

MP v. Summit Board of Education
Office of Administrative Law
12170-93
July 8, 1994

Judge / Administrative Officer

Mumtaz Bari-Brown., Administrative Law Judge

Counsel for Parents: Theodore A. Sussan, Esq., Sussan and Greenwald.

Counsel for Board: Ralph Neibart, Esq.

Statement of the Case

This matter arises under the Individuals with Disabilities Education Act. 20 U.S.C.A. §§ 1400 to -1485 (I.D.E.A. or Act), the State statutes covering the educational rights of children with disabilities, N.J.S.A. 18A:46-1 to -46, and the corresponding federal and state regulations, 34 C.F.R. §§ 300.1 to -300.396 and N.J.A.C. 6:28-1.1 to -11.13. M.P., a ten-year old special education student with his parents, Mr. and Mrs. P. seek approval pursuant to L. 1989, c. 152 for placement at the Winston School (Winston) for the 1993-94 school year and prospectively. Winston, a private day school in Short Hills, New Jersey, is not approved by the State for placement of public school special education pupils pursuant to N.J.S.A. 18A:46-14. Further, petitioner has reserved the right to seek reimbursement in accordance with 20 U.S.C.A. § 1415(e)(4).

Petitioner contends that the individualized educational program (IEP) and proposed placement for 1993-94 offered by respondent, Summit Board of Education (Board) are inappropriate, do not comply with federal and State law, and are not reasonably geared towards conferring significant educational benefit upon M.P. Thus, petitioner submits that the Board failed to provide M.P. a free, appropriate public education. Consequently, M.P.'s parents enrolled him in Winston for the 1993-94 school year.

Petitioner asserts that Winston is approvable pursuant to N.J.A.C. 6:28-6.5. Thus, petitioner requests that the Board pay for all charges attributable to M.P.'s placement at the school for as long as that

placement remains appropriate. Petitioner also seeks reformation of M.P.'s IEP in compliance with N.J.A.C. 6:28-3.6.

The Board maintains that the child study team (CST) developed an appropriate IEP for M.P. Further, the CST offered M.P. an appropriate program and placement that would provide some educational benefit in the least restrictive environment. The Board asserts that it substantially complied with the requirement of the law. In contrast, M.P.'s parents have refused to meaningfully participate within the spirit of the law. Further, it is asserted that they did not act in good faith and thus, they are not entitled to reimbursement of costs for the unilateral placement of M.P. Also, it is submitted that petitioner has not shown that Winston meets the statutory requirements for placement as a nonapproved private school under N.J.S.A. 18A:46-14 and N.J.A.C. 6:28-6.5.

The Board has the burden of establishing the appropriateness of its program and the placement offered to M.P. *Lascari v. Ramapo-Indian Hills Reg. School District*, 116 N.J. 30, 43-46 (1989).

Procedural History

On December 14, 1993, petitioner requested a due process hearing before the Department of Education, Division of Special Education (Division). On December 27, 1993, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. The Director of the OAL assigned the matter to the undersigned pursuant to *N.J.S.A. 52:4F-5o*.

Seven hearing days were held at the OAL in Newark, New Jersey. Petitioner presented five witnesses: Dr. James Krivacska, psychologist; Dr. Carol Aitchison, learning disabilities teaching consultant (LDTC); Pamela Bloom, director of Winston; and Mr. and Mrs. P. Respondent presented six witnesses: Kathleen Woodward, social worker; Debra Kosak, LDTC; Dr. Carole Kernan; Greta Olson; Robert Lamparello, psychologist; and James Lambert. The record closed on June 13, 1994.

Issues

Both parties agree that M.P. is a child with disabilities and requires a special education program. Also, they agree that M.P. is properly classified as perceptually impaired (PI). They differ, however, on the educational program and placement offered by the Board. Thus, the issues are whether the program and placement offered to M.P. for the 1993-94 school year were appropriate and reasonably calculated to provide him with educational benefit. And if not, whether the parents

are entitled to reimbursement for the unilateral placement of M.P. at Winston.

For the reasons stated here, I conclude that the program and placement offered to M.P. for the 1993-94 school year were not appropriate and were not reasonably calculated to provide him with educational benefit. I further conclude that the parents are entitled to reimbursement for the unilateral placement of M.P. at Winston.

Summary of Evidence General Background

Based on the evidence presented at the hearing, I FIND the following FACTS:

M.P., born on March 22, 1984, resides in Summit with his parents and younger sister. M.P.'s preschool development was relatively normal. He enrolled in Summit's Franklin elementary school in 1989-90. In kindergarten, he experienced problems with visual tracking and visual motor tasks. M.P.'s teacher recommended basic skills instruction for first grade.

In first grade, M.P. received speech therapy and reading and math instruction through the basic skills program. Notwithstanding these efforts, his progress in academic areas remained slow and inconsistent. Also, he had difficulty staying on task and completing his work. Therefore, M.P. was referred to the CST for evaluation. (J-3, J-4, J-5). The evaluation revealed a high average range of intelligence. Additionally, M.P. showed relative strengths in comprehension, knowledge and short-term auditory memory. On the other hand, he had weaknesses in visual processing, processing speed and visual-motor integration skills. Further discrepancies were noted in achievement. For example, he functioned above grade level in general knowledge and mathematics, but considerably lower in reading and written language achievement. The LDTC concluded that M.P.'s weaknesses in visual perception, visual tracking, auditory discrimination and graphomotor ability compromised his performance in these areas. (J-5).

Based on the collaborative evaluations, the CST recommended that M.P. was classifiable as PI and eligible for special education and related services. (P-7). On April 25, 1991, M.P. was classified as PI. His basic skills reading instruction was replaced with reading instruction in the resource room¹ for the remainder of the first grade.

In second grade, M.P. received resource room instructions in reading five times per week and study skills three times per week. Speech therapy was also recommended. All other instruction was provided in the regular classroom.

In November 1991, the resource room teacher, Greta Olson reported that M.P. was cooperative and happy. But, he had academic difficulties with decoding words and weakness in visual tracking. (P-12). In March 1992, Olson reported that M.P. continued to be cooperative and that he continued to have difficulties in decoding. Additionally, he needed reminders to focus his attention and stay on task. (P-13).

M.P.'s annual review at the end of second grade occurred on April 21, 1992. He was working on grade level in math and showed good verbal ability in class. However, continued weakness was noted in visual tracking, phonetic skills, attention span and reading. His reading level was 2.1. Other areas of weakness were writing skills and penmanship. Although he interacted well with his classmates, he also teased his peers and occasionally behaved inappropriately.

