

*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.C.

Date of Birth: [redacted]

Dates of Hearing:

October 21, 2013

November 7, 2013

November 12, 2013

CLOSED HEARING

ODR Case # 14230-1314KE

Parties to the Hearing:

Representative:

Parents

Pamela Berger, Esquire  
434 Grace Street  
Pittsburgh, PA 15211

Belle Vernon Area School District  
270 Crest Avenue  
Belle Vernon, PA 153012

Aimee Zundel, Esquire  
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Suite 503  
Pittsburgh, PA 15219

Date Record Closed:

November 12, 2013

Date of Decision:

November 22, 2013

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student is a pre-teen age student residing in the Belle Vernon Area School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)<sup>1</sup>. The student, diagnosed with Down Syndrome, has been identified under the terms of IDEA as a student with an intellectual disability, and a speech/language impairment. Parent claims the program and placement proposed for the student by the District for the 2013-2014 school year is not reasonably calculated to provide the student with a free appropriate public education (“FAPE”) in the least restrictive requirement (“LRE”), as required under IDEA and Pennsylvania special education regulations.

More specifically, the parents claim that, with the closure of the out-of-District life skills classroom where the student’s individualized education plan (“IEP”) was being implemented, the District’s proposed placement at a newly-created life skills classroom within the District is not the LRE. Parents claim the District, with the student’s transition back to the District, should employ supplementary aids and services to allow the student to attend the student’s neighborhood school within the District.

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<sup>1</sup> 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. *See also* 22 PA Code §§14.101-14.163 wherein Pennsylvania education regulations explicitly adopt most provisions of 34 C.F.R. §§300.1-300.818.

The District does not discount the importance of LRE considerations in the student's educational program but asserts that the newly-created life skills classroom is the more appropriate placement. Therefore, the District argues, the appropriateness of its proposed placement in the life skills classroom outweighs LRE considerations involving attendance at the student's neighborhood school.<sup>2</sup>

For the reasons set forth below, I find in favor of the parents and student.

### **ISSUES**

Is the least restrictive environment for the student's education program the student's neighborhood school, or the District's life skills classroom?

### **FINDINGS OF FACT**

1. The student has been diagnosed with Down Syndrome and, under IDEA, identified as a student with an intellectual disability and speech/language impairment. (Joint Exhibit ["J"]-1, J-2, J-10).
2. From the time of the student's enrollment in the District in kindergarten, the 2008-2009 school year, the student attended an out-of-District placement, specifically a life-skills classroom run by the local intermediate unit ("IU") in a nearby school district,

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<sup>2</sup> At the time of the hearing, the student was in an educational placement which both parties recognized should not be continued. Evidence was limited to consideration of each party's position, namely the nature of the environments at the District's life skills classroom and the neighborhood school. (Notes of Testimony at 24).

approximately 30-40 minutes away from the student's home.

(Notes of Testimony ["NT"] at 129-130, 143-144).

3. The student continued to attend the out-of-District life skills classroom from kindergarten through 4<sup>th</sup> grade, the 2012-2013 school year. (J-3, J-6, J-7, J-11, J-12, J-18; NT at 42-43).
4. In April 2012, in the spring of the student's 3<sup>rd</sup> grade year, the student's IEP team met for its annual review of the student's IEP. The April 2012 IEP was agreed-to by the parties and guided the student's instruction for the remainder of 3<sup>rd</sup> grade (2011-2012) and most of 4<sup>th</sup> grade (2012-2013). (J-11).
5. The April 2012 IEP contained thirteen goals in the following areas: one in reading, one in time-telling, two in mathematics, one in writing, one in science content, one in social studies content, one in money skills, one in speech and language, and four occupational therapy goals. (J-12 at pages 12-19).<sup>3</sup>
6. The student made progress on the April 2012 IEP goals. (J-2, J-10, J-13, J-21 at pages 1-13; NT at 42-51, 53-57, 63-68).
7. In April 2013, the spring of the student's 4<sup>th</sup> grade year, the student's IEP team met for its annual review of the student's IEP. The April 2013 IEP was agreed-to by the parties and guided the

