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**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING  
ODR File Number 6898/06-07 LS

Name of Child: JC

Date of Birth:  
Xx/xx/xx

Dates of Hearing:  
November 2, 2006

OPEN HEARING

Parties to the Hearing:

Mrs.

James Kaufman  
Director of Special Education  
Hollidaysburg Area School District  
201 Jackson Street  
Hollidaysburg, PA 16648

Representative:

Pro Se

Jane M. Williams, Esquire  
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PO Box 5069  
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Date Transcript Received: November 7, 2006

Date Record Closed: November 7, 2006

Date of Decision: November 16, 2006

Hearing Officer: Lynda A. Cook, Ed. D.

## **BACKGROUND**

Student, who resides with his Mother (Parent) in the Hollidaysburg Area School District (District), is a xx year old eleventh grader. He has received special education services through the District for his entire educational career. Student's disabilities include mental retardation, speech/language impaired, and autism/developmental disorder. The District and Parent agree on the content of the 2006-2007 IEP, but not on the location of the placement for implementing the IEP. The District filed for a due process hearing to resolve whether or not its proposed placement for 2006-2007 in the Life Skills Support Program in the high school is appropriate.

## **ISSUE**

Whether the location of the placement proposed by the District is appropriate for the implementation of Student's program? (N.T. 16)

## **FINDINGS OF FACT**

1. Student, whose date of birth is xx/xx/xx, is a xx year old, 11<sup>th</sup> grade student of the District. (N.T. 15)
2. Student currently receives services in middle school despite his chronological age which makes high school the appropriate level. (N.T. 67-70)
3. Student has received special education services through the District since early intervention in 1992 turned into school age programming. (N.T. 27, 32)
4. Student's disability is mental retardation, speech/language impaired, autism/developmental disorder. (SD 17)
5. Student's current educational programming includes Life Skills Support, Emotional Support, Autistic Support, Occupational Therapy, and Speech/Language Support. (SD 2)
6. Parent and the District agree that 2006-2007 IEP content is appropriate. (N.T. 40, 62, 167)
7. Parent signed the 04/28/06 NOREP indicating that she did not agree with the recommended educational placement at high school of Full Time Life Skills Support, Itinerant Emotional Support, Itinerant Autistic Support, and Itinerant Speech and Language Support, and requested a pre-hearing conference. (SD 12)
8. A pre-hearing conference was held on 05/23/06, and continued to 06/06/06 so that the District could research Parent's concerns about placement at high school location and suggestions for alternative programs, including [redacted] (a private school). This pre-hearing conference process did not conclude in agreement

between the parties for Student's placement for the 2006-2007 school year. (SD16, N.T. 80-97)

9. Parent's objections to having Student's 2006-2007 IEP implemented in high school location include: (1) her belief that the therapeutic support staff person (TSS) who works with another student in the classroom is aggressive; (2) her perceptions after observing the classroom that there was not enough activity and the teacher did not care to speak to her or her son; and, (3) her claim that Student had been molested in the past and the district has not acknowledged same. (N.T. 76-78, 83, 160-163, 165, 176)
10. The Special Education Director investigated and found no basis for the Parent's concerns about the TSS. (N.T. 82-90)
11. The Life Skills class located in [redacted] high school is operated by Appalachia Intermediate Unit 8. (N.T. 52, 116)
12. Following conversation with the Parent after the pre-hearing conference, the District's Director of Special Education, responding to Parent's interest, filed with ODR for a mediation session which was held on 08/01/06. The agreement reached at this mediation session was for the District to have Student's IEP team contact Private School to determine if the program would be in operation for the 2006-2007 school year, and to investigate whether placement would be appropriate for Student. (SD 16, N.T. 103-104)
13. District personnel and the Parent met again on 08/23/06 to attempt a resolution for Student's 2006-2007 placement, with no agreement being reached. The District maintained that placement at high school was appropriate, while the Parent maintained a desire to have Student attend the Private School. (N.T. 109-110)
14. The School Psychologist, who first worked with Student in 1992 and has interacted with him since then, testified that a full time life skills support classroom at high school is the appropriate placement. (N.T. 43-45)
15. Student's current teacher, who has worked with Student for eight years, testified that high school program is a continuation of Student's current program in a different setting. (N.T.136)
16. The District School Psychologist, Director of Special Education, Student's classroom teacher and itinerant autistic support teacher testified that Student has made meaningful educational progress in the life skills program located in middle school. (N.T. 36-40, 70, 120, 134)
17. District staff researched and visited program alternatives identified at the 05/23/06 and 06/06/06 pre-hearing conference and concluded that the Life Skills

