

RHODE ISLAND DEPARTMENT OF EDUCATION
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
OFFICE FOR DIVERSE LEARNERS

IN RE: CASE NO. 11-13

██████████ and ██████████
As Parents and Next Friend of ██████████

vs.

JOHNSTON PUBLIC SCHOOL DEPARTMENT

DECISION

HELD: For the School District. The IEP proposed for Student, with some modifications, can provide her with a free, appropriate public education in the least restrictive environment.

Dated: February 13, 2012

LEXICON

For the purposes of the Decision in the within hearing and to ensure confidentiality of the Student, the following Lexicon shall be used in this Decision:

Petitioners: Parents
Student: Student
School: Johnston High School
LEA: Johnston Public Schools
Special Education Director: Mr. Jerry Schimmel
Individualized Education Plan: IEP
Individuals with Disabilities Education Act: IDEA
Free, appropriate public education: FAPE

Witnesses:

Dr. Dana Gurney
Mr. Jonathan Alsculer
Ms. Janet Maloney
Dr. Karen Holler
Mother
Father
Student
Mr. Jerry Schimmel
Ms. Therese Picard
Dr. Kevin Fontaine

Hearing Officer: Carol J. King

Student's Attorney: John R. Mahoney

LEA's Attorney: William J. Conley, Jr.

of the Case

The Parents, through counsel, filed a Request for Hearing on September 7, 2011. The due date for the decision was set for November 21, 2011, unless modified by virtue of the timing or waiver of the required resolution session. The parties jointly agreed to waive the resolution session on or about October 5, 2011. A prehearing conference was held on October 7, 2011, at which time hearing dates of October 28, November 4, and November 15, 2011 were selected. The parties agreed to extend the deadline for the Decision for an indefinite period, to be determined at the close of the hearing.

The Hearing Officer took testimony on the scheduled dates. The parties selected additional hearing dates of November 23 and December 19, at which time the record closed. The hearing Officer received the post-hearing memorandum from the Johnston Public Schools on January 17, 2012. The memorandum from the Parents was received on January 24, 2012. The parties agreed that the decision would be due on February 13, 2012.

Issues

The issues in this case are whether or not the Individualized Education Program proposed for the Student in June, 2011 by the LEA is reasonably calculated to provide her with a free, appropriate education in the least restrictive environment, whether or not the IEP Team was properly constituted under the relevant statutes and regulations, whether or not the notice sent to the Parents informing them of its decision to place Student at the Johnston High School was adequate, and whether or not the LEA must continue to fund Student's placement at the St. Andrew's School.

Positions of the Parties

The Parents contend that Student must continue as a student at St. Andrew's School, a private day school, at public expense in order to receive a free, appropriate education. They claim that the IEP Team was not properly convened because the only LEA representative attending the meetings regarding the Student was the Director of Special Education, Mr. Jerry Schimmel. No Johnston High School teachers were involved in formulating the Student's IEP for the period of June 2011 to June 2012. In addition, they state that the notification sent to the parents from Johnston Public Schools informing them of its decision to educate Student at the Johnston High School was insufficient under the pertinent regulations.

The school district contends that it is able to offer Student an appropriate education at the public high school in its Intensive Academic Support program. The district states that St. Andrew's School is no longer approved to accept students placed from public schools. Therefore, the LEA cannot be ordered to place Student and pay for her education at St. Andrew's school.

