

*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.F.

Date of Birth: [redacted]

Date of Hearing: August 14, 2014

### CLOSED HEARING

ODR Cases (consolidated)

15215-1415KE

15221-1415KE

Parties to the Hearing:

Parent[s]

Representative:

Pro Se

Centennial School District  
433 Centennial Road  
Warminster, PA 18974

Grace Deon, Esquire  
60 East Court Street  
P.O. Box 1389  
Doylestown, PA 18901

Date Record Closed:

September 12, 2014

Date of Decision:

September 12, 2014

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION**

[Student] (student) is a [beyond teenaged] student residing in the Centennial 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 has been identified under the terms of IDEA as a student with an emotional disturbance.

The student's parent filed a special education due process complaint (ODR file #15215-1415KE), seeking an independent educational evaluation (IEE) at public expense. The parent's complaint also alleged that the District had inappropriately handled the issuance of the student's diploma, in addition to other claims related to alleged inappropriate treatment of the student by the District.

The District denied all claims alleged in the parent's complaint. Because IDEA requires a school district, when presented with a request for an IEE at public expense, to acquiesce in the request or to file a special education due process complaint, the District filed a complaint to defend its evaluation process and report (ODR file #15221-1415KE).

For the reasons set forth below, finding that a regular high school diploma has been issued by the District to the student, the student's parent's complaint is dismissed.

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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 24 PA Code §§14.101-14.162.

## **ISSUE**

Does the issuance of a regular high school diploma to the student impact the special education due process proceedings in this matter?

## **PROCEDURAL HISTORY**

As set forth below, this matter includes a procedural history that requires explicit recitation as part of this decision.

- a) On July 11, 2014, the student's parent filed a special education due process complaint. The parent's complaint was assigned ODR file #15215-1415KE. (Hearing Officer Exhibit [HO]-1).
- b) On the same date, the District filed a response to the parent's complaint and a complaint in defense of its evaluation process/report. The District's complaint was assigned ODR file #15221-1415KE. In the District's complaint, it referenced the complaint filed by the student's parent and requested consolidation of the two matters. (HO-2, HO-3).
- c) Both complaints were listed for hearing on August 14, 2014. In parent's complaint, parent had made an explicit request for the hearing to commence at 7 PM, to accommodate parent's schedule and that of the student. Accordingly, the August 14<sup>th</sup> hearing session was scheduled for 7 PM. (HO-1).
- d) On July 25, 2014, having returned from vacation and received complete case materials, the hearing officer sent to the parties his standard prehearing matters email. (HO-4).
- e) In addition to standard prehearing instructions, the hearing officer's July 25<sup>th</sup> email addressed three matters specifically: (1) the alleged inability of the hearing officer to be a fair decision-maker, (2) the consolidation of the two complaints, and (3) the specific issues presented in the parent's complaint. (HO-1, HO-4).
- f) In the parent's complaint, parent claimed that, due to prior interactions with the Office for Dispute Resolution involving other special education due process complaints/hearing processes,

parent felt it was not possible to have a fair hearing. In the hearing officer's July 25<sup>th</sup> email, he communicated to the parties on this issue: "I am aware that parent asserts my inability, given my position as a hearing officer employed by the Office for Dispute Resolution (ODR), to be a fair and impartial decision-maker. I warrant to both parties that I consider myself to be an impartial decision-maker and that I intend to, and will, treat both parties with fairness in adjudicating these matters." (HO-4).

