

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

J.E. (#6826/06-07 KE)
Date of Birth: xx/xx/xx
Date of Hearing: August 21, 2006
Closed Hearing

Parties to the Hearing

Parent

Representative
pro se

Transcript Received
August 24, 2006

Date of Decision
August 31, 2006

School District
Centre County MH/MR

Representative
Daniel McGee, Esq.

Hearing Officer
David Y. K. Lee

II. BACKGROUND

Student is a 2-year-old student receiving Early Intervention¹ (hereafter EI) Services under the auspices of Centre County Mental Health/Mental Retardation Program (hereafter County). Based on improvement of his language skills following a cochlear implant, the County proposed to reduce the frequency of services. The parents did not agree to the reduction in frequency. Since an agreement could not be reached in the revision to the Individualized Family Service Plan (hereafter IFSP), the County requested a due process hearing.

III. FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, was born deaf. (N.T. 37, 101.)
2. Student started receiving EI Services very early in his development under Part C of the IDEA. (N.T. 68, 100.)
3. Student was exposed to signing for communication. (N.T. 103. C. #1 @ 3ff.)
4. Student received a cochlear implant on March 17, 2005, at the [redacted] Hospital. (N.T. 103-104. C. #1 @ 4ff.)
5. Student was receiving services from the Speech and Language (hereafter S/L), and Hearing Therapists two times a week in his daycare locations. (N.T. 69, 96-97.)
6. Student's annual follow-up evaluation at the Hospital's Pediatric Cochlear Implant

¹ Early Intervention for Infants and Toddlers, birth to three, under IDEA Part C.

Program on April 14, 2006, found his receptive and expressive language skills to be at or above age equivalent. (C. #1 @ 3ff.)

7. Descriptively, Hospital notes that "...he has made significant progress in developing his skills and demonstrates age appropriate receptive and expressive language skills...speech production skills are also close to age appropriate...". (C. #1 @ 4.)

8. Assessments by the County EI therapist did not differ from the Hospital assessments. (N.T. 71, 92-93. C. #1 @ 5.)

9. On June 1, 2006, the parties met to consider the various input and to revise the IFSP. (N.T. 37-42, 50-55.)

10. The revised IFSP dated August 1, 2006, recommended one time per week of S/L and Hearing services. (N.T. 44, 70-71, 78. C. #1 @ 13.)

11. A request for due process hearing initiated by the County was received in the Office for Dispute Resolution on August 4, 2006. (ODR file.)

12. A due process hearing session was held on August 21, 2006.

IV. ISSUES

1. Is the County's proposed reduction of S/L and Hearing services appropriate?
(N.T. 14, 18.)

V. DISCUSSION AND CONCLUSIONS OF LAW

Scheduling of the hearing²

The due process hearing shall be conducted and a written decision mailed to each party no later than 30 days after the parent's request for a hearing is received by the county MH/MR program.

² Motions to Dismiss were denied. (N.T. 15-18, 34.)

55 PA Code §4226.102(b)

In the instant case, the County was the moving party. Although §4226 does not specifically refer to the condition when the County is the moving party, there is no cause to consider a different timeline. The parents were concerned with the short notice of the hearing date which did not allow for sufficient preparation time and the opportunity to seek counsel. (N.T. 17. F.F. #11. P. #2.) While their concerns were understandable and reasonable, and 55 PA Code §4226.100(b)(2) provides for the right to counsel, this Hearing Officer did not have the authority to override the timeline of 30 days and grant a continuance. Furthermore, considering the schedule of all parties involved, the time needed for preparation of the transcript and of the decision, there was not room to maneuver within the time constraint.

It is clear to this Hearing Officer that the dispute between the County and the parents was a continuing one since, if not prior to, the IFSP meeting of June 1, 2006. (N.T. 88. F.F. #9.) The prospect of a due process hearing, and the need for preparation should not have been a surprise. It is also expected that the County would have informed the parents of the intent to request a due process hearing prior to the submission of the formal request to the Office for Dispute Resolution. The parents in their Motion referenced portions of the procedural safeguards under IDEA '04 Part B. Their applicability to Infants and Toddlers under Part C of the IDEA is tenuous at best. (N.T. 15-16.) Also, the narrow time window in this instant case does not, in practicality, allow for compliance with the 5-day disclosure rule. (N.T. 17, 34.)

Reduction of services

The IFSP proposes S/L and Hearing services for one time per week respectively. (F.F. #10.) This recommendation was based on assessment data showing Student's significant gains over a year's time since receiving his cochlear implant. (F.F. #6 & #7.) Student went from being deaf and communicating through signing to being able to communicate through the auditory verbal modality. Specifically, Student went from having a repertoire of signs before implantation to having expressive and receptive language scores at or above age equivalent. The parents generally disputed County's assessments and observations showing Student's level of functioning among other children. (N.T. 88, 92 -93.) It is the parents' strong position that Student's S/L services should not be reduced because of his continuing need for intensive therapy subsequent to the cochlear implant.³ (N.T. 109-111.) Upon careful review, the evidence weighs on the side of the County.

³ The reference to an administrative case law from the State of Florida does not serve as a precedent for the Commonwealth. Furthermore, it addresses reimbursement under Part B.

Student received his cochlear implant at Hospital. Being a part of the Pediatric Cochlear Implant Program (hereafter Program), Student has follow-up evaluations of his development. (C. #1 @ 3-4.) The Program apparently also has on-site team visits of their former patients.⁴ (C #2 @ 1. P. #1 @ 3-4.) The County's recommendations do not contradict recommendations from Hospital. Documents from Hospital notes as follows: "However, given Student's potential and that he has only had his cochlear implant for one year, it is recommended that he continue to receive services from a teacher of the deaf and speech-language therapy. At this time, Student should receive services that focus on his ability to learn language in a natural environment versus one-on-one pull out. This is especially important because he is now in a daycare setting and should be able to start learning from his peers." (C. #1 @ 4.) "We have made the recommendation that Student continue to get services and some of it be direct service...With regards to EI services for other CI kids: it is such an individual decision, some get more and some get less...I don't think it is fair to just say the standard is..." (C. #2 @ 1.)

⁴ The exhibit dated 8/15/06 does not have author(s) designated. (N.T. 128.)

In dicta, it would be beneficial for the IFSP team, with the goal of continuing to develop Student's language processing skills in a natural social/learning environment, to review the recommendations specific to Student's daycare setting. (P. #1 @ 3.) They pertain to a consultative and supportive role as well as direct service. The County is also advised to review IFSP meeting procedures in accordance with 55 PA Code §§4226.72 and 4226.73.

Accordingly, it is hereby ordered:

VI. ORDER

The County is ordered to take the following action:

1. The County is to implement Student's IFSP as proposed with S/L and Hearing services one time per week respectively.

August 31, 2006

Date

David Y. K. Lee

David Y. K. Lee
Hearing Officer