

State of Rhode Island
Providence, SC

Department of Education

In Re: John Doe
Vs.
South Kingstown School District

LL 12-41

Administrative Decision

Maureen A. Hobson
Impartial Due Process Hearing Office

Dated: _____

Held:
Parents seeking reimbursement for unilateral out of district placement bear burden of proving district's failure to provide FAPE. Where denial of FAPE is not proven, claim for reimbursement for out of district placement must be denied.

Lexicon

Student: XXX XXXXX

Parents: XXX and
XXXXX

District: South Kingstown

Special Education Director Teresa Eagan

Parent's Attorney: Stephen Burke, Esq.

District's Attorney: Andrew Henneous, Esq.

Hearing Officer: Maureen A. Hobson, Esq.

Witnesses: Allison Schettini Evans, Ph. D
Teresa Eagan, Spec. Edc. Director.
Sheila Sullivan, School Principal
Michele Laurent, Teacher (district)
Jennifer DeFeo, Teacher (district)
Karen Laplante, Teacher (district)
Michaeline Lilley, Teacher (district)
Amy Taft, Teacher (Wolf School)
Rosaline Granoff (Dir. Admissions,
Wolf School)
Caighlin Perrin, Teacher (District)
xxx, Mother
Steven Imber, Ph. D
Mark Dumas, Ph. D

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This matter came to be heard before an impartial Due Process Hearing Officer following a complaint filed by the parents against the South Kingstown School District in December 2012.

At the time of the filing of the complaint, the child was already a student of the Wolf School, a private educational facility specializing in the teaching of children with certain learning disabilities. The student had been unilaterally placed at the Wolf School by his parents in the Fall of 2012.

A pre-hearing conference was conducted in January 2013 and resulted in no resolution of the issue(s). Though the due date of the decision was February 22, 2013, the parties sought an extension of that date in order to accommodate the scheduling of numerous witnesses who were expected to testify in the matter. The parties made it clear to the Hearing Officer that the case was one in which the parents were seeking monetary reimbursement for their son's education at the Wolf School, and that his education would not be interrupted by any delay in the proceedings.

The hearings commenced on May 8, 2013, and after 10 days of testimony, concluded on June 12, 2013. Thereafter, the parties requested additional time within which to file written briefs. It was agreed by the parties that a written decision would be filed by the Hearing Officer on or before September 1, 2013.

Travel, Summary of Evidence

And

Findings of Fact

The student is a 12 year old African American boy who was born pre-maturely to his biological mother who struggled with illness and illicit drug, alcohol and tobacco use during her pregnancy. The child was born at 27-28 weeks gestation and weighed 11lb 7oz at birth. As a result, the student suffers from a number of physical and cognitive deficits. He was hospitalized in a neonatal intensive care unit for 4 ½ months following his birth. The petitioners in this matter are the child's adoptive parents. The child began living with his adoptive parents when he was approximately 22 months old. He was formally adopted at 3 years of age when his biological mother agreed to a termination of her rights. The child's adoptive mother had served as a visiting nurse to his biological mother during her pregnancy, and, hence, was familiar with the challenges the child faced as a result of the circumstances of his birth.

The child has numerous impediments to his education, including, but not limited to, borderline to low average cognitive ability, speech/language deficits, writing deficits, fine motor skills deficits and the presence of an ADHD diagnosis.

The student received early intervention services and was then transitioned into pre-school then full day kindergarten class with an IEP designated to address his specific needs. The child continued onto public elementary school with an IEP and specialized education. At some point, the parents determined that the school district was not providing the supports and/or services that they felt were necessary to the education of

their son. The parents began exploring the possibility of a private school placement at the Wolf School. After initially receiving the child's records in the last quarter of the 2010-2011 school year, the Director of Admission at Wolf determined that the child's mental status and the supports and services that he required made him an unlikely candidate to succeed in the Wolf program. Accordingly, the Wolf School rejected that student's application, and he continued with his public school education. The parents remained unhappy with the educational services being afforded to their son by the district. At the conclusion of the child's 4th grade education in 2012, the parents again sought his enrollment at the Wolf School. The admissions staff at Wolf School found that the child had improved skills such as would warrant his acceptance. The parents thereupon unilaterally removed their child from the public education setting and he matriculated at the Wolf School in the Fall of 2012. The child completed the 2012-2013 school year at Wolf and is scheduled to return there for the upcoming school year. The Wolf School is a privately owned day educational facility located in East Providence, R.I. The parents are seeking tuition reimbursement from the South Kingstown School District. The district has denied reimbursement and maintains that the student was receiving a free appropriate public education (FAPE) in the local public school.