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<sup>3</sup> The April 2012 IEP was updated in February 2013. The speech and language goal, and the occupational therapy goals, in the April 2012 IEP are not in the February 2013 IEP. The February 2013 IEP revision did not address goals, and so the difference between the two documents appears to be a production error. (J-11 at pages 20, 21-29; J-12 at pages 1, 20).

student's instruction for the remainder of 4<sup>th</sup> grade (2012-2013) and would be in place for most of 5<sup>th</sup> grade (the current 2013-2014 school year). (J-18).

8. The April 2013 IEP, in its special considerations section, indicates that the student had communication needs. The IEP indicates that the student did not require any other special considerations, including an indication that the student did not exhibit behavior that impeded the student's learning or the learning of others. (J-18 at page 4).
9. The April 2013 IEP indicates that the student has independent skills in some regards and requires assistance in others. The student needs to be reminded to use the restroom but does not need assistance in the restroom. The student can access the cafeteria and input the payment account code but needs assistance with reminders and guidance with utilizing utensils and eating. The student does not have a behavior plan but requires some prompting and assistance in educational environments (e.g., navigating the school building, reminders, assistance with logging into devices). The student attends to academic instruction but requires prompting and assistance with classroom tasks. The April 2013 IEP calls for a full-time one-on-one aide for the student for assistance in these regards. (J-18 at pages 6, 30).

10. The April 2013 IEP indicates the student's strengths are communicating wants/needs, sight word vocabulary, motivated to learn, responds well to positive reinforcement, and using a calculator. The student's needs are time-telling, money concepts, functional and reading vocabularies, expressive language, attention, and fine motor skills. (J-18 at page 7).
11. The April 2013 IEP contains fifteen goals in the following areas: one in reading, one in time-telling, two in mathematics, two in writing, one in science content, one in social studies content, and one in money skills, two in speech and language, and four occupational therapy goals. (J-18 at pages 12-28).
12. The April 2013 IEP contains specially designed instruction as follows: structured classroom routine, selective seating, prompting and cuing, hand over hand writing and demonstration, classroom behavior plan, staff assistance for hygiene, staff monitoring for safety, and a one-on-one aide. (J-18 at page 29).
13. The April 2013 IEP contains related services for a weekly session of occupational therapy, transportation, a full-time schedule for the one-on-one aide, and twice-weekly speech and language therapy. (J-18 at page 30).<sup>4</sup>
14. The April 2013 IEP calls for ongoing consultation between the student's teacher and any assistants, and between the

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<sup>4</sup> In April 2013, transportation as a related service was indicated for transportation to the out-of-District placement.

- student's teacher/assistants with related services providers, staff, materials & equipment, and the IU supervisors. (J-18 at page 30).
15. The April 2013 IEP indicates that the student qualifies for extended school year services. (J-18 at page 31-32).
  16. The April 2013 IEP indicates that the student would receive all academic instruction in a special education setting and would participate in the regular education setting in the following instructional environments: art, music, physical education, computer class, library time, and "learning for life" programming. The student would also be included with regular education peers in lunch, recess, assemblies, and special programs. The student would spend 74% of the school day in special education and 26% in regular education. (J-18 at page 33, 35).
  17. The April 2013 IEP indicates that the student would receive full-time life skills support in the out-of-District placement. The IEP indicates that the student's program was not located in the student's neighborhood school because "special education supports and services required in the student's IEP cannot be provided in the neighborhood school." (J-18 at page 34).
  18. The student made progress on the April 2013 IEP goals over the remainder of 4<sup>th</sup> grade. (J-18 at pages 12-28).

