In re: Mia\(^1\)                        BSEA #11-2977

**DECISION**

This decision is rendered pursuant to M.G.L. Chapters 30A and 71B; 20 U.S.C. §1400 et seq.; 29 U.S.C. §794; and the regulations promulgated under these statutes.

A hearing in the above-entitled matter was held on April 27, 28, 29, 2011 at the Bureau of Special Education Appeals in Malden, MA. A fourth day of hearing was scheduled for June 2, 2011 but during a May 20, 2011 conference call Father indicated that Mia would not be testifying; Parents would not be calling any further witnesses; and that Parents rested their case. The Manchester-Essex Regional School District (MERSD) indicated that it would not be calling any rebuttal witness. The record remained opened for receipt of written final arguments until June 10, 2011.

Those in attendance for all or part of the proceedings were:

Christine D’Anjou  Co-Director of Student Services, MERSD  
Joan Endicott  Co-Director of Student Services, MERSD  
Pat Wheeler  School Psychologist, MERSD  
Connie Bergh  Special Education Teacher, MERSD  
Jane McConnell  Special Education Teacher, MERSD  
James Lee  Principal Manchester-Essex Regional High School (MERHS)  
Debra Isensee  English Teacher, MERHS  
Richard Brown  Math Teacher, MERHS  
Lauren DuBois  Social Studies Teacher, MERHS  
Erica Everett  Science Teacher, MERHS  
Pamela Beaudoin  Superindent, MERSD  
Thomas Nuttall  Attorney, MERSD  
Father  
Mother  

Raymond Oliver  Hearing Officer, Bureau of Special Education Appeals  

The evidence consisted of MERSD’s Exhibits labeled S-1 through S-66, excluding S-54; Parents’ Exhibits labeled P-O through P-36 excluding P-1 and P-23; and approximately 8 hours of oral testimony.

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\(^1\) Mia is a pseudonym chosen by the Hearing Officer to protect the privacy of the student in publicly available documents.
HISTORY/STATEMENT OF THE CASE

Mia is a young woman who has just turned 16 years of age and resides with her family in Manchester, MA. Mia received special education services in the state of New York until the family moved to Massachusetts so that Mia could attend the Landmark School (Landmark) located in Prides Crossing, MA. Mia attended Landmark for the 2005-2006, 2006-2007, and 2007-2008 school years. (testimony, Mother, S-63). In 2007 (Mia’s 6th grade year at Landmark) Parents referred her to MERSD for an initial special education evaluation. Cognitive and academic evaluations (S-64, 65) were conducted in June 2007 and MERSD promulgated an Individual Education Program (IEP) covering September 2007 to June 2008, which would have placed Mia in a partial inclusion program in the 7th grade at Manchester-Essex Regional Middle School (MERMS). In July 2007 Parents rejected this IEP and placement and Mia remained at Landmark. In August 2007 Parents requested reimbursement from MERSD for Landmark for the 2007-2008 school year. In September 2007 MERSD responded that its IEP was appropriate for Mia and refused Parents’ request for tuition reimbursement. (See P-31 for 2007-2008 IEP, rejection, reimbursement request, and denial of same.) This issue was never pursued by either party to the BSEA for either mediation or hearing.

On August 8, 2008 MERSD held a team meeting for Mia. Parents did not attend. MERSD developed a draft IEP and sent it to Parents (S-57; P-29). Mia was enrolled in MERSD and began the 2008-2009 school year on September 15, 2008 (two weeks late) as a regular education 8th grade student, because the draft IEP remained unsigned and the prior IEP had been rejected. On September 17, 2008 (S-60) and again on October 6, 2008 (S-59) MERSD requested that Parents allow implementation of the proposed IEP on an interim basis so that Mia would not be without special education services. This request was again repeated in an October 23, 2008 letter (S-58), which also scheduled a team meeting for October 28, 2008 to review a revised IEP. In a letter to MERSD dated November 4, 2008 (P-56) Father noted:

…[Mia] need(s) special education services. We have never refused to permit the implementation of these services, no matter how inadequate, and have and continue to request that they be implemented for [Mia] immediately.2

In a letter dated November 12, 2008 MERSD responded that it would immediately implement the special education services as recommended in the draft IEP (S-55).

A team meeting was held on June 25, 2009 and a new IEP was proposed for Mia for the period June 2009 to June 2010 (S-50, 51; P-20). Father rejected that 2009-2010 IEP on July 29, 2009 (P-20).