Witness Testimony

The first witness for the petitioners was Allison Schettini Evans, a licensed clinical psychologist who specializes in pediatric neuropsychology. Dr. Evans first met the student when he was 6 years, 8 months old. Dr. Evans reviewed the student's history

and concluded that prenatal conditions existing in his mother's pregnancy resulted in the child's premature birth and low birth rate that contributed to his neurological deficits. Dr. Evans found that the child did not exhibit global deficits, that is, his weaknesses were not across the board. He had some strengths that would negate an overall finding that he was merely intellectually impaired. Dr. Evans noted particularly his significant fine motor problems that seriously impact his ability to write. She found that the student's receptive language skills were average, but that his expressive language was deficient, indicating that he understands more than he can adequately convey to others. Further, she noted that his receptive language skills are deficient when people speak to him conversationally as opposed to when language is broken down into short pieces and systematically presented. Dr. Evans found impaired memory and ADHD that interfered with his learning success. She suggested additional supports and services in the class and pull-outs. She found that at the end of his kindergarten, the student was testing at an early kindergarten level. By the end of his third grade, his academic ability, dependent on the content area, ranged from beginning 1st grade to beginning 3rd grade. She concluded that he was not regressing, but that he was progressing at a rate similar to that of her first evaluation. By the end of the 3rd grade, Dr. Evans felt that the child's gains were minimal as deduced from her own test results and those obtained by the district. She stated that the gap between the student and his peers was widening, and that he needed a language based classroom and a significantly reduced student to teacher ratio, in addition to pull outs. Dr. Evans stated that her review of the student's 4th grade IEP indicated that there were no increased services over those of previous years. Dr. Evans saw the student again prior to the start of his 5th grade, and according to her testimony she concluded that the

student had made no educational progress from the 3rd to end of 4th grade. Dr. Evans recommended that the parents reject the proposed 5th grade IEP and “consider other placements.” She recommends “Wolf primarily.”

On cross-examination by the district’s attorney, Dr. Evans did state that she based her opinion of the student’s lack of educational progress on a standard of progress applied to all students, disabled and non-disabled students. She did not measure the student’s progress as against other disabled peers. She testified that the student’s full scale IQ was in the 75th percentile, low average to borderline mental retardation. Her last report regarding the student also indicates that “he made considerable gains in many ways as is indicated in testing and described in his draft IEP.” Each of Dr. Evans’ evaluations of the student encompassed approximately 6 hours with him and extensive conversations with parents and review of records. She did not observe the student at any time in his public school setting.

The Special Education Director for the district is Teresa Eagan. She testified that she oversees special education programs for the district. She stated that the student was slated to attend Broad Rock Middle School for the 5th grade. There is a transition process for special education students going from elementary school to middle school that is individualized for each student. She testified that some students just transfer with their peers while others require substantial support such as visits with teachers in the school. At the end of the student’s 4th grade school year, Mrs. Eagan attended a transition meeting for him. There were no concerns voiced by anyone at that time. The classroom setting that had been proposed for the student’s 5th grade education was an inclusion classroom being team taught by a general education teacher and a special education

teacher. In that setting, the student would have received science, social studies and written language. He would be pulled out for reading and 1-1 math instruction. That classroom is the only one at Broad Rock that is co-taught all day. Mrs. Eagan did not have an opportunity to observe the student in his public school classroom for the reason that she had only just assumed the position of director at the end of the student's 4th grade experience. Prior to that time, she had been the Assistant Director, and, as such, was not assigned to Wakefield Elementary School. As the Director, Mrs. Eagan had put forth an extended school year program (ESY) for the student between 4th and 5th grade, but his parents declined to participate in it. Mrs. Eagan further testified that in IEP meetings, the team set specific goals for student achievement. If the goals are not being met, the team tries to adjust the teaching modalities or available supports without necessarily setting a lower benchmark. The object is to keep the growth going without introducing frustration.

The next witness was Sheila Sullivan, the principal of Broad Rock School for the past 9 years leading up to her retirement in 2013. She testified as to the definition of an inclusion classroom and identified special education services available and their location within the school and/or classroom. Ms. Sullivan also explained services utilized within the school by children who need assistance in getting from one area in the school to another. Those services range in intensity based upon the individual needs of the student. To the extent appropriate, the model calls for the student to be as independent as possible.

Ms. Sullivan also testified that copies of students' IEPs are kept confidential in a locked area that is accessible by the students' special educators only with permission.

