

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

STUDENT: JOHN DOE

SCHOOL DISTRICT: PAWTUCKET

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.
1035 MAIN STREET
COVENTRY, R.I. 02816**

**ATTORNEY FOR SCHOOL DEPT: MARY ANN CARROLL, ESQ.
362 BROADWAY
PROVIDENCE, R.I. 02909
TEL: 453-2300**

**STUDENT'S ATTORNEY: VERONIKA KOT, ESQ.
56 PINE STREET
PROVIDENCE, R.I. 02903**

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STUDENT:

SCHOOL DISTRICT:

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.
1035 MAIN STREET
COVENTRY, R.I. 02816
Tel: 821-3537**

**ATTORNEY FOR SCHOOL DEPT: MARY ANN CARROLL, ESQ.
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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:

STUDENT:

MOTHER:

FATHER:

SCHOOL DISTRICT: PAWTUCKET SCHOOL DEPARTMENT

HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.

ATTORNEY FOR SCHOOL DEPT.: MARY ANN CARROLL, ESQ.

STUDENT'S ATTORNEY: VERONIKA KOT, ESQ.

POSITION OF PARTIES

PARENT: 1) The School District is violating the regulations under the Rhode Island Regulations Governing the Education of Children with Disabilities and under the IDEA by refusing to provide the Student with special education services and/or by denying the Student is eligible for special education services.

The School District should develop an appropriate IEP which targets the Student's developmental needs including but not limited to speech, fine motor skills, self help skills and gross motor skills (especially adapted to physical education).

2) The Student should receive compensatory services for the three weeks in January, 2010 (January 4, 2010 to January 22, 2010) when he did not receive special education services.

SCHOOL DISTRICT: 1) The Student does not require special education services and is not eligible for special educational services or compensatory services.

ISSUES and SUMMARY OF DECISION:

ISSUE: Is the Student eligible for special Education Services?

DECISION: The Student is not eligible for Special Education Services.

ISSUE: Is the Student entitled to compensatory services?

DECISION: The Student is not entitled to compensatory services.

TRAVEL OF THE CASE

That on May 10, 2010 this Hearing Officer was assigned this matter to conduct a due process hearing pursuant to section IX, 7.1.1 of the Regulations of the Board of Regents Governing Special Education of Children with Disabilities.

On May 11, 2010, a notification letter was sent to the parties setting forth dates for hearing. On May 12, 2010, another notice of appointment letter was sent correcting the pre-hearing date.

The pre-hearing conference was held on June 3, 2010. The Parents filed a Motion In Limine. The motion requested that all evaluations or assessments for which the raw data, test answers and protocols regarding the assessments or evaluations be barred from being introduced. (Motion is attached hereto)

On June 11, 2010, a decision denying the motion was sent to the parties. (A copy of the decision is attached hereto)

After the pre-hearing conference and pursuant to the Parents' request for information an, an order was entered in which the School District was ordered to provide records or affidavit that such records requested were not available. The order allowed the social worker selected by the Parents the right to observe the Student at school. It also set forth hearing dates. (A copy of the Order is attached hereto)

Hearings were held on June 15, 2010, June 16, 2010 and June 29, 2010. The dates were agreed upon by the parties. The hearing concluded on June 29, 2010.

Briefs were due by August 5, 2010 and extended to August 10, 2010. The decision due date was continued by agreement of the parties to August 25, 2010.

FACTS

The Student is five years old and is attending the Agnes Little School. The Student lives with mother, father and younger brother. The language in the household is Spanish. The Student's better language is English. In the 2010-2011 school year the Student will be in kindergarten. (VI. T p. 65) The Student attended special education preschool during 2008-2009 school year and also in the 2009-2010 school year (T.VI p.68). In December 2009, the mother was told that the Student had reached his IEP goals and that the Student was going to leave preschool. (T.VI p. 69) The Parents filed for mediation. Mediation was conducted on January 22, 2010. The mediation concluded that the Student was to begin attending school on January 25, 2010. The Parents agreed to psychological, educational, speech, language, occupational therapy and physical therapy evaluations. The evaluations were to begin on February 4, 2010 with the 60-day timeline for completion. Dr. Porras was to submit for permission for observing the Student. The District was given permission by Parents to communicate with Hasbro Children Hospital regarding evaluation. After evaluations the evaluation team was to convene. (Pet. Exh # 30)

Before preschool the Student received services from Our Lady of Intervention because of a diagnosis of Autism. (VIT p. 65) The autism diagnosis was changed to developmental delay. (VI T p. 66) The Student attended the Head Start program and was treated at Hasbro Children Hospital.