On July 20, 2009 Father wrote to MERSD’s Superintendent of Schools expressing his overall dissatisfaction with how MERSD was addressing Mia’s special education needs (P-18), and this communication was forwarded to Ms. Endicott, Co-Director of

2 On November 26, 2008 Father signed the draft IEP, still rejecting it but consenting to its implementation. (See S-57.)
Student Services. On July 23, 2009 Ms. Endicott wrote to Parents proposing to advance the date of Mia’s three-year re-evaluation by almost one year and enclosed the required consent to evaluate forms (S-46). Notices of Proposed School District Acton – Mia’s Re-evaluation with required consent forms – were also sent to Parents on January 28, 2010 (S-41), March 2, 2010 (S-39), April 5, 2010 (S-34), April 30, 2010 (S-32) and October 12, 2010 (S-10). Such forms were never returned to MERSD and Parents have never consented to an advancement of Mia’s three year re-evaluation nor to the now due three year re-evaluation (testimony, Endicott; D’Angou).  

A team meeting to develop Mia’s 2010-2011 IEP took place on May 28, 2010 and June 14, 2010. (See S-21, 22, 26.) MERSD proposed an IEP covering the period June 15, 2010 to June 15, 2011 (S-22) This 2010-2011 IEP has never been signed by Parents (testimony D’Anjou).

On September 1, 2010 Father wrote to Mr. Lee, Principal of MERHS, attaching a copy of a letter from Mia’s counselor, who was treating her for depression (and suicidal ideation) which recommended that Mia not attend further special education support services because they were exacerbating her depression. Father noted:

Mr. Simpson is confirming what we have previously told the school and, effective immediately, I am removing [Mia] from all support classes. [Mia] must be permitted to fully access the curriculum. This must include electives such as art, music, physical education, health etc. Please provide an updated schedule of classes which reflects these changes. Emphasis added. (See S-17 for both Father’s and Mr. Simpson’s letters.)

On September 2, 2010 Ms. Endicott responded (S-16) noting that MERSD would change Mia’s schedule immediately; that she would not receive any special education classes; and that she would become a regular education student. Ms. Endicott also noted:

The District continues to believe that [Mia] needs specialized instruction to access the general education curriculum. Additionally, as stated in your letter concerning [Mia’s] mental health issues, we continue to offer the support services of the High School’s School Adjustment Counselor at any time. To insure continued emotional support for [Mia], the District is asking for a Release of Information in order to communicate with [Mia’s] counselor, Al Simpson.

Father responded in a September 2, 2010 letter to School Superintendent Pamela Beaudoin (S-15). The following quotes, which were italicized in Father’s letter, are reprinted below:

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3 In fact on June 10, 2010 Father waived the Three Year Re-evaluation because Mia had been independently evaluated in 2008 (S-24).
To be clear I am not removing [Mia] from Special Education Services nor am I waiving any of my rights or safeguards through the IDEA and the Code of Massachusetts Regulations…

It is the District’s delivery of those services which is the cause of her depression and it is the delivery of those services which we are removing her from immediately…

Again, [Mia] desperately needs Special Education Services and we are not removing her from those services.

On September 8, 2010 Ms. Endicott wrote to Parents (S-14) confirming the scheduling changes for Mia, noting that the new schedule had been reviewed and approved by Mia’s counselor (P-13) and was in accordance with Parent’s directive. Ms. Endicott also noted:

To ensure [Mia’s] continued safety during the school day, I am sending a Release of Information, seeking your consent for the School Adjustment Counselor to speak with [Mia’s] Counselor as need.

Correspondence continued between Father and MERSD during the fall of 2010 (S-2, 6, 7, 8, 11, 12 13, P-13) over the issue of special education, removal of special education services and regular education, but with no resolution.

As a result of a team meeting held on November 9, 2010 MERSD offered to locate and fund an independent tutor for three one hour sessions to be conducted outside of school so that Mia could receive special education support (S-3; P-13). Although accepted by Father, Mia has only sporadically accessed said tutorials (testimony, D’Anjou).

On November 9, 2010 MERSD filed a hearing request before the Bureau of Special Education Appeals. Numerous postponements were requested and numerous pre-hearing conference calls took place. Preliminary motions were filed and ruled upon. Hearing dates were scheduled for January 2011, then March 2011 but needed to be re-scheduled for a variety of reasons. The appeal was finally scheduled for and took place on April 27, 28, and 29, 2011.

ISSUE IN DISPUTE

Does MERSD’s proposed IEP covering the period June 2010 through June 2011 appropriately address Mia’s special education needs so as to provide her a free and appropriate public education (FAPE) in the least restrictive environment?
STATEMENT OF POSITIONS

MERSD’s position is that the proposed June 2010-June 2011 IEP for Mia appropriately addresses her special education needs so as to provide her FAPE in the least restrictive environment.

Parents’ position is that MERSD’s June 2010-June 2011 IEP fails to provide Mia FAPE in the least restrictive environment. Parents request (in their closing argument) that MERSD redraft a new IEP with appropriate placement and provide compensatory services for all periods where services were not properly offered.

