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PENNSYLVANIA

# Special Education Hearing Officer

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Ambrose Finnegan, Ed.D.

## Due Process Hearing for:

Child's Name: D.P.  
Date of Birth: xx/xx/xx  
Date of Hearing: June 1 and July 18, 2006  
Type of Hearing: Closed  
CDR #: 6484/05-06 AS

## Parties to Hearing:

### Parent:

Parent(s)

### Date Transcript

Received: July 25, 2006

Date of Decision: July 31, 2006

Hearing Officer: Ambrose Finnegan, Ed.D.

School District: East Stroudsburg

District Representative: Gina DePietro, Esq.

County Representative: Pro Se

## Background

Student is a [teenaged] student in the East Stroudsburg School District (“District”). He has been classified as an Emotional Support (“ES”) student and has recently completed his junior year of high school. The District contends that Student has been a disruptive influence to the school environment and seeks to incorporate more restrictive interventions into his program. The parent disagrees with the recommended interventions, and requested these hearings.

## Findings of Fact

1. Student is a [teenaged] resident of the District and just completed his junior year of high school. (N.T. 23; SD #10)
2. The parent represented Student in these proceedings. (N.T. 4)
3. The hearing transpired over two sessions. The delay between the sessions was to accommodate both the parent’s work schedule and the availability of district witnesses. (N.T.185)
4. A resolution meeting had not been held between the parties prior to the commencement of the proceedings. The Hearing Officer ordered that a resolution meeting be conducted subsequent to the first session, and the meeting occurred on June 19, 2006. (N.T. 10-11, 54-55, 79, 173-174, 186-187; SD #19)
5. The remedies sought by the parent are that Student not have his special education status changed from an itinerant to a resource room placement for the purpose of receiving social skills training; that he not be assigned a 1:1 instructional aide or assistant; and that the Functional Behavioral Analysis (“FBA”) conducted concerning Student be judged invalid due to procedural irregularities. (N.T. 16-17)
6. Student returned to the District in September 2003 and was placed in a full-time ES class. His placement was subsequently changed to a part-time ES class, and then, in December 2004, to an itinerant ES status. Student was initially classified as an ES student in 1999. (N.T. 24)
7. The most recent Evaluation Report (“ER”) concerning Student was done in November 2003. The report determined Student to have average intellectual abilities, meet the psychiatric criteria for the diagnosis of Oppositional Defiant Disorder, and be in continued need for his ES educational classification and placement. (N.T. 25; SD #2, 3)
8. Student presents disciplinary concerns in the form of profanity, not complying with classroom directives, not participating in classroom activities, and being insubordinate to staff. Disciplinary concerns are evidenced at a minimum of once a month. (N.T.29-43, 96, 105-106, 118-119, 156-157, 163-170; SD #4, 10, 21, 23)

