

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: D.J.

Date of Birth: [redacted]

Date of Hearing: July 30, 2015

OPEN HEARING

ODR Cases #16208-1415KE

Parties to the Hearing:

Parent[s]

School District of Philadelphia
440 North Broad Street
Suite 313
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Andrea Cola, Esquire
440 North Broad Street
Suite 313
Philadelphia, PA 19130

July 30, 2015

August 26, 2015

Jake McElligott, Esquire

INTRODUCTION

[Student] (student)¹ is a kindergarten student residing in the School District of Philadelphia (District) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA)². The student has been identified under the terms of IDEA as a student with an intellectual disability and speech/language impairment.

For the 2014-2015 school year, the student transitioned from an early intervention program to kindergarten in the District. The District implemented the individualized education plan (“IEP”) from the early intervention program. By January 2015, the District had re-evaluated the student and proposed a new IEP. The student’s father disagreed with the District’s proposed IEP and placement. Ultimately, seeking to have the student’s education provided under the proposed IEP, the District filed the special education due process complaint which led to these proceedings.

For the reasons set forth below, I find in favor of the District, although the order contains directives for the student’s IEP team. Additionally, the District must provide a re-evaluation at public expense.

¹ The generic “student”, and gender-neutral pronouns will be utilized throughout the decision to protect the student’s confidentiality.

² It is this hearing officer’s preference to cite to the implementing regulation of the IDEA at 34 C.F.R. §§300.1-300.818. See also 24 PA Code §§14.101-14.162.

ISSUES

Has the District proposed an appropriate IEP and placement?

FINDINGS OF FACT

1. At the outset of the 2014-2015 school year, the student transitioned from an early intervention program to kindergarten in the District. Pending a re-evaluation of the student, the District implemented the IEP from the early intervention program. (School District Exhibit ["S"]-3, S-4).
2. In September 2014, the District sought and received permission to re-evaluate the student. (S-4, S-6).
3. As part of the District's re-evaluation, the student underwent early childhood cognitive testing. On the five sub-tests the student could complete, the student received the lowest scaled scores on each sub-test (block design, instrumentation, object assembly, receptive vocabulary, picture naming). (S-8 at pages 10-11).
4. The student's father and kindergarten teacher completed adaptive behavior scales for the student. The general adaptive composite for both raters fell in the extremely low range. (S-8 at pages 8-10).
5. The student's father, however, felt that his participation in the adaptive behavior assessment was flawed, namely that the administration of the adaptive behavior assessment, administered

- to him in the presence of the school psychologist and the student's teacher, skewed his responses. (S-7; Notes of Testimony ["NT"] at 67-77, 240-243).
6. The re-evaluation report also contained results from testing related to occupational therapy, visual-motor integration, school readiness, and speech/language. Each of these evaluations showed that the student had significant delays in all areas. (S-8 at pages 10-12).
 7. The re-evaluation report identified the student as having an intellectual disability and speech/language impairment. (S-8 at page 5).
 8. In January 2015, the District issued the re-evaluation report and prepared a draft IEP for the student. (S-8, S-9).
 9. The January 2015 IEP includes goals in expressive and receptive language, fine motor skills, meal-time routine, academic-readiness skills, and social skills. (S-9 at pages 15-21).
 10. The January 2015 IEP includes speech/language services to be provided for "900 minutes per IEP term" which under the terms of the IEP would run from January 2015 through January 2016. (S-9 at page 21).
 11. The January 2015 IEP recommended supplemental life skills support for 78% of the student's day. (S-9 at pages 25-27).

12. Over January-May 2015, the District invited the student's father to multiple IEP meetings. The student's IEP team did not meet. One of the major stumbling blocks was the father's request that the IEP team meeting be videotaped. (S-10, S-11, S-12, S-13; NT at 239-240).
13. In June 2015, the District proposed a revised IEP. The goals are nearly identical to those in the January 2015 IEP, although a goal has been added related to school attendance: "Given enrollment in school, [the student] will attend school daily with a baseline of 73% (118/163 days present) with 172 out of 180 days at 95% by 06/03/2016". (S-14 generally, and at page 13).
14. Speech/language services in the June 2015 IEP remained at "900 minutes per IEP term"; in this IEP, the duration of services would be from June 2015 through June 2016. (S-14 at page 20).
15. The student's recommended placement in the June 2015 IEP remained supplemental life skills support for 78% of the school day. (S-14 at pages 24-26).
16. The student continued to experience significant delays throughout the 2014-2015 school year. (S-15).