PROFILE OF STUDENT

Mia was extensively evaluated from 2003-2008. Beginning in May 2003 at 7 years 11 months of age, she was a participant in a research project on learning and attention at Yale University School of Medicine through which she received individual intelligence, achievement and language evaluations in May 2003 over two days. The individual achievement and language evaluations were repeated over two days in October and November 2004; over one day in May 2005; and over two days in April 2006. (See P-33 for all of the Yale evaluations from 2003 through 2006.)

MERSD conducted its initial evaluation of Mia in May and June 2007 including cognitive and academic evaluations (S-64, 65). Parents had Mia privately evaluated during 2008. Mia received an education evaluation (S-63) in late January 2008 and a neuropsychological evaluation in February and March 2008 (S-62). Finally, Landmark conducted testing of Mia at the end of each school year she was there, i.e., in May 2006, June 2007, and May 2008 (S-61).

As stated under HISTORY/STATEMENT OF THE CASE, above, MERSD repeatedly offered to advance Mia’s three year re-evaluation (due in June 2010) beginning in June 2009. Parents have never consented to the advancement of the three year reevaluation, and in June 2010 waived the three year re-evaluation when it became due because Mia had been independently evaluated in 2008 (S-24; testimony Endicott).

In June 2007 Mia was administered a cognitive evaluation (S-64) by Kate Roberts, Ph.D., MERSD School Psychologist and Licensed Psychologist. On the Wechsler Intelligence Scale for Children – 4th Edition (WISC-IV), Mia, then almost twelve years old, received the following scores (average scores on the WISC-IV range from 90 to 109):

<table>
<thead>
<tr>
<th>Subtest Area</th>
<th>Composite Score</th>
<th>Qualitative Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal Comprehension</td>
<td>108</td>
<td>Average</td>
</tr>
<tr>
<td>Perceptual Reasoning</td>
<td>100</td>
<td>Average</td>
</tr>
<tr>
<td>Working Memory</td>
<td>88</td>
<td>Low Average</td>
</tr>
<tr>
<td>Processing Speed</td>
<td>94</td>
<td>Average</td>
</tr>
<tr>
<td>Full Scale IQ</td>
<td>99</td>
<td>Average</td>
</tr>
</tbody>
</table>
On the Wide Range Assessment of Memory and Learning (WRAML) Mia received average scores on the verbal learning and story memory subtest and an overall average score on the processing speed cluster. On the Rapid Automatic Naming and Rapid Alternative Stimulus Test (Ran/Ras) Mia scored from the low average to high average range, suggesting that she may have some difficulty integrating visual and language processes which may impact upon her ability to learn to decode fluently.

(See S-64 for complete cognitive assessment.)

In May 2007 Mia was administered an Academic Skills Initial Evaluation (S-65) by MERSD special education teacher Joyce Swedberg, Ed. M. On the Comprehensive Test of Phonological Processing (CTOPP) most of Mia’s scores were within the average range, with one subtest score superior and one composite score above average. On the Test of Word Reading Efficiency (TOWRE) Mia’s sight word efficiency and phonemic decoding efficiency were both in the average range. On the Woodcock – Johnson III Tests of Achievement (WJ-III) Mia’s reading fluency score was within the average range. On the Woodcock Diagnostic Reading Battery (WDRB) Mia achieved the following subtest scores:

<table>
<thead>
<tr>
<th>Subtest</th>
<th>Standard Scores</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter-Word Identification</td>
<td>102</td>
<td>Average</td>
</tr>
<tr>
<td>Word Attack</td>
<td>111</td>
<td>High Average</td>
</tr>
<tr>
<td>Reading Vocabulary</td>
<td>105</td>
<td>Average</td>
</tr>
<tr>
<td>Passage Comprehension</td>
<td>107</td>
<td>Average</td>
</tr>
</tbody>
</table>

On the Gray Oral Reading Tests – 4th Edition (GORT-4) where an average standard score range is 8-12, Mia achieved the following scores:

<table>
<thead>
<tr>
<th>Area</th>
<th>Standard Score</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate</td>
<td>9</td>
<td>Average</td>
</tr>
<tr>
<td>Accuracy</td>
<td>7</td>
<td>Below Average</td>
</tr>
<tr>
<td>Fluency</td>
<td>7</td>
<td>Below Average</td>
</tr>
<tr>
<td>Comprehension</td>
<td>10</td>
<td>Average</td>
</tr>
</tbody>
</table>

Overall Oral Reading Average

On the Test of Written Spelling – 4 (TWS-4) Mia tested in the average range. On the Test of Written Language – 3rd Edition (TOWL-3), which assesses composition skills, vocabulary, grammar and language mechanics within the context of spontaneously written composition, Mia received average scores for contextual conversations and for contextual language and an above average score for story construction. On the WJ-III math subtests, Mia achieved average scores in the areas of calculations, applied problems
and quantitative concepts and a low average score in math fluency. Her cluster skills were average in both math calculation and math reasoning.

