

VIRGINIA:

SPECIAL EDUCATION DUE PROCESS HEARING

KYLE MCGEE, et al,

Complainants,

v.

YORK COUNTY PUBLIC SCHOOLS,

Respondent

DECISION OF HEARING OFFICER

Statement of Proceedings

This special education proceeding was initiated on February 21, 2003, (Parent's Exhibit 98) pursuant to Chuck and Becky McGee's request for a special education due process hearing. In their letter requesting this hearing, the parents assert that after several years of special education, their son was unable to read beyond the first grade level. For years, York County School Division (YCSD) used a reading program, "Patterns for Success," with Kyle which the parents deemed inappropriate. In his last year in York County, an aide, who the parents claimed was improperly trained, tried to teach Kyle to read with "Patterns for Success."

During the 2002-2003 school year when Kyle would transfer to middle school, York County offered another program called "Reading Works." York County advised the parents that YCSD does not have a reading specialist at the middle school. (Parents' Exhibit 84, pg. 10). YCSD was unable to provide any information about the "Reading Works" program or how the staff should be trained. The parents had previously asked that their son be allowed to transfer to a neighboring school district that uses the Wilson-Orton-Gillingham reading program. YCSD refused the parents' request.

The parents removed Kyle from the public school program and placed him in Northstar Academy, a special education school in Richmond, Virginia, primarily for Kyle to learn

to read through the Wilson-Orton-Gillingham reading program for dyslexic children. The parents are seeking tuition reimbursement for the 2002-2003 school year and the additional related expenses incurred in placing Kyle at Northstar Academy.

The York County School Division has the position that Kyle benefited from his education at its Tabb Elementary School and would have received an appropriate education at its Tabb Middle School based on the Division's past performance with Kyle and the IEP written for Kyle's sixth grade education.

### Findings of Fact

1. Kyle was born on September 20, 1990 in Germany, where his father was stationed as an Air Force pilot. He remained in the hospital for two months, and was closely monitored for several months. A neurologist told his parents that Kyle would have "no intelligible qualities." When he finally came home from the hospital, he had a feeding tube and heart monitor. His parents were told that Kyle "would never be able to feed himself, walk, talk, or even be able to sit up." They were told they would "be unable to care for him and that we should look at institutions for long term care. (Parents' Exhibit 98, pg. 1-2).
2. Mr. and Mrs. McGee obtained occupational therapy, physical therapy and speech therapy for their son. By the time he was two years old, he could feed himself, walk, talk, and sit up. (Parents' Exhibit 98, pg. 2).
3. Kyle attended special education preschools and received special education services during Kindergarten and first grade. (Parent's Exhibit 98, pg. 2). In April, 1998, Kyle was administered the Woodcock Johnson Achievement Test. His "Broad Reading" score was at the tenth percentile level, which was at the 1.2 grade equivalent level. His "Broad Written Language" score was at the eighteenth percentile, which was at the 1.3 grade equivalent level. (Parents' Exhibit 4, pg. 1).
4. In August, 1999, Kyle and his family moved to York County, Virginia. In September 1999, he entered third grade at Tabb Elementary School. He soon began "having more and more difficulty keeping up with his class on their lessons." He told his parents that he "should be killed, because he did not 'measure up'" His parents were alarmed, sharing their concerns with the school staff, and obtained evaluations to "determine what was wrong." (Parents' Exhibit 98, pg. 2-3).

5. Ms. Henderson was Kyle's teacher during the first year at Tabb Elementary School. Ms. Henderson testified that his problems were immediately apparent:

Q. But you saw drooling?

A. (Witness nodding head) I mean, the first day – I mean, when he first – when I first met him that first day open house, no, I did not see that, but the first day he walked into my class –

Q. But within the week or two –

A. Yes, you saw the drooling. You saw, you know, the arm flapping, which was hard to watch. You know, you just wanted to help him through it.

Q. Glasses, drooling, arm flapping.

A. He always kept his little head cocked to the side (indicating).

Q. Oh, really? A head tilt?

A. Uh-huh.

...

