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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION
DUE PROCESS HEARING

Name of Child: R L

ODR #5914/05-06 LS

Date of Birth:
XX-XX-XXXX

Dates of Hearing:
October 26, 2005

CLOSED HEARING

Parties to the Hearing:
Parents

Representative:
Pamela Berger
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Pittsburgh, PA 15211

McKeesport Area School District
3590 O/Neil Boulevard
McKeesport, PA 15132

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Date Record Closed:
Date of Decision:
Hearing Officer:

January 12, 2006
January 12, 2006
Gerald Dambach, Ed. D

BACKGROUND

Student is an xx year old grade 10 student at High School. She is currently diagnosed as Emotionally Disturbed (ED) and placed in an Emotional Support (ES) program. Student is diagnosed with a Major depressive Disorder and an Anxiety Disorder, NOS. She has a history of high absenteeism. A Chapter 15 Service Agreement was implemented on February 14, 2005 and she received a multidisciplinary evaluation on September 8, 2005. The MDE found that she was eligible for Special Education as an ED student.

This hearing was requested by the parent. The focuses of this hearing deal the IDEA Child Find component and also with the Chapter 15 Service Agreement. The parent alleges that the district was not timely in its effort to identify Student as a student in need of Special Education programs and services. The parent also alleges that the Chapter 15 Service Agreement was not appropriate, not implemented and when implemented subjected Student to ridicule. The parent is seeking two years of compensatory education as a remedy.

After discussion with both parties it was determined by this Hearing Officer to limit testimony to prospective issues and not the current IEP developed on October 6, 2005.

FINDINGS OF FACT

1. Student is an xx year old grade 10 student at High School. She is currently diagnosed as ED and placed in an ES program. (NT 3)
2. Student began school in 1993-94 as a Kindergarten student at Elementary. (SD 8)
3. Student was in grade 9 for three years: 2002-03; 2003-04; and 2004-05. (SD 8)
4. During 2003-04 (grade 9) Student had 44 excused absences. (SD 5)
5. During 2004-05 (grade 9) Student had 49 excused absences and 5 illegal absences. (SD 4)
6. During 2005-06 (grade 10), from the beginning of the school year until November 10, 2005 Student had 1 excused absence and 8 unexcused absences. (SD 4)
7. A Chapter 15 service Agreement for Student was developed on February 11, 2005 and implemented on February 14, 2005. (SD 7)
8. At the February 11, 2005 Service Agreement meeting the mother, Parent, agreed with the plan. (SD 7)
9. An Evaluation Report (ER) was developed for Student on September 28, 2005 with a conclusion that he was eligible for and in need of Special Education as an Emotionally Disturbed student. (SD 8)
10. As a result of the September 28, 2005 ER an IEP and NOREP were initiated on October 6, 2005. (NT 29-31)
11. This Hearing Officer determined that no decision or testimony would be taken on the current IEP of October 6, 2005. (NT 31, NT 55)

12. On September 7, 2003 [an incident occurred involving Student.]
13. Student was taken by her parents from school on September 8, 2003 to the [redacted] Hospital and then transported to [redacted] Hospital. She was then evaluated at [redacted] and released on September 9, 2003. (NT 185-187)
14. On September 10, 2003 the parents met with the principal and told him about the [September 7, 2003 incident] and that she would be in treatment. (NT 187-188)
15. In December 2003, Student identified failure in school as a trigger [redacted]. (P 1)
16. Dr. T, Mr. L, Parent, and family met in December 2003 to make arrangements for a decreased school day due to severe anxiety symptoms. The group discussed an IEP or 504 (Chapter 15) plan and agreed on a “school plan.” (P 1, NT 189-190, NT 115-116)
17. On January 13, 2004 Dr. T, psychiatrist, had another meeting with school staff. In attendance were Student, Mrs. Parent, Mrs. L (counselor) and Principal B. They discussed an IEP vs. a 504 plan again. Student was to return to school for two credit childcare course and receive homebound instruction. (P 1, NT 117-118)
18. Homebound instruction was provided on March 15 and 17, 2004 by the district. (SD 11)
19. The mother told the district she did not want homebound to continue since it was making “it worse.” (NT 203)
20. Student stayed home during the remainder of March, April, May, and June 2004 without a homebound teacher. (NT 211)
21. The district’s Child Find procedures include postings on the district website, procedures and policies in the district calendar to parents and statements in a newsletter to the community. (NT 32)
22. In 2004-05 according to Student’s English teacher, math teacher, and social studies teacher she did well in class when present but absenteeism affected her grades. (NT 72, NT 79-81, NT 89)
23. In 2004-05 Student’s English teacher, math teacher, and social studies teacher never denied her access to the guidance office when she was having a panic attack. (NT 73, NT 81-82, NT 90)
24. According to Mr. L, counselor, Student was never not permitted to go to the counselor center. (NT 121)
25. During 2003-04 Student’s teachers deemed her “a capable student when she was in school with the teachers.” (NT 125)
26. According to Ms. T, Supervisor of Special Education, “based on the absences (Student), I wouldn’t expect to see good grades just because she has missed more than a marking period for each of 2003-04 and 2004-05. I would expect to see that reflected in her grades.” (NT 37)
27. On the September 28, 2005 ER the poor math scores on the WIAT were attributed to many absenteeism’s and not a Learning Disability. (SD 8, NT 59)
28. Student had a neuropsychological evaluation by Dr. S on September 23, 2005 (P 4)

