COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS

In re: Lincoln Public Schools & AW

BSEA #05-4913

DECISION

This decision is rendered pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. 1401 et seq., 29 U.S.C. 794, and the corresponding regulations.

A hearing convened on June 29, 2005 at the Bureau of Special Education at 350 Main Street, Malden, MA. At this time, the Lincoln Public Schools presented its case through an Opening Statement, testimony from Daphne Easton and School Exhibits numbered 1 - 17. Despite notice of this hearing, AW’s Mother did not attend, nor did she produce any documents or witnesses. In order that she have every opportunity to present her case, the Hearing Officer notified her of her right to present her case and kept the record open until July 8, 2005 in the event that she notify the Bureau of her interest in presenting information. She did not do so, and the record closed on July 11, 2005.

Persons present for this hearing were:

Teresa Watts Special Education Administrator, Lincoln Public Schools
Mary Ellen Soweyrda Attorney for the Lincoln Public Schools
Karen Kanter Hanscom Schools’ Coordinator of Pupil Services, Lincoln Public Schools
Daphne Easton Special Education Liaison, Lincoln Public Schools

The issue addressed was whether Lincoln Public Schools’ (Lincoln) proposed June 2005 - June 2006 IEP was reasonably calculated to provide AW with a free and appropriate public education in the least restrictive setting (FAPE).

LINCOLN’S POSITION

Lincoln’s proposed 2005 – 2006 IEP calling for inclusion as well as pull-out special education services will provide AW with the services necessary for him to receive a free and appropriate public education (FAPE) in the least restrictive setting. Without such services, AW is unable to progress effectively in the general education program. The proposed IEP also exempts AW from the French class requirement, for his learning disabilities render that class too difficult for him; accordingly, this exemption is appropriate.
PARENT’S POSITION

On June 16, 2005, Mother rejected in full Lincoln’s proposed 2005 – 2006 IEP. (S-1) She had not yet decided whether AW would return to the Lincoln Schools, or whether he would attend a different school.

STATEMENT OF FACTS

1. AW is a 13 year-old boy who just completed his 7th grade at the Lincoln Public Schools. He is a mild-mannered friendly boy, and is diagnosed with a learning disability, having high average verbal comprehension skills and working memory skills, average perceptual reasoning skills, and extremely low processing speed.1 “His above average abilities to reason with language and work with rote information on a short term basis stand in contrast to his average, but much weaker, ability to organize and problem solve with visual material and his markedly weak ability to work fluently and accurately on tasks requiring visual analysis, visuo-spatial organization and motor output. These difficulties with organization and problem solving of complex material were quite apparent in his written language skills, … and his problems working with visually and spatially complex material also appears to be related to his marked difficulty understanding and working with math concepts.” His academic skills were tested to be well below average in math (7th %), solidly average in reading comprehension (70th %), (though memory may compromise his reading when working with complex story information), and at the 39th % in written language. (S-7)

2. AW entered the Lincoln Schools’ sixth grade in October of 2003, having moved from Seattle, Washington. In the spring of 2004, Lincoln conducted evaluations to determine his educational needs and he was found eligible for special education services. (S-4) He had been observed in his remedial reading class and was reported to be functioning significantly below the level of his peers. His teacher reported that although a well-respected member of the sixth grade class, his social strengths can mask his academic struggles. (S-3)

3. AW started his seventh grade receiving services pursuant to the agreed-upon 2004 – 2005 IEP calling for inclusion supports for math and English, and pull-out services for math, English, and academic support. (S-2) Early in the school year, the parties were in disagreement as to the necessary services, and at Mother’s request, Lincoln stopped providing the pull-out math session, however, the academic support period was then used mainly for the math. (S-6, S-11, Easton) The seventh grade end-of-school reports include a report from his French teacher stating that he rarely passes in his homework