A. Definitely. He's a smart little guy. (TR. 1, pg. 75-76, 79).

6. Mrs. Henderson testified that Kyle's greatest disabilities were in reading and writing, (TR.1, pg. 81-82, 84). She could not explain why his IEP was not modified from orthopedically impaired to include his learning disabilities. (TR.1, pg. 83-34).

7. On October 20, 1999, YCSD found that Kyle's reading skills were at the pre-primer level. (Parents' Ex. 6, pg. 2).

8. On February 1, 2000, pediatric neurologist Dr. Lewis reported that Kyle suffered from "arthrogryposis" and has a processing disorder, learning disabilities, and an articulation disorder. (Parents' Ex. 7, pg. 2).

9. On March 14, 2000, Dr. Montgomery, developmental pediatrician, reported that Kyle's standard score in reading was 65 (the first percentile) (Parents' Ex. 8,p.3), as measured by the WRAT-3. (Parent's Ex. 104, pg. 2). This was at the beginning first grade level. Dr. Montgomery found that Kyle suffered from:

1. **Arthrogryposis** of neurologic nature with additional Neurodevelopmental impairments including visual perceptual deficits and learning disabilities.
  2. **Dyslexia.** Kyle has significant discrepancy between his reading skills and his overall cognitive functions.
  3. **Dysgraphia.** Kyle has a significant writing disability greater than expected for his reading difficulties.
  4. **Speech difficulties.** He is inefficient with his expressive language. (Parents' Ex. 8, pg. 3).
10. On March 21, 2000, occupational therapist Wood reported that Kyle's Cursive Handwriting Score was a standard score of 61, at the 0.05 percentile to the second percentile. (Parents' Ex. 9, pg. 2).
11. From March 27 through April 4, 2000, Elizabeth Beerli of YCSD evaluated Kyle's reading again. His standard scores on Word Identification, Word Attack, Word Comprehension, and Passage Comprehension ranged from 55 to 72, i.e., from less than the first percentile to the second percentile. His grade equivalent scores ranged from 1.4 to 1.7. (Parents' Ex. 11, pg. 2). Importantly, his visual\auditory learning was age and grade appropriate.
12. While third grader Kyle was 9 years, 7 months old and tested by Beerli, he was still reading at the first grade level, and had fallen even further behind his peer group.
13. On August 25, 2000, school psychologist Ann Larkum evaluated Kyle. On reading, he earned a standard score of 73 (the 4<sup>th</sup> percentile) as measured by the WIAT Basic Reading Score. (Parents' Ex. 16). She did not report a grade equivalent score for reading.
14. Larkum testified that she prefers to use standard scores and percentile ranks, not grade equivalent scores because they are "statistically impure." (TR 4, pg. 115).
15. In September, 2000, Kyle was tested on the Stanford Achievement Test. In "Total Reading", his grade equivalent score was 1.6, his percentile rank was 1. (Parents' Ex. 18).
16. On September 15, 2000, YCSD reclassified Kyle as a child with a specific learning disability (Parents' Ex. 20).

17. On September 16, 2000, Kyle underwent a battery of testing by Ann Ferrell, a speech-language pathologist and reading specialist with Children's Hospital of the King's Daughters. (TR. 1, pg. 164-168, Parents' Ex. 107). Her report noted that many of Kyle's scores on the Phonological Awareness Test were at the 2<sup>nd</sup> percentile level and lower. Kyle scores above the 25<sup>th</sup> percentile in only one area, "Segmentation." She reported that:

The authors of this test have suggested that any skills with a score below the 25<sup>th</sup> percentile may need remediation . . . These test results confirm Kyle's dyslexia and the exact areas where he is breaking down. He must have a reading program administered by a trained professional that will remediate these specific deficits. (Parents' Ex. 22, pg. 4-5).

18. Ferrell testified that the Wilson Reading program used by neighboring school systems requires extensive teacher training and certification. She reported that the "Patterns for Success" program has no such training or certification requirements. (TR. 1, pg. 191-195).

