

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

DECISION

EXPEDITED DUE PROCESS HEARING

Name of Child: MK
ODR #8527/07-08 LS

Date of Birth:
xx/xx/xx

Date of Hearing:
March 3, 2008

OPEN HEARING

Parties to the Hearing:
Ms.

School District of Philadelphia
440 N. Broad Street
Philadelphia, Pennsylvania 19130

Date Transcript Received:
Date of Decision:

Hearing Officer:

Representative:
Pro Se

Kimberly Caputo, Esquire
Office of General Counsel
440 N. Broad Street
Philadelphia, Pennsylvania 19130

March 6, 2008
March 9, 2008

Linda M. Valentini, Psy.D.

Background

Student is a xx year old 1st grade eligible student residing in the School District of Philadelphia (hereinafter District). Student is currently classified as having a speech/language impairment. Pursuant to escalating inappropriate behaviors the District completed an evaluation and an IEP to which the Parent, Ms. (hereinafter Parent) objected¹ (NT 45), and which are the subject of another due process request.²

In the instant expedited matter, the District is seeking hearing officer permission to have Student laterally transferred for a 45-day alternative placement to another elementary school in his Region³ in the belief that the student poses a danger to himself and to others and in the belief that the proposed school offers more behavioral support because it houses on-site behavioral health staff.

Issue

Should the School District of Philadelphia receive permission from the hearing officer to laterally transfer Student to a 45-day placement in another elementary school because he presents a danger to himself and/or others?

Findings of Fact

1. Student is a xx year old 1st grade student at Elementary School (hereinafter Elementary) and a resident of the District.
2. From October 2006 onwards Student was having behavioral difficulties in school. On February 25, 2007 when he was in Kindergarten a Pre-CSAP Meeting Checklist notes that he often lacked respect for authority figures and peers. He often became disruptive or verbally aggressive when he did not get what he wanted. (P-5)
3. Interventions noted on the Pre-CSAP Meeting Checklist as having been tried include: regular contact with parent, verbal prompts, immediate feedback, change of seat, use of a five-minute warning before transition, frequent verbal reinforcement for verbal behavior, and use of daily report. (P-5)
4. The Pre-CSAP Meeting Checklist notes concerns as grades declining, disorganized, cannot follow directions, verbally disruptive, physically disruptive, easily upset/frustrated, physically aggressive, attention-getting behavior. (P-5)

¹ The District proposed the classification of Emotional Disturbance.

² ODR #8512/07-08 LS. Another hearing officer is assigned to that matter.

³ The School District of Philadelphia is divided into regions, each with its own regional superintendent, special education director, etc.

5. The CSAP Support Log of February 2007 notes a detailed intervention plan and contains a narrative of Student's strengths and concerns about him. Concerns include pushing, hitting, spitting, defiance, tantrums and saying he doesn't care about consequences but becoming upset when a consequence is imposed. (P-5)
6. He was evaluated and found eligible as a speech/language impaired student, and in June 2007 an IEP with an FBA and a formal Behavior Support Plan were put in place for the next school year. At the time it was written the FBA addressed the behaviors Student had presented up to that time. (NT 94; S-1, S-2, P-6)
7. Student received a "pink slip" (disciplinary notice) on 5-31-07: punched a 4th grader so hard in the stomach that she cried and doubled over, and hit three kindergartners shortly after. (S-6)
8. A pediatric well-child checkup chart documentation from the [redacted] Practice dated September 28, 2007 notes under Mood and Affect, "overactive, but able to follow direction". (P-8)
9. In school year 2007-2008 Student's inappropriate behaviors escalated. His behaviors included kicking, biting and spitting at peers. He threw scissors at another student. He was frequently out of his seat and eloped from the classroom. (NT 39)
10. The computerized CSAP Case Summary printed in October 2007 notes behavioral concerns as follows: argumentative, attention-getting behavior, verbally disruptive, perpetrator of bullying, physically disruptive, easily angered/annoyed, physically aggressive and hostile when criticized. (P-6)
11. Classroom strategies listed on the CSAP Case Summary of October 2007 note expanded strategies from those employed in February 2007 and are: limitation of number/length of directions, connection of material to everyday experience, provision of a peer or adult tutor/mentor, use of daily report, repetition of directions/instruction, visual cues/demonstration, alternation of high interest and low interest activity, provision of examples of appropriate work/behavior, provision of extra time, use of five-minute warning before transition, creation of a behavior contract with specific measurable objectives, functional behavioral assessment and behavior plan, change of seat, development of a reward/incentive system, use of manipulatives, immediate feedback, use of high interest reading materials, frequent verbal reinforcement for appropriate behavior, verbal prompts, regular contact with parent/guardian, division of work into smaller sections, provision of instructions both orally and in print. (P-6)
12. In the 2007-2008 school year, starting on September 18, 2007 Student received a daily report on five target behaviors for eight periods per day. The Parent signed the daily reports through 10-16-07, but stopped signing them after that. The daily