The Student had an IEP for students age 3 through 13. The Student was three years eleven months old. The Student's home language is listed as Spanish. The needs are stated as follows:

1) (The Student's) concept development, early literacy and communication skills are delayed for his age.

2) (The Student) needs to further develop his strength coordination, unilateral balance, loco-motor and mobility skills. The effective dates of the IEP was 1-5-09 to 1-4-10. The Student was in pre-school at Francis J. Varieur School. Goal #1 is identified as (The Student) will improve overall pre-readiness concept development and learning skills to 80% accuracy with daily participation. On March 17, 2009, the Student was making great progress toward the target goal #1.

On June 3, 2009, the Student demonstrated comprehension in following directions with the following concepts: open/close, in/out, front/back, over/under, on/off. The Student could identify opposites.

On November 22, 2009, the Student met goal #1.

Goal #2 was that the Student will improve comprehension and usage of vocabulary and sentence structure to clearly communicate his thoughts and ideas.

On March 12, 2009, the progress toward goal #2 was referred to as "excellent".

On June 9, 2009, the progress toward goal #2 was that the Student continues to make good progress.

On November 24, 2009, progress was described as the Student speaks in well structured 4 to 6 words sentences with developing grammar. The Student generates sentences on familiar topics.

Goal #3 was that the Student will develop skills in writing, reading, listening and expressing his thoughts and ideas.

By November 22, 2009, the progress report states that the Student has met the goals

set. The Student uses simple sentences to express thoughts; the Student was assertive and frequently answer questions; enjoyed participating in the class; the Student is able to answer questions completely and ask questions.

Goal 4 was that the Student will demonstrate sufficient strength, balance and gross skills and will keep pace with peers.

On March 15, 2009, the progress was described as “nice progress”. On June 5, 2009, it was reported that the Student continued to make progress. Placement was identified as a full time placement in early childhood special education setting located in a public school or building or other community based early childhood facility. (Pet Exh. 29)

Kathleen Grundy is the head teacher at Children’s Friend Head Start. She was a teacher for Head Start for thirty years. The Student participated in the Head Start program while he had an IEP. She filled in a report (Pet. Exh., 6) on October 14, 2009. At that time she had concerns with fine motor skills, the Student’s interaction with others and his language. She testified that her opinions changed since October, 2009.

“He has improved dramatically with his expressive language, interaction with peers, his gross motor skills have greatly improved, his language has improved.” (T.V. III. p.10)

“(The Student) verbally interacts with all children.... There is no more parallel play.” (T.V. III p. 11)

“Presently, he has become more independent in the classroom. (the Student) recognizes letters, writes his name. (The Student) can actually sight words.” (T.V. III p. 13)

When asked if that was something one would expect from a preschool child, Ms.

Grundy said “ more kindergarten level.” The Student’s skill level is above the level of a preschool child according to Ms. Grundy. Was the Student ready to enter kindergarten? Ms. Grundy responded, “yes” (T.V. III p.14) According to Ms. Grundy the Student is not eligible for an IEP (T.V. III p.14)

Reference was made on cross-examination of Ms. Grundy to Petitioner’s Exhibit 35 (60 Month Questionnaire of 5-5-10) and Petitioners Exhibit 37, Head Start Assessment. Both exhibits were the responsibility of Ms. Grundy. Certain areas were left unmarked. Ms. Grundy said “That it means is I probably did not fill this out correctly toward the end of the school year.” (T.V. III p.22) When asked if Exhibit 37 was not an accurate assessment, Ms. Grundy responded that “it did not reflect my observation of him”.

