

**IN THE OFFICE FOR DISPUTE RESOLUTION
COMMONWEALTH OF PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER**

Antonio Williams-Spence, a student in the	:	ODR #
School District of Philadelphia,	:	
On his own behalf and	:	
Antonio Spence Sr., Parent, on behalf of	:	
Antonio Williams-Spence and as Parent	:	
	:	
v.	:	
	:	
School District of Philadelphia	:	
	:	

DUE PROCESS COMPLAINT

I. CURRENT SITUATION

Antonio Williams-Spence (hereinafter, Antonio) is an 18 year old (DOB 05/17/2001) student in 12th Grade at Overbrook High School. IQ tests establish that Antonio is a young man of at least average intelligence, but he has a specific learning disability that impacts his ability to read, write, do math, and do other school work. Although his high school is about to graduate Antonio and issue him a diploma, Antonio is ill-prepared to transition to the adult world. Antonio is performing significantly below grade level. Antonio’s dream is to attend college. However, he will likely have difficulty getting into college because of his SAT total scores of just 800 and 810 respectively. Philadelphia’s own testing showed that in March of 2019, Antonio’s math and literacy scores were roughly at the 5th grade level. Accordingly, Antonio will also have difficulty succeeding in college.

II. NATURE OF THE PROBLEM

A. BACKGROUND, EARLY EDUCATIONAL HISTORY AND PARENT INVOLVEMENT

1. Antonio lives at 833 N. Farson St., Philadelphia, PA 19139 with his father, Antonio Spence Sr. Antonio was and has been at all relevant times a resident of the School District of Philadelphia (“District”). The District is wholly responsible for Antonio’s lack of progress and unpreparedness.
2. Antonio received Early Intervention services as a toddler through Elwyn where he received speech services. He attended Pennypacker Elementary School, Wagner Middle School, and Overbrook High School. His behavior was good in all school

settings. While Antonio did have attendance issues in kindergarten and first grade, attendance has not been an issue since then.

3. One of Antonio's parents regularly attended IEP meetings for Antonio when invited. Antonio's mother, Rosemary Nicholas, attended the IEP meetings until her passing in October 2014. Mr. Spence has been attending the meetings since then.
4. Mr. Spence did not receive Notices of Procedural Safeguards throughout the years.

B. PENNYPACKER ELEMENTARY SCHOOL (2006-2007 through 2012-2013)

5. Antonio attended Pennypacker Elementary School. Although Antonio had been provided early intervention services through Elwyn, it appears that while the District issued a Permission to Evaluate Form when Antonio was in kindergarten, he did not receive special education services in kindergarten, first grade or most of second grade. Instead, he received Tier 1 and Tier II reading and math support through Response to Intervention.
6. When Antonio was in second grade, his parents requested that he be evaluated for special education. The District completed an evaluation late in the year, May 4, 2009. The evaluation indicates that Antonio "failed" 1st grade but the District passed him anyway.
7. Based on the 2nd grade evaluation, Antonio's IQ was found to be in the upper end of the low average range. However, Antonio was functioning below grade level in all academic areas. Though he was nearly finished with his second grade year, he was at a mid-first grade level in reading and a mid-second grade level in math. **Ex. A., Evaluation, Pennypacker School, School District of Philadelphia, May 4, 2009 at 10.**
8. Based on the school's evaluation, Antonio was diagnosed with a Specific Learning Disability and was recommended for special education. He began to receive special education services.
9. Two years later, as Antonio was completing fourth grade, the District issued a re-evaluation report on April 1, 2011. The District recommended that Antonio continue to receive special education (learning support) in reading and math. During the two-year period, it is not clear if Antonio received direct instruction in reading and math. **Ex. B., Reevaluation, Pennypacker School, School District of Philadelphia, April 1, 2011 at 2.**
10. While attending Pennypacker School, Antonio was never offered Extended School Year services to enable him to maintain any educational gains during the summer. It does not appear that IEP teams specifically discussed ESY throughout the elementary school years.