(See S-65 for complete achievement/academic testing.)

In February and March 2008 a private neuropsychological evaluation (S-62) was performed by Lisa Shaw, Ph.D. (See S-62 for specific tests/subtests and analysis of Mia’s scores.) In her Summary, Impressions, and Recommendations, Dr. Shaw noted:

The results of the neuropsychological evaluation reveal a youngster of overall “average” range intellectual ability with age appropriate verbal and nonverbal reasoning abilities, but who exhibits continuing evidence of specific areas of cognitive weaknesses that are observed in youngsters with dyslexia disorders. These include phonological distortions, word retrieval difficulty in the absence of a visual cue, reduced appreciation of detailed information on visual-spatial tasks, and significantly reduced performance on a test examining verbal recall of factual knowledge. These findings, from a neuropsychological perspective, implicate dysfunction of left hemisphere brain systems that mediate language functions and reading skills.

Dr. Shaw recommended that Mia receive directed, intensive reading instruction that is coordinated with her academic curriculum; a small, self-contained fully integrated classroom setting with age and intellectual peers; modified testing such as open book/open note testing, and additional time to take tests; and additional time to complete assignments.

(See S-62 for complete neuropsychological evaluation.)

In late January 2008 Mia underwent a private educational evaluation (S-63) from Educational Consultant Jody Grey, Ed.M. On the CTOPP she received one low average, one average and two high average subtest scores with one average and one above average composite scores. On the Lindamood Auditory Conceptualization Test – 3rd Edition (LAC-3) Mia received an above average standard score (117). On the Wescester Individual Achievement Test – 2nd Edition (WIAT-II) Mia achieved average scores in both word reading and pseudoword decoding. On the TOWRE her decoding and word reading scores were both in the average range. Mia scored in the average range on the WIAT-II spelling subtest. On the GORT-4 Mia’s reading rate and comprehension were average, while her accuracy and fluency were below average. On the Test of Silent Contextual Reading Fluency Mia achieved a high average score. On the Grey Silent Reading Test (GSRT) she achieved a silent reading comprehension score in the average range. On the Test of Reading Comprehension (TRC) Mia achieved 2 subtest scores in the average range and one below average. On both the WIAT-II Listening Comprehension and Written Expression subtests Mia achieved average scores. On the WIAT-II Math subtests, Mia’s scores all fell within the average range. In her Summary and Recommendations, Ms. Grey noted:
Collectively, the results of today’s evaluation indicate that while [Mia] presents with many academic strengths, she also presents with characteristics often associated with that of a compensated dyslexic. For compensated while [sic] dyslexics may appear very similar to nondyslexics in their individual reading and spelling skills, they differ in the automaticity with which they apply these skills.…

Overall, today’s findings’ indicate that [Mia] is functioning in the fluency stages of learning when it comes to many academic skills. For within the fluency stage, the student is able to complete the target skill accurately but works slowly.…

Overall, as previously stated [Mia] is a student who presents with numerous academic strengths which will serve her well in her academic career. However, today’s findings suggest that she may well have yet to fully automatize taught skills, specifically in the area of oral reading fluency.

Ms. Gray recommended placement in a small group setting with similar peers. Recommended accommodations included untimed tests in a separate room, perhaps given in a one to one setting; additional time to complete assignments; and insuring that Mia has copied homework assignments into an agenda book and understands how to execute each assignment.

(See S-63 for complete education evaluation.)

SCHOOL’S PROPOSED PROGRAMS

MERSD’s proposed IEP for the 2008-2009 school year (Mia’s eighth grade year and first year actually attending an in-distant program) was not accepted by Parents until November 2008 (S-57; P-56; HISTORY/STATEMENT OF THE CASE, above). This IEP provided the equivalent of three hours per day in a special education setting for reading tutorial, work in written language, math and academic support. This amounted to 15 hours per week of special education services. This IEP provided Mia with multiple accommodations including the accommodations recommended by Dr. Shaw and Ms. Grey. Summer services consisted of five weeks of reading tutorial for three hours per week. (See S-51.)

