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Due Process Hearing Officer

KANSAS STATE DEPARTMENT OF EDUCATION
DUE PROCESS HEARING

_____, A Female Minor
and

Case no. 14DP

Public Schools No.

HEARING OFFICER'S DECISION

It is the finding of the Hearing Officer that _____'s placement in the resource room at _____ Elementary School during the school year 2013/2014 was appropriate and the least restrictive environment in order for _____ to receive FAPE. The undisputed evidence at the due process hearing was that at the beginning of _____'s first grade year at _____ the IEP team held an IEP team meeting regarding _____'s behavior in the regular class room. It was the decision of the IEP team that _____ needed a substantial change in placement to the resource room at _____. The parents participated in the IEP team meeting and consented to the change in placement. All experts testified that the resource room was the appropriate placement for _____ during the 2013/2014 school year.

However, new circumstances/data/information may impact on _____'s IEP and placement for 2014/2015 school year. The changes include but are not limited to new medication _____ has been prescribed, whether _____ is admitted into the BEST program, an evaluation of _____ by the University of Kansas and _____'s success in the ESY program this summer.

The IEP team is ordered to immediately reconvene and re-evaluate _____'s placement and IEP considering all of the new circumstances/data/information.

As a factual basis and in support of the above finding, the Hearing Officer finds as follows:

1. A request for due process was received by the district on April 25, 2014.
2. On May 19, 2014, the parties jointly requested mediation.
3. A mediation session was held on June 2, 2014. The parties signed an agreement that did NOT include an agreement to withdraw the request for due process.
4. On June 17, 2014, the parents were contacted by Mark Ward, Consultant-Legal, Kansas State Department of Education and expressed their intent to continue with the due process hearing.
5. June 17, 2014, therefore started the 45 day period in which to conduct a due process hearing and issue a decision. The hearing and decision deadline is August 1, 2014.
6. The burden of persuasion in a special education due process case in on the party challenging the IEP, _____'s parents.
7. Two prehearing telephone conferences were held. Exhibits and witness lists were exchanged. There were no issues involved in the exchange of those exhibits and witness lists.
8. On July 29, 2014, a special education due process hearing was held at _____ Drive, _____, Kansas. _____, mother of _____ appeared for the parents and _____ appeared on behalf of the district.

9. Both parties stipulated that the district followed IDEA, Kansas law and regulations with respect to all procedural matters. The sole issue at the hearing was whether placement in a resource classroom was appropriate for the school year 2013/2014.

10. Both parties agreed to the admittance of all of the numbered exhibits.

11. Ms. testified that had previously attended Elementary. was primarily in the regular classroom but with regular pull outs for support. (Ex. #1 K IEP and Behavior Intervention Plan from p. 12-15). Ms. testified that did well with as her special education teacher at .

12. The family moved and so began the 2013/2014 school year in Elementary. was again primarily in the regular education classroom with regular pull outs for support. had some difficulty adjusting to the move, according to Ms. ,

13. , 1st grade classroom teacher at , testified that had behavioral issues that were more extreme than typically seen in 1st graders. behaviors included screaming, physical aggression, elopement and non-compliance, according to Ms. .

14. Efforts to change 's behavior in Ms. 's classroom were not successful. On September 9, 2013, the district requested and was given parental permission to conduct a Functional Behavior Analysis. (Ex. 26)

15. On September 16, 2013, an IEP team meeting was held to discuss possible changes to 's IEP. (Ex. 32 Staffing Notes)

16. Prior Written Notice was given to the parents of the district's intent to make a substantial change in 's placement. (Ex. 37) Ms. gave her consent for this substantial change in placement. (Ex. 37, p. 40) was moved to the resource room which is pictured in Ex.

141-144. [redacted] is the special education resource room teacher for grades K-1 at [redacted].

17. Ms. [redacted] testified that the resource room isolates [redacted] from any interaction with her peers. [redacted] needs to “regain the ability to be in groups” of children and in social settings. Ms. [redacted] testified that the resource room was the backside of the gym stage where [redacted] hears children playing but is never allowed to participate in that play.