11. Antonio graduated from Pennypacker School in June of 2013.

C. WAGNER MIDDLE SCHOOL (2013-2014, 2014-2015)

12. Antonio began attending Wagner Middle School as a seventh grader and continued there through eighth grade. (He briefly attended Leeds Middle School from September 9, 2013 to October 01, 2013).

13. Although Antonio continued to have an IEP, it does not appear that Antonio received any direct special education instruction in reading or math while at Wagner Middle School.

14. The District completed the next reevaluation on April 25, 2014 when Antonio was in seventh grade. Staff administered the Stanford Math Diagnostic and the KeyMath to assess his progress in math only. Antonio remained below grade level with a total test equivalent on the Stanford of 5.0. Antonio's total test composite on the KeyMath was a 6.7. The re-evaluation report does not reconcile this difference. **Ex. C., Reevaluation Report, Wagner Middle School, School District of Philadelphia, April 25, 2014 at 2.**

15. In order to assess Antonio's progress in literacy at that time, Antonio was given both the Gates MacGintie and the Woodcock Johnson Reading Mastery Test. His total test grade equivalent for the Gate MacGintie, a curriculum based measurement, was 6.6. But on the more sensitive individualized Woodcock Johnson Reading Mastery Test, Antonio's reading skills were still far below the end of seventh grade level as reported below:¹

Basic Skills 2.6
Reading Comprehension 3.6
Total Reading 3.1
Word Identification: 3.6
Word Attack: 1.5
Listening Comprehension 8.8
Word Comprehension: 3.5
Passage Comprehension: 3.6
Oral Reading Fluency 3.3
Id. at 3.

16. Antonio, a child with basically about average intelligence (50% percentile) had no reading skills even near the 50th percentile. Word attack, and basic reading skills were far below the 50%. His listening comprehension, however, was above grade level – 8.8 – which shows that Antonio's ability was commensurate with at least

¹ The "standard scores and percentiles" were not provided in the testing results given to the parents and the parents seek those records, including the testing protocols.

average intelligence. Because of Antonio’s average intelligence, it appears he may have become a “sight word reader.” If he saw words that he knew a sufficient number of times, his average intelligence helped him to remember those words. But if he did not know the word, it appears that Antonio lacked basic reading skills to be able to phonetically “sound out” or learn new words.

17. Based on these results, the District found that Antonio continued to be eligible for special education in both math and reading because of the significant discrepancy between Antonio’s evidence of potential higher intellectual functioning, which extends upward to the average range, and his low achievement scores in reading and math. **Id. at 7.**

D. OVERBROOK HIGH SCHOOL (2015-2016 to Current Year, 2018-2019)

18. For the past four years, Antonio has attended Overbrook High School in the School District of Philadelphia. Each year, Antonio has been designated as a student with a Specific Learning Disability. Each year, Antonio was to be receiving special education and specially designed instruction to meet his unique needs. His IEPs generally provided him 450 minutes (7.5 hours) a week of learning support in the general education classroom. Antonio had regular attendance and good behavior at Overbrook. Despite this, and although Antonio will be graduating in May of 2019, he lacks the necessary academic skills and vocational skills to move forward successfully into postsecondary education.

19. As a tenth grader, on April 3, 2017, the District reevaluated Antonio. The reevaluation listed his scores from the WRAT 4, which remained significantly below grade level. The "standard scores and percentiles" were not provided in the testing results given to his parent and his parent is seeking those records. The information provided shows

Basic Skills 2.6
Reading Comprehension 3.6
Total Reading 3.1
Listening Comprehension 8.8
Word Comprehension 3.5
Passage Comprehension 3.6
Oral Reading Fluency 3.3

20. Based on the District’s own testing, Antonio’s total reading score of grade 3.1 in seventh grade remained the same three years later in tenth grade, a 3.1.