For third grade, the CST recommended continued classification of PI. The recommended program was regular classroom instruction with resource room instruction in two areas, reading and language arts, each five times per week. Also on April 21, the CST recommended an Occupational Therapy Evaluation. (P-8).

The occupational therapy evaluation, performed on December 2, 1992, revealed deficits in visual-perceptual/visual-motor integration and sensory processing. (J-6) Goals and objectives for improving deficit areas were set and classroom exercises were recommended. On December 17, 1992, the Board received the evaluation report and thereafter offered M.P. occupational therapy (O.T.) during regular classroom time. The parents objected to scheduling M.P.'s O.T. during class time. They believed that pulling M.P. out of class for O.T. and two periods per day for resource room instruction would further fragment his schedule. Instead, they requested that O.T. be given immediately before or after the school day. After the Board denied their request, Mr. and Mrs. P. arranged for O.T. after school and on Saturdays at the Per Dev Development Center in New York.

M.P. was pulled out of his regular class during his social studies lesson for resource room instruction. Consequently, he did not receive a social studies grade for that marking period. After the matter was brought to the attention of the CST, his schedule was changed to allow him to attend both resource room and social studies instructions.

Also during third grade, M.P. began to show increased social and emotional problems and exhibited inappropriate behavior in school. The resource room teacher tried to motivate M.P. to put more effort into his schoolwork. She also tried to help him build his self-image. (P-14). In November, 1992, M.P. was making adequate progress in the resource room in reading and language arts but he was also experiencing difficulty in regular classroom math. Mr. P requested that no changes be made to increase the amount of related services because M.P. was beginning to feel stigmatized from being a resource room student. Students in his regular classroom teased him and excluded him from group activities. Consequently, M.P. felt badly and he believed that he was "being picked on" because he was receiving resource room instruction. The parents believed that the students should be sensitized to M.P.'s problems. Thus, all agreed that Mr. P would work with his son at home on math skills. Also, it was agreed that M.P. would meet with the school's student assistant counselor, Jeff Lambert. Lambert could then determine the extent of the situation and the need for possible intervention. (P-27).

Also, during third grade, the principal sent several notes home to the parents about M.P.'s misbehavior. Additionally, the regular classroom teacher, Elizabeth Kropke memorialized her discussions with the parents and her observations of M.P.'s behavior in class:

I. Mr. and Mrs. [P] expressed grave concerns over [M's] social problems. He was being excluded from games on the playground and was being ostracized in/out of the classroom by his peers.

II. 11/16/92

I spoke with the children directly about [M's] problem when he was out of the classroom. We discussed how we could make [. . .]2 feel better about himself. We agreed to include him in playground activities, etc. . . . That afternoon the boys included [M] in their football game. [M] had a tendency to exhibit inappropriate behavior and he would not play by the rules. The boys agreed to let [M] play with them for the week regardless of his behavior, etc. If he was still exhibiting inappropriate behavior and/or not playing by the rules, they would not be asked to play w/him the following week.

III. 11/17/92

[M's] continuing to play inappropriately w/the boys at recess.

[M] is provoking other children while they are working. He will kick [C.O.'s] desk until I ask him to stop or until [C] reacts to his kicking.

IV. 11/18/92

[M] was taunting other children as he moved through the room.

V. [Mr. and Mrs. P] have felt that [M] is unjustly picked on due to his classification. The details from the week of 11/19/92-11/20/92 support my argument.

Elizabeth Kropke

11/23/92

[P-5]

The resource room teacher, Olson was also concerned with M.P.'s behavior. He had difficulty focusing in both small and large groups. During a meeting on January 14, 1993, the parents and teacher reviewed M.P.'s behavior and academic progress. Thereafter, the CST suggested that the parents visit the PI class at the Jefferson school for comparison. The next day, the CST sent the parents some literature on solving social problems.

Olson's progress report on January 25, 1993 revealed that M.P. made positive growth in phonetic skills but "continues to need teacher direction and one-on-one help with most writing tasks." (J-7). She noted that he showed little motivation toward school work, had a poor self-image, and displayed inappropriate behavior. His emotional and social development were of deep concern. *Ibid.* In April, he continued to progress in reading and moved up from an instructional level 2 to level 3. (J-8). However, he continued to use inappropriate attention getting behavior.

On March 24, 1993, M.P.'s parents, Olson, the school psychologist, and the CST case manager Kathleen Woodward, again discussed M.P.'s continuing academic and behavioral difficulties. Although they saw growth in reading, M.P.'s behavioral issues remained at the "forefront." (P-27). Also, the parents informed the CST that they had not visited the PI self-contained class at Jefferson School. In her case file, Woodward noted that M.P. would be allowed to stay at Franklin School if his behavior improves. *Ibid.* On March 26, it was noted that M.P. "continues to do things that invite criticism." Then, on March 29, it was noted that M.P. "is less disruptive in class last few days." *Ibid.*

M.P.'s annual review at the end of third grade occurred on April 15, 1993. (J-1). The program recommended by the CST for fourth grade was "daily replacement instruction in reading and support in language arts

in the Resource Center at Franklin School." *Ibid.* No related services were recommended at that meeting. However, on June 2, 1993, the CST recommended O.T. twice per week. (J-12). In April 1993, the Ps decided to withdraw M.P. from the Summit school district and apply for admission at the Winston school.

In March 1994, the CST arranged to have M.P. undergo a neuropsychiatric assessment for his reevaluation. Woodward asked Dr. Gary Rosenberg the following questions:

Might [M.P.] be ADD? Teachers find him distractible and restless, at times, easily stimulated in social situations, and somewhat impulsive. Task completion is often difficult. Aside from timely homework completion, parents do not experience difficulties at home.

...

What is the extent of the neurological involvement underlying [M]'s fine and gross motor difficulties? What are [M]'s perceptions of family dynamics including parenting style and support?

[P-9]

Gary B. Rosenberg, M.D., certified in psychiatry and neurology and an Assistant Professor of Psychiatry at UMDNJ/New Jersey Medical School performed a psychiatric evaluation of M.P.'s academic and behavioral difficulties on March 10, 1994. Dr. Rosenberg reviewed the CST's evaluation reports, met with M.P. and his father and then met privately with M.P.

