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STATE OF NORTH CAROLINA | **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

COUNTY OF MECKLENBURG | **15 EDC 00360**

[redacted] by and through parents [redacted] AND [redacted]) Petitioner, v. **CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,** Respondent.	**FINAL DECISION**

THIS MATTER came before the undersigned Administrative Law Judge for hearing on March 30 and March 31, 2015. At the close of Petitioners' case in chief, Respondent made a motion for directed verdict. For the reasons stated herein, the Motion is granted.

I. Introduction

Petitioners, [redacted] and [redacted] by and through counsel, filed a due process petition against Respondent, Charlotte-Mecklenburg Board of Education, which was also represented by counsel, on January 9, 2015. Petitioners alleged that Respondent failed to fully reevaluate their son, [redacted] III (hereinafter "[redacted] failed to identify [redacted] ongoing disability, and failed to identify the nature and extent of [redacted] need for continued special education services in the category of speech language impaired. Petitioners also alleged that [redacted] was denied a free appropriate public education (hereinafter "FAPE") because Petitioners were not afforded a meaningful opportunity to participate in their son's December 18, 2014 reevaluation meeting.

At the outset of the hearing, the Undersigned granted Respondent's motion *in limine* that barred any evidence and references to evidence of any violations alleged against the Respondent because of the one-year statute of limitations established by the North Carolina Policies Governing Students with Disabilities (hereinafter "N.C. Policies") § 1504-1.12(e). The Undersigned also granted Respondent's motion *in limine* that barred any evidence and references to evidence of any FAPE violations, because FAPE is not available to parentally-placed private school students pursuant to N.C. Gen. Stat. § 1504-6.1 1(a).

Petitioners offered six witnesses, listed in the order in which they testified, Christopher Vasami (friend and baseball coach), Perry Flynn, M. Ed., (Speech Language Pathologist), [redacted] ([redacted] mother, home school teacher and Petitioner), Jay Lucker, Ed. D. (Speech Language Audiologist and Speech Language Pathologist), Addie Holzman (Speech Language Pathologist), and Kristy Connor, M.S. (Speech Language Pathologist). Of Petitioners' six witnesses, two participated in the December 18, 2014 reevaluation meeting – [redacted] and Addie Holzman. Because Petitioners failed to meet their burden of proving their claims by a preponderance of the evidence, a directed verdict is warranted.

II. Directed Verdict Standard

"The standard of review of directed verdict is whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury." *Davis v. Dennis Lilly Co.,* 330 N.C. 314, 322, 41 1 S.E.2d 133, 138 (1991) (citing *Kelly v. Int' / Harvester Co.,* 278 N.C. 153, 179 S.E.2d 396 (1971)). "In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant's claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant's favor." *Turner v. Duke Univ.,* 325 N.C. 152, 158, 381 S.E.2d 706, 710 (1989).

III. Uncontroverted Facts

Viewing the evidence in a light most favorable to the Petitioners, the facts are as follows.

A. IEP Team's Reevaluation [redacted]

[redacted] individualized education program team ("IEP team") met on December 18, 2014 in Charlotte, North Carolina to reevaluate [redacted] a parentally-placed homeschooled student, for special education services. As [redacted] mother, [redacted] participated as a member of this IEP team. [redacted] brought with her a non-attorney advocate, Leslie Petruk, as well as legal counsel.The Respondent's members of the IEP team included Corinne Turner (Local Educational Agency Representative), Heather Skeen (Lead Speech-Language Pathologist), Lindsey Radack (Special Education Teacher), Kimberly Morris (Regular Education Teacher), and Rhonda Armistead (School Psychologist). Other members of the IEP team included Addie Holzman and Tammy King from Chatterbox, LLC, and [redacted] outside service provider, and a speech therapy service company located in Charlotte, North Carolina.

The purpose of the meeting was to determine whether [redacted] continued to qualify for special education services in the area of speech language impairment. Ultimately, the IEP team determined that [redacted] was no longer eligible for special education services in the area of speech language impairment based on the data that was provided to the IEP team and the criteria set forth in the Individuals with Disabilities Education Act (IDEA) and the *North Carolina Policies Governing Services for Children with Disabilities.* [redacted] disagreed with the IEP team's determination and the IEP team provided her with an opportunity to voice her disagreement in writing as an attachment to the DEC-5 meeting summary, which she did.

B. Petitioner's Participation in [redacted] Reevaluation Meeting

[redacted] participated in the December 18, 2014 reevaluation meeting for [redacted] and provided the IEP team with formal and informal data regarding her son. [redacted] also provided the IEP team with a formal speech-language evaluation conducted by Kristy Connor, a private Speech Language Pathologist with Early Bird Developmental Services, LLC. a formal psychological assessment by Dr. Melanie Powell and a formal educational assessment conducted by Catherine O'Neal, MA. Informal data included audio clips of her and [redacted] in the home school

environment,and an example of a research-based supplemental reading tool for children called " RA-Z Kids". Petitioner provided input as to [redacted] strengths and weaknesses, and provided the IEP team with two informal observations, but did not provide any informal assessments. [redacted] provided no grades or other curricular measures of [redacted] home school progress to the IEP team. According to [redacted] testimony, the IEP team did not consider the information that she provided.