- reports contain information similar to that contained in the pink slips, addressed below. (S-7)
13. Student received pink slips in the current 2007-2008 school year as follows: 9-24-07 (cut a hole in a fellow student's shirt, although the Parent noted her understanding that both children were playing with scissors); 9-27-07 (smacked a girl in the face and then kicked her butt, then spit on her friend and called the counselor a "big, fat ugly bitch"); 10-2-07 (hit peer and yelled "I hate you" and "No, you fat faggot" at the counselor, then yelled "I'll kill you" over and over); 10-4-07 (2nd incident with biting, left teeth marks on child's arm); 10-10-07 (spit on a girl, then spit on her again when he was caught); 10-22-07 (banging fist on the keyboard, refused time out, threw things and then walked out the door); 10-23-07 (removed from room for behavior and upon return threw books on the floor and screamed "Fuck, fuck" ten times); 10-24-07 (bit another student on the upper arm); 10-26-07 (called fellow student asshole, bitch, dickhead and screamed "You're a big bitch" to staff); 10-29-07 (Student stabbed another child with a pencil and puncture was bleeding); 10-30-07 (used the F-word, pulled another child's sweater until the zipper pull came off, running around the room and crawling on floor, hit a child on the arm and the leg); 10-31-07 (took another child's yo-yo and when told to give it back winged it at the child hitting child on the chest); 11-7-07 (when asked to get in line yelled, "I am going to kill Ms. W with a knife"); 11-19-07 (kicked a ball around the class and when asked for it yelled "No, you're mean. I hate you."); 11-21-07 (ran around the room with a pencil in his hand and stabbed another child in the leg); 11-27-07 (swinging a rope around, yelled "No" when told to stop and then smacked another child in the face); 11-29-07 aimed his pencil as if to stab staff in the chest); 12-3-07 (took child's work and ripped it up, punched pushed and kicked and attempted to bite; had 20 minute tantrum and started again upon attempt to take him back to class). (NT 130; S-6)
 14. On 12-11-07 when in a time out for biting Student attempted to pull the fire alarm, locked himself in the bathroom, used profanity toward his one-to-one support calling her a "black bitch" and slapping her notebook and papers out of her hand, slapped another student across the head, cried and wailed loudly in principal's office on and off for two hours and became physically violent towards the school police officer, kicking and swinging at him, flipping the hallway benches, and throwing a chair toward the officer. This was the occasion when the school attempted to 302 Student, but the grandmother refused. (S-6)
 15. Pink slips continued as follows: 12-18-07 (slapped another child in face twice then ran upstairs); 12-18-07 (shot rubber bands at other students and ran around the room picking things up and throwing them saying "stupid people, stupid work"); 12-20-07 (threw pencils and crayon bag and bent another child's hand backwards, yelled "Shut up" at staff); 1-2-08: (picked up chair and threw it at teacher); 1-4-08 (punched a child five or six times in the head and as he was running away hit another child); 1-4-08 (bent another child's hand back, punched