MERSD’s proposed IEP for the 2009-2010 school year (Mia’s ninth grade year and first year at MERHS) provided the equivalent of two hours per day in a special education setting – three hours of reading tutorial per cycle and seven hours of academic support per cycle or ten hours per week of special education services. This IEP provided Mia with multiple accommodations including the accommodations recommended by Dr. Shaw and Ms. Grey. Summer services again consisted of five weeks of reading tutorial for three hours per week. (See S-51.) This IEP was never accepted by Parents (testimony, Endicott).
MERSD’s proposed IEP for the 2010-2011 school year (Mia’s tenth grade year and the IEP at issue in MERSD’s appeal) provided the equivalent of two hours per day in a special education setting for English/Language Arts and academic support or ten hours of special education services per cycle for the first semester. For the second semester, beginning in February 2011 to the end of the 2010-2011 school year, Mia’s special education services in a special education setting would have been reduced to one hour per day or 5 hours per cycle. This IEP provided Mia with multiple accommodations including the accommodations recommended by Dr. Shaw and Ms. Grey. Summer services proposed were five weeks of reading tutorial for one hour per week. (See S-22 for MERSD’s proposed 2010-2011 IEP.) This IEP was never accepted by Parents (testimony, Endicott; D’Anjou). As noted in HISTORY/STATEMENT OF THE CASE, above, Father removed Mia from all support services at the beginning of the 2010-2011 school year.

(See S-22; 51; and 57 for complete IEPs for 2008-2009; 2009-2010; 2010-2011; see also testimony, Endicott; D’Anjou; Bergh; S-62, 63.)

PARENTS’ PROPOSED PROGRAM

Parents have never specifically articulated what special education program, programming or services they want for Mia. Mother testified regarding using a direct structured reading program. Father’s written closing argument asserts that Mia needed more time at Landmark and was not yet ready to leave. (This argument would relate to the 2008-2009 school year which is not before me.) However, no documentary evidence was submitted by Parents identifying what special education program or services they wanted for Mia during the 2010-2011 school year. Furthermore, neither Father nor Mia testified at this BSEA hearing.

FINDINGS AND CONCLUSIONS

It is undisputed by the parties and confirmed by the evidence presented that Mia is a student with special education needs as defined under state and federal statutes and regulations. The fundamental issue in dispute is listed under ISSUE IN DISPUTE, above.

Pursuant to Schaffer v. Weast 126 S.Ct. 528 (2005) the United States Supreme Court has placed the burden of proof in special education administrative hearings upon the party seeking relief. Therefore, in the instant case, MERSD bears the burden of proof in demonstrating that the proposed 2010-2011 IEP is/was appropriate to address Mia’s special education needs so as to provide her with FAPE in the least restrictive environment. Based upon three days of oral testimony, the written documentation introduced into the record, and a review of applicable law, I conclude that MERSD has met that burden and that its proposed IEP for 2010-2011 is/was appropriate to provide Mia a FAPE in the least restrictive environment.
My analysis follows.

The testimony and exhibits clearly demonstrate three fundamental realities in this case: 1) the existence of an extremely hostile relationship between Parents and MERSD;\(^4\) 2) total inconsistency between Parents’ purported issues and their actions; and 3) Parents either are not listening to/reading what MERSD says/does or Parents simply do not understand the consequences and manifestations of their actions under state and federal special education law.

Accompanying Father’s September 1, 2010 letter to MERHS Principal Lee removing Mia from all support classes and demanding full access to the curriculum and electives, is a letter from Mia’s counselor, Mr. Simpson, LMHC. (See S-17 for both Fathers 9/1/10 letter and Mr. Simpkins 8/31/10 letter.) Mr. Simpson notes:

I am writing on behalf of my patient, [Mia], she is currently being seen for depression. In therapy, [Mia] has repeatedly expressed feelings of hopelessness, pain, loneliness and suicidal ideation due to the damages incurred by the placement of special education, modified services and segregation from her friends during her years at MERS….

[Mia] is denied access to the school’s curriculum including art, physical education and other cultural exposure due to the demands of the IEP, the design lacks a balanced experience. [Mia] is placed in separate classes for three to four hours every day….

[Mia] should not attend further support classes as they will further exacerbate her depression….

The only MERSD IEP that Parents have ever accepted for Mia is the 2008-2009 IEP which was her first IEP in MERSD after having attended Landmark for three years. This 2008-2009 IEP, the services of which were accepted by Parents, justifiably provides approximately three hours per day of reading tutorial and special education services given Mia’s transition from Landmark to MERMS (See S-57.) Because the 2008-2009 IEP was the last accepted placement for Mia, that IEP became Mia’s placement pending appeal pursuant to federal special education law 20 U.S.C. §1415(j). Therefore, MERSD was legally obligated and mandated to continue to provide Mia those special education services provided under her last agreed upon placement/placement pending appeal.

