

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.

File No.: 7401/06-07 LS

TL

Date of Birth: xx/xx/xx
Dates of Hearing: April 23, 2007
April 24, 2007
May 4, 2007

OPEN HEARING

Parties to the Hearing:
Parents:

District:
Hollidaysburg Area School District

Transcript Received:
May 9, 2007
Briefs Postmarked:
May 30, 2007
Decision Written:
June 13, 2007
Gerald Dambach, Ed.D
Hearing Officer

BACKGROUND:

Student is a xx year old Kindergarten student who has been attending [redacted] Elementary in the Hollidaysburg Area School District. He has a primary educational diagnosis of Autism and a secondary diagnosis of Speech and Language. He attended an Itinerant Autistic Support (AS) program for 90 minutes a week as well as Speech Therapy. He also received Occupational Therapy (OT). The parents removed Student from the Kindergarten program in December 2006 and placed him in a [redacted] Program for 2 days a week. 2 hours a day.

The parents requested this hearing. They allege that Student's IEP was not being implemented and that his placement was not appropriate. The parents wished Student to be placed at the [redacted], a private school. While the parents raised the issue of implementation of the IEP, no question was raised concerning the appropriateness of the IEP.

FINDING OF FACTS:

1. Student is a xx year old student who is enrolled in the Kindergarten program at Elementary in the Hollidaysburg Area School District (District). He has a primary educational diagnosis of Autism and a secondary diagnosis of Speech and Language. (NT 6, SD 2, SD 5, SD 7, SD18)
2. On March 12, 2007 Attorney Williams raised a sufficiency challenge to the complaint lodged against the District by the Parents. (HO 1, NT 11-12)
3. This Hearing Officer provided a written response to the District's sufficiency challenge to the complaint by the parents. On March 13, 2007.(HO 1, SD 29)
4. On May 3, 2007 the District faxed to this Hearing Officer a motion for entry of a compulsory non-suit. (NT 546-549)
5. On May 4, 2007 this Hearing Officer denied the district's motion for compulsory non-suit. (NT 549)
6. At four years of age, Student was diagnosed with Pervasive Developmental Disorder (PPD), N.O.S. by Dr. K, Board Certified Child and Adolescent Psychiatrist. (SD 1)
7. Student has received [redacted] Early Intervention services since January 2003. (SD1)
8. An initial early intervention evaluation dated April 15, 2003 was completed by IU 8 Autism Assessment Team. The report concluded Student was eligible for special education as an Autistic student and that he be placed in a center based program. (SD 1)

9. An initial evaluation Report (ER) was completed by the District on May 2, 2006 due to his transitioning from Early Intervention (EI) to school aged programs. (SD 1)
10. The May 2, 2006 ER recommended Student enter Kindergarten in the general education curriculum with accommodations and modifications to best meet his needs in the Least Restrictive Environment (LRE). (SD 1)
11. The mother, signed the May 2, 2006 ER indicating agreement. (SD1)
12. The initial school age IEP was developed on June 2, 2006. (SD 2)
13. On June 2, 2006 the mother signed a NOREP indicating agreement with the June 2, 2006 IEP. (SD 3)
14. Additional IEPs or revisions were completed on October 30, 2006, November 15, 2006, and January 19, 2007. (SD 5, SD 7, SD 18)
15. The June 2, 2006 ER recommended a full-time paraprofessional staff be considered to help keep Student focused, safe, and to assist him with his social needs in the school setting. (SD 1)
16. The District did provide Student with a full-time paraprofessional during Kindergarten. (NT 560, SD 2)
17. \From the beginning of school (August 31) through December 15, 2006 Student was absent 21.5 days. This included 7.5 excused days and 14.0 unexcused days as well as 6 early dismissals. SD 27)
18. Student's last day of school at Elementary was December 15, 2006. (SD 27)
19. Following Student's withdrawal from public school he attended Program for 2 hours a day for 2 days a week. No academics were provided. (NT 237-238)
20. On February 14, 2007 Student was evaluated by Dr. P, licensed Psychologist for [redacted] Hospital. She did not directly request information from the district and she made no recommendations for an educational placement. (P12, NT^ 332-333)
21. Ms. H, Director of the Private School, testified concerning the private school. She testified that she was not there to testify as to the appropriateness of the school for Student. (NT 288)
22. Student's IEPs indicate that direct OT services were to be provided for two 30 minute sessions a month. (SD 2, SD 5, SD 7, SD 18)
23. Student received direct OT services on November 20 and 28, 2006 because there was no MD prescription to provide the services until November 7, 2006. (SD 13, NT 784, P 11)
24. The OT testified that the COTA provided implementation of OT goals through consultation with Student's teachers and paraprofessional. (NT 779)
25. According to Ms. R, OT, Student had no need that sensory, or a sensory diet was needed in school. (NT 779-781)
26. According to Ms. H2, a Behavioral Specialist with [redacted]Nursing Agency, she observed Student in school on December 1 and 13, 2006 and did not observe anything that was of concern relative to his behavior and/or performance in school. (NT 672, NT 148, NT 141, NT 131-136)
27. There are 21 students in Student's full-day Kindergarten classroom. (NT 561)
28. Ms. J, Itinerant Autistic Support Teacher, testified that the three revisions added to the October 30, 2006 IEP were implemented by district staff even

