

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: GD

Date of Birth: xx/xx/xxxx

Date of Hearing: April 30, 2010

CLOSED HEARING

ODR Case # 00940-09-10-KE

Parties to the Hearing:

Ms. Lori Sutton
Bethel Park School District
301 Church Road
Bethel Park, PA 15102

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Michael Brungo, Esq.
1 Churchill Park
3301 McCrady Road
Pittsburgh, PA 15235

April 30, 2010

May 10, 2010

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student (“student”) is a 12-year old student with autism residing in the Bethel Park School District (“District”) who qualifies as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The student’s mother alleges that the student does not qualify for extended school year (“ESY”) programming.² To the extent that it is determined that the student qualifies for ESY programming, the student’s mother alleges that the District’s proposed ESY program is inappropriate. The District maintains that the student qualifies for ESY programming and that it has offered an appropriate ESY program to the student for summer 2010. As such, the District avers that it has complied with its duties under federal and Pennsylvania law to offer the student a free appropriate public education (“FAPE”). The student’s father agrees in substance with the District—namely that the student qualifies for ESY programming and that the District’s proposed ESY program is appropriate.

For the reasons set forth below, I find that the student qualifies for ESY programming and that the District’s proposed ESY programming is appropriate.

ISSUES

Does the student qualify for ESY programming?

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.

² 34 C.F.R. §300.106; 22 PA Code §14.132.

If so, is the District's proposed summer 2010 ESY program appropriate?

FINDINGS OF FACT

1. The student has been identified as a student with autism with secondary identifications of emotional disturbance and speech and language needs. The student has been receiving services in an autism support program since October 2008. (School District Exhibit ["S"]-26, 72, 74).
2. The student has communication needs and exhibits behaviors that impede the student's learning or the learning of others. (Parent's Exhibit³ ["P"]-16; S-41).
3. The student resided in western Pennsylvania with both parents before relocating to [Redacted state] with mother. In May 2008, the student returned to western Pennsylvania to reside with father in the District. (S-74; Notes of Testimony at 156, 292).
4. Parents share joint legal custody of the child, but father holds primary physical custody. (NT at 226-227).
5. After returning to reside in the District in May 2008, the District, based on information regarding the student's educational placement in [Redacted state] sought an educational placement for

³ All references to parent's exhibit were offered by the student's mother. The student's father did not offer any exhibits.

- the student at a number of day programs in western Pennsylvania. (S-82, S-83, S-85, S-86, S-87, S-88, S-89, S-90).
6. In October 2008, the District recommended, and father approved, a placement at [Redacted School]. Until this time, the District was dealing only with the student's father. After October 2008, the District communicated and conferred with both parents. (S-72; NT at 306-307).
 7. The student attended the [Redacted school] program for the 2008-2009 school year. (S-69, S-72, S-73, S-74).
 8. In December 2008, the student's individualized education plan ("IEP") team met to revise the student's IEP. At that meeting, the student's IEP indicated that the student qualified for ESY programming and that data collection over the 08/09 Christmas break would be used to validate that conclusion. (S-69; NT at 307-309).
 9. [Redacted school] collected data on during the Christmas break, and the District determined that the student qualified for ESY programming. (S-67).
 10. Based on the student's identification and the data collected over the Christmas break, the District felt that the student qualified for ESY programming in summer 2009. The District considered multiple programs for the summer and recommended the [Redacted school] ESY program. (S-66; NT at 307-309).

11. The student's father approved the recommendation. The student's mother had questions about the possibility of waiver of the ESY program in the summer of 2009 but ultimately supported the decision to send the student to Pressley Ridge's ESY program in summer 2009. (P-2, P-14, P-15; S-66; NT at 101-102).
12. After the conclusion of the summer 2009 ESY program, the student joined mother in [Redacted state] in August 2009 and enjoyed time with mother, siblings, and stepfather. (NT at 65-67, 80-85, 207-213, 216-217).
13. The student returned to western Pennsylvania for the 2009-2010 school year and again attended Pressley Ridge. (S-69).
14. The student's IEP team met in December 2009 for the annual revision of the student's IEP. The District recommended continuing the placement at Pressley Ridge. Parents could not agree on whether the student would continue at the District or would return to [Redacted state]. (S-37, S-38, S-39, S-40, S-41; NT at 311-314).
15. In March 2010, based upon data collection over the 09/10 Christmas break, the District again recommended that the student attend the [Redacted school] ESY program in summer 2010. (P-7, P-10, P-12, S-13, S-14, S-15).
16. The student's mother did not agree that the data collection over the 09/10 Christmas break supports eligibility for ESY

programming. (P-8 at page 2, S-13, S-107, S-108; NT at 107-109, 115-116).