Sandra Aguiar testified . She is a bilingual speech and language pathologist who holds a master degree of science in speech pathology and a bachelor degree of arts in psychology. She is employed at Rhode Island Hospital and Hasbro Children’s Hospital. She evaluated the Student in January, 2009. (Pet. Exh. #1) She used as a basis for her evaluation general medical history, prior evaluations from Rhode Island Hospital, information from parents and recent medical history (T.VI p. 17). She testified that English was the language of comfort for the Student. (T.VI. p.20), that the Student is very good at functional communication and the Student lacks linguistic creativity. (V.I p. 25) Ms. Aguiar diagnosed the Student as having mixed expressive language disorder. (V.I p. 28) She made a distinction between a “disorder” and “delay”. “Delay is when a child is following the normal development pattern but behind in age; a disorder, the child is not following the normal pattern, more likely will not catch up, will always present with a disorder.” (V.I p. 28) During her direct examination she reviewed and gave opinions on Petitioner’s Exhibit #4 (Hasbro psychological evaluation), on Petitioner’s

Exhibit #32 (an article on language disorders), on Petitioner's Exhibit #19 (School District's speech and language evaluation of 3-11-10), on Petitioner's Exhibit #24. (School's speech and language progress report), December, 2009), on Petitioner's Exhibit #33 (Rhode Island Early Learning Standards), and on Petitioner's Exhibit #34 (Rhode Island Kindergarten through grade five written and oral standards – grade level expectations).

Petitioner's Exhibit #4, (Hasbro's Psychological Evaluation) was referred to by Ms. Aguiar in her evaluation of the Student. (V.I p.30)

Petitioner's Exhibit #32, Article on language disorders was discussed by her. She said, "The two most important points out of this article, the first being that children with language disorders are at risk for academic difficulties." (V.I p.31) Further, she said, "I do think that his language difficulties are going to impact his ability to participate in the mainstream classroom as well as the Student's ability to interact outside of the school as well as with typical peers. (V.I p.33)

In referring to Petitioner's Exhibit 19 (School's speech and language evaluation) she said that she agreed that English is the Student's language of comfort and further that overall she agreed with the school's evaluation. (V.I p. 42 L.20) She did not agree with the conclusion of Petitioner's Exhibit #24 (speech and language progress reports) as found in the summary that stated the Student's language skills are age appropriate and demonstrate in the 4 to 5 year range. (V.I p. 43 L.18) In her opinion concerning Petitioner's Exhibit 33 (Rhode Island Early Learning Standards) she said, "I think the Student would have splintered skills. Some of these would be easy for him. A lot of them would be difficult." When questioned about Exhibit 34, (Kindergarten to grade 3 Rhode Island communication standards pages 17 and 18 she said,

“.....listening and responding to stories, participating in large group discussions, sharing information and experiences orally and telling stories would be difficult.” (V.I p. 49)

As to placement Ms. Aguiar stated, “I feel placement....I predict that he would do pretty well in a self contained or intergrated special education classroom.” (V.I p.49)

Ms. Aguiar is not certified by the Department of Education as a speech and language pathologist. (V.I p.51)

As part of her evaluation Ms. Aguiar did not speak to or inquire of Head Start providers, any of the Student’s classroom teachers, or the Schools speech and language pathologist. (V.I p. 53,54) Ms. Aguiar did not have any knowledge of whether or not the Student demonstrated problems with language during play, using complex language, speaking or communication while in the school setting. (V.I p. 58,59)

Gisela Porras, M.D. testified. She is certified in the American Academy of Pediatrics and is a Board certified pediatrician. She will be eligible to sit for the Developmental Behavioral Pediatrics Board Test. She is an expert in her profession.

She initially saw the Student at age three for a developmental behavioral pediatric consultation.

She evaluated the Student when he was three and a second time in February, 2010.

Her evaluation included review of the following: a psychological evaluation (Pet. Exh. #4), speech and language evaluation (Pet. Exh. #1), occupational therapy evaluation)Pet. Exh. #2), Physical therapy evaluation (Pet. Exh. #3), teacher’s report from Head Start, (Pet. Exh. #6), teachers report from the school district, Ms. Duff (Pet. Exh. #7) medical history from Memorial Hospital. (V.II p.13,14 and 15) In order to assess the Student’s adaptive behavior she

reviewed the Parents statements taken through an interpreter according to the Vineland-II Adaptive Behavior Scales Survey.

