COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Chloe & North Adams Public Schools

DECISION

This decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. § 1401 et seq., 29 U.S.C. § 794 and the regulations promulgated under those statutes. A hearing was held in the above-entitled matter on June 9 and July 14, 2006 at the offices of United Cerebral Palsy in Pittsfield, MA. Those present for all or part of the proceeding were:

Dina Poplaski Pre-K Teacher, North Adams Public Schools
Linda Hurlbut Program Coordinator, North Adams Public Schools
Lucinda Rancourt Speech Language Pathologist, North Adams Public Schools
Chad Mazer Principal, Brayton School, North Adams Public Schools
Noreen Donnelly Special Education Administrator, North Adams Public Schools
Lydia Jean Bove Speech-Language Pathologist, North Adams Regional Hospital
Irene Wolcott Speech-Language Pathologist, Berkshire Medical Center
Ephrat David Psychotherapist, Autism Consultant
Rev. W. Van Order Parent Support
Kristen Smith Parent Advocate
Deborah Sedowy UCP Advocate
B. L. Parent
Peter Smith Attorney for School
Lindsay Byrne Hearing Officer

The official record of the Hearing consists of documents submitted by the Parent marked P-A through D-19; documents submitted by the School marked S-1 through S-29; and approximately nine hours of recorded testimony and argument. A videotape offered by the Parent was excluded as irrelevant and unreliable. The parties submitted written closing arguments on July 28, 2006, and the record closed on that day. The Parent proceeded pro se. The School was represented by an attorney.

Issues:

1. Whether the extended school year services offered by North Adams Public Schools for the summer, 2006, are reasonably calculated to prevent substantial regression of previously learned skills and to ensure the provision of a free, appropriate public education to Chloe?

2. If not, is the Student entitled to compensatory services for missing thirteen hours of direct, individual speech-language therapy the parent believes is necessary to prevent substantial regression over the summer vacation period?

Chloe is a pseudonym chosen by the Hearing Officer to preserve the privacy of the Student in publicly available documents.
Parent’s Position

The Parent believes the Student’s continued progress toward acquisition of age-appropriate speech and language skills is possible only with direct, individual speech-language therapy twice weekly for thirty minute sessions during each week school is not in session. The Parent asserts that the Student’s language skills regress immediately and precipitously whenever there is a gap in the provision of individual speech-language therapy. She is seeking reimbursement and/or compensatory services for the School’s failure to include twice weekly one-to-one speech therapy services in its extended year program for Chloe.

School’s Position

The School asserts that Chloe has made and continues to make substantial progress in all developmental areas, including language, with the special education services it provides. Chloe currently demonstrates pre-academic, speech and language skills at or above those expected for her age. There has been no indication in the two years North Adams has been providing special education services to Chloe that she has regressed in any skill area during any vacation period or any other interruption of service. Chloe does not need individual speech-language therapy during the summer to obtain a free, appropriate public education.

Findings of Fact

The issue here is narrow and the facts may be briefly summarized:

1. Chloe is a five year old girl who has been receiving special education services through the North Adams Public Schools since September 2004. In May 2004, when Chloe was three years old, she was identified as a student with a disability by the New York City Public Schools. New York City developed an IEP calling for special education services appropriate for a student with autism spectrum disorder and multiple developmental delays. (S-2; D-1, D-8A) Shortly thereafter Chloe’s family moved to North Adams.

2. North Adams Public Schools (hereinafter “North Adams”) conducted an initial speech and language evaluation in May 2004. The findings were consistent with those reported by the evaluators in New York City. Chloe demonstrated gross delays in all developmental areas. She had limited eye contact, short attention span, perseveration of actions and vocalizations and significant difficulty transitioning between settings, activities and people. (S-1, P-3a) North Adams proposed an intensive special education program consisting of: placement in an integrated preschool class five hours per day, 5 days per week; one 30 minute session of speech/language therapy in class; one 30 minute session of speech/language therapy in a small group outside the classroom; one 30 minute session of joint occupational therapy and speech/language therapy; and one thirty minute session of occupational therapy only. (S-3, P-3) Chloe’s mother returned with her to New York City and enrolled her in the New York City summer 2004 program.