19. Teacher training and certification for the Wilson reading program costs approximately \$1,200 for the first year and \$800 for the second year. (TR. 1, pg. 191). According to YCSD special education teacher Sue Reimer, the "Patterns for Success" program does not require teachers to undergo any specialized training or certification. "Patterns for Success" costs about \$54 for materials and supplies. (TR. 4, pg. 59). No information was proffered or known (TR. 4, pg. 64, 130). by YCSD about the "Reading Works" program that was being used in the 2002-2003 school year, i.e. the year for which reimbursement is sought.

20. After YCSD received Ms. Ferrell's report, IEP meetings were held on September 22 and 28, 2000. The parents explained that "Mrs. Ferrell's recommendations for a multi-sensory approach with specific remediation of his phonemic awareness deficits had been disregarded ... We requested that Kyle be permitted to attend a nearby Poquoson City Public School 'Wilson' program for an hour a day." (Parents' Ex. 98, pg. 5).

21. Dr. McIntyre, Assistant Principal at Tabb Elementary School, advised the parents to talk with Ms. Creasey, Director of Student Services in regard to their request. On September 29, 2000, Mrs. McGee talked with Ms. Creasey and was told

“they would not pay a different school division to provide services for a York County student.” (TR. 1, pg. 231, Parents’ Ex. 98, pg. 5).

22. On September 26, 2000, Ms. Ferrell wrote to YCSD and explained that “Kyle McGee must be instructed in a method described above administered by a teacher trained in the method or he will not learn to read.” (Parents’ Exhibit 25). YCSD did not provide Kyle with intensive instruction as described by Ms. Ferrell.

23. That fall, Kyle’s IEP goal in reading was changed to: “Kyle will demonstrate 2 years growth in reading by improving his recognition and application of sound symbol relationships.” (Parents’ Ex. 26).

24. During the 2000-2001 academic year, Kyle’s ability to read and write remained severely impaired.

25. By May 4, 2001, Kyle had not achieved “2 years growth in reading.” His IEP was modified to: “Kyle will demonstrate at least one year’s growth in reading by improving his recognition and application of sound/symbol relationships.” (Parent’s Ex. 36).

26. In July, 2001, Kyle began to see Dr. Brassel, (TR. 1, pg. 45, Parents’ Ex. 108) a child neuropsychologist, because of “high anxiety”. (TR.1, pg. 45-46).

27. In September, 2001, Kyle continued to attend Tabb Elementary School where he was in fifth grade. His parents reported in their due process request letter that:

IEP meetings were held on October 17, October 30, November 15 and November 28, 2001. At the meetings, we voiced our concern that Kyle is not learning how to read and is becoming more frustrated every day. We were told that the Patterns for Success program works for children with dyslexia. We asked for statistics on the expected reading progress from the Patterns program. Was Kyle ahead of schedule or behind schedule? The staff replied that, according to informal assessments completed by the teacher, Kyle had made almost a year’s reading progress after being in the program for a year. We were skeptical. We had not seen any improvement at home.

In December, Mrs. Fields of Student Services reported back to us that there was no statistical data on the success of the Patterns program. (Parents' Ex. 98, pg. 6).

28. On February 1, 2002, the parents arranged for Kyle to undergo a battery of testing to determine if he was making progress. Mark Snyder administered educational and psychological testing on Kyle. Snyder found that in reading, Kyle received a standard score of 63, which was at the 1<sup>st</sup> percentile on the on the Wide Range Achievement Test. In broad reading, he earned a standard score of 60, which was at the 0.3 percentile, and the first grade level. (Parents' Ex. 53, pg. 4-5).

29. Kyle was tested on the Woodcock Johnson test on May 13, 1998 (Parents' Ex. 4) and April 6, 2000. (Parents' Ex. 11). For four years, his grade equivalent scores remained at the first grade level. His standard scores and percentile ranks dropped as Kyle fell further behind.

