SPECIAL EDUCATION DUE PROCESS HEARING

[redacted] V. GREENWOOD PUBLIC SCHOOLS

Representing the parent: [redacted].

Representing the Greenwood Public Schools: Ms. Neysha Sanders, Esq.

Individuals in full attendance:

Ms. [redacted]	Mother - P
	Advocate - P
Ms. N. Sanders	Attorney - D
Mr. C. Brooks	Director of Special Education - D
Dr. S. J. Obringer	Hearing Officer

Scheduled Witnesses for the District as appearing on witness list:

Charles Brooks	Director of Special Education
Robert Sims	Principal
Charlotte Dale	Teacher
Linda Glass	Teacher
Jeffie Scott	Teacher
Janet Doty	Psychometrist
Floyd Smith	Teacher

Scheduled Witnesses for the Parent as listed on the witness list:

Ms. [redacted]	Mother of the student
Janet Doty	Psychometrist
Donna Pittman	Teacher
Ms. Hall	Teacher
Ms. Dale	Teacher
Ms. Moore	Teacher
Mr Brooks	Director of Special Education
Ms. Shack	Teacher
Ms. Ricketts	Speech/Language Pathologist

Evidence: Please refer to District (D) Exhibits; Parent (P) Exhibits (enclosed under separate cover).

A request for a Due Process hearing under Part B of the Individuals with Disabilities Education Act 2007 Amendment (IDEA) was received by the Greenwood Public Schools on July 17, 2007. It was forwarded to the Mississippi Department of Education for processing. The hearing officer, Dr. S. John Obringer, was appointed by this agency and was forwarded the complaint. The hearing officer read the complaint from the mother of [redacted]. The hearing officer contacted Mrs. [redacted] and her advocate, Ms. [redacted]. After several lengthy conversations, the facts of the complaint were documented. The hearing officer also contacted the Director of Special Education, Mr.Charles Brooks and proceeded with setting up a preconference on August 31, 2007. The hearing was held at the central office of the Greenwood Public School System on Sept. 14, 2007.

Background

[redacted] is a [redacted] year old student who resides within the Greenwood Public School System. He has a developmental disorder with an eligibility ruling of educable mentally retarded (mild). He was evaluated by Michael Wheelan, Ph.D and was found to have a full scale IQ of 64. At that time his academic achievement was between a first and second grade level, significantly below the expectation for his chronological age. The Vineland Adaptive Behavior Scale was administered by Janet Doty, Psychometrist, and an adaptive behavior composite of 40 was found. [redacted], also is reported to have received speech therapy in the past. Due to dissatisfaction with [redacted]'s education, his mother officially withdrew him from the Greenwood School System on October, 21, 2005. [redacted] currently attends New Summit School in Greenwood, Mississippi.

The Issue

The [redacted] family is requesting that the Greenwood Public School System either reimburse or pay the tuition for the New Summit School in Greenwood, Mississippi. The rationale for this issue is the denial of FAPE as presented in the following complaint.

The Complaint

The central issues of the complaint break down as follows:

The labelling of [redacted] as mentally retarded and the appropriateness of the goals and objectives of the IEP in an inclusive setting;

The appropriateness under IDEA of corporal punishment (paddling) following a behavior incident;

The question of need for a manifestation determination before the administration of the corporal punishment.

Summary of primary testimony

Testimony was heard from numerous teaching staff, support personnel, and a retired principal all employed by the Greenwood Public School System. The overwhelming consensus of the witnesses was that [redacted] was not a student with behavior problems, and in fact was seen as a relatively cooperative individual. The retired principal also testified that [redacted] was not viewed as a student with behavior problems and was seldom sent to the office for disciplinary action. The advocate spent much time going over the IEP and related documents with the various witnesses. The advocate also spent a considerable amount of time questioning the witnesses as to [redacted]'s behavior which resulted in the paddling. The retired principal stated that Ms. [redacted] simply could have told him that she did not want her son paddled and he would have informed the teachers of this fact and worked out a different form of discipline. The advocate also addressed the issue of gum being stuck to [redacted]'s nose by the teacher for more than an entire class period. Witnesses stated that they did not recall this incident and the retired principal reported that he "thought" it may have been playdough. The advocate then questioned witnesses concerning [redacted]'s altercation with another student, which resulted in both students being suspended for three days. Testimony was also heard attesting to the fact that Ms. [redacted] is a poor reader and may not have completely understood the IEP document. Also an issue was raised as to whether Ms. [redacted] signed the current IEP. Because the document was missing a page or pages, this fact was never clarified.