- g) In the hearing officer's July 25<sup>th</sup> email, he granted the District's request and formally consolidated the two complaints into one hearing process. (HO-4).
- h) In the hearing officer's July 25<sup>th</sup> email, he addressed the issues presented in parent's complaint. The parent's complaint contained twelve enumerated issues for resolution. Issues 1-3 dealt with allegations related to the District's evaluation process/report and the request for an IEE at public expense. Issues 4-8 dealt with the allegations related to non-issuance of the student's diploma. Issue 9 dealt with allegations of [redacted] discrimination. Issue 10 dealt with allegations of retaliation by District employees against the student. Issue 11 listed parent's characterizations of acts of District employees. Issue 12 incorporated by reference multi-page attachments to the complaint. (HO-1, HO-4).
- i) The hearing officer declined to hear issue 9 for lack of jurisdiction, as it dealt with allegations of [redacted] discrimination, matters which are not within the jurisdiction of special education due process. The hearing officer declined to hear issue 10 for lack of standing. Issue 10 dealt with allegations of retaliation by District employees against the student; but since the student had reached the age of legal majority, claims of retaliation against the student could not be brought by the student's parent and needed to be brought by the student directly. (HO-1, HO-4).
- j) The hearing officer informed the parties that issues 11 and 12 were not allegations presented for resolution. Issue 11 was a list of parent's characterizations of the acts of District employees ("malicious, hateful, spiteful, vindictive"), and issue 12 incorporated by referenced multi-page attachments to the complaint. Neither issue presented a claim for resolution. (HO-1, HO-4).
- k) The hearing officer informed the parties, then, that evidence would be heard only as to issues 1-8 (the IEE and diploma issues). Furthermore, because the parties' positions in the pleadings

contradicted each other as to whether, when, and under what circumstances a diploma had been, or had not been, issued, and parent's complaint contained claims that the diploma issue would have an impact on the student's post-secondary education plans, the hearing officer informed the parties that "the first hearing session will be limited solely to the issue of whether, when, and under what circumstances a diploma was, or was not issued, by the SD." (HO-1, HO-4).

- l) In the hearing officer's July 25<sup>th</sup> email, as part of his standard practice when *pro se* parents represent themselves in a hearing and, specifically, to address the focus of the first hearing session on the diploma-related issue, the hearing officer requested a conference call between himself, the parent, and District counsel to discuss the hearing process generally and the first hearing session specifically. Given the parent's availability request for 7-10 PM, the hearing officer offered available dates for the entire following week at that time. (HO-4).
- m) Later in the day on July 25<sup>th</sup>, District counsel responded that she was available only three of the days the following week from 7-10 PM. The hearing officer requested that the student's parent advise him and District counsel as to parent's availability on the three days indicated by District counsel. (HO-5).
- n) Over the course of July 25<sup>th</sup> – July 30<sup>th</sup>, the student's parent did not respond. Therefore, a conference call was not scheduled. (HO-5).
- o) On July 30<sup>th</sup>, the hearing officer sent an email to the parties reiterating that the August 14<sup>th</sup> hearing session would be limited only to issues related to whether, when, and under what circumstances the diploma was, or was not, issued. The parties were informed that evidence on this issue would be heard in that session over 7-10 PM. To plan for/structure that hearing session, the parties were instructed to submit, by August 4<sup>th</sup>, an offer of proof as to what the scope of the evidence would be (in the view of each party) as to the identity of witnesses each party planned to call to testify. (HO-6).
- p) Later in the day on July 30<sup>th</sup>, the District submitted its offer of proof, naming individuals and explaining, from the District's perspective, the offered scope of their testimony, including the intention to have certain witnesses at the hearing and other witnesses available, if need be, by telephone. (HO-7).

- q) By August 7<sup>th</sup>, neither District counsel nor the hearing officer had received any communication from the student's parent related to the offer of proof. Based on the District's offer of proof, the hearing officer issued directives to the parties as to the structure of the August 14<sup>th</sup> hearing session, namely that the District's offer that a special education supervisor would testify as a certainty. The District's director of special education and/or a building-level principal might testify, depending on other evidence as it might surface in the hearing session. The student's parent was informed that parent would testify as well. The parties were also informed about the procedures to make sure witnesses who might not be present in the hearing room had exhibits provided to those witnesses. (HO-8)
- r) On August 14<sup>th</sup>, in the late morning, the student's parent emailed for the first time to request a postponement of that evening's hearing session. The District objected to the request, and the hearing officer declined to postpone the session. The hearing officer informed the student's parent that, to the extent parent was not able to attend the hearing in person, parent was welcome to participate by telephone. (HO-9).
- s) On August 14<sup>th</sup> at approximately 7 PM, the hearing officer, District counsel, school district witnesses, and court reporter gathered at the District for the hearing. The student's parent joined by telephone. After ascertaining that the telephone communication was clear and other logistical arrangements, the record was opened at 7:11 PM. (Notes of Testimony [NT] at 5-8).
- t) Procedural matters were set forth, including the entry into the record of hearing officer exhibits created to that point in the proceedings. Because the student's parent represented [self], the hearing officer followed his standard procedure of swearing in a *pro se* parent before he/she participates substantively in the hearing. (NT at 8-26).
- u) After the hearing officer's procedural background and exhibits were made part of the record, the student's parent wished to speak to procedural matters. (NT at 26-27).
- v) The student's parent requested postponement of the hearing to seek the assistance of counsel, a request denied by the hearing officer. (NT at 27-29, 32-33).