30. On February 6, 2002, Mr. Snyder's report was provided to YCSD. (Parents' Ex. 54).

31. On February 27, 2002, after receiving Mr. Snyder's report, YCSD prepared another IEP. This IEP proposed that Kyle would "demonstrate at least one years growth in reading ..." (Parents' Ex. 55). Although YCSD proposed to measure Kyle's growth in reading in the Brigance Test, the school district did not administer the Brigance to him, so they had no baseline data to measure change or growth in reading. YCSD already had Woodcock test data that they could use for baseline comparisons.

32. On February 12, February 26, and March 5, 2002, Kyle was tested by Dr. Brassel. She assessed his reading skills with the WIAT test. In reading, she found that Kyle's standard score was 73, which was at the 4<sup>th</sup> percentile. (Parents' Ex. 57, pg. 7). Two years earlier, Kyle was tested on the WIAT by Larkum. (Parents' Ex. 16). His scores in 2000 and 2002 were identical. His progress in reading, the area of his most significant deficiency, was limited to his remaining at the bottom percentiles of his age group .

33. Dr. Brassel discussed several reading programs in her report, and wrote, "It is imperative that Kyle be provided with such a program if he is going to be able to read."

She recommended that Kyle receive an intensive summer program in reading. (Parents' Ex. 57, pg. 13-14).

34. In February, 2002, the parents arranged for Kyle to begin individual, one on one tutoring with Ms. Ferrell.

35. On March 28, 2002, YCSD administered the STAR Reading Test to Kyle. His grade equivalent score was 1.9, which was at the 1<sup>st</sup> percentile. (Parents. Ex. 58).

36. On April 24, 2002, Dr. Brassel and Ms. Ferrell participated in an IEP meeting with YCSD school personnel. Dr. Brassel was told that the IEP team did not "make those decisions" to modify Kyle's reading program for Kyle's middle school. She was told that those decisions came from the central office. Eventually, the Division told the McGees that Tabb Middle School would be teaching Kyle with "Reading Works 6." (Parents' Ex. 109).

37. On May 1, 2002, a meeting was held to discuss the parents' request for Extended School Year services. The parents' request was denied.

38. On May 9, 2002, the parents wrote to Dr. Creasey, Director of Student Services, and advised that:

The first step in teaching Kyle to read is ESY to stop his regression and provide the breakthrough to reduce the detrimental effects he has in being almost four years behind his peers in reading.

The parents provided notice of their intent to make a unilateral private summer school placement.

39. On May 18, 2002, Kyle was tested (Parents' Ex. 77) at The New Community School in Richmond, Virginia, for possible placement in their summer school program. His reading score was at the first percentile rank. He was rejected for the summer reading program because "His scores were too low." (TR. 1, pg. 183).

40. On May 30, 2002, Ms. Creasey, Director of Student Services, wrote to the parents and denied their request for placing Kyle in a private summer program for reading and writing. She claimed that Kyle had made "substantial progress over 15



months and that she has seen “success with a number of students. . .” (Parents’ Ex. 82). She added that she has planned a study of reading programs and would be employing an independent contractor. York County offered no evidence to support that an independent contractor was employed, or that any study of reading programs was completed.

41. On June 4, 2002, YCSD proffered yet another IEP with a reading goal. However, this IEP deleted the prior references to two years growth or one year of growth in reading. The IEP included test data from the Brigance Comprehensive Inventory of Basic Skills that Kyle’s Basic Reading Composite was at the third percentile, and Comprehension was at the second percentile. (School Div. Ex. 15).

42. On June 12, 2002, Dr. Milne, principal of Tabb Elementary School, wrote the parents a letter saying that Kyle would be taught with “Reading Works 6.” (Parents’ Ex. 85).

43. Patricia McMahon with YCSD Student Services gave testimony on the middle school remedial reading program titled “Reading Works”. She testified it was an intensive approach for children who were reading “a little behind.” (TR. 4, pg. 130). Kyle was not a child reading a “little behind.”

44. YCSD did not identify the specific remedial reading methodology its teachers would use for Kyle in sixth grade except to identify “Reading Works 6.”