Both parties agreed to submit closing arguments within ten days from the date of the hearing. Closing arguments were received from only Ms. Sanders, the district's attorney.

Discussion

The enrollment of a student with a disability is a complex issue, but the crux of the issues comes down to whether the public school system has the resources to educate and provide an appropriate education in the least restrictive setting with needed related services.

Many states have enacted legislation outlawing the use of corporal punishment in the public schools. In the absence of such legislation (as in Mississippi), corporal punishment has been permitted under common law in this country for more than a century. Courts have used a standard that is commonly referred to a the "shock the conscience test." Basically this test examines whether the corporal punishment was brutal or demeaning and so disproportionate to the misconduct, that it would be considered outrageous.

The following legal precedents give insight into this particular case.

Cunningham v. Harry J. Beavers
(106 LRP 45068).

In this case involving the paddling by school authorities the circuit judge ruled: "Because the state of Texas allows for the corporal punishment of children, and provides state criminal and tort remedies for excessive punishment, we affirm the district court's dismissal of the plaintiffs (complaint of paddling).

In reviewing the case of Garcia v. Miera, U.S. District Judge, Luther Bohanon clarified the difference between beating and paddling. Judge Bohanon writes, "We are aware the word beatings connotes excessive force; while paddling may imply reasonable force." (U.S. Court of Appeals, Tenth Circuit 85-1641)
(106 LRP 45070).

In reviewing the case of Fee v. Milton, which involves corporal punishment with a disabled student, the following observation were made:

> Reasonable corporal punishment is permitted in order to preserve an effective educational environment, free from disruption;
>
> Corporal punishment shall be reasonable and moderate and may not be administered maliciously or for purposes of revenge.
>
> (U.S. Court of Appeals, Fifth Circuit 89-2828) (16 IDELR) 793).

From the above decisions, case law suggests the following:

> Students, including those with disabilities, may be disciplined with the use of corporal punishment, including paddling, unless state law specifically prohibits this disciplinary action.

Facts determined by the hearing officer

The psychological testing results, the IEP, and associated documents for [redacted] were found to be satisfactory. Test scores support the eligibility ruling of "EMR" (educable mentally retarded).

The paddling administered by the school was within the legal guidelines of state policy and is clearly spelled out in the district's written policy concerning corporal punishment. The issue

of a required manifestation determination was not found to be necessary as the student was disciplined according to standard school policy and no substantial change in the student's program would result (ex. change in placement or other major IEP components).

Although not specifically addressed in the written complaint, the altercation with another student resulted in the equal punishment of both students involved; that being suspension for three days.

The Decision

The burden of proof in an IDEA complaint lies with the plaintiff (parents), The Greenwood Public School System has satisfied the hearing officer that the system has offered [redacted] a free appropriate public education (FAPE) through a reasonably calculated program by way of an IEP. After researching case law relating to this case, the hearing officer also is of the opinion that the corporal punishment in the form of a paddling does not violate FAPE. Further, altercations (fights) while not a desired behavior in a school unfortunately do occur; the hearing officer believes the school administration acted in a judicious and nondiscriminatory manner.

The hearing officer rules in favor of the Greenwood Public School System. That is: the school system is not responsible for the tuition or any other fees associated with the Summit School.

Further

Ms. [redacted] is opposed to paddling as a form of discipline. If [redacted] attends the Greenwood Public School System in the future, a form of discipline other than paddling should be worked out between Ms. [redacted] and the school administration.

Right to Appeal

Either party may make an appeal of this hearing officer's decision to the appropriate court of competence within forty-five (45) days of receipt of the written decision of the hearing officer. If no appeal is made, the decision is binding on both parties.

Signed this 2nd day of November, 2007

S. J. Obringer

S. J. Obringer, Ed.D
IDEA HEARING OFFICER
STATE OF MISSISSIPPI

NOTE: This decision was slightly delayed due to the late arrival of the court reporter's transcripts.