- w) The student's parent indicated that parent had not received email communications in the case. (NT at 29-35).<sup>2</sup>
- x) At this point in the hearing, the student's parent turned from procedural matters and began to testify about the diploma issue. The hearing officer raised his voice authoritatively to interrupt the student's parent, calling out parent's name ("M. X") to break the flow of parent's testimony to make sure that parent recognized the comments parent was making about the diploma issue were made under oath, that the hearing officer intended to have the District present its evidence first, and that parent risked testifying prematurely about the diploma issue. The student's parent objected to, and took offense at, the hearing officer's interruption. (NT at 35-53).<sup>3</sup>
- y) The hearing proceeded with the taking of substantive evidence, including the submission of District exhibits, and the testimony of a District special education supervisor, and the student's parent. The student's parent offered no exhibits. The hearing concluded at approximately 8:56 PM. (NT at 51-126; see "Findings of Fact" section below).
- z) In the evening after the conclusion of the hearing (August 14<sup>th</sup>), and the next day (August 15<sup>th</sup>), the student's parent emailed regarding various matters, including the status of the hearing (open or closed), obtaining an audio recording of the hearing session, filing an errata sheet for the transcript, and the status of the hearing officer's attorney licensure in the Commonwealth. (HO-10).
- aa) On August 18<sup>th</sup>, in the evening hours, the court reporting agency provided by email attachment to the parties and the hearing officer a PDF copy of the transcript.
- bb) On August 19<sup>th</sup>, the hearing officer responded to the matters presented by the student's parent in parent's emails of August 14<sup>th</sup> and 15<sup>th</sup>. The status of the hearing was confirmed as closed. The hearing officer confirmed that the transcript was the official record of the hearing session; he declined to order that the audio

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<sup>2</sup> At no point was any email sent by the hearing officer to any email address of the student's parent rejected by any email server, returned as "undeliverable" or "user unknown". (NT at 30).

<sup>3</sup> The term "yell" was used in the record to characterize the hearing officer's interjection. Certainly, the volume and tenor of the hearing officer's voice was elevated and assertive. The record speaks for itself in terms of why, and in what manner, the hearing officer interrupted the student's parent. (NT at 35-53).

