

This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of LD the document.

Student LD
Name of Child

Xx/xx/xx
Date of Birth

7944/07-08 LS
ODR File Number

September 12, 2007
Date of Hearing

Closed Hearing

Parties to Hearing

Parents
Mr. & Mrs.

Date Transcript Received:
September 14, 2007

School District
Patricia Mueller
Supervisor of Special Education
Central Bucks School District
16 Welden Drive
Doylestown, PA 18901

Date of Decision
September 19, 2007

District Representative
Scott Wolpert, Esq.
400 Maryland Drive
PO Box 7544
Fort Washington, PA 19034

Kenneth Rose
Hearing Officer

Background

The student is a xx year-old resident of the school district. He is identified as an eligible student with a Speech/Language (S/L) based disability. The student entered the school district during third grade as a regular education student. In March 2006 he was evaluated and found eligible as a student with S/L based disability. An Individualized Education Program (IEP) was developed. Early in fourth grade the parents desired to remove the student from special education. Due to behavior problems and increased speech needs the school district desired to add additional speech services and a Behavior Improvement Plan (BIP) to the student's IEP. The parents are opposed to these IEP additions.

The school district sought this due process hearing to have the Hearing Officer resolve the impasse.

Stipulations

1. The student's date of birth is xx/xx/xx.
2. The student is currently in a resource learning support class for reading, writing and math. The balance of the school day he is in regular education.
3. The student receives S/L services.
4. The student is a resident of the school district.

Findings of Fact

1. After the student entered the school district, it became clear to the staff that the student was having academic problems. (NT-74)
2. The initial Evaluation Report (ER) of March 2, 2006 identified the student with Speech or Language Impairment and in need of specially designed instruction (SDI) in reading, language arts and math. Also, he needed S/L therapy. (NT-32, 33; S-1)
3. An IEP was developed March 13, 2006. The IEP had present levels of academic achievement, present levels of functional performance, measurable goals and objectives for reading, written language, math and auditory processing. These were supported by program modifications and SDIs.

By way of a Notice of Recommended Educational Placement (NOREP) the student was placed in resource learning support (LS). The parents approved the placement. (NT-35, 36; S-2, S-3)

4. The student's LS teacher is an experienced teacher. She has had the student since he was identified as in need of special education and placed in LS. (NT-19, 21, 24)

5. The student's LS teacher has a classroom-wide behavior system that utilizes incentives. (NT-60)

6. The LS class has an aide. (NT-54)

7. In third grade there was regular communication with the parents, mostly the father. The mother became more involved in fourth grade. (NT-28, 29)

8. The LS teacher monitors the student's progress and behavior in his regular education classes. The student receives instruction in reading, writing and math in the LS classroom. He is in regular education class the remainder of the school day. (NT-22, 24)

9. At the request of the parents, in fourth grade home-school communication increased by way of a communication book and later by email. The parents did not always read these. The LS teacher maintained a written and email communication system with the parents. The student's misbehaviors were included in the reporting. (NT-29, 68-70, 87; S-23)

10. The student's teacher is in frequent contact with his other teachers and staff. (NT-63)

11. The student has had problems with peers since he started in the school district. (NT-26)

12. During fourth grade the student's disruptive behaviors escalated. These included name calling, threats to peers and younger students, challenging peers and younger students, inappropriate comments, pushing other students and hitting other students. He has thrown desks and chairs.

His behaviors inhibited his learning and interfered with other students' learning. These behaviors occurred throughout the school day. (NT-47-55, 72, 73, 76, 110)

13. At the parents' request an IEP meeting was held October 23, 2006 to review their request for the student to be removed from special education. The parents refused to sign the attendance page, but were present. The school district presented their case for continuing special education. The school district worked to increase S/L therapy, but the parents refused. A NOREP was issued for the continuance of present program and

placement. The parents did not respond to it. (NT-27, 28, 40-42, 82, 83, 84, 89, 90; S-6, S-7)

14. On March 9, 2007 an IEP was developed. The parent was present. Achievement and functional performance levels were updated. There continued to be goals for reading, written language, math and auditory processing. Behavioral goals were added in areas of peer interaction and disruptive behavior. A BIP was included in the IEP. Program modifications and SDIs were expanded. Speech therapy was increased to two sessions a week. (NT-43-46, 57, 90, 91, 92, 93; S-10)

15. The student's inappropriate behaviors impede his academic progress. The BIP has incentives to help improve the student's behavior. (NT-61, 62, 92; S-10)

16. To help facilitate the IEP meeting of March 9, 2007, the father was sent a draft copy ahead of time. (NT-66)

17. At the IEP meeting of March 9, 2007 it was difficult to keep the father focused on the issues at hand. (NT-66, 67)

18. The parents oppose a BIP for the student. (NT-95)

19. The student's teacher has charted his behavior. (NT-65, 72; S-22, S-24)

20. The proposed increase in therapy in the March 9, 2007 IEP is to address the parents' concern over possible stuttering. (NT-111)

21. The student is making progress in reaching his IEP goals. Progress on the IEP was reported regularly to the parents. (NT-36, 37, 43, 75, 76; S-4, S-9)

22. The school district offered to meet a second time with the parents to discuss the March 9, 2007 IEP. There was concern by the school district that the entire IEP hadn't been discussed. The parents did not respond to the request.

Another failed attempt was made April 10, 2007. Another NOREP was issued, but not responded to.

