

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: E.S.

Date of Birth: [redacted]

Date of Hearing: June 21, 2014

CLOSED HEARING

ODR Case # 15065-1314KE

Parties to the Hearing:

Parent[s]

Peters Township School District
631 East McMurray Road
McMurray, PA 15317

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Jocelyn Kramer, Esquire
445 Fort Pitt Boulevard
Suite 503
Pittsburgh, PA 15219

June 13, 2014

June 21, 2014

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (“student”) is a [teen-aged] student who has been identified as a student with a health impairment. The student resides in the Peters Township School District (“District”). On this record, the parties do not dispute that the student is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹. The parties’ dispute centers on the student’s eligibility for an extended school year (“ESY”) program. The District found the student to be ineligible for ESY programming for the summer of 2014. The parent maintains that the student is eligible for ESY programming.

For the reasons set forth below, I find in favor of the District.

ISSUES

Is the student eligible for ESY programming for the summer of 2014?

FINDINGS OF FACT

1. The student has been diagnosed with craniosynostosis, a condition where fusion of skull plates can lead to restricted skull growth which, in turn, can lead to health impairments. (Parent’s Exhibit

¹ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §14.132.

- ["P"]-1; School District Exhibit ["S"]-31; Notes of Testimony ["NT"] at 125).
2. In October 2009, the student was identified as eligible under IDEA as a student with a health impairment. Prior to the October 2009 evaluation, the student had received supports through a Section 504 plan/Chapter 15 service agreement. The October 2009 evaluation report ("ER") determined that the student would benefit from specially designed instruction in spelling and reading comprehension. (S-31).
 3. In September 2010, a re-evaluation report ("RR") found on the Stanford-Binet Intelligence Scale (5th edition) that the student's full-scale IQ was 111. The September 2010 RR contained a host of additional assessments in assistive technology, occupational therapy, speech and language, reading, mathematics, written language, executive functioning, memory, and auditory processing. (S-32).
 4. The September 2010 RR concluded that the student had a disability but did not require specially designed instruction. (S-32).
 5. In December 2011, the student was independently evaluated. The independent educational evaluation ("IEE) found on the Wechsler Intelligence Scale for Children (4th edition) that the student's full-scale IQ was 108. The IEE recommended that the student be

- identified as a student with a health impairment and specific learning disabilities. (S-26).
6. In April 2012, the student was re-evaluated by the District and found once again to be eligible under IDEA as a student with a health impairment, identifying needs in written expression, math calculation, and accuracy/consistency in homework completion. (S-33).
 7. As part of the student's 2012-2013 program, and as part of the settlement of a special education due process settlement between the parties at that time, the student received ESY programming in summer 2013. (S-1, S-27; NT at 42-46).
 8. During the 2013-2014 school year, the student's individualized education plan ("IEP") was delivered at a private placement. (P-2; S-15).
 9. In December 2013, the student's IEP team discussed ESY programming for the summer of 2014. At that time, the District recommended that the student did not qualify for ESY programming. (S-16; NT at 48-49).
 10. The December 2013 IEP contained nine goals—one in reading, one in reading comprehension, one in written expression, and six in mathematics. (S-16).
 11. Data on the student's reading level showed progress over the course of the 2013-2014 school year. (S-18).

12. Multiple probes in writing and mathematics administered at the private placement before and after the winter break indicated that the student maintained academic skills over the break. (S-19, S-20).
13. Written input from teachers at the private placement, including input on IEP goals/programming and ESY programming checklists, was solicited by the District. (S-22, S-23).
14. Two teachers who worked with the student at the private placement over the course of the 2013-2014 school year testified credibly that they felt the student showed no signs of regression, or need for recoupment, over the course of the school year and anticipated that the student would not regress or need recoupment in the absence of ESY programming. As teachers responsible for delivery of instruction under the student's IEP, their testimony was accorded heavy weight. (NT at 82-110).
15. Over the course of January-May 2014, the parties communicated regarding IEP meetings to discuss the student's ESY programming. (S-5, S-6, S-7, S-8, S-9).
16. On May 22, 2014, parent filed a special education due process complaint which led to these proceedings.
17. The student's mother testified credibly that in addition to what she feels is evidence of an academic need for ESY programming, the student qualifies for ESY programming as the

result of neurological impairments as a result of the student's craniosynostosis. (NT at 125-132).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of ESY services is governed by both federal and Pennsylvania special education law. (34 C.F.R. §300.106; 22 PA Code §14.132). Where the IDEA speaks generally to the availability of and qualification for ESY programming (34 C.F.R. §§300.106(a)(2), (b)), Pennsylvania special education regulations speak in detail about the provision of ESY services. (22 PA Code §14.132).

Special provision for the consideration of ESY programming is made for students with autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement, and/or severe multiple disabilities. (22 PA Code §14.132(d)). None of these identifications is part of the student's diagnostic or identification history on this record.

Pursuant to 22 PA Code §14.132(a)(2), the determination of ESY programming is based on an examination of multiple factors:

“(i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).

(ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities."

In this case, the weight of the evidence supports the District's conclusion that the student does not require ESY programming in the summer of 2014. As the 2013-2014 school year unfolded at the private placement, the student showed no signs of difficulty with regression in, or recoupment of, academic functioning after interruptions of instruction. Most persuasive was the testimony of the student's teacher's

at the private placement. The data provided through their input and ESY review was bolstered by credible testimony that they saw no risk of regression, or difficulty with recoupment, or any of the other risks in skill/goal consolidation or mastery.

Accordingly, there is no error in the District's handling of the question of ESY programming for the student in the summer of 2014.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District did not fail in its obligations to the student in determining that the student is not eligible for ESY programming in summer 2014.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 21, 2014