21. While the 10th grade reevaluation had Antonio’s math grade equivalent as 12, this information was incorrect. The reevaluation listed multiplication and division as Antonio’s weakest skills. In addition, the District found Antonio was still eligible for special education as a student with a specific learning disability in math (as well as reading) based on the reevaluation. **Ex. D. Reevaluation Report,**

Overbrook High School, School District of Philadelphia, April 3, 2017 at 5-6. It is not clear that Mr. Spence understood this discrepancy at the time he received the re-evaluation.

22. Most significantly, Antonio’s 2018-2019 IEP, illustrated he was performing far below grade level in math. “Given a math common core Easy CBM probe on grade level 7.1, Antonio will score 20 out of 30 from a baseline of 17 on 3 out of 4 trials by 1/21/2019.” **Ex. E. Individualized Education Program, Overbrook High School, School District of Philadelphia, Jan. 22, 2018 at 18 .**
23. Antonio was not only below grade level in math, but progress monitoring reports showed that he was regressing. **Ex. F. Progress Monitoring Report, Overbrook High School, School District of Philadelphia, Jan. 22, 2018 at 2.** Despite this regression, the District did not make any changes to Antonio’s IEP in math.
24. Antonio’s literacy goal in the 2018-2019 IEP was
- “Given direct instruction in the writing process, Antonio will write an informational essay on a topic of his choice that meets the standard of proficient in 3 of the 5 elements of writing on the PA Writing Domain Rubric (Focus, Content Organization, Style and Conventions) in 4 out of 5 trials by 01/21/2019.”
- While this goal, may have allowed Antonio to practice his writing skills, it did not address his reading needs.
25. Antonio’s 2018-2019 IEP states that Antonio does not require transition services. **Ex. E., IEP at 7.** The same IEP states that Antonio had a 99 score in SAT Prep although he would later get total scores of an 800 and 810 on the SAT. Antonio’s grades were reported as in the 90’s except for Chemistry (a 75) and History (an 85). He was reported to be scoring A’s in both English and Math.
26. During his four years of high school, Antonio was provided a modified curriculum to meet his specific academic needs and thus his “grades” cannot be compared to traditional classroom grades. See *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 568 (2010).
27. It is not clear if a transition evaluation was completed. Antonio does not recall taking a transition evaluation. Mr. Spence recalls taking only one parent survey about Antonio’s life after school and recalls it was early in Antonio’s high school career. Outside agencies do not appear to have been invited to the IEP meetings. The 2018-2019 IEP offered Antonio minimal hours of assistance for transition services.
28. Antonio has never held a job.

29. In Antonio’s most recent Individualized Education Program (IEP), which was dated April 26, 2019, Antonio took the WRAT-5 for math. It measures and monitors fundamental math skills. For math computation, Antonio scored a raw score of 34 or grade equivalent of 5.7. No other math specific scores of the WRAT were reported in the IEP. **Ex. G. Individualized Education Program, Overbrook High School, School District of Philadelphia, April 26, 2019 at 17.**
30. In April, 2019 Antonio also completed the WRAT 5 for literacy. The WRAT assesses Word Reading, Spelling and Sentence Comprehension. The test does not appear to provide subtests that would measure Antonio’s basic reading skill instruction and word attack or the subtests were not given that would measure Antonio’s basic reading skills and word attack. Antonio’s scores were as follows:
- Word Reading 5.0
Spelling 3.9
Sentence Comprehension 10.0
Id. at 15.
31. As he was completing 10th grade, Antonio’s sight word reading was at just the 5th grade level while his ability to understand (sentence comprehension) was spot-on grade level. His basic reading skills were not measured in April 2019, but likely had not improved.
32. During his time at Overbrook, Antonio was never recommended for Extended School Year services and Parent was never informed about the possibility that Antonio could receive services during the summer.
33. During his time at Overbrook, Antonio was not provided any meaningful program of transition services. For example, Antonio did not receive extended time on the SAT because he did not know he had to apply for accommodations through College Board, the administrator of the SAT. College Board recommends that students apply through their school for accommodations. This service was particularly important given that as part of his IEPs throughout high school, Antonio was given extended time across all environments. **Ex. F at 21.**
34. No transition services were listed in Antonio’s April 2019 IEP. The measurable annual goal related to post-secondary education was “Given Antonio’s interest in going to college, Antonio will take steps to prepare for post-secondary education (financial aid, deadlines recommendations with a baseline of 0.” **Id. at 19.** This goal was not appropriate because it did not address Antonio’s need to apply for accommodations on the SAT or apply to disability services to receive accommodations in college.
35. Antonio was not familiar with the process of applying for accommodations at the college level or that every institution has a disability office. If Antonio or his father

