

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.

PENNSYLVANIA

Special Education Hearing Officer

Child's Name: KB

Date of Birth: xx/xx/xx

File Number: 7538/06-07 LS

Dates of Hearing: May 21, 2007; May 31, 2007

CLOSED HEARING

Parties to the Hearing:

Ms.

East Pennsboro Area School District
890 Valley Street
Enola, PA 17025

Representative:

pro se

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Date Transcript Received:

June 6, 2007

Date of Decision:¹

June 11, 2007

Hearing Officer Name:

Gregory J. Smith

¹ The record was kept open until receipt of the transcript. This decision was rendered within 15 days receipt of the transcript and closing of the record.

Background

Student is a xx-year-old sixth grade student who attends school in the East Pennsboro Area School District (District). Student first enrolled in the District at the start of the current school year. Shortly after the start of the school year, Student's mother requested that an evaluation be completed and that Student be provided with special education services. Following that evaluation Student was identified as a child with a disability with a specific learning disability in written expression. During the current school year Student's academic performance has been poor, he has had numerous disciplinary referrals, and he has been absent from school at least 47 days. The present due process hearing was held to address four issues:

1. Did the District follow proper procedures when it changed Student's educational placement?
2. Was the initial evaluation completed by the District appropriate?
3. Must the District provide Student with an independent educational evaluation?
4. May the District complete a psychiatric evaluation of Student?

Findings of Fact

1. Student is a xx-year-old (d.o.b. xx/xx/xx) sixth grade Student who resides with his mother in the area served by the East Pennsboro Area School District (District). (SD-15, SD-26)
2. THE STUDENT is eligible for special education as a child with a disability who has been identified as having a specific learning disability. (N.T. at 118-121; SD-15, SD-26)
3. When he was three years old Student was sexually molested by a female Head Start teacher. (SD-12, SD-13)
4. When Student was four years old a psychiatric evaluation was completed. The conclusion of that psychiatrist was that Student exhibited multiple symptoms of Post Traumatic Stress Disorder (PTSD) caused by the sexual molestation experienced at age three. The psychiatrist also concluded that Student's impulsivity and relative inattentiveness could be related to his anxiety or to underlying attention deficit hyperactivity disorder (ADHD). The psychiatrist recommended further assessment in order to rule out ADHD as a cause of Student's behaviors. (SD-12, SD-13)
5. Student began his public education as a kindergarten student in the Harrisburg School District (Harrisburg), Harrisburg, PA. (SD-13)
6. In March 2001, while still in kindergarten, Student moved with his mother to [redacted city, state], where he was enrolled in the [redacted] City Public School System. Prior to Student's starting first grade that district completed an initial psychological assessment and a psycho-social assessment. At that time it was recommended that the Child Study Team determine whether or not Student qualified for special education as a Student with a suspected specific learning disability. It was also recommended that if Student was found to be eligible for special education he be provided with direct social work services one hour per month. (SD-13, SD-14)
7. Prior to second grade Student moved to [second city, second state], where he was enrolled in the [redacted] City School District. At the start of that school year Student was provided with special education services through an interim individualized education program (IEP). On September 24, 2002 an IEP team meeting was held and the IEP team determined that Student no longer qualified for special education. (N.T. at 194; SD-15)
8. Student remained in that district through fourth grade. His academic performance was average, earning grades ranging from 74 percent through 88 percent across various subjects. (SD-15)