Dr. Porras' summary in her evaluation is as follows:

“The Student presents significant receptive and expressive language delays. His nonverbal cognitive skills are within average range with significant weakness in his verbal cognitive abilities, consistent with the history of mixed language delay. (The Student's) overall early academic skills were in the low average range for a child of (the Student's) age with poor performance on the listening comprehension and spoken language tasks. The Student is found to be at risk for language-based learning disorder. His adaptive abilities are in the deficient range for a child of the Student's age. The communication skills have been found to be delayed both through standardized tests as well as observation in all settings (home, Head Start and clinical observation). The behavioral and social emotional concerns associated with description of routine have only been reported at home due in part because the home is less structured” (Pet. Exh. #5) She continued to state that the Student meets diagnostic criteria for PDD, NOS. The Student presents with mixed developmental delay involving adaptive motor and emotional/behavioral skill delay with significant delay in language abilities. (Pet. Exh. #5)

Her recommendations were:

1. Continue to need intensive speech and language therapy.
2. Student would benefit from participating in a structured language based preschool program with smaller to student ratio.
3. Needs occupational and physical therapy.

Dr. Porras never observed the Student in the pre-school classroom in the School District.

(V.II p.56) All of Dr. Porras' impressions concerning the Student came from evaluations done by specific evaluators. (V.II p. 57)

Leslie Marks-Hershey testified. She is a speech and language pathologist and is certified by the State of Rhode Island (Sch. Dist. Exh.#3) She obtained a Master degree in pathology and audiology. She also has a certificate in clinical competence and three certificates in supervision and administration. (V.II p. 62) She is certified in New York, Massachusetts and Rhode Island as a teacher of the hearing and speech impaired (V.VI p.63) For thirty years a portion of each position was in preschool. (V.II p.64) She was a clinical supervisor for University of Rhode Island and Jenks Junior High School. During the thirty years in education, she provided therapy to hundreds of bilingual children. (V.II p. 64 & 65) She is an expert in servicing bilingual students as a therapist and in servicing bilingual students in preschool. (V.I p. 65) She considered the Student to be an English language learner. She read Ms. Aguiar's evaluation prior to her evaluation. (V.II p.67)

She explained the difference between a monolingual child and a bilingual child. A monolingual child is one who speaks English at home and in the community and a bilingual child is learning two languages, the first language at home and at church and the second speaking English in school. (V.II p. 69 & 70) She did not agree with Ms. Aguiar's conclusion that the Student has mixed receptive language disorder. (V. II p. 72)

Ms. Marks-Hershey stated:

“Two languages do not develop at the same rate. One always takes a back seat and his English vocabulary now is that back seat”

There was no therapeutic relationship between Ms. Marks-Hershey and the Student. (V. II p.85)

She did not interview the parents during her evaluation. (T.V. II p. 94)

Kerry Duffy testified:

She has an emergency certificate for her to be in a special education preschool classroom.

(Dist. Exh. #11)

The Student was in her class during the 2009/2010 school year, the afternoon session. (V.III p. 25 & 26) There were six children with an IEP and the rest were community students from Pawtucket. (T.V.III p. 26) First they did circle time with academics, letter recognition, shapes, colors, calendar time, counting, weather and sang songs. (T.VIII p. 26 & 27) There was a center time where there were arts and crafts. (T.V. III p. 27) Other activities included cut and past and prewriting skills (T.VIII p. 28)

She gave the Student an informal assessment (Sch. Dist. Exh.15) for preschoolers that had check marks for preschool skills and kindergarten skills. (T.V. III p. 28) Ms. Duffy stated that in December, 2009 the Student was functioning the way the Student should for a preschool child. (T.V. III p. 29)

District's exhibit 15 was the assessment used by Ms. Duffy with all preschoolers. (T.V. III p. 30) District's exhibit 14 is an informal assessment done on March 31, 2010. (T.V III p. 34)

The March assessment was done by Ms. Duffy to determine if there was any regression. (T.V. III p.35) Ms. Duffy taught the Student from September to Christmas and then there were three weeks the Student was not in school. (T. V. III p.35)

Ms. Duffy concluded that the Student did not believe the Student has a disability or needs special education. (T.V.III p. 37) Note that District Exhibit 15 is Petitioner's Exhibit 20.

