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

FINAL DECISION AND ORDER

Student's Name: J.G.

Date of Birth: [redacted]

ODR No. 14171-1314AS

CLOSED HEARING

Parties to the Hearing:	Representative:
	Kristen Weidus, Esq. 302 West Otterman Street Greensburg, PA 15601
Belle Vernon Area School District 270 Crest Avenue Belle Vernon, PA 15012	Aimee Rankin Zundel, Esq. 445 Fort Pitt Boulevard, Suite 503 Pittsburgh, PA 15219

Dates of Hearing: 11/04/2013, 11/19/2013

Record Closed: 12/04/2013

Date of Decision: 12/11/2013

Hearing Officer: Brian Jason Ford

Introduction

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. and Section 504 of the Rehabilitation Act of 1973 (Section 504), 34 C.F.R. Part 104.4.

This due process hearing concerns the educational rights of a student (Student) in the Belle Vernon Area School District (District). In practical terms, this decision resolves a dispute about where the Student will go to school for the remainder of the 2013-14 school year. The District has proposed to change the location in which services will be provided. The Student's parents (Parents) requested this hearing, and are demanding that the Student remain in [Student's] current placement through the end of the 2013-14 school year.

Procedural History

Relative to most special education due process hearings, the scope of this hearing is remarkably narrow. The procedural history of this matter gives context to the narrow scope. The Parents requested this hearing on August 8, 2013, by filing a Complaint with the Office for Dispute Resolution (ODR). The IDEA establishes a statutory hearing timeline and, per that timeline, the due date for this decision was October 15, 2013.

A hearing schedule was set to comply with the forgoing timeline but, shortly before the hearing convened, the Parents moved for a continuance to pursue an Evaluative Conciliation Conference (ECC), a voluntary form of alternative dispute resolution offered by ODR. The District declined to participate in ECC and objected to the continuance request. The continuance requested was denied. The Parents then moved for a continuance so that they would have time to retain counsel, and also moved to extend the decision due date. Both of those motions were granted over the District's objection. Subsequently, the parties jointly moved for an additional extension to allow for a second hearing session and written closing briefs. Consequently, the due date was extended to December 11, 2013.

Issue

Should the student remain in [Student's current] educational placement through the end of the 2013-14 school year, or should the Student's placement change after the District's holiday recess?[1]

[1] In their closing brief, the Parents demand a number of remedies that are not demanded in the Complaint and go beyond the scope defined at the outset of this hearing. NT at 18-20. The only issue that I will consider is the one stated here.

Findings of Fact[2]

1. It is not disputed that the Student is an elementary-school-age child with Down Syndrome. It is not disputed that the Student is IDEA-eligible as a Student with an Intellectual Disability and a Speech/Language Impairment.

2. It is not disputed that the District is served by the Westmoreland Intermediate Unit 7 (IU7).

3. The Student received an initial evaluation for a preschool early intervention (EI) program, resulting in an evaluation report (ER) dated June 2, 2008. P-2A.

4. The ER revealed a number of significant needs, consistent with the Student's diagnoses. The ER concluded that the student was eligible and in need of EI services in the form of preschool class, speech and language support, occupational therapy, and physical therapy. *Id*.

5. An IFSP/IEP was drafted for the Student by a team on June 10, 2008. *See* P-3B at 4.

6. The Student's team reconvened to draft an annual IFSP/IEP on May 20, 2009. P-3B. That document includes a summary of the Student's present performance, which reports significant needs consistent with the Student's diagnoses. *Id* at 6.

7. At the time of the May 2009 IFSP/IEP, the Student was a preschooler within one year of transition to a kindergarten age program. As such, it was necessary for the IFSP/IEP to include a transition plan. *Id* at 8.

8. The May 2009 IFSP/IEP included eleven goals, six of which were transition goals. The transition goals targeted various kindergarten readiness skills, and were designed to enable the Student to transition to a new placement.[3] *Id* at 9-15.

9. In addition to the transition goals, the May 2009 IFSP/IEP also includes a Transition Plan. According to the plan, the Parents were to receive information about transition, a transition meeting was to convene in February of 2010, and the Parents, District

[2] The record of this matter supports broad and extensive findings of fact. I decline to make every finding of fact that the record would support, but rather limit my findings to those necessary to resolve the narrow issue presented. Additionally, throughout these findings of fact, I note points of agreement between the parties. These points are not findings of fact in the strictest sense, but they both establish a chronology and provide context for this decision.