Based on his evaluation, Dr. Rosenberg made the following treatment plan:

[M.P.] . . . presents [sic] with a history of inattentive and distractible behavior with associated cognitive and processing weaknesses in both visual and auditory spheres that was first noted in kindergarten . . . [M.P.]'s academic difficulties became more apparent during first grade . . . Despite assistance in a resource room setting, [M] continued to struggle with his reading and writing difficulties during second and third grade. In addition, he experienced social difficulties and displayed disruptive behavior in the classroom when he was in the third grade.

...

[M]'s difficulties are consistent with a neurophysiologically based attention deficit hyperactivity disorder with associated cognitive and

processing weaknesses. [M]'s frustrations in school as a result of his learning difficulties have contributed to his behavioral problems and social difficulties . . . [M] remains in need of special educational attention in the classroom focusing on his social, emotional and academic needs. [M] and his family could benefit from a clearer understanding of [M]'s cognitive and processing strengths and weaknesses and from the establishment of a behavior modification system at home and at school addressing his social and behavioral difficulties. A trial on psychostimulant medication would be indicated if [M]'s inattentive and distractible behavior continues within the context of special education and therapy.

RECOMMENDATIONS AND DISPOSITION

- 1. The Child study Team is encouraged to continue special educational classification as Perceptually Impaired in order to address [M]'s social, academic, and emotional needs in the classroom.**
- 2. At the present time, outpatient individual and family psychotherapy focusing on the development of a behavior modification system at home and at school could be helpful.**
- 3. If [M]'s inattentive and distractible behavior continues to be a significant factor, a trial on psychostimulant medication might prove helpful. At the present time, there is no clear indication of the use of medication.**

[P-10].

Dr. Rosenberg noted that although M.P. has allegedly experienced more academic success and no social difficulties at Winston, he is repeating third grade work in social studies, math and science. *Id.* at 2.

The Winston school is a private day school for students with learning disabilities. The facility includes six homeroom classes, an art room, a "Blue Book"3 room, a gym and a library. Additionally, the school has acquired 13 IBM computers with CD ROM and five Apple computers. The current enrollment is 43 students, ages seven to fourteen years old. The full-time and part-time staff includes six homeroom teachers, an art, physical education, computer and Blue Book teacher. There is also a LDTC, psychologist, and an occupational therapist on staff.

Testimony

Kathleen Woodward, the CST social worker, met M.P. in 1990 and was his case manager from September 1991 to January 1992, and March to

June 1993. Woodward often spoke with the parents about their concerns regarding M.P.'s program and academic progress. Also, she was aware of their concerns about M.P. being teased by other children because he needed resource room instruction. Additionally, Mr. and Mrs. P were worried about M.P.'s classroom behavior problems. Consequently, in November 1992, the CST referred M.P. to Jeff Lambert, the student assistant counselor.

Woodward was present at the April 15, 1993 annual review meeting. Mr. P. did not request any modification to the proposed IEP, but there was discussion that the IEP could be changed. If M.P.'s progress in reading deteriorated and/or his behaviors "became such," then the self-contained class remained an option. However, M.P.'s teachers reported that his behavior had improved between March 24 and April 15, 1993.

In November 1993, Woodward learned that the parents had visited the PI class at Jefferson School and spoke with the teacher, Mr. DiMauro in March 1993. They were told that the PI class may be eliminated the following year.

Debra Kosak, a LDTC and member of the Summit CST, had numerous contacts with Mr. and Mrs. P. regarding M.P.'s program and their concern about his fragmented schedule. Kosak immediately adjusted his schedule after she learned that M.P.'s resource room instruction schedule caused him to miss social studies instruction. During a meeting on January 14, 1993, the CST and parents discussed the option of self-contained classroom instruction for M.P. and the regular classroom instruction in his areas of strength, e.g. math and social studies. She asked Mr. P. to consider the PI class at Jefferson school.

Kosak observed M.P. at Winston on January 25 and February 16, 1994. There were eight students in the class. She described his participation in a reading group and spoke with his teacher. M.P. was tested privately in the summer of 1993 by Dr. J Krivacska. Kosak incorporated Dr. Krivacska's tests results into her evaluation, J-14. After reviewing several examples of M.P.'s class work, Kosak concluded that he continued to have serious graphomotor difficulties. But, he used the computer for much of his written work and he was able to successfully correct mechanical errors. In reading he did well on comprehension tasks but showed difficulty with phonic activities. Also, he had difficulty in organizing his work. In math he had a good command of basic operations. (J-14).

When Kosak tested M.P., he was cooperative, polite, and relaxed. Further, he maintained a good level of concentration and showed adequate task persistence. M.P. told her that he liked his class and his

teacher and has made friends. *Ibid.* Kosak candidly testified that M.P. has made progress at Winston.

Dr. Carole Kernan, the Board's Director of Special Services also visited the Winston school in November 1993. She described M.P.'s classroom as cluttered and messy. The teacher sat at her desk while the seven students called out to the front of the room. During the one visit for one-half hour, she also observed that the teacher did not monitor M.P. in class and that the computers installed in the room were not being used.

Dr. Kernan also observed M.P. in his reading class for about 20 minutes. She saw four students who appeared to be restless and bored. Dr. Kernan concluded that the teacher was not successful in engaging the students and that the class was inappropriate to meet M.P.'s needs.

Robert J. Lamparello, the Board's school psychologist and member of the CST knew that M.P. was having social problems during third grade but did not counsel the student. Instead, he referred M.P. to Jeff Lambert for counseling. Also, he informed the parents about the PI class at Jefferson school and suggested that they make an appointment to observe the classroom.

Lamparello also observed M.P. at Winston in December 1993. The reading class, consisting of seven students, was cramped. During recess, the boys played a game on the computer. In the next classroom, four students were taught phonics using the "Blue Book." M.P. was "out pacing" the teacher and the other students lagged behind. In math, M.P. is receiving individual instruction in an accelerated math program. Lamparello tested M.P. in March 1994, and was "impressed by the degree of motivation, task persistence and performance monitoring shown by [M.P.]." (J-16 at 4).

Greta Olson was M.P.'s resource center teacher in his second and third grade for reading and language arts at Franklin school. M.P.'s weak area was phonics but his strength was auditory learning. Olson participated in drafting IEP which was presented at the April 15, 1993 meeting.

Olson candidly and credibly testified that M.P. needs a small group structure to better address and manage his attention difficulties e.g., focus on subject, stay on task, and encouragement in getting started. Although the student's ability to read was critical, the "whole child" including his/her self-image and self-esteem were important. At times,

the child's self-image and self-esteem were in separable from the child's academic process.

