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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: MD

ODR #6911/06-07 LS

Date of Birth: xx/xx/xx

Date of Hearing: November 14, 2006

CLOSED HEARING

Parties to the Hearing:

Mr. and Mrs.

Tracy Terell
Office of General Counsel
440 N. Broad Street, 3rd Floor
Philadelphia, PA 19130

Date Transcript Received:

Date of Decision:

Hearing Officer:

Representative:

John Comegno, Esquire
521 Pleasant Valley Avenue
Moorestown, N.J. 08057

Ken Cooper, Esquire
Office of General Counsel
440 N. Broad Street, 3rd Floor
Philadelphia, PA 19130

November 18, 2006

November 28, 2006

Marcie Romberger, Esquire

BACKGROUND

Student is a xx years old female in 10th grade in the School District of Philadelphia. Student has been diagnosed with a number of disabilities including Tuberos Sclerosis Complex, mental retardation, Autism, and intractable seizures. Student's parents requested a due process hearing to seek placement for Student in a residential facility.

FINDINGS OF FACT

1. Student is xx years old and in 10th grade in the School District of Philadelphia (hereinafter, "District"). P-D, H.
2. Student has been diagnosed with a number of disabilities including Tuberos Sclerosis Complex, Mental Retardation, Autism, and Intractable Seizures to name a few. N.T. 13, 14, 31-32.
3. Student has been in the District since 2002. She was placed in the life skills support class in the District. N.T. P-M, N, O.
4. In Spring, 2006, the District's school psychologist observed Student in class. Student was the most distractible and her behavior the most unpredictable in the class. N.T. 32-33.
5. The psychologist attempted to evaluate Student. N.T. 29-30. He was not able to accurately administer any tests to Student because of her level of distractibility. N.T. 31. The psychologist recommended Student be placed in "the most restricted educational program placement for students who are both Mentally Retarded and Seriously Emotional Disturbed." P-X.
6. For the 2006-2007 school year, however, Student was placed in the full time multiple disability support class in the District. P-D.
7. On the first day of school, Student would not leave the house to get on the bus. N.T. 108. When Student's mother and father attempted to put her on the bus, Student pushed her father down. N.T. 109. Student's parents took her to school in their car and forced her to enter the building. N.T. 109-110. By 10:00 a.m., the psychologist called Student's family and asked them to pick up Student from school since she was having difficulty transitioning to school. N.T. 110. By the time Student's mother reached the school, Student had a grand mal seizure. Id.
8. The District's psychologist testified that Student's behaviors were more severe in September than what he observed in the Spring. N.T. 33. Student would keep her hands over her ears, talk to herself, push others away, and run away from

- teachers. N.T. 33. She was not engaging in any learning in the classroom. N.T. 33. She was having seizures. N.T. 40. 1
9. Student's mother attempted to get Student to go to school a few days later, but Student again would not leave the car. N.T. 111. The bus came to Student's home for the next 7 days, but student refused to go to school. N.T. 112.
 10. Student is currently being provided home instruction. N.T. 112. Student has not been able to sit for more than one minute with the teacher. Id.
 11. The District's psychologist believes Student needs a 24 hour a day residential placement because of the difficulty separating Student's educational, behavioral, and medical needs and Student's difficulty with transitions. N.T. 35, 36, 40, 44. The school psychologist has only determined a residential placement was necessary for only one other student in the over 30 years he worked for the District. N.T. 36, 43.
 12. Student's private psychologist also feels transitions are hard for Student because she becomes agitated for a significant amount of time before and after the transition which interferes with her education. N.T. 66.
 13. At home, Student has obsessive compulsive traits, is aggressive, does not like to leave her home, and does not like to travel in a car. N.T. 69-70. These traits are getting worse over time. N.T. 105.
 14. Student's private school psychologist completed a Vineland-II Adaptive Behavior Scale. Student's skills are at the following levels: communication skills -1 year, 3 months; written communication skills - 4 years, 1 month; daily living skills – 2 years, 7 months; domestic skills – 10 months; community skills – 1 year 10 months; interpersonal relations – 6 months; play and leisure – 2 months; coping skills - 10 months. N.T. 73; P-H.
 15. Student's medical condition is declining over time. N.T. 94.
 16. Student's pediatric neurologist has seen a significant regression over the past year in Student. P-E. She agrees Student is in need of a residential placement to improve her self-care, socialization, and behavior. P-E.
 17. Student's psychiatrist also believes a residential placement is required for Student's educational and behavioral needs. P-B.
 18. Student's private psychologist also believes Student needs a residential placement with a nursing staff, opportunities for self-help skills, and staff trained in behavioral interventions. N.T. 86; P-H.

¹ These similar behaviors were seen by a private school psychologist hired by Student's family to observe Student in June, 2006. N.T. 64.

ISSUE

Is Student in need of a residential placement in order to receive a free appropriate public education?

DISCUSSION AND CONCLUSION OF LAW

The Individuals with Disabilities Education Act (hereinafter “IDEA”), entitles each child with a disability a free appropriate public education (hereinafter, “FAPE”). The IDEA defines FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge to the child’s family. 34 C.F.R. § 300.17. Special education for a student with disabilities can include instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. 34 C.F.R. § 300.39. Although the IDEA mandates that all children with disabilities are educated with children who are not disabled to the maximum extent appropriate, it does provide for children with disabilities to be educated in special classes or separate schools, including residential facilities, if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §§ 300.104, 300.114(2).

As the District’s school psychologist best stated, it is hard to determine where Student’s educational/behavioral needs end and medical needs begin. N.T. 35, 36, 40, 44. Sadly, Student has such severe educational, behavioral, and medical needs there does not seem to be any other placement that can provide FAPE to Student except for a residential placement. Placements in least restrictive environments have been either attempted or discussed, but none have been determined to be able to provide FAPE to Student. As no evidence contrary to Student receiving FAPE only at a residential facility has been offered, I have no choice but to order a residential placement for Student. 2

This hearing was continued on at least one occasion for the parties to participate in interagency meetings with at least two MH/MR agencies involved with Student. Unfortunately, these agencies were unwilling to provide funding for Student to attend a residential placement. This decision is astounding to me. Unfortunately, I cannot order the agencies to help fund the placement and under the circumstances must order the District to fund the total cost of the residential placement. 34 C.F.R. § 300.154. It is clear to me, however, that these agencies should be funding the non-educational portion of the placement for Student.

2 Every doctor and psychologist who provided input feel Student needs a residential placement. N.T. 35, 36, 40, 44, 86; P-B, E, H.

ORDER

Student is in need of a residential placement in order to receive FAPE. A residential placement is the least restrictive environment for Student to receive special education services. The residential placement should be able to address Student's educational, behavioral, self-help, and medical needs in a small, highly structured setting. Transitions in the residential placement must be kept to a minimum.

Marcie Romberger, Esquire
Hearing Officer