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Student J  
Student C by parent  
or guardian Parent  
Petitioner  

vs.  

Mr. Colin Armstrong  
Robeson County Board of Education  
Respondent  


APPEARANCES

For Petitioner: Parent, Pro Se  
As Parent for Student J  
and Student C

For Respondent: Grady L. Hunt, Esquire  
Locklear, Jacobs, Hunt & Brooks  
203 South Vance Street  
Post Office Box 999  
P., North Carolina 28372

WITNESSES

For Petitioner:

1. Students’ Grandmother - Grandmother of Students J and Student C.

2. Katherine Neale - Consultant for the N. C. Department of Public Instruction

For Respondent:
1. G.C. – Guidance Counselor, P. Middle School, Public Schools of Robeson County, Robeson County, North Carolina

2. K.J.– Exceptional Children’s Teacher, P. Middle School, Public Schools of Robeson County, Robeson County, North Carolina

ISSUE

1. Whether the Respondent properly implemented Individualized Education Programs (IEPs) for Student J (hereinafter “Student J”) and whether the respondent offered appropriate compensatory services to Student J?

2. Whether Respondent made a proper determination in compliance with state and federal law as to the entitlement of Student C (hereinafter “Student C”) to an Individualized Education Program?

BASED ON the evidence, including testimony and exhibits presented, the undersigned makes the following findings of fact, all by the greater weight of the evidence after having determined the credibility of each witness.

FINDINGS OF FACT

1. Petitioner, Parent (hereinafter “Petitioner”), is the parent of Student J and Student C. (See Petition for a Contested Case Hearing received March 25, 2004 by the Office of Administrative Hearings)

2. Student J was born XX xx, 1989 and at the time of hearing was fourteen years old. (See Petition for a Contested Case Hearing received March 25, 2004 by the Office of Administrative Hearings)

3. Student C was born YY yy, 1991 and was thirteen years old at the time of the hearing. (See Petition for a Contested Case Hearing received March 25, 2004 by the Office of Administrative Hearings)

4. Student J and Student C attended P. Middle School for the 2003-2004 school year. (Transcript [T.], page 92)

5. Petitioner first attempted to enroll the children at P. Middle School in the spring of 2003. (T., page 88)

6. In the spring of 2003 the Petitioner did not present IEPs to the school for either child. (T., page 89)

7. Petitioner informed G.C., Guidance Counselor at the school, that the children had special needs, but did not provide documentation. (T., page 89)
8. G.C. had discussions in the spring of 2003 with Petitioner about enrolling the children at P. Middle School. (T., pages 88, 89, 90 & 91)

9. Petitioner did not, in the spring of 2003, offer proof establishing residency in the school district. (T., page 90)


11. Upon enrollment of a child at P. Middle School there is a place on the enrollment forms for the parent or guardian to check if the child has special needs, needs speech or any kind of related services. (T., page 102)

12. Upon enrollment at P. Middle School for the 2003-2004 school year, none of the blocks were checked on the enrollment form for Student J indicating he was a child with special needs. (T., page 102 and Petitioner’s Exhibit 8)

13. If the Petitioner had checked the blocks on the enrollment form indicating that Student J was a child with special needs, the guidance counselor would have made that known and the school would have asked to see if the child had been previously identified as an exceptional child from the Petitioner in order to properly place the child. (T., page 102)

14. An IEP was not presented at the time of enrollment for the 2003-2004 school year for Student J. (T., page 99)


16. When Petitioner presented an IEP to P. Middle School for Student J, K.J. set up a meeting with the parent and requested testing through the Public Schools of Robeson County. (T., page 99)

17. When Petitioner presented the IEP for Student J to K.J. in September 2003, Student J was temporarily placed according to the IEP from Student J’s previous school. (T., page 99)

18. The Public Schools of Robeson County developed an IEP for Student J on October 8, 2003. (T., page 99 and Respondent’s Exhibit 4)

19. The Public Schools of Robeson County evaluated Student J on October 17 and 20, 2003. (Petitioner’s Exhibit 8)

20. The IEP developed for Student J by the Public Schools of Robeson County set out the parameters as to how Student J would be educated. (T., page 99)