45. No teacher or administrator who would teach Kyle in sixth grade participated in the IEP team meeting that devised Kyle’s IEP for the sixth grade.

46. There is no direct evidence from the staff at Tabb Middle School on how Kyle would be taught reading and writing at Tabb Middle School if he had attended school there.

47. On June 19, 2002, the parents wrote a letter to Dr. Creasey and provided notice of their intent to remove Kyle from YCSD and place him in a private school at public expense. (Parents’ Ex. 88).

48. During the summer of 2002, Kyle continued to work with Ms. Ferrell. In their due process request letter, the parents explained that:

Through the summer Kyle continued with individual, one-on-one tutoring using the Wilson Reading System under Ann Ferrell. Kyle became excited about reading with Ann and was very willing to go to the sessions even though they were at 7:45 a.m. In August, at the conclusion of our session with Ann, we asked for a Woodcock Reading Mastery test. Ann advised that since Kyle had only completed 25 sessions, that there might not be any improvement in Kyle's reading scores. Much to our pleasure Kyle had improved in all areas on the test and his overall reading score was at the third grade level. In four months Ann Ferrell and the Wilson program were able to do what York County School Division had been unable to accomplish in three years. Kyle was finally learning how to read.

49. On September 3, 2002, Kyle entered Northstar Academy in Richmond, Virginia. Northstar Academy is a small special education school that provides intensive specialized education for learning disabled children like Kyle. Northstar Academy has contracts with Virginia local school divisions for providing an appropriate education for children with disabilities. (TR. 2, pg. 320.)

50. Candace David, the Head of Northstar Academy, described Kyle's initial difficulties at Northstar, which she viewed as due to the inconsistency of his prior teaching by untrained personnel.

51. Ms. David testified that "Reading Works" is not appropriate for Kyle and the children at Northstar because it:

didn't stress enough with the phonemic awareness and it went too fast for them. Um, our children – the kinds of children that we have, um, if you have bright dyslexic children who can make inferences and make references quickly, a phonemic approach, such as Reading Works, would be helpful, um, but our kids need repetition, repetition, repetition, and then you need a highly-structured program with a highly-trained teacher, who is not going to vary from day to day on how that instruction is delivered. It is delivered the same way. It is predictable just like the language is predictable. (TR. 2, pg. 309.)

52. Ms. David responded to a question about whether Northstar Academy was the least restrictive environment for Kyle:

Children who come to Northstar fall through the cracks. Our kids can't compete with other kids without the disabilities. Um, they're not going to be able to keep up. However, many of our children have attention deficit disorders, and so if you want to call attention deficit disorder a disability, then you'd have to look at all the kids that are in public school who also have attention deficit disorders.

So I do believe that we are the least restrictive. However, we are a small structured environment. Our kids have plenty of time to go out into the world and participate. We have a basketball team. We have a soccer team. We go on field trips constantly. We believe in hands-on education. So if you're going to be studying pond water, you got to go to a pond to get the water. And so we go to the pond and we get the water.

So we have lots of time to interact in the community and we encourage our families to be interactive with their community, any kind of – anything that would be an engaging thing for a young man. Like Kyle, he loves Hockey and likes to go to the hockey games, um and participate with his brothers and sisters. We're only six hours a day. That's – that's not much in a 24-hour day. (TR. 2, pgs. 318-319).

53. Ms. David emphasized the significant gains Kyle has made and her concerns that:

The window of opportunity for him is slamming shut. He is in the – you know, he's in the sixth grade. He doesn't have much more time left. And if we don't continue on the same pattern that we're going, then, um, he'll fail. He'll fail. He will – he won't get much higher than he's getting now.

This is a young man who can comprehend information. He can comprehend it orally. You read it to him and he's got it. But the fact that – he's a curious learner. He wants to participate in his learning. And if you stop teaching him how to read, you're going to – you're going to stop his education, because nowadays you've got to be able to read. Even to use a computer, to use a word processor, to look up things on the Internet, you have got to be able to read that screen. It is – it is the age of technological advances, but that doesn't mean you can't read. You know,

you have to be able to read.