program located in high school was most appropriate for reasons listed below  
(SD 15)

- a. Class is age appropriate.
  - b. Familiar classmates (last year, this year) and this will reduce his social anxiety and stress by seeing familiar faces.
  - c. High school is a least restrictive environment for a transition continuum of services.
  - d. Physical site of the High School is close to his home.
  - e. Transportation to the High School will be minimal.
  - f. Able to work within his local community towards a goal for independent living.
  - g. Reading program from [Middle] School is continued at High School (Reading Mastery).
  - h. Team will continue to explore in-school work experience/volunteer activities and future off-site campus locations as determined by the IEP team.
  - i. Community based instruction is within his local community.
18. District personnel made a second visit to the Private School following the 08/01/06 mediation session and concluded that it was not appropriate for Student. Their conclusion was based on two facts: (1) all students at the Private School are identified as autistic; and (2) Student would not have the opportunity to interact with non-disabled students. (N.T. 105-108)
19. Planning for Student's transition to high school began in the 2005-2006 school year when, at Parent's request, Student was continued one year beyond appropriate chronological age in middle school. (SD 7, N.T. 68-70)
20. The life skills support program based at high school offers services (STAIRS) to help students transition to independent adult living.(N.T. 54)
21. Parent requested that transition planning for high school stop in December 2005, and District agreed. (N.T. 74-75)
22. As part of transition planning for Student, District is prepared to re-assign to high school on a temporary basis staff with whom Student is familiar. (N.T. 99-102, 112)
23. On 08/29/06 the District filed a Due Process Complaint Notice with ODR, stating, in part: "District supports NOREP placement at the High [School] Life Skills Support Program." (HO-3, SD 17)
24. On 09/12/06 the Office for Dispute Resolution (ODR) assigned this Hearing Officer to preside over the due process hearing proceedings, at which time 10/23/06 was established as the date for the hearing. (HO 5)

25. On 09/19/06, District counsel requested a continuance, which was granted to 11/02/06. (HO 2, 3)
26. Parent chose not to have legal representation for this due process hearing. (N.T. 9)
27. Because no agreement has been reached on the location for implementing Student's 2006-2007 IEP, Student is continuing in the middle school.
28. A Resolution Session was held on 08/23/06, with no agreement being reached for Student's 2006-2007 placement. (HO 6)
29. Parent was informed of procedures for providing District counsel with names of witnesses and a copy of exhibits through:
  - a. Conference call on 09/29/06 (HO 1-2)
  - b. Letters from this hearing officer on 09/15/06,10/13/06 (HO 1,2,4)
  - c. Letter from District counsel on 09/19/06.(HO 6)
30. Parent called only herself as a witness, and did not enter documents/evidence into the record of the hearing.(N.T. 13)

### **DISCUSSION AND CONCLUSIONS OF LAW**

The narrow issue in this case centers on whether the location of the placement proposed by the District is appropriate for the implementation of Student's 2006-2007 IEP. (N.T. 16) There is no dispute between the parties as to the content of the IEP. (N.T. 40, 62, 167)

The Individuals with Disabilities Education Act (IDEA 2004), also known as the Individuals with Disabilities Education Improvement Act, requires the School District to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412 This requirement is met by providing personalized instruction and support services to permit Student to benefit educationally from the instruction. Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982) The Rowley standard is met when Student's program provides him or her with more than a trivial or de minimis educational benefit. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988)

Because the specific disagreement over which the District filed for due process in this case arises over where the 2006-2997 IEP should be implemented, the Student appropriately is remaining in his 2005-2006 program placement in middle school life skills program during the pendency of this due process proceeding. (N.T. 16, 67-69) 20 U.S.C. §1415 (j) Procedural Safeguards The District maintains that the appropriate placement for the Student is in a district-based life skills support program provided by Appalachia Intermediate Unit 8. Parent wants Student's placement to be at the Private School, a private school. (SD 12, N.T. 109-110) Parent's rationale for not wanting Student placed at high school does not address program, but rather her beliefs or

perceptions about personnel. (N.T. 76-78, 83, 160-163, 165, 176). The Special Education Director investigated and found no basis for the Parent's concerns about the TSS. (N.T. 82-90)

District witnesses provided credible testimony that Student has made meaningful educational progress through his prior IEPs and placement in District-based life skills support program. (N.T. 36-40, 70, 120, 134) Parent provided no evidence or testimony that Student has not made meaningful educational progress. Rather, her testimony addressed objections to personnel and her belief that a private school, specifically Private School, would be better for her son. (N.T. 76-78, 83, 160-163, 165, 176)

IDEA requires ... (1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and (2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. §1412 Section 612 (a) (5), and its implementing regulations found at 34 C.F.R. §300.114(a)) Pennsylvania's requirements in this area are detailed in the Pennsylvania School Code (22 Pa. Code § 14.102 (a)(s)(xxiv) and the October 1, 2006 Basic Education Circular: Least Restrictive Environment (LRE) and Educational Placement for Students with Individualized Education Programs (IEPs). Ridgewood Board of Education v. N.E., 172 F.3d 238, 30 IDELR 41 (3<sup>rd</sup> Cir. 1999) court made clear that the IDEA requires an education to be both appropriate and in the LRE.

Student's IEP team offered credible rationale that the placement proposed on the 04/28/06 NOREP represents an appropriate placement in the least restrictive environment for the Student. Specifically, in the summary document of the pre-hearing conference, the Special Education Director listed six points identified by the IEP team: (1) class is age appropriate; (2) senior high is a least restrictive environment for a transition continuum of services; (2) physical site of high school is close to his home; (4) transportation to high school will be minimal; (5) able to work within his local community towards a goal for independent living; (6) community based instruction is within his local community/ (SD 15) In addition, after District personnel visited the Private School program which Parent wants, they concluded that it would not be appropriate for Student because he would not have opportunities to interact with non-disabled students. (N.T. 105-108) Testimony and evidence also reveal that the proposed placement at high school would offer Student transition services to support movement to high school as well as to post high school opportunities. (N.T. 54, 99-102, 112)

The District demonstrates numerous ways in which it has attempted to reach a resolution for Student's 2006-2007 placement. The District agreed to a mediation session after the two-part pre-hearing conference was held. (SD 16) Following both the pre-hearing and mediation sessions, District personnel researched placement alternatives for Student and offered credible rationale for the proposed placement's appropriateness. (SD 15, 16, N.T. 105-108, 109-110) Plans are in place to re-assign District staff on a temporary basis to help Student transition to the high school. (N.T. 99-102, 112)

The record establishes that the District's proposed placement for implementing Student's 2006-2007 IEP offers a free, appropriate public education (FAPE) in the least restrictive environment. The proposed placement of full time life skills support at high school on the 04/28/06 NOREP is not a change in placement, but rather a continuation of the Student's current program in a different setting. (N.T. 136)

**Order**

Student's 2006-2007 IEP shall be implemented in the District-based Life Skills Support program at high school.

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Lynda A. Cook, Ed. D.  
Hearing Officer

DECISION DATE: 11/16/06