21. The IEP developed for Student J by the Public Schools of Robeson County was for the period from October 8, 2003 to October 7, 2004. (T., page 100 and Respondent’s Exhibit 4)
22. The IEP developed for Student J by the Public Schools of Robeson County was a resource IEP. (T., page 105)

23. The IEP developed by the Public Schools of Robeson County was the same type of IEP previously developed for Student J by his previous school system. (T., page 101)

24. On November 20 and 24, 2003 the IEP team at P. Middle School met to review Student J’s evaluations, update his IEP and add a behavior goal to address on task behavior, following rules and evaluating aggressive behavior. (Petitioner’s Exhibit 8)

25. Later in the 2003-4 school year, Petitioner asked that Student J be placed in an individual setting. (T., page 101)

26. The Public Schools of Robeson County offered to place Student J in an individual setting. (T., page 101)

27. Petitioner apparently changed her mind and indicated to the Public Schools of Robeson County that she did not want Student J placed in an individual setting. (T., page 101)

28. Petitioner filed a complaint with the North Carolina Department of Public Instruction (“DPI”) against the Public Schools of Robeson County on November 20, 2003. (Petitioner’s Exhibit 8)

29. The Complaint was investigated and a corrective action plan was developed by DPI for the Public Schools of Robeson County. (Respondent’s Exhibit 1)

30. The corrective action plan required the Public Schools of Robeson County to provide eighty-two hours of compensatory services to Student J along with an explanation as to how the services would be provided to Student J. (Respondent’s Exhibit 1)

31. Pursuant to the correction plan and consultation with the Petitioner, the Public Schools of Robeson County developed a correction plan to offer eighty-two hours of compensatory services to Student J. (Respondent’s Exhibit 2)

32. The file developed by DPI and identified as case number 03-18 was closed by letter to the Public Schools of Robeson County dated May 26, 2004. (Respondent’s Exhibit 3)

33. Petitioner never presented Student J for compensatory services. (T., page 110)

34. The Office of Civil Rights, U.S. Department of Education, received a complaint from Petitioner dated February 6, 2004 against the Public Schools of Robeson County. (Respondent’s Exhibit 7)

35. By letter dated April 30, 2004, Petitioner asked the Office of Civil Rights, U.S. Department of Education, to terminate or stop their investigation. (Respondent’s Exhibit 7)

37. When Petitioner enrolled Student C at P. Middle School she didn’t present an IEP or check the blocks on the enrollment form indicating that Student C needed special services. (T., page 102 & 103)

38. Petitioner first made K.J. at P. Middle School aware of Student C having a prior IEP at a former school in February or March 2004. (T., page 103)

39. P. Middle School immediately arranged an IEP meeting with Petitioner, requested testing and temporarily placed Student C on the IEP that Petitioner presented to P. Middle School. (T., 103)

40. The Public Schools of Robeson County evaluated Student C. (T., page 103)

41. Student C did not qualify for services as a child with special needs. (T., 104)

42. Student C was evaluated by the Public Schools of Robeson County and it was determined that he was not entitled to services as a child with special needs, Petitioner did not follow-up in any manner or dispute the results of the evaluation. (T., page 105)

CONCLUSIONS OF LAW

1. The IDEA, 20 U.S.C. § 1400 et seq., is the federal statute governing education of students with disabilities. The federal regulations promulgated under the IDEA are codified at 34 C.F.R. Parts 300 and 301.

2. The controlling state law for students with disabilities is N.C. Gen. Stat. § 115C, Article 9, and corresponding state regulations, including the State Procedures governing Programs and Services for Students with Special Needs §§ 1501-1541 (2000).

3. Respondent is required under federal and state law to make available special education and related services only to those students who qualify under state and federal guidelines.

4. N.C. Gen. Stat. § 115C-109 and –111 provide that no child with special needs, ages three through twenty, shall be denied a free appropriate public education or be prevented from attending the schools of the local educational agency in which he or she receives services, or in which he or she or his or her parent/legal guardians reside.