The next witness called to testify was Michele Laurent, a special education teacher at Broad Rock Middle School. She stated that she is an educator in the alternative learning program where some of her students are with her 50-60% of the time and others for one hour blocks. The children in her class are those with complex issues that require significant supports across content area. Some pose significant behavior issues. Her class size can range from 1-4 students. The alternative learning program is the model that replaced what previously had been referred to as the self contained classroom. This is not the classroom wherein the student would have been placed had he remained in public school.

Jennifer DeFeo testified that she is the regular education teacher in the co-taught class in which the student was to have been enrolled. She described her classroom with 23 students in detail. The class is co-taught by a special education teacher and there is a teaching assistant in the class for part of the day. The students remain in the same classroom all day. There are periods called “intervention blocks” during which time some of her students who require special services are pulled out of class for those services. Students are not pulled out during any educational block. She testified that her counter-part, the special educator is primarily responsible for managing the academics of those students with IEPs, while she, in addition, is responsible for handling the academics for all students. She works closely with the special educator on developing lesson plans for the class. They adapt an approach whereby the special educator and she parallel teach the same lesson at the same time, but the special educator does it in a separate area of the room with a small group. Ms. DeFeo testified about the types of lessons being given in the class throughout the day. She was also asked to identify

interruptions in the day e.g. telephone calls, PA announcements, bathroom breaks and behavioral issues with students. She stated that all of those interruptions were minimal.

The next witness was Karen Laplante, who was the student's 3rd grade teacher. She testified that the student had a personal literacy plan (PLP). PLPs are developed for children who are not meeting reading expectations. Then, the students are screened or tested periodically throughout the year to see whether their reading proficiency has increased over the previous period. In the beginning of 3rd grade, the NECAP test was given to the student. Ms. Laplante did not administer it to him as it was administered in a small setting with accommodations, not in the class. The student scored below proficiency in the NECAP. The student was also administered the AIMSweb test throughout the year, fall, winter and spring. The test requires that the student read for one minute, and that he or she be given credit for the number of words read. In the fall, this student was able to read 40 words, 38 words correctly with 2 errors, whereas the benchmark is 83 words. In the winter, reading the same paragraph for 1 minute, the student read 41 words, 39 correctly with 2 errors, whereas the benchmark is 105. In the Spring, the student read 61 words, 56 of them correctly. The spring benchmark is 120. Petitioner's counsel directed further questions at Mrs. Laplante relative to other testing and/or literacy education of the student in the 3rd grade, but the witness could not recall the time period sufficiently to respond with any specificity.

The next witness, Michaeline Lilley, is a special educator at the elementary school where the student had been enrolled. Mrs. Lilley was the student's case manager, that is, she organized meetings about the student, prepared all of his paperwork and communicated with the parents. She created draft IEPs from which the team could

develop more comprehensive IEPs. She also wrote the goals for her areas of service. Counsel questioned Mrs. Lilley extensively as to Exhibit 17, the student's IEP goals for the period of 9/7/10 to 6/14/11. By way of example the Hearing Officer will detail herein the testimony regarding Goal #1. Goal #1 related to reading with phonological awareness and word identification as specific areas of concern. There were goals set with an expectation of 85% achievement by June 2011. In the IEP, there are measurable short term objectives that add up to the goal. These are measured quarterly. With respect to Goal #1, the student did not meet his expectations of the 1st quarter. By the end of the 2nd quarter, he had met his 1st quarter objective and some of his 2nd quarter objective. By the end of the 3rd quarter, he was still working on the 2nd quarter. By the end of the 4th quarter, the student had met his 2nd quarter objectives and was working on the 3rd quarter. He never got to the 4th quarter. While his yearlong goal had not been achieved, he succeeded in progressing to his 3rd quarter objective.

The witness testified similarly to each goal set forth in the student's IEP goals. Petitioner's counsel went through exhaustive testimony regarding IEPs denoted as Exhibits 17 and 19. Counsel addressed all of the goals. Ms. Lilley testified as to each one what achievement the student had made. One can conclude from the testimony that the student achieved progress in all goals, though not to the extent that had been expected upon implementation of each goal. Typically, the student was shown to make all around progress to the end that he completed at least his 2nd quarter objectives and was working on, or in some cases, had completed his 3rd quarter objectives by the end of the school year. Petitioner's counsel did elicit testimony from Mrs. Lilley as to the fact that the student had achieved these successes only with teacher help, whereas none of the goals in

the IEP specified that progress included reaching goals and objectives with teacher help and/or accommodations.