Chloe re-enrolled in North Adams in September 2004. The IEP proposed by North Adams was accepted in November 2004. For the remainder of the 2004-2005
school year Chloe attended both the morning and afternoon sessions of the integrated preschool, and received related services in that program. In the winter and spring of 2005 Chloe experienced a period of significant negative and inappropriate behaviors. The School reconvened the Team to develop behavioral goals and plans, to rework the speech/language goals that had been mastered, and to put behavioral consultation services in place in school and at home. The Team recommended reducing direct speech/language therapy services to two twenty minute sessions per week. This change was rejected by the Parent. (S-5, D-9A)

The Team also offered a summer program designed to address Chloe’s behavioral and socialization needs. One thirty minute session of speech/language therapy was provided in that summer program. Chloe made substantial progress in all developmental areas throughout the 2004-2005 school year. (S-4, S-6, S-7; Rancourt, Poplaski)

3. Lucinda Rancourt, the speech-language pathologist at North Adams who evaluated and worked with Chloe throughout the 2004-2005 and 2005-2006 school years, reevaluated her speech/language skills in September 2005. On standardized language testing then 4 year old Chloe demonstrated age appropriate articulation, receptive and expressive language skills and mildly delayed grammatical skills. (S-10) Ms. Rancourt noted that Chloe had made great gains in all areas of development since her previous testing in May 2004. (Rancourt) She recommended reducing direct speech/language services to Chloe to two twenty minute sessions per week. (S-10)

4. Lydia Bove, a speech/language pathologist associated with North Adams Regional Hospital, provided 20 individual speech/language therapy sessions to Chloe between March and October 2005. She noted that Chloe made substantial progress in speech production, language and attentional skills during that time. She did not note any regression in skills after any period of non-service. (P-D-15A, Bove)

5. For the 2005-2006 school year 4 year old Chloe attended the integrated preschool in the morning, ate lunch with a one-to-one aide, and attended regular kindergarten in the afternoon. The Team met again on September 30, 2005 to update the program goals and objectives of Chloe’s IEP consistent with the then most recent speech/language evaluations. The Parent rejected the proposed reduction in speech/language therapy services so Chloe received three thirty minute sessions of direct speech/language service each week in accordance with the last agreed upon IEP. (S-11, D-9A; Parent, Rancourt) Chloe continued to demonstrate significant progress in all developmental areas throughout the 2005-2006 school year. (Rancourt, Poplaski; S-12; S-14; S-22; S-26; S-23, S-25)

6. In December 2005, Dr. Susan McQuiston of Bay state Medical Center evaluated Chloe. She recommended that Chloe be placed in an intensive full day/full year special education program, with language therapy three times weekly. (P-D-8) I give Dr. McQuiston’s report little weight because her foundational information was limited to parental report, which is unreliable in this instance. Further I find that her recommendation for extended year services lacks supporting factual and legal context.
7. The Team met on February 27, 2006 and April 24, 2006, to update the goals and objectives that Chloe mastered, to discuss summer services, and to develop an IEP for the 2006-2007 school year. The Team recommended a summer program to maintain Chloe’s pragmatic and social skills. Although the summer program includes speech/language therapy in the classroom, the Team did not recommend that Chloe receive any direct speech/language therapy during the summer. (S-15; S-19; P-D-6; Rancourt) The Parent rejected the lack of direct speech/language services during the summer and requested 13 hours of direct individual speech/language therapy divided into 2 weekly sessions of 30 minutes each for the 13 weeks of summer vacation. (S-16) The School responded that Chloe did not, as of April 2006, meet the criteria for the provision of extended year speech/language services as there was no indication that she would substantially regress in those skills without therapy. (S-17)

8. Irene Wolcott, a speech/language pathologist associated with Berkshire Medical Center, evaluated Chloe on March 17, 2006. On standardized measures of language performance Chloe scored within the average range of the norms for her age. Ms. Wolcott found Chloe to have fluent and intelligible speech with age-appropriate articulation errors, and age appropriate conversational skills. She reviewed the IEP developed by North Adams in March 2006 and found it to be complete and comprehensive. Ms. Wolcott testified that although Chloe could benefit from continued speech/language services during the summer, she had no recommendations for components or length of summertime speech/language therapy. She also testified that her evaluation and report do not support the Parent’s request for thirteen weeks of direct, one-to-one language therapy twice weekly for half-hour sessions. (P-D-7; Wolcott)

9. Cindy Rancourt is the North Adams Public Schools’ speech/language pathologist who has evaluated Chloe and worked with her since May 2004. Ms. Rancourt testified that over the course of 2 years Chloe’s language skills improved so rapidly and so comprehensively that her IEP goals and objectives needed to be adjusted every few months. Ms. Rancourt stated that Chloe’s language is currently within the range of normal for typically developing students. Chloe shows continuous development of language skills in all settings despite occasional breaks in the school schedule. Ms. Rancourt has never observed regression of any type in Chloe’s language skills over the course of two years.

