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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: T.B.

Date of Birth: [redacted]

Dates of Hearing:

November 27, 2012

December 4, 2012

CLOSED HEARING

ODR Case # 13101-1213KE

Parties to the Hearing:

Representative:

Parent

Pro Se

Achievement House Cyber Charter School
600 Eagleview Boulevard
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Exton, PA 19341

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Date Record Closed:

December 21, 2012

Date of Decision:

January 4, 2013

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (“student”) is a [teenaged] student who is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. Specifically, the student is identified with an emotional disturbance. The student is enrolled in the Achievement House Cyber Charter School (“Charter School”). Parent claims that the student’s placement should include programming at a vocational education school which the student attended previous to enrolling in the Charter School. The Charter School counters that it is not obligated to provide the site-specific placement requested by parent. For the reasons set forth below, I find in favor of the Charter School, although the order includes instructions for the student’s individualized education plan “(IEP)” team.

ISSUES

Must the Charter School provide a placement for the student at the vocational education school which the student previously attended?

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.

FINDINGS OF FACT

1. In the 2011-2012 school year, for academic instruction, the student attended part of the school day in the school district where the student resided and, for culinary arts, part of the school day in a regional public vocational education school supported by a consortium of school districts. In June 2011, the student had been evaluated for eligibility for special education by the school district of residence and was found not to be eligible. In March 2012, as required by the vocational education school, the student applied to continue in the culinary arts program for the 2012-2013 school year. (Parents' Exhibit ["P"]-1, P-14; Notes of Testimony ["NT"] at 39).

2. In April 2012, following a disciplinary incident at the vocational education school, the student's parent investigated enrollment at the Charter School . (P-2; NT at 341).

3. In May 2012, the student's parent enrolled her in the Charter School for academic instruction. The student's school district of residence stopped transporting the student to the vocational education school, but the student continued to attend using ad hoc transportation. The vocational education school was not informed that the student had enrolled in the Charter School. The Charter School was not informed that the student had been previously evaluated by the school district of residence. (P-14; School District Exhibit ["S"] -1; Hearing Officer Exhibit ["HO"]-1; NT at 94-95, 164-172, 298, 316-317).

4. At the time of the May 2012 enrollment, the Charter School indicated that it thought it could arrange for the student to continue attending the culinary arts program at the vocational education school. (NT at 164, 179-180, 294-295, 310-315).

5. In June 2012, the vocational education school informed the parent that the student could not continue in the culinary arts program

in the 2012-2013 school year. The vocational education school, still unaware that the student was enrolled in the Charter School, informed the school district of residence by carbon copy of the letter sent to parent. (P-2; NT at 45-46, 93-95.)

6. Some time in June/July 2012, the student's parent requested that the student be evaluated for special education. The Charter School was not informed that there had been a previous evaluation approximately one year prior. (P-14; S-1; HO-1; NT at 200-201).

7. Over the summer of 2012, the Charter School investigated its ability to have the student continue to attend the vocational education school. Ultimately, the Charter School was unable to arrange for the student to attend the school, and the vocational education school never had any indication that the Charter School would be sending the student to the school. (NT at 63-65, 192-199).

8. In late August 2012, at the outset of the 2012-2013 school year, the student appeared at the vocational education school to attend. Given the fact that the vocational education school had indicated that the student was not accepted to continue in the culinary arts program, the vocational education school was surprised by the student's appearance at the school. The vocational education school still had not been informed that the student had disenrolled from the school district of residence and was enrolled in the Charter School. (P-2, P-3, P-17; NT at 60-65, 97-105, 303.)

9. In August 2012, contemporaneous with the events regarding the student's erstwhile return to the vocational education school, the Charter School issued its evaluation report, finding that the student was eligible as a student with an emotional disturbance. (HO-1).

10. In September 2012, the Charter School created an IEP to address the student's behavioral and academic issues that resulted from the emotional disturbance. Nothing in the student's IEP references

placement at, or services through, the vocational education school. (HO-1; S-2, S-3; NT at 210-18, 222-24, 231, 256).