Olson believed that although M.P.'s deficits were moderate, his "self-image" had a direct impact on his learning process. Thus, in third grade when M.P.'s inappropriate behavior magnified, Olson conferred with his regular classroom teacher, Kropke about building his self-image and using different strategies to improve his behavior. (P-14). Although M.P. was making academic progress by April 1993, he continued to display inappropriate attention getting behavior. She also noted that his behavior continued "to affect his growth and development . . . these behaviors and his lack of motivation are real stumbling blocks to his discovering his true potential." (J-8).

Jeffrey Lambert is the Board's elementary student assistant and substance abuse counselor. M.P., was referred to Lambert in November 1992, they met briefly in December and began having weekly meetings for twenty minutes in January 1993. Lambert developed a rapport with M.P. and they would discuss daily problems that happened on the playground and in class. They also talked about building self-esteem and interacting with other students. Sometime in February 1993, M.P. told Lambert that he was going to a different school, Winston. Lambert then told Olson that M.P. said he was going to Winston.

In March 1993, Lambert gave a presentation before Kropke's class about inclusion, interaction and friendship. M.P. was an active participant. In April 1993, Lambert discontinued his meetings with M.P., based on a belief that M.P.'s problems had lessened and that M.P. had become more self-assured and more positive than he had been previously. Also, Lambert received good reports from M.P.'s principal. However, he was unaware that after April, M.P. continued to misbehave in school and was sent to the principal for disciplinary action.

Lambert testified on May 17, 1994, however he was recalled to testify after counsel for petitioner requested that the witness produce his notes regarding M.P. On June 2, Lambert revealed that he destroyed his original notes after copying its contents onto index cards. Lambert's notes indicate that M.P. may have first talked about going to Winston in April rather than February. (P-35). Another discrepancy was the month that Lambert spoke to M.P.'s class about friendship; his prior testimony says it was in March, but the notes indicate it may have been in April. Lambert explained the inconsistencies as an error he made when he was copying the original notes onto the index cards.

Carol Aitchison the former director of education and head of the Winston school is currently in private practice as an LDTC. Her initial

contact with M.P. was on February 11, 1993. At his parents' request she evaluated M.P. to render another opinion about his educational needs. Dr. Aitchison reviewed M.P.'s school file including prior IEPs, the resource room teacher's reports, and the O.T. evaluation. She spoke with Kosak about M.P.'s reading and social functioning. Aitchison also suggested that the parents visit the self-contained class at Jefferson. Other program recommendations included the Winston school, the Craig school, local O.T., and group social skills training.

Pamela Bloom, head of Winston, testified about the school's program and students. Winston has been in existence for 12 years and accepts students with average to above average intelligence in grades K to 8. Also, Winston is non-sectarian and complies with all relevant State and federal anti discrimination laws. Although it is not approved by the State, it is accredited by the Middle States Association. Winston's curriculum is geared to help students build self-esteem and socialization skills. Thus, all students participate in weekly group sessions that are 40 minutes long. Parent group meetings are held once a week. After they have achieved academic success, many Winston students return to public school or continue their education at Kent Place or Morristown Bard schools.

Mrs. P. contacted Bloom in late March or early April, 1993. Bloom then interviewed M.P. in mid-April. She reviewed M.P.'s IEP and progress reports from the Summit school system and also conferred with the LDTC. M.P. was accepted to Winston on June 23, 1993, for the 1993-94 year. (P-16).

M.P. was then tested to determine his strengths and weaknesses and academic level. The Woodcock Reading Mastery Test results reported in October 1993, revealed the following scores: Word I.D.--2.9, Word Attack--1.5, Word Comp.--3.8, Passage Comp--2.8. M.P.'s total reading score was 2.7. (P-17). Bloom noted that M.P.'s word attack score in first grade was also 1.5. (J-5). Thus, she concluded that there was no growth in this area between 1991 and 1993. The tests also revealed problems with decoding. (P-17).

Based on his ability, M.P. was placed on a third grade level. M.P.'s class includes eight students. His academic schedule includes reading, Blue Book instruction, math, vocabulary, social studies, science, composition, art and physical education. Also, he received O.T. once per week. During his first year at Winston, M.P. has demonstrated improvement in spelling, cursive writing and math.

James J. Krivacska, a licensed clinical psychologist and a certified school psychologist conducted a psychological evaluation on M.P. at

the parents' request. The P.'s asked Dr. Krivacska to clarify M.P.'s learning problems, to evaluate the appropriateness of the IEP developed by the CST and to provide recommendations for programming and development of M.P.'s self-esteem and social skills. (P-1). Dr. Krivacska also reviewed M.P.'s special education record, including his IEPs, progress reports and CST evaluations. He also interviewed the parents and performed a clinical interview of M.P. He then administered the Woodcock-Johnson Psychological Psychoeducational Battery-Cognitive Ability and Tests of Achievement Scales. However, Dr. Krivacska's request to observe M.P. in class was denied by the Summit School District. He did, however, observe M.P. in the classroom at Winston and also interviewed Bloom and two of M.P.'s teachers.

Dr. Krivacska concluded that the educational services and program offered in the April 13, 1993 IEP were inappropriate. In his opinion, M.P. was not progressing academically at a pace that would prepare him for middle school. Also, the IEP had numerous deficiencies. A comparison of the IEPs revealed the following:

The IEP . . . of 4/21/93 contains 26 objectives under eight goals, 73% . . . are identical to the objectives written in the IEP from February of 1991. Nine objectives included in the 1991 IEP were not included in the 1992 IEP including all objectives relating to spelling. Yet according to the progress reports completed during . . . [M.P.'s] second grade year, none of the objectives that were dropped from his IEP were . . . mastered. In particular the deletion of any spelling goals and objectives is especially disconcerting given that written expression and spelling is an area of profound weakness . . . [T]he IEP prepared this past April for the 1993-94 school year reveals that 74% of its objectives were identical to objectives written in the 1992 IEP. Three objectives from the 1992 IEP were dropped and again, according to progress reports, none of these had been mastered either. Of the seven new objectives included in the IEP, two were spelling objectives which had been included in [M.P.'s] first IEP but dropped in the 1992 document.

A comparison of the IEPs developed in [M.P.'s] first grade year and those developed this past April in his third grade year reveal that 66% of them are unchanged. A review of [M.P.'s] progress reports which describe his performance relative to the goals and objectives of each IEP in the last three years does not indicate mastery achieved on *any* objective during that period of time.