Ms. Rancourt explained that in March 2005, she developed language goals to be addressed in the summer, 2005, educational program. The summer program was designed specifically to target angry, tantrumming behaviors. It did not focus on language development per se. The program was successful and Chloe did not exhibit any of the previously demonstrated problematic behaviors during the 2005-2006 school year. Therefore Ms. Rancourt did not recommend that summer speech/language services be provided to Chloe in 2006.

Currently, Ms. Rancourt recommends continuing direct speech language services, though at a reduced level, in the kindergarten Chloe will enter in September 2006. The reduced services will be adequate to maintain Chloe’s age/grade
appropriate language skills. According to Ms. Rancourt, Chloe does not need any more practice in pragmatic and social language than any other five year old child. She is currently developmentally appropriate in all aspects of language. (Rancourt)

10. Dina Poplaski was Chloe’s preschool teacher for both the 2004-2005 and the 2005-2006 school years. She holds both regular early childhood and special education certifications, and has been teaching in North Adams for thirty years. Ms. Poplaski testified that Chloe has made “tremendous” progress in all areas since she entered the preschool program in September 2004. As demonstrated on the Brigance Kindergarten Screening instrument administered to Chloe in February 2006, and confirmed by Ms. Poplaski’s own observations in the classroom, Chloe has higher level pre-academic skills than the typical entering kindergartener. (S-14; compare S-2, D-1; S-26) Ms. Poplaski testified that she never saw any regression in communication or language skills throughout the two years she has worked with Chloe. On the contrary, Chloe’s language acquisition is “startlingly rapid.” She knows her letters, has excellent phonemic awareness and improving listening and conversational skills. There is no expectation that a child be able to read before kindergarten. (Poplaski)

Ms. Poplaski predicted that Chloe would continue to make significant progress when she has “stressless” days. Ms. Poplaski stated that North Adams offered a five week summer program to Chloe just to maintain her pragmatic and social skills. There are no academic or speech/language concerns at this time. The Parent chose to place Chloe in the four week kindercamp program which is a regular education preparation program designed for students entering kindergarten who demonstrated difficulty on the kindergarten screening instrument. After that Chloe will attend Camp Sunshine, a recreational program, for one week. (Poplaski) Speech-language and occupational therapy services are provided in both settings pursuant to the last accepted IEP for the 2005 summer program. (S-5, D-9A)

11. The Parent testified that Chloe shows immediate regression in skills without constant provision of speech/language therapy. The Parent stated that in the past she has done hours of homework, language worksheets, and pre-academic skill drills with Chloe after-school and on weekends in order to help her progress in the language area. Currently, however, the Parent is unable to “carry over” these language activities at home. As a result Chloe is showing “severe regression” in her language. According to the Parent Chloe makes grammatical errors, does not consistently use a plural s, does not use comparatives and superlatives appropriately, has no concept of professional titles and can’t read three letter words. The Parent stated that she finds these “deficits” “embarrassing” and hurtful. At the hearing the Parent claimed that North Adams has consistently failed to provide Chloe with sufficient speech/language and other special education services to support appropriate progress for its own financial, retaliatory, and discriminatory reasons. Due to the Parent’s admitted lack of familiarity with appropriate developmental expectations for five year pre-kindergarten students, as well as the lack of corroboration in this record, I find the Parent’s testimony insubstantial and unreliable, and I do not credit it.
Findings and Conclusions

The parties agree that Chloe is a Student with a disability who is entitled to receive a free, appropriate public education pursuant to M. G. L. c. 71B and the Individuals with Disabilities Education Act (“IDEA-2004”). The parties also agree that Chloe is entitled to extended year services, including speech/language therapy, under the last accepted IEP. The only issue for resolution is whether Chloe is entitled to publicly-funded individual speech/language therapy for a total of 13 hours during the summer, 2006, in addition to the special education services she is currently receiving. After careful consideration of all the evidence introduced at the hearing, and the arguments of the parties, it is my determination that she is not. My reasoning follows:

Under federal law, to prevail in a hearing on a claim for extended year services the party seeking such services must demonstrate by a preponderance of the evidence that the student cannot receive a free, appropriate public education without them (20 USC § 1412(a)(1); 34 CFR 300.309) Massachusetts law has the same general intent, but requires a showing with greater specificity. The regulation concerning summer programming provides:

An extended year program may be identified if the student has demonstrated or is likely to demonstrate substantial regression in [] learning skills and/or substantial difficulty in relearning such skills if an extended year program is not provided.