Mrs. Lilley testified that she delivered services to the student all four years of his elementary school education. She participated in IEP meetings. As a special education provider, she believes that the public school IEPs provided the student with opportunity for educational progress and that he made progress. However, Mrs. Lilley noted tardiness and absenteeism as mitigating factors in the student's education (14 absences and 32 tardys in the 4th quarter of 2011). Lateness and absence impacted the student's educational progress, especially the morning services that he missed. Mrs. Lilley testified that she and school staff knew about the student's outside tutor and coordinated their efforts.

The next witness was Amy Taft, the 4th-5th grade special educator at the Wolf School. There are 7 children with 3 staff people in the class.

Ms. Taft stated that the classroom is sparsely furnished in order to minimize distraction. Each child has a desk and chair, and there are tables for group work. There is a white board, bulletin board, and a map. Students each have an individual white board with instructions on it, and there are computers and laptops. The student's class consists of 7 students, 5 boys and 2 girls. One of the boys is in the 4th grade, and the other 6 are 5th graders. Ms. Taft is the teacher in the class. There is also a teaching assistant and an occupational therapist or special/language therapist in the room.

Ms. Taft described the activities of the class. Each morning, the first period is devoted to organization i.e. getting coats off, lunches put away, taking notebooks out, etc. Ms. Taft stated that when this student originally came to her class, he needed 1-1

assistance with organization. Now, he follows a routine with minimal assistance. She further stated that the student is very social. After a two month period becoming acclimated to the school and new children, the student actively participates in the “morning meeting” part of the day wherein the children sit in group discussion.

There is a language block that is tailored to individual student needs. She stated that the student uses Project Read and Read Naturally. Project Read is a phonics program, whereas Read Naturally tests comprehension.

There is a “move to learn” block of time that is a form of physical education led by the occupational therapist.

There is a language block wherein the focus is on writing. There are two children in the student’s writing block.

Next there is a fifteen minute “movement break” wherein the students engage in a series of three movements especially designed for each by the occupational therapist.

There is a “math connects” block that introduces age appropriate math to students.

Twice per week, the staff engages in team planning meetings. In those meetings, the staff get together and discuss individual student’s needs, e.g. occupational or speech/language therapy, etc. The staff then attempts to develop activities designed to integrate a student’s particular needs into his/her curriculum.

Recess is held every day for a twenty minute period during which there are approximately sixteen students being supervised by 2 adults.

The last period of the day is “all school read” wherein children sit quietly and read books of their own choosing.

Throughout the week, there are social studies, science and music classes. The children also attend equine therapy where they ride horses at an off campus location. Periodically, there are all school assemblies that are attended by the entire school population, (about 47 children). Upon his arrival at Wolf, the student sat apart from other students and appeared nervous. After being at the school a short time, the student readily participated in the assembly and mingles with the other children.

The witness testified that the student's 5th grade "learning plan" was developed at the beginning of the school year by the team pursuant to measurement tools at that time. The team lists what the student can do at the time, what is expected at the end of the "learning plan" (school year) and short term quarterly goals.

Ms. Taft testified specifically as to the student's reading comprehension goal. Her testimony was similar to that of the student's South Kingstown Case Manager, Michaeline Lilley, with regard to the student's progress on meeting goals. Ms. Taft testified that with respect to "reading comprehension", the student did not meet his November objective until January. He met his November objectives in January, with 1-1 assistance in a distraction free environment. He eventually attained his January goal with teacher prompting. By the end of the school year, the student was working toward his April goal with 1-1 assistance and teacher prompting. The Wolf reading comprehension goal, similar to that explained by Mrs. Lilley at the district level, did not reference the fact that the goal would be obtained with teacher assistance and prompting. Ms. Taft, nevertheless, testified that the student had met the quarterly goals or objectives.

Ms. Taft also testified as to some visual projects that the student completed. Exhibit 80 depicts a diorama of a Native American shelter for a social studies project, and

Exhibit 81 depicts an explorer's map for Columbus' voyage. The student created it and gave a verbal presentation of the journey complete with a costume and map. Ms. Taft explained that the student produced Exhibits 80 and 81 with maximum, 1-1 teacher assistance.

On cross-examination, Ms. Taft agreed with the district's counsel that the student's initial shyness at joining with other students at Wolf may have been attributable to the fact that he was in a new school, with new peers in a place that is an hour away from his home.

Ms. Taft further testified that with respect to his reading, the student was noted to be off task 90% of the time, requiring 1-1 assistance and removal to a separate room. She said that staff could not always accomplish that accommodation, so they would utilize teacher proximity or eye contact to attempt to maintain the student's attention to task.

