northwestern Hospital during the summer of 2004.

J was enrolled in a tuition-based preschool program on June 22, 2004. He attended during the summer and received speech/language services as documented in the district records. He continued in the program at the beginning of the 2004 school year. Jason was evaluated in the fall of 2004 by CPS. Consent was signed on September 19, 2004. An IEP meeting was held on November 19, 2004. The team recommended a full day blended pre-K program. The Parent observed the proposed classroom and was in agreement that the placement was appropriate. A transfer was made from school to the other on December 9, 2004. There was a problem in that a certified special education teacher was not available. J did not begin attending until January 25, 2005.

Witnesses for the Parent and District testified that J is a student who has severe speech and language deficits. His scores on measures of receptive and expressive language, including pragmatics, indicate that he needs services and a placement that will provide intense language intervention. The scores on these measures have improved, but continue to be of such a deficit that continued services are required. Several evaluators testified that they were not aware that the student had been evaluated prior to their assessment. Best practices suggest that repeated measurement on the same instrument not be done in close proximity of time.

Witnesses for the District testified that J is a student who has significant needs in focusing his attention, participating in group activities, changing from one activity to another, and interacting on his own with peers. District staff testified about the intervention strategies they have used in the classroom to meet the IEP goals. These strategies included visual cues, social scripting, reinforcement, and various other modifications and accommodations.

Witnesses for the District were well qualified with advanced degrees, appropriate school certificates, and licenses. The Parent's witnesses were qualified with degrees and credentials, but had not observed the student in any classroom setting, and had only interacted with him in their offices for very limited periods of time.

The Parent requested an Occupational Therapy evaluation. A physician's note agreeing with this was shared with the District. While the child's gross and fine motor skills appear to be of no serious concern, the question of sensory integration problems have been mentioned.

In May and June of 2005 the IEP team met update J's goals and to consider placement for the 2004-05 school year. The goals and objectives that were developed were based on classroom observations, additional assessments, and compared to goals and objectives previously put in place. There was conflicting testimony about the revision of the IEP in June with the suggestion that parts of the IEP were rewritten based on availability of programs. The staff and other witnesses were in agreement that J had made progress during his placement at Agassiz School in a full day blended pre-K program. The staff that worked most closely with J, specifically the regular education classroom teacher and the special education teacher, were in agreement that a blended kindergarten classroom would meet J's needs. Neither of these individuals now works for the Chicago Public Schools. Other district witnesses testified that the goals and objectives that were developed could be met in a self-contained classroom. All witnesses were in agreement that the accommodations and modifications that have been previously listed are necessary for J to make progress.

Witnesses testified regarding the large amount of time that was required to work with the student in order for him to make progress. Some staff indicated that they spent the majority of their time working with this student. Although specific testimony was not given, references to a change in program availability corresponded to the timeframe for decision-making in this matter.

No testimony was given regarding the Parent's request for payment for a program regarding parent training for parents of autistic children.

Conclusions of Law

The Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982) Decision presents a standard for analyzing the appropriateness of a student's placement. The Supreme Court has presented a two-pronged test to evaluate a school district's compliance with the Free And Appropriate Public Education Requirement (FAPE). The first prong asks with whether the state has followed the procedures outlined in the Act in arriving at the recommendation it has made for a given student. The

second prong queries whether the IEP developed is reasonably calculated to allow a child to receive educational benefits.

The District knew that J would be a student at one of its schools. The District failed to obtain records from his previous school to assist in determining an appropriate placement. The District relied solely on information shared by the Parent which turns out to be selected pieces. It was the District's responsibility to identify the student's needs and develop an appropriate placement. This is clearly enumerated in 23 Illinois Administrative Code 226.50 which states in part that the receiving district is responsible for implementing the current IEP and to conduct an IEP meeting within ten days of enrollment. That didn't happen until a complete evaluation in the fall of 2004 and subsequent placement in January 2005. Then there were problems with the transition from one school to another. An appropriately certified teacher was not in place until the end of January. The student was not in school for several weeks.

The evaluations that were conducted by the District are complete and appropriate and the November 2004 IEP that followed from the evaluations were adequate to meet the child's unique needs and derive educational benefit.

The May/June IEP that the District has developed has been calculated to meet the child's unique needs and to provide an opportunity for him to derive educational benefit. The question of appropriateness hinges on the specific placement. The District's recommended placement specifies that the student's needs could be met in a cross-categorical self-contained classroom. The District contends that this is the least restrictive environment based on his identified needs and that if independent behavior is observed, he could be moved to a setting that would be considered less restrictive. However, the last agreed upon IEP placed the student in a blended pre-K classroom and staff attested to the fact that he had made progress in that setting. One of the parent's witnesses was surprised at how well the child behaved in her office for the evaluation and was amazed at the progress he had made. The fact that the District does not have a full-day blended kindergarten class at this time does not change the process for determining what a specific student requires. In a blended classroom, this student would have access to non-disabled peers. This is a critical time for language development and social interaction. The placement should maximize his exposure. The ISBE Memorandum dated April 10, 2003 supports this finding. Further, the Seventh Circuit Court of Appeals has upheld the doctrine that progress is a key consideration in determining the appropriateness of a least restrictive environment. This is noted in two recent Illinois cases, namely Beth B v Lake Bluff SD and Kevin B v LaGrange SD.

ORDER

1. The District is ordered to develop an appropriate placement for this student in a regular full day kindergarten classroom with appropriate supports. An IEP meeting should be conducted and placement made within thirty (30) days of the receipt of this Order.

2. The parties are ordered to consider appropriate ways of addressing the question of compensation for the period of time when J was not in school during the 2004-05 school year. Discussion should address the need for a behavioral intervention plan.

3. The request for payment for the Puentes Program is denied.

4. The request for reimbursement of tuition for the preschool program is upheld.

5. The District is ordered to conduct an Occupational Therapy evaluation.

6. The request for reimbursement for other outside of school district evaluations is denied.

7. Within forth-five (45) days of the receipt of this Order, District 299 shall submit proof of compliance to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777-0001.

This Order issued the 12th day of October 2005.

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Marie A. Bracki, Psy.D.
Impartial Hearing Officer

Right to Request Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer with five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other parties and to the Illinois State Board of Education. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

Right to File Civil Action

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 Ill. Comp. Stat. 5/14.8.01(I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

Certificate of Service

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Lombard, Illinois 60148 with postage prepaid on October 12, 2005.

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Marie A. Bracki, Psy.D.
Impartial Due Process Hearing Officer