

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

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: J.W.

Date of Birth: [redacted]

Dates of Hearing:
December 23, 2010
January 25, 2011
March 15, 2011

CLOSED HEARING

ODR Case # 01706-10-11-AS

Parties to the Hearing:

Parent[s]

Sto-Rox School District
600 Russellwood Avenue
McKees Rocks, PA 15136

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Aimee Zundel, Esquire
Law Offices of Ira Weiss
445 Fort Pitt Boulevard
Suite 503
Pittsburgh, PA 15219

March 15, 2011

March 30, 2011

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is an elementary-school age student residing in the Sto-Rox School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹. The student has been identified as a student with an other health impairment (“OHI”) and attends a private placement. The District seeks to change the student’s placement, returning the student to a District-based placement. Parent wishes to maintain the private placement.

For the reasons set forth below, I find in favor of the District.

ISSUE

Is the District’s recommended District-based placement appropriate?

FINDINGS OF FACT

1. The student was initially evaluated in September 2008 with OHI. (School District Exhibit [“S”]-7).
2. The student has exhibited consistently defiant behavior, including aggression, in educational and home settings. (S-7; Notes of Testimony [“NT”] at 357-358).

¹ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. 175-176.

3. The student has been in a private placement since 1st grade, the 2007-2008 school year, attending the private placement through 2nd grade (2008-2009) and 3rd grade (2009-2010). (S-3 at page 5; S-11; NT at 33).
4. In August 2010, the District issued a notice of recommended educational placement (“NOREP”) recommending that the student return to a newly-created elementary emotional support classroom in the District. Parent rejected the NOREP. (S-2).
5. The District issued additional NOREPs in September 2010, and the parent requested mediation. The parties could not come to an agreement regarding the student’s placement. (S-4, S-10).
6. The individualized education program (“IEP”) proposed by the District in September 2010 contains three behavior goals. The student would receive math and reading/language arts instruction in an emotional support setting and be included for science and social studies instruction. (S-3, S-4).
7. The emotional support classroom where the student would receive instruction currently has eleven students, a special education teacher and one classroom aide. (S-15; NT at 276-279).
8. The IEP includes a positive behavior support plan, and includes the ability for the student to voluntarily leave a regular education setting if the student needs to maintain appropriate behavior. (S-3 at pages 15, 22-27, S-16; NT at 289-297).

9. The private placement provides services for students with disabilities and regular education students who exhibit disruptive behavior. The student's classroom at the private placement includes thirteen students, a special education teacher and two classroom aides. (NT at 181-183, 253-255).
10. At the private placement, the student has been removed from classes due to disciplinary incidents, which include defiance, disruption, profanity, and aggression. (S-14; NT at 197-200, 258-262).
11. Parent is satisfied with the private placement and vehemently disagrees with a District-based placement. (S-3 at page 6; NT at 377-392).

DISCUSSION AND CONCLUSION OF LAW

To assure that an eligible child receives free appropriate public education,² an IEP must be “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.”³ “Meaningful benefit” means that a student’s program affords the student the opportunity for “significant learning”,⁴ not simply *de minimis* or minimal education progress.⁵

² 34 C.F.R. §300.17.

³ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

⁴ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁵ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

Moreover, both federal and Pennsylvania law, at require that the placement of a student with a disability be in the least restrictive environment (“LRE”).⁶

Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

“Each (school district) must ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled, and...separate schooling...occurs only if 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.”

In this case, the District has proposed an appropriate program and placement. (FF 4, 6, 7, 8). The District’s proposed placement is less restrictive than the current private placement. (FF 6, 9). Even though the student’s mother is in deep disagreement with the District’s recommended placement, as an appropriate placement in a less restrictive environment, the District has the opportunity to implement the program.

The student’s behaviors, however, are deeply problematic. The student has exhibited disruptive behavior since the outset of schooling and has continued to exhibit such behavior, even in a private placement specializing in the education of students with behavior issues. (FF 2, 3, 9, 10).

Even though the District’s proposed program is appropriate, the record supports a finding that the student requires intensive support. As such, the IEP will

⁶ 34 C.F.R. §§300.114-120; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993).

be amended to include a full-time one-on-one aide for the student. Additionally, the transition of the student from a more restrictive setting, where the student has been almost exclusively educated since 1st grade, to a less restrictive setting may present challenges. To accommodate the student's transition, the IEP team will be ordered to meet to design a plan for transitioning the student to the District placement. And to avoid a disruption of the student's school year as it nears its end, the order will include a provision that the student finish the current school year in the private placement.

The record clearly supports a finding that the District should be given the opportunity to implement an appropriate program in a less restrictive environment. But the record also reveals that the student presents quite challenging behaviors in educational settings. To that extent, ultimately the District may find that the student requires more restrictive programming than it will offer. Still, the District has met its burden in proving that its program is reasonably calculated to yield meaningful education benefit in a less restrictive environment.

CONCLUSION

The District's proposed program is reasonably calculated to yield meaningful education benefit in a less restrictive environment than the private placement.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District's program and placement proposed in September 2011 are both appropriate. Within 30 days of the date of this order, the student's IEP team shall meet to design a plan to transition and to acclimate the student to the District's placement. When the student's IEP team meets to consider transition planning for the student, the IEP shall be revised to include a full-time one-on-one aide in the District placement. For the remainder of the 2010-2011 school year, the student shall attend the private placement and shall begin to attend the District placement in the 2011-2012 school year.

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

March 30, 2011