

STATE OF SOUTH CAROLINA	)	
	)	BEFORE THE LOCAL HEARING
COUNTY OF RICHLAND	)	IDEA HEARING OFFICER
In the matter of:	)	
LT on behalf of JT,	)	
	)	
Petitioner	)	
	)	
v.	)	FINAL ORDER
	)	
Richland County School District Two	)	
Respondent	)	

This matter is before me pursuant to a request that I serve as the Local IDEA Hearing Officer received September 1, 2017. A letter was sent to the Petitioner on September 5, 2017, providing him with his rights and responsibilities in a Due Process Hearing and a Resolution Session was held without success. The Petitioner in this case actually submitted three Complaints but it was determined that the third one was a simple utilization of the State Standard form and did not present a new claim. The first two complaints were consolidated into one case. The District filed responses on August 31, 2017, and September 11, 2017.

The parties participated in a teleconference on September 14, 2017, which resulted in the setting of a hearing Date of October 16 and 17, 2017, and an exchange of documents and witness lists on October 9, 2017. Those events occurred without issue.

There was one preliminary issue that had to be determined, i.e. the child's "Stay Put" placement, which was settled by an Interim Order dated September 19, 2017. That placement was determined to be the pre-school program at Forest Lake Elementary, but by agreement the parties agreed to allow the Student to attend the kindergarten program at that school.

At a pre-hearing conference the parties confirmed that the issues to be determined at the hearing were: 1) the child's permanent placement; 2) whether or not the Petitioner was

given meaningful participation in the IEP Team meetings; 3) whether or not the Respondent provided the Student with sufficient transition services; and 4) whether or not the Student's IEP was appropriate and thus provided him with FAPE.

Each party was given an opportunity for an opening statement and testimony began. The parties' witness lists contained eight common witnesses, so it was determined that said witnesses would only be called once and each party would be allowed to ask those witnesses any questions they wished without regard to form but subject to objection from the opposing party.

From the testimony and evidence presented at the hearing it appears that the following are determined to be facts:

1. The Parent is a child who just turned five years old, but entered the Respondent District at age 3 in a pre-school program at Killian Elementary School. (Testimony of several witnesses).
2. During the preschool program and kindergarten time, the Student exhibited serious behavior problems, i.e. spitting, biting, kicking, hitting, throwing objects, cursing and running from class. (Testimony of numerous witnesses, documented in numerous documents).
3. The Student was determined to be of normal intelligence and able to achieve his academic goals but was deterred by his behavior. (Testimony of multiple witnesses but in particular, the school psychologist, Respondent's Exhibit 13).
4. The Student's first IEP was in January, 2017 with goals relating to speech deficit and behavior issues providing placement in a special education classroom. (District witnesses, Petitioner's Exhibit 1).
5. In April, 2017, a functional behavior assessment (FBA) and behavioral intervention plan (BIP) were developed. (Testimony of District witnesses, Petitioner's Exhibit 6).
6. The District offered placement in a Behavior Support Program at Killian Elementary School and Condor Elementary School, which was rejected by the Petitioner. (District witnesses, Respondent's Exhibit 2).

ISSUES

As is often the case, issues identified prior to the Hearing are not necessarily all of the issues that emerge from the testimony and exhibits presented at the hearing. In this case, the issues identified prior to the hearing were:

“1) the child’s permanent placement; 2) whether or not the Petitioner was given meaningful participation in the IEP Team meetings; 3) whether or not the Respondent had provided [the Student] with sufficient transition services; and 4) whether or not [the Student’s] IEP was appropriate and thus provided him with FAPE.”

Those issues are important and will be addressed, however, we also must deal with the Student’s behavior; how IEP teams work; and some definitions such as least restrictive environment (LRE), resource, self-contained class, and Inclusion service delivery models.

DISCUSSION AND FINDINGS

From the testimony and documentary evidence it is clear that the Student has a significant behavior problem. It is so severe that it interferes with the ability to provide him educational services.

It is somewhat normal for young children to develop negative behaviors while exploring how to get their way, interact with others or cope with uncomfortable circumstances. Biting, hitting, kicking, throwing items and running are fairly common behaviors with three (3) year olds. However, it is not normal to have them exhibited so severely and on a daily basis. Usually, with parental guidance and behavior modification efforts at school, by age 4 and 5 those behaviors have subsided. In the Student’s case those behaviors have become more intense, extreme and difficult to control.

Instances of those behaviors as well as spitting, putting his fingers down his throat to cause vomiting and cursing indicate a serious imbalance in behavior and are clearly learned behavior from siblings, family, relatives, other children. The assertion of the Student’s mother

that the Student did not exhibit those behaviors at home is improbable. Four-year-old children do not have curse words in their vocabulary unless they overhear them and see them used in context with certain actions. Nor do they exhibit the severe behaviors that the Student is regularly engaged in at school without exhibiting them at home as well. Young children are simply not sophisticated enough to know when to act out and when to act in an appropriate manner.

We know that the teachers and administrators at school have made substantial efforts to control the Student's behavior utilizing a variety of methods with limited success. One can only assume that the same efforts are not being undertaken at home particularly when no evidence to the contrary was presented. In fact, the family's resistance to the District's efforts at behavior control by objecting to the methods used and rejecting placements that would help the Student indicate a lack of understanding of how serious his behavior has become. The lack of consistency while dealing with behavior problems simply exacerbates them.

