

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: A.S.

Date of Birth: [redacted]

Dates of Hearing:
March 30, April 14, & April 19, 2011

OPEN HEARING

ODR Case # 02002-10-11-JS

Parties to the Hearing:

Representative:

Parent[s]

Williamsport Area School District
2780 Fourth Street
Williamsport, PA 17701

Jeffrey Champagne, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Date Record Closed:

May 2, 2011

Date of Decision:

May 17, 2011

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a kindergarten age student residing in the Williamsport Area School District (“District”) who is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹. Specifically, the student is identified with deafness. The parents claim that, for the student to receive a free appropriate public education (“FAPE”), the parents must receive sign-language training provided by the District at a time convenient to the parents in the family’s home. Additionally, parents claim that the student’s communication plan, a required part of the student’s individualized education plan (“IEP”), must include American Sign Language (“ASL”) as one of multiple modes of communication for the student. The District maintains that the provision of FAPE to the student does not require that sign-language instruction be provided to parents and that the student’s communication plan, as last drafted in December 2010, is appropriate.

For the reasons set forth below, I find in favor of the parents that ASL instruction for the parents is necessary for the student to receive FAPE. This instruction, however, must take place in school during the school day. Furthermore, I find that communication needs should be

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. Pennsylvania special education regulations can be found at 22 PA Code §§14.101-162.

added as a special consideration in the student's IEP and that ASL should be added to the student's communication plan as both an expressive and receptive communication mode.

ISSUES

Must the student's parents receive instruction in ASL in order for the student to receive FAPE?

Must communication needs be added as a special consideration in the student's IEP and/or must ASL be added to the student's IEP, through the communication plan, as an expressive and/or receptive communication mode?

FINDINGS OF FACT

1. The student is diagnosed with profound bilateral hearing loss. (School District Exhibit ["S"]-8; Notes of Testimony ["NT"] at 71, 93-98).
2. In May 2007, the student received a cochlear implant in the left ear. In July 2008, the student received a cochlear implant in the right ear. (S-2).
3. The student's cochlear implant technology is comprised of two devices. The internal device is an electrode surgically implanted into the cochlea. The external device is a processor worn in the ear that picks up an auditory signal, translates the auditory signal to

- an electronic signal, and then transmits the electronic signal to the cochlea. (S-8; NT at 71-73).
4. The transmission from the external device to the internal device is done wirelessly using an antenna that attaches to the head behind each ear and is held in place magnetically by a metallic insert under the skin. The electronic signal is different from the auditory signal, likened in testimony at the hearing to a poor quality stereo sound versus a high definition sound. (S-8; NT at 72-73).
 5. Because the external device is held in place by the magnetized antenna, it is removable. When the cochlear implants are removed, the user of cochlear implants returns to his/her baseline levels of hearing; for the student, this means profound deafness. (S-8; NT at 73-74, 105-108).
 6. To monitor progress with the cochlear implant technology and the student's speech and language skills, the student has been seen regularly at a pediatric cochlear implant program at a children's hospital. (S-2, S-7, S-24; Parents' Exhibit ["P"]-2).
 7. In the 2009-2010 school year, the student received early intervention services through an individualized family services plan ("IFSP") in a preschool setting, including a goal for correct letter sounds, a goal in a particular curriculum used in the preschool, and a goal in correct question-answering on reading/language activities. (S-4, S-5).

8. In February 2010, the student's parent, preschool staff and District staff met to discuss transitioning the student to kindergarten at the District. (S-1, S-5, S-9; NT at 397-400).
9. The student began kindergarten at the District using the goals from the IFSP, with certain revisions. (S-5, S-12; NT at 170-172).
10. The student receives most instruction in the regular education classroom. The regular education teacher uses a FM system to broadcast over a frequency so the student can hear more distinctly. While the regular education teacher uses some signs in her class, almost all instruction for the student is verbal. (P-1; S-17; NT at 320-323).
11. Each week, the student receives sixty minutes of itinerant hearing support outside of the regular education setting. This instruction is delivered by a District teacher certified in education of the deaf/hard of hearing. (P-1; S-19; NT at 395-398).
12. The itinerant instruction includes one weekly session of thirty minutes for written expression with two other students who are deaf/hard of hearing where the student interacts with these peers. It also includes one weekly session of thirty minutes with the student's older sibling where the student's sibling learns sign language and interacts with the student using signs. (NT at 409-410, 415-416, 498-500).

13. In December 2010, the student's IEP team met to discuss the student's IEP. At the meeting, the student's parent brought up the issue of sign language instruction for the parents; the school-based members of the IEP team ended the meeting at that point. (S-15, S-16, S-23; NT at 176-180, 405-406).
14. The IEP team re-convened in January 2011. The team again discussed the issue of sign language instruction for the parents. Additionally, the parents contested other issues not discussed at the December 2010 meeting. (NT at 176-180).
15. Particularly, parents felt that, in the special considerations section of the IEP, the question 'does the student have communication needs?' should have been answered 'yes' instead of the District's proposed answer of 'no'. Also, parents felt that the communication plan should have indicated that the student's receptive and expressive communication modes included ASL in addition to other modes. (P-1; S-16, S-17; NT at 176-178).
16. The parents and school-based members of the IEP team could not reach agreement at the January 2011 meeting.
17. There is a significant debate within deaf education circles and the deaf community at large regarding the approach to acclimating students with cochlear implants to hearing culture while numbers of deaf/hard of hearing peers will use other, non-verbalized means of communication outside of spoken (such as

ASL). One aspect of this debate is the choice of parents in introducing deaf children to these two cultures, especially at young ages when the complexities of their disability and the refinement of their own decision-making may not yet be fully understood by them. (P-6, P-7; S-21).

