

VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

Received

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Dispute Resolution &
Administrative Services

POST HEARING REPORT

Public Schools
School Division

Parent

Superintendent

Child

, Esq.
Counsel for School Division

Counsel for Parent/Child

F. Mather Archer
Hearing Officer

Public Schools
Party Initiating Hearing

The Public Schools (PS) filed a Complaint requesting an expedited due process hearing to determine appropriate placement of , his disability category, and appropriate services all arising from his behavior problems since enrolling in Elementary School ().

ISSUES:

1. Is 's placement in a regular education class with special education support the appropriate placement for him?
2. Is 's current category of Emotional Disturbance the correct category?

PRELIMINARY MATTERS:

EXHIBITS:

The following exhibits were presented by PS:

As listed and indexed in black notebook.

The Parent presented no exhibits, but used the PS exhibits for her purposes.

OTHER MATTERS:

Confusion existed regarding who served as parent for . PS carries Mrs. ('s natural mother) as his parent. ('s grandmother) stated that she was legal custodian of and had been since some time in the 1990's. Early in the first day of the hearing, Mrs. , Mrs. and walked out of the hearing; The hearing continued in their absence until on or about 1:00 PM, when, by previous arrangement made with me, PS

counsel had to attend the hearing on _____ in the _____ Juvenile and Domestic Relations District Court (District Court) filed by PS to enforce the parent's participation in this hearing.

The next day (Day 2 of the hearing) PS counsel reported that the District Court ordered Mrs. _____ and Mrs. _____ to participate in the hearing. Mrs. _____ and _____ failed to appear; but Mrs. _____ was present and served *in loco parentis*.

DECISION

SUMMARY OF THE CASE.

This case arose out of the difficulty the PS was having controlling _____'s misbehavior which was seriously interfering not only with his education, but with that of other children in his class as well. PS had little or no cooperation from Mrs. _____, the Parent. As a result, PS determined to change _____'s placement on the basis of his behavior.

The case was concluded on Day 2. _____ is ordered to be placed in an interim alternative educational setting in a self-contained class for 45 days following the date of this decision.

Findings of Fact.

Having heard and observed the demeanor of the witnesses and considered the documentary evidence, I find the facts set out below.

1. _____ is a 10-year-old boy who is a child with a disability. _____ was enrolled in _____ Elementary School (_____) on 6 September, 2005 in the 4th grade.
2. _____ was previously enrolled in _____ Elementary School (_____), where he was in a self-contained special education class. He was initially evaluated as developmentally delayed (DD) in 2002 when he was in kindergarten. He was placed in a self-contained class in November of 2002. In 2003, _____ was enrolled in _____ Elementary School where his category was changed to emotionally disturbed (ED) at the eligibility meeting, and he was placed in a self-contained special education classroom in the 2003 IEP. The Parent did not consent to that IEP because of the change to ED. After problems at _____, _____ was transferred to a self-contained class at _____ in April, 2004. (Tr 1, pp. 52-53; Tr II, pp. 147-149).
3. At _____, _____'s IEP was changed to place him in a self-contained ED class at _____ Elementary, but the Parent wanted him out of self-contained and out of

special education. So, he was put in a regular ed class, with a part-time breakout for special ed teaching in the ED self-contained class where he had been, under the '03 IEP. This was done to comply with the Parent's insistence, and to judge how would do. While Ms. [redacted] was arranging for matriculation in [redacted], in April 2004, his mother was enrolling him in [redacted] which could not provide a self-contained ED classroom. (Tr II, pp. 149-153)

4. Since the Parent did not consent to his being placed in self-contained as ED in the 2003 IEP, [redacted] has had to operate under the category DD. In order to update his IEP for his new school, [redacted], there were 2 IEP meetings on 9/15/05 and 12/19/05. The Parent consented to re-evaluation of [redacted]. The 9/15/05 meeting was a planning session for the triennial review in which the Parent gave permission for the assessments necessary for modification of the IEP. However, the Parent withdrew her consent and the evaluation has not been accomplished. (Exh D1-4, 9-11) (Tr 1, pp. 52-53; Tr II 153-156)
5. The 12/19/05 IEP meeting was changed to the 21st and held in the Parent's absence as she declined to attend. A functional behavior assessment (FBA) and a behavior intervention plan (BIP) were prepared for review. The team met and finalized the documents. However, the BIP was never implemented because Mrs. [redacted] did not attend the meeting and withheld her consent to implementation of the BIP. Mrs. [redacted] agreed only to the school contracting with [redacted] regarding his behaviors. There was no effective change in [redacted]'s behaviors and no support forthcoming from Mrs. [redacted]. In his placement in the general education class with special education through December [redacted] made no satisfactory academic progress (Exhs D-5 through 11; M-4) (Tr 1, pp. 53, 58-62)
6. [redacted] was placed in the general education setting with 45 minutes of special education services daily when deemed necessary. (Exh D-2)
7. [redacted]'s misbehavior began manifesting itself on or about 9/13/05, consisting of misbehavior on the bus, running in the hall, kicking students, distracting other students, which steadily increased through January, 2006. (Exhs D, E, G)
[redacted] has been given out-of-school suspensions on 6 occasions, and several in-school suspensions. (Exhs I, J, K)
8. Academically, [redacted] has been failing in all his subjects, except in writing in which he received a "D" in the first quarter of the year. His academic progress has been declining since he enrolled in [redacted]. (Exh F) (Tr 1, pp 80 – 81)

