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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: J.C.

Date of Birth: [redacted]

Date of Hearing:

January 27, 2016

CLOSED HEARING

ODR Case # 17254-1516AS

Parties to the Hearing:

Parent[s]

Upper Dublin School District
1580 Fort Washington Avenue
Maple Glen, PA 19002

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Jonathan Corchnoy, Esquire
1515 Market Street/Suite 1510
Philadelphia, PA 19102

Claudia Huot, Esquire
Blue Bell Executive Campus
460 Norristown Road/Suite 110
Blue Bell, PA 19422

February 5, 2016

February 10, 2016

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[The student] (“student”)¹ is a [mid-teenaged] student who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)². The student has been identified with an emotional disturbance.

The student began to attend the Upper Dublin School District (“District”) in the current 2015-2016 school year. Over the course of the first half of the school year, the student was involved in a series of behavior incidents.

The District held a manifestation determination meeting to determine if the student’s behavior was a manifestation of the student’s disability. The meeting resulted in a finding that the student’s behavior was a manifestation of the student’s disability.

Thereafter, the District filed the due process complaint which led to these proceedings, requesting an expedited hearing pursuant to 34 C.F.R. §300.532(a),(b)(2)(ii), seeking a hearing officer-ordered interim placement because it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the implementing regulation of the IDEA at 34 C.F.R. §§300.1-300.818.

For the reasons set forth below, I find in favor of the District. The student's placement will be changed, on an interim basis, under the terms of this order.

ISSUE

Should the student's placement be changed,
on an interim basis,
because maintaining the current placement of the student
is substantially likely to result in injury to the student or to others?

FINDINGS OF FACT

1. Prior to the 2015-2016 school year, the student attended a school district in a neighboring state. (School District ["S"]-7, S-8, S-9, S-10).
2. In August 2015, after relocating within the geographic boundary of the District, the student enrolled in the District. (S-11; Notes of Testimony ["NT"] at 234).
3. The District implemented the student's individualized education plan ("IEP") from the out-of-state school district until it could evaluate the student and design its own IEP. The District implemented a behavior plan which was part of the student's programming at the out-of-state school district. The District requested educational records from the out-of-state school district, and received some of those records, but did not receive complete educational records, including special education records, until mid-November 2015. (S-10, S-11, S-12 at pages 1-4, S-16, S-34; NT at 39-41, 66-68).
4. In mid-September 2015, the District requested permission to evaluate the student. The student's parent did not provide permission at that time. (S-14).
5. At the outset of the school year, the student did not exhibit problematic behaviors. (NT at 42-50).

6. On October 26, 2015, the student engaged in behavior that concerned District staff, including displays of anger and emotion toward another student. (S-29).
7. On October 27th, the student engaged in incendiary comments about other students, cursed, yelled, laughed out loud, and asked if others were watching the student and/or talking about the student. The student was hostile and elbowed a teacher in the stomach. The student made comments which implicated potential self-harm. (S-12 at page 10)
8. On the 27th, the student's father granted permission for the District to evaluate the student. (S-14, S-23; NT at 49-51, 90-95).
9. On the 27th, based on the student's behavior, the District felt that the student was in crisis and arranged a consultation with a private therapist, who shared that the student was struggling with anxiety. The therapist did not feel the student was a threat to self or others. (S-12 at pages 5-8).
10. On October 28th, the student was suspended for three days for the disruption and aggression exhibited on the 27th. (S-21; NT at 95).
11. On November 4, 2015, the student was seen as an outpatient at a local hospital emergency room. The hospital indicated that the student could be safely discharged. (S-24; NT at 96-99).
12. In the first half of November 2015, District staff reported multiple instances of aggressive or defiant behavior. (S-26, S-27).
13. The student met regularly with a District school counselor and school psychologist as the evaluation process continued. (NT at 76).
14. On November 17, 2015, the student was involved in another behavior incident, involving aggression toward students and staff, incendiary and threatening remarks, profanity, and toppling or attempting to topple furniture. (S-12 at page 17, S-21, S-25, S-30; NT at 54-56, 100-103).
15. As a result of this incident, the student was suspended for six days. (S-21).

