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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: MR
ODR #7494/06-07 LS

Date of Birth: xx/xx/xx

Date of Hearing: April 20, 2007

CLOSED HEARING

Parties to the Hearing:

Ms.

Centennial School District
433 Centennial Road
Warminster, PA 18974-5448

Representative:

Pro Se

Andria Saia, Esquire
Levin Legal Group
1800 Byberry Road
1301 Mason's Mill Business Park
Huntington Valley, PA 19006

Date Transcript Received:

April 23, 2007

Date of Decision:

May 4, 2007

Hearing Officer:

Marcie Romberger, Esquire

BACKGROUND

Student is a xx year old boy in the Centennial School District. He is currently in the 3rd grade. Student moved into the District during the 2005-2006 school year. Since then, the District has made numerous attempts to evaluate Student, but has not received permission from Student's Parent to do so. The District requested this due process hearing asking that an evaluation be ordered.

FINDINGS OF FACT

1. Student is a xx year old boy currently enrolled in the 3rd grade in the Centennial School District (hereinafter, "District.") S-7.
2. Student entered the District in September, 2005, when he was in 2nd grade. S-3 N.T. 9.
3. In October, 2005, Student's teacher referred Student to the Instructional Support Team as a result of behavioral issues Student was exhibiting in the classroom. N.T. 9-10. Specifically, Student was disruptive, had difficulty dealing with his emotions, and had an inability to socialize with his classroom peers. S-6; N.T. 9-10. He also had some academic concerns, including an inability to follow directions, prepare for tests or complete assignments, and achieve passing grades. Id.
4. Student also made negative self-esteem comments about himself. S-6.
5. Assessments were completed which determined Student was below basic in writing and below average in math. S-8. Observations were also conducted which showed Student exhibiting many off-task behaviors, an inability to get along with peers, and incidents of being upset or crying. S-8, N.T. 15.
6. An Action Plan was implemented by the Instructional Support Team beginning on November 1, 2005. S-8. The District provided Student with a buddy, rewarded Student with positive words and stickers, and explained to Student the consequences if his goals were not met. S-8. Student's behavior goal chart was also going to be updated to provide Student with an opportunity to increase the number of "Happy Faces" he could earn in a week. S-8.
7. Originally, the Instructional Support Team wanted Student to earn 73% or greater on his behavior goal card to reach his goal. S-8. However, since he was not meeting success at that level, the Team decreased expectations to 67%. S-8; N.T. 17.

8. During the 30 days in which the Instructional Support Team implemented supports for Student, Student's behavior was very inconsistent in the classroom. S-9; N.T. 18. Student's Mother was also having difficulty with Student at home. Id.
9. The Instructional Support Team suggested continuing supports throughout the school year. S-3; N.T. 18, 19. It also suggested an evaluation be conducted to determine if Student was eligible for special education services. Id. Student's Mother would not agree to the District conducting an evaluation of Student because she said Student was involved with a private evaluator. S-19.
10. Student's Mother did not provide the District with an evaluation from a private evaluator. N.T. 19.
11. Student is again exhibiting concerning behaviors during the 2006-2007 school year. S-10; N.T. 19, 27-28. In addition to the behaviors Student was exhibiting in the previous year, Student is also exhibiting inappropriate sexual behaviors and making inappropriate sexual comments to other students in the class. Id.
12. Although interventions have been utilized, including sending Student to the school's counselor, they have not sufficiently addressed Student's behaviors. N.T. 31-33.
13. The District, in November, 2006, again attempted to obtain consent from Student's Mother to perform an evaluation of Student. N.T. 21. Although Student's Mother originally said she would consent, she never signed the permission to evaluate form. N.T. 21. Later, Student's Mother said she would not consent because she planned on taking him to a private evaluator. N.T. 22.
14. The District again met with Student's Mother in February, 2007 and requested she consent to an evaluation. S-1; N.T. 22-23. She refused to consent. Id.
15. The District requested this due process hearing to seek permission to conduct an evaluation of Student under the Individuals with Disabilities Education Act and Chapter 14. S-1; N.T. 34.

ISSUE

Should the District be allowed to evaluate Student for possible eligibility under the Individuals with Disabilities Education Act and Chapter 14 of the Pennsylvania Regulations?

DISCUSSION AND CONCLUSION OF LAW

The Pennsylvania Regulations require schools to establish a system of screening children which would identify and provide assistance to regular education students that need academic or behavioral support. 22 Pa. Code §14.122. If the interventions provided to a student under the school's screening process have produced little or no improvement within 60 school days after initiation, Pennsylvania Regulations state the student should be referred for an evaluation to determine if the child is in need of special education services. Id.

The District conducted a screening of Student in October, 2005, and determined that Student was in need of supports and interventions to assist Student with his behavioral issues. S-6; N.T. 9-10. After 30 days of interventions, Student's behaviors remained and the interventions were continued for the remainder of the 2005-2006 school year. S-9; N.T. 18. Unfortunately, Student's behaviors were not controlled by the interventions under the Action Plan and continue to this day. S-10; N.T. 19, 27-28, 33. Of greater concern are the inappropriate sexual comments and behaviors which began this school year. In addition, Student's academic concerns may need to be addressed via special education.

As a result of Student's many off-task behaviors, inability to get along with peers, incidents of being upset, crying and breaking down, inappropriate sexual comments and behaviors, and academic struggles and frustrations, an evaluation under 34 C.F.R. § 300.300 and 22 Pa. Code § 14.123 is appropriate. S-8, 10; N.T. 15, 29-30.

ORDER

The District has shown a need to evaluate Student. The District's request to evaluate Student is granted. Student should be evaluated as per the mandates established by the Pennsylvania Regulations and the Individuals with Disabilities Education Act.

Marcie Romberger, Esquire