29. Dr. S indicated that his report was for therapeutic purposed and not for school purposed. If the evaluation had been done for school purposes it would have been completely different approach taken to the evaluation. (NT 263-264)
30. The February 14, 2005 Service Agreement provided 6 specific accommodations designed to address Student's diagnosis of Major Depressive Disorder and Anxiety Disorder as specified by Dr. T, psychiatrist. (SD 6)
31. Both parties were directed to submit written closing briefs to this Hearing Officer postmarked by December 30, 2005. The date of receipt of the closing briefs will be the termination date for this proceeding. (NT 295)
32. Both closing briefs were postmarked December 30, 2005 and received on January 3 and 4, 2006.

ISSUES

1. Did the School District meet its Child Find obligations in a timely manner in identifying Student for Special Education?
2. Was the Chapter 15 Service Agreement of February 14, 2005 appropriate to meet Student's needs?
3. Was the Chapter 15 Service Agreement of February 14, 2005 implemented?
4. When the Chapter 15 Service Agreement of February 14, 2005 was implemented was Student subject to ridicule?

DISCUSSION AND CONCLUSIONS OF LAW

Student is a xx year old grade 10 student at High School. She currently has an IEP dated October 6, 2005. She is diagnosed as ED and placed in an ES program. This hearing is not concerned with the current diagnosis, IEP, or placement. This hearing focuses on a Chapter 15 service Agreement developed February 11, 2005 in terms of appropriateness, implementation, and ridicule. It also focuses on alleged Child Find delays by the district.

The district in accordance with the United States Supreme Court case in *Schaffer, a Minor by his Parents and Next of Friend v. West Superintendent, Montgomery County schools*, 546 U.S. 1 (2005) raised the issue that the burden of persuasion in Administrative Hearings under IDEA 20 U.S.C. 1400 et seq., lies upon the party seeking relief. The burden of persuasion, in this instance, is upon the parent to establish its claim. (SD 1)

This Hearing Officer indicated that we are going to move forward with this proceeding, and the District will need to present a case first that clearly establishes what they have done and what has been in existence and what is in existence currently. The parent also clearly has a right to attempt to indicate that what the District has attempted to do has been inappropriate. (NT 22)

CHAPTER 15 SERVICE AGREEMENT: APPROPRIATENESS, IMPLEMENTATION, AND RIDICULE

A Chapter 15 Service Agreement for Student was developed on February 11, 2005 and implemented on February 14, 2005. The mother, Parent, signed the Service Agreement indicating that she agreed with the plan. The February 14, 2005 Service Agreement listed six(6) specific accommodations designed to address Student's diagnosis of Major Depressive Disorder and Anxiety disorder as specified by Dr. T, psychiatrist. The accommodations included:

1. For any assignments that she misses due to absence, Student will have to speak to her teachers to get the assignments that she needs to make up.
2. If Student is feeling an anxiety attack coming on, she should be allowed to report to the guidance office so she can calm down.
3. Deal with Student in a positive manner.
4. During homeroom and second period, Student will be able to go to the guidance office and work with the guidance counselor (office aide).
5. Student will have access to the tutoring room during her 7th period class.
6. If Student misses any exams due to absence, she will have 3 days to make up that test. (SD 7)

On September 7, 2003 [an incident occurred involving Student]. Her parents then transported her to the [redacted] Hospital and was then transported to [redacted] Hospital. She was evaluated at [redacted] and released on September 9. As a result of this [incident] she became a patient of Psychiatrist, Dr. T at [redacted]. Since the September 7, 2003 [behavior at] school, family, and Dr. T have been involved in discussions and meetings in an effort to accommodate Student at school. It was not until February 11, 2005 that a Chapter 15 Service Agreement was developed. From September 2003 until February 2005 there were several meetings and discussions between the parties. In December 2003 the parties discussed an IEP or a Chapter 15 Plan, but instead developed an unwritten "school plan" to accommodate her. Another meeting was held on January 13, 2004 when it was determined to reduce her school day to two periods to take a childcare course and then to provide her with homebound instruction.