[3] There is an error in the numeration of the goals in the May 2009 IFSP/IEP. There are six goals specific to transition. There are several other goals as well.

and IU were to discuss the need for a Multidisciplinary Team Evaluation by the end of June 2010. *Id* at 24.

10. The Student received services pursuant to the May 2009 IFSP/IEP in one of the District's elementary schools. *Id* at 21.

11. The Student continued to receive EI services under the May 2009 IFSP/IEP at one of the District's elementary schools during the 2010-11 school year. *See, e.g.* P-5B at 1.

12. IU7 conducted a physical therapy evaluation, resulting in a School-Age Physical Therapy Evaluation Report, on April 14, 2011. P-5B. The purpose of the evaluation was "secondary to transitioning to the school age program for the 2011-12 school year." *Id*. The report concluded that the Student continued to be in need of physical therapy, and recommended physical therapy goals to be implemented in a school age program.

13. The District also evaluated the Student towards the end of the 2010-11 school year, resulting in a Reevaluation Report (RR) dated April 27, 2011. P-5C. The RR revealed progress towards IFSP goals, but also significant and numerous deficits across all domains, including academics, social skills, communication skills and adaptive behaviors.

14. The April 2011 RR summarized the IU7 Physical Therapy evaluation and other previous evaluations, and reported the results of new testing. The new testing included the Bracken School Readiness Assessment - Third Edition; the Wechsler Preschool and Primary Scale of Intelligence - Third Edition (WPPSI-III); the Wechsler Individual Achievement Test - Third Edition (WIAT-III); and the Adaptive Behavior Evaluation Scale - Revised Second Edition. P-5C.

15. The April 2011 RR concludes that the Student is IDEA-eligible as a student with an Intellectual Disability and a secondary Speech and Language Impairment.[4] *Id* at 17.

16. The Student's IEP team met on May 26, 2011. S-21.

17. During the May 26, 2011 IEP team meeting, the District recommended placement at an IU7-run life skills support program located in a neighboring school district (the "[redacted] Placement" or "[Placement]"). The Parents agreed to [Placement].

18. More specifically, the District issued *two* Notices of Recommended Educational Placement (NOREPs) during the meeting. The *first* NOREP specified that the

[4] This IEP predates Rosa's Law, Pub. L. 111-256, and, consequently, uses the prior terminology instead of Intellectual Disability.

District recommended a full-time, in-District life skills placement with an itinerant level of speech/language support. The District advised the Parents to reject the *first* NOREP, and demand [Placement]. The Parents complied. S-5D; NT at 234-239.

19. The *second* NOREP offered during the May 26, 2011 IEP team meeting specified that the District recommended placement at [Placement]. The District advised the Parents to approve the *second* NOREP, and the Parents complied. S-9, NT at 234-239.

20. There is no dispute that the Student attended [Placement] during the entirety of the 2011-12 school year. There is no dispute that the Student made meaningful progress during the 2011-12 school year. Some progress monitoring from November of 2011 was entered into evidence. *See* P-5E.

21. On September 1, 2012, the District invited the Parents to an IEP team meeting to discuss the Student's IEP and revise it as needed. P-6B at 1. The meeting convened on September 17, 2012. P-6B at 2, 3.

22. The meeting on September 17, 2012 resulted in an IEP that was intended to run from September 18, 2012 through September 16, 2013. This IEP continued the Student's placement in [Placement]. P-6B at 35.

23. Some progress monitoring data from early in the 2012-13 school year was entered into evidence. *See* P-6B. There is no dispute that the Student made meaningful progress while attending [Placement] during the 2012-13 school year.

24. During the 2011-12 and 2012-13 school years, the Student demonstrated difficulty with transitions, engaging in work refusal in response to new curricular materials and staffing changes, and a need for interaction with a consistent group of peers at similar instructional levels. NT at 32-40, *see also* NT at 271-273.

25. The Student's current Life Skills teacher at [Placement] testified that the Student will likely experience some difficulty with any transition from [Placement] to a different school. *See* NT at 51. I find this testimony credible and adopt it as a finding of fact.

26. Starting late in the 2011-12 school year, the District began to reconfigure and increase the special education placements it offers to students with disabilities. Pertinent to this case, these changes culminated with the opening of a K-2 Life Skills Support classroom within one of the District's elementary schools (the "[District placement]").

