

**DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION ADMINISTRATIVE HEARING PANEL**

IN THE MATTER OF:	)	
	)	
["Student"]	)	<b>HEARING DECISION</b>
Petitioner	)	<b>AND ORDER</b>
	)	DE DP 09-10
v.	)	
	)	Hearing Dates:
RED CLAY CONSOLIDATED	)	June 15 <sup>th</sup> & 16 <sup>th</sup> 2009
SCHOOL DISTRICT	)	July 1 <sup>st</sup> , 6 <sup>th</sup> & 8 <sup>th</sup> 2009
Respondent	)	

Parent:

["Parent"]

Counsel for Parent:

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**DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION ADMINISTRATIVE HEARING PANEL**

IN THE MATTER OF:	)	
	)	
["STUDENT"]	)	<b>HEARING DECISION</b>
Petitioner	)	<b>AND ORDER</b>
	)	DE DP 09-10
v.	)	
	)	Hearing Dates:
RED CLAY CONSOLIDATED	)	June 15 <sup>th</sup> & 16 <sup>th</sup> 2009
SCHOOL DISTRICT	)	July 1 <sup>st</sup> , 6 <sup>th</sup> & 8 <sup>th</sup> 2009
Respondent	)	

Due Process Hearing Panel for ["Student"] consisted of the following individuals:

Noel C. Burnham, Esquire – Panel Chair  
Dr. Janice Hoffman Willis – Panel Member  
Julie Johnson – Panel Member

1. The original Due Process Hearing Complaint Notice was filed on behalf of Petitioner ["Student"] with the Department of Education on or about April 13, 2009.
2. An initial Pre-Hearing Conference was conducted on April 30, 2009. Participating in the conference call were Panel Members, Counsel for District and Counsel for Petitioner. The conference call was adjourned until Counsel for Petitioner could receive copies of the pre-Hearing Notice and Agenda sent by Panel Chair.
3. A second Pre-Hearing Conference was conducted on May 6, 2009 with the same attendees.
4. On or about May 8, 2009 Counsel for District provided the Prior Written Notice dated November 20, 2008 as the District's response to the Petitioner's Complaint.
5. The Due Process Hearing was conducted on June 15, 16, July 1, 6 and 8, 2009.
6. At the conclusion of the Hearing Petitioner and District submitted their closing Arguments to the Panel on July 31, 2009.
7. The Panel met to deliberate this decision on August 12, 2009.

## **STATEMENT OF ISSUES**

At the Pre-Hearing Conference Petitioner re-affirmed that the issues to be considered by the Panel were set out in the Notice of Complaint, to-wit

1. The District failed to provide an appropriate IEP
2. The District failed to implement IEPs
3. The District failed to provide benefit

## **PETITIONER'S PROPOSED RESOLUTION**

[“Student”] requested an award of:

1. Placement in an appropriate program at the [“Private”] School
2. Compensatory for the duration of [“Student’s”] denial of FAPE

## **FINDINGS OF FACT**

1. [“Student”] is a fifteen year old girl suffering from spastic quadriplegic cerebral palsy since birth.
2. Prior to moving to Delaware [“Student”] attended school in New York with an IEP.
3. After initial IPRD review, [“Student”] has attended the [“Special”] Program since 2001 when she moved to Delaware from New York.
4. The [“Special”] Program serves students through age 21 with a combination of disabilities.
5. From school year 2001 through 2008, [“Student”] received education pursuant to a Parent approved IEP.
6. At the IEP meeting on November 20, 2008 Parent did not agree with the program described in the IEP document.
7. At the IEP meeting on November 20, 2008, Parent requested that [“Student”] be placed at the [“Private”] School.
8. The next step was to have been consideration of the placement request by the IPRD [Identification Placement, Review and Dismissal] committee operated at the School

District level that reviews students who may be seeking something outside of what their current educational program offers.

9. The parent is a participant in process followed by the IPRD.
10. At the November 20, 2008 meeting Parent was informed that the IEP team does not have the authority to approve placement such as ["Private"] School.
11. The Director of Special Services made the determination that Parent's request for placement at the ["Private"] School was not an IPRD type request, and asked that a letter be sent to Parent denying her request. Parent's request for placement at the ["Private"] School was never transmitted to the IPRD for consideration, review or response
12. No IPRD review or meeting was held to consider Parent's request for placement at the ["Private"] School.
13. No ITC meeting was held to consider Parent's request for placement at the ["Private"] School.
14. Parent's request for placement at the ["Private"] School was never transmitted to the IPRD for consideration, review or response.
15. From school year 2004 to 2008, ["Student's"] direct physical therapy has been decreased for 90 minutes per week to 30 minutes per week without review or documentation.
16. From school year 2005 to 2008 ["Student's"] direct occupational therapy has been decreased from 90 minutes per week to 45 minutes per week without review or documentation.
17. From school year 2004 to 2008 ["Student's"] direct speech/language therapy has been decreased from 60 minutes per week to 60 minutes per month on a consulting basis only.

## DECISION

A student receives FAPE where the state and school district have complied with the procedures set forth in the IDEA and the educational program offered is reasonably calculated to enable the student to receive educational benefits. *Bd. of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 176, 206-207 (1981) ("*Rowley*"). In addition the educational benefit must be meaningful and provide the "basic floor of opportunity or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 201. All this must be considered and included in any applicable IEP designed by an IEP team that will govern the educational program of the student.

The IEP team must include at least one public agency representative who "[h]as authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided." 14 DE Admin. Code 925.21.0; 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D); 14 Del.C. §3110. Placement, even at a private school, is an IEP team decision. 14 DE. Admin. Code 925.25 and 925.27. "Following the development of a child's IEP, the team shall determine the child's educational placement in the least restrictive environment based on the child's individual needs and the services identified in the IEP." 14 DE Admin. Code 925.27.1. The placement options which must be considered include separate schools where "children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate schools. This may include children placed in public and private day schools for children with disabilities" 1.4. DE Admin. Code 925.27.1.4. Throughout the process the parent is included in all deliberations/meetings, including placement issues. Specific statutory authority directs that the parent is to be included in the process. 14 Del Code Section 3124.

In the present case two District administrators, neither of whom was a member of the IEP team and without meeting with Parent, made the decision regarding ["Student's"] placement request. This is a violation of the parent's right to be a part of every team making a placement decision. 14 Del Code Section 3124; 34 C.F.R. §300.327. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency considering placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 14 Del Code Section 3124; 34 C.F.R. §300.116(a)(1).

## **CONCLUSION**

It is the Decision of the Panel on this 17th Day of August, 2009 that based on the facts established at the hearing by testimony and exhibits and the current law and regulations, it is the decision of the hearing panel that the District did not provide FAPE to ["Student"].

["Student's"] request for placement at the ["Private"] School is granted unless the District and Parent agree to an alternative placement.

**RIGHT TO APPEAL**

The decision of the Hearing Panel is final. An appeal of this decision may be made by any party by filing a civil action in the Family Court of the State of Delaware or United States District Court within ninety days of the receipt of this decision.

\_\_\_/s/ Noel C. Burnham \_\_\_\_\_  
Noel C. Burnham

\_\_\_/s/ Janice Hoffman Willis \_\_\_\_\_  
Dr. Janice Hoffman Willis

\_\_\_/s/ Julie Johnson \_\_\_\_\_  
Julie Johnson