

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.

5715/05-06 LS
File Number

H., A.
Child's Name

Xx/xx/xx
Date of Birth

8/29/05
Date of Hearing

Closed
Type of Hearing

For the Student:
Parent

For the School District of Philadelphia:

Deborah G. DeLauro, Esq.
Office of General Counsel
School District of Philadelphia
400 North Broad Street, Third Floor
Philadelphia, PA 19130

Date of Last Hearing Session:	August 29, 2005
Receipt of Transcript:	September 2, 2005
Date of Decision:	September 16, 2005
Hearing Officer:	Daniel J. Myers

BACKGROUND

Student is [an elementary school]aged] resident of the School District of Philadelphia (School District) whose parent disputes the appropriateness of the School District's proposed individualized education plan (IEP) and placement for the 2005-2006 school year. She asks that I order that Student's IEP be implemented in a different school building than the building proposed by the School District. For the reasons described below, I find for the School District.

ISSUE

1. Whether or not the School District's proposed 2005-2006 IEP is appropriate?
2. Whether or not the School District's proposed placement is appropriate?

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is [an elementary school-aged] student of the School District with autism. He is verbal, has developmentally appropriate articulation, and any articulation errors are not considered problematic. He makes requests and comments in whole sentences. He performs personal hygiene tasks with minimal assistance. He reads at a first grade level, can count to 1,000, identifies shapes and currency and is learning to add single digits. He frustrates easily and engages in some stereotypical behaviors such as echolalia and eye contact avoidance. He will request other students by name, attempts to associate with peers during gym, and walks independently on community outings. (SD 1; SD 6) ¹
2. In September 2004, Student transferred from a successful early intervention program into the School District's elementary school system. Originally, Student's mother wanted Student to attend the School District's full-time autistic support classroom at its [redacted] elementary school (ES 1), based upon recommendations that she had received from friends and physicians. After some discussion with School District officials, however, Student's parent agreed to try the full-time autistic support classroom at the School District's [redacted] elementary school. (ES 2). At that time, ES 2 was a K-7 elementary school within the School District's Northwest Region, and the autistic support teacher at ES 2 was an energetic and successful young teacher. In fact, Student's parent was pleased with her choice, because the teacher seemed to be effective and Student appeared to be progressing. No witnesses were certain how many verbal and non-verbal classmates were in Student's class last year. (SD 6; N.T. 19, 64-65, 72-74, 78)

¹ References to "SD" and "HO" are to the School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcripts of the August 29, 2005 hearing session.

3. On May 23, 2005, Student's IEP team developed an IEP requiring full time autistic support as well as 90 minutes per week of occupational therapy and 45 minutes per week of speech/language therapy. All parties were satisfied with this IEP at the time that it was developed. (SD 1; SD 7; SD 8; N.T. 21, 28)
4. For the 2005-2006 school year, School District officials have decided to reconfigure ES 2 from a K-7 school to a K-8 school. The impact of this decision is that, to make room for the incoming 8th graders, School District officials have decided to move Student's full-time autistic support classroom from ES 2 to the [redacted] Elementary School (ES 3). Apparently coincidentally, Student's teacher has left School District employment to teach in a different school district this school year. (N.T. 19, 42-43, 65)
5. On June 15, 2005, the School District issued a Notice of Recommended Placement (NOREP) proposing to place Student in the full time autistic support program at ES 3. Student's parent rejected the NOREP on June 15, 2005 and requested a due process hearing. (SD 2; SD 4)
6. Dr. Gary F. has been a special education case manager for the School District's Northwest Region for 4 years. For an additional 16 years, he served as a school psychologist for the School District.
 - a. He testified that all Northwest Region autistic support classes are equivalent in their abilities to implement Student's IEP.
 - b. He testified that the Northwest Region does not have separate autistic support classrooms for high functioning and low functioning students.
 - c. He further testified that, even if Student's IEP changes and he starts attending a learning support class, he can do so at ES 3. (N.T. 16-17, 47, 52, 69)
7. No witnesses know how many verbal and non-verbal classmates Student will have at ES 3, where the School District proposes to place Student. The autistic support teacher at ES 3 is a new teacher, but is fully certified. The principal at ES 3 has substantial experience as a principal at ES 3, and he has a special education background. (N.T. 58, 64-65)
8. The teacher at ES 1, where Student's parent wants Student to attend, is highly experienced. ES 1 will have a new principal this year. In addition, ES 1 will not be a part of the Northwest Region this year, but rather will become part of the School District's West Region. (N.T. 53, 57, 68)
9. Student's parent agrees that Student needs a full-time autistic support classroom, but she is concerned with uprooting her child unnecessarily.
 - a. She notes that Student would not be changing buildings this year if she had been more insistent last year about his attending ES 1.

- b. She further feels that Student's needs are better be addressed by an experienced teacher in an established, stable program at ES 1.
- c. Finally, Student's parent believes the School District's reason for refusing to permit Student's enrollment at ES 1 is disingenuous.
 - i. School District officials allege that there is no room for Student at the ES 1 autistic classroom because it has reached its maximum enrollment of 8 children.
 - ii. Student's parent believes that the ES 1 classroom has 9 students already, even though it is allegedly limited to only 8 children.
 - iii. Dr. F. could only testify that he thought the autistic classroom at ES 1 was full, with 8 children.
 - iv. Dr. F. further testified that he did not know, and would have been surprised to learn, that 9 children actually were enrolled in that classroom.