- though no sensory needs had been identified by a professional. (SD 5, NT 586-687, NT 589, NT 591-592, NT 619, NT 666-667, NT 564)
29. Student ran from the playground on two occasions – October 9 and 13, 2006. (SD 31)
 30. Both Mrs. T and Ms. J testified concerning an isolated incident when a substitute teacher mistakenly gave Student a color work sheet instead of a black and white sheet as indicated in the November 15, 2006 IEP. (SD 8, NT 599, NT 719)
 31. Both Mrs. T and Ms. J testified that sentence strips had been utilized in accordance with the parent requests, even though they were not necessary for Student to communicate. (NT 578)
 32. Ms. J testified that the time in which the parent described his behaviors as very bad correlated to the time when he was not consistently in school. (NT 604, NT 606-608, NT 706)
 33. The parties agreed to submit written closing briefs postmarked by May 30, 2007. (The briefs were postmarked by May 30, 2007.) This would constitute the conclusion of this hearing. (NT 825)
 34. This Hearing Officer would submit his written decision by June 14, 2007. (NT 825)

ISSUES:

1. Is Student 's IEP being implemented?
2. Is the Private School appropriate for Student?

DISCUSSION AND CONCLUSIONS OF LAW:

Student is a xx year old Kindergarten student who was attending Elementary in the Hollidaysburg Area School District. He has a primary educational diagnosis of Autism and a secondary diagnosis of Speech and Language. Student's diagnoses are not in dispute. He attended an Itinerant AS program for 90 minutes a week, Speech Therapy for 90 minutes a week, and direct OT for two 30 minute sessions a week. He also has a full-time paraprofessional. Student attended Elementary from August 31, 2006 until December 15, 2006 when his parents removed him from school. In February 2007 he began attending a Program for 2 hours a day for 2 days a week. The Program did not provide any academics.

The issues before this Hearing Officer include an allegation by the parents that the IEP was not being implemented and that his current placement was not appropriate. The parents raised no issue concerning the appropriateness of the IEP. The appropriateness of the contents of the IEP; the goals, the objectives, the specially designed instruction, the supports for school personnel, and the related services were never in controversy. On the contrary, they were accepted both by execution of the NOREP as well as by the opening statement of the parent and a response by this Hearing Officer to a sufficiency challenge raised by the district.

Student began receiving Early Intervention services in January 2003. He was initially evaluated on April 15, 2003 by the IU 8 Autism Assessment Team. As a result

of the evaluation he was placed in a center based program. The Hollidaysburg Area School District completed an initial ER on May 2, 2006 due to his transitioning to a school aged program. The ER recommended Student enter Kindergarten in the general curriculum with accommodations and modifications to best meet his needs in the LRE. He should receive Itinerant AS, Speech and Language services and OT. He should also be provided with a full-time paraprofessional. The paraprofessional should be available to help keep Student focused, safe, and assist him with his social needs in the school setting.

As a result of the May 2, 2006 ER an IEP meeting was convened on June 2, 2006. The initial IEP was developed and agreed to by the parents via the NOREP.

