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Pennsylvania Special Education Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR File Number 20539 1718

Child's Name: R.H.

Date of Birth: [redacted]

Date of Hearing:

06/04/2018

ParentsU

[redacted]

Pro Se

School DistrictU

Pittsburgh School District, 341 S. Bellefield Avenue
Pittsburgh, PA 15213

Annemarie Harr, Esquire, 445 Fort Pitt Boulevard, Suite 503
Pittsburgh, PA 15219
Counsel for the LEA

Hearing Officer: Michael J. McElligott **Date of Decision:** 06/29/2018

INTRODUCTION

Student¹ is a pre-teen age student who resides in the School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with multiple disabilities and an intellectual disability.

Based on their complaint,³ parents claim that the student should receive educational services, provided by the District, in the family home. The District asserts that the appropriate educational placement for the student is the District’s specialized school for students with complex disability profiles.

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

ISSUES

Which placement, District-based or services in the home, is appropriate for the student?

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

³ On April 16, 2018, the parents filed their complaint. On May 11, 2018, the student’s mother, District counsel, and the undersigned hearing officer participated in a conference call to discuss hearing planning, to make collaborative decisions about the issues and evidence at the hearing, and to allow the parent and counsel to ask questions of the hearing officer. On May 31, 2018, the hearing officer sent an email confirming certain hearing details and reminding the parents and District counsel of the hearing scheduled for the next day, including the hearing location. Parents failed to appear at the hearing on June 4, 2018. (Notes of Testimony at 3-14, 62-63).

FINDINGS OF FACT

1. The student has multiple medical diagnoses of a significant nature, including epilepsy, spastic quadriplegia, anoxic traumatic brain injury, chronic respiratory failure, cortical vision impairment, and global developmental delays, among other diagnoses. The student has a tracheostomy, a g-tube, and utilizes a ventilator. The student takes numerous prescribed medications. (School District Exhibit ["S"]-1).
2. Prior to July 2017, the student attended District schools and private placements at District expense. As of July 2017, the student was attending a private placement, and parents requested that the student transition back to a District placement. (S-1; Notes of Testimony ["NT"] at 52).
3. In July 2017, the student transitioned back to the District for summer programming at a District school specializing in the education of students with significant disabilities that implicated medical needs. (S-1; NT at 18-19).
4. The student attended summer programming at the District placement and began the 2017-2018 school year at the District placement. (NT at 19-20).
5. The student was accompanied by a nurse, contracted by the District from an outside nursing agency, on the bus to and from the District placement each day and accompanied the student throughout the school day. The nurse attended to the student's medically-based needs and administered medications. (S-2; NT at 19-22).
6. At the outset of the school year, the student's nurse was available only three days per week, so the student attended the District placement only on those days. Parents requested that the student attend school five days per week, so the District began working with a new nursing agency for the student. A nurse began to accompany the student five days per week. (NT at 19-20).
7. In October 2017, an incident occurred where non-labeled medicines were sent to the school with the student. The nursing agency requested more clarity regarding the medications that the nurse was tasked with administering, and parents provided the necessary information. (NT at 22-24, 55-56).
8. In November 2017, the District issued its biennial re-evaluation report (RR) of the student. (S-1).

9. The student is nonverbal and has limited non-verbal communication skills. The evaluator utilized certain testing and assessments, input and standardized scales from the student's teacher and parents, observation of the student, and record review. The November 2017 RR concluded that the student exhibited extremely low adaptive functioning and profound intellectual disability. (S-1).
10. In the November 2017 RR, the student's special education teacher, who had been working with the student in the summer and in the school year, indicated that "(the student's) current educational placement with (physical therapy), (occupational therapy), speech, and vision as related services continues to be an appropriate placement. (Those individuals) also agree that (the student) continues to require an individual nurse to attend to...significant and complex medical needs." (S-1 at page 12).
11. The November 2017 RR continued to identify the student as a student with multiple disabilities and an intellectual disability. (S-1).
12. Over the fall of 2017, the District and the family continued to have intermittent issues with the student's medications and other needs in the school environment. (NT at 23-24).
13. In December 2017, the District proposed an individualized education program ("IEP"). (S-2).
14. The December 2017 IEP contained six goals: One in adaptive physical education (tolerating hand-over-hand physical assistance), one in physical therapy (toleration of positioning/re-positioning), one in occupational therapy (shoulder flexion without donning/doffing outerwear without indication of pain/discomfort), one in vision (orientation to object and use of eye movement to communicate yes/no), and two in speech and language (requesting or indicating preference with motor movement or use of a switch). (S-2 at pages 26-28).
15. The December 2017 IEP provided for physical therapy, occupational therapy, vision services, and speech and language services, as well as daily classroom instruction and interaction. (S-2; NT at 16-47).
16. In January 2018, a substitute nurse was assigned to the student. Medications which were not part of the student's treatment plan with the District were provided to the nurse, who did not feel comfortable administering the medications and requested updated medical treatment information. The parents disagreed with the approach taken by the nursing agency and stopped sending the student to school. (NT at 24, 53-55).