had known about this process, they would have asked for extended time or other accommodations on the SAT test.

36. While Antonio took the Standardized Achievement Test (SAT) twice, he could not correctly answer most of the questions on the math portion of the SAT as shown by his scores of 390 and 420. He also scored poorly on the reading section 420 and 380. **Ex. H Standardized Achievement Test Scores.** Antonio's total scores of 800 and 810 put him in the 14th and 16th percentiles nationally.²
37. Antonio applied to three colleges: Community College of Philadelphia, Chestnut Hill College and Holy Family University. His admission status is unclear at this time.
38. On May 23, 2019, the Parent requested an Independent Educational Evaluation via email to the District. One piece of information critically needed is information and recommendations about the types of assistance and accommodations Antonio needs as he prepares to go from high school to college.
39. There is no dispute that Antonio has been and continues to be a student protected by the Individuals with Disabilities Education Act ("IDEA") and Chapter 14 and that he has been and remains entitled to an IEP that provides him with a free appropriate public education designed to result in meaningful educational benefit.
40. It appears that throughout the years, the parents were not provided Notice of Procedural Safeguards and were ill-informed of their rights as parents. This significantly infringed upon their meaningful participation in the IEP process throughout the years, leading to impeding and denying Antonio a free appropriate public education. Mr. Spence's rights and Antonio's rights are being infringed still as they do not apparently have all of his educational records, as they should.

III. CLAIMS

A. Individuals with Disabilities Education Act, 20 U.S.C. §§1400*et seq.*, and 22 Pa. Code Chapter 14

41. The District has denied Antonio a free appropriate public education designed to meet his unique educational needs. Although Antonio expects to accept his diploma, Antonio does not have the necessary academic skills to succeed in a postsecondary institution and has no work/employment experience.
42. Since the District evaluated Antonio on multiple occasions, the District was aware of the severity of his specific learning disability and should have planned

² These percentiles can be found at <https://collegereadiness.collegeboard.org/pdf/understanding-sat-scores.pdf>

accordingly by providing him more intensive specially designed instruction in reading and math.

- 43. The District has failed to individually design a program of education for Antonio that is designed to meet Antonio's unique educational needs and as a result, Antonio will be graduating with skills far below his grade level and cognitive ability level. He was, in essence, socially promoted.
- 44. Antonio's parents were not fully informed of their rights, did not receive a Notice of Procedural Safeguards at all times as required, and Mr. Spence was unaware of Extended School Year or that Antonio could be eligible for it. Antonio likewise (as a transition age student) was unaware of his rights.

B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and 34 C.F.R. § 104; Americans with Disabilities Act as amended, 42 U.S.C. §§ 12101 et seq.; and 22 Pa. Code Chapter 15

- 45. Antonio is a qualified individual with a disability as that term is defined under 504 and the Americans with Disabilities Act, and Chapter 15. There is no dispute that he has a specific learning disability that impacts major life activities of learning, reading, and comprehending.
- 46. The School District of Philadelphia is subject to Section 504, the Americans with Disabilities Act, and Chapter 15.
- 47. The District has failed to provide Antonio with meaningful access to the same educational opportunities that other non-disabled students have had access to, including but not limited to, access to the general curriculum, including reading, writing and math, as well as transitional and vocational programming.