27. Like the [Placement] placement, the [District placement] is staffed by IU7 employees. The same instructional materials and curricula are available in both [Placement] and [District placement]. NT at 155, 327, 331, 393.

28. In the spring of 2013 (during the 2012-13 school year, before the [District placement] opened), the Student's Life Skills teacher at [Placement] notified the District that the Student's two-year reevaluation was coming due. NT at 65-67, 313.

29. On April 3, 2013, the District issued a Permission to Reevaluate (PTR) - Consent Form. Through this form, the District proposed cognitive assessments, achievement testing, behavioral rating scales, a review of records, parent/teacher input, observations and "other assessments as deemed necessary." S-20.

30. The Parents provided consent for the reevaluation on April 16, 2013.

31. The evaluation proceeded, and the District drafted a Reevaluation Report (RR). S-12. The RR is dated April 26, 2013, and was sent to the Parents the same day it was drafted. *Id.*

32. A section of the April 2013 RR is titled "Evaluations and information provided by the parent (or documentation of LEA's attempts to obtain parental input):" Under that heading, the April 2013 RR says: "Contacts were made to parent(s) on 4-3-13 by letter. No information has been returned as of this date." S-11

33. The April 2013 RR included a summary of prior evaluations, and detailed descriptions of the Student's then-current functioning. Those descriptions were provided by the Student's Life Skills teacher and the therapists who worked with the Student. S-11

34. The April 2013 RR reported the results of new testing, including a Brigance Diagnostic Inventory of Basic Skills Test; the Stanford-Binet Intelligence Scales, Fifth Edition (SB-V); some sub-tests of the Woodcock-Johnson Test of Achievement, Third Edition (WJ-III); and the Adaptive Behavior Assessment System, Second Edition (ABAS-II). S-11

35. Generally, the April 2013 RR reported that the Student was making good progress towards IEP goals, but still exhibited great needs across all domains. S-11.

36. The April 2013 RR concluded that the Student continued to be IDEA-eligible, with a primary disability category of Intellectual Disability and a secondary category of Speech or Language Impairment. S-11.

37. The April 2013 RR recommended a continuation of a full-time Life Skills placement with Occupational Therapy and Physical Therapy. The RR also recommended that "the team meet to review [Student's] current educational location."

38. The Student's Life Skills teacher at [Placement] was not asked to provide input regarding the Student's transition needs, and was instructed by IU7 to remain neutral regarding any proposed change to the location of services . NT at 47, 74-75.

39. The April 2013 RR is silent regarding the Student's transition difficulties.

40. The District also invited the Parent to a meeting for the purpose of discussing the evaluation. The invitation was sent with the April 2013 RR on April 26, 2013. The meeting was scheduled to convene on May 2, 2013. S-11.

41. The meeting convened as scheduled on May 2, 2013. *See* S-14 at 1. The April 2013 RR was discussed at the meeting. The District's School Psychologist and the District's Superintendent, neither of whom had met the Parents before, attended the May 2, 2013 meeting.

42. Prior to the May 2 meeting, the District drafted an IEP for the Student. S-14. That IEP is dated May 2, 2013, and it was presented to the Parents at the meeting after the Parents waived their right to have the RR ten days in advance of an IEP team meeting. *Id*; NT at 71-73, 174.

43. Functionally, the May 2013 IEP is a revision and continuation of, and an update to, the IEP that was already in place for the Student. There is no dispute about the substantive appropriateness of the special education and services offered through the May 2013 IEP.

44. The May 2013 IEP calls for placement at [Placement]. S-14 at 44.

45. The May 2013 IEP was drafted to be in place from May 3, 2013 through May 1, 2014. S-14 at 1.

46. During the May 2, 2013 meeting, the District informed the Parents that the Student would remain at [Placement] for the remainder of the 2012-13 school year, and that the Student would then be placed in the [District placement] at the Start of the 2013-14 school year.

47. The option of continuing the [Placement] placement during the 2013-14 school year was neither presented nor discussed during the May 2, 2013 meeting. NT at 49-50.

48. Prior to the May 2, 2013 meeting, the District prepared a NOREP proposing to change the Student's placement to [District placement] for the 2013-14 school year. S-15.

