

*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 the document.*

File No. 5958/05-06 LS

K.D.

Date of Birth: xx/xx/xx

Dates of Hearing: November 30, 2005  
December 1, 2005  
January 17, 2006  
January 18, 2006  
January 31, 2006

CLOSED HEARING

Parties to the Hearing:

Parents:

Parent(s)

District:

Harbor Creek School District

Date Transcript Received:

February 3, 2006

Date Briefs Received:

February 13, 2006

Date of Decision:

February 16, 2006

Gerald Dambach, Ed.D

Hearing Officer

## **BACKGROUND:**

Student is xx year old grade 5 student who currently attends the [Redacted] Charter School. Student began attending the Charter School in November 2005. Previously student was a Student in the Harbor Creek School District. Student's last day at Harbor Creek was October 24, 2005. While at Harbor Creek Student was a grade 5 student at Elementary where Student was placed in a Learning Support (LS) program as a Mentally Retarded (MR) student.

On November 2, 2005 the parent representative, Pamela Berger, Esq., submitted a request to the Harbor Creek School District requesting a special education due process hearing. Attorney Berger made 11 specific claims and as a remedy was seeking one year of compensatory education and that Student be provided with appropriate behavioral supports and social skills training. (HO 1) The 11 specific claims basically deal with three broad-based issues: suspension; behavior plan; and IEP including speech, social skills, behavior plan, and implementation of an IEP that was not approved by the parent.

## **FINDINGS OF FACT:**

1. Student is a xx year old grade 5 student who resides in the Harbor Creek School District and who began attending the Charter School in November 2005. (NT 3, NT 818-819)
2. Prior to enrolling in the Charter School, Student attending Elementary in the Harbor Creek School District. Student was placed in a LS program with an educational diagnosis of MR. (NT 3, SD 2, SD 9)
3. Student had genetic testing in Pittsburgh where it was found that Student has an unusual chromosome 7 [redacted]. This condition is best termed Trisomy-7p. Individuals with this genetic disorder are all developmentally delayed. Student's delay is mild. (SD 17, SD 1)
4. In April through August 2001, Dr. B completed a pediatric neuropsychological assessment of Student. Student's full scale IQ score was 58. Dr. B feels that Student's difficulties are more due to Mental Retardation (MR) than Pervasive Developmental Disorder (PDD). (SD 17)
5. On January 14, 2004 the district completed a reevaluation Evaluation Report (ER). The ER concluded that "Student continues to be eligible for and in need of LS, the related services of Speech and Language Support, PT and OT to be successful within Student's educational environment." (SD 1)
6. Both parents, signed the January 14, 2004 ER indicating agreement. (SD 1)
7. On November 15, 2004 Mr. N, Educational Consultant from IU 5, made a classroom observation of Student at the request of Parent [who] was concerned about Student's performance in science and social studies (regular education). Mr. N concluded that the adaptations and modifications listed on the IEP were appropriate. He also concluded that the team (IEP) consider if Student might benefit from accessing a curriculum that more accurately reflects Student's current level of performance (life skills curriculum) for at least part of Student's school day. He stated that the extreme nature of the behaviors may very well be beyond the capacity of any elementary school. (SD 14, NT 299, NT 287-301)

8. An IEP was developed for Student on November 23, 2004 (grade 4). This IEP placed Student in LS for 47% of the day for Language (Reading, spelling, English) and math. Student also received 50 minutes/week (two 25 minutes sessions) of pull-out Speech and Language Support. Student received both Occupational and Physical Therapy two (2) times per month. (SD 2)
9. The November 23, 2004 IEP includes instruction in social skills and has a behavior plan. (SD 2)
10. On December 3, 2004 the Parent, signed a NOREP approving the November 23, 2004 IEP.
11. An IEP was developed on September 15, 2005 with IEP meetings on June 1, September 7, and September 15, 2005. This IEP was based upon a revision of the May 5, 2005 IEP draft (SD 6). The September 15, 2005 IEP placed Student in LS for 47% of the day for Language (Reading, spelling, and English) and math. Student received 25 minutes/week (one pull-out session) of Speech and Language Support. Student also received one consultation session/month of both Occupational and Physical Therapy. (SD 9)
12. The September 15, 2005 IEP included instruction in social skills and had a behavior plan. (SD 9)
13. On the September 15, 2005 IEP there were several hand-written changes to the typed IEP. These changes were reflected in: speech; math; behavior plan; and frequency of speech, OT, and PT. All the changes were initialed by the mother (xx) and the district (xx). (SD 8, SD 9)
14. A Functional Behavior Assessment (FBA) was completed in December 2001 by Ms. E, Behavior Specialist for IU 5. (SD 10)
15. The FBA was completed in September 2001 through December 2001. (SD 10, SD 11)
16. The December 2001 FBA collected data in October 2001 on three inappropriate behaviors: aggression toward others; non-cooperation with work and teacher demands; and negative comments to others. (SD 10)
17. The function of Student's inappropriate behavior according to the FBA was task avoidance. (SD 10, NT 145, NT 541)
18. From September 15, 2005 to October 19, 2005, Ms. E collected data from Student's current teachers and again concluded that the inappropriate behaviors were in order to escape a task. (SD 12)
19. Ms. E did not believe that it was necessary to repeat the FBA in June 2005. (NT 144)
20. On October 7, 2005 Student exhibited inappropriate behavior for which Student was suspended for five (5) school days. (NT 206-215)
21. On October 7, 2005 a Manifestation Determination meeting was held that determined that Student's behavior was not related to Student's disability. (SD 13)
22. The parents did not attend the October 7, 2005 Manifestation Determination meeting although they were invited. On October 12, 2005 the parents indicated that they did not agree with the determination. (SD 13)
23. On October 25, 2005 the district received a letter from Ms. Z, Special Education Advisor for the Pa. Department of Education, approving the

