

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.

Due Process Hearing

A.R. (#6356/05-06 LS)

Date of Birth: xx/xx/xx

Date of Hearing: August 7 & 8, 2006

Open Hearing

Parties to the Hearing

Parent

Parents

Representative

pro se

Transcript Received

August 14, 2006

Date of Decision

August 21, 2006

School District

Franklin Area

Representative

Patricia K. Smith, Esq.

Hearing Officer

David Y. K. Lee

II. BACKGROUND

Student is a xx-year-old student in the Franklin Area School District (hereafter District). During the 2005-2006 school year, Student was a first grade regular education student in the [redacted] Elementary School. The parents opined that he should be given services as a special education student due to the diagnosis of Reactive Attachment Disorder (hereafter RAD). The District opined that Student did not demonstrate significant difficulties to warrant a determination of eligibility. The parents requested a due process hearing subsequent to mediation.

III. FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a student in the District. (S.D. #6.)
2. Student has a less than optimal developmental history. (S.D. #6 @ 2. P. #1 @ 1.)
3. Student was adopted by the parents and has been given the diagnoses of RAD and Oppositional Defiant Disorder (hereafter ODD). (P. #1 @ 4.)

4. Student made the transition to Kindergarten, 2004-2005 school year, at Elementary School from an Early Intervention program (hereafter EI). (S.D. #4 @ 3.)

5. Student received Speech and Language Services (hereafter S/L) in Kindergarten. (S.D. #6 @ 1.)

6. S/L was discontinued in first grade upon parent request. (S.D. #5. N.T. 113, 273-274.)

7. Student completed first grade as a regular education student during the 2005-2006 school year. (S.D. #4 @ 1-2 & #6 @ 1.)

8. Student had a Therapeutic Support Staff (hereafter TSS) with him during the entire school day as a part of Wrap Around Services provided through [redacted] Services. (N.T. 24, 27, 225, 268-269.)

9. An Evaluation Report (hereafter ER) was completed on October 21, 2005, with the conclusion that Student was not eligible for S/L, and did not meet the criteria for Emotional Disturbance (hereafter ED). (S.D. #6 @ 9-11.)

10. The parents did not agree with the ER and requested mediation. (S.D. #8.)

11. Subsequently, a request for due process hearing dated March 2, 2006 was received in the Office for Dispute Resolution. (ODR file.)

12. Due process hearing sessions were held on August 7 and 8, 2006.¹

IV. ISSUES

1. Is Student a child eligible for special education services? (N.T. 6, 114.)

V. DISCUSSION AND CONCLUSIONS OF LAW

The term 'child with a disability' means a child—

- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

¹ A due process hearing session was initially scheduled for March 22, 2006. Due to the lateness of the complaint received by the District and its sufficiency challenge, the hearing was rescheduled for April 22, 2006. At the session on April 22, 2006, [the Parent] indicated that Student was scheduled to be evaluated at the [redacted] Hospital on May 15th. It was then agreed by the parties to hold the hearing in abeyance in order for the team to have an opportunity to consider the upcoming evaluation results. The team met on July 13th but the parties did not arrive at a resolution. The due process hearing was then rescheduled for August 7th.

IDEA '04 §602(3)(A)

The term 'special education' means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability...

IDEA '04 §602(29)

The determination as to whether or not Student is a student with a disability encompasses two criteria. Student needs to have one or more of the 10 categories of impairment *and* is in need of special education services as a result of the impairment. Evidence is not before

this Hearing Officer that Student is in need of specially designed instruction. There is no dispute between the parties regarding Student's diagnoses of RAD and/or ODD. The parents essentially equated the diagnosis of RAD with the need for special education. The TSS testified to a number of incidences which the parents inferred as causes for special education. (N.T. 12-23.) Furthermore, the perspective that Student's behavior was not 'normal' was prevalent in the parents' opinion. (N.T. 50, 56, 72, 74-75, 77-78.) While generically a child with RAD demonstrates a list of behavioral manifestations, Student's

classroom teacher did not find him to demonstrate behavioral difficulties in the classroom that would be expected from reading the literature on RAD. (N.T. 124-125.) Student's TSS found him to be able to respond positively with prompting, and the classroom teacher did not find him to be in need of special attention during instruction. (N.T. 55-56, 120-126.)

Student's treating psychologist testified to Student's eligibility as a student with ED due to manifestations of his RAD and recommended special education programming in social skills development. (N.T. 183, 188, 209, 219-220, 222, 226.) This focus in social skills training, however, was not unequivocally under the designation of special education as Emotional Support or even under special education. (N.T. 220, 222, 226.) Even if the designation of ED is left undisturbed, the parents did not provide documentation that Student's behavior is significantly affecting his educational progress.

Academically, Student made meaningful progress in the regular first grade curriculum. He received above passing grades. His scores on the Dynamic Indicators of

Basic Early Literacy Skills were at benchmark. He also did well on the Grade 1 Math

Tests. (N.T. 130-131, 200. S.D. #4 & #7.) Student required more attention from his

TSS in more unstructured settings such as gym, art, music, library, and art. (N.T. 18,

55.) The desire to have Student perform better does not, in itself, mean that his progress

was inappropriate. (N.T. 242-243, 284.)

There is a history of dissatisfaction with service providers when they might have differed in perspective or opinion from the parents. Student's speech and language support² was terminated due to a disagreement, and input from the S/L teacher was excluded in a team meeting. (F.F. #6. S.D. #8 @ 2) There was disagreement with the classroom teacher on management and instructional approaches. (N.T. 132-135, 153.)

The District was selectively provided with professional reports on Student. (N.T. 82-82.)

Student's TSS was changed upon parents' request. (N.T. 25-26, 211-212.) The maintenance of such a stance is not necessarily conducive to Student's continuing developmental needs.

² The continuing need for S/L support is not an issue before this Hearing Officer.

Lastly, this Hearing Officer notes that social skills deficiencies are not restricted to, or equated with, students with disabilities. As a general program for the enhancement of social skill interactions in the school environment, the District may wish to initiate a regularly scheduled social skills group where selected students, as well as Student, with such needs would participate. Should such a group come to pass, it may be counterproductive for the parents to demand that the facilitator of the group be “an expert who completely understands fetal alcohol syndrome, oppositional defiant disorder, and reactive attachment disorder” (N.T. 7.) before Student is allowed to participate.

Accordingly, it is hereby ordered:

VI. ORDER

The LEA is not ordered to take the following action:

1. The District is not ordered to identify Student as a child with a disability.

August 21, 2006

Date

David Y. K. Lee

David Y. K. Lee

Hearing Officer