

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

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.

6270/05-06 AS
File Number

S.F.
Child's Name

Xx/xx/xx
Date of Birth

March 24, 2006
Date of Hearing

Open
Type of Hearing

For the Student:

Parent

For the Oley Valley School District:

Dawn Cambria
Director of Student Services
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Oley, PA 19547

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| Date of Hearing: | March 24, 2006 |
| Date Transcript Received: | March 30, 2006 |
| Date of Decision: | April 14, 2006 |
| Hearing Officer: | Daniel J. Myers |

BACKGROUND

Student (Student) is a [teenaged] resident of the Oley Valley School District (School District) with autism. The School District has proposed a publicly-funded private school placement for the 2005-2006 school year. Student's parent disputes the appropriateness of that placement, contending that personnel are inadequately trained, personnel do not adhere to Student's restricted diet, and personnel are more concerned with criticizing Student's parent than with educating Student. For the reasons described below, I find that the School District's proposed private school placement is appropriate.

ISSUE

Whether or not the School District's proposed placement at a private parochial special education school is appropriate?

FINDINGS OF FACT

1. Student is a [teenaged] resident of the School District with moderate to severe autism. (NT. 13-14)¹ If Student's cognitive abilities have been measured through standardized tests, the results are not in the record. Student can sort objects by color and shape, and he can put together puzzles. (SD 1; SD 3)
2. Receptively, Student understands language and takes verbal direction. Expressively, Student is functionally nonverbal. He communicates through gestures, a picture exchange communication system (PECS), a DynaMyte computerized communication device, and a few words. (NT. 13-14, 54, 119) Witnesses disagreed at the hearing regarding the size of Student's expressive vocabulary. His parent testified that he has a vocabulary of several hundred words, and that he can string together nouns and verbs to create sentences. (N.T. 31, 51) Student's teacher and behavior specialist, however, have only heard Student speak approximately 20 different words. (N.T. 51, 100, 196, 199)
3. Behaviorally, Student elopes, or runs unexpectedly in unsafe ways, and he has meltdowns or anger outbursts both at home and at school. He takes Risperdal to control his behavior. Because Student has a strong interest in airplanes and airports, his airplane book and trips to the airport frequently are used as effective behavioral reinforcers. (N.T. 16, 3, 46, 207)
4. It was alleged and not disputed at the hearing that [family members of Student] have been diagnosed with an autoimmune disorder called Celiac disease, which prevents patients from processing either gluteins (the proteins in wheat, barley, rye and oats) or

¹ References to SD, P, and HO are to School District, Parent and Hearing Officer exhibits, respectively. References to N.T. are to the transcript of the February 16, 2006 hearing session.

- caseins (the proteins in milk and dairy products.) Apparently, these unprocessed proteins act as opiates to people with celiac disease, affecting their behavior and causing them to feel ill much of the time. Student's [sibling] is home-schooled in response to his celiac disease. (N.T. 14-15, 37, 41; P 1; SD 1; SD 7)
5. Although the record does not contain a medical diagnosis that Student has Celiac disease, his parent believes that he does have the disease. Student's diet is very restricted, and he requires constant supervision to prevent him from eating foods with caseins and gluteins. All foods with caseins and gluteins in Student's home, if any, are kept either in a locked refrigerator or in cabinets that are out of Student's reach. While the School District does not object to restricting Student's diet at parental request, it does object to placing such restrictions in Student's IEP without a medical diagnosis that such restricted diet is medically required for Student. (P 1; N.T. 32, 39, 41, 54, 111, 160)
 6. In summer 2005, Student moved to the School District. Prior to that, he lived in [another city], where he reportedly progressed well under his applied behavioral analysis (ABA)-based home and school programs, and where he was assigned a full-time TSS and attended a public school autistic support classroom. (SD 1; SD 19; N.T. 19-20, 24, 35, 121)
 7. During summer 2005, Student and the School District's Supervisor of Student Services began discussing an appropriate program and placement for Student. Because the School District operates only one autistic support classroom, for first and second grade children, the parties discussed out-of-district options. (N.T. 14, 123-124)
 8. Student's parent researched and discovered Private School, which is a parochial special education school, 18 miles from Student's home, designed to educate children with mental retardation and developmental disabilities. It has 15 full-time and 8 part-time professional staff, and 36 students, all of whom have IEPs, 10 of whom are publicly-funded. Private School has 4 classrooms, taught by state certified teachers, all but one of whom is certified in special education. (N.T. 164-165, 167) Typical student to staff ratio is 5 to 1. (SD 20)
 9. After a visit, all parties (parent, school district and Private School principal) felt that Student would fit in well at Private School. (N.T. 126-127; SD 6, p.2) The parties agreed not to have an IEP meeting until Student adjusted to Private School and Private School staff became acquainted with Student. (N.T. 130)
 10. At the request of Student's parent, the parties agreed that Student initially would attend school on Mondays, Wednesdays and Fridays until he became acclimated. (N.T. 25, 155, 171; SD 6) The parties never reached agreement regarding when Student would start attending school daily. (N.T. 171)
 11. Also at the request of Student's parent, Student's parent initially transported Student to school. This apparently was for both acclimation purposes, as well as to give the

