

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

ODR No. 01259-0910AS

Child's Name: J.T.

Date of Birth: [redacted]

Dates of Hearing: 7/31/10, 9/1/10

CLOSED HEARING

Parties to the Hearing:

Parents
Parent[s]

Representative:

Parent Attorney
None

School District
Eastern Lebanon County
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Myerstown, PA 17067-2604

School District Attorney
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Date Record Closed:

September 7, 2010

Date of Decision:

September 22, 2010

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is currently in 11th grade in the Eastern Lebanon County School District, and is IDEA eligible due to an autism spectrum disorder. The complaint in this case alleged a single violation, the August 2009 failure or refusal of the District's [redacted sports] coach to fully implement two aspects of the specially designed instruction specified in Student's IEP: That during try-outs for the [redacted] team, the coach or another adult would remind Student to focus and concentrate and that Student would always be the [at a specific place in the line of players].

Parent further alleged that because the District failed to implement that aspect of Student's IEP, and Student did not make the [sports] team for 2009/2010 school year, Student suffered a loss of self-esteem and a loss of interest in school and in participating in school activities. Upon inquiry concerning any adverse effect that directly affected Student's educational performance, Parent asserted that Student's failure to make the [sports] team resulted in lower grades during the 2009/2010 school year.

The hearing was held in two short sessions due to the unavailability of a witness at the first session. Although the evidence established that the SDI was not implemented on at least one of the two day 2009 [team] try-outs, the violation did not result in a substantive deprivation of Student's educational rights under IDEA. In addition, there was no evidence that the District intentionally discriminated against Student on the basis of disability through the actions of the [team] coach. The objective evidence at the hearing established that 1) the violation was not the reason Student did not make the [sports] team in 2009; 2) Student's educational progress was not adversely affected by not being on the [sports] team in 2009. Parent's claim, therefore will be denied.

ISSUES

1. Did the [sports] coach for the School District fail to provide accommodations required by [Student's] IEP, resulting in [Student] failing to achieve a place on the School District [sports] team for the 2009/2010 school year?
2. Did a violation of [Student's] IEP and/or being denied the opportunity to be a member of the School District [sports] team for the 2009/2010 school year result in a substantive loss of educational benefits?
3. Were the accommodations concerning [sports] team try-outs specified in [Student's] IEP unenforceable as a violation of rules governing athletic teams promulgated by PIAA?

FINDINGS OF FACT

1. Student is a [late teen-aged] child, born [redacted]. [Student] is a resident of the School District and is eligible for special education services. (Stipulation, N.T. pp. 21—23)
2. Student has a current diagnosis of autism in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 23)
3. Student was a member of the District's high school [sports] team during the 2008/2009 school year. (N.T. pp. 55, 56, 66)
4. The District permits the [sports] coach, in consultation with the athletic director, to determine how many players to select for the team each year. (N.T. pp. 104, 105)
5. The coach for the 2008/2009 school year accepted all students who tried out for the team. (N.T. pp. 50, 55, 66)
6. Although Student was not one of the six team members who played in inter-scholastic [sports] matches during the 2007/2008 school year, [Student] practiced regularly with the other team members not selected for the [inter-scholastic] matches and occasionally with the entire team. (N.T. pp. 55, 56, 58, 67, 91)
7. The District's [sports] coach for the 2008/2009 school year owned a [facility] where the student [players] could practice. (N.T. pp. 55, 90)
8. Tryouts for the District's [sports] team for the 2009/2010 school year consisted of [activities over] two days in mid-August 2009. (Affidavit of the [Sports] Coach, HO-1, ¶2)

9. The IEP agreed to by Parents and the District in May 2009 for the 2009/2010 school year, as modified on August 10, 2009, included the following provisions as part of the “Modifications and SDI section:

During [team] tryouts, [Student] will be [at a specific place in the line of players].

During [team] tryouts, the coach or volunteers with [Student]’s group will remind [Student] to concentrate and remain focused.

Those provisions were to be implemented specifically on the two days of [the sports] team tryouts, August 17 and 18, 2009. (Stipulation, N.T. p. 26; P-6, p. 2; S-3, p. 14)

10. On the second day of tryouts, Student [was not always at a specific place in the line of players]. Student was not provided with reminders to concentrate and remain focused on [the sport]. (N.T. p. 81; P-6, pp. 2, 4, HO-1, ¶12)
11. The District’s new [sports] coach for the 2009/2010 school year did not have the same kind of access to a [facility] and volunteers to assist [Student] as the prior coach, and determined that the resources allotted to the [sports] team could best be used by limiting the team to twelve players. (N.T. pp. 89, 90, 108, 109; HO-1, ¶18)
12. Of the 15 players who tried out, Student [scored worse than the other players] over the two days of tryouts and, therefore, was not selected for the team. [Redacted.] (N.T. pp. 50, 79, 81—83; HO-1, ¶16, Exh. 1)
13. By Parent report, Student lost interest in [the sport] and abandoned other interests and activities during the 2009/2010 school year as a result of the disappointment and loss of self-esteem [Student] suffered in not being selected for the team. (N.T. pp. 57, 61, 63, 65, 77)
14. Parent filed a complaint of discrimination with the federal Office for Civil Rights (OCR), which investigated and concluded that the District had failed to properly implement Student’s IEP with respect to the [team] tryouts. After receiving assurances that the District would address the identified compliance concerns, OCR closed its file without providing any additional or specific remedy to Student. (N.T. pp. 74, 75; P-6, p. 5)
15. As part of the District’s Resolution Agreement resulting from the OCR investigation, the District met with Parent to determine whether Student had suffered an educational loss as a result of the failure to properly implement the portion of the IEP relating to the [team] tryouts. Because the District concluded that Student suffered no deprivation of educational benefits, the District declined to award Student any compensatory services. (N.T. pp. 76, 78, 79; P-6, p. 6, S-2, p. 2, S-6)
16. Although the District noted that the rules governing scholastic sports prohibit coaching during tournament play, the [sports] coach does not know whether the no coaching rule applies during team tryouts within a school. (N.T. p. 137)