The 2009-2010 IEP proposed by MERSD for Mia (S-51) reduced Mia’s special education services to two hours per day, which would have allowed her more time for other elective classes. However, Father specifically rejected the 2009-2010 IEP on July 29, 2009 (See P-20.) Indeed, on September 16, 2009 Ms. Bergh, Mia’s reading tutor and one of her special education teachers, e-mailed Mother specifying that because the 2009-

\(^4\) For examples of this hostility, refer to testimony, Endicott; D’ Anjou; Bergh; P-O (recorded IEP meetings of 5/28 and 6/14/10); P-13, 18, 35; S-2, 7, 8, 11, 12, 13, 18, 38, 45, 47, 48, 49.
As the 2010 IEP had not been signed, Ms. Bergh was obligated to follow the prior IEP, although she did not believe three hours out of Mia’s regular education day would be in Mia’s best interests; and that Mia had specifically requested to come to special education classes only once per day. On the same day, September 16, 2009, Father immediately responded: “Please be advised that I cannot support any reduction in services.” Later in the same e-mail, Father wrote: “[Mia] needs electives in her day to break from the stresses and experience some joy in her academic day and we would not support removing them from her schedule.” (See P-4.) Numerous e-mails between Father and MERSD followed, with Father requesting more electives and Ms. Bergh or Principal Lee explaining the requirements of last agreed upon placement and the options of signing the new IEP or authorizing a reduction of special education services which Father did not do, but he did accuse MERSD of violating Mia’s civil rights and discriminating against her because she is learning disabled. (See S-44 for the voluminous e-mails between the parties.) The then Superintendent responded to Parents in an October 8, 2009 letter (S-43) again referencing MERSD’s legal obligation to implement the terms of the last accepted IEP until Parents accept a new IEP or the case proceeds to the BSEA (S-43). On March 10, 2010 Father wrote to the Superintendent (S-37):

My child has been removed from, and not been allowed to participate in, Health and Physical Ed., Spanish, Graphic Arts, chorus and is not permitted any electives. My child’s IEP and Placements is so restrictive that my child is only permitted to attend four courses, math, science, history and English. This must be immediately corrected to prevent this IEP and Placement from subjecting my child to further discrimination based upon disability…

The then Superintendent again responded on March 10, 2010 (S-36) that MERSD was complying with the requirements of state and federal law. The Superintendent stated:

It is my understanding that [Mia’s] current program of studies reflects her enrollment in a combination of regular education and special education programming, which programming is being provided to her due to your specific direction under her last-accepted Individualized Education Program (IEP). As I am sure you are aware, federal and state law requires that the District provide such “stay-put” programming until there is an agreement on a new IEP, or based upon a Decision issued by the Bureau of Special Education Appeals. If you are in any way dissatisfied with the services being provided pursuant to her last accepted IEP, I would recommend that you either re-consider the draft IEP previously forwarded to you at the beginning of the academic school year; participate in a reconvening of the TEAM to address any concerns you may have with that draft IEP; or participate in a mediation or hearing through the Bureau of Special Education Appeals. In the interim, the District is constrained to implement the last accepted IEP in its current format.

MERSD’s IEP for Mia for 2010-2011 (S-22) proposed two hours of special education services per day from September 2010 to February 2011 and thereafter reducing special education services to one hour per day. This IEP, proposed on June 17,
2010 was never responded to by Parents. Then on September 1, 2010 Father withdrew Mia from all support services and the letters began regarding termination of services while, at the same time, not removing Mia from special education. (See HISTORY/STATEMENT OF THE CASE above.)

I conclude that MERSD appropriately followed the federal legal mandate with respect to last accepted placement/placement pending appeal. Parents had it within their power to have changed this “status quo” situation at any time by accepting the 2009-2010 or 2010-2011 IEPs; or, at a minimum, by accepting those portions of the ‘09-10 or 10-11 IEPs that reduced Mia’s special education time so that she could take advantage of other elective classes. Parents were repeatedly informed by MERSD of both the School’s legal obligation and parental actions that could change the situation. (See S-36,37,43,45.) Parents chose not to take such action, affirmatively and specifically refusing to do so. Parents had the keys to start the car – they chose not only not to turn on the motor- they locked the doors to the car. Mia’s experience was extremely unfortunate but it could have been ended by Parents at any point in time. Further, if Parents were so distrustful of MERSD, they could have requested a mediation and/or hearing before the BSEA. I find it telling that MERSD ultimately requested the hearing in this matter.