18. The combination of multiple modes of communication for deaf/hard of hearing individuals is common; the use of a particular mode of communication varies depending on the hearing ability and communication needs of the other person(s) and the context/environment of the communication. This combination of communication modes is referred to as ‘total communication’. (NT at 39-61, 249-252).
19. Parents’ concerns center around their ability to stay involved in sign language communication that the student receives at school. (NT at 275-281).

DISCUSSION AND CONCLUSIONS OF LAW

To assure that an eligible child receives FAPE,² an IEP must be “reasonably calculated to yield meaningful educational...benefit and student...progress.”³ “Meaningful benefit” means that a student’s

² 34 C.F.R. §300.17.

³ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

program affords the student the opportunity for “significant learning”,⁴ not simply *de minimis* or minimal education progress.⁵

In addition to specially designed instruction in an IEP for an eligible child, an IEP must also include, where appropriate, related services which are “developmental, corrective, and other supportive services as required to assist a child with a disability to benefit from special education, and includes...parent counseling and training.”⁶ The related service of parent counseling and training is defined as “assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP.”⁷

In this case, parents have persuasively met their burden in multiple regards. First, it is clear that the modes of communication for deaf/hard of hearing individuals is complex and includes more than simply one choice. (FF 15, 17, 18). Second, although the parties dispute the degree to which the student uses or requires sign language, the student receives weekly instruction in sign language under the auspices of the IEP. (FF 10, 11, 12). Third, for the parents to work with the student authentically, it seems critical that they have the ability to understand and practice, with the student, the signs that the student is

⁴ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁵ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

⁶ 34 C.F.R. §300.36(a).

⁷ 34 C.F.R. §300.36(c)(8).

learning in the school environment. (FF 11, 12, 19). Indeed, the District already includes the student's sibling as part of sign instruction so that the sibling has an inclusive sense of communicating with the student. (FF 12).

Additionally, to reflect the intricacies of the student's disability and global needs of the student in the educational environment (FF 4, 5, 11, 12, 15, 17, 18), the student's IEP and communication plan must be revised. Specifically, the student's IEP needs to reflect that the student has special considerations regarding communication needs. (FF 15). Also, the student's communication plan should indicate that the student's communication modes include ASL in addition to auditory/oral/spoken English modes. (FF 15).⁸

Having found that the parents are entitled to sign language instruction as a related service, a remaining issue is the location and timing of this related service. Here, parents have not carried their burden to show that the service needs to be provided in the parents' house outside of school hours. While the parents testified that there may be some inconvenience in attending sign language instruction during the school day, both parents testified that they own their own businesses. Where this provides some uncertainty because of the responsibilities of

⁸ The District cites to the language on the face of the communication plan which asks for an indication of the student's "primary" communication mode—in the singular. Yet that instruction, at the end, indicates "check all that apply" on a list of receptive and expressive communication modes. It is ostensibly contradictory language. Still, the record fully supports the conclusion that multiple modes of receptive and expressive communication can be used in the mosaic of any deaf or hard of hearing person, including the student. (S-16; FF 17, 18).

both parents as primary managers, it also leaves the parents a degree of flexibility in their schedules to accommodate such sessions. (NT at 216-217, 288-289).

In the student's current schedule, the student receives instruction in sign language along with a sibling from 2:30-3:00 PM on a day-certain once per instructional week. (NT at 486-487).⁹ This would seem to provide an opportunity for one parent, or both parents, to schedule in advance the time necessary for one, or both, of them to attend each week the sign language session with both children. Given the participation of parent(s), however, the weekly session will need to be extended from 30 to 45 minutes.¹⁰

CONCLUSION

The student's IEP and communication plan must be amended to reflect the changes outlined above. The student's weekly session in sign language with a sibling will also include one parent, or both parents, as scheduling allows and shall be extended to 45 minutes.

•

⁹ The school day ends at 3:30 PM; both students return to their classrooms at 3 PM after sign language instruction.

¹⁰ Per footnote 9 above, the student and sibling will still have time to participate in the session and return, at 3:15 PM, to their classrooms for dismissal.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, within 10 days of the date of this order, the student's IEP team shall meet to revise the special considerations section of the IEP and the communication plan, as outlined in this decision.

Furthermore, the IEP shall be revised to increase itinerant hearing support from 60 minutes per week to 75 minutes per week to reflect a 45-minute sign language session for the student, the student's sibling, and one or both parents (as their schedules allow).

Because the 2010-2011 school year will conclude in a short number of weeks, it is within the discretion of the IEP team to decide if it is in the best interest of the student to implement the changes to the student's schedule over the coming weeks, or to wait until the 2011-2012 school year to implement those changes.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

May 17, 2011