Homebound instruction was only provided on March 15 and 17, 2004. The mother requested that homebound be discontinued since it was making "it worse." Mrs. Parent was told by Mr. B, to simply keep Student at home during the day for the remainder of the school year. Student did not attend school or receive homebound for the remainder of the 2003-04 school year. She failed grade 9 for the second time. Student also failed grade 9 in 2004-05. She repeated grade 9 three times – 2002-03, 2003-04, and 2004-05.

The parents presented no direct testimony concerning the appropriateness of the February 2005 Chapter Service Agreement. While the parent did not present testimony concerning the appropriateness of the Chapter Service Agreement, Student continued to miss excessive amounts of school and received failing grades.

There was testimony concerning the Chapter 15 Service Agreement in terms of implementation. The parents and Student testified that she was not always permitted to leave class to go to the guidance office when an anxiety attack or panic attack was

imminent. The district teacher and Mr. L, counselor, all testified that Student was not denied the opportunity to leave class and go to the guidance office.

The parent also raised concerns that Student was sometimes ridiculed about her disability and dress in school. While there was some [hearsay] testimony concerning inappropriate dress, there was no direct confirmation.

CHILD FIND

The district testified that it had met Child Find obligations by providing public awareness activities such as postings on the district website, procedures and policies in the district calendar to parents, and statements in a newsletter to the community. These activities clearly meet the district's Child Find obligations according to 22 PA Code Chapter 14.121. These activities do not, however, meet the district's obligations under Chapter 14.122(a))b)(c)(d)(e) – Screening.

Student has repeated grade 9 three (3) times – 2002-03, 2003-04, and 2004-05. Student [engaged in behavior] in September 2003. Since that [behavior] there has been ongoing discussions and meetings between the district, Student, her parents, and her psychiatrist, Dr. T. Those meetings were to attempt to develop and provide success for Student in school. Dr. T constantly requested an IEP or a Chapter 15 Service Agreement. It was not until February 2005 that a Service Agreement was developed.

During 2003-04 Student had 44 excused absences and failing grades. In 2004-05 Student had 49 excused absences and 5 illegal absences. There was significant testimony by Student's teachers that she did well in school when present, but absenteeism affected her grades. According to Ms. T, Supervisor of Special Education, "based on the absences I wouldn't expect to see good grades just because she has missed more than a marking period for each of 2003-04 and 2004-05. I would expect to see that reflected in her grades." Student also performed poorly in math on the WIAT during the September 28, 2005 Multidisciplinary Team evaluation. The poor math scores were attributed to absenteeism.

Student is a student who has anguished through three (3) years in grade 9. She had failing grades and excessive absenteeism. The district was not proactive in attempting to find a solution to Student's failure. It took from September 2003 until September 2005 for the district to complete a multidisciplinary team evaluation. During the September 2005 evaluation the district did not complete any curriculum-based or performance-based assessment, not did they do a systematic observation of the student's behavior in the school, or a functional behavioral assessment.

While the February 2005 Service Agreement was an attempt to provide accommodations for Student, it was never updated. There were also indications that it may not have been fully implemented. It should also be noted that when homebound instruction was recommended it was delayed in starting and only lasted two (2) days. Student was not in school during part of March, April, May, and June 2004. The district did not meet its Child Find/Screening obligations according to 22PA Code 14.122.

ORDER

It is hereby order that:

1. The School District shall provide Student with two (2) years of Compensatory Education for a total not to exceed 2160 hours. (180 days x 6 hours/day x 2 years = 2160 hours)
2. The Compensatory Education is to supplement, not supplant a free appropriate public education. The hours are available to Student until she becomes 21 years of age.
3. The parents may choose how to use these compensatory education hours – tutoring, counseling, or vocational-technical education. The costs may not exceed the prevailing rate for the metropolitan Pittsburgh area. The School District must pre-approve expenditures in relation to local prevailing rates.

Submitted by,

Gerald Dambach, Ed.D
Hearing Officer
January 12, 2006