Findings of Fact

1. The Student, age 16, is currently a sophomore at St. Andrew's School, a private school in Barrington, Rhode Island. (Tr. Vol. 5, pp. 20-23)
2. She was born about three months prematurely and suffered from failure to thrive, mild cerebral palsy, and neurofibromatosis. She was fed through a gastric tube until she was about five years old. (Id.; Tr. Vol. 3, pp. 4-5)
3. Student received special education services from the Johnston Public Schools when she was in preschool. (Tr. Vol. 3, p. 11)
4. The Parents privately enrolled Student in Henry Barnard School for kindergarten and first grade. She was struggling to keep up by the end of first grade. (Tr. Vol. 3, p. 11, 12)
5. Her parents had her privately evaluated at Franciscan Children's Hospital, and she was diagnosed with a non-verbal learning disability. (Tr. Vol. 4, pp. 6-8).
6. The parents and Johnston Public Schools agreed that Student should be placed at the Wolf School, a private special education day school in East Providence, at public expense. Student repeated the first grade at the Wolf School, and remained a student there through the eighth grade. (Tr. Vol. 3, p. 17) Class sizes at the Wolf School did not exceed 12 students. (Tr. Vol. 3, p. 117) In math, Student was in a class of 12, but both parents testified that she often received instruction in groups of one, two or three during class. (Tr. Vol. 3, p. 148, Vol. 4, p. 11)
7. The Wolf School did not have a high school component. The District and parents agreed to place Student at St. Andrew's School at public expense for her ninth grade year. (Tr. Vol. 3, pp. 29-30)
8. Student has completed several neuropsychological evaluations with Dr. Karen Holler during her school career. Dr. Holler last evaluated her in 2009. The results of Dr. Holler's evaluations have been consistent throughout the years. (Exh. E)
9. Student's verbal skills are much better than her non-verbal skills. The 2009 evaluation placed her verbal intelligence quotient score at 98, at the 45th percentile. However, her perceptual organization score was only 63, in the bottom one percent. Her processing speed, which refers to the ability to visually scan for similar shapes and transpose symbolic information quickly, was also at the first percentile. Her working memory was at the third percentile. (Exh. E)
10. Dr. Holler diagnosed Student with a nonverbal learning disability, cognitive disorder NOS due to her cerebral palsy and neurofibromatosis, and a math disability. (Exh. E)
11. Dr. Holler also diagnosed Student with attention deficit disorder, primarily inattentive type, due to her difficulties with executive functioning. Executive control refers to the ability to persist in a task, organize, and develop goals, for example. (Exh. E, Tr. Vol. 2, p.)
12. Student's disabilities are manifested academically by weaknesses in subject areas with a high visual load, like all areas of math, charting, and mapping. In science, she can be expected to have difficulty in understanding diagrams, such as cell structure. She has trouble with visual and spatial tasks, such as organizing a

- binder. She also struggles with comprehension of abstract language and has trouble seeing the big picture, as opposed to the details. (Exh. E, Tr. Vol. 1, p. 14, 16)
13. Dr. Holler was impressed with the fact Student has continued to do well with language learning. She explained that children with nonverbal learning disabilities tend to struggle with verbal skills in the higher grades, because of the pressure on executive skills, such as reading for meaning and organizing written output. (Tr. Vol. 2, p. 24)
 14. Children suffering from nonverbal learning disabilities can have problems in social interactions because they do not understand body language and nonverbal communication cues. Father testified that this is true of Student. In addition, children with this disability can be anxious. When Student becomes anxious, her executive functioning collapses. (Exh. E; Tr. Vol. 4, pp. 12, 22)
 15. Student does have some problems with anxiety. According to parent report, she was in counseling for anxiety from 1999 to 2003. At present, Student does experience periodic anxiety, particularly in test taking and when trying to learn difficult math concepts. Transitions can be challenging for individuals with nonverbal learning disabilities. However, student has no significant social or emotional problems at present. (Exh. E)
 16. By all accounts, Student is a very hard worker. She is motivated to succeed. Her report cards consistently reflect excellent effort and exemplary behavior. Student testified that she wants to attend college. (Tr. Vol. 1, p. 20, Exhs. Q & R, Tr. Vol. 3, p. 137)
 17. Dr. Holler made a number of recommendations for Student's education. She stated Student will do best in a small, structured class setting with accommodations for her attention weaknesses. She needs explicit teaching of study skills, outlining, note taking, and highlighting. She will need help in planning how to complete her assignments, such as formulating an organizational framework for projects and setting deadlines for completing steps in assignments. Student needs help in understanding main themes, rather than focusing on details and missing the big picture. Since math is a particular area of weakness, she should overlearn basic facts and be taught to understand mathematical procedures and when to use them. Dr. Holler also suggested a number of mnemonic strategies to help Student with memory and learning. (Exh. E) Dr. Holler defined a small class as one with between eight to ten students. (Tr. Vol. 2, p. 59)
 18. St. Andrew's serves both students with and without learning disabilities. At St. Andrew's, Student has taken both special and regular education classes. She participated in the special education Focus program. The 5 students in this class meet twice a week in the morning to get organized and prepare for the day. They also meet daily for 45 minutes after lunch to plan and prioritize homework, get started, and obtain guidance and support in subject matter courses. The students and teacher also meet for 10 to 20 minutes at the end of the day to prepare for evening homework. The Focus teacher collaborates with content area teachers. (Tr. Vol.1, pp. 32-38, 47)
 19. During ninth grade, Students' Literacy and Math subjects were also special education classes. (Tr. Vol. 1, p. 40)

