

**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.**

LP  
Name of Child

Xx/xx/xx  
Date of Birth

7444/06-07 AS  
ODR File Number

April 12, 2007  
Date of Hearing

Expedited Hearing

Closed Hearing

Parties to Hearing

Parent

Date of Transcript:  
April 15, 2007

Parent Representative  
Robert Gidding, Esq.  
2 Bala Plaza  
Suite 300  
Bala Cynwyd, PA 19004

Date of Decision  
April 20, 2007

School District  
John Iannacone  
North Penn School District  
410 Hancock Street  
Lansdale, PA 19448

Kenneth Rose  
Hearing Officer

District Representative  
Mark Fitzgerald, Esq.  
Sweet, Stevens, Tucker & Katz  
331 Butler Avenue  
PO Box 5069  
New Britain, PA 18901

## **Background**

The student is a xx year-old ninth grade student identified as emotionally disturbed. She is diagnosed with Major Depressive Disorder, Post Traumatic Stress Syndrome, Oppositional Defiant Disorder and Physical and Sexual Abuse. She was born in the United States, but moved with her mother to [redacted] where she lived until five years ago when they returned to the U.S. She is fluent in English.

In November of 2005 she was placed in [residential treatment facility] for residential treatment and education. Residential Treatment Facility is a residential treatment facility (RTF). She left Residential Treatment Facility in April 2006 and returned home. She did not attend school in her home school district until September 2006. In September 2006 she started [redacted] School in the Philadelphia School District. She was absent and/or late most days. In November 2006 she was placed in [redacted], a group home run by [agency redacted], after being adjudicated dependent. Group Home is located in the North Penn School District.

She started school in North Penn School District on December 11, 2006 and had behavior problems almost immediately. The school district placed her in Private School, a private school for students with disabilities, on January 25, 2007.

The parent charges that the placement was for disciplinary reasons and done without a Manifestation Determination (MD). An expedited hearing was requested.

At the request of the attorney for the parent, a [language redacted] interpreter was provided for the hearing. The Hearing Officer is requesting that the Office of Dispute Resolution provide the parent with a copy of the decision in [language redacted].

The parent left the hearing early because of business concerns. Her attorney remained and represented her. The hearing continued.

## **Stipulations**

1. The 11/28/05 Individualized Education Program (IEP) was developed while the student was a resident of Residential Treatment Facility.
2. The North Penn School District issued approximately five student behavior reports in December of 2006.
3. The North Penn School District issued approximately nine student behavior reports in January 2007.
4. None of the previously stated behavior reports involved weapons, drugs, or infliction of serious bodily injury.

5. The North Penn School District imposed out-of-school suspensions from 1/3/07 through 1/5/07.

6. The North Penn School District imposed out-of-school suspensions from 1/12/07 through 1/19/07.

7. The North Penn School District imposed an in-school suspension from 1/22/07 through 1/29/07.

8. The student's first day at Private School was 1/25/07.

9. None of the District's written or oral communications with the biological mother were in [language redacted].

10. The biological mother never attended any IEP meetings.

11. The District addressed the Notice of Recommended Educational Placements (NOREPs) to the biological mother. The NOREPs were not translated into [language redacted].

12. The North Penn School District did not provide biological mother with Procedural Safeguards Notice.

13. There has been no direct oral communication between the parent and the school district.

### **Findings of Fact**

1. The parent was born in Philadelphia, moved to [redacted] at age five, and returned to Philadelphia eleven years ago. She graduated high school in [redacted].

At the hearing she claimed not to speak English fluently or to be able to read English. (NT-56-59)

2. The student was placed at Residential Treatment Facility around November 2005 where she remained until April 2006. Residential Treatment Facility is a residential treatment facility (RTF). (NT-30, 218)

3. The IEP and Behavior Improvement Plan (BIP) of November 28, 2005 indicated a high level emotional support, counseling and a restrictive setting were needed. Goals were written for inappropriate language, physical aggression and verbal aggression. Specially Designed Instructions (SDIs) were written for behavior, including counseling.

