

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: K.G.

Date of Birth: [redacted]

Dates of Hearing:

January 7, 2013

January 28, 2013

February 11, 2013

February 27, 2013

CLOSED HEARING

ODR Case # 13272-1213AS

Parties to the Hearing:

Hampton Township School District
4591 School Drive
Allison Park, PA 15101

Parents

Representative:

Patricia Andrews, Esquire
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Suite 506
Pittsburgh, PA 15221

Edward Feinstein, Esquire
429 Forbes Avenue
Allegheny Building/17th Floor
Pittsburgh, PA 15219

Date Record Closed:

March 22, 2013

Date of Decision:

April 2, 2013

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (hereinafter “student”) is [a] student residing in the Hampton Township School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”).¹ Specifically, the student has been identified as a student as having an intellectual disability.

Parents allege that substantive flaws in the design and implementation of the student’s individualized education plans (“IEP”), and more specifically the post-secondary transition planning contained in the IEP, denied the student a free appropriate public education (“FAPE”) for the 2010-2011, 2011-2012, and 2012-2013 school years. Parents seek compensatory education for alleged deprivations in the student’s programming as it relates to community-based instruction and vocational skills.²

The District counters that the post-secondary transition planning in the student’s IEP was appropriately designed and implemented. Therefore, the District’s position is that the student was provided with FAPE at all times.

¹ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.164.

² Parents seek compensatory education for a period of two years prior to the filing date of the complaint (November 15, 2012), or since November 15, 2010. (Parents’ Exhibit 37; Notes of Testimony at 23).

For the reasons set forth below, I find in favor of the District.

ISSUES

Was the student provided FAPE through the design and implementation of the post-secondary transition planning contained in the student's IEPs for the 2010-2011, 2011-2012, and 2012-2013 school years?

FINDINGS OF FACT

1. The student has been identified as a student with an intellectual disability. (Parents' Exhibit ["P"]-2, P-10).
2. In September 2009, the student's IEP team met to revise the student's IEP for 12th grade. (P-1).
3. In the September 2009 IEP, the student's present levels of performance related to post-secondary transition indicated that the student was interested in janitorial services and food services as vocational interests. (P-1 at page 11).
4. In the September 2009 IEP, the student's post-secondary education/training goal was to enroll in a training program in the areas of janitorial service or food service or a related field. The student's employment goal was competitive employment in one of these fields. The student's independent living goal was to live with family, with supports to access community resources. (P-1 at pages 13-14).
5. In the September 2009 IEP, each goal was supported by various services and activities in the furtherance of that goal, including, for example, reading and math goals in the IEP, vocational information and experiences, community-based instruction, and a transportation evaluation. (P-1 at pages 13-14).
6. One of the services/activities in support of the student's employment goal was: "Obtain part-time job in the community". This service/activity was to take place four hours per week in the community. (P-1 at page 14).

7. In the 2009-2010 school year, part of the student's school-based activities included flag duties and assisting custodians with cafeteria duties during the lunch periods. (P-1 at page 10).
8. In June 2010, the student participated in the District's graduation ceremony but was not awarded a diploma. Therefore the student returned to the District for the 2010-2011 school year. (P-3 at page 11).
9. In September 2010, the student's IEP team met for its annual IEP review. The student's present levels of performance related to post-secondary transition continued to indicate that the student was interested in janitorial services and food services as vocational interests, including job-shadowing at local fast food restaurants. (P-3 at page 14).
10. In September 2010, the student began a split-day program between the District and the culinary arts program at a local vocational education school. (P-3 at page 11).
11. The September 2010 IEP included similar post-secondary education/training and employment goals as in the September 2009 IEP, although the focus was drawn more tightly on food service training and employment. The independent living goal remained largely the same as in the September 2009 IEP. (P-3 at pages 16-17).
12. The service/activity related in support of the student's employment goal was revised: "Provide information to obtain a part-time job in the community". As in the September 2009 IEP, this service/activity was to take place four hours per week in the community. (P-3 at page 17).
13. In the 2010-2011 school year, the student's school-based activities continued to include flag duties and assisting custodians. (P-4 at page 8).
14. The student completed the 2010-2011 school year at the District, a half-day in District programming and a half-day at the culinary arts program.
15. In September 2011, the student's IEP team met for its annual IEP review. The student's present levels of performance related to post-secondary transition indicated that the student was interested predominantly in food services as vocational interests,