her in the shoulder and then the stomach); 1-7-08 (kicked at wall, yelled that staff won't let him have fun, told staff "I hate you, you fucking bitch". Punched staff in the shoulder while aiming for staff's face, kicked another staff in the ankle, pulled the fire alarm and the fire department arrived while several classes evacuated the building); 1-8-08 (punched another child in the face); 1-8-08 (pinched a child on the neck and back, pushed another child down and kicked him in the stomach); 1-9-08 (jumped up and down and broke pencil box to pieces, ran around the room knocking things off desks, pulling headsets out of listening centers, chewed math papers, licked his own papers and books, ran around room hitting other children, snatched a child's glasses, said "I hate you", grabbed a broom and hit another child with it and smacked staff's hand); 1-11-08 (ripped pages from a reading textbook and threw scissors at a child); 1-11-08 (yelled he hates staff, slammed the door on staff and it hit the staff's shoulder); 1-14-08 (called staff a bitch and said he hates that staff being in the class); 1-14-08 (called staff dummy and punched staff in the arm); 1-15-08 (dumped work baskets onto the floor and kicked a child); 1-17-08 (after a productive morning he bothered other students, tore up paper and threw it on floor, struck staff, called another staff stupid and snuck out of the room a number of times); 1-24-08 (punched child in the head); 1-28-08 (used profanity – bitch and asshole – hit child in back with his fist, and hit another child in the back and choked her); 1-29-08 (hit a child because he was not picked for a tag game); 2-1-08 (punched child in the face, punched another child in the face, and smacked another child in the face); 2-5-08 (punched child in the stomach, chest and neck); 2-6-08 (bit student in the upper arm); 2-6-08 (spitting food at other students at lunch); 2-6-08 (called another student a bitch and kicked student in the leg); date illegible (hit another student as she walked through the door); 2-6-08 (ran out of principal's office and roamed the school hitting others); 2-11-08 (slapped child and put his hands around child's neck); 2-21-08 (hit most of the children in the lunch room, called staff names); 2-25-08 (smacked child in the face with a bag of crayons and smacked child with pencil case, grabbed another child in the chest and pushed child into the wall). (S-6)

16. Since 2-25-08 Student has continued to exhibit behaviors similar to those recounted on the pink slips. (NT 110)
17. Student had been suspended on the Tuesday and Wednesday of the week prior to the Monday hearing. He returned to school on the Thursday and the principal had already received three or four pink slips on Student citing hitting, biting, trying to bite and running out of the room. (NT 110-111)
18. Student has called the principal names and has tried to strike the principal, he mimics the principal and puts his hands over his ears, saying "yah, yah, yah" when the principal tries to talk with him. (NT 111-112)
19. Other students asked the teacher, when new materials were delivered to the classroom, "Is [Student] going to destroy our stuff?" (NT 114)

20. The principal notes that Student has “penetrated the psyche of the kids” such that he has had to transfer two or three children and two more parents called this week to ask that their children be moved from Student’s class. (NT 114)
21. In December 2007 Student tried to jump out of/over a stairwell. (NT 166)
22. On November 15, 2007 the District sought the Parent’s permission to reevaluate Student via a Permission to Evaluate form. Initially the Parent did not want to consent, but on December 4, 2007 she did provide consent and a psychologist was dispatched to perform the evaluation, the report of which was given to the Parent prior to February 4, 2008. (NT 88-89)
23. On December 11, 2007 Student was being physically aggressive with peers and staff, having tantrums, and getting in and out of his seat throughout the day. He punched a metal cabinet. He grabbed a fan cord and was swinging it. He slapped another student, tried to pull a fire alarm, kicked and bit the school’s police officer, threw chairs and spit at the counselor. The school proceeded to initiate a 302 process (involuntary admission to psychiatric hospital), and contacted the Parent. (NT 40-41, 45; S-9)
24. The 302 petition was verbally approved by L. C. of the Office of Mental Health on the afternoon of December 11, 2007. (S-9)
25. Because the Parent could not get to the school she sent her mother, who decided that she did not want Student taken to the children’s Crisis Response Center at Germantown Hospital and took him home instead. (NT 41)
26. To the District’s knowledge the Parent has not yet obtained a psychiatric evaluation for Student. As of November 2007 Student had insurance coverage under CBH and he also has private health insurance.⁴ (NT 41-42, 76, 79-80)
27. The District’s evaluation was completed; an FBA was conducted on January 18, 2008.⁵ An IEP, including the FBA/Behavior Plan was presented in February 2008. Since that February IEP meeting Student’s behaviors have continued, including throwing scissors, chairs and other objects, kicking and punching the school principal. (NT 45, 95)
28. The only Behavior Plan that can be implemented at this time is the pendent plan from June 2007.
29. In some of the District’s school buildings there are mental health services available such as the SBBH program and the CARE program that are funded through Community Behavioral Health (CBH). Elementary does not have either program on site. (NT 30-31)

⁴ The transcript is incorrect at page 79, line 14 in this regard.