49. Some testimony suggests that the District prepared two NOREPs prior to the May 2, 2013 meeting – one calling for a continuation of [Placement] during the 2013-14

school year, and another calling for a change to [District placement]. The same testimony suggests that NOREP calling for a continuation at [Placement] was never presented, destroyed, and deleted from the District's computer system. I find that a continuation of [Placement] for the remainder of the 2012-13 school year followed by a change of location to [District placement] for the 2013-14 school year was the District's *only* proposal, and that no alternatives were discussed during the May 2, 2013 meeting.

50. The District's Superintendent and School Psychologist met and spoke on more than one occasion prior to the May 2, 2013 meeting, and as result of those private conversations, determined that the [District placement] program was appropriate for the Student. NT at 423-425, 433-434, 446.

51. During the May 2, 2013 meeting, the Parents objected to the proposed change in placement. They expressed their opinion that the Student was making good progress at [Placement], and that the [Placement] program would naturally come to an end at the conclusion of the 2013-14 school year (the Student would age out of the program at that time). The expression of these opinions did not yield a meaningful discussion of options other than the District's proposal. *See, e.g.* NT at 257-265.

52. During the May 2, 2013 meeting, the District's Superintendent advised the Parents that they could request a due process hearing if they disagreed with the District's proposal. *See, e.g.* NT at 254.

53. The May 2013 NOREP was presented to the Parents *before* the May 2013 IEP was presented. During the May 2, 2013 meeting, the District proposed the change in placement to [District placement] *before* the presentation of, or any discussion about, the IEP. *See, e.g.* NT at 252-253.

54. The Parents rejected the NOREP on May 14, 2013. S-15.

55. It is not disputed that the [District placement] is located within the Student's neighborhood school – that is, the school that the Student would attend if the Student were non-disabled.

Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005);

L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing S*hore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parents are the party seeking relief and must bear the burden of persuasion.

Least Restrictive Environment

Both federal and Pennsylvania law require that a student with a disability be placed in the least restrictive environment (LRE), considering the full range of supplementary aids and services that would allow a student to receive instruction and make progress in the LRE. 34 C.F.R. §300.17. Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

> Each (school district) must ensure that to the maximum extent appropriate, children with disabilities…are educated with children who are nondisabled, and…separate schooling…occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Additionally, to comply with LRE mandates, school districts must ensure that "unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." 34 C.F.R. §300.116(c).

Pennsylvania special education regulations mirror this emphasis on LRE. Where a student "can, with the full range of supplementary aids and services, make meaningful education progress on the goals in…the IEP", a school district cannot require separate schooling for a student." 22 PA Code §14.145(3). Similarly, "(a) student may not be removed from…(a) placement in a regular education classroom solely because of the nature or severity of the student's disability, or solely because educating the student in the regular education classroom would necessitate additional cost or for administrative convenience." 22 PA Code §14.145(4).

School Building Selection, Parental Participation

Cases from other jurisdictions have found that school districts have "great authority to select the school site, as long as it is educationally appropriate." *White ex rei. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 382 (5th Cir. 2003); *see also A. W. v. Fairfax County Sch. Bd.,* 372 F.3d 674 (4th Cir. 2004).

Courts in the Third Circuit have considered a similar issue: placement in the neighborhood school. In *S.H. v. State-Operated Sch. Dist.*, 336 F.3d 260 (3d Cir.2003), the Third Circuit concluded that the IDEA includes a preference for children to attend their neighborhood schools, but only if the children can be "satisfactorily educated" in that placement. *Id* at 272 (quoting Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3d Cir.1996)); s*ee also Cheltenham Sch. Dist. v. Joel P*., 949 F.Supp. 346, 351-52 (E.D.Pa.1996), aff'd 135 F.3d 763 (3d Cir.1997).

The issue of placement in the neighborhood school was most recently considered in *Lebron v. North Penn School Dist.*, 769 F.Supp.2d 788, 2011 WL 601621 (ED.Pa., 2011). In *Lebron*, in the context of neighborhood school placement, Judge Brody concluded that "geographical proximity is a factor that districts must consider, but they have "significant authority to select the school site, as long as it is educationally appropriate." *Id* at *10 (quoting *White*, 343 F.3d at 382 and citing *A.W.*, 372 F.3d 674 and *McLaughlin v. Holt Public Schools Board of Education*, 320 F.3d 663, 772 (6th Cir.2003)).