The student is diagnosed with Major Depressive Disorder, Post Traumatic Stress Syndrome, Oppositional Defiant Disorder and Physical and Sexual Abuse. (S-7)

4. The parent received a Procedural Safeguards Notice with the IEP of November 28, 2005 developed in the Philadelphia School District. (NT-101; S-7)

5. The School District of Philadelphia's IEP of November 28, 2005 was for Full Time Emotional Support and it was for her placement at Residential Treatment Facility. It had a BIP. The behavior parts were tied into the residential placement. (S-7, S-8)

6. The parent asserts the School District of Philadelphia would not readmit the student in April of 2006 after her release from Residential Treatment Facility. She did not attend school for the rest of the school year. The parent did not seek help to get the student admitted or file a due process complaint. (NT-78, 93, 94, 102)

7. During her stay at [redacted] High School from September 19, 2006 to December 7, 2006, the student was illegally absent 33 times, late 11 times and suspended two days of approximately fifty two school days. (NT-94, 96; S-9)

8. The School District of Philadelphia accepted the November 28, 2005 IEP as the IEP to return the student to School District of Philadelphia on September 6, 2006. (NT-182; S-7)

9. The student was adjudicated dependent by Master Beth Oswald of the Court of Common Pleas-Family Division-Juvenile Branch and placed with [social service agency] November 21, 2007. (NT-215, 216; S-24)

10. In November 2006 the student was placed in Group Home. She goes home some weekends. (NT-60)

11. The student was registered in the school district November 30, 2007 by Mr. B. Mr. Briggs is director of [social service agency]. He has been with them for seventeen years. The group homes receive children through various court orders. (NT-165, 225-227; S-1)

12. When the student was registered in the school district, the registration form said the student had no IEP. (NT-112, 113; S-1)

13. On December 11, 2007 the student met with school counselor to choose courses and start classes. The school counselor discerned the student came from a unique setting that sounded like a special education setting (LS/ES). She placed the student in emotional support classes and regular education electives. The school counselor immediately sought records from her previous school by phone and in writing

On December 12, 2007 the school district faxed [redacted] High School for records including academic records, health records, current IEP, multidisciplinary evaluations, psychiatrist/social/psychological evaluations and other evaluations. (NT-114, 167, 240-248, 251; S-2, S-3)

14. The IEP of November 28, 2005 and the BIP of November 2005 were received by the school district during the Christmas recess of 2005. (NT-171)

15. Immediately after the Christmas recess, the IEP was sent to the student's teacher and an IEP meeting was called. (NT-129, 130)

16. The school district did not request an evaluation when it saw the November 28, 2005 IEP. (NT-122, 123)

17. Behavior problems started as early as December 19, 2007. While at her middle school the student had a history of noncompliant behaviors, inappropriate behavior and verbal aggression. (NT-123; S-17, S-19; P-34-41)

18. On January 3, 2007 an Invitation to Participate in the IEP Team Meeting scheduled for January 9, 2007 was sent to Group Home. Mr. B signed his intention to attend. (NT-171; S-11)

19. The IEP of January 9, 2007 was information from the November 28, 2005 IEP including I.Q. and behavior areas. The IEP of January 9, 2007 had a behavior plan that was implemented. (NT-137-139, 148; S-12)

20. Due to the student's continuing behaviors the IEP team reconvened on January 19, 2007 and revised the January 9, 2007 IEP. (NT-172; S-12, S-13)

21. The referral process for an alternative placement for the student started around January 11, 2007 due to her behaviors and seeking an appropriate program. (NT-177, 178; S-19)

22. The IEP meeting of January 19, 2007 was held to discuss a change in placement. It was followed with a NOREP for an alternative placement. The NOREP of January 19, 2007, placing the student in a full time alternative setting to be determined, was not sent to the parent by the school district. (NT-65, 71, 144, 145; S-13, S-14)

23. The NOREP of January 19, 2007 states the purpose of the change in placement is that a review of the student's records indicates a need for more restrictive environment to meet her emotional, educational and behavioral needs.