20. Student received individual math tutoring in the summer prior to entering ninth grade at St. Andrew's. (Tr. Vol. 1, pp. 121-122) Student testified that she began the year in a math class of herself and four other students. The pace was too fast for her. She quickly fell behind, despite having additional math tutoring. Even in the small class of five, she was distracted when the teacher spoke to another student. She finds it helpful when few people are in the room. She indicated that the one-to-one math class was quite helpful, and she believes she is still in need of individual instruction in math. (Tr. Vol. 3, pp. 124-134)
21. She did very well in the ninth grade. (Tr. Vol. 1, p. 40)
22. Student testified that there are five students in her Focus class, 12 students in her English and Biology classes and 11 students in her History class this year at St. Andrew's. She is struggling in Biology because she finds pictures, graphs, and charts confusing. (Tr. Vol. 3, p. 138-139)
23. Ms. Maloney, Student's math tutor at St. Andrew's, testified that Student was placed in Introduction to Algebra, the lowest level math class, with four other students for ninth grade. However, the pace of the class was too fast for her, which was why the school decided to provide one-to-one tutoring in math for the rest of the school year. (Tr. Vol. 1, pp. 133-136) Ms. Maloney testified that she believes Student would have extreme difficulty in a class of 15 students. (Tr. Vol. 1, p. 156)
24. Student has been successful in regular education classes of no more than 12 students at St. Andrews. (Exh. O)
25. Mr. Jerry Schimmel, the Special Education Director for Johnston Public Schools, met with staff from St. Andrew's School five times during the 2010-2011 school year to develop an IEP for Student.
26. Mr. Schimmel obtained an undergraduate degree in special education and elementary education from Bridgewater State College, and a Master's degree in special education from Simmons College. He administers the special education programs throughout the Johnston School District. He supervises about 70 special education teachers and 30 teaching assistants in the District. He also teaches two special education courses at Rhode Island College.
27. Two IEP documents were submitted in evidence. Both IEPs call for small group and individualized instruction in all areas of need, including math. The document drafted at or after the May 25, 2011 meeting states Student requires a teacher/student ratio of 1 to 4-5 for reading and writing. This requirement is omitted in the IEP formulated after the June 9, 2011 meeting. (Exhs. Q, R) As noted above, Student's current English class contains 12 students.
28. At the last meeting in June 2011, Mr. Schimmel announced that the Johnston Public Schools could provide an appropriate education for Student in its Intensive Academic Support (IAS) program. None of the Team members from St. Andrews School had any information about this program. (Tr. Vol. 1, pp. 68, 69, 96, 97)
29. Communication between the parties broke down completely at that point. Mr. Schimmel testified that he did not explain Johnston's proposed program because the father became angry and ended the meeting, saying he would hear from his lawyer. (Tr. Vol. 4, pp. 68, 70) Father testified that Mr. Schimmel raised his