- recording be provided to the parties, took no position on the status of the audio recording, and indicated to the parties and the court-reporting agency that its handling of the audio recording was entirely within its discretion, according to the protocols of the agency and/or the custom of the individual reporter. The hearing officer established a deadline of August 26<sup>th</sup> for the filing of any errata sheet, and confirmed for the parties the status of his attorney licensure in the Commonwealth. (HO-10, HO-11).
- cc) On August 21<sup>st</sup>, the student's parent emailed to say that parent had been unsuccessful in accessing the PDF attachment of the transcript. Parent requested that a hard copy be sent to parent. (HO-11).
- dd) On August 22<sup>nd</sup>, the hearing officer made two copies of the transcript. (HO-11).
- ee) On August 22<sup>nd</sup>, one copy of the transcript was sent by the hearing officer via U.S. Express Mail, return receipt requested, to the P.O. box of the student's parent (the address which the student's parent had requested for furnishing the hard copy of the transcript). In an abundance of caution, a second copy of the transcript was sent by the hearing officer to the same address via first class U.S. mail, verified with a Certificate of Mailing. (HO-12).
- ff) On August 23<sup>rd</sup> by 10:25 AM, the U.S. Express Mail package was available for pick-up. (HO-12).
- gg) On August 26<sup>th</sup> at 9:52 AM, the hearing officer emailed the parties to inform the student's parent that U.S. Post Office tracking indicated that the Express Mail package had been delivered and was available for pick-up. With the transcript having been available since August 23<sup>rd</sup>, the deadline for the submission of either party's transcript errata sheet was set for 8 PM on the evening of September 2<sup>nd</sup> by email submission or post-marked by September 2<sup>nd</sup> for submission by U.S. mail. (HO-12).
- hh) On August 26<sup>th</sup> at 11:49 AM, the U.S. Express Mail package was retrieved by the student's parent. Subsequently, the return receipt was received by the hearing officer confirming the retrieval of the Express Mail package on August 26<sup>th</sup>. (HO-12).
- ii) As of September 11, 2014, no errata sheet had been received by any means from either party.



## **FINDINGS OF FACT**

1. In August 2013, the student's individualized education plan (IEP) team from a nearby school district, where the student was enrolled at that time, met to revise the student's IEP. (School District Exhibit [S]-1).
2. The August 2013 IEP planned for the student's placement to be at a third-party private placement called [Redacted] Schools ([Redacted School]), a placement which the student had been attending since February 2010. (S-1, generally, and, specifically, at pages 33-34; S-7 at page 6).
3. The August 2013 IEP listed a [Redacted School] location based in a school district which was not the school district where the student was enrolled at the time and was not the District. (S-1 at page 33).
4. On March 27, 2014, the student enrolled in the District as a matter of residency but continued to attend [Redacted School]. (NT at 60-65).
5. In April 2014, the District utilized information from [Redacted School], along with input from the student's parent, to draft an IEP for continued implementation in the remainder of the 2013-2014 school year. (S-7 at 6-10, 12-13; NT at 64-70).
6. [Redacted].

7. Over May and June 2014, the student's IEP team continued to meet, including in-person meetings, via telephone, and with email exchanges, to consider the April 2014 IEP. (S-7 at pages 1-2).
8. The April 2014 IEP indicated that the student planned to graduate in June 2014 and to pursue post-secondary study for a career in [redacted]. Graduation in June 2014 and post-secondary study were formal elements of the student's transition planning. (S-7 at pages 7, 15-16).
9. Students who attend [Redacted School] have the option to attend a [Redacted School] graduation ceremony, a District graduation ceremony, or both. The student chose to attend the [Redacted School] graduation ceremony, held in mid-June. (NT at 76-83, 102-104).
10. When a student is educated in a third-party placement, but seeks a District diploma, the District must receive information from the third-party placement regarding course content and course completion to build a District transcript from that information. The District transcript is the basis to determine whether the student has met the District's requirements, based on Commonwealth standards, for the issuance of a diploma. (NT at 84-85, 98-99, 107-108).
11. In late June 2014, at the request of the student and the student's parent, the District provided a letter indicating that "to

the best of our knowledge, (the student) has completed all graduation requirements and will be issued a 2014 diploma from (the District)". The letter was requested by the student given the student's concern that, for employment purposes, the student might be asked to produce a diploma; pending the transcript-confirmation process outlined in Finding of Fact 10, the District complied with the request and prepared the letter so the student could offer it to a potential employer. (S-8; NT at 86-90, 104).

12. On July 11, 2014, the student's parent filed the complaint at ODR file # 15215-1415KE. Until that filing, the District had no sense that diploma-issuance was a concern of the student or student's parent. (HO-1; NT at 85-86).
13. On July 11, 2014, the District filed its response to the complaint. The response indicated that [Redacted School] had only provided the course completion information to the District in the days prior to the student's parent's complaint and that the information was contemporaneously being synthesized with the District's requirements for diploma-issuance. (HO-2).
14. On July 16, 2014, a District high school administrator emailed the student's parent, indicating that the student had met District diploma-issuance requirements and that a regular high school diploma issued by the District was available for pick-up at the District, or for delivery by U.S. mail (with a request for an

explicit mailing address for the secure delivery of the diploma). (S-9, S-13; NT at 91-94).

15. On July 23, 2014, as required when a parent files a special education due process complaint, the District convened a resolution meeting. The District attendees had with them the student's diploma. The District attendees waited for 30 minutes, but neither the student nor the student's parent attended the resolution meeting. (S-12).

16. Since the student's diploma had not been retrieved, and the District had not received a response to its request for a confirmed mailing address, the District sought out the assistance of a community-based human service agency to assist it in providing the diploma to the student. (NT at 96-98, 105-107).

17. Liaising with the community-based human services agency was successful, and the student received the District diploma, a fact confirmed by the student's parent at the hearing. (S-13; NT at 71, 110-111).

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

Under the terms of the IDEA, a student qualifies for the provision of a free appropriate public education (FAPE) through the delivery of special education and related services "between the ages of 3 and 21,

inclusive” unless state law or practice limits the age-applicability for children who are, for these purposes, 18, 19, 20, or 21. (34 C.F.R. §§300.101-300.102; 24 PA Code §14.102(a)(2)(x)). Pennsylvania has not, by state law or practice, limited the availability of IDEA services to students ages 18-21.

Where a student has “graduated from high school with a regular high school diploma” however, the student no longer qualifies for services under IDEA, and a school district is released from its obligations to provide FAPE. (34 C.F.R. §300.102(a)(3); 24 PA Code §14.102(a)(2)(x)). A “regular high school diploma” is a diploma that is fully aligned with state academic standards and does not include an alternative degree outside of state academic standards, or is a certificate, or is a general education development (GED) credential. (34 C.F.R. §300.102(a)(3)(iv); 24 PA Code §14.102(a)(2)(x)).

Here, as the 2013-2014 school year moved toward its end in April 2014, the student, the student’s parent, and the student’s IEP team all anticipated, and programmed-for, the student’s graduation in June 2014 and progression to post-secondary studies. [Redacted.] In mid-June 2014, the student completed studies at the third-party placement and participated in its graduation ceremony.

In late June, at the request of the student and the student’s parent, the District supplied its letter regarding the good-faith assertion that it anticipated the issuance of a regular District diploma. Then, on

July 11<sup>th</sup>, as the process of obtaining the necessary documentation from the third-party placement was in its midst, the student's parent filed parent's complaint. As of July 16, 2014, however, the District had issued, and made available to the student, a regular high school diploma.

Under the clear terms of the IDEA, as of July 16, 2014, the student no longer qualified for services under the IDEA. The record in its entirety supports the conclusion that, even though this diploma-issuance technically came after the filing of the student's parent's complaint, the District through the IEP team at all times met its obligations to the student and acted in good faith to place the student in a position where the student would hold a regular high school diploma as the student moved beyond K-12 education in pursuit of post-secondary studies.

The District's process in obtaining information from the third-party placement and assuring itself that the student qualified for the diploma under Commonwealth standards was necessary. Any procedural argument regarding the issuance of the diploma in light of the filing of the student's parent's complaint, therefore, is viewed by this hearing officer, and is deemed, non-prejudicial to the student.

Finally, even though the issues related to the IEE were not made a matter of evidence in the August 14<sup>th</sup> hearing session, the finding that, as of July 16, 2014, the student had received a regular high school diploma, thereby ending the District's obligations to the student under

IDEA, renders moot the request for an IEE by the student's parent. Therefore, that claim will be dismissed.

Accordingly, the District's obligation to provide FAPE to the student ceased as of July 16, 2014 when the District issued, and made available to the student, a regular high school diploma.

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**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the District's obligations to the student under the terms of the IDEA ceased as of July 16, 2014 when the District issued, and made available to the student, a regular high school diploma. The issues related to the request by the student's parent for an IEE at public expense are thereby rendered moot and are dismissed.

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

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

September 12, 2014