

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

LOCAL IDEA DUE PROCESS HEARING
DOUGLAS F. DENT

G.C., on behalf of minor child J.G.)
Petitioner,)

vs.)

Florence County School District 1)
Respondent)

DECISION

This matter is before me pursuant to a request that I serve as the Local Due Process Hearing Officer on September 17, 2024. The Petitioner submitted a Due Process Hearing Request (DPHR) on September 11, 2024. On September 17, 2024, a letter was sent to the Petitioner explaining her rights and responsibilities in a DPHR. On September 20, 2024, the parties participated in a Resolution Session which did not yield an agreement. After a teleconference, hearing dates of November 12 and 13, 2024, were established with the exchange of documents to take place on November 6, 2024. The document exchange proceeded without incident, and on the appointed day the hearing began with testimony from the Petitioner's witnesses followed by the Respondent's case. Closing arguments were submitted in writing on Thursday, November 14, by both parties.

This case is unique in that the Petitioner is the Foster Parent of the child and there are numerous State agencies involved, i.e. Department of Social Services, Foster Care Agency and a Guardian ad Litem. In addition, there were residential placements with private providers, one in Williamsburg County, made by one or more of these other agencies.

In her DPHR the Petitioner listed numerous alleged violations of the IDEA which will be discussed more completely below. However, as testimony unfolded it appeared that she was actually seeking to relitigate a Manifestation Determination Review (MDR) held on September 10, 2024, and the decisions that arose out of it. Very little information was provided by the Petitioner during testimony regarding the other alleged violations.

BACKGROUND

The child in this case is a fifth-grade student at an Elementary School in the Respondent District, receiving special education services under the category of disability of Autism. In addition, he is diagnosed as having attention deficit hyperactivity disorder (ADHD). He resides in the home of the Petitioner who is the Foster Parent to him and his two siblings who are triplets.

During his time in the District, his behavior has been an issue resulting in a behavioral assessment (FBA) being completed on January 13, 2023, by an Autism consultant and an outside BCBA and a Behavioral Intervention Program (BIP) developed on March 28, 2024. During the 2023-2024 school year he progressed academically and behaviorally. (Testimony of special education teacher). Since coming to the current Elementary School on August 1, 2024, which was the beginning of the 2024- 2025 school year, his behavior significantly deteriorated to the point that on September 3, 2024, he became so violent that personal restraints were utilized and during the attempt to calm him that he caused substantial injury to a female staff member. During a two-hour confrontation the Respondent District sought to have the Petitioner come to school and pick up the child. She indicated that she could not leave her business and agreed to have the Respondent call the Emergency Medical Service (EMS) and have him hospitalized. The Respondent called EMS and they arrived along with a Police Officer who the Respondent had not called but was sent because of the 911 call for EMS. The child finally calmed down and was transported to the Hospital. At the Hospital it was determined that the child would be held for observation for 72 hours. However, the DSS adoption specialist/DSS representative intervened and the child went home. The next day the child appeared at school without any notice and another incident ensued.

As a result of these incidents, the Respondent determined that he was a danger to himself and others. On September 10, 2024, a MDR was held which found his behavior was related to his disability and thus no discipline was administered. However, at the conclusion of the MDR the IEP team offered

that a change of placement was needed and chose a forty-five-day homebased program. The Petitioner objected, indicating she owned her own business and could not be home with the child. Her objection was joined by the representative of the Department of Social Services (DSS) and her Guardian ad Litem. The Petitioner characterized this change of placement as a suspension or expulsion. Since then he was placed in a residential placement at Broadstep Psychiatric Residential Treatment facility in Williamsburg County By DSS. After two months he was withdrawn by DSS and a new residential placement sought.

The Petitioner alleges the child should have been provided assistance at school by the school's Behavior Therapist and possibly treated in the District's relatively new Compass Academy Program. She submitted her DPHR on September 11, 2024.

ISSUES

The Petitioner has listed numerous violations of the IDEA and its implementing regulations in her DPHR. Many of these violations are either not relevant or were not supported by testimony or evidence. The ones which do deserve additional attention are listed here:

1. The Petitioner was not given a chance to have meaningful participation in individualized education program (IEP) meetings or team decisions.
2. The MDR decision was in error.
3. The change of placement was in error or predetermined.
4. Failure to provide a placement in the Least Restrictive Environment (LRE).
5. Failure to follow and implement the child's FBA.
6. Failure to implement the child's BIP.
7. Failure to provide records.
8. Failure to provide extended school year (ESY).
9. Failure to provide school-based therapy.
10. Failure to provide free appropriate public education (FAPE).
11. The Petitioner sought payment of her Advocate's fees and costs.