Clearly, [M.P.] has made some progress over the course of the last 21/2 years. Unfortunately, the goals and objectives of these IEPs are written in such a way as to make it impossible to evaluate the extent or rate of

that progress. More importantly, this format does not allow one to diagnose the areas in which particular difficulties persist nor allow the introduction of program modifications which might remediate those areas of persistent weakness. [P-1 at 6].

Dr. Krivacska concluded that the IEPs are inadequate because the goals are not specific or measurable. *Ibid.* Progress reports which monitor the progress of each objective, although commendable, are not specific enough to develop a meaningful or relevant educational planning process. (P-1). Thus, Dr. Krivacska further concluded that the level of progress or areas "in which a particular stumbling block may have been identified," cannot be determined from the progress reports. (P-1 at 24).

Dr. Krivacska believes that M.P. needs an educational program and placement that is flexible, enhances his strengths, nourishes his social skills and protects him from embarrassment and humiliation from peers. M.P.'s third grade program at Summit did not offer this kind of educational support. Instead, his program was fragmented by the pull out schedule for resource room instruction. Further, the lack of communication between the classroom and resource room teachers restricted the integration of strategies necessary to achieve an appropriate program. Coordination between the classroom teacher and the educational specialist is critical if the student with learning disabilities is to achieve academic success. For M.P. to acquire the reading and writing skills necessary to independently function within a mainstream setting, Dr. Krivacska recommended an intensive program in which he can receive diagnostic reading and written language instruction and a highly structured and monitored instruction in organizational skills. (P-1 at 26). For M.P. to acquire the social skills and personal sense of self-worth necessary to function as a productive and healthful adult, Dr. Krivacska recommended a program which will teach him pragmatic skills, provide him with opportunities for success, teach below frustration levels and provide an atmosphere of peer acceptance, encouragement, understanding and support. *Ibid.*

Dr. Krivacska did observe M.P. at Winston on two dates. At Winston, the school day begins with an orientation period to help the students prepare for daily instruction and activities. This routine also develops organizational and planning skills. At the end of the day, teachers review the homework assignment to ensure that the student can complete the assignment at home satisfactorily. Lunch and recess periods are structured with the teacher present. Students use this time to develop socialization and conversation skills. Student progress is measured by ongoing teacher evaluation in the classroom and

diagnostic testing in the fall and spring. The IEPs are developed by the sending district in coordination with information provided by Winston.

Dr. Krivacska observed M.P. during reading, language arts, math, snack and recess. M.P. remained with his class for all periods but the class was divided into groups for reading. A teacher assistant provides individual instruction to students. The students were respectful and supportive of each other. Overall, the program provided a consistency of expectations, structure and instructional techniques. Consequently, there is a level of stability, integration, continuity and individual instruction not typically found in most school settings. The structured, calm and predictable setting reduces the attention, memory and language demands and allows the student to exert his mental efforts on academic tasks. M.P. appeared to be relaxed, motivated and attentive. The class size and thus, the teacher/student interaction heightens M.P.'s ability to remain on task and benefit from instruction. Dr. Krivacska concluded that Franklin school is not appropriate; thus, it cannot be the least restrictive environment. In contrast, Winston offers the "best chance" to meet M.P.'s educational, social and emotional needs.

Mrs. P. testified that her son initially liked school. In first grade he got along well with his peers in the resource room and classroom. In second grade his group of friends decreased and he experienced difficulties in academics, organization skills and completing homework assignments. M.P.'s third grade did not begin well. Classmates teased him about his handwriting and art projects, and called him stupid. During recess he got into fights and came home with scratches and bruises. He "didn't fit in the group" and had no playmates after school. M.P.'s resource room teacher, Mrs. Olson often discussed his poor self-image, lack of motivation and inappropriate behavior in class. His classroom teacher also reported that M.P. acted inappropriately in class and distracted the other students. At home, Mrs. P. noticed her son's lack of self-esteem. He was overly concerned about his appearance, his hair and clothing. Also, he began to fake ailments to keep from going to school. By January, he would cry almost everyday about being teased at school and not having any friends. He now hated school.

After the meeting with the CST on March 24, 1993, the P.s did speak with Lamparello about visiting the self-contained class. He told them to first make an appointment. They went home, made the appointment with the principal of Jefferson school and visited the classroom that afternoon. The P.s observed a small class participating in a science fair. They were impressed with the program. Afterwards they spoke with the teacher who informed them that the class would probably be

eliminated next year because the Board was moving toward "inclusion." Mrs. P. then visited the Winston school and the Craig school. They did not discuss their visits to other schools with the CST.

In April 1993, the P's decided to withdraw M.P. from the Summit School District and enroll him in Winston. The P's believed that their son's progress had deteriorated over the past three years in the program developed by the CST. Yet, the CST was offering M.P. the same program for his fourth grade which he had in the third grade. Mrs. P. stated that since he has been attending Winston, M.P. has made friends, he is happy and looks forward to going to school.

Regarding M.P.'s O.T., although the CST recommended an O.T. evaluation in April 1992, it was not scheduled until November. When the evaluation was completed in December, all agreed that M.P. should have O.T. However, the parents requested that O.T. be given before or after school, because M.P.'s school day was already fragmented. Thus, they sought to avoid another disruption in his schedule. When the CST denied their request, M.P. was taken to Per Dev, an occupational therapy program for perceptually impaired children. Mrs. P. informed the Board that M.P. was receiving O.T. from Per Dev. She estimated the cost for M.P.'s therapy from December through the summer of 1993 was \$8,000.

Mr. P.'s testimony about his son's behavioral changes and feelings about school was similar to Mrs. P.'s testimony. In third grade, M.P. changed from being a happy child into a child who looked depressed and hated school. Mr. P. attended several meetings with the CST to discuss M.P.'s academic progress and how to best handle his inappropriate behavior in class. However, Mr. P. was horrified that Kropke, the classroom teacher, spoke to the class about M.P.'s problems without parental permission. He believed that the Kropke's comments exasperated the situation rather than helped it. Mr. P. also believed that M.P.'s third grade schedule was "discombobulated." Not only did M.P. miss social studies instruction because of a schedule conflict, he was then pulled out of his recess period to complete the missed class.