- voice and just said that “We can provide FAPE” when asked about the program. (Tr. Vol. 3, p. 108) Father never asked anyone at Johnston High School about the IAS program. He first heard about it during the hearing. (Tr. Vol. 3, pp. 104-105; 144)
30. Therese Picard, the Johnston Special Education Department Chair, testified that the IAS program was new in academic year 2011-2012. The prior program served students with lower cognitive ability. That program was taught primarily by a special educator. A subject matter teacher was brought in when needed. (Tr. Vol. 5, p. 104)
 31. The IAS program uses a co-teaching model, with one content area teacher and one special educator in each class. One special educator co-teaches all the content area classes and the academic support class in each grade level. Each grade has an IAS program in place, serving a total of about 50 students at present. Most students are diagnosed with learning disabilities. Classes generally range from 8 to 12 students, according to the Special Education Director, as some students attend certain subject matter classes in the mainstream. (Tr. Vol. 4, pp. 72-77, 80) Class size is capped at 15 students. (Tr. Vol. 4, p. 135)
 32. Student’s IEP references the Focus class At St. Andrew’s as it calls for small group instruction for organizational and time management skills, linked with advising in the morning and afternoon, for one hour and 25 minutes, five days per week. (Tr. Vol. 4, p. 85, Exh. R, p. 16)
 33. The IAS program has an academic support class run by the special educator to support the students with organization and review and re-teaching concepts from subject matter classes. Mr. Schimmel testified that the class meets for 50 minutes five days per week. (Tr. Vol. 4, pp. 79-81) Ms. Picard stated that the academic support class takes place six out of seven days, because the school schedule is a seven-day rotation. (Tr. Vol. 5, p. 85) She testified that all students at Johnston High School have a 30-minute advisory period every Wednesday during homeroom. (Tr. Vol. 5, p. 90)
 34. Mr. Schimmel testified that the IAS program additionally has an advisory period that he believes meets for around 20 to 25 minutes daily. He stated that organizational issues could also be handled in the IAS subject matter classes because the special educator in those classes can address problems as they arise. (Tr. Vol. 4, pp. 89-90)
 35. Mr. Schimmel testified that the IAS program can also meet the requirements in Student’s IEP for small group, individualized instruction in language arts and math because the content area teacher and special educator co-teach those classes. (Tr. Vol. 4, pp. 83-85; 90-92)
 36. Ms. Picard and Dr. Fontaine testified that Student could receive one-to-one math tutoring if she was unsuccessful in the IAS math class. (Tr. Vol. 5, pp. 136, 181)
 37. Ms. Picard testified that Student could leave the self-contained IAS program and have the opportunity to attend classes with non-disabled peers if the Team felt it appropriate. The regular education classes are capped at 28 students each. (Tr. pp. 112, 113)
 38. Dr. Kevin Fontaine, a school psychologist for Johnston Public Schools, testified that he would define a small class as one containing fewer than ten students. (Tr.

Vol. 5, p. 166) However, he stated that he believed Student could do well in the IAS program, even in classes of 15, because of the intensive services available. (Tr. Vol. 5, p. 173)

39. Johnston Public Schools sent the parents a document entitled Prior Written Notice, which was signed by Student's mother. (Exh. L)
40. On May 25, 2010, the Rhode Island Department of Education notified St. Andrew's School is would no longer be permitted to accept future special education students referred by public schools at public expense, due to the fact it did not meet the teacher certification requirements. (Exhs. N, U)

Discussion and Decision

The parties agree that Student has a disability and, as a result, requires special education services. It is clear that a public school system has an obligation to provide students with qualifying disabilities a free, appropriate public education. An appropriate education is one designed to enable the student to receive educational benefits. Schools are not required to maximize a student's potential, but the education must be designed to provide a meaningful benefit. Board of Education of the Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 U.S.176 (1982). Eligible students must be educated in the least restrictive environment suited to their needs. 20 U.S.C. § 1401(9).

When parents reject the school district's determination of placement and the contents of an IEP, the burden of persuasion rests upon them to prove, by a preponderance of the evidence, that the school's plan will not provide an appropriate education. Schaffer v. Weast, 546 U.S. 49 (2005).

The parents argue that Student's IEP Team was inappropriate because only one representative from Johnston, Mr. Schimmel, attended the meetings. The Individuals with Disabilities Education Act, 20 U.S.C. § 1414(d)(1)(B), sets out the required members of the IEP Team. The team must include the parents, not less than one regular education teacher if the student participates in the regular education environment, at least one special education teacher, and a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction for students with disabilities, is knowledgeable about the general education curriculum and the available resources, and an individual who is qualified to interpret the instructional implications of evaluation results. The team member who can interpret the evaluation results can be one of the individuals previously listed.

Student's 2011-2012 IEP was formulated in several meetings involving teachers and administrators from St. Andrew's School and Mr. Schimmel, Johnston's Director of Special Education. No Johnston school staff members other than Mr. Schimmel participated in these meetings. The parents contend that this is improper. However, the parents presented no evidence to prove that Mr. Schimmel is not qualified to be the representative of the LEA, as set forth in the statute. The law contains no requirement that more than one representative of the LEA must attend IEP meetings for students being educated in private day schools at public expense.

In their hearing request, parents allege that the Johnston Public Schools violated its duty to provide them with legally adequate notice of its proposal to change the Student's placement. The IDEA sets out the required content of the notice in 20 U.S.C. § 1415(c) as follows:

Notification Requirements.--

(1) Content of prior written notice.--The notice required by subsection (b)(3) shall include--

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

Johnston used a form for notifying the parents about its placement decision. The content of the form closely tracks the language of the pertinent regulation. Although little elaboration is included on the form sent to the parents, it conforms to the requirements of the law.