A number of documents were introduced by the Petitioner to support various issues which often revealed more information than the testimony and almost all were school records. The DSS adoption specialist was the only outside witness, no testimony was entered by either party regarding a Psychoeducational evaluation, and little information regarding the child's educational progress was

provided. Testimony primarily centered on his behavior and the results of that behavior.

DECISION

This matter is complicated by the fact that there are so many parties participating in the care of the Student. In addition, it is not clear which party has the final authority to make decisions regarding the child's care and education. While it was determined that the Petitioner had the right to request a Due Process Hearing, several actions by DSS blur the line of authority. For example, the DSS case worker made the placements of J.G. at Broadstep and Well Spring without consultation with the School District. In addition, he removed the child from the Hospital instead of allowing the 72-hour hold requested by that facility. In addition, the final Decision is made more difficult by the fact that while there is a wealth of information about the child's behavior and the MDR, there was little testimony about anything else.

Given these impediments, the following issues were identified:

1. The Petitioner alleges that she was denied meaningful participation in the IEP and other meetings.

The Petitioner was present with her Advocate at each IEP meeting and the MDR and participated in the preparation of the FBA. She was accompanied by representatives of the various other support agencies during the MDR and was in regular contact with the Respondent during discipline incidents. (Petitioner's Exhibits 1,3, testimony of Petitioner, the advocate, the principal, and others).

IEP teams are made up of a number of people including the parent. In this case the number of participants were expanded to include the Petitioner's support team. Meaningful participation does not mean Control, veto ability, or unilateral decision ability by the Parent. Decisions are made by the team. There may be disagreements and dissenting views but that does not mean a denial of participation. Parents have a right to meaningful participation in an IDEA but not the right to dominate, *J.D. by*

Davis v Kanawha County Bd. Of Educ. 48 IDELR 159 (SD WV a 8/3/07), K.A. v
Fulton County. Sch. Dist. 743 F.3rd 1195, 62 IDELR 161 (11th Cir. 2013)

The specific incident that the Petitioner refers to is the decision by the IEP team at the conclusion of the MDR to change the placement of the child from a self-contained special education service delivery model to a homebased program for 45 days. The Petitioner, her advocate, and the DSS adoption specialist disagreed with the decision. Others at the meeting testified that they agreed with the decision, some verbally and some by a nod of the head.

The Petitioner sought to introduce into the record a flash drive recording of the meeting as proof that the decision was arbitrary by the School Principal, and others did not consent. That attempt was denied because of the testimony of participants in the MDR and subsequent IEP team meeting under Oath was the best evidence of what happened during the meeting.

Clearly, the Petitioner fully participated in all major decisions regarding J.G.'s education.

2. The MDR decision and results were incorrect.

The MDR decision was that the child's behavior was the result of his disabilities and thus no disciplinary action was taken. That should have been good news to the Parent. After the determination, the school principal offered a change in placement to a homebased educational plan because the child was a danger to himself and others. The matter was discussed by all, including the Petitioner's support team.

Because the child could not be safely served at school and the Petitioner indicated she had not experienced the child's violent behavior at home, the placement was to be in a homebased with one-on-one teachers and other support personnel to go to the home. Despite the objections of the Petitioner and her support team, the IEP team voted to proceed with the placement.

Very little testimony was offered by the Petitioner or others in her support group as to the home environment. The only testimony relating to the child's behavior at home was that the Petitioner had taken the child and her other foster children on a vacation to the Great Wolf Lodge and they behaved well. Questions as to possible home triggers for the child's behavior; who took care of the children when the Petitioner was not able to be at home, i.e. on weekends or during school breaks or the summer months; or who took the child to school or picked them up were not answered. Thus, little is known about the home or who, other than the Petitioner, might be there to care for the child. The only inference we have is that DSS and the Foster Care agency found the home an acceptable place for the child to reside. In addition, the DSS adoption specialist, who apparently was the ultimate decision maker, offered no testimony as to DSS's ability to help or supplement the Petitioner's inability to be at home with the child during suspensions, school breaks, summer vacation or other times.

After the September 3 and 4 incidents, it was clear that the child could not immediately return to school or his current classroom. The decision of the MDR was correct.