(SD 2; SD 3; SD 4; SD 5; N.T. 40, 45, 53, 76, 79)

- 10. Although she originally approved the School District's May 2005 proposed IEP, Student's Parent now believes that Student needs more speech therapy because [redacted]. (N.T. 81)
- 11. A hearing was conducted in this matter on August 29, 2005. School District Exhibits 1-7 were admitted into the record without objection. (N.T. 84) Student's Parent did not submit any exhibits. (N.T. 84)
- 12. This decision is issued:
 - a. 93 days after the due process hearing request was filed;
 - b. 51 days after my assignment as Hearing Officer to the case;
 - c. 18 days after the last hearing session; and
 - d. 14 days after receipt of the transcript.

DISCUSSION

A school district bears the burden of proving the appropriateness of the program that it has proposed. In re D.O. and the Central Bucks School District, Special Education Opinion No. 1507 (2004) An appropriate IEP is one that meets the procedural and substantive regulatory requirements and is designed to provide meaningful educational benefit to the child. Board of Education v. Rowley, 458 U.S. 176, 107 S. Ct. 3034 (1984); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D.PA.1996) The appropriateness of an IEP is judged on the basis of information known at the time it is drafted. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993); In Re B.S. and the West Chester Area School District, Special Education Opinion No. 1466 (2004)

Substantively, there does not appear to be much dispute over the School District's proposed 2005-2006 IEP. It is a continuation of the successful 2004-2005 program. I reject the contention of Student's parent that Student needs more speech therapy. Present

education levels in the proposed IEP indicate that Student's articulation is developmentally appropriate for a child of his age and any articulation errors are not considered problematic. (SD 1) The record contains no evidence to the contrary.

I do not know what recourse, if any, Student and his parents have when the School District decides to place particular classrooms in particular buildings. It is almost axiomatic that Students with disabilities do not have a right to placement in a particular school building. In Re G.A.B. and Hempfield School District,² Special Education Opinion No. 1467 (2004); See also White v. Ascension Parish School Board, 2003 WL 21939834, Dkt. No. 02-30845 (5th Cir. Aug. 13, 2003) ("Educational placement" as used in the IDEA, means educational program--not the particular institution where that program is implemented.) Possibly, there is a local procedure available for such decisions, but the state and federal special education due process procedures are not the appropriate method for complaints regarding building assignments.

On the other hand, I believe that Student has a legitimate complaint for special education due process if the School District's decision to relocate his classroom, even if it is completely legal and procedurally correct, would have a substantive, negative impact upon the Student's education. In this case, however, there is no evidence of such impact. At best, the record contains speculative argument that Student will be negatively impacted. Student's parent argues that Student will be negatively impacted: 1) by being uprooted and moved to ES 3; and 2) by being taught in a new autistic support classroom by a new teacher.

The first argument is not persuasive because Student will be moving this year no matter what I decide. This is because last year's autistic support classroom at ES 2 simply no longer exists. I empathize with Student's parent who regrets not being more insistent last year about sending Student to ES 1. Had she been more insistent, and had Student begun attending ES 1 last year, he most likely would not be moving classrooms this year. That, however, is water under the bridge now.

The second argument, i.e., that Student will be negatively impacted by being taught by a new teacher in a new classroom is not persuasive either. This is because Student, in fact, had a successful year last year with the new and energetic teacher at ES 2. If it is any consolation to Student's parent, it was not a mistake to send Student to ES 2 last year because he did benefit last year.

It is regrettable that School District officials appear to be so whimsical about moving around their full time autistic support classrooms. They do have the right, however, to make building assignment decisions, and the most that I can do is consider whether or not their decision will substantively and negatively impact Student's special education. As I have already noted above, in this case there is no evidence of any substantive negative impact upon Student's education that results from the transfer of his autistic support classroom from ES 2 to ES 3.

² See also the cases cited in footnote 57 of G.A.B.

In this case, the School District's proposed IEP and placement addresses Student's identified needs and is reasonably calculated to provide meaningful educational benefit. Moreover, Student's parent offers neither probative nor persuasive evidence that the School District's 2005-2006 IEP or recommended placement are inappropriate. Accordingly, I find that the School District offered Student FAPE by proffering an appropriate 2005-2006 IEP and placement.

CONCLUSION

Student's parent asks me to order that Student be placed in a different elementary school where the autistic support classroom is more established and the teacher more experienced. I find, however, that the School District generally has the right to make building assignments, and that the proposed IEP and placement are reasonably calculated for Student to make meaningful educational progress. Accordingly, I find that the School District's proposed program and placement for 2005-2006 are appropriate, and therefore I deny Student's requested relief.

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ORDER

For the reasons described above, I ORDER that:

- The School District's proposed 2005-2006 IEP and recommended placement are appropriate.
- No action is required of the School District.

Hearing Officer

September 16, 2005

Re: Due Process Hearing
File Number 5715/05-06 LS
Student

School District [Redacted]