

This is a redacted version of the original hearing officer decision. Select details may have been removed to preserve anonymity of the student. The redactions do not affect the substance of the document.

File No.: 7308/06-07 AS

PY

Date of Birth: xx/xx/xx

Dates of Hearing: March 22, 2007
April 20, 2007
April 27, 2007

CLOSED HEARING

Parties to the Hearing:

Parents:

Mr. & Mrs.

District:

North Allegheny School District

Date transcript Received:

May 2, 2007

Date Briefs Post Marked:

May 18, 2007

Date of decision:

June 4, 2007

Gerald Dambach, Ed.D

Hearing Officer

BACKGROUND;

Student is a xx year old grade 11 student at [redacted] High School.(High School). He is diagnosed as Emotionally Disturbed (ED) and is placed in an Emotional Support (ES) Resource Room for 10% of his school day. His ED diagnosis is based upon Attention Deficit Hyperactivity Disorder (ADHD) and Depression. Student has had a Chapter 15 Services Plan since June 1998 (end of grade 2).

The parents requested this hearing and alleged: (1) that child find should have taken place by grade 9; (2) that Student's IEP should include academic goals; and (3) that Student should be identified as a Learning Disabled (LD) student or also possibly as Other Health Impaired (OHI). The parents are seeking two years of compensatory education as a remedy.

FINDING OF FACTS:

1. Student is a xx year old grade 11 student at High School. He is diagnosed as ED and placed in as ES resource room . (P14, SD 1)
2. The ED diagnosis is based on diagnoses of ADHD and Depression. (SD 1)
3. The current Evaluation Report (ER) by the district is dated November 13, 2006. (SD 1)
4. The mother signed the November 13, 2006 ER indicating agreement. (SD 1)
5. An independent evaluation was completed by the [redacted]Center (Center) on October 4, 2006. (P 12)
6. The parents have stipulated that the Center evaluation can not be used to determine a diagnosis of LD. (NT 1460147)
7. The current IEP is dated December 6, 2006. (P14)
8. A NOREP was issued to the parents on December 6, 2006 indicating placement in an ES program. The mother signed the NOREP on December 6, 2006 agreeing to the placement. (SD 2)
9. Student has had annual Chapter 15 Services Plans since June 4, 1998. (SD 1)
10. Student currently takes Wellbutrin in the morning and he believes it is helpful to him throughout the day. (SD 1, NT 161)
11. Student demonstrates above average intellectual abilities. (P 14, NT 95)
12. Student estimates that he spends two hours nightly completing homework and that he does not keep an assignment book. He sometimes forgets to do assignments. (P 14, SD 1, NT 75-77)
13. His parents estimate that Student spends about an hour on homework per night at the most. (P 14, SD 1, NT 73)
14. Student's grades in grades 7 and 8 were all As, Bs, and Cs even though there was some variability between marking periods because of lack of assignments being turned in. When the work was done and turned in he performed adequately. (SSD 3, NT 89-90)
15. In grade 9 Student earned all As, Bs, and Cs except for a D on College Preparatory English. (SD 3)

16. In grade 10 Student earned As, Bs, and Cs except for Ds in World Cultures and Spanish 2. Fluctuation in grades can be attributed to not turning in assignments. (SD 3, NT 92)
17. Student was placed in a Special Education Program on December 7, 2006 (grade 11). Since that placement his grades have been at a consistent level of As, Bs, and Cs. (SD 4, NT 186-188)
18. On the BASC-2 self Report Scale on the November 13, 2006 ER Student rated himself in the clinically significant classification in Sense of Inadequacy and Attention Problems. This suggests a high level of maladjustment. (SD 1)
19. In grade 11 Student started to have more significant problems with academics. (NT 185-186)
20. Report card grades reflect Student's poor academic adjustment to grade 11 and strongly suggest his progress in the curriculum is being impeded by his emotional needs. (SD 1, P14)
21. Student has poor organizational skills and study skills. (SD 1, P 14)
22. The December 6, 2006 IEP has an annual goal that states that "Student will develop and verbalize a plan of study and work independently and/or with assistance from the teacher or classroom assistant to complete assignments or [prepare for tests 90% of the days Student is in attendance. (14)
23. The parties agreed to keep this case open until submission of written closing briefs to be postmarked by May 18, 2007. (NT 289)
24. The parties also agreed to extend this Hearing Officer time to render a written decision until June 8, 2007. (NT 289)

Issues:

1. Should the North Allegheny School District have identified Student as exceptional and placed him in a Special education program by at least grade 9?
2. Should Student's current IEP include academic goals?
3. Should the North Allegheny School District have identified Student as LD or OHI?