Mediation was offered to the parents.

On May 24, the school district again attempted to set up a meeting with the parents to resolve the IEP issues. (NT-95-102; S-12, S-14, S-15, S-16, S-17, S-19)

23. The IEP of March 9, 2007 has not been implemented because of the parents' opposition to it. (NT-72)

24. Currently the student is in fifth grade under his pendent October 23, 2006 IEP. (NT-31, 32; S-6)

25. The school district opines that the parents do not trust the school district.
(NT-110)

Issue

1. Is the IEP of March 9, 2007 appropriate?

Discussion and Conclusions of Law

The parents did not attend the hearing. They were notified of the hearing by way of the Due Process Hearing Notice(s) of August 1, 2007 and August 14, 2007 of the time and place of the hearing. The Hearing Officer notified the parents in writing by letter on August 1, 2007 of the hearing and its time and date. On August 14, 2007, the parents were notified of the continued time and date of the hearing. As late as September 8, 2007 the school district was in telephone conversation with the parents concerning the due process hearing. On the morning of the hearing, when the parents did not arrive, the Hearing Officer telephoned the cell phones of both parents. The calls were not answered. Voice mail messages were left informing the parents the hearing would start at ten o'clock. The Hearing Officer called the ODR case manager to see if the parents had contacted her. They had not. The Hearing Officer checked his answering machine at his office to see if a message was left by the parents. There was none. The Hearing Officer decided to proceed with the hearing absent the parents.

The student entered the school district during third grade. When it became evident the student was having academic problems he was evaluated (FF 1, 2). The student was found to have S/L impairment and in need of SDIs in reading, language arts and math (FF 2). Also, speech therapy was needed (FF 2). On March 13, 2006 an IEP was developed to which the parents agreed (FF 3). The student was placed in a resource learning support class for reading, writing and math (FF 3). The class had an aide and a classroom-wide behavior plan (FF 5, 6). The student attended regular education classes (FF 7). There was regular communication with the parents (FF 4, 9, 10).

During third grade and into fourth grade, there were escalating behavior problems. These included name calling, threats to peers, hitting other students, inappropriate comments, pushing other students and throwing desks and chairs (FF 11, 12). Due to these issues the school district added a BIP in the student's March 9, 2007 IEP (FF 14). The March 9, 2007 IEP updates the levels from the previous IEP; revises the academic goals; increases speech therapy to two sessions a week; revises the program modifications and SDIs; adds behavior goals and SDIs; and adds a BIP (FF 14).

To facilitate the March 9, 2007 IEP meeting the parents were sent a draft copy (FF 16). The school district reports it was difficult to keep the father on task at the meeting (FF 17). The parents did not return the NOREP. The parents did not approve the BIP (FF 18).

After a meeting between the school district officials and the parents on March 15, 2007, the school district recognized that not all areas of the IEP were reviewed on March 9, 2007 (S-12). The parents did not respond to the March 15, 2007 attempt to reconvene the IEP team (FF 22; S-14). From that time forth the parents have not responded to attempts to set up a meeting to resolve the IEP or to have mediation (FF 22).

It is important to note that in October of 2006 the parents requested an IEP meeting to remove the student from special education (FF 13). The team maintained the need for special education. The parents never responded to the NOREP (FF 13).

The student has made progress under his IEPs (FF 21). The parents have been kept informed of the progress and behavior of the student (FF 7; S-4, S-9).

The issue before the Hearing Officer is to resolve the issue over the appropriateness of the March 9, 2007 IEP.

The IDEA requires that FAPE be provided to all students qualifying for special education services. The Supreme Court, in *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), held FAPE is met by complying with IDEA's procedural requirements and by providing individualized instruction and support services to permit a child to benefit educationally from the instruction. This is further delineated in *Rose v. Chester County Intermediate Unit 25*, IDELR 61 (ED. PA. 1996); *Board of Education v. Diamond*, 808 F. 2d 987 (3rd Cir.) and *Polk v. Central Susquehanna I.U. #16*, 853 F. 2d 171, 183 (3rd Cir.) While the law does not require school districts to offer optimal educational programs to maximize the child's potential, this standard is met only when the child's program provides more than a de minimus educational benefit.

34 CFR 300 §320, 321, 322, 323 and 324 establish the requirements for an appropriate IEP. A preponderance of the evidence shows the March 9, 2007 IEP is appropriate. The IEP recognized the academic needs of the student and addressed them. Of importance is the attempt of the school district through behavior goals, SDIs and a BIP to address the student's escalating behavior needs. The school district also addressed the parents' concern over a possible speech stutter by increasing speech therapy. The school district has met its duty.

Without the parents' participation it is not possible for the Hearing Officer to judge the reason for the parents' distrust of the school district. It is hoped this can be bridged and a cooperative effort between the school district and the parents be forged for the benefit of the student.

Of concern to the Hearing Officer are the escalating behavior problems of the student. This needs to be better understood. A reevaluation of the student is needed. This should include a Functional Behavioral Assessment (FBA). At the hearing the school district indicated a willingness to do this. They even suggested an independent FBA. I am ordering a reevaluation of the student that includes an FBA.

The LEA is ordered to take the following action

1. The March 9, 2007 IEP is to be implemented immediately.
2. The school district will complete a reevaluation of the student. The reevaluation will include a FBA.

Date

Kenneth Rose
Hearing Officer