School District time within which to arrange public transportation to Private School. (SD 6, p.2; N.T. 129)

12. On September 6, 2005, Student began attending Private School and was assigned to the multi-disabilities classroom with 5 other children, 4 of whom were in wheelchairs. (N.T. 192) Student's classroom was staffed with a teacher, two classroom aides, and one full-time aide dedicated solely to Student. Student's teacher is state certified in elementary and special education, with a master's degree equivalency and 23 years teaching experience, three of which were with an intermediate unit. (N.T. 129, 137, 158, 189, 212)
13. On October 17, 2005, the School District began providing public transportation for student, with a special van and an aide to ride with Student. (N.T. 130, 135; SD 6)
14. Over the course of the Fall 2005 semester, Student became increasingly unwilling to leave his home to go to school. (N.T. 21, 44) To avoid going to school, Student typically would [act aggressively]. (N.T. 21-22)
 - a. Student's parent reported that, on some days, the van driver and aide would sit and watch Student's parent spend 45-60 minutes trying to get Student onto the bus. (N.T. 22-24)
 - b. On some days, Student's parent would call the public transportation service and cancel the morning run, stating either that Student was not going to school that day or that she would drive Student to school. (N.T. 22, 138)
 - c. When Student's parent drove Student to school, it sometimes took 2-3 hours before Student's parent felt that she could leave the school to go home. (N.T. 14, 178) When the car arrived at the school, Student would lock the car doors from the inside and/or he would drag his parent away from the school as she coaxed him toward the school. (N.T. 179-180) Sometimes Private School personnel would restrain Student as his parent drove away. (N.T. 179) Private School personnel testified that Student would calm down after his parent left. (N.T. 180)
 - d. Private School personnel testified that, on days when Student arrived at school on the van with an aide, he transitioned into school well with no negative behaviors. (N.T. 176-177)
15. On November 7, 2005, the parties developed Student's IEP. There does not appear to be any disagreement between the parties regarding the substance of Student's IEP goals. (N.T. 130; SD 3) Student's parent rejected the recommendation of the Private School's principal that Student begin attending school more often, either on a 4 day or 5 day per week basis. (N.T. 172, 183) The Private School's principal, who has over 14 years experience in education, thought that Private School could program better for student once he started attending more consistently. (N.T. 181-182)
16. On November 16, 2005, Student began receiving wrap-around services from a behavior specialist and a TSS. The behavior specialist, who supervised the TSS, is certified in Pennsylvania and Florida as an elementary education and special education teacher, and

she is ABA-certified. She has six years experience working with autistic children and she specializes in children with severe communication and behavioral problems. (N.T. 63-67)