- suspension of Student on October 7, 2005 for a maximum of 5 school days. (SD 19)
24. Student received TSS services from [Redacted] Behavior Health services from January/February 2003 through December 2004. The basis for the wraparound services was Pervasive Developmental Disorder, NOS and Disruptive Behavior Disorder, NOS. (P18, NT 721-723, NT 522-523)
  25. On December 8, 2004 [an incident occurred], and TSS services were terminated one (1) week later. (NT 723)
  26. Wraparound treatment plan meetings were held at Student's school and were attended by district personnel. (NT 532)
  27. Treatment plan recommendations were addressed and incorporated into the behavior plan (IEP) (NT 547)
  28. On May 17, 2005 the district issued a Permission to Evaluate for Student to the parents. The parents objected to the proposed reevaluation on May 18, 2005. Among the assessment procedures was a Psychiatric evaluation. (P 14, NT 730-731)
  29. On October 7, 2005 while Student was in time-out Student was not restrained. (NT 454-455)
  30. Parent agreed to reduce Student's pull-out individual Speech and Language sessions from two sessions/week to one session/week. This was for the 2005-06 school year. (NT 110, SD 8, SD 9, NT 742)
  31. On the September 15, 2005 IEP it is indicated that academically Student struggled with below average grades in LS classes. Behaviorally, Student has also had a difficult year. (SD 8, SD 9)
  32. According the September 15, 2005 IEP Student is not showing adequate progress in Student's present placement. Student's academic needs cannot presently be met solely through LS. (SD 8, SD 9)
  33. Both parties were to mail closing briefs to this Hearing Officer postmarked by February 10, 2006. Receipt of the closing briefs would constitute the conclusion of this hearing. (NT 857-858)
  34. Both parties closing briefs were postmarked on February 10, 2006 and received by this Hearing Officer on February 13, 2006.

**ISSUES:**

1. Did the School District comply with state and federal regulations concerning Student's five day suspension on October 7, 2005?
2. Were Student's behavior plans for the 2004-05 and 2005-06 school years appropriate?
3. Did Student's 2004-05 and 2005-06 IEPs appropriately address speech/language and social skill goals?

## **DISCUSSION AND CONCLUSIONS OF LAW:**

Student is xx year old grade 5 student who currently attends [a] Charter School. She began attending the charter school on November 2005. Student is a resident of the Harbor Creek School District. Student attended Harbor Creek prior to enrolling in the Charter School. While at Harbor Creek Student was a grade 5 student at Elementary. Student was placed in a LS program as a MR student.

At the beginning of this proceeding the district raised the issue of burden of proof and the parent going forward with the evidence based upon the Schaeffer v. Wiest U.S. Supreme Court decision. The parents requested this hearing. This Hearing Officer indicated that the district would present their case first but that it is clearly the parents' responsibility to move forth with the burden of proof or the burden of persuasion that what the district is providing is or is not appropriate. (NT 12-13)

Student's educational placements consisted of:

1998-99 – [Redacted] Preschool at the [Redacted] Center

where Student received Early Intervention (EI) services through IU 5.

1999-00 – Kindergarten, [with] additional year of EI at [Redacted] Center.

2000-01 – Life Skills Support (LSS) program at [Redacted] with inclusion in kindergarten.