The informal assessment was not a standardized test. (T.V. III p. 38) Certain sections of the informal assessments were not addressed by Ms. Duffy because she did not feel that they

were something that she would assess. (T.V.III p. 39) Ms. Duffy never saw the Student at home or in the community. (T.V. III p. 42)

Kathleen Allison testified. She is a physical therapist working for the Pawtucket School District. She worked as a physical therapist for thirty years. She is licensed by the State of Rhode Island. (T.V.III p. 43) She gave therapy to the Student since April, 2008. She evaluated him on March 22, 2010. (T.V.III p. 45)

The evaluation summary stated “.....The Student can independently negotiate the school setting along with adult direction considering his age. The Student’s motor skills are sufficient for functionally mobility in the school setting. School based PT services are no longer indicated. (The Student) should continue to refine and develop his motor skills through exposure to the physical education curriculum” (Pet. Exh #17) Ms. Allison did not have a record of skill scores for her evaluation. (T.V. III p.49) The record form was destroyed because she thought that was the policy of the District. It was what she always did. (T.V. III p.50) Ms. Allison never observed the Student at home. (T.V. III p. 50)

The Student is not toilet trained. That would fall within the witness’ expertise only as it relates to getting on and off the toilet. (T.V. III p.54)

Gigiola R. Mello testified. She is an occupational therapist employed by the School District. She has worked at acute care in a hospital setting and in outpatient home care and early intervention. (T.V. III p.56) Ms. Mello is fluent in Spanish. (T.V.III p.57) She is licensed by the State of Rhode Island. (Dist Exh. #7) Ms. Mello evaluated the Student in March of 2010. (Petitioner’s exhibit #16 and the District’s exhibit #18)

She stated that she did not chose to do a formal standardized testing because the Student received a standardized testing from Hasbro Hospital making it invalid for her to use the same

Standardized test. (T.V. III p. 59) Ms. Mello observed the Student for the whole afternoon observing him in centers, free play, circle time, snack, bathroom and movement time. (T.V. III p. 60)

For fine motor skills she observed the Student during centers and snack time. (T.V. III p.60) She observed the Student in the bathroom. (T.V. III p.63) Ms. Mello initially spoke to the Student in Spanish but he did not respond in Spanish and the Student seemed upset that she was talking Spanish so she continued in English. (T.V. III p.64)

Ms. Mello's role in the school department is support for the classroom teacher. (T.V. III p.65)

She concluded" (The Student) is able to access his education without any difficulties and independently.

The Student has not been seen by Ms. Mello outside of preschool, at home or in the community.

Cindy Hawkins testified. She is a preschool psychologist and has been such for ten years.

She has known the Student since he transitioned from early intervention or two and a half years. (T.V.III p.71).

She has a certificate from State of Rhode Island. She has a master's degree in educational psychology and a certificate of Advance Graduate (Studies. T.V.III p.21)

The Student is not toilet trained. Ms. Hawkins stated that they started a program last year and the Student was very successful requesting to use the toilets. The School District received a note from the Student's pediatrician asking them to stop because the parents said that he was getting a urinary tract infection because they were forcing him to use the toilet.

Toileting is not a function of a school setting. (T.V. III p. 73)

In December, 2009 Ms. Hawkins made an assessment of the Student (Dist. Exh. #15) She concluded that the Student did not show any signs of development delay and that the Student was performing at age level expectations and has met the goals of the IEP.

Ms. Hawkins did another assessment on March 15, 2010 as part of a three-year re-evaluation. (Dist. Exh. #21)

She found all skills to be within age level and some were at the lower end of the average range and some were at the higher end of the average range but the Student was functioning in all at age expectation both at Head Start and at school....(T.V.III p.75)

Ms. Hawkins stated the Student does not need special education. She said “The Student is functioning at age level if not better.” (T.V. III p.77)

Ms. Hawkins on cross-examination answered the inquiry as to why the test booklets where answers are recorded are destroyed.

“It is a practice that was taught to us in graduate school. You score them, you destroy them.” (T.V.III p.82) Further she said “It is something drilled into our heads when we are in school is that your protocols and your notes are your notes, do not put any identifying identification on them and they are yours. Don’t bring them to meetings, don’t put them in folders, they are yours.” (T.V. III p.83) She was never told by the Pawtucket School District to destroy protocols “it was just always been the practice.” (T.V. III p.83) Ms. Hawkins has observed the Student several times at Head Start. (T.V. III p.90)

Eileen Crudele testified. She is the Director of Special Education for the Pawtucket School District. She is certified as a director of special education for the School District.