Parents also complain that, pursuant to R.I. Regulation 300.116, the placement decision must be made by an IEP team knowledgeable about the available placement options. They state, and the record shows, that solely Mr. Schimmel made the placement decision, without any input from the parents or Team members from St. Andrew's School. Neither the parents nor the St. Andrew's staff had any information about Johnston's program.

Development of the IEP is supposed to be a collaborative process, involving well-informed educators and the parents, with their intimate knowledge of their child's issues and needs. In this case, the development of the IEP, prior to the determination of placement, was a joint effort among the meeting participants. However, Mr. Schimmel

made the placement decision unilaterally, which violates the intent of the laws and regulations. The parents testified that Mr. Schimmel refused to elaborate on his statement that Johnston could provide FAPE. Mr. Schimmel stated that Father ended the meeting at that point and said he would be hearing from the parents' lawyer. I find Mr. Schimmel's version of events to be the more credible.

The parties did not meet or talk again until the hearing in this case commenced. Both parties bear responsibility for derailing communication. Certainly Mr. Schimmel could have attempted to schedule another meeting to calm the troubled waters and discuss placement options more productively with the Team. The parents could have contacted Mr. Schimmel and requested a meeting themselves to challenge and further discuss Student's placement.

As the chair of the Team, Mr. Schimmel should have handled the process differently, and likely wishes he had been more diplomatic. However, even if the meeting had gone better, the evidence elicited during this hearing makes it obvious that the parties would have been highly unlikely to have reached agreement about placement. The LEA clearly believes that its IAS program can meet Student's educational needs. Likewise, the parents are adamantly opposed to removing Student from St. Andrew's School. In the event of a disagreement among the Team members, Mr. Schimmel has the ability to make the placement decision as the representative of the LEA.

The reality of the situation is that scheduling another meeting to evaluate placement options in a collaborative Team process would be futile now and would have been futile last June. There is no point in elevating form over substance.

The IDEA directs hearing officers to make decisions on substantive grounds. Procedural violations can result in a finding that a child did not receive a free, appropriate public education only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process, or caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(E)(i),(ii). I find that any procedural violation by the District in determining placement did not deny Student FAPE or deprive her of educational benefits; nor were the parents precluded from meaningful involvement in the process, as they left the meeting of their own accord without requesting further discussion of the placement issue.

Student has been very successful in her private school placements. Her performance has exceeded expectations, due in no small part to her own excellent work ethic and the support of her dedicated parents and school staff.

The fundamental question in this case is whether or not Johnston's IAS program can provide Student with an appropriate education. Class size and the amount of teacher and program support available to Student are critical issues.

Student's IEP states that she is to be placed in small classes. Both Dr. Holler and Dr. Fontaine testified that the definition of a small class would be no more than ten

students. Mr. Schimmel testified that Student's classes would range between eight to twelve students, although the cap on class size in the IAS program is 15. Dr. Fontaine stated that, despite the fact Student could be placed in classes of up to 15 students, this would be appropriate due to the support available in the classroom. The IAS program places two teachers in each classroom at all times, one highly qualified regular education teacher and one special education teacher. The student-teacher ratio is thus no more than one teacher to 7.5 students. In addition, although the content area teacher changes from class to class, the special educator remains the same, providing that person the opportunity to get to know the students well.

Student has been successful in classes of twelve students and one teacher in the past. While attending the Wolf School, her classes contained up to 12 children. At times, even in math class, students were broken into smaller groups for individualized instruction during class. At St. Andrew's, she has done well in regular education classes of up to twelve students with one teacher in history, English, and biology, although she struggles in biology due to the impact of her nonverbal learning disability. In math, however, she was not successful in her ninth grade special education class of five students, although it was the lowest level math class offered at the school. She testified credibly that she could not keep up with the pace of the class and was distracted when the teacher spoke to other students during class, which added to her comprehension problems. Other testimony and evidence referred to above demonstrates that Student becomes anxious when she does not understand the subject matter, which further erodes her executive functioning skills. As a result of Student's problems in the math class, St. Andrew's decided to teach her math on a one-to-one basis. Student has managed to make progress in math with this individual tutoring.

Student testified that the Focus program at St. Andrew's is very helpful to her. There are five students in the class taught by a special educator. The class meets for 45 minutes every afternoon, and for an additional ten to 20 minutes at the close of the school day. The class also meets twice a week, first thing in the morning. Student receives assistance with organization of her assignments and materials, content matter support, and help planning and prioritizing her homework. Student undoubtedly needs extensive support with organization and planning, due to her difficulties with executive functioning.