3. The change in placement was incorrect.

The change of placement was offered and discussed by the IEP team. Because of the Petitioner's report from Roper Regional Hospital and their own experiences, the IEP team wanted to re-evaluate the child to see if he was properly diagnosed and receiving services under the proper category of disability (Petitioner's Exhibit 7). The Homebased program would provide them that opportunity.

The change of placement was appropriate.

4. Failure to provide a placement in the Least Restrictive Environment (LRE)

The Petitioner alleges that the homebased placement is not the LRE since it is more restrictive than the self-contained service-delivery model at school. The irony here is that DSS was already working to place the child in a residential facility when the MDR took place and once the homebased placement was approved, he placed the child in Broadstep Psychiatric Residential Treatment facility which is a more restrictive placement than the homebased proposed on September 13, 2024.

The IEP team's decision to place the child in a homebased program was the least restrictive placement available at the time.

5. Failure to follow and update the child's FBA:

The child had a FBA which was developed during the prior school year. (Petitioner's Exhibit 14). It identified the same behaviors that were experienced during the 2024-25 school year. The only difference was the intensity of those behaviors. Any update would be redundant.

6. Failure to implement the child's BIP:

A BIP was developed on March 28, 2024 (Petitioner's Exhibit 4). It identified the child's behaviors, Strategies, and Interventions to be taken when the child acted out. It also discussed a Crisis Plan. While the behaviors listed in the BIP continued into the 2024-2025 school year resulting in several disciplinary actions including an out-of-school suspension from September 5-10 for the September 3 and 4 incidents. There was a lot of testimony about the use of "mat blocking", a strategy which uses athletic mats to block and isolate the child when he became aggressive. The Petitioner claimed that it was not used. Respondent witnesses indicated that the technique was attempted but it was not successful.

During the August 3rd incident in particular, many strategies outlined in the child's BIP were attempted to no avail. Ms. Smith, and autism consultant with Saftecare training sought to restrain the child in what is called a "one person hold". In addition, she was assisted by another adult in a "two person hold". Neither were totally effective and during the attempts the District's autism consultant sustained significant injuries which required medical attention. Neither the Petitioner nor any of her support staff witnessed the incident and she refused to come to school, so they could not know what actually happened and how much violence the school personnel experienced.

The testimony from those who were present when the child erupted makes it clear that any attempt to educate the child when he was engaging in these aggressive behaviors was futile. In addition, he attacked a fellow student with a broom and caused the classroom to be evacuated which meant that the other children were being deprived of their educational opportunities and were possibly in danger

The BIP was not only followed it was fully utilized.

7. Failure to provide the Parent with records:

The Petitioner claimed that she requested records that were not provided. In particular, she sought notes from the child's Shadow, a personal assistant who was with the child the entire time he was in school. On the day of the MDR she was provided with those notes. (Petitioner's Exhibit 11).

The Petitioner received all appropriate records and utilized them liberally in the Hearing.

8. Failure to provide ESY:

The Petitioner alleged that the Respondent's failure to provide ESY services between the 2023-2024 and 2024-2025 school year was a violation of the IDEA. During his IEP review in March of 2024 the request for ESY was made. The child's special

education teacher, indicated that the child was progressing educationally and with his behavior at the end of the 2023-2024 school year. She saw no signs of regression during long school breaks and felt that it was not necessary to provide ESY. The IEP team agreed.

The failure to provide ESY services was not a violation of IDEA.

9. Failure to provide school-based therapy:

The Petitioner alleged that the Respondent's failure to provide School-Based Therapy or a placement at the Respondent's recently formed Compass Academy contributed to the incidents that ultimately led to the MDR and the homebased placement and violated his rights under IDEA. One of the School Behavior Therapists who was a witness to the September 3, 2024, incident, testified that after two attempts, on August 26, 2024, she received permission to diagnose and treat the child (Petitioner's Exhibit 6). However, prior to the September 3 incident she had not met with the child.

The Petitioner sought information from several witnesses regarding why the child was not placed in the newly formed Compass Academy. Testimony from one of the autism specialists, a supervisor for the District's Programs for Exceptional Children, and the Assistant Superintendent of Programs for Exceptional Children for the District stated Compass Academy is a program for low functioning children with severe mental health issues, i.e. schizophrenia, deep depression, etc. (Petitioner's Exhibit 12) All agreed that it was not a good placement for J.G at that time.

The Respondent provides several School-Based therapy programs which are designed to assist children with their ability to learn, but not to modify their behavior which is clearly what J.G..needs. Although the Petitioner was referred

to outside agencies to help with behavior modification, they either did not work or were rejected.