She explained that services provided at school are educationally based to help a student access the general curriculum. Services given through a home would be more clinical in nature and can affect what is going on in the home and community setting. (T.V. III p. 92)

Part of the School's typical preschool program is toilet training. It not part of an IEP goal. As to kindergarten, Ms. Crudele stated: "Every student whether they are general education students or whether they have been previously identified as an IEP Student are screened within the first two to three weeks of school in areas of reading and kindergarten especially general readiness." (T.V.III p.93) Students found at risk are then put into intervention groups.

DECISION

ISSUE: Is the Student eligible for Special Education:

At the outset, it is noted that all the witnesses were considered experts in their field and were excellent in their presentations. However, the parent's witnesses in many areas had diametrically opposed opinions to the witnesses of the School District as to the eligibility of the Student for special education services.

The Student lives in a home where Spanish is the dominant spoken language.

Testing and communication with the Student was conducted in English by the Parents' experts and by the experts for the School District. Ms. Aguiar, a speech and language pathologist stated: "English is (The Student's) language of comfort. (T.V.I. p. 20)

When she spoke to the Student in Spanish the Student had difficulty responding. (T.V.I. p.20) Witness, for the School District, Leslie Marks-Hershey stated "Subsequent to this testing, an English proficiency test was administered and the results suggest that (the Student) is proficient in English."

Ms. Aguiar conducted a speech and language evaluation in January 5, 2010. (Pet. Exh. #1) In her evaluation she referred to prior evaluations from Rhode Island Hospital, information from the parents and recent medical history. She was a therapist for the Student for two years. In her evaluation summary she stated. "... (the Student) continues to present with a significant mixed receptive and expressive language delay and impaired social communication skills. (The Student) demonstrates reduced understanding of complex sentence forms and directions. He communicates via gestalt phrases with limited linguistic creativity." (Pet. Exh. 1 p.4) She recommended that speech services be continued. (T.V.I. p.33) In reviewing the School District's speech and language evaluation she said "the Students oral expression was below average but not a standard deviation. So based on these scores he is showing delay." (T.V.I. p. 38) Concerning the Peabody Picture Vocabulary Test the Student was one and a half standard deviation below the mean. Her overall comment about the evaluation was that she agreed with the evaluation. (T.V.I. p.42)

Leslie Marks-Hershey was on the preschool team as an evaluator for three year olds. (T.V.II p.60) She is a speech and language pathologist. She reviewed Ms. Aguiar's evaluation. (Pet. Exh #1) which was conducted the day after the Student had an adenoidectomy. Ms. Marks-Hershey stated she would not have tested the Student the day after such an operation. (T.V.II p.67) She classified the Student as a second language student. In exhibit #1 there was a clinical evaluation of language Fundamental Preschool 2 on which the Student did poorly and she explained that such a test involves a lot of vocabulary and students who are learning a second language vocabulary tends to be the deficit that is the lowest. (T.V. II p.68) She testified that the CELF evaluation in exhibit #1 is a clinical tool that is normal for children who are only English speaking. (T.V. II p.69) On cross examination it was pointed out that the Student's

standard score for listening comprehension and oral composite was 78 which is approximately 1.5 standard deviation below mean. Ms. Marks-Hershey responded, “The 78 is compared to English-only speaking children of his age. The WIDA testing says we can test him we can not test him in Spanish.....we need to test in English, and compare (the Student) to himself and not compare him to English only peers.” To this Hearing Officer this means she is measuring progress which seems a very reasonable approach.