19. In May 2013, after the April 2013 IEP meeting, the IU indicated that the out-of-District classroom might be closed due to low enrollment. (NT at 69).
20. The need to find another location for the student's programming began a process where both parents and the District considered options for the student's placement in the 2012-2013 school year. (NT at 69-70, 130-132, 140-141, 202-206, 265-269).
21. The District was creating its own life skills classroom. At the same time, parents came to the realization that placement in a less restrictive environment was a possibility. (NT at 130-132, 140).
22. Over the summer of 2013, the parties continued to work together on placement options. (NT at 210-211, 217-222).
23. The District came to the belief that the student would be most appropriately placed in the newly-created District life skills classroom. The parents requested that the student be placed in a learning support classroom at the neighborhood school, the school which the student's sisters and neighborhood peers all attend. (NT at 129, 143, 208-210, 223-224, 270-271).
24. On August 9, 2013, the Pennsylvania Department of Education approved the revisions to the District's special education plan for creation of a District life skills classroom. (J-26).
25. On the same day, August 9<sup>th</sup>, the District issued a notice of recommended educational placement ("NOREP"), recommending

that the student be educated in the District's life skills classroom. The NOREP explicitly rejected an option for a learning support classroom. The parents rejected the NOREP, and, on the NOREP, requested a placement at the student's neighborhood school. (J-25).

26. Thereafter, parents filed the special education due process complaint that led to these proceedings.

### **DISCUSSION AND CONCLUSION OF LAW**

To assure that an eligible child receives FAPE,<sup>5</sup> an IEP must be “reasonably calculated to yield meaningful educational...benefit and student or child progress.”<sup>6</sup> “Meaningful benefit” means that a student's program affords the student the opportunity for “significant learning”,<sup>7</sup> not simply *de minimis* or minimal education progress.<sup>8</sup>

Moreover, both federal and Pennsylvania law require that a student with a disability be placed in the LRE, considering the full range of supplementary aids and services that would allow a student to receive instruction and make progress in the LRE.<sup>9</sup> Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

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<sup>5</sup> 34 C.F.R. §300.17.

<sup>6</sup> Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

<sup>7</sup> Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999).

<sup>8</sup> M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996).

<sup>9</sup> 34 C.F.R. §§300.114-120; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993).

“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, the school district 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.”<sup>10</sup>

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.<sup>11</sup> 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.”<sup>12</sup>

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<sup>10</sup> 34 C.F.R. §300.116(c).

<sup>11</sup> 22 PA Code §14.145(3).

<sup>12</sup> 22 PA Code §14.145(4).

In this case, the record taken as a whole supports the conclusion that the student's IEP can be implemented in the learning support environment at the student's neighborhood school. Looking at the details of the IEP (FF 8-17), each element of the student's educational program can be delivered at the neighborhood school. Taken the other way around, there is nothing in the special considerations, present levels of performance, goals, specially designed instruction, related services, supports, or placement details which requires the April 2013 IEP to be delivered in a life skills classroom. In that regard, the conclusion of the April 2013 IEP that the student's special education and services cannot be delivered in the neighborhood school is in error. (FF 17).

In fairness to the District, and it is a point that parents, on this record, would agree with, at the time the April 2013 IEP was created, no one had a definitive understanding that the student's program would not continue at the out-of-District placement, and everyone was content that the student should continue to receive programming there. But once that placement was removed from the matrix of options for the location of the student's programming, an examination of whether the student's IEP can be delivered in the student's neighborhood school yields the conclusion that it can be. As such, and in accordance with the mandates of federal and Pennsylvania law that any student's special education program must be delivered in the LRE and (where appropriate) in the neighborhood

school, the April 2013 IEP must be implemented at the school the student would attend if nondisabled.

### **CONCLUSION**

On this record, nothing prevents the student's IEP from being implemented at the student's neighborhood school. Therefore, the student's educational programming should be delivered in that environment.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student's IEP shall be implemented at the student's neighborhood school.

Within 20 days of the date of this order, the student's IEP team shall meet to consider the IEP in light of its implementation in the student's neighborhood school. Additionally, the IEP team shall explicitly consider whether the transition to the student's neighborhood school from the student's current educational placement (a) should take place before or after the District's winter break, and (b) the extent and details of, and planning for, a transition plan for the student to be prepared for the change in placement.

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

*s/Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

November 22, 2013