Regarding M.P.'s O.T. schedule, Mr. P. was informed that the therapist was only available between 9:00 a.m. and 3:00 p.m. because of a personal schedule. He also learned from another student that the teacher gave M.P. a "ham" to use in class because he was hyperactive. Mr. P. was then informed that the district's therapist, Susan Lee, gave the classroom teacher a theraplast⁴ for M.P. to use in class. When not being used by M.P. it was kept in his desk. The parents were never informed during the CST conference or the April 15, 1993 IEP meeting

about Lee's involvement in M.P.'s O.T. They later learned what M.P. was to do with the therapist in class; "pull it, roll it, stretch it, squeeze it, and pinch it between fingers for improved strength." (P-15). The P.s were also surprised at the therapist's report that "due to teacher reports of self simulatory behaviors and deficits in the area of sensory processing, recommended acquisition of a rocking chair in class to allow [M.P.] to perform his own vestibular stimulation. It is felt that such input will also allow [M.P.] to organize himself better and increase visual/perceptual-motor skills." *Ibid*. None of these recommendations had been discussed with the parents.

Based upon a careful review of the documentary and testimonial evidence, I FIND that during the year that M.P. was in third grade, the CST and parents had several conferences to discuss his academic progress and on how to handle his continued inappropriate behavior in class. Various CST members suggested that the parents visit the self-contained class at the Jefferson school as an option to the program at Franklin school. Thereafter, the CST offered no assistance to arrange for the visit.

I FIND that the parents followed through on the CST's suggestion and did observe the self-contained class at the Jefferson school. At the conclusion of their visit they were told that the self-contained class may be eliminated the following year.

I further FIND that the only program recommended and offered by the CST for school year 1993-94 was at the Franklin school with resource room instructions for reading and language arts.

Argument

Petitioner contends that the Board was remiss in not timely evaluating M.P. for occupational therapy services. It is asserted that a delay in providing M.P. a related service is a denial of a free, appropriate public education. Further, petitioner contends that the Board's decision to give M.P. therapy during the school day, rather than before or after school, further fragmented his program. Thus, it is submitted that the parents' request for O.T. at 8 a.m. or 3 p.m. was reasonable. When the Board denied their request, the parents were justified in obtaining O.T. services on their own. Therefore, they are entitled to reimbursement for that expense.

Also, petitioner contends that the program and placement offered M.P. were inappropriate, insufficient, and not reasonably calculated to confer educational benefit. It is asserted that the IEPs were deficient under federal and State law because they were not specific or

measurable. It is also asserted that M.P. achieved no goals and objectives while attending the Summit school district. However, his IEP was not changed to reflect achievable goals that could reasonably be expected within a year.

Further, petitioner's parents assert that they are entitled to the equitable relief of reimbursement for M.P.'s placement at the Winston school. The parents contend that Winston meets the criteria under N.J.A.C. 6:28-6.5(b). Thus, they should be reimbursed for all charges for placement since September 1993, and continuing for as long as the placement remains appropriate. It is also submitted that placement at Winston remain appropriate until the Board offers an appropriate program of its own.

The Board argues that the IEP developed by the district and parents in April 1993 provides an appropriate education in the least restrictive environment. It is asserted that the education provided to M.P. between 1991 through the end of the 1992-93 school year was sufficient to confer some educational benefit. The CST, the resource room teacher and the classroom teachers used various strategies to address and remediate M.P.'s disabilities. Moreover, it is argued that M.P. made substantial progress in his mainstream subjects and in his social skills while attending the Summit school district.

The Board further argues that petitioner is not entitled to reimbursement for the unilateral placement at Winston. Reimbursement should also be denied because the parents failed to cooperate with Summit in the development of the IEP. It is asserted that sometime in March 1993, the parents ceased to cooperate in good faith with the CST. For example, although the CST requested copy of Dr. Aitchinson's report in the spring, it was not received until December 1993. Further, the parents did not provide the CST with information about the O.T. which M.P. was receiving from the Per Dev Development Center. Moreover, although the parents had visited and were impressed with the programs at Winston and the Jefferson school, they did not give any indication to the Board that they were interested in a placement other than Franklin school. Additionally, Mr. P.'s failure to speak out at the April 1993 annual review conference violated the language and the spirit which require that the child's IEP be prepared with the participation of the parents. Consequently, CST's recommendation to continue M.P. in mainstream fourth grade class at Franklin, with pull out for reading and language arts in the resource center and O.T. provided an appropriate education placement and program.

Regarding the appropriateness of the IEP developed for M.P., it is asserted that the school district need not be limited to a single teaching

methodology. Instead, various teaching techniques and strategies, including those used and proposed by Summit, could be selected to improve M.P.'s reading and writing skills. Here, that multi-sensory approach is appropriate for M.P.'s disabilities and it was used by the Summit CST.

In contrast, it is asserted that M.P.'s lack of frustration at Winston is because he is not challenged by the program. Indeed, much of his time is spent on "doodling and other personal projects." Moreover, petitioner has not satisfied the requirement of the Naples Act, N.J.S.A. 18A:46-14, and related regulations which prescribe the procedures for approval for a placement at a school that is not approved by the New Jersey Department of Education. Thus, the Board submits that if a more restrictive placement than the mainstream class with resource center were more desirable, a self-contained PI class at the public schools would be a viable option.

Legal Discussion and Conclusions

New Jersey receives federal funding under I.D.E.A., a statute enacted to assist states in providing education to disabled children. I.D.E.A. provides that states must assure all children with disabilities the right to a free, appropriate public education (FAPE). 20 U.S.C.A. § 1412(1). I.D.E.A. further mandates that the education be tailored to the unique needs of each eligible child through an IEP, which must be reviewed annually. 20 U.S.C.A. § 1414(a)(5). School districts are required to take the lead and develop an appropriate IEP. 20 U.S.C.A. § 1412(4) and N.J.A.C. 6:28-1.4(a)8. Also, the school authorities must provide educational programs and related services in accordance with the IEP, N.J.A.C. 6:28-2.1 and 4.1. Moreover, I.D.E.A. and New Jersey Law create a statutory preference for educating children with disabilities in a least restrictive environment. 20 U.S.C.A. § 1412(5)(B) expressly mandates that:

to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The school district has the burden of proving that it is providing an appropriate education to a disabled child. *Lascari v. Ramapo-Indian Hills Regional School District*, 116 N.J. 30, 43-46 (1989). Moreover, New Jersey applies the federal standard of whether the educational is

"sufficient to confer some educational benefit." *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).

I have considered carefully the cumulative testimonial and documentary evidence, and I CONCLUDE that the Board has failed to establish by a preponderance of the evidence that it provided M.P. a FAPE in the least restrictive environment.