2001-02 – Learning Support (LS) at Elementary with inclusion in Grade 1

2002-03 – LS at Elementary with inclusion in Grade 2.

2003-04 – LS at Elementary with inclusion in Grade 3.

2004-05 – LS at Elementary with inclusion in Grade 4.

2005-06 – LS at Elementary with inclusion in Grade 5.

October 24, 2005 – last day of enrollment at Elementary

November 2005 – enrollment in the Charter School

A request for a change of placement from LSS to LS in 2001-02 was made by the parents.

### **FIVE DAY SUSPENSION October 7, 2005**

The parent's complaint in due process contained in Attorney Berger's letter of November 4, 2005 (HO 1) raised four issues with regard to the October 7, 2005 suspension. The parent alleged that:

- Student's behavior on October 7, 2005 was a manifestation of Student's disability; the manifestation determination made by the district is flawed substantively.
- The manifestation determination was made with (without) the participation of Student's parents and is flawed procedurally.
- Student was improperly suspended and denied educational services.
- Student was improperly restrained on October 7, 2005 and no IEP meeting was convened as a result.

On October 7, 2005 Student demonstrated inappropriate behaviors in the LS classroom in that Student refused to participate in an academic task. Student started throwing things and clearing the table and Student was using inappropriate

language. Student would not leave the LS room when requested and Student's behavior continued to escalate. Student was removed to a "time-out" room. In the time-out room Student's behaviors continued to escalate – [redacted]. The Principal called Student's mother and also called Officer H. The building C.A.T. team was called in to provide assistance. The parents alleged that Student was restrained and bruised. Mr. L, counselor, testified that Student was not restrained by anyone present in the time-out room. (NT 454-455) The parents did not present any testimony to negate the district testimony. The parent did come to school on October 7, 2005 to pick-up Student.

On October 7, 2005 a Manifestation Determination meeting was held. The parents were invited to the meeting, but did not attend. The Manifestation Determination IEP team determined that Student's behavior was not related to Student's disability. On October 12, 2005 the parents signed the manifestation determination worksheet indicating disagreement with the decision. No explanation for their disagreement was provided. On October 7 the district called the PA Department of Education, Bureau of Special Education to obtain permission to suspend Student for 5 school days. The district received verbal permission and on October 25 received a written confirmation from Ms. Z, Special Education Advisor indicating that the student's continued presence was a danger to Student and others. Student was suspended for 5 school days.

The district made appropriate efforts to provide Student with educational services during the time period she was suspended. The district made arrangements for a certified teacher to provide services to Student from October 11 through October 14. The parents requested that the services had to be provided during the school day. The teacher made efforts to accommodate the parents but without success. The district's efforts to provide educational services to Student during the suspension were appropriate.

Since Student is diagnosed as MR, the district correctly solicited approval from PDE prior to proceeding with the suspension. The parents were invited to the Manifestation Determination meeting but did not attend. There is no requirement under state or federal regulations that the parent must participate in a manifestation determination in order to make it valid.

The parents allegations concerning the October 7, 2005 incident and suspension are not founded. The district's efforts were educationally and procedurally correct.

## **2004-05 AND 2005-06 BEHAVIOR PLANS**

Hearing Officer exhibit 1 identified four issues raised by the parent concerning Student's behavior plans. They were:

- Student had been deprived of a free and appropriate public education in that Student's behavior plan was known to be inappropriate throughout the 2004-05 school year.

- On several occasions, Student demonstrated aggressive, verbal and physical behavior, but no functional behavioral assessment was done.
- The behavior plans for 2004-05 and 2005-06 were not appropriate because they were not based on a FBA.
- Student's behavior plan depends too heavily upon the participation of Student's mother

There have been several meetings and IEP meetings during 2004-05 and 2005-06 to discuss Student's IEP and specifically Student's behavior plan. The parent has always been an active participant in these discussions.

A FBA was completed in September through December 2001 by Ms. E, Behavior Specialist for IU 5. The FBA collected data on three inappropriate behaviors:

- Aggression toward others.
- Non-cooperation with work and teacher demands.
- Negative comments to others.

Student's inappropriate behavior was precipitated by task avoidance.

In September and October 2005 Ms. E collected data from Student's current teachers and again concluded that the inappropriate behaviors were in order to escape a task. Ms. E specifically testified that she did not believe that a new FBA was necessary in June 2005. It should also be noted that the district sought to have Ms. E perform a follow-up FBA after the October 7, 2005 incident. However, Parent never made Student available in the school setting for this assessment to be done.

The IEP behavior plans incorporated information from the [Redacted] treatment plans for wraparound services. There was a clear indication that the district used the treatment plans as a foundation for Student's behavior plans.