The school district states the change in placement was not for disciplinary reasons. The student's behaviors were based on the student's emotional disabilities and demonstrated that her needs could not be met in the school district. (NT-155-159; S-14)

24. The school district opines the student's needs exceed what they can provide for her in the school district. (NT-184, 185)

25. The school district never started Chapter 12 disciplinary action against the student. (NT-171)

26. The parent was given all the school district's behavior reports on the student by Mr. B in January 2007. A friend interpreted these for her. (NT-72, 73; S-17)

27. On January 23, 2007 the student was accepted at Private School, a private school for students with disabilities. (NT-123, 156; S-15)

28. The student started Private School January 25, 2007. Her last day in the school district was January 23, 2007. (NT-154)

29. The school district permitted Mr. B to sign for the parent starting at registration and continuing through the IEP and placement process. (NT-114, 116, 133, 134, 135, 140)

30. Mr. B has previously attended IEP meetings in school districts and signed educational documents. He views this as proper. (NT-224, 235)

31. Mr. B discussed the student's January 9, 2007 IEP meeting with the parent. The parent told him she could not attend. (NT-220-221)

32. Communication from the school was sent to personnel at Group Home. Mr. B mailed all educational documents from the school district to the parent. This includes invitations to attend IEP meetings, IEPs and NOREPs. He also phoned her about IEP meetings. The suspension notices were given to the parent by Mr. B. (NT-70, 127, 211, 221-223, 232; S-11, S-12, S-13, S-14)

33. The parent gave [social service agency] permission to communicate with the school district. (NT-90, 91; S-26)

34. Mr. B communicated verbally and in writing to the parent in English. She never indicated she did not understand English. She read and signed documents in English. (NT-212, 235; S-26)

35. On the School District of Philadelphia's IEP of November 28, 2005, it is indicated that the home languages are English and [language redacted] and the parent does not need an interpreter. The parent signed her participation at the meeting. (NT-99-101; S-7)

36. The school district never had information the parent spoke only [language redacted]. (NT-183, 184)

37. The parent claims never to have given Mr. B permission to make educational decisions for the student. (NT-61, 62)

38. The parent asserts she did not talk with Mr. B about school issues. (NT-71, 80, 81)

39. The parent claims not to have seen the IEP of January 9, 2007 or January 19, 2007. (NT-75, 76; S-12, S-13)

40. The school district did not conduct a Manifestation Determination prior to the change in placement. (NT-149)

41. To date the School District of Philadelphia has not provided any records beyond the November 28, 2005 IEP, attendance records and report card. (NT-188)

42. The parent thinks Residential Treatment Facility was a good placement. (NT-83, 89, 90)

43. The parent thinks the student has psychiatric needs. (NT-83)

44. The school district now believes it should have involved the parent. The school district believed Mr. B had the legal right to sign for the parent. (NT-160-164; S-19)

45. At Group Home the student struggles with rules and expectations. (NT-217, 218)

## **Issues**

1. Was the change of placement to the Private School appropriate?

2. Was a Manifestation Determination (MD) conducted?

3. Is the student due compensatory education from November 30, 2006 to when she started Private School?

## **Discussion and Conclusions of Law**

This is an expedited hearing (34 CFR §300.532(c)(1)(2) filed by the parent alleging a change in placement for disciplinary reasons. Disciplinary changes in placement are covered by 34 CFR §300.536.

The student was at Residential Treatment Facility from November 2005 to April 2006 (FF 2). Residential Treatment Facility is a RTF in which the student received her education by way of an IEP developed by the Philadelphia School District November 28, 2005 (FF 2,5). In April 2006 the student returned home. The School District of Philadelphia would not readmit the student so she did not attend school for the remainder of the school year (FF 6). In September of 2006 she started [redacted] High School under the IEP of November 28, 2005 (FF 7). Between her entry and withdrawal December 7, 2006, she was illegally absent thirty-three days, late eleven days and suspended for two days (FF 7). School had been in session for about fifty two days

The Court of Common Pleas-Juvenile Branch adjudicated the student dependent and removed her from her home (FF 9). She was placed in Group Home, a group home run by [social service agency] (FF 9). At this point in time it can be concluded that the student had not been consistently in a regular school setting since April of 2005.