16. On November 18, 2015, the District received by U.S. mail complete educational records from the out-of-state school district. (S-34; NT at 66-68).
17. On November 19, 2015, the student's father filed a special education due process complaint at 17059-1516AS, alleging failures on behalf of the District involving implementation of the student's IEP and behavior plan, in addition to the implementation of discipline as a result of the student's disability.³
18. On December 10, 2015, the District issued its evaluation report ("ER"). The ER documented similar problematic behavior at the out-of-state school district. The ER included a functional behavior assessment in the District environment. (S-27).
19. The December 2015 ER contained multiple assessments of social, emotional, and behavioral domains, including an assessment for autism, which had been previously identified by the out-of-state school district. (S-27).
20. The December 2015 ER identified the student as having an emotional disturbance and ruled out an identification of autism under Pennsylvania special education identification criteria. (S-27).
21. On December 14, 2015, the student was involved in another behavior incident in a school conference room, involving profanity, incendiary remarks, and threats to the school. The student destroyed property and threw objects. The student attempted to topple the conference room table. (S-12 at page 18, S-21, S-30; NT at 104-106).
22. As a result of this incident, the student was suspended for five days. (S-21, S-30).
23. On December 22, 2015, the District convened a manifestation determination ("MD") meeting as a result of the December behavior incident and in light of the 14 cumulative days of suspension to that point in the school year. (S-28).
24. The MD team found that the student's behavior was a manifestation of the student's disability. Following the December 10th ER, an IEP had not yet been developed in the District, so the

³ The complaint at 17059-1516AS is still active. Given the expedited nature of the instant matter, however, the parties utilized an existing January hearing date for 17059 as the one-session hearing in this matter.

out-of-state IEP was still being implemented. The student's father agreed with the finding that the behavior was a manifestation of the student's disability. (S-28).

25. On December 23, 2015, the last day of school before the winter break, the student confronted another student in a hallway and then intruded on a random classroom. District staff were able to move the student to an office area where the student continued to show escalated behaviors. The student was suspended for one day, to be implemented on January 4, 2016 when students returned from the winter break. (S-21, S-30; Hearing Officer Exhibit ["HO"]-2; NT at 108-109).
26. On January 7, 2016, the student's IEP team met for consideration of the student's IEP. (S-31).
27. On the same day, January 7th, a second MD meeting was held. The MD team again found that the student's behavior before the winter break was a manifestation of the student's disability. (S-36).
28. The student began to receive tutoring at the District's central administrative offices. (S-36; NT at 110).
29. After the MD meeting, the District began to contact private placements where the student could receive full-time emotional support services. (S-33; NT at 196-197).
30. One of the private placements indicated that it would accept the student. (S-33 at page 1).
31. The private placement is a school serving students with a variety of needs, including behavioral needs. The private placement includes an academic component and a vocational component. The private placement prepares students for academic post-secondary study. (NT at 156-173).
32. The student's father toured the private placement. (NT at 239-247).
33. On January 13, 2016, the District formally recommended a placement. The student's father did not approve the recommended placement and indicated that he wanted an informal meeting to continue discussing the student's educational needs and programming. (S-32).

34. On January 18, 2016, the District filed the complaint in the instant matter, seeking an interim 45-school day placement at the private school which had accepted the student as a result of the District's view that it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. (HO-1).
35. Over the course of the October 2015 – January 2016 incidents, District witnesses testified that from incident to incident the behaviors intensified, that the student could not be de-escalated, and that concerns of District staff deepened. (NT at 42-51, and generally at 85-144, 182-229).
36. The parent testified that one of the concerns he had with the private placement was the student's goal of pursuing academic post-secondary study. The tour, and the impression of the father, was that the student would engage, at least in part, in vocational study. (NT at 239-247, 257-260).