9. In fifth grade Student attended Central Dauphin School District (C.D.) in Pennsylvania. His grades in most subjects were at the C level, with a B in social studies. (SD-15)
10. On August 21, 2006, just prior to the start of sixth grade, Student was enrolled in the District. At that time Student's mother indicated that Student had previously received specialized services for emotional support, but that those services had been discontinued. (N.T. at 192-193; SD-53)
11. In the middle school that Student attends there are two sixth grade educational teams identified as the Black Team and the Orange Team. The teams are named after the District's school colors. Part-time learning support services, with instruction in the learning support classroom, are available to Students on the Black Team. Itinerant learning support services, with services provided in the regular education classroom, are available to Students on the Orange Team. At the start of the school year Student was placed on the Black Team. (N.T. at 98-99, 151, 206)
12. On September 21, 2006 Student's mother requested that Student be evaluated to determine whether or not he was eligible for special education. (N.T. at 89-90; SD-16, SD-17)
13. On September 21, 2006 a permission to evaluate was issued. The proposed evaluation would include psychological testing, including the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), and parent and teacher reports. On October 24, 2007 Student's mother rejected the proposed evaluation and requested a meeting with the District. Following a meeting held on November 3, 2006, Student's mother gave her permission for the evaluation to be completed. (N.T. at 90-92, 105; SD-17, SD-18, SD-19, SD-30)
14. On November 11, 2007 a meeting was held and a Section 504 Service Agreement was developed to address Student's academic and social difficulties in unstructured setting. (N.T. at 102, 141-143; SD-43, SD-44)
15. An initial evaluation was completed and, on December 15, 2006, an evaluation report (ER) was produced. A copy of the ER was provided to Student's mother on December 21, 2006. (SD-15)
16. The December 15, 2006 ER included information from Student's mother; a review of records from prior school districts including grade reports, the results of the evaluations completed in 2001, the results of the IEP team meeting held in 2002; a summary of the psychiatric evaluation completed when Student was four years old; a summary of Student's disciplinary referrals up to that point in the school year; information from Student's language arts, math, social studies, science, and reading teachers; present levels of academic functioning; and the results of evaluations completed by the District's school psychologist including the Test of Nonverbal Intelligence-Third Edition, the WISC-IV, and the Wechsler Individual Achievement Test-Second Edition. (N.T. at 118-120; SD-15)
17. In the December 15, 2007 ER the District's school psychologist noted that the testing performed suggested that Student had relative strengths in reading and math, but that he showed a weakness in written expression that was significantly discrepant from the level of achievement that would be expected for a Student with Student's cognitive abilities. Noting Student's history of PTSD and that the last psychiatric evaluation was completed when Student was four years old, the District's school psychologist suggested that the multidisciplinary team consider requesting a psychiatric evaluation. (N.T. at 120-125, 129-131; SD-15)
18. On December 21, 2007 the multidisciplinary team met. The multidisciplinary team concluded that Student qualified for special education as a Student with a specific learning disability in written expression. (SD-15)
19. On December 21, 2007 the District requested permission to complete a psychiatric evaluation and to also have the Behavior Assessment System for Children (BASC) completed. (N.T. at 92; SD-15, SD-20)
20. On January 19, 2007 Student sexually harassed a female Student. To limit his future contact with that Student Student was moved from one section of the Black Team to another section of the Black Team. (N.T. at 252-255, 279-280; SD-3, SD-54)

21. On January 25, 2007 a functional behavior assessment (FBA) was completed and a draft behavior intervention plan (BIP) was developed. Included in the BIP were numerous in-class interventions, interventions designed to address Student's organizational deficits, interventions addressing Student's learning disability, prompts, and direct instruction in organization, problem solving, and social skills. Also included in the BIP was the opportunity for a cool-off period when Student's behaviors might be escalating. During the cool-off time he would be able to meet with either the school counselor or the Student services specialist. On January 29, 2007 the FBA and BIP were discussed at an IEP team meeting. (N.T. at 259, 297-314, 340-341; SD-4, SD-5)
22. On January 29, 2007 an IEP team meeting was held and an IEP was developed. The IEP included two annual goals that addressed written expression and spelling. The IEP also included program modifications consisting of combining verbal directions with visual clues, opportunities to edit written work, preferential seating, the provision of structured study guides, testing modifications, breaking longer assignments into smaller segments, and the BIP to address behavioral needs. (N.T. at 72, 74, 94-95; SD-25, SD-26)
23. On January 29, 2007 a notice of recommended educational placement (NOREP) was issued that called for Student to begin to receive itinerant learning support. Student's mother initially rejected the NOREP and proposed IEP, but after a meeting with the District's supervisor of special education, agreed to its implementation starting on March 5, 2007. (N.T. at 68-71, 98, 102-103, 106-107, 175-176; SD-26, SD-27, SD-28, SD-29)
24. Because Student's mother initially rejected the IEP, the BIP was never fully implemented. (N.T. at 314)
25. On February 28, 2007 Student's mother gave her consent to have Dr. A complete a psychiatric evaluation. Subsequently, Dr. A indicated that she would not complete an evaluation. Following Dr. A's decision not to complete an evaluation, the District made attempts to secure permission to complete a psychiatric evaluation. Student's mother requested that an evaluation be completed by Family Life Services or by a psychiatrist of her choosing. When an agreement could not be reached regarding the evaluator to be used, Student's mother informed the District that she did not want to have a psychiatric evaluation completed. (N.T. at 56-59, 61, 72-76, 92-95, 106, 108, 148-150, 156-158; P-2, P-3, SD-21, SD-22, SD-36, SD-37, SD-38, SD-39, SD-40, SD-41, SD-42, SD-52)
26. On March 5, 2007 the District began to implement Student's IEP. In order to provide the itinerant learning support services called for in his IEP and NOREP, Student was moved from the Black Team to the Orange Team. (N.T. at 103-104, 189-190, 151-152, 206; SD-29)
27. On March 16, 2007 the District suggested that Student's IEP be modified to include adult supervision and monitoring in unstructured settings and in settings where aggression had previously occurred. The District did not receive a response to that suggestion. (N.T. at 109; SD-37)
28. On April 4, 2007 Student's mother notified the District that she objected to his placement on the Orange Team. (N.T. at 104; SD-29)
29. During the days immediately preceding the present hearing Student has gone to the Student services specialist on several occasions to talk about issues that were of concern to him. In those meetings alternate ways to achieve what Student wants without resorting to inappropriate behaviors have been discussed. The Student services specialist is a licensed counselor who supports the social, emotional, and behavioral development of Students. (N.T. at 295-296, 340-341)
30. During the current school year Student has had failing grades for at least one marking period in all of his major academic subjects: language arts, social studies, math, science, and reading. His teachers and other school staff have reported that one of Student's major weaknesses is with organizational skills. They also report that he is frequently absent, does not submit class work, is disruptive and inattentive, is lacking in effort, and has low test and quiz scores. (N.T. at 39, 186-188, 205-206, 212, 215; P-1, SD-15)
31. During the current school year Student has had multiple disciplinary referrals for fighting, aggressive acts towards others, inappropriate behaviors and language, oppositional behavior, and class disruptions. As a result