This jurisprudence regarding placement in the neighborhood school is relevant to this issue *sub judice*: placement selection in general. In reaching conclusions about neighborhood school placement, Judge Brody agreed with courts in other jurisdictions that vest school selection authority in public school districts. Even *T. Y. v. N. Y. City Dep't of Educ*., 584 F.3d 412, 420 (2d Cir.2009) is cited in *Lebron*. *Lebron* at *10. In *T. Y.*, the Second Circuit found that an IEP need not specify the school location.

Neither the Third Circuit nor the Eastern District has explicitly adopted the holding in *T.Y.* and, despite the foregoing, a school district's authority to select the school site is not absolute. Even though school administrators ultimately decided the schools in which the students in *White* and *T.Y.* were placed, the parents were integrally involved in the process. Closer to home, in *Lebron*, the parents were informed of the school district's building selection as part of the IEP development process. The school building choice was discussed by the student's IEP team, the building was reflected in the student's IEP and the final building choice was presented to the parents with the IEP in the form of a NOREP that they could reject. The NOREP itself explained why the selection was made and why the parents' preferred school building was rejected. *Lebron at *10, footnote 14.* In short, the *Lebron* placement decision was made by an IEP team, with substantial parental participation, for the purpose of enabling the implementation of the IEP. The level of parental participation in *White* was similar. S*ee White*, 343 F.3d at 376.

The extent of parental participation in the decision-making process is enshrined in the IDEA. The IDEA requires school districts to use procedures that afford parents an "opportunity ... to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child ... " 20 U.S.C. § 1415(b)(1) (emphasis added). Similarly, parents must receive prior written notice whenever a school district proposes to the educational placement of a child. 20 U.S.C. § 1415(b)(3). The IDEA explicitly details the type of

information that must be contained in such prior written notice. 20 U.S.C. § 1415(c). This includes an explanation of why the change is proposed, what other options were considered and why those other options were rejected. *Id.*

In Pennsylvania, the NOREP is the document that provides the type of prior written notice to parents that is contemplated by the IDEA. As explained by the Pennsylvania Training and Technical Assistance Network (PaTTAN), "The NOREP explains the recommended educational placement or class for [a] child, and explains [parental] rights." http://parent.pattan.netlieplWhatisaNOREP.aspx. Moreover, the United States Supreme Court has recognized that parents have a right to receive prior written notice whenever a school district intends to alter a student's "program or placement." *Honing v. Doe*, 484 U.S. 305, 311-12 (1988)(emphasis added); *see also Petties v. District of Columbia*, 238 F.Supp.2d 114, 123 -124 (D.D.C., 2002). *Petties* does not stand for the proposition that a school building change is a change in placement *per se. See Petties* at 123-124. Rather, a school building change could be a change in placement depending on the particular facts of any case. *Id*. Consequently, without prior written notice, parents would lose the right to contest building changes and argue that such changes fundamentally alter their children's educational program. The District Court explicitly found that parents could contest such changes and so they must receive prior written notice in satisfaction of 20 U.S.C. § 1415(c) in advance of any building change.

The logic of *Petties* is correct. Sometimes FAPE can only be provided in particular school buildings. This was the situation in *Lebron*. There, building assignment was part and parcel to the provision of FAPE. Sometimes FAPE can be provided in several locations that house identical programs in equal proximity to a child's home. Under these circumstances, school districts have broad authority to make a building selection. Yet in all cases, parents have the right to argue that building selection (or reassignment) will yield a depravation of FAPE, and so parents must receive IDEA-compliant prior written notice in advance of any such change.

Predetermination

The opposite of meaningful parental participation is predetermination. Predetermination of an IEP can be grounds for finding a violation of the IDEA. *D.B. v. Gloucester Twp. Sch. Dist*., 751 F. Supp. 2d 764 (D.N.J. 2010). Predetermination rises to the level of a violation when parents are excluded from meaningfully participating in the decision making process. *Id.* Further, a student's placement must be based on the IEP, and not the other way around. *Id, citing* 34 C.F.R. § 300.442; 34 C.F.R. pt. 300. Therefore it is essential that the IEP is created prior to any final placement decisions. *Id.*

Discussion

This case presents the relatively rare circumstance in which both parties agree that the Student has, to date, received a FAPE. Both parties want the Student to continue to receive the services that the Student is currently receiving. The Parents want the

Student to continue receiving those services in the [Placement]. The District wants the Student to continue receiving those services in the [District placement]. This is *only* dispute.