The district's counsel directed Ms. Taft to the Wolf goals and objectives for the student (Exhibits 84 and 85) Counsel noted the absence of 1-1 assistance, teacher prompting and/or a less distracting environment in the goals. The witness agreed, but she stated that was the only way that the student was able to attain his goals.

Upon questioning from district counsel, Ms. Taft also agreed that the student made no progress from November 2011 - April 2012 in achieving his math computation or math concepts goals. In fact, the student regressed in those areas.

Counsel questioned the student's absences and/or tardiness. The witness could not respond to the number of absences, but she stated that there were definitely some tardys.

The next witness was Rosaline Granoff, Director of Admissions and one of the founders of the Wolf School. By profession, Mrs. Granoff is a speech/language therapist. Mrs. Granoff stated that the Wolf School was founded on the premise of servicing students with complex learning disabilities in small immersion classes without pull outs. Classes contain no more than 8 students. Math and reading cases are broken down to groups smaller than 8. Wolf looks to attract children whose sociological profile and cognitive processing indicate the need for a small class setting. Wolf does not accept children with behavioral issues. Mrs. Granoff stated that the school strives to matriculate students who “match up” with the other children in the class. When the student first applied to Wolf in April, May or June of 2011, Mrs. Granoff rejected his application. She stated that his 2009 neuropsychological evaluation demonstrated that his cognitive ability was too low to make him a match at the Wolf School. The student continued in the public school at that time. A year later, the Spring of 2012, the parents again sought to have their son admitted to the Wolf School. The second time that Mrs. Granoff reviewed the student’s records, including a 2011 neuropsychological evaluation, she found that he had made some cognitive gains in verbal communication, verbal comprehension and perceptual reasoning. His evaluation and reports indicated improved working memory and increased processing speed, as well. Mrs. Granoff found that the student’s skills had improved from very, very low to moderately low. The student had a two day visit to the Wolf School in April 2012 during which the staff observed and tested him. He was anxious on the first day, but calm and more engaged on the second day. Staff thought the student would benefit from the Wolf educational model and there was another child in the class with similar capabilities. Therefore, the student

was accepted for the Fall 2012 class. Mrs. Granoff testified that she does not have direct contact with the student. Mrs. Granoff testified that there is a part time special education director at Wolf. There is no school psychologist. There is a person who provides emotional support to students. Mrs. Granoff did not know that person's academic background. The head of school at Wolf is a sociologist. Mrs. Granoff testified that the Wolf School typically does not provide 1-1 services.

Caighlin Perrin, the student's 4th grade teacher in the public school was the next witness. Ms. Perrin is a certified special education teacher for K-8 and a certified regular education teacher for K-6. Before meeting the student at the start of 4th grade, Ms. Perrin had reviewed his IEP, accommodations and prior staff notes. Though she can't recall specifically, she said she usually speaks with the previous year's special education teacher, occupational therapist and the speech/language therapist to see what methodologies had worked for them. She had 24 students in the class with desks and chairs arranged in a group. Ms. Perrin situated the student in close proximity to herself. There is a chalkboard in the room and five bulletin boards. The room has two windows and a door. The seating area is carpeted. There are two 4th grade classes that share a teaching assistant. There is a speech/language therapist, an occupational therapist and a special education teaching assistant for math. There were no children in the class with behavioral issues. There were no children with 405 plans or obvious health issues in the class. Depending on the subject matter, the student was educated in a small group, with one partner, or 1-1. Ms. Perrin testified that she rarely uses the chalkboard, nor does she lecture. She uses an easel for subjects such as science and math where charts and math problems can be demonstrated. Ms. Perrin stated that she also uses manipulative devices

in her lessons. There is no class schedule posted since instruction is provided in the same classroom at the same time each day. Only itinerant classes such as art, music and physical education are posted on the bulletin board.

Ms. Perrin testified that she consulted with the student's service providers on a daily basis. She coordinated her classroom efforts with those of the student's special services personnel e.g. if she taught him spelling words, his special service providers would work on integrating those words. Ms. Perrin stated that the student was a "joy" to have in her class. She said that he made friends easily and interacted well with students and staff. Ms. Perrin stated that the student benefitted from repetition and that she frequently "checked in on him" to keep him on task.