⁵ An FBA was also conducted in November 2007. (NT 95)

30. Since the funding mechanism is through the mental health stream, students cannot access these services unless they have a specific type of mental health evaluation, a Comprehensive Biopsychosocial Evaluation (hereinafter CBE) performed by a licensed psychologist or a psychiatrist. (NT 30-31)
31. On November 5, 2007 the Parent initially provided consent for a CBE, but on that same day later in the afternoon she retracted her consent for Student to have a CBE. (NT 35, 51, 53)
32. Student has not had a CBE to date and no appointment for a CBE has been made. The Parent indicated her understanding that the new SCOH worker, assigned one week before the hearing, would be making the appointment. (NT 159-160, 168, 180-181)
33. The Parent indicated that she would seek an evaluation through her primary care physician. This has not yet been done to the District's knowledge. (NT 51)
34. [Redacted], a social service agency, places Consultation and Education (C&E) Specialists in Student's elementary school to provide case management services related to behavioral health and mental health issues. (NT 32-33)
35. Elementary does have a C&E Specialist. (NT 33)
36. Because the supports that Elementary had put into place for Student were not effective, and he was being physically and verbally aggressive to peers and verbally aggressive to staff, in the fall of 2007 the District's behavioral health CSAP liaison for the West Region requested that the Consultation and Education (C&E) Specialist employed by Social Service Agency and placed at Elementary provide assistance to the District and to the Parent so that Student could have a CBE. (NT 35)
37. At a September 28, 2007 Tier II CSAP meeting attended by the Parent and District staff including the counselor, speech/language pathologist, principal, teacher and nurse the Parent gave consent to be contacted by the Social Service Agency C&E Specialist. (P-5)
38. Because some difficulties around working with the case arose, the C&E Specialist's Supervisor sought to set up a meeting with the Parent and was after some cancellations able to meet on November 21st. The Supervisor explained to the Parent that the C&E staff were not connected with the District, and tried to explain the importance of agreeing to a CBE which could be done at any mental health agency. (NT 65-71)
39. At some time subsequent to October 22, 2007 the C&E Specialist at Elementary was able to provide some direct services to Student consisting of nine social skills

- groups. However, in January 2008 the Parent ultimately asked that the C&E Specialist no longer work with Student even though the C&E Specialist was willing to provide more sessions, and averred that she was seeking services for Student on her own. (NT 35-36, 54-55, 59)
40. On January 18, 2008 the Parent asked that the C&E Specialist be changed, but since this was not possible as the individuals are assigned to a specific school, the Parent asked that the C&E Specialist's services be discontinued since she believed the social skills groups were not working. (NT 71-74)
 41. Student was on "daily report" as a means of positive behavior management. (NT 105; S-7)
 42. As of November 21, 2007 into sometime in December Student was assigned three "noon-time aides" as one-to-one assistants to be with him during the day in the classroom to help with managing his behavior. (NT 141-142, 160)
 43. Student swore at the aides and the Parent attempted to have one of the aides arrested. (NT 160, 163-164)
 44. Last school year the Parent requested to have Student transferred out of Elementary but the request was denied. (NT 151)
 45. The Parent believes that Student has problems with the teachers at Elementary. (NT 152)
 46. The Parent is not satisfied with the way the Elementary teachers interact with Student, and believes there is a lack of communication between herself and the teachers. (NT 152)
 47. The [redacted] School has a CARE program and that school was considered for Student, but he would need a CBE to access that classroom. (NT 93)
 48. The Proposed School (hereinafter Proposed School) has SBBH services. If Student receives a CBE and wraparound services are recommended in the form of an SBBH program those services can be implemented at Proposed School. (NT 75)
 49. Even if Student does not have a CBE and obtain approval for SBBH services, the Proposed School staff would be able to consult with the SBBH staff at that school regarding supports he needs. (NT 100)
 50. Because SBBH personnel is already at Proposed School, the District intends to contract for the services of a TSS to be Student's one-to-one aide unless and until he receives a CBE that gives him eligibility for wraparound services. (NT 100)

51. At Elementary the District does not have access to the on-site SBBH staff for consultation or for contracting. (NT 101)
52. Proposed School is located in the West Region, as is Elementary. (NT 83)
53. Proposed School has a regular education 1st grade classroom with about 28 students.⁶ (NT 92)
54. Proposed School provides hearing support personnel and a school counselor.⁷ (NT 92)

Credibility of Witnesses

Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. The decision shall be based solely upon the substantial evidence presented at the hearing.⁸ Quite often, testimony or documentary evidence conflicts; this is to be expected as, had the parties been in full accord, there would have been no need for a hearing. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". Blount v. Lancaster-Lebanon Intermediate Unit, 2003 LEXIS 21639 at *28 (2003). This is a particularly important function, as in many cases the hearing officer level is the only forum in which the witnesses will be appearing in person. This hearing officer has made the following determinations of the witnesses' credibility:

Student: Because he came to the hearing and testified briefly this hearing officer was able to observe his behavior for about one hour. Student's articulation is quite impaired; he did not stay in his seat for more than thirty seconds at a time until he gave his testimony; he continually fiddled with something (paper, gum from his mouth); he talked audibly to himself with random content while his mother, the hearing officer and District's counsel were having a prehearing conference; he refused his mother's urging to come into the hearing room while the school and C&E staff were there (he entered after the hearing officer cleared the room for his testimony); and unlike many seven year olds could not be left alone outside the room in the waiting area with the receptionist unaccompanied. Nevertheless, he seemed engaged when he was testifying, seemed truthful although age-appropriately put a favorable spin on himself, and seemed to be of average intelligence.