9. _____'s behavior interferes with his learning: he doesn't do his homework, refuses to do assignments, goes to sleep, doesn't complete assignments, for which his teacher and her helpers used various incentives and strategies to overcome the misbehaviors and keep him on task limiting his being a distraction to the other students in the class. (Tr 1, pp 82-87) (Exh M-3).
10. On 2/16/06 _____ was denied recess time because of his behavior earlier in the day. He was to spend recess time in the office of the Assistant Principal, Mrs. _____. _____ objected and caused a conflict of an hour and a half with Mrs. _____ and Mr. _____ the teacher called in to help in the effort to keep _____ in the office. _____ created an argument and altercation with the two adults of considerable proportions. The school security guard was called to quell his behavior, and needed to handcuff _____ to subdue him. He continued to disrupt things and the security guard called _____ police, one of whom went to _____'s home to bring his mother to the school. Eight adults were required to calm _____. His behavior for the hour and a half was of a child totally out of control. _____ was suspended for 10 days. (Tr 1, pp. 18-29, 31, 49) (Tr II, pp. 9-34; 39-44; 49-55; 60-64; (Exh L)
11. The incident on 2/16, resulted in the IEP meeting originally set for that day being rescheduled for 2/23. The purpose was to rewrite _____'s IEP because of the numerous incidents of _____'s misbehavior since his matriculation in _____, and to undertake a Manifestation Determination Review (MDR). Although she received the 2/17 notice of the meetings, Mrs _____ declined to attend. The MDR, followed by the IEP meeting, proceeded in her absence. (Tr 1, pp. 18-19, 32-33; Exh D-13, 14).
12. The MDR team determined that _____'s behaviors are a manifestation of his disability. (Exh D-16, 17) (Tr 1, pp. 35
13. The IEP team concluded that _____'s appropriate placement was in a self-contained special education classroom, rather than in the general education classroom with special education support in which he had previously been placed. (Exh D-15)
14. _____ has not been re-evaluated since 12/9/03, and he is due for the Triennial Review. (Exh D-1)

Conclusions of Law.

_____ 's behaviors, during the course of the 2005 school year to the date of the request for a due process hearing, presents a trying time for _____ and the school staff,

as well as a sad time. _____ has literally failed in his schooling, and the due process hearing is an appropriate action. It is unfortunate that _____'s mother and grandmother and the school staff have been unable to communicate and cooperate with one another so as to foster his receiving the educational benefit with which his behavior has so drastically interfered.

Notwithstanding, all due notice has been given by PS to the Parent. _____ is clearly a child with a disability, although the category is not clear. He is in dire need of special education and related services. PS has provided and is providing a free appropriate public education to the extent they can, given the obstructions that they face.

Issue 1:

Is _____'s placement in a regular education class with special education support services the appropriate placement for him?

While _____ has been in a regular education class, even with sped support of 45 minutes a day, his academic progress since his matriculation in September, 2005, has decreased drastically to failing and his misbehavior has drastically increased. It has become obvious that his current placement is the most inappropriate placement for him. He needs a self-contained special education classroom for two clear reasons: he has not received educational benefit from the time he entered _____ because of his disability and his behavior. And his behavior has gotten to the point that he has become a serious danger to himself, other students and school staff.

At this point, although the PS at _____ have practically exhausted their strategies, supports, and supplementary aids and services, nevertheless, _____'s behavior has continued to worsen. To return him to the regular education class, with or without special education services, would be futile, and would simply be dangerous to _____ and to others. It is clear that PS has demonstrated by substantial evidence that if _____ were to remain in his general education classroom with special education support he would likely cause harm to himself and to other people. He came very close to that on 2/16/06.

Issue 2:

To date, _____ has not been reevaluated since 2003. Consequently, there is considerable confusion in PS about his disability category. His current IEP (also dated 2003) used the ED category which (together with the self-contained class) caused the Parent to refuse to consent to that IEP. The school has continued to operate on the basis of the outdated DD category while trying to help _____ improve. So, a reevaluation is a real necessity for clarification of his category of disability. If that is done, the appropriate placement of _____ can be determined by

the IEP team, and a placement that is appropriate can be determined. In short, it is not known that the "current category of ED" is appropriate since the Parent has not permitted the PS to operate on that basis with _____; but it is very clear that the DD category is inappropriate since that ended when _____ completed his 9th year of age in May, 2005.

ORDER


It is accordingly ordered as follows:

_____ will be placed in an interim alternative educational setting in a self-contained special education class at the earliest possible time, the setting to be determined by the IEP team, for a period of 45 days from the date of this decision;

PS shall provide a reevaluation of _____'s disability in order to, among other matters, determine the correct and appropriate category of his disability, and modify the 2/23/06 IEP as necessary; and

PS shall implement the IEP, as modified, and place _____ in an appropriate placement; and

If the above cannot be accomplished within the 45 day period, a motion to extend the time for another 45 days or less may be filed in accordance with the regulations.


F. Mather Archer
Hearing Officer

April 6, 2006

Cc: parties & counsel
Virginia Department of Education.

NOTICE: This decision is final and binding unless it is appealed by either party to a state circuit court within one year following the date of this decision, or to a Federal district court within 90 days following the date of this decision.