17. Although Student's parent was concerned for the TSS's safety around Student, the TSS herself was not concerned for her safety while working with Student. (N.T. 72, 88) In one instance, Student became aggressive with the TSS [redacted]. Student's behavior specialist then ordered the TSS not to take Student out into relatively isolated areas in the community in the absence of Student's parent. (N.T. 87-88)
18. On November 30, 2005, Student's Private School teacher reported that Student showed moderate progress on his IEP goals. He needed hand over hand assistance at the computer, he needed repeated trials with reading tasks, and he enjoyed sensory activities. Student always had a one-on-one aide throughout the day when he attended school. Student started learning sign language at school. (SD 21; N.T. 181, 184)
19. Student's wrap-around behavioral specialist observed Student both at home and at school to better understand Student's severe behaviors, particularly as they related to his school attendance. (N.T. 77; SD 11)
 - a. She observed Student become physically aggressive when his parent announced, while Student was watching a movie, that it was time to get ready for school. The behavior specialist observed Student's parent use few immediate consequences for Student's negative behavior, relying instead upon delayed reinforcers, such as promises to go to the airport after school, in return for cooperation before school. (N.T. 92, 95-96, 112, 115)
 - b. At school, she observed Student aggressively seek to leave the classroom when loud noises appeared to over stimulate his senses, and when demands for nonpreferred activities were placed upon him. (N.T. 79-81)
20. Student's wrap-around behavioral specialist recommended:
 - a. Making school as enjoyable as possible by pairing the Private School setting to positive reinforcement so that Student would associate Private School with enjoyable experiences;
 - b. A consistent morning routine, including daily school attendance;
 - c. The use of more immediate consequences and fewer delayed reinforcers;
 - d. Intentional ignoring of Student's attention-seeking behaviors in an effort to extinguish them;
 - e. Assignment of the wrap-around TSS to the school setting to assist in training Student's one-on-one aide; and
 - f. Increasing Student's capacity for making requests.
 (N.T. 76, 90, 98, 102, 104, 112-115; SD 11)
21. For two weeks in December 2005, Student attended Private School daily. Private School personnel cooperated fully with the suggestions of Student's wrap-around behavior specialist. (N.T. 67, 99, 105, 209) Positive reinforcers were basketball and riding the scooter board in Private School's occupational therapy room. (N.T. 73-74)

- Student's Private School principal and teacher credibly testified that Student's attention increased and his anxieties reduced over the two weeks in December when he was attending school daily. (N.T. 142, 181, 210)
22. On December 7, 2005, Student's developmental pediatrician wrote a letter stating that Student exhibits strong anxiety traits that make it impossible for him to get to school at times. She suggested that it is best to keep Student at home when he is very agitated, because Student will be very difficult to manage in the school setting. (SD 8)
 23. At some point, Student's behavior specialist filed a mandatory report of bruising that she observed on Student's body. (N.T. 106) The local Children and Youth Services (CYS) organization investigated the report and found no abuse. (N.T. 50, 106)
 24. Around December 21, 2005, Student's parent informed Private School principal that her morning fights with Student to get him to school were becoming too difficult to manage. Student's parent stated that she intended to dis-enroll Student from Private School after the Christmas break. (N.T. 19, 174; SD 9)
 25. Student has not attended school since December 21, 2005. (N.T. 161-162) CYS continues to visit Student's home monthly because Student's parent is no longer sending Student to school. (N.T. 50, 106)
 26. On January 17, 2006, the parties met to develop a facilitated IEP with a facilitator provided by the Office for Dispute Resolution (ODR). The parties reviewed the behavior specialist's functional behavior assessments, but the meeting did not result in Student returning to school. (N.T. 144-145, 159; SD 12; SD 13)
 27. Since January 25, 2005, Private School has maintained on its staff a one-on-one aide specifically for Student in the event that Student begins attending school again. Between December 21, 2005 and January 25, 2006, Private School had not kept Student's one-on-one aide on staff because Student was not attending school. (N.T. 158; SD 18)
 28. On January 29, 2006, the School District issued a Notice of Recommended Educational Placement (NOREP) offering continued placement at Private School. (SD 16)
 29. On January 30, 2006, the School District filed with ODR a request for due process hearing on behalf of Student's parent. (SD 16)
 30. On February 9, 2006, Student's Private School teacher issued a report card indicating that Student's attendance had been inconsistent and that Student had not attended school since Christmas break. (SD 21)
 31. On or about February 13, 2006, the School District stopped sending a bus to Student's home and informed Student's parent that it intended to initiate truancy procedures. (N.T. 157; SD 18)

