

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: L. H.

Date of Birth: [redacted]

Date of Hearing:

June 11, 2015

CLOSED HEARING

ODR Case # 16109-1415AS

Parties to the Hearing:

Representative:

Parent

Pro Se

Riverview School District
701 10th Street
Verona, PA 15147

Rachel Lozosky, Esquire
Peacock Keller
70 East Beau Street
Washington, PA 15301

Date Record Closed:

June 14, 2015

Date of Decision:

July 14, 2015

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION

Student is an elementary school age student residing in the Riverview 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”)¹. The student has been identified under the terms of IDEA as a student with autism. The student’s father claims that the District has failed in its obligations to the student in how it has handled the student’s transportation, specifically as to its procedures for drop-off at the end of the student’s school day.² The District counters that, in the transportation arrangements for the student by both design and implementation in the student’s individualized education plan (“IEP”), there has been no denial of a free appropriate public education (“FAPE”).

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

ISSUE

Did the District deny the student FAPE
in its handling of the student’s transportation
under the terms of the student’s IEP?

¹ It is this hearing officer’s preference to cite to the implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. See also 22 PA Code §§14.101-14.162.

² The student’s mother was not a party to this complaint. The complaint was filed by the student’s father. The student’s mother was notified of the hearing through communications from the Office for Dispute Resolution but never communicated with this hearing officer and did not attend the hearing.

FINDINGS OF FACT

1. The student entered the District in September 2014 for the 2014-2015 school year. (School District Exhibit ["S"]-1).
2. Among other educational needs, the student exhibits, at times, significant behavioral difficulties, including aggression. (Parent's Exhibit ["P"]-15, P-16, P-21; S-7 at pages 9-10; Notes of Testimony ["NT"] at 94, 106-107, 132-133, 136-137, 204).
3. The student's parents do not reside together. The student's mother has sole physical custody of the student; the student resides with the mother. (P-1; NT at 55-56, 199-200).
4. In November 2014, the student's IEP team, including both parents, supported the student's transfer from a District placement to a full-time autism support placement outside of the District. The September 2014 IEP was implemented in the new placement. (S-1, S-2, S-3).
5. At all times, both while attending the District placement and while attending the out-of-District placement, the student was transported by the District. This transportation was listed in the student's IEPs as a related service. (S-1 at page 34, S-4 at page 31; NT at 40-44).

6. The student's transportation is door-to-door, provided by the District through contracted services with a private transportation company who transports the student. (S-5; NT at 40-41, 50-53).
7. The student is picked up at the mother's residence in the morning and transported to the out-of-District placement. At the end of the school day, the student is retrieved from the out-of-District placement and returned to the mother's residence. (P-1; NT at 58-59, 185-187).
8. Before releasing the student from the school bus, the driver of the bus ascertains that an individual is present to take custody and control of the student at the mother's residence. If there is no individual present to take custody and control of the student at drop-off, the bus driver has a protocol to follow, including communication with a specific dispatcher and procedures to retain the student on the vehicle until an individual is available to take custody and control of the student at the mother's residence. (NT at 188-196).
9. In January 2015, with better understanding of the student's acclimation to/needs in the out-of-the District placement, the student's IEP was revised. Transportation as a related service remained in the student's IEP. (S-4).
10. In March 2015, for the first time, the student's father voiced concerns to the District that he was concerned about the

custody/control arrangements at the mother's residence when the student was dropped off at the end of the school day. Namely, his understanding is that the student is released regularly to the custody/control of a 16-year old sibling residing at the mother's residence. The father felt, and at the time of the hearing still feels, this is inappropriate, given the student's physical size and potentially violent behaviors. (P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-13, P-24; NT at 58-62, 199-201, 204).

11. In April 2015, the student's IEP team met to revise the student's IEP. At the IEP meeting, the student's father again voiced his concerns regarding drop-off procedures at the mother's residence at the end of the school day. (P-11, P-12, P-13, P-17, P-18; S-7; NT at 75-76, 138).
12. The District's director of special education acknowledged the father's concerns but indicated that it appeared to be a matter of disagreement and custody between the parents and not a matter related to the District's obligations under the IEP. (P-7, P-8; S-6; NT at 114-119, 138-141).
13. In April 2015, the student's father filed the special education due process complaint that led to these proceedings.
14. A management representative of the transportation company testified that he would be directly informed if there were behavioral incidents related to the student's transportation, or if there were

concerns about pick-up, drop-off, or transportation of the student, or if protocols for retaining the student on the bus were ever triggered. (NT at 149-151, 166-176, 190-191, 195-196).

15. The student never presented behavioral difficulties at pick-up, at drop-off, or at any time during this company's transportation of the student. (NT at 64-66; NT at 103, 191-192).
16. The student was never retained on the bus because an individual was not present to take custody and control of the student at the mother's residence. The bus driver never reported concerns or irregularities involving the student's drop-off. (NT at 192-196).
17. Protocols for retaining the student on the bus at drop-off were never triggered. (NT at 192-196).

CREDIBILITY FINDINGS

- a. All witnesses testified credibly. (NT at 39-143, 146-196, 198-206).
- b. The participation and demeanor of the student's father, in prehearing email and conference call communications and throughout the hearing session, was at all times decorous. It is an explicit finding that, based on the entirety of the record and the father's participation in the hearing, the father has advocated in

good faith for his [child] regarding the father's concerns related to transportation.

DISCUSSION AND CONCLUSION OF LAW

To assure that an eligible child receives FAPE,³ an IEP must be “reasonably calculated to yield meaningful educational...benefit and student or child progress”⁴ through the provision of special education and related services.⁵ Related services are “developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education”⁶ and, if necessary to access special education and/or to receive FAPE, include transportation of the student.⁷

In this case, the District did not deny the student FAPE in its handling of the student's transportation. The father's concerns for his child are understandable and genuine. Ultimately, though, the District has met its obligations to transport the student from the mother's residence in the morning to the out-of-District placement and from the placement to the mother's residence at the end of the school day.

³ 34 C.F.R. §300.17.

⁴ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

⁵ 34 C.F.R. §§300.34, 300.39.

⁶ 34 C.F.R. §300.34(a).

⁷ 34 C.F.R. §300.34(a), (c)(16).

On this record, that transportation was handled appropriately and without incident. At the end of the school day specifically, the student was released to an individual to take custody and control of the student at the mother's residence. Again, this decision is not meant to diminish the father's concerns with the arrangement involving the sibling to whom the student is released. But those arrangements do not amount to a denial of FAPE on the part of the District.

CONCLUSION

The District did not deny the student FAPE in its handling of the student's transportation.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District did not deny the student FAPE in its handling of the student's transportation.

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

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

July 14, 2015