That said, the issue before me is whether or not the Respondent District has performed in such a manner as to have met its legal obligations relating to the education of the Student. From the testimony and evidence it is clear that the Student was identified early on as a child with special needs. Thus, the District has met its "Child Find" obligations. The District evaluated him in kindergarten and offered special education services through an IEP addressing his speech deficit and disrupting and extreme behavior (Petitioner Exhibit 1). His teacher, was qualified to implement the IEP and did so to the best of her abilities. The services offered were appropriate and the Student did make some progress towards educational goals and his speech disorder. However, the Student's behavior deteriorated further requiring additional efforts.

In May 2017, the IEP team agreed to develop a FBA and a BIP in an effort to seek new strategies to control the Student's behavior. That effort resulted in several offers of placements to the Petitioner all of which were rejected.

The issue has become more complicated because of the Petitioner's insistence that his child be served at Forest Lake Elementary, even though the Respondent has tried to explain that the program the Student needs is not available at Forest Lake. In addition, the Petitioner has rejected the need for a more restrictive placement for the Student.

Evidence shows that the District has considered LRE issues and has attempted to find placements that satisfy the LRE requirements and will provide the child with an appropriate educational plan. An inclusion placement was offered and the resource model was tried. However, based on experience and evaluation results, the Respondent settled on a self-contained behavior support placement.

The Petitioner has also indicated that he did not feel the Respondent treated him or the child's mother fairly during the IEP process. Since he or the Student's mother signed each IEP, it is obvious that they were present or represented at each meeting. In addition, several witnesses testified that they spoke with the Petitioner on a regular basis. The IEPs were modified based on the parents positions and the IEP team actually altered placements and programs offered their child. However, the Petitioner apparently objected to his inability to veto the IEP team's decisions. It is well settled in law that IEP teams are just that "a team", and no individual has the power to make decisions for the team. They are made as a group. *JD by Davis v. Kanawha County Bd of Educ*, 48 IDELR 159 (SD WV, 8/3/07).

The Petitioner also indicated in his Complaint that he did not believe that the Student was given appropriate transitions services between pre-school and Kindergarten. His move from Killian to Forest Lake did result in an adjustment period. The teacher took some time to find out for herself about the Student's behavior. As a result, the first several months of his time at Forest Lake took place without an IEP. However, it became apparent that he needed more services and thus the IEP was formulated in January of the kindergarten year. Given the age of the Student and the fact that young children often grow out of inappropriate behaviors the teacher's approach appears to be reasonable.

Finally, we must address whether or not the Student's IEP and proposed placement were designed to provide him with meaningful educational progress and thus FAPE. By all accounts the Student was progressing educationally and his speech deficit was improving. (Testimony of District personnel). However, his behavior was worsening and interfering with the teacher's efforts to teach him; interfering with the education of others; and he was becoming a danger to himself and others. The development of the FBA and the BIP for the Student was an appropriate step in an effort to find a way to modify his behavior. The offer of a placement in a Behavior Support Program was the next logical placement for the Student and clearly an appropriate step towards the District's attempt to get his downward spiraling behavior under control. The Petitioner's attempt to veto that placement for the simple reason that he wanted him to attend Forest Lake was unreasonable and detrimental. The only fault I find with the District's plan is that it did not offer or suggest that the Student undergo individual counseling. Even at his young age, he would benefit from a one on one relationship with a professional who could assist in the effort to get his behavior under control.

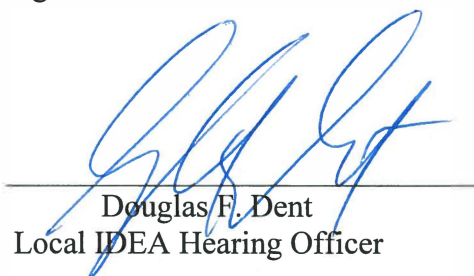
DECISION

The Student just five years old. He has his full life ahead of him. The Petitioner is a concerned parent who for some reason does not seem to grasp the seriousness of his son's behavior problems and the fact that those behaviors need to be dealt with now before they become ingrained and impossible to modify. I hope that will change and he will find a way to work with the Respondent District to assist his son.

I find that the IEP and placement in a Behavior Support Program at Condor Elementary is the appropriate placement for the Student. I further find that the District offered the Petitioner meaningful participation in the IEP process and he took advantage of that offer. I further find that the Respondent provided appropriate transition services to the Student as he moved from pre-school to kindergarten. I further find that the placement at Condor constitutes the least restrictive placement for the Student. Finally, while I am not ordering it at this juncture, I am strongly recommending that the Respondent consider working with the family to find someone who can provide individual counseling for the Student.

IT IS SO ORDERED.

October 24, 2017
Greenville, South Carolina



Douglas F. Dent
Local IDEA Hearing Officer

APPEAL

Should either party wish to appeal this ruling they may do so by writing a letter to the South Carolina Department of Education, Office of the General Counsel, 1429 Senate Street, Rutledge Building, Columbia, South Carolina 29201 within ten days of receipt of the Hearing Officer's Order.