Dr. Gisela Porras saw the Student when he was three years old for a developmental behavioral pediatric consultation. On February 17, 2010, Dr. Porras wrote a summary of a team evaluation. The evaluations reviewed by her were, Audiology/Speech Pathology prepared by Sandra Aguiar, (Pet. Exh. #1), Psychological Evaluation by Deborah Rosile (Pet. Exh. #4), Physical Therapy by William Shaughnessy (Pet. Exh. #3, Occupational Therapy Evaluation by Jennifer Roosa (Pet. Exh. #2) In addition to reviewing the above evaluations Dr. Porras also reviewed a teacher report from Head Start (Pet. Exh. 6), teacher report from preschool teacher Ms. Duffy (Pet. Exh. &) School District Psychological Evaluation by Cynthia Hawkins (Pet. Exh. 15), School District Physical Therapy evaluation by Kathleen A. Allison (Pet. Exh. #17), School District Occupational Therapy Evaluation by Gigliola Mello (Pet. Exh. 16), School District Educational evaluation by Mary Mustafa, (Pet. Exh. 18), School District Speech and Language evaluation by Leslie Marks- Hershey (Pet. Exh. 19), School District teacher observation of the Student (Pet. Exh. #20), School District teacher summary (Pet. Exh. 23) and Help for Preschoolers Checklist.

Dr. Porras concluded from review of her evaluation team’s findings the following:

1. In expressive language the Student was found to be more than two (2) deviations below the mean suggesting a language delay. (T.V.II p.17)

2. The Student is delayed in the Student's verbal cognitive ability (T.V.II p.18) and non verbal the student was in the average range (T.V.II p.18)
3. Psychological evaluation the Student is in the borderline range. (T.V.II p.19)
4. In Physical Therapy evaluation the Student was two standard deviations below average. (T.V.II p.23)
5. The Occupational Therapy Evaluations showed his physical grasping was in the first percentile however his visual motor integration was in the average range.
6. On the young children's achievement test the Student was equivalent to three years ten months.
7. The Student's visual motor integration was fine, average (T.V.II p.24)

In reviewing the School District's evaluations she concluded:

1. Speech and language evaluation, oral written language was between one and two standard deviation so the Student was in the borderline range, some mild delay and on the Peabody picture test the Student's in the lower borderline range with almost two Standard deviation below mean. (T.V.II p.37)
2. On the psychological evaluation had average skills for nonverbal abilities and the verbal IQ test was 101 which places the Student at the 53rd percentile, which were inconsistent with her finding. (T.V.II p.38 & 39)
3. In educational evaluation the Student was considered to be average. In expressive language the Student was almost two standard deviation below mean. The receptive language was in the average range and the Student's visual reception shows a mild delay. (T.V.II p.41 & 42)
4. Physical Therapy evaluation placed the Student in the average range. (T.V.II p.42)

In regard to Dr. Porrás' opinion concerning Petitioner's Exhibits 23 and 24 which were teacher observations and summaries, it is clear that observation evaluation is extremely subjective and therefore more weight will be given to the opinion of the observer rather than one who reviews the observation documentation.

Dr. Porrás observed the Student in the classroom at Head Start from 8:30 A.M. to 12:30 P.M. but she never observed the Student at school in the School District.

She also recommended an inclusion program in kindergarten. (T.V.II p.27 & 28)

Section 300.8 of the regulation, section (b) (3)

“A developmental delay or disability is defined as a Twenty-five per cent (25%) delay or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two or more of the following areas: Physical Development, cognitive development, communication development, social or emotional development or adaptive development.”

In expressive language the Student was found to be more than two deviations below the mean and in physical therapy evaluation the Student was also two standard deviations below average according to Dr. Porrás. Although these results would indicate a delay or disability in those areas, the regulation under Section 300.304 (2) require:

“Not (to) use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability”

Dr. Porrás' team certainly did utilize various recognized standardized testing, medical information about the Student and a brief observation of the Head Start classroom and information from Parents. However, the regulations are clear about the necessity, in addition to

parent input, input from teacher recommendations (300.306) (c)(i)) and classroom observation. (300.308 (a)(1)(2)).

I find it to be detrimental to any evaluation that did not have school district teacher input and more critical, observation of the Student in the school environment.

The regulations consider observation important in the evaluation process. Section 300.310 of the regulations requires that the public agency insures that the Student is observed in the learning environment in order to document the child's academic performance and behavior in areas of difficulty. Surely this must apply to any evaluator or professional giving an opinion concerning academic performances of a student.

Section 300.305 requires that the IEP Team and other qualified professionals must among other procedures used for evaluation obtain information from the parents and conduct classroom based observations.