Student's IEP calls for academic support daily for one hour and 25 minutes. The IEP was obviously written with the St. Andrew's Focus class in mind, as the document specifically refers to this class in the service delivery section. Johnston offers an academic support class in the IAS program. The class meets six out of seven days in the rotating schedule for 50 minutes. Mr. Schimmel also made brief reference to the existence of an advisory period of about 25 minutes per day. Ms. Picard testified that all students at the High School participate in an advisory period every Wednesday in homeroom for 30 minutes. She made no mention of an additional daily advisory period of 25 minutes. Mr. Schimmel testified that the IAS program complies with Student's IEP because additional academic support can be provided in subject matter classes by the special educator when the need arises.

Parents argue that Johnston's IAS program cannot educate Student in the least restrictive environment, while St. Andrew's can. They assert that Student has been successful taking regular education classes with non-disabled peers at St. Andrew's because class sizes are small. At Johnston High School, regular education classes are much larger, containing up to 28 students each. Student could not manage such large classes, and therefore would have no realistic opportunity to be educated with nondisabled students, in violation of the law's requirements that students be educated with typically developing peers to the maximum extent possible.

The District argues the contrary-that it is legally required to educate Student within the public school system unless it is unable to do so. At that point, removal of the child from the public school system can be considered.

The IDEA, the Rhode Island Regulations, which are modeled after the federal regulations, and case law support the District's position. Both 20 U.S.C. § 1412 (a) (5) and Section 300.114 of the Rhode Island regulations require public agencies to ensure, to the maximum extent appropriate, that children with disabilities are educated with children who are nondisabled, and that separate schooling occurs only if the child cannot be educated in regular classes. The following section, 300.115(A), sets out the continuum of special education placement alternatives. The least restrictive option is placement of the child in a regular education class with special education consultation, supplementary aids and services, or part-time services in a special class. The next, more restrictive placement is defined as "placement in a special class integrated in a school district building." This option accurately describes Johnston's IAS program. Day school placement in a separate public or private school is defined, under the regulation, as being more restrictive than placement in a special class in the regular school building. St. Andrew's is a private day school. Section 300.116(c) states, "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." Student would attend Johnston High School if she were nondisabled. "The least restrictive environment is the one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled." Carlisle Area Sch. V. Scott P., 62 F. 3d 520, 535(3d Cir. 1995). The law precludes a private day school from being considered less restrictive than the public school placement the Student would attend if she were nondisabled.

Conclusion

The Parents have not met their their burden of proving, by a preponderance of the evidence, that the proposed IAS program in the Johnston High School cannot meet Student's educational needs, with some modifications. Johnston's IEP, if modified in some respects, is reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment. Student's normal verbal intelligence and past successes in subject areas other than math indicate that she is likely to be successful in classes of more than ten students in Johnston's IAS program.

Math is a different matter. Student's cognitive testing reveals that her non-verbal abilities and her processing speed lie at the lowest one percent of the population. Given Student's severe math disability, her failure in a special education class of five at St. Andrew's in the ninth grade, her attention difficulties when faced with distractions in the ninth grade math class, and her propensity to become anxious when she falls behind, I find that the IAS class of eight to twelve students and two teachers will not meet her needs. She will need tutoring, either individually or with very few other students on her level, in order to continue to progress.

Johnston cannot fully implement Student's IEP as written because the academic support class offered in the IAP program does not meet daily. It is not clear from the record whether or not the IAS program offers academic support for one hour and 25 minutes per day, six days per week, as required by Student's IEP.

I further find that Parents have not shown that the Johnston Public Schools violated the procedural requirements of the relevant laws and regulations in a manner resulting in a denial of educational benefit to Student or a denial of the Parents' right to meaningful participation in the IEP process.

For the reasons set out above, I direct the parties to meet within fourteen days of receipt of this decision to formulate an IEP in accordance with this Decision. Specifically, the LEA must modify its plan to educate Student in the IAS math class and add tutoring to Student's IEP, either individually or with a very small number of students on her level, if any attend Johnston High School; clarify the academic support services offered in the IAS program; and add academic support time to her schedule on day seven of the school's schedule rotation.

The parties are informed that the right to appeal from this decision is governed and delineated under Section 300.512 of the Regulations.

Hearing Officer

Date: February 13, 2012