Ms. Perrin addressed exhibits 11, 12 and 13, all of which represented the student's 4th grade IEPs. The student's special education services were provided partly in the classroom and partly elsewhere in the building. The student was given extra time to complete his work. The teacher often read instructions to the student, paraphrasing when necessary and she provided him with copies of notes and clipboards as far point copying was difficult for him. The student also had access to a word processor and typing program. Ms. Perrin developed cues for the student, e.g. changing the color of folders with different subjects and visual cuing if the student was seen fiddling. The student utilized word prediction software, too. Ms. Perrin testified as to a 4th grade project that all of the students completed. The student was given a modified version on which he wrote his answers out longhand and via word processing keyboard (exhibits 86, 87 and 88). Ms. Perrin stated that she communicated often with the student's mother, and that

they enjoyed a good working relationship until late in the school year when she and the mom had a disagreement concerning a school project the student had undertaken.

Ms. Perrin testified that the student's 4th grade IEPs were designed to provide an opportunity for the student to make educational progress, and that he certainly made progress throughout his 4h grade year.

Deidre Therrien, the student's mother testified at length.

She is a registered nurse with a work history that includes the care of pediatric patients with multiple diagnoses, physical and emotional. Ms. Therrien had served as a visiting nurse to the student's biological mother. Ms. Therrien and her husband adopted the student in 2004 when he was 3 years old. The mother chronicled the student's school experience for the record. The student received early intervention services, including speech/language therapy and physical therapy. He entered pre-school in 2004 in an inclusion program with four other children. The student received extended school services in the summer of 2005, then returned to pre-school for a second year, then a third year during which time occupational therapy was added to his program in the second half of the year. The mother testified that her child made progress in his pre-school years. She stated that he made progress in his kindergarten class where his special education also included speech therapy and occupational therapy. Before the end of kindergarten, the parents obtained an evaluation from Dr. Evans. Given the child's birth circumstance, the mother thought her son was at risk for learning difficulties and she wanted to address them early. Dr. Evans formulated a report with education recommendations that the mother presented to school prior to the start of the student's 1st grade. Some recommendations were incorporated into the 1st grade IEP, others were not. During the

course of his 1st grade, the mother expressed concerns to school staff. She was told that the child was making progress and that the level of services was adequate.

At the beginning of 2nd grade, the mother attended an IEP meeting at which legal counsel were present. The mother expressed her concerns, including the fact that her son could only understand one step directions and could not assimilate certain concepts like up/down, before/after, now/later, etc. She felt the lack of those concepts was impacting the student's language development as well as other subjects. She questioned how he could access math if he could not understand what numbers came before or after another number. Math had already been identified as an area of serious deficits. The mother requested a 1-1 assistant, but the school personnel said he didn't need it. The school district added a second teaching assistant to the class and reported that the student was making progress in all areas. At the end of the 2nd grade, the team drafted an IEP for 3rd grade. The parents were still concerned as they were not seeing at home the progress that the school department was reporting. The parents hired a tutor who assisted the student with his math and reading. In the 4th grade, the student had reading homework that the mother helped him with each night. Mom testified that the 4th grade IEP was not substantially different than the 3rd grade IEP and still did not address her concerns. Dr. Evans made recommendations that the team did not adopt. However, Mrs. Lilley did begin using the same math program as the home tutor. The 4th grade progress reports from the school did not match with the skill levels she was seeing at home. At some point in the 4th grade, at the mother's urging, the school developed a reward system for praising the student each time he exhibited positive behaviors. The mother said that she initially got daily reports on the reward system, but that they stopped coming after

approximately two weeks. The special education teacher drew up a schedule of school events on a daily basis that she sent home to the parents. The mother gave one to the student every day and he carried the schedule in his pocket and checked off each activity as it occurred throughout the day. School personnel reported to the mother that the schedule had significantly helped the student with his ability to follow the class routine. Ms. Therrien testified as to a difficult conversation she had with the 4th grade teacher, Ms. Perrin. The mother testified that on the day before the last day of school, her son brought home a social studies project that he had been allegedly working on for ten weeks. The finished project consisted of a cardboard box with orange construction paper in it. The mother contacted the teacher about the project and she said the teacher told her that the student had not had time to finish it. The conversation ended according to the mother, with the teacher saying that, in effect, the mother had a hostile attitude and, for that reason, the teacher had not contacted her for assistance in helping her son complete the project.¹

On cross-examination, Ms. Therrien did admit that the school department followed Dr. Evans' 2009 recommendation by adding a second teaching assistant to the student's class to be used by the other children but primarily for the student. The mother also admitted that in Dr. Evans' June 2011 evaluation (Exhibit 9 @ p 10) Dr. Evans noted that the student made considerable gains in many ways as evidenced by test scores and his IEP, despite his extended absences from school due to pneumonia and eye surgery.