DISCUSSION AND CONCLUSIONS OF LAW:

Student is a xx year old grade 11 student who attends [redacted] High School. He currently has an educational diagnosis of ED and is placed in an ES resource room program for 10% of the time. His current ED diagnosis is based upon diagnoses of ADHD and depression.

Student has had annual Chapter 15 Services Plans since June 4, 1998 (the end of the grade 2 school year). These services Plans provided accommodations to deal with ADHD. These services Plans did not provide for any Specialized Instruction or deviation from the regular education curriculum.

Student had an independent educational evaluation by the [redacted] Center (Center) on October 4, 2006. The Center evaluation concluded that Student had a Learning Disability. The Center evaluation did not specify a specific Learning Disability as defined under IDEIA regulations. The parents did not provide any testimony by Dr. G,

School Psychologist, from Center concerning his evaluation or conclusions. The parents did stipulate that the Center evaluation could not be used to reach a conclusion that Student was LD. Absent the Center report the parents did not provide any testimony from an expert to establish a Learning Disability. There is no record of evidence to support that Student is LD.

The parent also raised the possibility in the opening statement that Student was OHI. There was no testimony provided by the parent concerning the potential diagnosis of OHI.

The district completed a multidisciplinary evaluation and issued an ER on November 13, 2006. The district did consider the Center evaluation and included some test results within their report. The mother did sign the ER indicating agreement.

The November 13, 2006 ER recommended that Student be identified as a special education student under the category of Emotionally Disturbed due to the following criteria:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
2. Inappropriate types of feelings or behavior under normal circumstances.
3. A general pervasive mood of unhappiness or depression.

The report concluded that these characteristics are to a marked degree and are adversely affecting his performance. The report concluded that Student is a child with a disability and in need of specially designed instruction.

Student demonstrates above average intellectual abilities. The Center report find a Full Scale IQ score of 116 on the WISC-IV and the district ER finds an I Q score of 119 on the WASI.

In grades 7 and 8 Student's grades were all As, Bs, and Cs even though there was variability between marking periods because he did not turn in assignments. When he did complete the work he performed adequately. In grade 9 Student earned all As, Bs and Cs except for a D in College Preparatory English. (He continued in College Preparatory English 10). In grade 10 he earned As, Bs, and Cs except for a D in World Cultures and Spanish 2. His floatation in grades can be attributed to not turning in assignments. The evidence indicated that Student does well when he completes assignments and turns in homework. There was no evidence to suggest that he has difficulty with alertness relative to the school environment. Student has poor organizational skills and study skills but can, and did, benefit from the regular education curriculum through grade 10.

Report card grades reflect Student's poor academic adjustment to grade 11 and strongly suggested that his progress in the curriculum was being impeded by his emotional needs. Student was placed in a Special Education ES program on December 7, 2006. Since that placement his grades have been at a consistent level of As, Bs, and Cs. The December 6, 2006 IEP annual goal focused on developing and verbalizing a "plan of study." In the ES resource room the focus is on supplementing the curriculum and not providing specific curriculum instruction. (NT 225). His performance has consistently improved with providing organizational and study skills and without providing specific academic instruction.

ORDER:

It is hereby determined that:

1. Student has made adequate academic progress in school until grade 11.
2. The current IEP is appropriate and does not require specific academic goals.
3. Student is appropriately identified as ED. There was no specific testimony from the parent to substantiate a diagnosis of LD or OHI.

It is hereby ordered that:

1. The current IEP of December 6, 2006 remain in effect until December 6, 2007 or until both parties agree to make any necessary adjustments.

Submitted by:

Gerald Dambach, Ed.D
Hearing Officer