18. Ms. [redacted] testified that [redacted] is not isolated in the resource room. Ex. 121, [redacted]'s daily schedule shows many interactions with peers including breakfast, recess, lunch, P.E. and music. [redacted] attended all class parties except one and went on all field trips and interacted with special visitors.

19. Ms. [redacted] further testified that the resource room itself does not isolate students and has designated areas for group work and also a “Calm Room”. (Ex. 122, Resource Room drawing) [redacted] interacts at some point in her school day with 5 other students, according to Ms. [redacted].

20. The IEP team held another meeting on December 9, 2013. (Ex. 44 Staffing Notes) The IEP team reviewed the Functional Behavioral Assessment Summary for [redacted]. (Ex. 45-56)

21. A new Behavior Intervention Plan and Positive Behavior Supports was developed for [redacted] and included in her IEP. (Ex. 57-60 dated 2-5-2014)

22. Another IEP team meeting was held February 13, 2014. (Ex. 69 Staffing Notes) and a new IEP was developed for [redacted]. (Ex. 74-87) The team consensus was that [redacted] should remain in the resource room.

23. Ms. [redacted] testified that she believes putting [redacted] in the resource room allows [redacted] to think she can get out of work by misbehaving. Ms. [redacted] testified that [redacted] has learned

virtually nothing academically in the first grade. Ms. [redacted] testified that [redacted] is on new medication and is scheduled to be evaluated by the University of Kansas.

24. [redacted], Assistant Special Education Director, testified that the IEP team held another IEP meeting April 21, 2014. (Ex. 100, Staffing Notes) The IEP team referred [redacted] to the BEST (Behavior and Emotional Support Team) program in another school setting. Ms. [redacted] testified and the staffing notes also indicate that she continued to express concerns about [redacted]'s isolation in the resource room. It was Ms. [redacted]'s opinion that the IEP team needed to meet and reconsider placement.

25. [redacted] District autism consultant, [redacted], testified that data was charted on [redacted]'s behavior in the classroom. (Ex. P. 130-140) The data included frequency of behavior divided into 5-15 minute increments.

26. Ms. [redacted] testified that this data was available for consideration by the IEP team. Ms. [redacted] testified that the data showed a general downward trend in behavioral problems including aggression, screaming, destruction, elopement and noncompliance from [redacted] throughout the school year.

27. Ms. [redacted] testified that the data supported [redacted]'s transfer to the resource room. In the resource room, [redacted]'s academic demands are decreased and her preferred activities are increased. More behavioral supports are available in the resource room.

28. [redacted], special education instruction for [redacted], during her 2013/2014 ESY, testified that [redacted] did well in the group classroom setting during the E. S. Y. (Ex. 124) Mr. [redacted] testified that he normally teaches 6th grade and is not a regular special education teacher.

29. Mr. [redacted] testified that the only goal for [redacted], during the E. S. Y. were social goals. There were no academic goals. The classroom contained 8 children, 1 teacher and 5 paraprofessionals.

The undisputed testimony at the due process hearing was that it was the consensus of the IEP team that [redacted] needed to be placed in the resource room at the beginning of her 1st grade year because of her behavior in the regular classroom. The parents consented to this placement at the time of the change.

It was also the undisputed testimony at the due process hearing that the IEP team needs to reconvene to consider all of the new circumstances that may affect [redacted]'s placement. Ms.

[redacted] was adamant that [redacted] must not return to the resource room under any circumstance.

The IEP team should immediately reconvene and consider [redacted]'s behavior in the ESY, [redacted]'s new medication, BEST and any and all other factors. It is the opinion of this Hearing Officer that the Memorandum of Settlement Agreement developed by the parties themselves and included as Exhibit page 120 is completely appropriate and will likely provide [redacted] with the best possible IEP.

IT IS SO ORDERED.

/s/ Sue DeVoe
Sue DeVoe, #13314
Due Process Hearing Officer

Certificate of Service

Sue DeVoe states that on August 1, 2014, she emailed a copy of the above to:
Mark Ward, mward@ksde.org

[\[redacted\]@usd\[redacted\].org](mailto:[redacted]@usd[redacted].org)
[\[redacted\]@yahoo.com](mailto:[redacted]@yahoo.com)

/s/ Sue DeVoe
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