C. Request for Educational Records

- 48. This complaint is being filed based on the information that the parent currently has. The parent went to the School District headquarters (440 N. Broad Street), requested all of Antonio's records from the District, and received records on April 26, 2019. However, there appear to be "gaps" of **entire years** where the parent did not receive any records. There should be an IEP for each year, and 4 progress reports (one for each quarter) for each year. There should be a 3 year re-evaluation for 5th grade, 8th grade and 11th grade.
- 49. The parent and the student have the right to receive all educational records prior to a due process hearing. 20 U.S.C. §1232g; 34 CFR Part 99, 20 U.S.C. §1417(c), 20 USC §1415(a)(b)(1) and 34 C.F.R. §§300.613, 300.611(b) and 20 U.S.C. §1243(g)(a)(4)A), 20 U.S.C. §1232(h) and 34 C.F.R. §99.3. 22 Pa. Code Chap. 14, 14.162(j). Educational records include all instructional materials, including teacher's manuals, films, tapes or other materials. It includes correspondence and

emails between the parties. *Belanger v. Nashua Sch. Dist.*, 856 F. Supp. 40 (D.N.H. 1994)

The parents' request for records includes:

- A. a list of all records kept, location of same and documentation of individuals accessing same
- B. disciplinary records
- C. attendance records
- D. any screening, evaluation, or formal testing (including RTI testing and screening)
- E. progress reports, goals and objectives reports, including data sheets, report cards, testing protocols
- F. any documents related to child's IEPs, notes of observations, video and videotapes, NOREPs
- G. in-service training conducted and attended by school employees
- H. all research supporting any methodologies used by the school to teach Antoine to read
- I. results of any curriculum based reading and spelling tests and math tests completed
- J. any testing protocol specific to a transition assessment (if one was done).
- K. any request for reasonable accommodations form or document provided to request accommodations on student's behalf for SAT
- L. the years only of any Notice of Procedural Safeguards forms provided to the parent

50. Should the District fail to provide the records, the parents' reserve the right to ask the hearing officer to consider the failure to provide the records as an additional violation.

D. Relief Demanded

Based on the information they currently have, Antonio Williams-Spence, by and through his father, Antonio Spence Sr., respectfully requests the Office of Dispute Resolution to immediately assign an available Hearing Officer to conduct a due process hearing in this matter and award the following relief:

1. Find that the District has denied Antonio a free appropriate public education throughout his four years at Overbrook High School and potentially even further back, depending on the educational records eventually produced by the District.
2. The parents request the Hearing Officer to schedule a date for a "knew or should have known hearing" if necessary to establish the parent's lack of knowledge about: 1) specially designed instruction; 2) ESY, 3) transition services and 4) information provided or not provided consistent with the IDEA. The parent intends to contest the denial of FAPE and requests appropriate services as a remedy in accordance with *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015).

3. Order the District to pay the cost of an Independent Educational Evaluation, including the cost of the evaluator's testimony at the hearing.
4. Award Antonio compensatory education in accordance with *G.L. v. Ligonier* at 1000 hours per year and at an hourly rate commensurate with rates in the community for qualified tutors and other providers. The IHO should permit Antonio to use the compensatory education for tutors, and other related assistance, including remedial course work and both non-matriculating and matriculating courses at postsecondary institutions and/or technical schools of his choice.
5. Any and all other appropriate relief.

E. Non-Waiver of Timeline for Completion of Hearing

The Parent hereby gives notice that he requests the hearing in this matter to be completed within the timeline required by the IDEA, and Chapter 14, and that he does not waive the right to a full and fair impartial hearing before an available hearing officer.

F. Notice of Potential Attorneys' Fees

The Parent and his counsel hereby give notice that to the extent that they are a prevailing party in this matter, they will seek full payment of attorneys' fees and recoverable costs as permitted by 20 U.S.C. § 1415(i)(3).

May 30, 2019

Respectfully Submitted,

/s/ Darlene J. Hemerka

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