There are numerous other instances of Parental inconsistency/direct contradiction between Parents’ purported issues and their actions. For example, Parents repeatedly criticized MERSD alleging a lack of objective testing results/benchmarks for Mia. MERSD responded by offering to move up Mia’s three year reevaluation by a year. MERSD sent Parents five requests to allow Mia to be evaluated. Parents never consented to these proposed evaluations. Then, in June 2010 when Mia’s three year re-evaluation was actually due, Father waived the three year re-evaluation owing to the 2008 private evaluations. (Refer to testimony, Endicott; D’Anjou; Bergh; S-10, 24, 32, 34, 39, 41, 46; P-22.) Parents repeatedly requested meetings with two consecutive MERSD Superintendents, but when the Superintendents agreed to meet, Parents did not pursue such meetings and/or failed to respond. (See S-2, 8, 12, 14, 15.; testimony, D’ Anjou, Endicott.) Parents removed Mia from all support services due to depression/suicidal ideation, but refused to allow the School Adjustment Counselor to have any contact with Mia’s therapist (See testimony, Mother; S-1,14, 16). Parents refused to take time off from work to meet with MERSD during school hours and suggested evenings, Saturdays or Sunday morning. MERSD obliged by scheduling most meetings at 7:00 a.m. or 7:30 a.m. Father then criticized MERSD when not all of Mia’s regular education teachers were in attendance at the team meetings. (Refer to testimony, Endicott; S-50,53; P-13,20.) All IEPs contain a section entitled Parent and/or Student concerns. For the 2010-2011 IEP, Parents were not prepared to present those concerns during the team meeting but indicated that they would provide MERSD their concerns in writing (S-50). They failed to do so and the Parent/Student concern section simply says: to be provided by Parent (S-22). Parent later blamed MERSD for not writing the Parental concerns for them (testimony, Endicott).

Because Parents would not allow an advancement of Mia’s three year re-evaluation or even her three year re-evaluation when it was due in June 2010, the
measurement of Mia’s progress is limited to one reading screening assessment that MERSD did perform, the grades Mia achieved, and the reports of her teachers. MERSD reading teacher Roberta Pedra completed a reading screening assessment on June 10, 2009 (S-52) after Mia had been at MERMS for almost one year and functioning under an IEP for almost seven months. On the LAC Mia achieved a perfect score of 100. On the TOWRE-B Mia’s word reading efficiency was average. On the GORT-B Mia’s overall oral reading quotient was average with her highest score on the comprehension subtest. On the GSRT, Mia’s silent reading was also in the average range. (See S-52 for complete scores and analysis.) Father attempted to show that these scores constituted a lack of progress or regression based upon prior testing (See P-5, chalk of test scores.) I do not find such to be the case. Different test instruments test different areas and there is always variation among different testing instruments. I note for the record, however, that comparing Landmark testing utilizing the same test instrument administered at the same time every year, some of Mia’s test scores showed progress over her three years at Landmark while other test scores (Stanford Achievement Test in reading vocabulary, reading comprehension and listening skills) showed an overall decline in scores. (See S-61.)

Mia’s report card in June 2010 at the end of her ninth grade year at MERHS (S-19) shows three B+ grades for her three special education learning strategies classes, C’s in regular education English, world history and algebra, and a C- in physics.

Connie Bergh has a masters degree in special education, is certified in moderate special needs and elementary education and is certified in the Orton-Gillingham reading methodology. Ms. Bergh provided Mia with special education reading tutorial, reading comprehension support, academic support and study skills during the 2009-2010 school year and would have been Mia’s special education teacher during the 2010-2011 school year if Mia had not been removed from support services. Ms. Bergh testified to Mia’s progress within her special education classes in various areas of reading, writing and spelling (testimony, Bergh; S-27). However, Ms. Bergh noted that Mia often did not come to the resource room for her tests and quizzes (one of the many accommodations on her IEP) for extra time to reread and proofread her answers, as well as allow for the clarification of test questions, all of which affected her test results in regular education classes. (Refer to testimony, Bergh.)

Jane McConnell has a masters degree in special education, is certified in moderate special needs and elementary education. Ms. McConnell provided Mia with special education math support during the 2009-2010 school year. Ms. McConnell testified that Mia made progress over the 2009-2010 school year, achieved her math goals, and that her math scores are in the average range. While Ms. McConnell believes that Mia would continue to benefit from math support, she does not believe that Mia requires a special education period devoted to math. (Refer to testimony, McConnell.)

Based upon the above-discussed testing, report card and testimony of Mia’s two special education teachers who worked with her on a daily basis for a total of three periods per day for a full year, I conclude that Mia did make progress while receiving
special education support services under her last accepted IEP. However, I particularly note the testimony of both Ms. Bergh and Ms. McConnell that Mia did not require three periods per day of special education support and that such services should have been reduced; that both supported the reduction in special education services proposed under the 2009-2010 IEP and the further reduction of special education services under the proposed 2010-2011 IEP; and that Mia herself requested reduced special education services per day.

During 2010-2011, Mia’s tenth grade year, she was withdrawn from all special education support services. In addition to her various elective classes, she attended four regular education classes without such support.

