1-2-2001

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Recommended Citation
This matter was heard before the Beecher R. Gray, Administrative Law Judge Presiding, on November 8, 2001, in Charlotte, North Carolina.

**APPEARANCES**

For Petitioner: Parent

For Respondent: James G. Middlebrooks  
Smith Helms Mulliss & Moore, L.L.P.  
201 North Tryon Street  
Charlotte, North Carolina 28202

**WITNESSES**

For Petitioners: Parent

For Respondent: Ms. D.C. (accepted as an expert witness in the areas of regular and special education)  
Ms. J.G. (accepted as an expert witness in the area of special education)  
Ms. L.C. (accepted as an expert in the area of regular education)

**EXHIBITS**
The following exhibits were received into evidence for the Petitioners: Petitioners’ Exh. Nos. 1-13; Respondent’s Exh. Nos. 1-3. The exhibits have been retained as part of the official record of this contested case.

ISSUES

The sole question at issue in this contested case hearing is as follows:

Whether Respondent acted appropriately under federal law and procedure and state law and procedure in determining that the “student” was no longer eligible for special education services.

Based upon the greater weight of the evidence presented at the hearing in this contested case, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner “C” is the mother of the “Student”, currently a ninth-grader in Respondent’s school system. Respondent, Charlotte-Mecklenburg Board of Education, is a local educational agency receiving monies pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq.

2. Petitioner filed a petition for a contested case hearing in the Office of Administrative Hearings on 20 April 2001, alleging that the Respondent’s staff erred in determining that the “Student” no longer was eligible for special education services.

3. At the time of the petition, the “Student” was an eighth grader in middle school. Prior to the IEP team meeting on February 22, 2001, the “Student” had been appropriately served under applicable special education services as a student with specific learning disabilities.

4. Prior to the February 2001 IEP team meeting, Respondent’s staff conducted a re-evaluation of the “Student”. That re-evaluation indicated that the “Student’s” composite ability standardized score was 107. His reading, math, and written expression achievement standardized scores were 104, 98, and 99, respectively. Tr. at 50-51; Respondent’s Exh. Nos. 1-2.

5. At the close of the IEP team meeting, Respondent’s staff offered Ms. “C” a Section 504 plan for the “Student”. Tr. at 113.

6. Pam Jackson, employed by the Council for Children in Charlotte, attended the February 22, 2001, IEP team meeting as a parent advocate for Mrs. “C”, Ms. Jackson indicated on eligibility report form that she agreed with the determination that the “Student” no longer qualified for special education services. Tr. at 55-56, 107; Respondent’s Exh. No. 1.

7. At the IEP team meeting, the members discussed past evaluations and the “Student’s” present performance. The team specifically noted that the “Student’s”
handwriting was slow and laborious and that he had been diagnosed in the past with ADHD. The team also noted a previous neuropsychological conclusion that the “Student” had a possible left temporal lobe dysfunction. Tr. at 52-53, 87, 107-109; Respondent’s Exh. No. 1.

8. In the spring of 2000, which was at the conclusion of his seventh grade year, the “Student” scored a Level III in reading and a Level IV in mathematics on his North Carolina end-of-grade tests. Respondent’s Exh. No. 3.

9. The Parent/Teacher Report of the those test scores states as follows with regards to the “Student’s” reading score: “Students performing at Level III consistently demonstrate mastery of grade level skills, strategies, and competencies and are prepared to be successful at the next grade level.” Respondent’s Exh. No. 3; see also Tr. at 72.

10. A Level IV score in mathematics indicates that the “Student” was performing above-grade level work in that subject area. Tr. at 72-73.

11. The “Student’s” grades at the beginning of the 2000-2001 school year indicated that he was passing with As in several subjects. Tr. at 63; Respondent’s Exh. No. 2.

12. On a day-to-day basis, the “Student” demonstrated that he was able to come into class, focus on the work that he was to perform, able to stay on task, and able to block out external stimuli that might have otherwise distracted him. He showed on a daily basis that he was able to and did ask for help when needed. Tr. at 89, 109.

13. On a day-to-day basis and as indicated by his testing results, the “Student” was performing at or above grade level in his subjects. To the Respondent’s IEP team, his daily performance indicated that the “Student” did not need direct special education services to make progress commensurate with that of his non-disabled peers. Tr. at 77, 89-91, 109-111.

14. The IEP team did suggest that the “Student” needed support in the following ways: organizational skills; extended time on tests; abbreviated assignments except in math; and continued help with study skills. Tr. at 92. These supports could be carried out in the regular education environment, according to members of the IEP team, and did not equate to a continuing need for special education services. Tr. at 92, 111.