32. Student no longer receives any wrap-around services. (N.T. 28, 43) This is because, at Student's quarterly wrap-around services continuation meeting in February 2006, Student's Parent and her wrap-around provider mutually agreed to cease wrap-around services. The wrap-around provider determined that Student's parent refused to be trained in behavior modification skills. (N.T. 59-61, 66-70) Student's parent contends that the wrap-around provider service hours were minimal and that the providers were not sufficiently trained to work with autistic children. (N.T. 18-19, 46-47)
33. On March 24, 2006, I conducted a due process hearing in this matter.
- a. The School District moved to dismiss the case as moot because Student's parent intends to move out of the School District on May 27, 2006. (N.T. 10-11) I denied the School District's motion because I determined that this decision would be issued prior to May 27, 2006. (N.T. 11)
 - b. Student's parent left the hearing early, just before the last witness from Private School testified. Before she left, I spoke with Student's parent off the record, and I determined that her departure was voluntary and was not intended as any sort of protest or disruption of the hearing. Accordingly, I determined that the hearing would continue to its conclusion despite the absence of Student's parent. (N.T. 216)
 - c. Exhibits P1 and SD 1-22 were admitted into the record. (N.T. 218-219)
34. This decision is issued:
- a. 74 days from the date of due process hearing request;
 - b. 66 days from the date of my assignment as hearing officer;
 - c. 21 days from the date of the hearing; and
 - d. 15 days from my receipt of the transcript.
35. Student's parent lacked credibility in her allegations that the inadequate training of classroom personnel and their lack of experience with autistic children resulted in Student's increased episodes of aggressive behavior. (N.T. 21, 46)
- a. Student's teacher is state certified in elementary and special education, with a master's degree equivalency and 23 years teaching experience, three of which were with an intermediate unit. (N.T. 129, 137, 158, 189, 212) Private School's principal is a state-certified teacher with over 14 years experience in education. (N.T. 181-182) The wrap-around behavior specialist is certified in Pennsylvania and Florida as an elementary education and special education teacher, and she is ABA-certified. She has six years experience working with autistic children and she specializes in children with severe communication and behavioral problems. (N.T. 63-67)
 - b. Student's parent does not appear to be as well-trained and expert as she alleges. Although Student's parent alleges that she implements an ABA program at home (N.T. 29, 43), she does not keep data regarding Student's home-based ABA training, and she was unable to describe any ABA-based methods that she used for training Student either to get onto the school bus in the morning, or to get into her car for personal transport to school. (N.T. 52, 57)

36. Student's parent lacked credibility in her allegations that Private School personnel allowed Student to ingest unauthorized foods, resulting in incontinence and severe, aggressive behaviors. (N.T. 17, 35; SD 12)
- a. Student's parent never observed the classroom routine. (N.T. 21)
 - b. Student's Private School teacher credibly testified that Student was never exposed to, and never ate, food at school that was not provided by his parent. (N.T. 205)
 - c. Student's Private School teacher credibly testified that Student was not incontinent at school, and that his two toileting accidents at school were mechanical, not medical in nature, i.e., his pants were not pulled down completely during toileting. (N.T. 213)
 - d. Student's teacher credibly testified that Student encountered no safety issues at school and that his negative behaviors in the classroom were never more aggressive than pulling or pushing when he wanted something. (N.T. 200, 203-205, 208)
 - e. While there is evidence that Student's wrap-around TSS gave Student food that was not authorized by his parent (N.T. 106-108), the behavior specialist credibly testified that this was addressed and corrected immediately, and that it did not happen again. (N.T. 68)
37. Student's parent lacked credibility in her allegations that Private School personnel were more concerned with criticizing Student's parent than with educating Student.
- a. Student's parent erroneously believed that Private School personnel forced Student to use his DynaMyte communication device to identify a family member as his abuser. (N.T. 18, 26) In fact, the wrap-around behavior specialist credibly testified that she filed a mandatory report based upon her observations of bruising on Student's body. (N.T. 106)
 - b. Continued follow-up by the local CYS is based upon the decision of Student's parent to keep Student home from school, rather than upon allegations or criticisms from either the School District or Private School personnel. (N.T. 50, 106, 161-162)
38. Student's parent lacked credibility in her theory that Student's difficult behaviors are based upon the inadequacy of the Private School placement. Student's parent may have an unrealistic understanding of Student's needs, she may be feeling overwhelmed by Student's challenging behaviors, and she appears to attribute her circumstances to Student's Private School placement.
- a. Student's parent testified that Student has a vocabulary of several hundred words, and that he can string together nouns and verbs to create sentences. The more credible evidence in the record, however, indicates that Student is functionally nonverbal, communicating primarily through gestures, PECS, his DynaMyte, and a vocabulary of approximately 20 different words. (NT. 13-14, 31, 51, 54, 100, 119, 196, 199)
 - b. Student's parent fears that Student may be removed involuntarily from her home. (N.T. 185-187)