9. Student was particularly insubordinate and disruptive during an incident on December 6, 2005, when he disrupted an after school activity at the District's Intermediate School. (N.T.36-37, 133, 155-156; SD #21)
10. Student's behavior support plan was revised during the 2005-06 school year to allow him to visit support staff whenever he became frustrated or anxious in class. Staff considered him as abusing this privilege by not always going to see the support staff when he left class. (N.T. 37-38, 115-121, 124; SD #10, 14, 26)
11. In addition to revising his behavior support plan, the Individual Education Plan ("IEP") revisions agreed to by the IEP team in December 2005 included changing Student's schedule to allow him to take honors and college prep classes. (N.T. 41, 124-125; SD #10)
12. At the December 2005 IEP meeting, the IEP Team considered a 1:1 assistant being assigned to Student, but did not include that intervention in his IEP. (N.T 41.)
13. Subsequent to the December 2005 meeting, Student received another disciplinary referral for use of profanity and the District sought to reconvene another IEP meeting. Consideration was also given at the time as to whether it was necessary to make a determination of whether Student's behaviors were a manifestation of his disability, but it was ultimately judged not to be necessary to engage in such a consideration. (N.T. 41-48; SD #11, 13, 21, 23)
14. An IEP meeting was subsequently held on February 9, 2006. The parents arrived for the meeting, but were ordered to be escorted out of the building by the District Superintendent due to alleged disruptive behavior. The IEP team continued to meet without the parents in attendance, and both completed an FBA and made revisions to Student's IEP. The revisions included having Student assigned a 1:1 instructional aide and having his placement changed from itinerant ES to resource room ES to allow for two 20 minute social skills training sessions per week. (N.T. 48-52, 131-136; SD #16)
15. The parent returned a Notice of Recommended Educational Placement ("NOREP") indicating that they did not agree with the IEP revisions contained in the February 2006 IEP and that they requested a due process hearing. (N.T. 52-53; SD #18)
16. Student had a behavior plan during the 2005-06 school year which targeted five (5) specific behaviors. Each teacher assigned him a point value of 4 (highest) to 0 (lowest), which reflected their assessment of him manifesting the targeted behaviors during their class. (N.T.107-113; SD #4, 22, 31)
17. Using the above cited behavior plan as the basis of measuring his progress on the targeted behaviors, Student's IEPs in 2005-06 identified an achievement rate of at least 95% as the benchmark to indicate whether he attained the behavioral goals and objectives set for each of the targeted behaviors by the IEP team. Student did not attain a 95% achievement rate for any of the targeted behaviors at any of the three (3) intervals at which his rate of achievement was monitored. (N.T. 126, 152, 189-197; SD #4, 10, 20, 22, 31, 32, 34)

18. The 95% attainment rate reflected in the IEP was established by his parents. At least one teacher, Student's case manager, wanted the rate to be set at 85%. (N.T. 143)
19. While his teachers did not believe Student always worked to his capacity, he passed all his subjects, with the majority of his awarded numerical grades in the 80s, and several positive comments were offered by his teachers. It was unresolved as to what his final grade in Biology was. (N.T. 125-126, 189, 198-202; SD #30, 33)
20. Student is not the only student who uses profanity. Nevertheless, Student's use of profanity is more prevalent than that evidenced by other students. There were inconsistent observations as to whether Student's use of profanity abated over the course of the year. (N.T. 138-142, 163-168; SD #28)
21. Many of Student's disciplinary issues were evidenced after school hours. (N.T. 149-150)
22. Student is a capable student who can achieve when he extends himself, but he does not exert a consistent effort. (N.T. 162-166)

### **Issues**

1. Should Student's placement and program be changed from an itinerant to resource room status in order to provide him social skills training?
2. Should Student be assigned a 1:1 instructional assistant?
3. Was the FBA conducted concerning Student inappropriately implemented?

### **Discussion and Conclusions of Law**

It was uncontested that Student is an ES student who requires special education placement (FF:6-7).

The Individuals with Disabilities Act ("IDEA") establishes a strong presumption that students with disabilities will receive a free appropriate public education ("FAPE") in the least restrictive environment ("LRE"), and that such students will be educated with nondisabled students to the maximum extent appropriate. 34 CFR 300.550 (b) (1). To ensure that students with disabilities receive FAPE in the LRE, the IDEA establishes both a continuum of alternative placements ranging from the most to least restrictive, and also mandates that Districts support students with the necessary supplementary aids and service to allow the students to achieve FAPE in the least restrictive educational placement. 34 CFR 300.551

The crux of the issues here is whether Student is receiving his education in the least restrictive setting and whether he is receiving the necessary supplementary aids and services to support LRE.

For the reasons enumerated below, it is held that the parent has not met its burden in all regards.

Credible evidence was rendered that indicated Student was a disruptive influence in the school environment (FF: 8-9). The preponderance of evidence, moreover, was indicative of the fact that the District has attempted to provide interventions and accommodations to address Student's behaviors. The District has increasingly included Student in the regular or general curriculum over the last several years to the point where he was receiving itinerant services in 2005-06 (FF: 6); allowed him to visit designated support staff whenever he became frustrated in class (FF: 10); altered his schedule of classes to take more demanding subjects (FF: 11); and established a behavioral plan that allowed for feedback concerning Student's behavior from all his teachers (FF: 16-17).