15. Respondent’s witnesses, each of whom was tendered and accepted as an expert witness, testified that, based upon the “Student’s” day-to-day performance in the classroom and his evaluation results, he was making adequate academic progress and no longer needed direct special education services to be successful. Tr. at 51, 76-77, 89-92, 109-113. Two of these witnesses had ongoing contact and experience with the “Student” at his middle school.
16. The IDEA, 20 U.S.C. § 1400 et seq., is the federal statute governing education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Parts 300 and 301.

17. The controlling state law for students with disabilities is N.C. Gen. Stat. Section 115C, Article 9 and the corresponding state regulations, including the Procedures Governing Programs and Services of Students With Special Needs (August 2000).

18. To qualify for special education services as a student with specific learning disabilities, a student in North Carolina must (a) exhibit at least a 15-point discrepancy between achievement and ability on standardized testing and (b) demonstrate a need for direct special education services.

19. the “Student’s” three-year re-evaluation, which was considered by the IEP team at its meeting in February 2001, showed that he did not have the required 15-point discrepancy. Ms. “C” offered no competent evidence that tended to show the required discrepancy between ability and achievement.

20. The evidence in this case indicated that the “Student” is capable of making and in fact, has made educational progress commensurate with his non-disabled peers and that he no longer needs direct special education services to be successful in school.

21. the “Student’s” scores on his end-of-grade tests showed that he was performing on grade level in reading and above grade level in mathematics.

22. His day-to-day performance in eighth grade showed that he had learned appropriate ways of compensating for any attentional and processing difficulties that may have hampered his performance in the past. His teacher, Ms. J.G., testified that he was able to get on task, remain on task, and ask for help when appropriate. Again, Ms. “C” offered no competent evidence to the contrary.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. As the party bringing the petition, Ms. “C” had the burden of proving by the greater weight of the evidence that Respondent’s decision to exit the “Student” from special education services in February 2001 was inappropriate. Because Respondent had all of its witnesses present at the start of the hearing, the undersigned asked Respondent to present its witnesses first. This decision, made for the convenience of the undersigned, did not in any way signal any shifting of the burden of proof, which at all times remained with the Petitioner.

2. A critical requirement for eligibility for special education services – in both the categories of specific learning disabled (where the “Student” had been classified) and other health impaired (Ms. “C”’s alternative area of theoretic eligibility) – is that the
student must show a demonstrated need for such special education services. The evidence presented in this case established that the “Student” no longer met that requirement.

3. The supports that the “Student” continues to need – organizational skills, study help, extended test time – are all needs that could and should be met within the regular education context. Those needs do not in this case equate to special education eligibility. The “Student” has shown that he is successful and performing well. With regular education supports and appropriate modifications, he has the tools that will help him achieve continued success.

4. Based upon the evidence presented at the hearing, the “Student” no longer qualifies for special education services. His standardized test scores demonstrate that he does not suffer the 15-point discrepancy between ability and achievement that is required by the North Carolina Department of Public Instruction. On a daily basis in the classroom, the “Student” has shown that he can compensate for the attentional and processing deficits that still present problems. Additionally, there was no evidence that he demonstrated a continued need for special education services.

5. The goal of special education is to educate children in the least restrictive environment. This case represents, at least at this point of the “Student’s” educational career, a success. With direct special educational services in earlier years, the “Student” has learned to compensate for his attentional and processing problems to the extent that he is making progress at levels appropriate for his peers. Indeed, he performs at or above grade level in the core areas of reading and math. This is the goal of special education: to identify students, to serve them appropriately, and then to release them when that service has been successful. To force continued special education services at this time would be to violate the central tenet that children are to be educated in the least restrictive environment.

6. Petitioner failed to show that respondent’s staff inappropriately determined that the “Student” was no longer eligible for special education services. Ms. “C” had the burden of proof on this issue and failed to carry it.

7. Respondent properly exited the “Student” from special education services at a duly noticed IEP team meeting at which the members of the team (including petitioner’s own advocate) appropriately considered and applied the “Student’s” strengths and weaknesses, his evaluation and testing reports, and his day-to-day performance at school to the applicable standards for special education eligibility.
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following

**DECISION**

Petitioner has the burden of proof in this contested case. She failed to show that (a) the Respondent wrongfully exited the “Student” from special education services in February 2001 and (b) that Respondent has failed to identify the “Student” as a student eligible for special education services. Based on the evidence presented, Respondent acted appropriately. Accordingly, Ms. “C” is not entitled to relief in this matter. Respondent is the prevailing party.

**NOTICE**

In order to appeal this Final Decision, the person seeking review must file a written notice of appeal with the North Carolina Superintendent of Public Instruction. The written notice of appeal must be filed within thirty (30) days after the person is served with a copy of this Final Decision. N.C. Gen. Stat. §§ 115C-116(h) and (i).

This the 22nd day of January, 2002.

____________________________________
Beecher R. Gray
Administrative Law Judge Presiding