

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

Final Decision and Order

CLOSED HEARING

ODR File Number 22447-19-20

Child's Name: M. D.

Date of Birth: [redacted]

Parent:

[redacted]

School District:

Pittsburgh School District
2323 Brighton Road
Pittsburgh, PA 15212

Lynne Sherry, Esquire
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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

08/24/2019

INTRODUCTION

Student (“student”)¹ is an early elementary school student who attends the 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.

The student will be new to the District in the 2019-2020 school year. The student’s parent disputes multiple elements of the program that the District is proposing for the student’s transition to the District. The District counters that its proposed programming for transition to the District is appropriate. Therefore, rather than a broad sweep of claims, the parties are disputing specific elements of the student’s program.

For the reasons set forth below, elements of the student’s program will be addressed in the order.

ISSUE

What, if any, elements of the student’s program need to be addressed through this decision and order?

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 §§14.101-14.162 (“Chapter 14”).

FINDINGS OF FACT

1. The student has a genetic condition that impacts multiple areas of the student's physical, cognitive, and adaptive development. (Parent Exhibit ["P"]-1; School District Exhibit ["S"]-1).
2. The parties do not dispute that the student qualifies for services under IDEA as a student with multiple disabilities.
3. The student has attended a preschool and specialized school program which supported the student's needs. (S-2; Notes of Testimony ["NT"] at 72-86, 88-103).
4. The student's individualized education program ("IEP") in the preschool environment is an early intervention document and is not an IEP developed by the student's IEP team for school-aged program. (S-2; NT at 51-68).
5. The early childhood IEP contains six goals, one in grasp/manipulation of objects, one in appropriate/intended engagement with toys and objects, one in attention to task, one in use of hello/goodbye, one in expressive speech, one in put-in/take-out and put-on/take-off, and one in physical therapy (balance, posture, and strength while sitting). (S-2).
6. Part of that programming includes the provision of physical therapy, speech and language therapy, and occupational therapy provided by the District. (S-2).
7. In the spring of 2019, the student's IEP team met to plan for the student's transition to a program at the District. (S-3, NT at 51-68).
8. At that time, the student was formally enrolled in the District for the 2019-2020 school year. (NT at 51-68).
9. Upon transition from early intervention programming to District-based programming, the District offers parents one of three options: (1) a re-evaluation of the student for wholly new programming at the District, (2) revising the early intervention program for implementation prior to beginning school, or (3) implementing the early intervention program as written with revision in the fall of the school year. The parent agreed with the third option—implementation of the early intervention IEP with revision in the fall of 2019. (NT at 51-68).
10. The District proposes that the student be transported, accompanied daily by a nurse, to/from a District regular-education

elementary school with a classroom for students with multiple disabilities. (S-3; NT at 15-50, 51-68).

11. The multiple disabilities classroom is projected to have six students (including the student), with two kindergartners, one 1st grade student, one 4th grade student, and two 5th grade students. (NT at 15-50).³
12. The student's mother, accompanied by the student's grandmother, toured the school building and the multiple-disabilities classroom where the District is recommending placement. The student's parent and grandmother had concerns about what they saw at the school. (NT at 51-68, 72-86, 88-103).
13. The classroom is staffed by a special education teacher and two classroom aides. One of the students in the classroom has a full-time personal care assistant. (NT at 51-68).
14. The student would have a full-time nurse to attend to the student's [redacted] feeding, [redacted]. (S-2; NT at 51-68, 72-86, 88-103).
15. At the preschool, the student received pureed lunch. (P-1).
16. Ultimately, the parties could not agree on elements of the student's program. In July 2019, the parent filed the special education due process complaint which led to these proceedings. (School District Exhibit – B).
17. In early August 2019, the student's family received a packet of materials from the District, including a welcome letter and food services information which indicated the student would attend a different school building, not the school building which the student's IEP team had been discussing. A District special education administrator testified that this was a clerical error. (P-2; NT at 51-68).
18. At the hearing, in terms of the student's program, the student's mother and grandmother testified to particular concerns regarding:
 - transportation
 - the student's feeding using pureed foods
 - the student's access to sensory devices
 - noise and activity levels in art, music, and gym classes, and concerns with inclusive environments generally
 - the amount of occupational therapy and physical therapy services

³ The District has an age-range waiver for the classroom. (NT at 88-103).