Although the School District failed to obtain information from the parents as required above it had access to those professionals who was thoroughly familiar with the Student's abilities and disabilities on a daily basis for a long time. Mrs. Grundy of Head Start was an independent witness. She had a subpoena served on her by the School District. The Student attended her school four hours a day. She had to Student for a year. (T.V.III p.13) Although she had a concern about fine motor ability she stated that she did not believe the Student needed an IEP (T.V.III p.14) She said that he recognizes letters, he can write his name and he can recognize sight words. When asked if one would expect that of a preschool student she said "more kindergarten level." (T.V.III p.13) In December, 2009, the Student was developmentally appropriate and met (the Student's goals of the IEP and was functioning at or beyond what he should. (T.V.III p.29) The Student did not have any deficiencies in (the Student's) goals of the

IEP and was functioning at or beyond what he should. (T.V.III p.29) The Student did not have any deficiencies in (the Student's) personal skills or the (Student's) social skills. (T.V.III p.32)

Kathleen Allison is a physical therapist for thirty years.

She provided therapy for the Student one session per week since April, 2008. In December, 2009 she determined that the Student no longer needed physical therapy to participate or access his curriculum. She observed the Student moving throughout the school and in his physical education class. (T.V.III p.47)

Gigiola Mello is a occupational therapist who speaks Spanish. She never serviced the Student because in a school based setting the teacher would go to her if the teacher sees a student having difficulty accessing his or her education and that never happened. (T.VIII p.58)

Because the Student had a standardized test at Hasbro Hospital it would make it invalid for her to do the same thing. (T.V.III p.59) Instead she observed him in his classroom environment. (T.V.III p.60) The Hasbro evaluation (Pet. Exh. #2) was reviewed by her and she noted that the sensory profile is directed by the parent and what they see at home. She said it is not what you see in the classroom. (T.V.III p.64) She concluded that the Student was able to access his education. (T.V.III p.66) The Hearing Officer asked the witness why certain thing would be observed in the home and not in school. Basically she said the home environment is different than the school environment. The school is structured, there are routines to follow, they have piers to follow and another adult is directing them. (T.V.III p.68) She said "A lot of children are hearing two different languages, Spanish at home, English in school but they want to be like their friends". (T.V.III p.68) They can become rebellious when they find they are not fitting in.

Cindy Hawkins is a preschool psychologist for the School District. She stated that toilet training is not a function of the school setting but there is a program in preschool to address toileting. She observed the Student and the Student did not have trouble getting on or off the toilet. (T.V.III p.74) Before she did her evaluation (Pet. Exh. 15) she obtained information from Ms. Duffy the classroom teacher and from Head Start. The Student's skills were within age level. Some at the lower end and others at the higher end. (T.V.III p.75) The Student is functioning at age level if not better. (T.V.III p.77) This witness observed the Student twice a week for two and a half years. (T.V.III p.79)

It is important to consider the determination by the district that the Student met all the goals set by the IEP covering the period of January 5, 2009 to January 4, 2010.

I have placed emphasis on professional opinions based on observation of the Student in the school environment. The School District's witnesses had many, many hours of observation over weeks months and in some case years.

The standardized test or evaluation is a snapshot of the Student but observation over a long period of time and in some instances over years is a movie.

Based on the above I find that the Student is no longer eligible for special education services.

An evaluation was done by the School District by Ms. Duffy on March 31, 2010 to determine if there was any regression while the Student was out of School for three weeks. (Sch. Dist. Exh. 14) She found there to be no regression.

The evaluation was basically an observational report and not a standardized test.

The only evidence put in by the Parents concerning regression was put in by Dr. Porrás in Petitioner's Exhibit # 8. The Parents reported to Dr. Porrás or one of her team that the

Student has shown regression in maladaptive behaviors. The Student is withdrawn, hiding under the table, needs constant adult supervision, bites his brother and tried to smother his brother. Such complaints I find to be home related and not educationally based. As stated by Eileen Crudele "Services given through the home would be more clinical in nature and could affect what is going on in the home and community setting. I do not find any regression."

DATE: _____

Arthur G. Capaldi, Esq.
1035 Main Street
Coventry, R.I. 02816
Tel: 821-3537

Due Process Hearing
Decision
Town of Pawtucket