We have been working on different kinds of technology for Kyle, trying to find a good one that he is able to be – he can be able to express his information. This young man has a lot of information upstairs and he wants to get it out. His hands don't allow him to do that. Um, he has difficulty with articulation. So, using speech-activated devices, we've been trying all kinds of speech-activated devices with Kyle to be able to help him, to be able to get out his information. (TR. 2, 313-314).

54. YCSD has not obtained any specialized training for their staff on the level of Wilson Certification.

55. Kyle can learn to read and write with the Wilson Reading Program for individuals who have dyslexia.

56. Kyle's ability to read and write at Northstar Academy improved at a rate that indicates he will write with computer accommodations and read at a high school level if he continues to receive instruction in the Wilson Reading Program.

57. Northstar Academy is an appropriate educational program for Kyle.

58. Without the proficiency in reading and writing that the Wilson Program will achieve for Kyle, Kyle will be unable to progress academically to meet any standards of learning the Commonwealth of Virginia requires high school students to meet. (TR. 2, pgs. 349-350).

59. Reading and writing are essential skills a student needs to benefit educationally.

60. Kyle's education has cost his parents \$28,663.40 (Parents' Ex. 101, TR. 3, pg. 28). Kyle received an appropriate education at Northstar.

61. Kyle spent his first four years of primary education, two years of kindergarten, first and second grade, in Department of Defense schools in Germany. (TR. 2, pgs. 53-54).

62. Kyle was diagnosed as dyslexic after his third grade year. (TR. 2, pg. 55,

Parent's Ex. 8).

63. Kyle received no specialized reading instruction until he entered the York County School Division in his third grade year. (TR. 2, pgs. 208-209).

64. Kyle entered the third grade significantly behind his peers in reading. (TR. 3, pgs. 60-61; Parents' Ex. 6 and 11; School Div. Ex. 23 and 24).

65. Kyle's first IEP in York County was a transfer IEP from Patch Elementary School in Germany. (School Div. Ex. 1). This IEP included the goals and objectives developed by Patch Elementary School at the end of Kyle's second grade year, and was agreed to by the parents. Id. Kyle received occupational, physical and speech therapy, as well as consultation with a teacher for the visually impaired. Id. This IEP listed Kyle's primary disability as orthopedically impaired. Id.

66. In October of Kyle's third grade year, the School Division drafted an IEP Addendum to add math goals, a speech therapy goal, and to modify his physical therapy goals. (School Div. Ex. 2).

67. In December of Kyle's third grade year, the School Division drafted an IEP Addendum to add services for a functional educational vision. (School Div. Ex. 3).

68. An evaluation done by Kyle's special education teacher in October of 1999 indicated that Kyle was not even at the first grade reading level in an informal reading inventory. (School Div. Ex. 23).

69. By the end of his third grade year, in math, Kyle mastered all of the math goals established for him. (School Div. Ex. 2). Further, Kyle made huge social progress in the third grade including delivering letters to other classrooms (TR. 2, pg. 58).

70. In April of 2000, Kyle's special education teacher again administered an informal reading inventory, which noted Kyle's improvement from the pre-primer level to the primer level in reading. (School Div. Ex. 24). Kyle made some progress in learning to read in the third grade but he could not read at a level that would enable him to be appropriately educated in light of his high intelligence.

71. An IEP for Kyle's fourth grade year was developed, signed and consented to by

the parents over the course of approximately four days at the end of Kyle's third grade year. (School Div. Ex. 4). An eligibility committee meeting was held on August 25, 2000, and Kyle's primary disability was changed to specific learning disability, with OT as secondary. (School Div. Ex. 6 and 7).

72. Kyle received ESY services the summer after third grade. (School Div. Ex. 5). He received occupational therapy services one time per week, and individual or small group reading instructions two times per week for forty minutes, for five weeks. *Id.* The ESY Addendum notes "[d]ue to recent advances in reading . . . reading instruction is required over the summer to maintain skill level." *Id.* (emphasis added). The parents agreed to this Addendum.