- c. The strategy used by Student's parent to get Student into the car in the morning is, "I wouldn't consider this ABA, but the strategy we used was we would go outside, lock the [house] doors, and wait in the cold until [Student] got in the car without strangling us." (N.T. 56)
- d. The wrap-around behavior specialist credibly testified that Student requires more consistency in his morning routine, and that Student's parent used few immediate consequences for Student's negative behavior, relying instead upon ineffective delayed reinforcers, such as promises to go to the airport after school, in return for cooperation before school. (N.T. 92, 95-96, 112, 115)
- e. Private School personnel credibly testified that Student's attention increased and his anxieties reduced over the two weeks in December when he was attending school daily. (N.T. 142, 181-182, 210)

DISCUSSION

The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. Schaffer v. Weast, ___ U.S. ___, Dkt. No. 04-698 (Nov. 14, 2005) In this case, Student's parent does not believe that Private School is an appropriate placement for Student. As described below, I find that Student's parent has not met her burden of proof.

An appropriate program is one that is provided at no cost to the parents, is individualized to meet Student's educational needs, is reasonably calculated to yield meaningful educational benefit, and conforms to applicable federal requirements. Rowley v. Hendrick Hudson Board of Education, 458 U.S. 176, 102 S. Ct. 3034 (1982) The appropriateness of the IEP is based on information known at the time it is drafted. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993) While school districts are not required to provide the optimal level of services, a program that confers only trivial or minimal benefit is not appropriate. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988), cert. denied, 488 U.S. 1030 (1989) The IEP must be likely to produce progress, not regression or trivial educational advancement. Board of Education v. Diamond, 808 F.2d 987 (3d Cir. 1986)

Student's parent contends that the Private School personnel are not adequately trained in addressing Student's needs, did not adhere to Student's restricted diet, and were more interested in accusing Student's parent of abusing Student than in teaching him. I reject each of these arguments.

Private School is a special education school designed to educate children with mental retardation and developmental disabilities, with 15 full-time and 8 part-time professional staff to service 36 students, of whom have IEPs. (N.T. 164-165, 167; SD 20) Student's teacher is state certified in elementary and special education, with a master's degree equivalency and 23 years teaching experience, three of which were with an intermediate unit. (N.T. 129, 137, 158, 189, 212) Private School's principal is a state-certified teacher with over 14 years experience in education. (N.T. 181-182) Private School personnel were cooperative in working with Student's wrap-around behavior specialist, who is ABA-certified as well as a certified

elementary education and special education teacher. (N.T. 63-67) Private School personnel are adequately trained in addressing Student's needs.

With regard to Student's diet, his parent never observed the classroom routine and therefore she lacks sufficient basis for asserting that Private School personnel did not adhere to Student's dietary restrictions. (N.T. 21) In addition, Private School personnel credibly testified that Student was never exposed to, and never ate, food at school that was not provided by his parent. (N.T. 205)

Finally, I reject the argument that the School District and Private School personnel were more concerned with criticizing Student's parent than with educating Student. These are the unfounded perceptions of Student's parent that appear to be based upon the general fears of Student's parent and not upon fact. The record does not contain evidence supporting allegations that Private School personnel forced Student to use his DynaMyte communication device to identify a family member as his abuser. (N.T. 18, 26) Further, any continued follow-up by the local CYS is based upon the decision of Student's parent to keep Student home from school, rather than upon allegations or criticisms from either the School District or Private School personnel. (N.T. 50, 106, 161-162) School District and Private School personnel are fulfilling their duties in a professional and appropriate manner.

In this case, for the reasons described above, I find that the publicly-funded Private School placement offered by the School District is appropriate.

CONCLUSION

Student's parent disputes the appropriateness of the School District's publicly-funded Private School placement, contending that personnel are inadequately trained, personnel do not adhere to Student's restricted diet, and personnel are more concerned with criticizing Student's parent than with educating Student. For the reasons described above, I reject the contentions of Student's parent and I find that the School District's proposed private school placement is appropriate.

ORDER

For the reasons described above, I ORDER that:

- The School District's proposed Private School placement is appropriate.
- No further action is required of the School District.

Daniel J. Myers

Hearing Officer

April 14, 2006

Re: Due Process Hearing
File Number 6270/05-06 AS