In contrast, petitioner presented credible evidence that the IEPs were deficient, inappropriate, and insufficient. The IEPs reflect that M.P. had not mastered any of the goals and objectives by the time his April 1993 IEP was developed. (J-8, P-12). Although some of the goals were dropped and other goals were absorbed into the latter IEP, a majority, 73%, were repeated at the same percentage mastery level. The regulations require that that an IEP contain objectives which describe specific measurable steps between the current educational status and the annual goals N.J.A.C. 6:28-3.6(e) 4, and criteria, procedure and a schedule to determine if the goals and objectives are being met. N.J.A.C. 6:28-3.6(e)5xii. Dr. Krivacska's testimony revealed that the objectives appeared to be compiled from a preexisting form used by the CST to develop the IEP for all students. His review of the IEPs further revealed that the objectives relating to spelling, areas of "profound weakness," were included in the 1990-91 IEP but then dropped from the 1991-92 IEP. They were again included in the 1992-93 IEP; goals for spelling skills called for a mastery level of 75% and the goals for written expression called for a mastery level of 80%. The teacher reports indicated that M.P. needed more help in these areas, e.g., phonic skills, writing and spelling. (J-7, J-8). In spelling, M.P.'s third quarter achievement level was "NR" (needs review) and in the area of written expression, he achieved one "P" (progress shown), and two "NR"s. (J-8). The 1993-94 IEP repeated these goals each calling for a mastery level of 80%.

I am persuaded by the evidence that this format does not allow one to diagnose the areas in which M.P.'s "particular difficulties persist nor allow the introduction of program modifications which might remediate those areas of persistent weakness." [P-1 at 6].

Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP . . . An IEP that is incapable of review denies the parents the opportunity to help shape their child's education and hinders their ability to assure that their child will receive the education to which he or she is entitled. [*Lascari* 116 N.J. at 48-49].

Thus, I CONCLUDE that the IEP developed in April 1993 is not designed to specifically address the individual needs of M.P.

I have also considered the appropriateness of the program provided to M.P. The standard for a FAPE is met when the school district provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley, supra*, 458 U.S. at 203, 73 L.Ed.2d 710. The educational benefit, however, must not be de minimis. The *IDEA* "calls for more than a trivial educational benefit" but should strive to accomplish "enough [learning] so that citizens who would otherwise become burdens on the state would be transformed into productive members of society." *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182 (3d Cir. 1988). M.P.'s program called for regular classroom instruction with pull out for reading and language arts.

The parents and the CST acknowledged that there was a relationship between M.P.'s deficits and his inability to interact with peers. Additionally, all agreed that M.P.'s continued behavior problems limited his academic growth. Thus, strategies to support M.P. in the regular class were discussed to help him deal with social and emotional problems and to improve the situation. The parents agreed to the intervention by Mr. Lambert. However, M.P.'s brief counseling sessions with Lambert between January and April did not work. M.P. continued to behave inappropriately after the meetings ended.

Although Woodward and other Board witnesses testified that M.P.'s behavior improved between March 24 and April 15, 1993, credible evidence reveals that it did not.

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances . . . [Citation omitted.] . . . *In re Perrone's Estate*, 5 N.J. 514, 522 (1950).

M.P.'s resource room teacher, Mrs. Olson provided an objective and credible assessment of the "whole child"; his ability, progress and behavior in her class. At times, his self-image and academic process were inseparable. As of April 2, 1993, M.P. was still exhibiting serious behavior problems. (J-8).

Unfortunately, Olson's attempt to coordinate meaningful strategies with the classroom teacher, Ms. Kropke, did not improve the situation. Cooperative learning and peer interaction support are strategies that can be used in a regular classroom for some special education

students who need to initiate and maintain relationships with other children. But, Kropke's attempt to include M.P. in playground activities by discussing M.P.'s problems with the class when he was out of the classroom was inappropriate. Moreover, she informed the class that they would not be asked to play with him "if he was still exhibiting inappropriate behavior and/or not playing by the rules" (P-5). Apparently, Kropke concluded that there was no justification for the parents' belief that M.P. "is unjustly picked on due to his classification. The details from the week of 11/19/92-11/20/92 support my argument" *ibid*. In stark contrast, the Board's physician, Dr. Rosenberg concluded that M.P.'s "learning difficulties have contributed to his behavior problem and social difficulties." P-10.

Kropke's method of providing opportunities, encouragement, and support for M.P. to interact positively with his peers manifests a clear misperception of M.P.'s emotions and behavioral problems. A more appropriate attempt to sensitize the class to M.P.'s problems was made however, by Lambert. In March 1993, he and M.P. talked about friendship and interaction. Although Lambert misstated dates concerning his discussion with M.P. about the Winston school, the existence of some inconsistencies in a witness' testimony does not warrant an automatic discounting of that testimony as incredible. *United Stations of N.J. et al v. Getty Oil Co., et al*, 102 N.J. Super 459 (Ch. Div. 1968). I am satisfied by the whole testimony that during their nine meetings, Lambert attempted to help M.P. to better handle social problems in school. Nevertheless, M.P.'s behavior did not improve.

Another example of the lack of coordination between the CST and the classroom teacher is M.P.'s missed social studies period to attend resource room instruction. Moreover, he was denied recess period because he missed the social studies lesson. The schedule was corrected after he failed to receive a grade for the marking period. Consequently, I CONCLUDE that the lack of coordination between the CST and the classroom teacher deprived M.P. from the benefit of integration strategies necessary to achieve an appropriate education.

Regarding M.P.'s O.T., the record reflects that a seven months lapse occurred between the recommendation for O.T. and the evaluation. Thereafter, M.P. was offered O.T. during his school day. The parents had a legitimate concern about minimizing the disruption to their son's school day. Thus, it was reasonable for them to request that an accommodation be made to offer O.T. before or after school. N.J.A.C. 6:28-3.8(a)2.ii provides that "A district board of education may contract with approved clinics and agencies for the provision of occupational and/or physical therapy." Here, the Board merely denied the request without explanation. Therefore, the parents had no alternative except to

use another occupational therapist. I CONCLUDE that the Board's seven months delay in evaluating M.P. for occupational therapy services, and thereafter, its refusal to provide a reason why the related service could not be provided before or after school was a denial of a free, appropriate public education. See *Utica (MI) Community School*, 20 IDELR 90 (1993), where the Office of Civil Rights (OCR) held that a two weeks delay in providing O.T. services because the therapists were involved in administrative duties were substantial and denied the students FAPE. In *Brackton Public School*, 20 IDELR 914 (1993) the OCR found that the school district's failure to provide the student O.T. from February 2 to March 9 was an unreasonable delay and thus denied the student a FAPE. See also *DAS v. McHenry School District No. 15*, 20 IDELR 979 (1994), (the court granted the parents reimbursement for privately obtained O.T.).