Even given these accommodations by the District, Student's behaviors have remained disruptive and insubordinate (FF: 17, 20). It is not viewed as helpful to the situation when the parent seems to want to portray Student's disruptive behaviors to be along some arbitrary continuum of minor to major "blowups" (N.T. 66-67). Student's behaviors are disruptive to the academic environment and school officials are within their authority and responsibility to address any and all of these disruptions. The District is to be commended for attempting to make the necessary interventions to both provide Student the required supplementary aids and services he requires to achieve and to provide an alternative milieu to allow all students to achieve free of unwarranted disruptions.

The District contends that Student's placement status should be changed from itinerant to resource room status to allow him to receive social skills training. The District notes that Student's continuing disruptive behaviors (FF: 17) and the fact that he abused the privilege of leaving classes at his discretion when he was feeling frustrated is justification for the change in placement status. The parent offered no evidence that such a change in status is unwarranted.

Given the above, I find that the recommended change in status is warranted. I furthermore hold that the social skills training should occur on an every day basis until such time as the IEP Team decides otherwise. Student is a capable and competent student (FF: 19, 22) whose potential, as presented through his teachers' highly credible evidence, is not being realized due to his behaviors in, at least, the school setting. Social skills training is seen as a supplementary service that is definitely warranted to allow Student to receive FAPE and successfully function within the regular curriculum. It needs to be noted that Student will only receive social skills training in the resource room. All his academic subjects will continue to be provided in the regular or general curriculum.

The District also wants to provide Student with a 1:1 instructional assistant. I do not find sufficient evidence to support this conclusion and find with the parent that such an intervention is not warranted.

The parent notes that Student is not the only student to use profanity in the school setting (FF: 20); many of his disruptive behaviors within the academic setting have occurred after the regular school day (FF: 9, 21); and Student's grades have been adequate in all his classes (FF: 19). This latter point casts some doubt as to the pervasiveness of Student's disruptive behaviors, a condition which on its own would not be a compelling argument. But, in the context of the other

evidence rendered in the record, as indicated below, gives this Hearing Officer some pause in accepting the conclusion that a 1:1 instructional assistant is warranted. I also do not want to suggest that I attach less significance to disruptions that occur after school than to those that occur within the school day. The distinction is that Student's after school disruptions do not have a direct impact on the achievement of other students, an inherent and explicit argument in the District's claim for the need of a 1:1 instructional assistant. Furthermore, there would seem to be more direct administrative prerogatives availability to ensure Student leaves school at the end of the school day.

While there was consensus among the teachers offering testimony that Student was disruptive to the academic environment, teachers were also inconsistent in depicting the pervasiveness of his behaviors (FF: 20). The parent was also able to demonstrate that Student's lack of success in achieving targeted behaviors on his IEP was made to appear more significant than warranted due to their influence in determining what the levels of success should be established (FF: 17-18). Finally, the evidence presented did not establish a set of facts that Student's situation had changed from December 2005, when it was determined a 1:1 instructional assistant was not needed (FF: 12).

For the above reasons, a 1:1 instructional assistant is judged not to be warranted.

No testimony was rendered concerning the administration of the FBA concerning Student, and consequently, no judgment will be made concerning that issue.

### **Order**

On this 31st day of July 2006, it is hereby ordered that:

1. Student's special education status be changed from itinerant support to resource room status. His resource room placement will be for 20 minutes each day to address social skills training. His resource room placement will be for each day of school attendance until the IEP team decides otherwise. Implicit in this order is that the District's recommended placement of two days per week in a resource room setting for social skills training is appropriate.
2. Student will not be assigned a 1:1 instructional assistant.
3. The District's administration of the FBA concerning Student was conducted in a procedurally appropriate manner.

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Ambrose Finnegan, Hearing Officer

July 31, 2006