Student has received after school detentions, suspension from riding the bus, a superintendent's disciplinary hearing, and in school suspensions. (N.T. at 183, 245, 251-259, 281-283; SD-1, SD-2, SD-3, SD-6, SD-7, SD-54, SD-55)

32. During the current school year Student has served 14 days of in-school suspension and has been absent from school 47 days, at least . At least 36 of his absences were unlawful and two more were unexcused. A total of 32 of Student's absences occurred between March 5, 2007, the date his IEP was implemented and May 21, 2007, the start of the present hearing. Student has also been tardy on at least 23 days. (N.T. at 183-184, 259-264; SD-48, SD-56)

Issues

Did the East Pennsboro Area School District change Student's educational placement without following proper procedures?

Was the initial evaluation completed by the East Pennsboro Area School District appropriate?

Must the East Pennsboro Area School District provide Student with an independent educational evaluation?

May the East Pennsboro Area School District complete a psychiatric evaluation of Student?

Discussion

The procedural history of this matter and clarification of the issues is discussed on the record at pages 25 through 33 of the notarized transcript. Documentation of the complaint, the District's challenges to that complaint, and preliminary rulings on the sufficiency of the complaint, jurisdictional questions, limitation of the issues, and the addition of issues can be found in Hearing Officer Exhibits 1 through 7. That discussion and a summary of those documents need not be repeated here except to indicate that prior to the present hearing the issues were limited to Student's mother's challenge to the change in placement, the appropriateness of the initial evaluation, and the District's request to complete a psychiatric evaluation. At the first session of the hearing, after listening to the opening statements of the parties, but prior to the receipt of any evidence in this matter, the fourth issue, that of the IEE, was added with the agreement of both parties.

Did the East Pennsboro Area School District change Student's educational placement without following proper procedures?

Because Student's mother requested the present hearing to contest Student's change in placement, she carried the burden of proof on this issue. *Schaffer v. Weast*, 126 S.Ct. 528 (2005) However, it must be noted that burden of proof as it has been applied to special education hearings has been limited to the burden of persuasion which addresses "which party loses if the evidence is closely balanced." *Schaffer* at 533-534 With this issue the evidence was not closely balanced.

Student first enrolled in the District at the start of the current school year. At that time he was placed on the sixth grade Black Team. The District has divided the sixth grade into two academic teams, each with multiple sections. The teams, Orange and Black, are named after the District's school colors. During the school year there have been two occasions that Student's mother apparently believe constitute a change in placement, once was when Student was moved from one section of the Black Team to another section of the Black Team and the other was when Student began to receive special education services and was moved to the Orange Team.