Regarding reimbursement for privately provided O.T., the Handicapped Children's Protection Act of 1986 (HCPA), 20 U.S.C. § 1415(e)(2) gives the court discretion to grant such relief as it determines appropriate. *DAS v. McHenry School District No. 15*, 20 IDELR 979 (1994). Thus, I further CONCLUDE that the parents are entitled to reimbursement for the O.T. services provided by Per Dev Program. I therefore direct the parents to provide a statement of actual expenses for the O.T. services provided by the PER DEV Program between December 1992 through June 1993.

Regarding M.P.'s placement in Winston, it is established that parents may unilaterally place an educationally disabled child in a private program if they dispute the appropriateness of a school's proposed IEP. Furthermore, if the challenge to the school's IEP is successful and the private placement is found to be appropriate, the parents may be awarded reimbursement for the expenses of that private placement. *School comm. Of Burlington v. Department of Educ. Of Mass*, 471 U.S. 359, 369-70, 85 L.Ed.2d 385, ___, 105 S.Ct. 1996, ___ (1985).

Recently, in *Florence County School Dist. Four v. Carter*, 510 U.S. ___, 126 L.Ed. 284, 114 S.Ct. ___ (1993) the Court held that the parents' failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement. Also N.J.A.C. 6:28-6.5(a) provides, in part, that a student with educational disabilities may be placed in an accredited nonpublic school which is not specifically approved by the State, when the following requirements have been met:

2. A suitable special education program pursuant to NJSA 18A:46-14a, b, c, d, e, f, g or h cannot be provided to this pupil;

3. The most appropriate placement for this pupil is this nonpublic school

4. The program to be provided shall meet the requirements of the pupil's individualized education program;

"The clear import of the language of N.J.A.C. 6:28-6.5 is to ensure that a placement in accredited, but unapproved for placement of public school pupils, private schools occurs only when no other public or private approved placement is appropriate and the selected unapproved school is the most appropriate placement"; *C.D. v. Wanaque Board of Education*, 93 N.J.A.R. 2d (Vol. 8) 154, 158. Consistent with the strong statutory preference for integrating children with disabilities in regular classrooms whenever possible, *Oberti v. Board of Educ. of Clementon*, 995 F.2d 1204 (3d Cir. 1993), I have carefully reviewed M.P.'s April 1993-94 IEP for fourth grade.

Based on the foregoing reasons, I CONCLUDE that the IEP developed by the CST in April 1993 was not appropriate for M.P. and therefore failed to provide him with a free appropriate public education.

I further CONCLUDE that the evidence demonstrates that the Winston school is an appropriate placement. Among the experts who observed M.P. at Winston, Dr. Krivacska provided the most detailed information about the curriculum. Although he was called by petitioner, Krivacska's testimony was matter-of-fact and more objective than the testimonies provided by the CST members who also observed M.P. at Winston. Moreover, Winston has developed an educational program for M.P. which includes the information provided by the Summit district. Indeed, the educational attention provided at Winston in the classroom during academic, lunch and recess periods directly focus on M.P.'s social, emotional and academic needs. See, P-10, Report of Dr. Rosenberg. These are the components which M.P.'s resource room teacher, Mrs. Olson tried to provide, with the coordination of the CST, the classroom teacher and school counselor, to make M.P. a "whole child." They did not succeed. On the other hand, I find that Winston has provided M.P. with educational achievement, self-esteem and a positive attitude toward himself and school. Consequently, I CONCLUDE that Winston has met the requirements of N.J.A.C. 6:28-6.5.

Regarding the petitioner's request to reimbursement for the unilateral placement, the New Jersey courts have required that parents attempt to reconcile their disagreements with the child's IEP before unilaterally removing the child from the district. Failure to do so could result in diminished reimbursements. *T.G. v. Middletown Township Board of Ed.*, 93 N.J.A.R. 2d (Vol. 8) 66. But, parents who attempted in good faith

to reach an agreement with the school system are entitled to reimbursement. *Lascari v. Bd. of Educ.* 116 N.J. 30 (1989). *Egg Harbor Township Board of Educ. v. S.O.*, 19 IDELR 15 (D. N.J. 1992).

Here, the parents never claimed the expertise needed to formulate an appropriate IEP for their son. Rather, they earnestly worked with the CST to develop an appropriate educational program for M.P. They agreed with many of the CST's suggestions to address M.P.'s behavior problems as they became more apparent. Despite the various interventions and strategies used by the district, the P.'s became extremely frustrated over M.P.'s lack of progress during his third grade. The parents' failure to inform the CST about their visits to the Winston school or the PI class at Jefferson school was not an act of bad faith. Indeed, by March 1993, a mutual break-off in communication between the parents and the CST had developed. In lieu of the previous open exchange of information and corroborative efforts between the parents and the district, now the parents and the district were making one-sided decisions about M.P.'s program. Nevertheless, the P.'s responded to the CST's suggestion to visit the PI class at the Jefferson School and were led to believe that the class would not be available the following year. Thereafter, they looked at alternative programs. They then made the decision to withdraw M.P. from the district after the Board offered a placement that was no different from what he had been receiving in third grade.

Accordingly, I CONCLUDE that the parents made a reasonable attempt to reconcile the inappropriate program. Thus, they are entitled to reimbursement of expenses for M.P.'s placement at the Winston school for 1993-94 and prospectively for as long as that placement remains appropriate. The placement at Winston shall remain appropriate until the Board offers an appropriate program and placement.

It is so ORDERED.

This decision is final pursuant to 20 U.S.C.A. § 1415(e) and 34 C.F.R. § 300.509 (1993) and is appealable by filing a complaint and bringing a civil action either in the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C.A. § 1415(e)2, 34 C.F.R. § 300.511. If either party feels that this decision is not being fully implemented, this concern should be communicated in writing to the Director, Division of Special Education.

1 The Resource Room is also referred to as the Resource Center and thus, will be used interchangeably in this decision.

2 Kropke referred to M.P. by another name which the record disclosed was M.P.'s brother.

3 The "Blue Book" is a teaching method of reading which uses a phonic approach.

4 Mr. P. described the therapist as something similar to silly putty.