On November 30, 2006 Mr. B, Director of group homes for [social service agency], registered the student in the school district as a regular education student (FF 11, 12). On December 11, 2006 the student was brought to school to start attending (FF 13). No reason for the delay is stated.

Upon interviewing the student it was obvious to the school counselor that the student had been in a special education setting (FF 13). The school district immediately contacted [redacted] High School for records (FF 13). In the meantime, the school district placed the student in LS/ES classes for her major subjects and regular education classes for her electives (FF 13).

Records arrived during the Christmas recess (FF 14). These consisted of only the IEP of November 30, 2005, the [redacted] High School attendance record and the report card. Immediately when school resumed, an IEP meeting was called (FF 15). From almost the beginning of her attendance behavior problems occurred (FF 17). These were reminiscent of behavior described in the IEP of November 28, 2005 (FF 3).

On January 9, 2007 an IEP was developed using information from the IEP of November 28, 2005 and her brief time in the school district. The IEP addressed her behavior and emotional concerns, with behavior goals and program modifications/SDIs (FF 19). Also, a Daily Behavior Point Sheet was provided (S-12). The placement was a part-time emotional support class. Behavior problems continued. Starting on January 11, 2007 the school district started to look for an alternative placement. On January 19, 2007 an IEP meeting was held primarily to review a change in placement to an alternative setting (FF 22).

On January 19, 2007 a NOREP was issued to place the student in an alternative setting. This recommendation was based on a need for a more restrictive environment to meet her emotional, educational and behavioral needs (FF 23).

At all times, Mr. B from [social service agency] acted as and signed for the parent. He felt he had the authority to do this based on previous practice (FF 29, 30). He communicated by telephone to the parent (FF 31, 32). He mailed all correspondence he received from the school district, including invitations to IEP meetings, IEPs, NOREPs and disciplinary write-ups, to the parent (FF 32). All communications, oral and written, were in English (FF 34). He opines the parent understood spoken and written English (FF 34). The Hearing Officer finds Mr. B to be credible. He is expert in his field by experience and training (FF 11).

The student started at Group Home January 25, 2007.



**Issue 1.** Was the change of placement to the Private School appropriate?

This issue rests on whether the transfer to Private School was for disciplinary reasons. The record shows a series of behaviors such as cursing, threatening and disobedience that led to two out-of-school suspensions for eight days and a series of in-school suspensions that were not all served (FF 17). The school district views these behaviors were consistent with previous needs addressed in the Residential Treatment Facility placement. It is important to note that the student had not been in regular public school environment since at least November 2005. The school district attempted to meet the student's needs through immediate placement in a part-time ES program, and then an IEP based on what they knew at the time. The student was overwhelmed by the new regular school environment. The student, due to her emotional and behavioral needs, could not cope with the program at the school.

A preponderance of the evidence shows the change of placement was not a disciplinary change in placement as covered by 34 CFR §300.536. This was a change in placement to meet the educational and emotional needs of the student as demonstrated during her brief stay in the school district.

**Issue 2.** Was a Manifestation Determination conducted?

Since this was not a disciplinary change of placement, no MD had to be conducted as provided for in 34 CFR §300.530(e).

**Issue 3.** Is the student due compensatory education from November 30, to when she started Private School?

No compensatory education is due the student. The change in placement was not a disciplinary placement. Issues of procedures and programming were not part of this expedited hearing.

Since this is an expedited hearing, the Hearing Officer held strictly to the two issues before him. Throughout the hearing issues of procedures and appropriate programming arose. These, if they exist, are subjects for another time.

**The LEA is ordered to take the following action**

1. The change in placement was not a disciplinary change in placement, therefore, no action is required.

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Date

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Kenneth Rose  
Hearing Officer