¹ Ms. Perrin was re-called to rebut the testimony concerning the social studies project. Ms. Perrin claimed that the student completed his project, and it went on display with those of the other children. She says once the display was dismantled, the student left his project in the classroom and was unable to complete a new one. By way of rebuttal, the mother said that the box that the child brought home was the same one that she had given him at the outside of the project.

Dr. Evans attributed the student's gains to the parent's strong support and to the school's "intensive intervention and accommodations".

The parents produced an expert witness, Steven C. Imber, Ph. D. Dr. Imber has a doctorate in psychology with an emphasis on disabilities and emotional problems. He is also certified as a special educator for children of various ages and cognitive abilities. Dr. Imber's practice includes evaluating IEPs for schools and parents to determine whether children are making educational progress. He was qualified as an expert on the record. Dr. Imber observed the student engaged in his activities at the Wolf School one day for approximately three hours. He also observed the Broad Rock 5th grade classes to witness how the teachers coordinated instruction. He watched as Ms. Laurent provided speech/language services to another child and toured the school facility, cafeteria and recess yard. Dr. Imber interviewed the parents for approximately three hours and met with the student at his office. Dr. Imber described the Broad Rock classroom as a colorful, well structured and inviting learning environment. Dr. Imber saw very positive learning with attempts to modify instructions for certain students. He observed children breaking up into small groups for learning. Dr. Imber stated that for many children with ADHD, it would be a good class. However, Dr. Imber qualified the student as the "most distractible" child he had ever met. He did not believe that the student would be able to focus in a group of even five children. Dr. Imber testified that in a 1-1 situation, the student is still distractible, but can be brought back to task. He stated that the Wolf environment is also one of order and structure. He noted that Ms. Taft uses modifications of verbal prompts and visual stimulants to try and keep the student on task. Dr. Imber testified that the Wolf immersion model allowed the student to access all facets of

education in an integral manner, e.g. he observed that the occupational therapist was helping the student construct his computer project and at the same time working with the student on his language arts. Dr. Imber acknowledged that the public school afforded the student with the same special services. Dr. Imber explained that the parents were not critical of the school district, but that they questioned whether their son needed a different educational environment. They felt that the 4th grade IEP and the proposed 5th grade IEP were not vastly different than previous year's IEPs that they felt were not working.

Dr. Imber stated that in his meeting with the student, the student was easily engaged, but he could not answer open ended questions. Dr. Imber's observation of the student at Wolf revealed that he was not attending to the teacher or to the other students despite the teacher's attempts. Dr. Imber observed the student just look around the classroom, completely distracted for about ten minutes. Then, when working on the computer, trying to re-construct a story that he had deleted with the occupational therapist, the occupational therapist had to re-direct him up to twenty times in twenty minutes. With that type of intense direction, the student could stay on task. The same was true of the student's work with the speech/language therapist. With constant re-direction, the student was able to stay on task. The witness observed the student take a "timed" math test that he completed with great concentration, attaining 18 out of 19 correct answers. Dr. Imber observed that the student was very distractible in a group class and physical education. He works much better with a 1-1 application like the timed math test.

Dr. Imber reviewed all of the student's prior testing results. He noted test scores that showed significant gains that were inconsistent with the student's other abilities. Dr.

Imber noted that according to the tests administered, the student's full range I.Q. increased from 60 to 75 in the period from July 2009 to June 2011. Dr. Evans attributed the increase to maturity and the addition of medication. She insisted that the results were valid. Dr. Imber testified that the student experienced progress in the 3rd and 4th grade, but it was trivial not meaningful. He noted that the proposed 5th grade IEP was virtually the same with the addition of significant technology supports. It was Dr. Imber's opinion that the proposed 5th grade IEP was not designed to provide the student with FAPE as most of the day would be spent in the general education class with pull outs, too distracting for him. Dr. Imber offered his opinion that the Wolf School offers "a more reasonably calculated program that will enable him to better meet his unique needs over time."

On cross examination, Dr. Imber did acknowledge that the proposed 5th grade IEP for the student provided an increase of 40% for 1-1 services. He also admitted that attendance at school is very important, more so for children with disabilities. Dr. Imber agreed that from his observation at Wolf, the student was distracted and not accessing education for 80-90% of the time. Dr. Imber also agreed that a child's ability to access education and make progress correlates to his/her I.Q. or cognitive ability.