⁶ Elementary's 1st grade classroom has between 20 and 25 students. (NT 99)

⁷ The Parent reports that Student had some hearing difficulty such that tubes were placed in his ears. Witnesses for the District who testified noted that they had not noticed that Student had difficulty hearing. The Parent has not yet taken Student for the follow-up audiometric evaluation.

⁸ Spec. Educ. Op. No. 1528 (11/1/04), quoting 22 PA Code, Sec. 14.162(f). See also, Carlisle Area School District v. Scott P., 62 F.3d 520, 524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

Parent: The Parent is obviously committed to her son and is willing to fight for what she believes is best for him. Unfortunately she substitutes her own judgment for that of the trained mental health professionals from Social Service Agency and the educational professionals at Elementary. Her testimony in this hearing was simply not credible. She tended to shift blame for Student's behavior onto other students without exception, regarded the documented behavior on pink slips as "hearsay" from the teachers, was not receptive to the observations of a most-seasoned and widely experienced school principal, and accused the District's witnesses of being racially biased when to a person they were of the same race as the Parent and child. Except for the music teacher, the Parent expressed severe dissatisfaction with the staff at Elementary, was dissatisfied to the point of terminating services with the C&E Specialist from Social Service Agency who is based at Elementary, and additionally expressed dissatisfaction with Elementary as she remembered it from her own childhood. Despite this she is determined to keep Student at Elementary⁹, and could give no reason that had anything to do with Student, instead speaking about her desire to change Elementary into the kind of school she would like it to be.

SCOH Worker [redacted agency]: This individual has only been assigned to Student for about two weeks. Given that there are waiting lists for CBE's in the city, it is of some concern that she has been waiting to gather information before making a referral for a CBE, which seems to be one of the mandates from DHS. With no real basis of knowledge she provided her opinion about moving Student, which opinion was stricken from the record because she has neither the professional nor the personal knowledge of the child that would warrant such an opinion.

Behavioral Health Liaison: This witness was exact, answered directly what she was asked, was poised, was willing to explain her answers and these factors contributed toward her high credibility.

C&E Specialist Social Service Agency: This witness, who appeared under subpoena, was exact, precise in her responses, clear in her recollection of events and evidenced concern for Student. Her testimony was highly credible.

C&E Supervisor Social Service Agency¹⁰: This witness, who appeared under subpoena, provided a great deal of detail when answering questions put to her. She obviously had very much wanted to assist the Parent and Student and her frustration at not being able to do so was palpable. Her testimony was highly credible.

Director of Special Education West Region: This witness provided some specific information about the proposed placement. Her testimony was credible.

Principal Elementary School: This gentleman has been in education since 1956 and has extensive experience with integrating mental health into the schools, having worked with the founder of the prototype in-school partial hospitalization programs. He has had many

⁹ The Parent seemed to be willing to accept a private school but this is not currently an option given that Student has not yet even been classified with emotional disturbance due to Parent's rejection of the ER and the Proposed IEP that are the subject of the upcoming hearing .

¹⁰ The hearing officer put on the record that she had served as a consultant for the same large mental health agency that employed this witness, but that the witness had left that position 5 years ago and there has been no contact/communication since that time.

opportunities to interact directly with Student and testified with utter sincerity and deep concern about his belief that the child requires emotional and behavioral support beyond that which can be afforded to him at this time. He was eminently credible.

Discussion and Conclusions of Law

Legal Basis

Burden of Proof

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). As the District asked for this hearing, the District bears the burden of persuasion. However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. In this matter that is not the case.