DISCUSSION AND CONCLUSION OF LAW

Where a student with a disability violates the student code of conduct, a school district may implement discipline against that student as it would with student who does not have a disability. Federal and Pennsylvania special education regulations, however, contain explicit limits and protections for a student with a disability in such circumstances. 34 C.F.R. §§300.530-536; 22 PA Code §§14.143, 14.162.

At any time, a MD meeting may be convened to consider whether a student's behaviors, or violations of the student code of conduct, are a manifestation of the student's disability. 34 C.F.R. §§300.530(a),(e),(f). In Pennsylvania, however, a MD meeting must be convened where the discipline amounts to an exclusion in excess of 10 consecutive school

days, or exclusions in excess of 15 cumulative school days. 34 C.F.R. §§300.530(d)(4); 22 PA Code §§14.143.

Where a MD meeting results in a determination that a student's behavior was a manifestation of a disability, the student's placement cannot be changed except by agreement of the student's IEP team, or through a special education due process hearing. 34 C.F.R.

§§300.530(e),(f). Specifically in the context of this matter, where a student's placement may not be changed because the behavior is viewed as a manifestation of a student's disability but the school district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the school district may utilize a special education due process hearing to seek an interim 45-school day placement outside of the school district. 34 C.F.R.

§§300.532(a),(b)(2)(ii). This is the course chosen by the District in the instant matter.

On this record, the District has carried its burden of proof that maintaining the student's current placement is substantially likely to result in injury to the student or others. This finding is based on the fact that each of the incidents of note (October 27th, November 17th, December 14th, and December 23rd) involved contact with another individual, or non-contact aggression directed at another individual, and/or the throwing of objects or violent moving of furniture. The student also voiced threats to self and/or others over the course of these

incidents. Finally, the testimony of District witnesses was credible and persuasive that the amplified intensity of the behaviors, and increasing difficulty in de-escalation, from incident to incident was a particularly grave concern.

It is equally clear on this record that the student's father is deeply involved in the student's education, and, understandably, concerned about the student's well-being. For his sake, and for the safety of District students and staff, and—most importantly— for the safety and social, emotional, behavioral, and psychological health of the student, an interim placement of 45 school days is not only warranted under the terms of the law but is viewed by this hearing officer as a way for everyone involved to focus on the student's needs and find a way forward for the student's educational programming.

CONCLUSION

On this record, it is the considered opinion of this hearing officer that should the student be returned to a District-based placement at this time, in such a placement the student is substantially likely to result in injury to the student or to others. Therefore, an order for an interim 45-school day placement will follow.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District shall work with the private placement which accepted the student to enroll the student for 45 school days.

If it can be arranged, the placement shall begin on Monday, February 15, 2016. If it cannot be so arranged, the placement shall begin no later than Wednesday, February 17, 2016. The 45 school-day period shall begin on the day between February 15th – 17th when the enrollment at the private placement is finalized.

Furthermore, the District shall ensure that the student's program at the private placement is entirely academic and does not include any vocational component.

As the IEP may deem appropriate, but no later than 30 calendar days after the date the student's enrollment at the private placement is finalized, the IEP team shall meet to consider the student's IEP and programming, the student's progress in the private placement. As part of this IEP team meeting, the IEP team shall explicitly consider the student's program and placement in light of the interim nature of the placement made under the terms of this order. The IEP team, of course, may meet when and as many times as it deems appropriate, but the meeting spelled out in this paragraph will ensure that the IEP team is monitoring the student's interim placement and planning for the time when it eventually is concluded.

Nothing in this order should be read to limit or interfere with the ability of the student's IEP team, by agreement of the student's father and the District, to alter the explicit directives of this order.

Any claim not specifically addressed in this decision and order is denied.

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

February 10, 2016