The last witness was brought forth by the school district. Mark Dumas is a licensed clinical psychologist who provides services to students and staff in the public schools. He was certified on the record as an expert in clinical psychology. After reviewing the student's test results, Dr. Dumas concluded that the student's full scale I.Q. is 75. That places the student between mildly retarded and low average on the functioning level. At that level, the student can learn, but not at the rate that a person of

average or above average intelligence can learn. Persons scoring in the 75 range cannot learn as much or as fast. Dr. Dumas stated that the student's academic achievement is commensurate with his cognitive ability. Counsel for the parents queried whether a student with borderline cognitive ability, with supports and services can catch up to an average student. Dr. Dumas stated that a person's I.Q. does establish a ceiling on achievement and learning.

Discussion and Conclusions of Law

The parents initiated the request for this due process hearing alleging that the district was not providing FAPE for their son and that they were therefore entitled to reimbursement for the cost of their son's attendance at the Wolf School. It is true that the Rules and Regulations for the Education of Individuals with Disabilities do provide for cost reimbursement of unilateral private school placements when it is shown that the public school district failed to provide FAPE. The burden of proof is upon the parents to substantiate that South Kingstown's failure to provide FAPE necessitated their placement in a more restrictive educational setting. Scheffer vs. Weast, 126 US. 258 (2005). If the parents overcome that hurdle, they must next also prove that the private school setting that was chosen is appropriate to meet with the student's unique needs R.S. vs. Lakeland Central School District 59 IDELR 32 (United States Court of Appeals, 2nd Circuit (2012)). Determining the appropriateness of an IEP is a fact intensive activity to be engaged in by the Hearing Officer upon assessing the credibility of the witnesses.

Sebastian M. vs. King Philip Regional School District 59 IDLER 61 (United States Court of Appeals, 1st Circuit (2012)).

In the instant case, the parents attempted to prove their position by presenting a number of witnesses from the public school setting as well as the private school. They also presented expert witnesses. The testimony of the witnesses does not support the parents' claim that South Kingstown failed to provide FAPE. The record reflects extensive testimony as to the child's experiences in both school settings. It is clear that in the public school that the child was receiving a host of services designed to meet his needs throughout his elementary school years. Though enrolled in the general education class, the student reviewed special education services in small group instruction, 1-1 assistance and pull outs. He was provided with specialized instruction to match his cognitive ability and accommodations to help him achieve his goals. He was also provided with related services such as speech/language and occupational therapy. The parents were in continual communication with school personnel and there were numerous meetings to address their concerns and adjust the student's IEPs. Dr. Evans' reports (Exhibits 7 and 9) contain numerous references to the "gains" that the child was making as he progressed through elementary school. It seems that the only thing lacking was complete all day 1-1 instruction. Dr. Imber testified as to the student's overarching distractibility. Upon observing him at the Wolf School, Dr. Imber noted that the student was distracted and not engaged in this education 90% of the time. The student's Wolf School teacher, Ms. Taft agreed with that observation and stated that the distractibility observed was not atypical. This appears to be the case whether the student is in a larger class or one working with 5 students. It should be noted that the witnesses testified that

the Wolf School does not generally provide any 1-1 services such as might be necessary to keep the student on task. Lending even more credibility to the success of the public school environment was the testimony of Ms. Granoff, Director of Admissions at Wolf. She testified that upon his first application to Wolf, the student was rejected as too low performing. Upon his next application a year later, Ms. Granoff found that the student's ability had increased significantly as would merit his acceptance.

It appears that the parents in this case want their child to succeed at a higher level as would be more in line with other children of his age. However, both Dr. Imber and Dr. Dumas testified that expectation on the part of the parents may not be realistic given the child's cognitive ability, he does not learn at the same speed or acquire the same content as other higher functioning children. Clearly the parents want what is best for their child, and they feel that placement at the Wolf School is more appropriate for their son. However, the testimony and demonstrative evidence presented in the form of evaluations, reports and notes substantiate the fact that the student was making slow and steady progress in the South Kingstown school district. Further, the student's proposed IEP for the 5th grade in the South Kingstown School Department called for an increase in individual services being offered to the student over previous years. The 5th grade IEP prepared by South Kingstown was designed to provide the student with FAPE in the least restrictive environmental as dictated by case law and regulations.

Based upon the foregoing, this Hearing Officer concludes that the parents have failed to sustain their burden of proof that the South Kingstown School District was not providing FAPE for their son. Accordingly, the parent's claim for reimbursement for the cost of their son's tuition at the Wolf School is denied.

Dated August 26, 2013

Maureen A. Hobson
Impartial Due Process Hearing Officer.

Certification

I certify that a copy of the within was mailed to Stephen Burke, Esq. and to Andrew Henneous, Esq. on the 26th day of August, 2013.