17. The student's father approved the District's recommended placement at [Redacted school]for ESY programming in summer 2010. The student's mother rejected the District's recommended placement at [Redacted school]for ESY programming in summer 2010 and requested a due process hearing. (P-1; S-2, S-13).
18. The District's assistant director of special education (the administrator responsible for special education programming for District students within the student's grade range) and the director of the [Redacted school]program both opined credibly that the student qualifies for ESY programming and would benefit from the ESY program at Pressley Ridge. Both agreed that the continuation over a summer program of instruction, structure, and routine is important for the provision of a free, appropriate public education to the student. Additionally, monitoring the student through data collection over the summer was also highlighted as important for planning the student's education program. (NT at 291-292, 314-318, 323-330, 337-338, 340-341, 347-348).
19. The ESY program at [Redacted school]is an appropriate program for the student. (P-46; S-14, S-105, S-106; NT at 339-346).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of ESY services is governed by both federal and Pennsylvania special education law.⁴ Where the IDEIA speaks generally to the availability of and qualification for ESY programming⁵, Pennsylvania special education regulations speak in detail about the provision of ESY services.⁶

Eligibility

A student in Pennsylvania qualifies for ESY programming when the IEP team finds that the student qualifies under a constellation of factors.⁷ One of these factors includes the severity of the student's diagnosis, including autism and emotional disturbance. Other factors include the student's potential regression after breaks from instruction, or the inability to recoup instruction after such breaks, maintenance and/or consolidation of skills/behaviors, the degree that the a break in instruction will interfere with a student's self-sufficiency and independence, and the effect of a break on the student potentially withdrawing from the education process.⁸ The consideration of these factors must be based on data, which can take numerous forms.⁹

⁴ 34 C.F.R. §300.106; 22 PA Code §14.132.

⁵ 34 C.F.R. §§300.106(a)(2), (b).

⁶ 22 PA Code §14.132.

⁷ 22 PA Code §14.132(a).

⁸ 22 PA Code §14.132(a)(i)-(vii).

⁹ 22 PA Code §14.132(b).

In this case, the student is diagnosed with two severe disabilities. (FF 1). Additionally, the record taken in its entirety firmly supports the finding that the District, in consultation with both parents and Pressley Ridge, considered how a break from education programming affected the student over Christmas breaks and, more globally, the importance of continuing a structured instructional environment for the student over the summer. (FF 2, 9, 10, 15, 18). The student's mother clearly disagrees with the interpretation of the same data. (FF 16). While minds might differ over the exact meaning of the data collected about the student, the record overwhelmingly supports the conclusion that ESY programming is necessary for the student to maintain the progress the student has made on IEP goals and to maintain the structure that the student requires for problematic behaviors in the educational environment.

Accordingly, it is the finding of this hearing officer that the student is eligible for ESY programming.

Appropriateness

The substance of an ESY program, as is under consideration here, is judged by the standards of appropriateness and FAPE that would govern any aspect of a special education program. As such, to assure that an eligible child receives a FAPE,¹⁰ an IEP must be "reasonably calculated to yield meaningful educational or early intervention benefit

¹⁰ 34 C.F.R. §300.17.

and student or child progress.”¹¹ ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning.”¹²

In this case, the District has proposed an ESY program at [Redacted school] that is reasonably calculated to yield meaningful education benefit to the student. (FF 13, 14, 17). Admittedly, the bulk of the evidence at the hearing was geared by all parties more toward the issue of eligibility rather than the issue of programming. Still, an examination of the proposed program, taken in conjunction with the totality of the testimony, supports the finding that the student met with success in the [Redacted school] ESY program in the summer of 2009 and that the program for the summer of 2010, as proposed, would provide the student with FAPE. (FF 14, 18, 19).

Accordingly, the program proposed for the student by the District for the student’s summer 2010 ESY program is appropriate.

CONCLUSION

The student is eligible under federal and Pennsylvania special education laws for ESY programming in the summer of 2010. The ESY program proposed by the District for summer 2010 is appropriate in that it is reasonably calculated to yield meaningful education benefit to the student. This decision does not speak to whether the student must

¹¹ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

¹² Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

attend the ESY program, simply to the fact that (a) the student is eligible for ESY programming and (b) the ESY program proposed by the District for summer 2010 is appropriate.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student is eligible for ESY programming. The ESY program proposed by the District for summer 2010 is appropriate.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

May 10, 2010