Because the change within the Black Team occurred on January 19, 2007, prior to the development of Student's IEP, that change was a decision made as part of Student's regular education program. As such, consideration of that change is outside of this hearing officer's jurisdiction.

The second change came on March 5, 2007, when Student was moved to the Orange Team. That change was made in order to provide Student with the itinerant learning support services called for in his IEP and NOREP and agreed to by his mother. In the District's middle school, part-time learning support services, with instruction in the learning support classroom, are provided to Students on the Black Team, but itinerant learning support services, with services provided in the regular education classroom, are provided to Students on the Orange Team. Under this administrative structure, all sixth grade Students who require itinerant learning support services are placed on the Orange Team. That is exactly what happened to Student. Once an agreement was reached regarding the implementation of his IEP, he was placed on the Orange Team. Because that was his initial placement, this was not a change in special education placement at all. Moreover, Districts have the authority to develop administrative structures to provide for the education of their Students and to group Students accordingly as long as those structures and groupings do not violate the requirements under that law.

Special education programming and placement issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). 20 U.S.C. § 1400 *et seq.* (as amended, 2004). The IDEA requires that:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
20 U.S.C. §1412(a)(5)(A)

In the present case Student is being educated in the school and grade he would attend if he did not have a disability and his special education services are being provided within the regular education setting. It is true that, apparently by chance, Student began the school year on the Black Team and it is also true that at a later point in time he was moved to the Orange Team. But that change was made to allow Student to start to receive itinerant learning support services. The addition of those services to Student's educational program occurred following the completion of an initial evaluation, an IEP team meeting, the development of an IEP, the issuance of a NOREP, and the ultimate agreement to that program by Student's mother. It is the conclusion of this hearing officer that proper procedures were followed in making this change and that the change was appropriate.

Was the initial evaluation completed by the East Pennsboro Area School District appropriate?

Because the District was seeking approval of its' initial evaluation, it carried the burden of proof on this issue. *Schaffer* (2005)

Under 34 C.F.R. § 300.304(b) an evaluation must:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent...
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Additional requirements under 34 C.F.R. § 300.305 are:

- (a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
 - (1) Review existing evaluation data on the child, including—

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers;

In the present matter, an initial evaluation was completed and, on December 15, 2006, an initial ER was produced. The ER was provided to Student's mother on December 21, 2006. The December 15, 2006 ER included information from Student's mother; a review of records from prior school districts including grade reports, the results of the evaluations completed in 2001, the results of the IEP team meeting held in 2002; a summary of the psychiatric evaluation completed when Student was four years old; a summary of Student's disciplinary referrals up to that point in the school year; information from Student's language arts, math, social studies, science, and reading teachers; present levels of academic functioning; and the results of evaluations completed by the District's school psychologist including the Test of Nonverbal Intelligence-Third Edition, the WISC-IV, and the Wechsler Individual Achievement Test-Second Edition. The District's school psychologist noted that the testing performed suggested that Student had relative strengths in reading and math, but that he showed a weakness in written expression that was significantly discrepant from the level of achievement that would be expected for a Student with Student's cognitive abilities. On December 21, 2007 the multidisciplinary team met. The multidisciplinary team concluded that Student qualified for special education as a Student with a specific learning disability in written expression.

The initial evaluation met the requirements found in 34 C.F.R. § 300.304(b). In particular, the initial evaluation included a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information; it included information from Student's parent; it did not use any single measure or assessment as the sole criterion for determining whether Student was a child with a disability or for determining the appropriate educational program for Student; and it used technically sound instruments.

The initial evaluation also met the requirements found in 34 C.F.R. § 300.305(a). In particular, the initial evaluation included a review of existing evaluation data, including evaluations completed within the District and those completed by other school districts; a review of material provided by Student's mother, including the prior psychiatric evaluation; information on classroom-based assessments and classroom observations; and observations by teachers and related services providers.

It is the conclusion of this hearing officer that the initial evaluation was completed in a manner that allowed for the accurate determination that Student is a Student with a specific learning disability in written expression. The initial evaluation followed almost all of the required procedures and it adequately assessed Student's potential learning disabilities. Where it failed was in any attempt to assess his behavioral and social needs. Under 34 C.F.R. § 300.304(c)(4) the evaluation must include assessments in all areas related to a suspected disability. *Warren G. v. Cumberland Valley Sch. Dist.*, 190 F.3d 80 (3rd Cir. 1999) Given that a Section 504 Service Agreement had been completed the month before to address behavioral problems, the numerous teacher reports of behavior problems, and the extensive disciplinary records, there should have been some suspicion that Student had behavioral and social needs. The initial evaluation should have addressed those needs further.