73. The one page of reading goals for the summer of 2000 indicate that Kyle mastered two of his goals and was making progress on the other two. *Id.* One goal that was mastered indicated that he read a passage at the 1.5 grade equivalency level. *Id.*

74. At the beginning of Kyle's fourth grade year, the IEP team drafted a new IEP for Kyle's fourth grade year which was signed and consented to by the parents on November 3, 2000. (School Div. Ex. 8 and 9). This IEP updated the identified disability and was drafted to take into account the recommendations of Ann Ferrell and to address the concerns of the parents as a result of Mrs. Ferrell's report. (TR. 3, pgs. 28-29).

75. The new fourth grade IEP, agreed to by the parents, notes that Kyle was reading at the early first grade level, and in written language he was below the first grade level. (School Div. Ex. 8).

76. The beginning of the fourth grade was the first time YCSD identified Kyle's specific reading disability and specific goals and objectives were developed to address his reading skills.

77. Elizabeth Stinson, Kyle's fourth grade teacher, testified as to the extraordinary progress he made socially throughout the fourth grade year, noting that he ran for and won a student elective office after making a speech to the entire student body, made announcements on the P.A. system, decreased his "flapping" and was able to interact better with the class. (TR. 3, pgs. 89-92).

78. In the fourth grade, Kyle received individual instruction in reading with Sue Reimer, a special education teacher, with nine years of reading teaching experience, one hour per day, five days per week (as recommended by Mrs. Ferrell), while also staying in class for reading comprehension activities. (TR. 3, pgs. 92-93; TR. 4, pgs. 4-6; School Div. Ex. 8). Kyle also did most of the math that his fourth grade peers did. (TR. 3, pg. 99).

79. Kyle's reading objectives in the fourth grade IEP consisted of four pages of goals and objectives under the goal of demonstrating two years growth in reading by improving his recognition and application of sound-symbol relationships. (School Div. Exhibit 8). Sue Reimer was responsible for implementing these objectives. (TR. 4, pg. 13). The goal of two years growth in reading was added by the IEP team with the participation of the parents. (Parents' Ex. 27).

80. Kyle mastered some fourth grade goals. Kyle also made progress on all the reading goals that were implemented by Linda Bergeron, Kyles' speech therapist. (TR. 3, pgs. 130-136).

81. For reading, the fifth grade IEP indicates that Kyle would receive reading resource five times per week for two thirty minute sessions per day, with the special education staff. (School Div. Ex. 10). The parents consented to this IEP.

82. The summer after fourth grade, Kyle received ESY services in the form of occupational therapy to continue working on his keyboarding skills. (School. Div. Ex. 10, last two pgs.)

83. Approximately one month into Kyle's fifth grade year, the parents began requesting IEP meetings. (TR. 3, pgs. 33-34). Approximately four IEP Addenda were drafted during Kyle's fifth grade year, (School Div. Ex. 11-14) and at least three draft IEP's were written. (Parents' Ex. 43, 55 and 83; School Div. Ex. 15).

84. Kyle made progress on his reading goals that the speech therapist was responsible for in his fifth grade year. (TR. 3, pgs. 137-144).

85. Sue Reimer was responsible for testing Kyle each month in the fifth grade to chart his progress in reading. (TR. 4, pg. 25). Kyle received one hour of reading instruction per day in fifth grade with special education staff. (TR. 3, pg. 167).

86. In the fifth grade, Kyle did much of the same material as his fellow classmates in math, and received two C's and two A's for the four marking periods. (TR. 3, pgs. 161-163, 177-179). Kyle did not do much writing during his fifth grade year.

87. Kyle's final proposed sixth grade IEP was rejected by the parents. (School Div. Ex. 15).

### Conclusions of Law

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., required the York County School Division to provide Kyle McGee a free appropriate public education during his 2002-2003 school year at Tabb Middle School where he would have been in the sixth grade.