11. After issuing the evaluation report, but prior to convening the IEP team, the Charter School discovered from communications with the school district of residence that it had performed an evaluation in June 2011. The communications did not include discussion of programming at the vocational education school or transportation issues. (NT at 231).

12. Over the course of September 2012, the student's IEP team met and, each time, the Charter School issued a notice of recommended educational placement ("NOREP"). None of the IEPs or NOREPs included any reference to the vocational education school. In late September 2012, parent returned a signed NOREP indicating that the parent was requesting special education due process. (P-14; S-2, S-3; NT at 263, 273-274.)

13. The student's IEP addressed transition services for the student that included culinary arts as a vocational post-secondary path. (S-2).

14. In September 2012, the vocational education school confirmed with the Charter School that the student was not enrolled in its culinary arts program. (P-2; S-2; NT at 244-45).

15. In October 2012, after the due process complaint was filed by the parent, the Charter School proposed further revisions to the proposed IEP. These revisions related in part to more detailed transition services related to training in culinary arts. The specific options envisioned by the Charter School include (1) job training or job shadowing in culinary arts, (2) enrollment in community-based cooking classes, and/or (3) participating in a cyber-education program in culinary classes, constituting up to half of the student's daily education programming. (S-2; NT at 265-68, 278.)

DISCUSSION AND CONCLUSIONS OF LAW

Here, the central questions revolve around how the Charter School is addressing the student's transitional/post-secondary programming and how, if at all, the site-specific placement of the student at the vocational education school plays a role in that. These two issues will be examined in reverse order.

Site-Specific Vocational Education School. First, the record does not support a finding that the Charter School undertook to have the student placed at the vocational education school. While the parties clearly discussed the potential for the student to continue in the culinary arts program at the vocational education school, the Charter School never made such a placement part of its offered programming. To the extent that the Charter School thought it could, or would, facilitate such a placement and did not, it was a good-faith mistake. But, as set forth in the section below, it did not amount to a denial of appropriate educational programming.

Second, and more importantly, even if the Charter School pursued a placement at the vocational education school, it is an option which is wholly unavailable for the student's educational programming. The school itself did not allow the student to continue in its culinary arts program. In effect, then, the question of a site-specific placement at the vocational education school is rendered moot—regardless of the Charter

School's approach to the student's view of transition services/post-secondary, the culinary arts program at the vocational education school would not be an option available to the student's IEP team.

As pointed out by the Charter School in its closing argument, IDEIA anticipates a situation like this, namely where a local education agency coordinates with some other outside agency for transition services and the outside agency is unable to, or fails to, provide the transition services, the local education agency must convene the IEP team "to identify alternative strategies to meet the transition objectives for the child set out in the IEP." (34 CFR §300.324(c)(1)).

Accordingly, the Charter School need not, and indeed cannot, make a placement at the vocational education school.

Charter School Programming. The Charter School has been diligent in making sure that it provides an appropriate program for the student. From its evaluation process through the IEPs it has proposed, the record supports a finding that the Charter School has always worked to provide appropriate educational programming to the student. This includes the transitional services/post-secondary training that the student is interested in pursuing. As indicated above in the provisions of 34 CFR §300.324(c)(1), the student's IEP team must reconvene to design the student's programming in light of the fact that the culinary arts program at the vocational education school is not available to the student. While

there is nothing in the record to indicate that the Charter School would not pursue this course, the order will address that issue explicitly.

CONCLUSION

The Charter School is not obligated to undertake a site-specific placement at the vocational education school.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Charter School is not obligated to provide a placement at the vocational education school where the student previously attended.

Within 20 days of the date of this order, or as nearly as possible thereafter given the mutual convenience of the parties, the IEP team shall meet to design the student's programming for culinary arts in accordance with the transition services/post-secondary vocational training, including a combination or mosaic of programming, as outlined in the student's IEP and as envisioned by the Charter School as of October 2012.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

January 4, 2013