Placement

The parent of a child with a disability who disagrees with any decision regarding (disciplinary) placement, or a local educational agency such as a school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

The hearing officer hears and makes a determination regarding the appeal. In making the determination, the hearing officer may order a change of placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. The procedures may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

See 34 CFR §300.532(a)(b)

Whenever a hearing is requested as noted above, the LEA is responsible for arranging the hearing and it shall be an expedited hearing, held within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. See 34 CFR §300.532(c)

Discussion

Student is a young child who is severely behaviorally disordered (FF 4, 5, 7, 9, 10, 13, 14, 15, 17, 18, 21, 23). In the absence of a thorough mental health evaluation the underlying causes for his disruptive behavior are not matters of record. What is evident however through testimony of the District's witnesses, all of whom were credible, and through documentary evidence produced contemporaneously with the behavioral events as they occurred, is that Student presently presents a danger to himself and to other students in his school setting. He has already injured other students and staff, and some of his behaviors (punching a metal cabinet, eloping from the classroom, attempting to jump over a stairwell) pose a significant risk to his own safety.

Student currently does not have the mental health and behavioral health supports that he deserves because the Parent refused to allow him to receive a Comprehensive Biopsychosocial Evaluation, necessary for him to receive wraparound services in the form of a CARE program classroom, an SBBH program, a Behavior Specialist Consultant, a Therapeutic Staff Support worker and/or a Mobile Therapist. (FF 30, 31, 32) He was not able to receive a psychiatric evaluation at the Crisis Center at Germantown Hospital because his grandmother would not allow him to be taken in for a 302 assessment, and the Parent did not follow through with taking him. (FF 23, 24, 25) He is not receiving outpatient therapy from a mental health professional as his Parent has not taken him for any type of mental health assessment. (FF 26) He is not receiving the possible benefits of medication as he has not yet had a psychiatric evaluation or to the school's knowledge been seen by any outside mental health professional for an assessment of his behavior, although it is noted that pediatrician notes say he is "overactive". (FF 8) Because of the Parent's difficulty with the particular professional assigned to Elementary, he is no longer receiving social skills training, the one behavioral health intervention he had, or the referral services of the C&E Specialist from Social Service Agency. (FF 38, 39, 40) Although the District recently reevaluated Student, including performing a new FBA, after waiting several weeks for parental permission, and drafted an IEP, he is not receiving the special education emotional support programming from which he may profit. (FF 22, 27, 28) The Behavior Support Plan that followed from his recent FBA cannot even be implemented because the Parent has not approved the proposed IEP. Basically this Parent has effectively tied the District's hands while her son continues to dangerously abuse other students and the staff at Elementary. Student's behavior also presents a danger to himself; Student is not a happy, well-functioning child and given the extent of his behavioral dyscontrol in 1st grade it can only be anticipated that his problems will grow exponentially worse as he becomes bigger in stature.

Unfortunately, the SCOH services put into place through the Department of Human Services (DHS) have only just begun, and the worker had not made a referral for a CBE as of the date of the hearing. This hearing officer is aware that agencies in Philadelphia generally carry a waiting list and that it is common for children to wait one or two months before they can receive a CBE. In addition, as was discussed in a prehearing conference with the parties, the due process hearing on the issue of the proffered IEP and

NOREP had to be rescheduled, and it is unlikely that a decision will be rendered much before the beginning of May at the earliest as that hearing is not expedited.

Currently the only recourse left to the District is a lateral transfer to another elementary school in the West Region that has the advantage of having an SBBH (School Based Behavioral Health) program, which offers the on-site presence of at least one Behavioral Specialist Consultant and Therapeutic Staff Support workers upon whom the school staff can call for on the spot consultation about Student. (FF 48, 49) In addition, because the SBBH program is already set up in the school, the District intends to purchase the services of a one-to-one aide with mental health training from the SBBH provider (as opposed to using noontime aides) since Student is currently, in the absence of a CBE, not authorized to receive behavioral health services through CBH or any other BHRS (Behavioral Health Rehabilitative Services) provider. (FF 50)

Student desperately requires additional behavioral support, as he is clearly a danger to himself and to others. He deserves the help that his Parent is denying him. Until he can receive the necessary evaluation to become eligible for behavioral health services, or until the Parent accepts or a hearing officer orders emotional support services and the implementation of a recent Behavior Management Plan, the best the District can do is place Student in another elementary school where additional supports for staff and hopefully for Student will be in place for 45 days. At the end of the 45 days, if special education emotional support and/or BHRS support is not yet available, the school can file for another hearing to extend that placement if warranted by continuing dangerous behavior.

Order

It is hereby ordered that:

Because he presents a clear danger to himself and to others, the District is permitted to immediately laterally transfer Student to a 45-day alternative placement at the Proposed School.

March 9, 2008

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer