

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.K. (#7117/06-07 KE)
Date of Birth: xx/xx/xx
Date of Hearing: January 16, 2007
Closed Hearing

Parties to the Hearing

Parent
Ms.

Representative
Pamela E. Berger, Esq.

Transcript Received
January 22, 2007

Date of Decision
January 26, 2007

School District
Grove City Area

Representative
Andy Evankovich, Esq.

Hearing Officer
David Y. K. Lee

II. BACKGROUND

Student is a xx-year-old student in the Grove City Area School District (hereafter District). Student has been identified as an eligible student in need of Autistic Support (hereafter AS). The parent requested a due process hearing when the District did not agree to provide Student with an aide in the van during transportation to and from school.

III. FINDINGS OF FACT

1. Student, date of birth xx/xx/xx, is a student in the District. (J. #1.)
2. Student attends the AS program located in the neighboring [redacted] School District operated by the [redacted] Intermediate Unit #4. (N.T. 6, 68. J. #1 @ 16.)
3. Student has tantrums which includes self-injurious behaviors such as hitting, biting, and slamming his head. (N.T. 8, 16.)
4. Transportation, as a related service, is provided to and from school in a mini-van. (N.T. 42. J. #1 @ 13.)
5. The parent requested a due process hearing, when the District denied the request for an aide to accompany Student in the mini-van, which was received in the Office for Dispute Resolution on November 7, 2006. (ODR file.)
6. A due process hearing session was held on January 16, 2007.¹
7. Closing Statements in writing were received on January 22, 2007. (N.T. 82.)

¹ This matter was initially scheduled for December 15, 2006. There was a change of counsel for the parent in late November. The date was continued to allow time for preparation. A resolution meeting was held on October 17, 2006, with the involvement of parent's previous counsel. (N.T. 24, 73.)

IV. ISSUE

Does Student require an aide to accompany him on the van as an element of his AS?

V. DISCUSSION AND CONCLUSIONS OF LAW

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education...

34 CFR §300.34(a)

Transportation includes—

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adaptive buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 CFR §300.34(c)(16)

There is no dispute that Student is a student with significant behaviors that require a coordination of services. (J. #1 @ 13.) Among other behavioral manifestations as a result of his disability, Student has the propensity to rock, slam his head, hit himself and others. (N.T. 26, 43, 45-46.) An exacerbation of self-injurious behavior apparently resulted in his hospitalizations at the [redacted] Institute in late winter and early spring of 2006. (N.T. 9, 12, 22, 30.) The issue before this Hearing Officer is whether or not Student exhibits behaviors while in transit to and from school to such a degree that Student cannot benefit from AS.

Transportation for Student consists of riding in a mini-van for approximately 30 to 35 minutes each way to and from school, currently with two other students. (N.T. 57-58.) The route includes an intermediate stop at another school. (N.T. 48-50.) A daily Van Checklist, which was put into operation on October 23, 2006, was developed by the District in conjunction with the parent.² (N.T. 15, 24-25, 74-78. P. #1.) The Van Checklist, consisting of 16 items, came into being following the resolution meeting between the parties. It is logical to conclude that it was a method of on-going documentation since the parties apparently did not agree on the extent and degree of behavioral difficulties exhibited by Student during transport. The driver, who had been transporting Student since the beginning of the current school year, did not express any concerns about having Student in the mini-van. (N.T. 42, 52-58.) Following adjustments of Student's car seat strap in the beginning of the school year, Student has not been able to free his arms. (N.T. 51.) There was no denial of Student's tendency to rock, slam his head, hit himself, and the specific incidents of October 23, and December 12, 2006³, brought forth by the parent. (N.T. 15-16, 43-46, 54. P. @ 1.) Aside from the specific incidents, there is no evidence before this Hearing Officer to indicate Student was presenting consistent unmanageable self-injurious behavior during transport.⁴ The completed Van Checklist of December 12, 2006, was illustrative of a particular day and

² The parties may want to consider an alternate way of marking the Van Checklist. It may be more easily read if only 'yes' items are checked. This will also take less time to complete and allow for more time to write comments on the sheet. (N.T. 42, 51.)

³ December 12, 2006, was more than one month after the due process hearing request.

⁴ The parent's testimony, on the whole, was focused on concerns regarding Student's self-injurious behavior. (N.T. 10-11, 16-17.)

not a general representation of Student during transport. (N.T. 18. P. #1.) There was no indication that the hospitalizations in the early spring of 2006 were related to, or the results of, incidents in the van. Furthermore, the parent also noted that the incidents of self-injurious behavior has been less frequent. (N.T. 12.) The current related service of transportation is appropriate to enable Student to benefit from special education.

This Hearing Officer notes that Student's seating arrangement in the mini-van will most likely need to be modified over time as he continues to grow in size and gain weight. It will encumber upon both parties to continue to monitor his safety needs. (N.T. 13, 61.) A periodic systematic review of the Van Checklist may serve the proactive purpose of identifying any exacerbation of symptoms.

Accordingly, it is hereby ordered:

VI. ORDER

The LEA is not ordered to take the following action:

The District is not ordered to provide an aide for Student in the mini-van when being transported to and from school.

January 26, 2007

Date

David Y. K. Lee

David Y. K. Lee
Hearing Officer