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1 The WISC-IV scores were verbal comprehension: 119  
   Perceptual Reasoning  92  
   Working Memory  113  
   Processing Speed  65  
   Full Score  99
assignments, is not prepared for class, has difficulty staying on task, and requires 1:1 to complete his work. She stated that he has great difficulty recalling information already covered in class. (S-8) His report card final grades were as follows: English C-; Math F; Science C+; Social studies D+; French D+; Art B+; Music A; Technology education A, and Physical education B+. His teachers described him as lacking in effort in English, Science, Social studies, and French, having adequate effort in math, and good effort in academic support, art, music, technology education, and physical education. (S-17) The March 2005 progress reports reflect excellent work in AW’s expressive writing, reading, and organizational/study skills, but states that he continues to struggle in his regular education math class. (S-12)

4. Lincoln’s proposed 2005 – 2006 IEP calls for daily special education support in the regular education English/language arts, science, and social studies classes, daily pull-out special education for math and academic support (50 minutes each), and weekly 10-minute consultation sessions. (S-1) Mother rejected this proposed IEP. Lincoln thereafter requested a due process hearing in order to have the BSEA endorse its IEP as providing AW a FAPE.

FINIDINGS AND CONCLUSIONS

I find that Lincoln’s proposed 2005 – 2006 IEP is reasonably calculated to provide AW with a free and appropriate public education in the least restrictive setting. My reasoning follows. AW has struggled academically over the last two years, first as a regular education student, then as a student receiving limited special education services. Yet, even with the services provided, he continues to struggle. Thus, Lincoln’s position is reasonable that he requires more - not less - special education services. Ms. Easton was persuasive as to AW’s special education needs. She has extensive experience as a special education teacher, she taught AW in the resource room for a full year, she oversaw his inclusion special education services, and she is aware of his school record. Thus, she has a wealth of information on which to base her opinion. That is, AW needs the inclusion as well as pull-out special education services, and the exemption from French class requirements is appropriate. She observed that over the year, AW resisted individualized math help in the regular education class. For instance, he needed manipulatives to learn math concepts, yet he resisted using them in the regular education class. In contrast to this, he worked well in the resource room with 1:1 support where the teacher could help focus him, where there was less distraction, and where the teacher could give him individualized support. In fact, he willingly went (and sometimes asked to go) to the resource room where he was able to complete assignments. Given that AW’s third-grade-level math skills are significantly lower than his 7th grade peers’, Ms. Easton is persuasive that he is more comfortable learning math in the resource room than in the regular education setting. (Easton) Further, Ms. Easton is persuasive that the daily special education class for academic support is appropriate; AW’s ready acceptance of resource room help supports such conclusion, for clearly, he benefits from this setting. Mother has provided no reason as to why such should not be provided. (Easton)
Ms. Easton is also persuasive that AW needs special education support in his regular education classes in English/language arts, social studies, and science classes. His skills are sufficiently high so that he can benefit from these regular education classes, however the extra support can be provided when needed. He received such supports this past year, yet his grades were C-, C+, and D+ in these subjects; he cannot afford to be without these supports at this time. It is noted that he required modified tests and other accommodations, further suggesting the need for continued extra support in the regular education setting. (Easton)

Although not testified to, given the combined regular education and resource room services, it is appropriate that the IEP include the consultation services necessary to ensure that all staff are knowledgeable about AW’s work and his performance.

Finally, Ms. Easton is persuasive that AW should be exempt from the French class requirement. Evidence of his extreme difficulty with this subject matter is clear; his very poor report card grades, his teacher’s report, and his stated lack of interest all support this conclusion. (S-17, S-8, Easton)

Given Mother’s lack of any evidence in support of her case, Lincoln’s position is not only persuasive, but is unrebutted.

**ORDER**

Based on the above findings, Lincoln shall provide AW with the services outlined in its 2005 – 2006 IEP and shall exempt him from the French class requirement, as long as he is enrolled in the Lincoln Schools.

By the Hearing Officer,

Date: July 13, 2005