In fairness, the team did realize more was needed and, on December 21, 2007, the District requested permission to complete a psychiatric evaluation and to have the BASC completed. In the end, Student's mother never allowed a psychiatric evaluation to be completed, an issue addressed below.

The District did not sit idly by. Following the completion of the initial evaluation an FBA was completed and a draft BIP was developed. That BIP was finalized at an IEP team meeting held on January 29, 2007. Here the District corrected the short-comings of the initial evaluation and through the FBA and development of the BIP, directly addressed Student's behavioral and social needs.

After listening to the testimony of Student's mother, his former teacher, the school psychologist, the Student services specialist, and District administrators, and after reviewing the exhibits in this matter, particularly the evaluation report, other evaluation materials from both previous school districts and the current District, the Section

504 Service Agreement, and the attendance and disciplinary records, it was striking to this hearing officer how perfectly the FBA described Student's strengths and needs, and how perfectly the BIP addressed those strengths and needs. That BIP included program modifications and support services to address Student's problematic behaviors in the classroom and during less structured times; program modifications, support services, and direct instruction to address his organizational difficulties; program modifications to address his learning difficulties; the use of prompts to cue Student; instruction in problem solving; inclusion in a social skills group; a system to allow him time to "cool-off" when he feels under pressure; other program modifications; replacement behaviors; reinforcements to use; and procedures to follow when Student exhibits behaviors of concern. This hearing officer was impressed with the extent to which the BIP matched and addressed Student's needs in all areas.

Considering all of the above, it is the conclusion of this hearing officer that the initial evaluation completed by the District, in combination with the FBA completed to address behavioral and social concerns, was appropriate.

Must the East Pennsboro Area School District provide Student with an independent educational evaluation?

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation completed by the school district. If a parent requests an IEE, but at a hearing a final decision is made that the school district's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. 34 C.F.R §300.502(b)(1)(2)(3).

Because it was decided above that the initial evaluation, in combination with the FBA, was appropriate, Student's mother's request that the District provide an IEE must be denied. *Holmes v. Millcreek*, 205 F.3d 583 (3rd Cir. 2000); *In Re Educational Assignment of K.S.*, Spec. Educ. Op. 1760 (2006); *In Re Educational Assignment of L-M.B.*, Spec. Educ. Op. 1795 (2007) Even if that were not the case, in the present matter the request must be denied because Student's mother did not provide any indication as to what type of evaluation she was seeking. There is nothing on the record to suggest whether or not she is seeking an IEE consisting of a psychiatric evaluation, a psychological evaluation, both, or neither. There is nothing on the record to suggest whether or not she is seeking an IEE addressing behavioral concerns, learning concerns, both, or neither. This hearing officer cannot order the District to pay for an IEE without either this hearing officer or the District knowing what that IEE will consist of or what issues or concerns the IEE is intended to address.

May the East Pennsboro Area School District complete a psychiatric evaluation of Student?

Because the District was seeking permission to complete a psychiatric evaluation, it carried the burden of proof on this issue. *Schaffer* (2005)

During the current school year Student has had multiple disciplinary referrals for fighting, aggressive acts towards others, inappropriate behaviors and language, oppositional behavior, and class disruptions. As a result Student has received after school detentions, suspension from riding the bus, a superintendent's disciplinary hearing, and in school suspensions. There can be little question that Student's behaviors have not only been disruptive, but, coupled with his extensive absences and tardiness, those behaviors have interfered with his learning. In response the District has completed an initial evaluation, completed a FBA, developed a BIP, and developed and implemented an IEP to address both Student's learning disability and his behavioral difficulties.

The District has asserted that even after doing all of the above, Student is still exhibiting problem behaviors. It has further asserted that the only way that it can adequately program for Student is to be allowed to collect additional information through a psychiatric evaluation.

