

*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: Student

Date of Birth: xx/xx/xx

Date of Hearing: May 26, 2010

**CLOSED HEARING**

ODR Case # 01054-09-10-AS

Parties to the Hearing:

Cumberland Valley School District  
6746 Carlisle Pike  
Mechanicsburg, PA 17050

Representative:

Philip Drumheiser, Esq.  
P.O. Box 890  
Carlisle, PA 17013

Sharon Montanye, Esq.  
Sweet, Stevens, et. al.  
331 E. Butler Avenue  
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Date Record Closed:

June 4, 2010

Date of Decision:

June 9, 2010

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (“student”) is a pre-teen aged student who has been identified as student with anxiety issues and as a student in need of emotional support. The student resides in the Cumberland Valley School District (“District”). 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 (“IDEIA”)<sup>1</sup>. The student’s grandmother, who acts as the student’s guardian, claims that the proposed school location for the student’s extended school year (“ESY”) program is inappropriate. The District maintains that the location proposed for the ESY program it has offered is appropriate and, as such, has complied with its duties under federal and Pennsylvania law to offer the student a free appropriate public education (“FAPE”).

## **STIPULATIONS**

In the summer of 2010, the District will provide 8 hours of emotional support/social skills training by a specific, named provider. The scheduling of these services is to be coordinated between the family and provider.

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<sup>1</sup> 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.

In the summer of 2010, the District will provide 8 hours of support/instruction in written expression by a specific, named provider. The scheduling of these services is to be coordinated between the family and provider.

In the summer of 2010, the District will provide 8 hours of mathematics support/instruction by a specific, named provider. The scheduling of these services is to be coordinated between the family and provider.

Hours of support and instruction set forth in these stipulations that are not used in the summer of 2010 are forfeited.

The guardian has declined the offer of transportation to be provided by the District.

These stipulations are an agreement of the parties to provide services and are not deemed to be an offer of ESY programming in summer 2010.

The recommendations of the independent school psychologist working with the family regarding the summer 2010 support and instruction in written expression and mathematics will be considered in the provision of those services.

### **ISSUES**

Is the school location proposed by the District for the ESY program appropriate or not?

If not, what is an appropriate location for the ESY program?

### **FINDINGS OF FACT**

1. The student began a difficult transition to middle school in the 2009-2010 school year. Ultimately, the student was educated in a number of placements throughout the school year, culminating in homebound instruction for the latter half of the school year. (Notes of Testimony ["NT"] at 58-61, 124-127).
2. In March 2010, the student's individualized education plan ("IEP") team met. The student was deemed eligible for ESY programming, and the District issued a notice of recommended educational placement ("NOREP") that offered ESY programming in addition to programming for the student's emotional support needs in the 2010-2011 school year. (School District Exhibit-1; NT at 52-58, 127-128).
3. The student's guardian returned the NOREP on May 7, 2010 via hand delivery to the District, disapproving the NOREP. There was no indication as to whether the disapproval was related to the ESY program and/or the 2010-2011 school year. Regardless, the guardian requested a due process hearing. (P-8).
4. The District's proposal for ESY programming is offered at one of the District's middle schools. This is the middle school where, ostensibly, the District sees the student being placed in the 2010-2011 school year. The District's supervisor of special education testified that the District's reason for proposing the school placement for summer 2010 ESY programming is to assist the

student in a transition to that school for the upcoming school year.  
(NT at 128-131, 141-142).

5. The student's guardian is resistant to the middle school location proposed by the District. The student's guardian has voiced a preference for the ESY program to be offered at another District middle school. The student has also voiced a preference for another District middle school because of the presence of friends at that middle school. (NT at 64, 97-98, 128-131).
6. An independent clinical psychologist, who is involved in the student's programming and a member of the IEP team as the result of a recommendation by the student's guardian, testified that there are advantages to providing the ESY program at the District's proposed middle school location to assist in the student's transition to that environment. (NT at 42-46, 50-51).
7. An independent school psychologist working with the student testified that the student has a negative association with the District's proposed middle school location. The independent school psychologist also testified that with the guardian's clear disapproval of, and lack of support for, the District's proposed middle school location, the likelihood of the student's success in ESY programming is greatly diminished, if not impossible. (NT at 90-100).

## **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 IDEIA 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).

Neither party disputes the student's qualification for ESY programming. The dispute between the parties centers on the appropriateness of the school location for the 2010 ESY program. In Pennsylvania, however, the regulations speak mostly to the evaluation/qualification of students for ESY programming, and consideration of specific factors and data in making these determinations. (22 PA Code §§14.132(a)(2), (b)). 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 (34 C.F.R. §300.17), an IEP must be "reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress." Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning.” Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

In this case, the school location proposed by the District for ESY programming is reasonably calculated to yield meaningful education benefit to this student. The differences between the parties on the location for the summer program could not be more stark. It is clear that the parties have two divergent views of the appropriate location for the delivery of summer programming. (FF 4, 5, 7). Indeed, as counsel for the student’s guardian framed the issue in opening statements, the guardian “is open to just about any, will consider just about any, will consider any location that the school district might suggest, other than (its proposed middle school location).” (NT at 37).

Similarly, there are compelling arguments on both sides of the issue to support both parties. The clinical psychologist working with the family testified that the focus on transition into an environment where the student may be placed for the 2010-2011 school year is likely to be beneficial to the student. (FF 6). On the other hand, the independent school psychologist working with the family powerfully points out that the student, already struggling with anxiety issues, is resistant to the District’s proposed middle school location and, critically, the student’s guardian—a vital support in the student’s life—does not support the proposed placement. (FF 7).

The issues of anxiety and stress in the school environment that the student has encountered in the past may or may not be present during the summer program at the District's proposed middle school placement. Providing summer programming at that middle school may or may not assist with any potential transition to that location in the future. But the record supports the conclusion that nothing in the District's reasoning or recommendation would render the proposed middle school location inappropriate. On balance, the District's proposed middle school location is reasonably calculated to yield meaningful education benefit to the student for summer 2010. Therefore, it is appropriate, and the District has met its obligations under the IDEIA.

Accordingly, an order will be entered to reflect this conclusion, and there is no need to consider the appropriateness of alternative program placements.

### **CONCLUSION**

The school location proposed by the District for the summer 2010 ESY program is reasonably calculated to yield meaningful education benefit to the student.

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**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the school location proposed by the Cumberland Valley School District for summer 2010 extended school year services is appropriate.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

June 9, 2010