An IEP meeting was held on November 23, 2004. This IEP (as well as all other IEPs) included a behavior plan. The parents signed a NOREP on December 3, 2004 agreeing with the November 23, 2004 IEP. The next IEP meeting was not held until May 4, 2005. The parents are well informed about Special Education procedures and understand that by signing the NOREP for the November 23, 2004 IEP that they were in agreement with the total IEP, including the behavior plan.

The next IEP was begun in May 2005 and continued in June and then September 2005. In addition to the parents and district staff, input concerning IEPs and behavior plans was also solicited from parent advocates, an IU 5 educational consultant, IU 5 behavior specialist, and mobile therapist involved with wraparound services.

Student's behavior plans involved the parent coming to school to remove Student if nothing else controlled or maintained Student's behavior. The mother's involvement in the behavior plan was as a last resort and was also approved by the parents. While the behavior plans for 2004-05 and 2005-06 were not always as successful as desired they were constantly reviewed and revised. Several district staff and the IU 5 educational consultant raised questions about the appropriateness of the LS placement. There was discussion with the parents about changing placement. They were reluctant to agree to another placement. The 2004-05 and 2005-06 behavior plans were fluid and constantly subject to change. Both parties worked together to control and maintain Student's behavior. The behavior plans are deemed to be appropriate.

The parents' claims for inappropriate behavior plans in 2004-05 and 2005-06 are unfounded.

### **SPEECH THERAPY AND SOCIAL SKILL GOALS**

The complaint in due process identified as HO 1 raised three issues with regard to the content of Student's IEPs in 2004-05 and 2005-06. They are:

- The school district implemented an IEP in the late spring of 2005 and early fall of 2005, which the parents have rejected because of descriptive language that they viewed as disparaging of Student.
- The amount of time provided to speech and language was inappropriately cut this year, although the goals and objectives that Student works on during speech and language sessions are important to Student's social interactions.
- Student's IEPs have not included social skills goals and objectives, although Student is viewed as having needs in the area of social communications.

The parents objected to the descriptions of Student in the Present Levels of Education performance and How the Student's disability affects Involvement and Progress in General Education Curriculum on the June 1, 2005 IEP (SD 8) and the review of that IEP on September 13, 2005. The mother believed that the narrative was too negative and did not accurately describe Student. The mother stated, "I believe that they were trying to put information to support a life skills program, and I am trying to take out the information that would support a life skills program." (NT 739) The narrative in the June 1, 2005 IEP was not changed in the September 13, 2005 IEP. There were several hand-written changes in the September 13, 2005 IEP that were initialed by both the mother and the district. While the narrative that was questioned by the mother often described limitations in Student's learning, it appears to be a reasonably accurate description based upon teacher testimony. All the significant content of the September 13, 2005 IEP was agreed to by both parties. The September 13, 2005 IEP is procedurally correct and represents a consensus reached by both parties.

Speech was changed from two 25 minute pull-out sessions/week to one 25 minute pull-out session/week on the September 13, 2005 IEP. The speech therapist personally spoke with Parent about changing the frequency of speech at the beginning of the 2005-06 school year. The mother was in agreement with the speech change. (NT 110, NT 742) The September 13, 2005 IEP also reflected the change in speech frequency which was initialed by both the mother and the district. (SD 9)

The November 23, 2004, June 1, 2005 and September 13, 2005 IEPs all contained objectives dealing with social skills. The speech goal/objectives reference social skill in terms of using pragmatic language skills to demonstrate appropriate social skills. The goal for developing appropriate behavior also has objectives dealing with social skills – complying with directives – initiating at



least one social interaction/day with peers. The behavior plan also references social skills in that Student will be taught desired behaviors.

The parents' claims for speech therapy and social skills are unfounded.

**ORDER:**

It is hereby:

1. Determined that the eleven (11) claims made by the parent against the School District are denied. Student is not entitled to any compensatory education based upon the record for this hearing.
2. Ordered that if Student returns to the School District as a student that the district within 60 school days will complete a comprehensive multidisciplinary team evaluation. The evaluation will minimally include:
  - a. Individual assessment of cognitive skills
  - b. Individual academic achievement tests
  - c. Curriculum-based assessments
  - d. Adaptive behavior scales for home and school
  - e. Behavior rating scales for home and school
  - f. Psychiatric evaluation
  - g. Functional Behavior Assessment

This evaluation data will be used to determine an appropriate program and placement for Student. Since this is an order by this Hearing Officer, no further permission by the parents is required.

Submitted by:

Gerald Dambach, Ed.D  
February 16, 2006