Richard Brown has a masters degree and is certified to teach math grades 9-12. He has been Mia’s geometry teacher during her tenth grade and instructs her in a class of 25 students. Mr. Brown testified that Mia has earned high C’s to low B’s in geometry over this school year and that she puts a lot of hard work and effort into the course. Deborah Isensee has a masters degree in English, is certified to teach English grades 9-12 and is the head of the English Department. She has taught Mia English during tenth grade, which course consists of reading American literature, vocabulary, grammar and writing. There are 21 students in the class. When Mia reads orally in the class her oral fluency is average. Her performance is solidly average (C range) with her test scores ranging between 70-78. She frequently participates in class. Ms. Isensee testified that Mia struggles with writing, that she needs to slow down and proofread, and that she would benefit from some support to help her fluidly write what she knows. Lauren DuBois is Mia’s history teacher. Mia is in a honors history class where she is described as upbeat and participatory, does her homework and does well on projects, but struggles with tests and quizzes. Ms. DuBois testified that Mia does not ask her questions and often rushes in her work; that she has asked Mia to come to see her for extra help either before or after school, but that Mia has done so on only 1-2 occasions over the school year. Ms. DuBois testified that support services would have been helpful to Mia in history class. Erica Everett has a masters degree in science, a masters degree in secondary education, is a national board certified teacher and is the science department chair. She also runs the peer tutoring program in biology. Ms. Everett has been Mia’s tenth grade biology teacher, instructing her in a class of 7 students. Ms. Everett testified that Mia is attentive, works hard, does her homework and enjoys the labs/activities, but struggles with tests, receiving a D on her mid term exam. Ms. Everett testified that Mia would benefit from both peer tutoring and 1:1 tutoring in biology and that special education services would assist Mia in getting the main idea and do better on tests. Ms. Everett suggested to Mia that she participate in peer tutoring either before or after school, but Mia has not done so. Ms. Everett also testified that her free period coincides with Mia’s study period and that she has told Mia to come to see her during this period for extra help, but that she has done so on only one occasion in October 2010.

(Refer to testimony, Brown; Isensee; DuBois; Everett.)

5 It should be noted that Mia’s four regular education teachers were subpoenaed/called as witnesses by Parents, not MERSD.
Based upon the above testimony, I conclude that Mia has done remarkably well without any special education support services, especially in math. (Refer to testimony, Brown; Ms. McConnell.) However, the above testimony also demonstrates that Mia would definitely benefit from help in English, history and especially in biology. The testimony of Ms. Issensee, Ms. DuBois and Ms. Everett corroborates Mother’s testimony that during the 2010-2011 school year Mia has struggled in biology, history and English, while experiencing no problems in her elective courses of photography, graphic design or ceramics (testimony, Mother). (See also P-34 – Parents’ private testing of Mia done on April 19, 2011 after 7 ½ months of no special education services.)

Based upon the vast preponderance of the testimony, I find that MERSD’s proposed 2010-2011 IEP provides Mia with FAPE in the least restrictive environment. I further conclude that MERSD acted responsibly in providing more extensive special education services (three periods per day) in the first year Mia began in MERSD (2008-2009) after transitioning from Landmark, in attempting to gradually reduce such special education services to two periods per day in the second year (2009-2010) and then in the year at issue in this appeal (2010-2011) attempting to further reduce such special education services to one period per day. I find that this was not only sound educational practice as Mia progressed in MERMS and MERHS, but was sensitive to her needs and wants. Mia’s overall positive 2010-2011 school year experience would have been enhanced had Parents accepted MERSD’s proposal, thus allowing her to experience more regular education and elective courses while still providing the special education support which her teachers believe that she still requires and would be beneficial.

Father’s removal of Mia from “all support classes” while claiming he is “not removing Mia from special education services” is, on its face, a direct contradiction. Further, Mother’s testimony that Mia needs a direct, structured reading program to teach her reading is misplaced. Special educator/reading teacher Ms. Bergh and Ms. Endicott both testified that at Mia’s age and grade level, students are reading for content and that therefore should be taught reading by facilitating her ability to access and derive meaning from her content related subjects; that is, utilization of content course curriculum as the medium for teaching reading. Indeed, in 2008 before Mia even began in MERSD, Dr. Shaw recommended: “[Mia] will continue to require directed intensive reading intervention that is fully coordinated with her academic curriculum….(S-62)

I strongly urge Parents to work cooperatively with MERSD personnel so that Mia can receive the special education support she continues to require in order to more fully comprehend and access her regular education courses.
ORDER

MERSD’s 2010-2011 IEP is appropriate to provide Mia FAPE in the least restrictive environment.

By the Hearing Officer

_______________________________   Dated: July 8, 2011

Raymond Oliver