5. Respondent followed all required procedures in evaluating and assessing whether Student C qualified for services as an exceptional child.

6. In the spring 2004, Respondent completed proper evaluations of Student C to determine his eligibility status for services as an exceptional child. (T., page 104)
7. A proper IEP meeting was held to consider results of the evaluations and determine whether Student C qualified for services as an exceptional child with the Petitioner either in attendance or having had the opportunity to attend. (T., page 103)

8. The Respondent, after considering all relevant information, correctly determined that Student C was not eligible for services as an exceptional child. (T., pages 103 and 104)

9. Respondent followed all required procedures in evaluating and assessing whether Student J qualified for special education services.

10. In September and October 2003, Respondent completed proper evaluations of Student J to determine his eligibility status for services as an exceptional child. (Petitioner’s Exhibit 8)

11. Proper IEP meetings were held to consider the results of the evaluations to determine whether Student J qualified for services with the Petitioner in attendance or having had the opportunity to attend. (Petitioner’s Exhibit 8)

12. The Respondent developed an IEP for Student J that provided services from October 8, 2003 to October 7, 2004. (T., page 99 and Respondent’s Exhibit 4)

13. The IEP developed by the Public Schools of Robeson County for Student J for the period of October 8, 2003 to October 7, 2004 was proper and addressed the needs and services for Student J.

14. Student J is a student with a disability for the purposes of the Individuals with Disabilities Act (“IDEA”) and corresponding state law.

15. Both the IDEA and corresponding state law require Respondent to make special education and related services available to Student J and to offer him a free, appropriate public education as that term is defined under the IDEA and applicable state law.

16. The Public Schools of Robeson County provided Student J with a free, appropriate public education for the 2003-2004 school year.

17. The IDEA defines a free appropriate public education as one that provides the handicapped child with personalized instruction and sufficient support services to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 203, 102 S.Ct. 3034, 3049 (1982); In re Conklin, 946 F.2d 306, 313 (4th Cir. 1991); Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 980 (4th Cir. 1990) (“Burke County”); CM ex rel JM v. County Bd. of Educ. of Henderson Cty., 85 F. Supp.2d 574, 595 (W.D.N.C. 1999) (“Henderson County”); Harrell v. Wilson County Schools, 293 S.E.2d 687, 690 (N.C. App. 1982). The IDEA contains no requirement that the state provide the “best education” or even the “most appropriate” education. Henderson County, 85 F.Supp.2d at 595; Harrell, 293 S.E. 2d at 690.

18. The North Carolina equivalent of the IDEA requires that handicapped children be given an opportunity commensurate with the opportunity given to non-handicapped children to reach their full potential. Burke County, 895 F. 2d at 983; Henderson County, 85 F.Supp.2d at
North Carolina law does however, require the development of a “utopian educational program for handicapped students any more than the public schools are required to provide utopian education programs for non-handicapped students.” See Harrell, 293 S.E.2d at 690-91; Henderson County, 85 F.Supp.2d at 596.

19. The offer of 82 hours of compensatory services offered by Respondent was not accepted by Petitioner.

FINAL DECISION

Student C is not eligible for special education services under the federal Individuals with Disabilities Education Act or Chapter 115C of the General Statutes of North Carolina and Petitioner has failed to establish by the greater weight of the evidence anything to the contrary.

Student J is eligible for special education services under the federal Individuals with Disabilities Education Act or Chapter 115C of the General Statutes of North Carolina. Respondent has properly identified Student J as a child with special needs, developed an appropriate IEP for Student J, properly implemented the IEP for Student J for the 2003-04 school year and consequently has provided Student J with a free, appropriate public education and Petitioner has failed to establish by the greater weight of the evidence anything to the contrary. The offer of 82 hours of compensatory services by Respondent fulfilled Respondent's obligations under state and federal law.

NOTICE

In order to appeal this 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 Decision. G.S. § 115C-116(h) and (i).

This the 10th day of August, 2004.

_____________________________________
Donald L. Smith
Temporary Administrative Law Judge