17. The same SDI provisions relating to [team] tryouts are in Student's 2010/2011 IEP. (N.T. p. 86; S-7, p. 11)
18. In August 2010, 10 players, including Student, tried out for the [sports] team and all were accepted. Student's IEP was implemented during tryouts. Student's 2010 tryout scores were similar to the 2009 scores. (N.T. p.128, 159; S-15)
19. Student's grade point average during the 2009/2010 school year was slightly higher than during the 2008/2009 school year. (N.T. p. 141; S-16)

DISCUSSION AND CONCLUSIONS OF LAW

1. IEP Violation/Substantive Effect

The record compiled in this case leaves no doubt that the SDI provisions of Student's IEP relating to [sports] team tryouts were not fully implemented in August 2009. (F.F. 10, 14) The record also establishes, however, that the District's failure to follow those provisions of Student's IEP did not result in a substantive failure to provide Student with a free, appropriate public education (FAPE)

Although Student was understandably disappointed in not making the [sports] team for the 2009/2010 school year, the true reason for that was the coach's decision to limit the team to twelve members, not his failure to fully implement Student's IEP. The significant difference between Student's 2009 [performance and that of the other players who tried out] make it unreasonable to conclude that Student was not among the top twelve [players] selected for the 2009/2010 team because [Student] was not at a specific place in the line of players], and/or because [Student] was not reminded to focus and concentrate [during the tryouts]. (F.F. 12)

At various points in her testimony, Parent seemed to suggest that the coach's decision to limit membership on the [sports] team for the 2009/2010 school year, along with his failure to fully implement Student's IEP was discriminatory, but the evidence does not support that

conclusion. The District provided a number of legitimate reasons for limiting team membership. (HO-1, ¶18) It may be accurate to state that the coach put the needs of the [sports] team ahead of Student's needs, but Student's IDEA eligibility is not an entitlement to preferential treatment, such as requiring the [sports] coach to accept Student as a member of a 12 person team regardless of [performance] or to expand the team to 13—15 members to assure Student a place on the team.

Finally, even if the coach's failure to fully implement Student's IEP is assumed to be the reason [Student] was not selected for the [sports] team in 2009, there was no adverse effect on Student's educational progress during the 2009/2010 school year. Personal feelings of disappointment do not automatically amount to a loss of educational benefits. There was no evidence that Student refused to attend school or that not participating on the [sports] team interfered with meaningful educational progress. Because Student's IEPs are focused on academic skills and Student's grades were substantially the same during the year [Student] was on the [sports] team and the year [Student] was not, there is no evidence that not participating on the [sports] team during the 2009/2010 school year adversely affected [Student's] success in school. (S-3, S-7, S-16)

Under the legal standards that must be applied to the facts presented by this case, the District is not liable for an IDEA violation, even though the District failed to follow Student's IEP completely during the 2009 [team] tryouts. Under the IDEA statute, 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from his/her school district of residence in accordance with an appropriate IEP, *i.e.*, one that is "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 an eligible child’s program affords him or her the opportunity for “significant learning.”

Ridgewood Board of Education v. N.E., 172 F.3d 238 (3RD Cir. 1999). In addition an IEP violation does not automatically amount to a denial of FAPE, because the IDEA regulations provide that,

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —

- (i) Impeded the child’s right to a FAPE;
- (ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
- (iii) Caused a deprivation of educational benefit.

34 C.F.R. §300.513(a)(2).

Parent’s claim in this case will be denied because the evidence in this case establishes 1) that the District’s IEP violation did not prevent Student from making the [sports] team and 2) that not making the [sports] team did not impede Student’s right to FAPE.

2. Enforceability of the IEP Provisions Under PIAA Rules

Despite the District’s contention that the accommodations in place in Student’s IEP for [team] tryouts violate PIAA “no coaching” rules, the [sports] coach admitted that he is not clear as to whether rules for tournament play apply to [team] tryouts, although it is his opinion that such rules do, or should, apply. (F.F.16; HO-1, ¶¶24—27) There is clearly uncertainty on the District’s part as to whether that opinion is accurate, however, since the accommodations in Student’s 2009/2010 IEP related to [team] tryouts was substantially the same as the prior year, and the District committed to fully implementing Student’s IEP in response to the OCR investigation. (F.F. 17; P-6, p. 6) It is difficult to understand how the District could be concerned about a PIAA violation, yet create the same situation for itself in a subsequent IEP.

The only reasonable conclusion is that the [sports] coach's uncertainty is shared generally by the District.

Because the factual circumstances here do not support Parent's claim, the issue does not need to be fully resolved in the context of this case, but the District would do well to seek a definitive opinion from PIAA concerning this matter in the event of a similar situation in the future.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the School District need take no further action with respect to this matter.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

September 22, 2010