C. [redacted] Clinical Evaluation of Language Fundamentals (CELF) Scores

Petitioner chose Kristy Connor (hereinafter "Ms. Connor") to administer [redacted] formal speech-language evaluation, the Clinical Evaluation of Language Fundamentals (CELF-5). Petitioner also provided the IEP team with two informal observations authored by Ms. Connor. Petitioner and Ms. Connor testified that Ms. Connor was a former CMS employee, who participated as a member of [redacted] prior IEP teams at Dilworth Elementary School that found him eligible for speech language services in 2011. Ms. Connor incorrectly scored [redacted] CELF-5on two separate occasions. Heather Skeen, Respondent's lead speech-language pathologist for privately placed students, correctly rescored [redacted] CELF-5 using the CELF-5 scoring manual.Students scoring in the average range score from 86-114 and the mean score is 100. [redacted] corrected scores in the five main sub-categories within the CELF-5 were as follows: 101 (Core Language Score), 98 (Receptive Language Index), 104 (Expressive Language Index), 87 (Language Content Index), and 100 (Language Memory Index). [redacted] scored in the average range in all five categories, with three of his scores reaching or exceeding the mean score. The CELF-5examiner's manual states that about two-thirds of all students with typical language development tearn scores within the average range. [redacted] learned that [redacted] scores on the CELF-5 were rescored in the average range when she was given this information at the IEP meeting.

D. Informal Data Provided by the Petitioner

During the December reevaluation meeting, [redacted] provided and played multiple audio clips of her home schooling sessions with [redacted] and provided information about [redacted].'s performance on a supplemental reading tool, RA-Z Kids, and testified that [redacted] was reading at an R reading level, which is equal to a third-grade reading level. Petitioner also provided the team with two informal observations authored by Ms. Connor.

E. Input from [redacted]'s Outside Service Provider

Addie Holzman (hereinafter "Ms. Holzman"), testified that she had never worked with a student who had scored in the average range within every category of the CELF-5 and qualified for speech-language services. She agreed with the IEP team that there was no clear curriculum presented at the reevaluation meeting and that no grades were provided to the IEP team by the Petitioner. Ms. Holzman also stated that based upon everything presented she could not say that [redacted] needed speech therapy services "based on the speech and language scores that were presented at the meeting." Ms. Holzman stated that her purpose for participating as a member of the IEP team was to discuss [redacted] strengths, his progress, and weaknesses that she observed in her one-on-one sessions. She stated that [redacted] could benefit from speech therapy services, but he did not require them and that a lot of students could benefit from her services, including students without any speech-language deficits. She stated that there is a difference between "could benefit from"and "requires" as it relates to speech-language services, which is important because the N.C.

Policies Governing Services for Children with Disabilities establish that a student's disability must require specially-designed instruction. Ms. Holzman stated that, overall, [redacted] was progressing towards mastering his IEP goals based on what she saw in her one-on-one sessions with [redacted] Ms. Holzman agreed with the IEP team's determination to exit [redacted] from special education services in the area of speech-language impairment.

IV. Analysis

As with any due process hearing, it is Petitioners' burden to prove by a preponderance of the evidence the claims that they have asserted. In this matter, Petitioners called six witnesses to testify, but only two of the six witnesses participated in and provided input to the IEP team at the December 18, 2014 reevaluation meeting – the meeting upon which all of Petitioners' claims centered.

Petitioners have failed to meet their burden of proving that Respondent failed to fully reevaluate [redacted] failed to identify [redacted] ongoing disability, and failed to identify the nature and extent of [redacted] need for continued special education services in the category of speech language impaired and that Petitioners were not afforded a meaningful opportunity to participate in their son's December 18, 2014 reevaluation meeting. The Petitioner testified that she participated in the December 18, 2014 reevaluation meeting, shared both formal and informal data with the members of [redacted] IEP team, that the members asked questions about some of the data that she presented, and that the she was provided with an opportunity to voice her disagreement with the IEP team's decision in writing when the team determined that [redacted] no longer qualified for special education services in the category of speech-language impairment. Ultimately, the IEP team consensus was that there was no data to support an adverse effect on [redacted] education and that he did not require specially designed instruction in the way of speech therapy services. All [redacted] formal speech-language assessment scores were within the average range, with three of five reaching or exceeding the mean score. [redacted] was reading at a third-grade reading level on the RA-Z Kids reading supplement even at the start of his third grade home school year.

Petitioner called Addie Holzman, [redacted]'s outside speech services provider, who testified that [redacted] was making progress on his IEP goals at the time of the December 2014 reevaluation meeting and that he was on track to meet his IEP goals. Ms. Holzman stated that [redacted] and many non-disabled students could benefit from speech therapy services, but that she could not say that [redacted] required speech therapy services. Ms. Holzman also stated that she ultimately agreed with the IEP team's determination that [redacted] was no longer eligible for special education services based on all of the data that was presented at the reevaluation meeting. Contrary to Petitioners' claim, Ms. Holzman also stated that the IEP team considered more than the CELF-5 and provided examples of what the team considered.

The IDEA and the *North Carolina Policies Governing Services for Children with Disabilities* require a reevaluation determination to be made by a student's IEP team every three years to determine whether a student's disability has an adverse effect on educational performance and whether the student requires specially designed instruction. Such a determination may not be made by any one individual, but must be made by a consensus of the IEP team. In this matter, Petitioners did not provide sufficient evidence that Petitioner [redacted] was denied a meaningful opportunity to participate as a member of this IEP team at the four-hour reevaluation meeting on December 18, 2014, nor did Petitioners provide evidence that the IEP team did not fully reevaluate

[redacted] with the information that the IEP team was provided.

V. Conclusion

For the foregoing reasons, a directed verdict is hereby entered on all claims in Respondent's favor.

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).

IT IS SO ORDERED.

This the 6th day of May, 2015.

Selina M. Brooks
Administrative Law Judge

A copy of the foregoing was sent to:

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This the 6th day of May, 2015.

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