17. In early February 2018, the student's IEP team met, and the December 2017 IEP was revised, adding additional parental concerns related to the assigned nurse. The IEP team also updated the format of the home/school communication log. The parents did not continue to engage in the process of interviewing/selecting a new nurse or new nursing agency. (S-2 at page 2; NT at 57-61).
18. Due to the student's lack of attendance, the District began to deliver, with parents' consent, educational services in the student's home for a brief period of time. A notice of recommended educational placement, however, was never issued by the District for the delivery of those services. (NT at 24-25).
19. District personnel were not aware that parents had placed a video camera in the home and that the District personnel were being recorded by the parents as they worked with the student. Upon learning of the videotaping, the District discontinued providing services in the home. (NT at 25-27).
20. As of the date of the hearing, the student had not returned to the District placement. Based on parents' complaint, they seek to have the student educated in the home. (Parents' Complaint at page 3).
21. The student's special education teacher testified credibly about how she implemented the student's IEP, both in the District placement and in the home. (NT at 27-47).
22. The District's inclusion coordinator for personal care aides and nurses testified credibly to the District's efforts to identify a nursing agency, and specific nurse, to work with the student, an agency/nurse that was satisfactory to the family. (NT at 49-61).
23. Parents did not attend the hearing. (NT at 3-14, 62-63).

DISCUSSION AND CONCLUSIONS OF LAW

To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the

student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her needs (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 29, 197 L. Ed. 2d 335 (2017); Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (Andrew F.; M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).⁴

Moreover, both federal and Pennsylvania law require that the placement of a student with a disability be in the least restrictive requirement (“LRE”). Educating a student in the LRE requires that placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting which affords exposure to non-disabled peers and regular education and that “separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (34 C.F.R. §300.114(a)(2) and, generally, 34 C.F.R. §§300.114-120 ; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3^d Cir. 1993)).

Here, the student’s complex needs, including significant medical needs, require that the student receive separate schooling. In that regard, the LRE considerations for this student do not implicate a regular education setting.

⁴ While in some parts of the United States the U.S. Supreme Court decision in Andrew F. presented a new and higher standard to gauge the appropriateness of special education programming, the standard laid out in Andrew F. has been, largely, the longstanding standard enunciated by the Third Circuit Court of Appeals and has been the applicable standard to judge the appropriateness of special education programming in Pennsylvania.

But the parties' dispute is, at its base, a LRE dispute—the parents seek to have educational services provided in the home, and the District seeks to educate the student in an educational setting, albeit a highly specialized and somewhat restrictive—though necessary— educational setting. In that regard, the December 2017 IEP, delivered in an educational setting, is less restrictive than services provided to the student in the home.

In the District placement, the student would receive daily instruction and interaction, and weekly therapy services, including multiple sessions of some therapies. The student's medical needs would be attended to, and the student would be exposed to a variety of interactions with peers and adults. The student's special education teacher, by affect a deeply devoted and engaged educator, would provide the student with a full range of educational approaches and class/school experiences. Between the two placements, the District's school-based placement is clearly less restrictive than providing services to the student in the home.

The December 2017 IEP itself is reasonably calculated to yield meaningful education benefit. The student's special education teacher testified credibly that over the period September 2017 – January 2018, while the student attended the District's placement, the student made progress in goals and general engagement in communication/learning processes, an assertion that is borne out by the progress monitoring data contained the December 2017 IEP. In sum, by design and implementation, the District provided a free

appropriate public education to the student, in the LRE based on the student's complex educational and medical needs.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District has designed and implemented a special education program for the student which is appropriate, in the least restrictive environment available for the student.

Any claim not specifically addressed in this decision and order is denied.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

June 29, 2018