One of the parents concerns involved sensory items or a "sensory diet." At the June 2, 2006 IEP sensory was not discussed. The May 2, 2006 ER did not recommend a sensory diet." During EI, sensory was not used and the OT evaluation did not mandate a sensory program. At the October 30, 2006 IEP meeting a new program modification and specially designed instruction was added: "Use of various sensory items (ball chair, twidget, and chewelery) to be used in the classroom."

At the November 15, 2006 IEP there were 5 ideas suggested that were agreed upon by the team to be implemented immediately:

1. Student will have the opportunity for sensory timer throughout his day. Will also continue to leave the cafeteria early.
2. Student will have his own personal area in the classroom which will be marked with masking tape.
3. Student will have a dry erase board available to him at all times including the time he gets off the van.
4. Black and white worksheets will be available when applicable as opposed to colored sheets.
5. [redacted] will write directions down when there are too many directions. (SD 8)

At the January 19, 2007 IEP meeting four new items were included in specially designed instruction:

1. Black and white worksheets as opposed to color when applicable.
2. Dry erase board available at all times.
3. Paraprofessional will write directions down when there are too many.
4. Communication strips available to foster communication in the school.

One time after the parents and district agreed to use black and white worksheets at the November 15, 2006 IEP, a substitute teacher mistakenly gave Student a colored work sheet.

Ms. J, Autistic Support Teacher, summarized Student's behavior in school from September to mid-December 2006 as: pleasant; high functioning; quiet; liked to observe; and started to socialize in that he moved from parallel play to interactive/initiated play.

Ms. H2, Behavior Specialist, observed Student in school on December 1 and 13, 2006 and did not observe anything that was of concern relative to his behavior and/or performance in school.

From September through December 2006 the parents continued to report increasing behavior issues concerning Student at home. The educational staff

testified to the behaviors of Student in the home, not the school environment as being of concern and alarming. During his attendance at Elementary Student was absent 21.5 days. This included 7.5 excused days and 14.0 unexcused days as well as 6 early dismissals. The time in which the parent describes his behaviors as very bad correlates to the time when he was sporadically and not consistently in school.

All professionals involved with Student and his school program testified that he made progress. There was no clear evidence that any of Student's IEPs were not implemented. Developing 4 new IEPs in 6 months is not typical. It is clear that the district was making appropriate efforts to accommodate the parent's wishes and desires for Student's educational program.

The only area of potential noncompliance in terms implementing the IEPs was OT. The first 4 sessions of direct OT were not provided because there was no MD prescription. During the time of the missed OT sessions (September and October) the COTA provided consultation to staff in terms of Student's OT needs. The OT testified that Student was making progress. This Hearing Officer views the OT missed sessions as being compliant because the parent, then the district had difficulty obtaining a prescription.

For the 2006-2007 school year the parents agreed to place Student in an Itinerant AS program for 90 minutes a week. He attended Kindergarten and accessed the regular curriculum. The parents wished for Student to be placed in a full-time private Autistic program starting in January 2007. The parents presented two witnesses concerning placement. Dr. P, Licensed Psychologist, from Hospital evaluated Student on February 4, 2007. Dr. P in her evaluation report, however, did not make recommendations for an educational placement.

Ms. H, Director of the Private School, testified at length about the school, its curriculum, and cost to the district. She did not testify specifically about Student and placement in the school however. She indicated that she was not at this proceeding to testify as to the appropriateness of the school for Student.

Appropriateness of the current IEP was not an issue at this proceeding. If appropriateness of the IEP was not an issue, it should be assumed that the parents were satisfied with the IEP and his placement in regular education with Itinerant Autistic Support. Placement decisions are made on a continuum of Least Restrictive Environments. Student's current placement is on one end of that continuum while placement in a private school is on the other end of the continuum. If the current placement was not appropriate, then there were several more restrictive environments that should be explored prior to a private school.

There was no evidence presented by the parents as to the appropriateness of the Private School for Student and there was testimony presented by the professionals who worked with him that the private school proposed would not be an appropriate placement for him.

ORDER:

It is hereby determined that:

1. Student 's current IEP is being implemented.
2. The Private School is not an appropriate placement for Student.

Submitted by:

Gerald Dambach, Ed.D
Hearing Officer