- with vocational interest in janitorial services becoming less of a focus. (P-4 at page 8-9).
16. The September 2011 IEP continued the split-day program between the District and the culinary arts program. (P-4 at page 8; School District ["S"]-7).
 17. The post-secondary education/training, employment, and independent living goals in the September 2011 IEP remained largely the same. Likewise, the services/activities in support of the goals remained largely the same. (P-4 at pages 11-12).
 18. In November 2011, the student's long-time special education teacher left the District for other employment. (Notes of Testimony ["NT"] at 396-397).
 19. In January 2012, the student's IEP team met regarding the service/activity in support of the student's employment goal. Parents felt the student's IEP called for the District to help secure the student a part-time job. The District felt that the student's IEP had not provided for securing part-time employment and, further, that four hours per week toward that end was excessive. Therefore, the District reduced the frequency of providing information toward obtaining a part-time job to once per year. (P-4 at page 12, P-5 at page 12; NT at 267-269, 446-448).
 20. In February 2012, the student's IEP team met to discuss extended school year services for the summer of 2012. (P-6).
 21. In March 2012, the student began a job-shadowing/vocational experience through a local school for exceptional children. The student engaged in these experiences at a retail store and a fast food restaurant over March-May 2012. (P-9 at pages 11-13, P-12 at pages 12-14, P-16, P-27).
 22. In April 2012, the student went as part of a group from the District to a local community college to tour janitorial services and food service programs for post-secondary students with disabilities. (S-1, S-2).
 23. In May 2012, the student's IEP team met. Parents continued to voice frustration with the student's vocational programming. Parents also informed the team that, although the student had experienced success in the food service programming, they and the student were no longer interested in continuing with the culinary

arts vocational program in the following school year. (S-8; NT at 319, 457-458).

24. The student made progress on academic and behavioral goals over the course of the 2011-2012 school year. (P-15).
25. In June 2012, the District proposed a half-day program in the District for academic programming. Because the student no longer wished to return to the half-day culinary arts program, the District proposed that the student work with school custodial staff for a half-day to gain vocational skills and experience in janitorial services. (P-8).
26. In August 2012, the parties reached a mediation agreement related to a future IEP meeting and topics for discussion at that meeting. (P-21).
27. In September and October 2012, the student's IEP team met again with IEP revisions at each meeting. Ultimately, however, the parties have had little success agreeing on the student's programming beyond the fall of 2011. (P-9, P-12, P-29).
28. In September and October 2012, the parents requested a notice for recommended educational placement ("NOREP") regarding the 2012-2013 school year. The student's special education teacher believed that the NOREP could not be issued until parents voiced to her their disagreement with the NOREP. (P-24, P-25).
29. For the 2012-2013 school year, the student engaged in academic programming at the District in the morning and in monitored, District-based custodial work in the afternoon. (P-18, P-22; S-5, S-6).
30. Through November 2012, the latest point in the record regarding progress monitoring, the student made progress on academic and behavioral goals over the course of the 2012-2013 school year. (P-19).
31. On November 15, 2012, parents filed a special education due process complaint. (P-37).

DISCUSSION AND CONCLUSIONS OF LAW

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 benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (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 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Part of delivering a FAPE to a student with a disability includes transition services, “a coordinated set of activities for a child with a disability...designed to be within a results-oriented process that is focused on improving academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities” and “is based on the individual child’s needs”. (34 C.F.R. §300.43(a)). Where appropriate, transition services must be included as part of a student’s IEP (34 C.F.R. §300.320(b)), and, in Pennsylvania, this includes all students with IEPs who have reached age fourteen. (22 PA Code §14.131(a)(5)).³

³ While counsel for both parties ably argued for their clients’ positions in written closing statements using arguments grounded in certain court decisions, there is no controlling appellate case law in Pennsylvania or the Third Circuit that definitively addresses the appropriateness of the nature or design of transition services.

In this case, the District has designed and implemented transition services in the student's IEPs that are reasonably calculated to yield meaningful education benefit. In the 2009-2010 and 2010-2011 school years, the District helped the student to identify post-secondary and employment interests, using those interests to build a foundation for half-day programming in a food services vocational program. The student made progress in this program as well as in the academic programming delivered by the District.

In September 2011, however, things seem to have changed markedly when the student's special education teacher, who had been working with the student, left the District and a new teacher became responsible for the student's instruction. Still, the record supports the finding that the student's program continued to be appropriate and the student made progress in the 2011-2012 school year.

And in the 2012-2013 school year, as well, the student made meaningful education progress under the terms of the IEP.⁴ At that point, the parties were not seeing eye-to-eye on many levels of the student's programming. But the District responded to the student's/family's decision to move away from a vocational focus on food

⁴ It should be noted that the record supports the finding that the District committed a procedural error with its understanding that a NOREP could not be issued unless, and until, parent voiced in advance the basis of a disagreement with the District's recommendations. This is exactly backward: the District, after sifting through the IEP team's deliberations and determinations, issues the NOREP which, then, the parent responds to. In this case, however, the procedural error does not amount to a denial of FAPE.

services to janitorial services by providing a similar half-day of programming within the District.

This is not to say that the District's program was perfected. But where it may not have been perfect, the entirety of the record supports the conclusion that the District's program was designed and implemented in such a way that it was always reasonably calculated to yield meaningful education benefit.

Because the design and implementation of post-secondary transition planning in the IEP was reasonably calculated to yield meaningful education benefit, the District did not deny FAPE to the student. Accordingly, there is no award for compensatory education.

CONCLUSION

The District did not deny the student FAPE through the design or implementation of the transition planning in the student's IEPs over the 2010-2011, 2011-2012, and 2012-2013 school years.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student was not denied FAPE by the School District.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

April 2, 2013