The failure of the District to provide a School-Based therapy program for the child did not violate the IDEA.

10. Failure to provide the child with a FAPE:

There is no doubt that J.G. is in trouble and in need of serious behavior modification. It is also clear that without that behavior modification it would be nearly impossible to provide educational services to him in school. He has physically attacked students and staff; disrupted classrooms; caused property damage; and shown the propensity to erupt at any moment for no apparent reason.

There is some indication in the testimony and exhibits that his behavior may be, in some part, manipulative as a way of avoiding school work or to get a result that he wants (Respondent Exhibit 2, Petitioner's Exhibits 4, 14). However, to the Respondent's knowledge, he has not been in a residential placement or received services there long enough to fully diagnose the motivations for his behavior.

This Respondent placed him in one of their best Special Education classrooms that utilizes a self-contained service delivery model presided over by one of their best elementary school special education teachers (Testimony of District personnel). Her classroom has only ten students with two teacher aides and provided the child with a full time shadow to help with his school work. He was given an IEP which offered him an opportunity to obtain meaningful educational progress and he did make progress during the 2023-2024 school year. However, just a couple of weeks into the new school year he had his first incident of a severe behavior on August 13, 2024. While discipline problems occurred, the incident that created the MDR and other actions which engendered this Due Process Hearing occurred on September 3 and 4. The actions of the

Respondent and others which took place after that date are the ones that the Petitioner has focused on for the purposes of this Hearing.

As a result of the MDR and the child's propensity for violence at school, the Respondent offered a homebased program consisting of: 30 minutes of Reading, 30 minutes of Math, 15 minutes of writing, 15 minutes of communication skills, 15 minutes of social interaction, 15 minutes of daily living skills administered by a special education teacher overseen by the homebased supervisor. The program consisted of over 2 hours a day and since the child only had an approximately 20-minute attention span it would have lasted longer.

Before the Respondent could implement the program, DSS placed the child in Broadstep Residential Psychiatric Treatment Facility where he stayed from September 13, 2024, until November 8, 2024. He was withdrawn from that facility "AMA", against medical advice, by the DSS representative who contended the facility was under investigation (Respondent's Exhibit 2 and testimony). The program is in Williamsburg County which meant that once he was placed there, the Respondent had no responsibility for his education. It then became the responsibility of Williamsburg County School District. When a request was received by Williamsburg County School District, the Student's records were forwarded to them. There was no evidence presented at the Hearing that Williamsburg ever developed an IEP or worked with Broadstep to provide educational services.

When the Student was withdrawn from Broadstep, DSS pursued another placement and may have successfully placed him by now. No testimony was provided about this subsequent placement. In any event, the Respondent

is no longer involved in the child's education.

The Respondent is a School District with the legal responsibility to offer an educational opportunity to the child. The law requires the School District to provide such related services as may be necessary to give the student an opportunity to learn. However, it does not require it to serve as a residential or psychiatric hospital. In this case, it had provided significant support in order to allow the child to grow educationally but the child became of control and could not be educated in school.

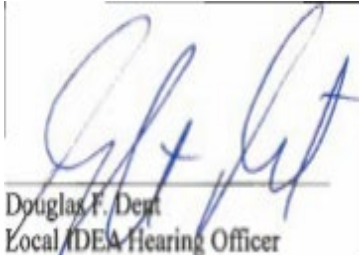
The Respondent did not deny the child FAPE.

As previously noted, this case is unique. It relies primarily on factual information, includes involvement by other agencies not related to the child's education and engenders a decision which does not require much in the way of legal interpretation. It is actually an appeal of the MDR decision and not a challenge to the educational opportunity offered.

Finally, the Petitioner has sought payment of her hired Advocate's fees and costs. This is not within my power to grant and if it were, it would require a ruling in the Petitioner's behalf. Such a ruling is not the case in this instance.

THEREFORE, IT IS ORDERED, that the Respondent has offered the child a Free and Appropriate Public Education within the requirements of IDEA and while the child was within its control. ***IT IS SO ORDERED.***

Greenville, South Carolina
November 18, 2024



Douglas F. Dent
Local IDEA Hearing Officer

APPEAL

Should either party wish to Appeal this decision they must contact the South Carolina Department of Education, Office of General Counsel, 849 Learning Way, West Columbia South Carolina 29172, (843-734-3393) within ten (10) days of receipt of this Decision.