The current situation is strikingly similar to that found in *In Re Educational Assignment of M.B.*, Spec. Educ. Op. 1381 (2003). M.B. was a sixth grade Student who exhibited a pattern of disruptive, disrespectful, and aggressive behavior. The District had tried to address his escalating behaviors through completion of an FBA, implementation of a BIP, and modifications to M.B.'s IEP. Having little success and believing that a psychiatric evaluation was needed to be able to adequately program for M.B., the District requested a due process hearing. The hearing officer in that case granted the District's request for a psychiatric evaluation, but, on appeal, the Appeals Panel overturned

that ruling. *M.B.*, Spec. Educ. Op. 1381 The Panel cited the 2001 removal of any mention of a psychiatrist participating in evaluations in Pennsylvania regulations to “suggest that a psychiatrist is not the standard, or sine qua non, for this purpose.” at 5 The Panel went on to state:

Given the strong interest of parental liberty and familial privacy that is triggered by psychiatric and similar intrusions, school officials should first opt for less restrictive alternatives. In this case, for example, the District could have used the available behavioral consultant to not only check the internal alignment of its BIP but also suggest additional or alternative strategies to improve its effectiveness. Another illustrative option for the District would be to use a school psychologist, who is required for determining ED, to examine underlying social-emotional issues and recommend appropriate educational strategies. In contrast, psychiatrists not only implicate more severe stigma in terms of familial and personal privacy, but they typically use a medical model, rather than the distinct IDEA framework, for identifying and treating emotional impairments. *M.B.*, Spec. Educ. Op. 1381 at 6 (footnotes omitted)

In the present matter the District completed an evaluation in December 2006 and a FBA in January 2007. Following the completion of the FBA a BIP was developed. Included in the BIP were numerous in-class interventions, interventions designed to address Student’s organizational deficits, interventions addressing Student’s learning disability, prompts, and direct instruction in organization, problem solving, and social skills. As noted above, the extent to which that BIP matched and addressed Student’s needs as presented in the initial evaluation, testimony by individuals at the present hearing, and the other evidence available for review was impressive. In short, that BIP carries every promise that it should be successful.

Unfortunately, according to the District’s Student services specialist, the person who developed the BIP, because Student’s mother initially rejected the proposed IEP, the BIP was never fully implemented. Even if the BIP had been implemented after the IEP was approved, Student was absent over half of the school days between the implementation of the IEP in March and the current due process hearing in May. That simply was not enough time to determine whether or not the program modifications, services, and specialized instruction contained in the BIP would be effective with Student

In addition, there are other program modifications that have been considered, but apparently have not been implemented. For example, in the BIP it is suggested that Student have daily interactions with a teacher. During the few days leading up to the current hearing, Student initiated contact with the Student services specialist to talk about issues that were of concern to him. The Student services specialist reported that those discussions were helpful for Student Regular meetings with the Student services specialist, who is a licensed counselor, or some other trusted individual, for example a teacher as suggested in the BIP, should be considered for inclusion in Student’s IEP. Those meetings probably do not have to be lengthy, but should be on a regular basis.

Another example is that the District has already proposed having adult supervision and monitoring whenever Student is in unstructured settings and when he is in settings where aggression had previously occurred. The IEP team should consider whether or not that intervention should be added to Student’s IEP.

Considering all of the above, it is this hearing officer’s conclusion that the District failed to meet its’ burden of proof in this matter to show that a psychiatric evaluation is necessary at this point in time. Because of that, the District’s request to complete a psychiatric evaluation must be denied. What is needed is for the District to fully implement the program modifications, services, and specialized instruction contained in Student’s IEP and BIP, have the IEP team consider additions that could be made to Student’s IEP, and then fully implement the amended IEP. Only after doing that will the District be able to determine whether or not it can successfully program for Student After doing all of that, and after allowing a reasonable period of time to pass to determine whether or not Student’s educational program was working, the District would be in a better position to request a psychiatric evaluation. *M.B.*, Spec. Educ. Op. 1381

Accordingly we make the following:

ORDER

The East Pennsboro Area School District followed proper procedures when it changed Student's educational placement to the Orange Team to allow him to receive the itinerant learning support services called for in his IEP.

The initial evaluation completed by the East Pennsboro Area School District, as reported in the evaluation report dated December 15, 2007, when coupled with the functional behavioral assessment completed on January 25, 2007, was appropriate.

The East Pennsboro Area School District is not required to provide Student with an independent educational evaluation.

Unless Student's mother agrees otherwise, the East Pennsboro Area School District may not complete a psychiatric evaluation of Student

Gregory J. Smith

Signature of Hearing Officer