2. The IDEA requires a school district to provide an individualized education program (IEP), for each disabled child. An appropriate IEP must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress.

3. The IDEA defines an IEP as a written statement for a disabled child, developed in accordance with the statute, that includes, inter alia:

1. A statement of the child's present levels of educational performance;
2. A statement of measurable annual goals, including benchmarks or short term objectives;
3. A statement of the special education related services and supplementary aids and services to be provided to the child;
4. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in activities described in 3 above; and
5. A statement of how the child's progress towards the annual goals



described in 2 above will be measured. (20 U.S.C. Sec. 1414 (d) (1)(A))

4. An appropriate education is one that provides a child with educational benefit.
5. More than minimal educational benefit is necessary to comply with IDEA. Congress did not intend that a school district could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial. Carter v. Florence County School District 4, 950 F.2d 156, 160 (4<sup>th</sup> Cir. 1991).
6. The IDEA imposes two prerequisites for parents to obtain reimbursement for private educational services provided to their disabled child. One is that the program proposed by the school district fails to provide the student with a free appropriate public education, and that the private program in which the parents place the disabled child is reasonably calculated to enable the child to receive educational benefits as required by the IDEA.
7. Kyle McGee would not have received a free appropriate public education from York County School District if he had attended Tabb Middle School during his sixth grade, 2002-2003.
8. Mr. and Mrs. McGee's placement of Kyle at Northstar Academy was appropriate under the IDEA, because Kyle received substantial educational benefits at Northstar Academy during the school year 2002-2003.
9. The McGee's are entitled to reimbursement for reasonable costs associated with Kyle's placement at Northstar Academy in the amount of \$28,663.40.

#### Discussion of the Law and Facts

The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities be offered a free appropriate public education (FAPE). If a school system defaults on its obligation to provide a disabled child a free appropriate public education, then the Act allows parents to place the child in a private setting and obtain appropriate reimbursement for expenses related to that placement if the private school provides the disabled child an education whereby the child receives educational benefit.

Criteria for a parent's entitlement to reimbursement for educational expenses when the parents place their child in a private setting are set forth in Town of Burlington v. Department of Education for the Commonwealth of Massachusetts, 471 U.S. 359 (1985) and was further addressed in Florence County School District 4 v. Shannon Carter, 950 F.2d 156 (4<sup>th</sup> Cir. 1991).

Reading and writing are essential skills a child needs to benefit educationally from school. If the child has the intelligence to learn to read and write, but also has a handicap that requires special remediation to enable a child to read and write, that child is not receiving an appropriate education if he is denied that special remediation. Kyle McGee has the intelligence to learn to read and write and go on to college if he does learn to read and write. Middle school is a crucial stage for any child's transition into the competitive world of academia. The overwhelming evidence from the experts was that Kyle could learn and did learn to read and write from the Wilson-Orton-Gillingham methodology of remediating dyslexia. York County School Division refused to give Kyle that special education service he needed to learn to read and write appropriately. It would be pure speculation to say what reading and writing remediation Kyle would have actually received at Tabb Middle School for his dyslexia, but it is certain it would not have been the Wilson method of remediation. The only evidence the school division provided on the appropriateness of Reading Works 6 was from Mr. McMahon who said it was a reading program for students who were "a little behind."

If a child has the intelligence to learn to read and write like children without disabilities but is denied the services that would allow him to excel beyond the lower two percentile of his peer group, then that child is not getting an appropriate education. If a child is taught only how to read "cat" and "dog" on his own, but has the intelligence to learn to read and write at the high school level, then that child, albeit receiving some minimal educational benefit, is not receiving the educational benefit that the IDEA requires.

### Decision

Mr. and Mrs. McGee are awarded reimbursement for the costs associated with Kyle's placement at Northstar Academy in the amount of \$28,663.40.

### Right of Appeal

A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party within one year of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under Sec. 1415 of the Individuals with Disabilities Education Act (20 USC Sec. 1400 et seq.) without regard to the amount in controversy.

6/14/03  
Date

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