603 CMR 28.05 (4)(a)(1)

Here the showing required of the moving party is complicated by the fact that a comprehensive summer program is being provided to Chloe. The Parent must demonstrate, therefore, that Chloe’s language learning needs are so significant that they cannot be met in a typical prekindergarten environment which includes speech/language intervention and enrichment. The preponderance of the credible evidence presented in this case, however, establishes that Chloe has age appropriate speech and language skills. (Wolcott, Rancourt, Poplaski; S-10; S-12; S-14; S-22; S-26; S-23; S-25; P-D-7) There are no credible professional recommendations in this record for direct, individual speech/language services to Chloe beyond what is provided to her in the summer Kindercamp and Camp Sunshine programs. There are no professional recommendations for 13 hours of individual speech/language therapy during the summer, 2006. There is no reliable professional opinion that Chloe cannot receive a free, appropriate public education without additional speech/language services over the summer months. There is no evidence in the record from which I could conclude that Chloe has significant language learning needs which alone would require provision of targeted intervention over the summer. Instead, the credible testimony of the teacher and speech-language therapist with long-term involvement in Chloe’s day to day education establishes that Chloe is receiving appropriately tailored special education services in the least restrictive available environment during the summer 2006. In reaching this finding I rely heavily on the observations and conclusions of Ms. Polplaski

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2 See also: PQA Question and Answer Guide on Special Education Extended Year Programs; Massachusetts Dept. of Education.
concerning Chloe, as she has had the greatest continuous professional contact with Chloe and her family. In addition her experience as a teacher of young children with and without disabilities over the course of thirty years lends weight to her judgments and predictions. I found Ms. Poplaski’s testimony to be authoritative and persuasive. In addition, I accord great weight to the testimony of Ms. Rancourt as I found her to be direct, sympathetic and uniquely knowledgeable about and responsive to the Student’s needs. Her observations are consistent with the reliable documentation in the record and with the observations of other reliable witnesses. (e.g. Poplaski, David) She is also the only expert speech-language pathologist with both past and on-going knowledge of Chloe’s speech-language needs and skills. I am persuaded therefore that Chloe can receive a free, appropriate public education without the addition of the 13 hours of individual speech/language therapy to her summer program as requested by the Parent.

Turning to the Massachusetts standard for evaluating claims for summer services there is a similar dearth of evidence. There is no credible evidence in this record that Chloe has demonstrated or is likely to demonstrate substantial regression in her language skills without twice weekly individual speech/language therapy during the summer. Ms. Rancourt and Ms. Poplaski, both of whom had the opportunity to observe Chloe after long and short vacations, testified that they had never seen any regression in Chloe’s language skills. On the contrary, they each testified to her continuing rapid progress in acquiring age-appropriate speech and language skills in all areas, at all times, and across all observed settings. Their professional observations are corroborated by standardized testing (S-14; D-7; S-10) as well as the professional observations of independent service providers. (See testimony of Bove, Wolcott; P-D-7; P-D-10; S-25) There is no indication in this record that Chloe forgets previously learned material or that she has difficulty relearning previously acquired skills. Neither is there any evidence that she is failing to make appropriate progress toward meeting the benchmarks set out in her school year IEP. Instead, Ms. Rancourt testified that Chloe’s speech/language progress was so rapid that she mastered her IEP goals every few months, requiring the continual development of new speech/language goals. (Rancourt) Therefore I find there is no evidentiary support in this record for the Parent’s request for additional individual speech/language therapy services for Chloe during the summer 2006. The legal standards simply have not been met.

Order

The extended year program currently provided to Chloe by the North Adams Public Schools is reasonably calculated to provide her with a free, appropriate public education. Chloe is not entitled, under federal or state law, to receive an additional thirteen hours of individual speech/language therapy during the summer, 2006.

Lindsay Byrne, Hearing Officer  

Date: