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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: C.G.

Date of Birth: [redacted]

Dates of Hearing:

May 25, 2011

June 14, 2011

June 30, 2011

OPEN HEARING

ODR Case # 1552-10-11-AS

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Council Rock School District
30 North Chancellor Street
Newtown, PA 18940

Catherine Nguyen, Esq.
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Doylestown, PA 18901

Date Record Closed:

June 30, 2011

Date of Decision:

July 18, 2011

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a pre-teen-aged student residing in the Council Rock School District (“District”) who is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The parties do not dispute that the student qualifies under the IDEIA.

The parties, however, have highly divergent views of what the student’s educational needs are. Parent believes that the student is low-average cognitive ability but has learning difficulties that require attention in a cognitive strengthening environment. The District believes that the student has moderate cognitive impairment that requires a placement in a life skills program.

The parent has requested tuition reimbursement of a privately funded education placement due to an alleged failure by the District to propose an education program reasonably calculated to provide a free appropriate public education (“FAPE”). Particularly, parent claims that reimbursement is owed for an alleged failure by the District to propose a program to provide FAPE in the 2010-2011 school year. The District maintains that the programming proposed for the student was reasonably calculated to yield meaningful education benefit and, as such, was designed to provide FAPE to the student.

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.

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

ISSUES

Was the educational program proposed by the District for the 2010-2011 school year appropriate?

If this proposed program was not appropriate, is parent entitled to tuition reimbursement for the unilateral private placement undertaken for the 2010-2011 school year?

FINDINGS OF FACT

1. In 2004, the student was first evaluated by the District in anticipation of a transition to the District from preschool. (Joint Exhibit ["J"]-1 at page 6; Notes of Testimony ["NT"] at page 35).
2. The evaluation found that the student had borderline verbal abilities and extremely low non-verbal abilities, with overall low cognitive abilities. (J-1 at page 6).
3. The student attended two years of kindergarten and one year of 1st grade at the District. (J-1 at page 3; NT at 35-36).
4. In January 2006, while still attending District schools, the student was privately evaluated. The private evaluation found that the student has borderline verbal abilities and extremely low non-verbal abilities, with overall extremely low cognitive abilities. (J-1 at page 6).
5. The private evaluation also identified broad impairments in speech and language, in both the expressive and receptive domains. (J-1 at page 7).

6. The private evaluation found the student as having mild mental retardation, developmental coordination disorder, and mixed receptive-expressive language disorder. (J-1 at page 7).
7. After the two kindergarten years and 1st grade in District schools, the student was homeschooled for three years, the 2nd, 3rd, and 4th grade years. (J-1 at page 3; Parent's Exhibit ["P"]-1, P-1a; NT at 36, 53).
8. In July 2010, the parent submitted the student's homeschool program report and evaluation. As part of the evaluation, the program evaluator administered standardized achievement testing. The student scored in the negligible range (less than 1st percentile) in total achievement for same aged peers, with similar scores in the negligible range for broad reading and broad written language. The student scored in the very limited range in broad mathematics. (School District ["S"]-1 at pages 9-13).
9. The homeschool program evaluator, in reporting the student's assessment results, that "(d)ue to the nature of (the student's) disabilities, this particular assessment tool may not give a fair sample of (the student's) abilities. Timed portions of the test were clearly lower as (the student's) problem solving and comprehension was [sic] slow and deliberate and could not be rushed. (The student) currently has limited recognition and retention of print which caused many sections of the test to be impossible to administrate [sic] without making some form of adaptation. The adaptations were reading the questions to (the student) and allowing (the student) to respond verbally instead of in writing. One must remember that any adaptation to a standardized test calls into question the scores obtained." (J-1 at page 9).
10. In July 2010, parent requested an evaluation of the student. (J-1 at pages 1-3).
11. In October 2010, the District issued its evaluation report. (J-1 at pages 3-25).
12. The District's evaluation report found that the student has moderately impaired verbal and non-

verbal abilities, with overall moderately impaired cognitive abilities. (J-1 at pages 11-13, 20-21).

13. The District's evaluation report also assessed achievement. The evaluator used a letter-word identification subtest to gauge basic reading achievement, a spelling subtest to gauge writing achievement, and a calculation subtest to gauge mathematics achievement. The student scored below in the very low range (less than 1st percentile) on all three subtests. (J-1 at pages 13-14).
14. The District's evaluation report assessed the student's social/emotional functioning. On the social/emotional assessment, the student was rated by a current teacher in the private placement with clinically significant ratings in learning problems and overall school-based problems composite score; the student was rated by the parent with clinically significant ratings in activities of daily living and functional communication. (J-1 at pages 14-15).
15. The District's evaluation report assessed the student's adaptive behavior. On the adaptive behavior assessment, the student was rated by both a current teacher in the private placement and the parent with extremely low functioning in the following areas: functional academics, self-direction, conceptual composite score, school living & home living, self-care, practical composite score, and the overall general adaptive composite score. (J-1 at page 16).
16. The District's evaluation report assessed the student in speech and language where the student was found to have needs in expressive and receptive language, speech articulation, and fluency; in occupational therapy where the student was found to have needs in sensory functioning, gross and fine motor skills, perceptual-visual-motor skills, and activities of daily living; and in physical therapy where the student exhibited "significant deficits in age appropriate gross motor skills". (J-1 at pages 17-20).
17. The District's evaluation report concluded that the student was a student with a primary identification as a student with mental retardation and

a secondary identification of speech/language impairment. (J-1 at page 21).

18. In December 2010, the student's individualized education plan ("IEP") team met. (J-2 at pages 4-34; NT at 461-462).
19. The student's IEP includes two goals in attention/focus and adaptive functioning (organizing supplies and following directions in a recipe, and performing the morning-arrival routine appropriately), two goals in mathematics (numbers & number systems and estimation/calculation), one goal in reading (independent reading skills such as letter and word identification), one goal in writing (grammatically correct writing), two goals in speech and language (articulation and awareness/correction of dysfluent speech), and one goal in physical therapy (gross motor activity) (J-2 at pages 18-25).
20. The IEP contains specially designed instruction and related services to assist the student to make progress on these goals. (J-2 at pages 26-29).
21. The District recommended a life skills support placement where the student would receive instruction in math, reading/language arts, writing, and functional daily living skills and therapies for approximately 57% of the school day. (J-2 at pages 30-32).
22. The student would participate with non-identified peers in homeroom, science, lunch, recess, art, music, library time, physical education, and school assemblies for approximately 43% of the school day. (J-2 at pages 30, 34).
23. In February 2011, parent rejected the District's recommended educational placement. (J-2 at pages 1-3).
24. In March 2011, the parent filed a due process complaint.
25. The student did not attend District schools and spent

the 2010-2011 school year in the private placement. (S-4, pages 4-15, S-5, S-6).

26. In June 2011, the parent obtained an independent educational evaluation. The independent evaluation found that the student scored in the very low range on a full-scale cognitive measure. Using another measure and focusing on “glimmers of higher functioning in earlier testing”, the independent evaluator concluded that the student has cognitive abilities that are “at least low average, though significant learning differences make it difficult to assess (student’s) true intellectual ability.” (S-8 at pages 3-6, 8).
27. The evaluator’s conclusions are not persuasive, especially in light of the testimony of a District school psychology/special education administration witness in his assessment of the evaluator’s methodology and conclusions. (NT at 305-313, 316-321, 328-347, 366-367).

DISCUSSION AND CONCLUSIONS OF LAW

Long-standing case law and the IDEIA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability.² A substantive examination of the parent’s tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated in IDEIA.³

² 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi); Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985).

³ 34 C.F.R. §§300.148(a),(c),(d)(3).

In this three-step analysis, the first step is an examination of the school district's proposed program and whether it is appropriate. If the District's proposed program is found to be inappropriate then the analysis proceeds to the second step: an examination of the private placement to see if the private placement is appropriate for the child. If the private placement is found to be appropriate, the analysis proceeds to the third and final step, a balancing of the equities between the parties when considering the remedy of tuition reimbursement.

To assure that an eligible child receives a FAPE⁴, an IEP must be reasonably calculated to yield meaningful educational benefit to the student.⁵ 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning"⁶, not simply *de minimis* or minimal education progress.⁷ Here, the District, through the student's IEP, has developed a program reasonably calculated to provide the student with a FAPE.

Here, the parties have highly divergent views of the student's educational programming. While the parent believes passionately in the educational programming that the student received in the 2010-2011 school year at the private placement, the analysis for a claim of tuition reimbursement begins with the public school program offered to the student.

⁴ 34 C.F.R. §300.17

⁵ Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

⁶ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁷ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

In this case, the District comprehensively evaluated the student. (FF 10, 11, 12, 13, 14, 15, 16, 17). This evaluation supports the finding that the student has significant cognitive impairments, cognitive impairments that have surfaced in multiple evaluations, including a private evaluation over the course of the student's education. (FF 1, 2, 4, 5, 6, 12). Also, the student has consistently exhibited extremely low achievement scores over the course of the student's education. (FF 8, 9, 13).

In addition, the student exhibits deficits in adaptive behavior in both the school and home environments as well as social/emotional concerns in the school environment. (FF 14, 15). There was also evidence that the student requires interventions in speech and language, occupational therapy, and physical therapy. (FF 5, 6, 16, 17).

The proposed IEP is reasonably calculated to yield meaningful education benefit. The student's goals are appropriate in light of the student's needs, and the specially designed instruction and related services are appropriate to allow the student an opportunity to make progress toward those goals. (FF 19, 20). Furthermore, the student's educational environment will include significant exposure to, and learning in, the regular education environment. (FF 21, 22).

The record in its entirety supports the conclusion that the December 2010 IEP is reasonably calculated to yield meaningful education benefit. With a determination that the District's proposed

programming is reasonably calculated to yield meaningful education benefit, the tuition reimbursement analysis ends, and there is no need to continue with the second and third steps of the analysis.

CONCLUSION

The record taken as a whole supports a finding that the December 2010 IEP is reasonably calculated to yield meaningful education benefit. Therefore, no tuition reimbursement is owed to parent.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the education program outlined in the IEP of December 2010 is reasonably calculated to yield meaningful education benefit. The District does not owe tuition reimbursement to parent.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

July 18, 2011