I note, as I have recently, that there is nothing sinister about the District's efforts to build its own capacity to serve students with disabilities. *See G.W. v. Methacton Sch. Dist.*, ODR No. 14072-1314KE. However proud the District is of its recent efforts, the District's motivation for increasing or reconfiguring the services that it provides in-house is ultimately irrelevant to these proceedings, despite considerable testimony on this point.

It is, in the most literal way, possible for the District to implement the Student's IEP at [District placement]. Both placements have access to the same materials, and both are staffed by IU7. As described above, when the same program can be implemented in more than one location, schools are obligated to propose the less restrictive of the placement options. In this case, [District placement] is the LRE because it is the Student's neighborhood school.

At the same time, schools may not change the location of IDEA services unilaterally and may not predetermine the location of IDEA services. In this case, the District did both. The record and facts above very clearly establish that the District unilaterally decided that the Student would transfer to [District placement]. This decision was made in advance of an IEP team meeting. In fact, the placement decision was announced before an IEP was ever presented. When the Parents expressed concerns, the District's reaction amounted to a proclamation of 'if you don't like it, sue us.'[5]

All of the cases that confer broad discretion regarding building selection to schools are predicated upon parents having a meaningful voice in the process. As I have held twice previously, a predetermined change in location violates the IDEA because parents are cut out of the process beyond what the IDEA permits. *See M.M. v. Sch. Dist. of Phila.*, ODR No. 01539-1011AS *and P.V. v. Sch. Dis. of Phila.*, ODR No. 01541-1011AS.

It is entirely possible that, after allowing meaningful parental participation, the District could have still recommended the [District placement]. The District has a strong argument that it was obligated to recommend [District placement] in order to comply with the LRE mandate. However, had the District engaged in a meaningful discussion,

[5] During the hearing, the District's Superintendent appeared genuinely shocked that the Parents would challenge the proposed placement. Explicitly, the Superintendent expected a pat on the back for his actions in this matter. NT at 419, 425. It is bizarre, however, that the Superintendent could join the Student's IEP team out of nowhere, predetermine the Student's placement, refuse to consider other options, and advise the Parents to request a hearing if they disagreed – and then express dismay that the Parents did as they were advised to do.

the District surely would have learned about the Student's transition needs. Those needs are well-established by the record, and would have been known to the District had the District bothered to ask the Student's teacher. This error is greatly compounded by the fact that the need for a careful, comprehensive transition plan is evident in the documents that the District reviewed in preparation of the April 2013 RR. Historically, changes in the Student's school building are accompanied by a written, explicit transition plan and the addition of transition goals in order to access the Student's progress during transition. The District proposed to change the Student's location without assessing the need for any of these accommodations.

It is simply unrealistic to assume that the change in location would have no impact whatsoever upon the Student - yet this is the District's assumption. The District, in a very literal way, intended to continue the Student's IEP in a new building with a new teacher and new cohort of peers at the start of the 2013-14 school year. The RR leading up to the proposed change reveals nothing about what services would have been necessary to enable this transition, despite the fact that information about the Student's transition needs was readily available.

Given the procedural history of this matter, described above, the District currently proposes a move to [District placement] after the holiday recess. To be clear, I am evaluating the propriety of the proposed change in location at the time that it was offered. Even so, a mid-year change only exacerbates the need for a well-thought-out transition plan.[6]

Conclusion

In sum, I find that the Student's right to a FAPE and the Parents' right to meaningfully participate in IEP development outweigh the District's discretion to choose the location of services. Even though the District proposed a change to a less restrictive location, the Parents had no meaningful voice in the process. Moreover, the District failed to consider how the change itself would impact upon the Student's substantive right to a FAPE. In light of the Student's well-documented transition needs, these failures amount to a violation of the IDEA.

ORDER

[6] The question of what comes next for the Student after the current, 2013-14 school year is beyond the scope of this hearing. [Placement] will not be available for the Student after the current school year. The parties are cautioned to consider the Student's transition needs when developing the Student's program for the upcoming school year.

Now, December 11, 2013, it is hereby **ORDERED** as follows:

1. The District is hereby **ORDERED** to maintain the Student's current placement at [Placement] for the remainder of the 2013-14 school year.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED.**

/s/ Brian Jason Ford
HEARING OFFICER