- access to a tablet computer
- the student’s physical therapy needs in terms of seating arrangements in the classroom
- the potential need for a personal aide

(NT at 72-86, 88-103).

19. At the hearing, the student’s mother and grandmother testified to more generalized concerns regarding arrival/dismissal, building security, confidentiality of student information, the academic reputation of the school, and the location of the classroom. (NT at 72-86, 88-103).
20. This decision is being issued on the cusp of the 2019-2020 school year. (NT at 51-68).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives a free appropriate public education (“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 unique needs, not simply *de minimis* or minimal educational progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, 904 F.3d 248 (3d Cir. 2018)).

Additionally, to the maximum extent appropriate, a student should be exposed

to and educated in the regular education environment, or with typically-developing peers. (22 PA Code §22.145).

As indicated in the *Introduction* section of this decision, the parties dispute specific elements of the student’s program. Mindful of the legal framework that provides a gauge for the provision of FAPE outlined in the foregoing paragraph, and recognizing that the parties are at an impasse about the student’s programming, the terms of the order below will provide directives for the IEP team.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student’s placement shall be in the multiple disabilities classroom at the school building which was the focus of evidence at the hearing (not the school building named in the correspondence received by the family in August 2019).

During the week of Monday, August 26th, the District, through a District special education administrator, shall communicate with the student’s parent and the District physical therapist who provided services to the student in preschool to ascertain, prior to beginning school, the student’s needs for physical therapy support— including chairs, devices, and other equipment— which the student will require in the classroom and school building.

During the week of Monday, August 26th, the District occupational therapist shall communicate with the student's parent to consult about the sensory objects/strategies that are being employed in the preschool. The District occupational therapist shall make part of the twice-weekly programming (see below) an assessment of whether the student exhibits sensory needs and any appropriate programming therefor.

During the week of Monday, August 26th, the District, through a District special education administrator, shall communicate with the student's parent and the District child nutrition department to develop a nutrition plan for the student's daily feeding of pureed foods.

As soon as practicable, but no later than Tuesday, September 3rd, the District shall have in place daily transportation to/from the placement. During transport, the student shall be accompanied by a nurse and shall be secured utilizing a car seat.

The student's IEP shall be the IEP document from the student's prior placement with the following revisions:

- The provision of physical therapy, speech and language therapy, and occupational therapy shall take place twice weekly for 30 minutes per session.
- The student shall have access to a tablet computer. The classroom teacher and therapists shall consult with the student's parent about how this technology might be utilized in instruction and/or therapies. Over the period prior to October 1st (see below), the

student's teacher and therapists shall assess the student's need/use for the tablet and any appropriate programming utilizing the tablet.

- The student shall participate in regular education settings for art and music. In these settings, the student's one-to-one aide (see below) shall collect data about the student's affect and response to instruction/participation in these regular education settings.

Whether or not the student should continue to participate in these settings, and if so to what extent, shall be an explicit consideration of the student's IEP team at its October meeting (see below).

Whether or not the student should participate in adapted physical education shall be deferred for explicit consideration of the student's IEP team at its October meeting.

Additionally, the student's program shall include a one-to-one aide to accompany the student in regular education settings outside of the multiple-disabilities classroom and to assist the student with the daily feeding of pureed foods. The training of the aide in the latter regard shall be in consultation with the family and the District nutrition department.

The student's IEP team shall meet on or before October 8, 2019 to craft a District-based IEP, to be formalized through a notice of recommended educational placement (NOREP) issued by the District with implementation no later than October 15, 2019.

The student's District-based IEP shall include the provisions outlined in this order, but nothing in this order shall limit the parties' ability, at any time, to agree otherwise in writing as to any aspect of the student's placement or programming.

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

With the issuance of this final decision and order, the undersigned hearing officer releases jurisdiction.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

August 24, 2019