CREDIBILITY FINDINGS

- a. All witnesses testified credibly. (NT at 29-94, 103-164, 169-200, 205-235, 237-253).
- b. The direct testimony of the student's father was limited. But, as a *pro se* party, his participation and demeanor throughout the hearing led this hearing officer to credit his perspective on multiple events/issues in the record. It is an explicit finding that, based on the entirety of the record and the father's participation in the hearing, including prehearing communications and planning, the student's father has advocated effectively and in good faith for his child. (NT generally, and specifically at 237-253).

DISCUSSION AND CONCLUSION OF LAW

Appropriateness of the IEP

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning" (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not

simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Here, the June 2015 IEP is appropriate. The goals, specially designed instruction, and related services all appropriately address the student's needs. Given the student's significant developmental, adaptive, and academic needs, the District's recommendation that the student receive programming largely in a life skills setting is not inappropriate. Indeed, at the hearing itself, the student's father held the opinion that much in the District's proposed program was acceptable to him.³

On this record, the crux of the parent's dispute with the District appears to be a lack of trust. The context of the administration of the adaptive behavior assessment (addressed below) and a lack of communication are at the heart of the father's disagreement. Neither of these matters, however, need to be permanently fatal to the relationship between the parties, and the order will address both issues.

Additionally, the order will address two aspects of the June 2015 IEP that is problematic. First, the school attendance goal is not based on the delivery of instruction or related services to the student. While a lack of attendance certainly is of primary concern to the District, it is not an appropriate matter for an instructional goal in the student's IEP. Therefore, the order will address the removal of this goal from the IEP.

³ See generally NT at 237-253.

Second, the student's speech/language services (900 minutes) are structured over the entire one-year duration of the IEP. This delivery schedule is unclear and malleable, especially where a student requires some degree of persistence in the delivery of services (as here, with a student with significant language difficulties). Ostensibly, the student could receive a heavy dose of speech/language services in one week (or month), and a paucity of such services in another week (or month), and the terms of the provision of services in the IEP would be met. While one would not expect this of a school district, the plain language of the IEP is the guiding source for a student's programming; here, the plain language of the student's IEP must be amended to reflect a weekly delivery of services.

January 2015 Re-Evaluation

The District's January 2015 re-evaluation was appropriate. Again, the parent's disagreement with the District is not entirely substantive. Rather than disagreeing with the ultimate conclusions in the re-evaluation report, the student's father disputes how, in the father's mind, the adaptive behavior assessment was administered in collaboration with District personnel present.

The parties are at the very beginning of this student's educational journey and may need to cooperate and collaborate on the student's programming for years to come. The student's father voiced distrust

regarding the District's re-evaluation process and report but, again, recognized much of value in the District's re-evaluation report. The father has requested an independent evaluation at public expense. It is the considered opinion of this hearing officer that an independent evaluation of the student will allow the parties to move forward on a level of trust that will serve the parties, and more importantly the student, as they seek to understand and to program for the student's needs. Accordingly, under the hearing officer's authority to order an evaluation pursuant to 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the order will structure a process by which an independent evaluation may be obtained.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above:

The January 2015 re-evaluation report and June 2015 IEP are appropriate.

The June 2015 IEP shall be amended as follows:

- As part of the specially-designed instruction/modifications for the student, a weekly school-home communication log shall be added to the IEP.

- As part of the related services, speech/language services shall be structured on a weekly delivery schedule, as determined by the student's IEP team.
- The school attendance goal shall be removed from the IEP.

Pursuant to the authority of a hearing officer as granted in 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), it is ordered that:

- On or before Wednesday, September 9, 2015, the student's father shall provide by email to the District's special education liaison responsible for the student the names and contact information for three independent evaluators experienced in conducting comprehensive psycho-educational evaluations for educational programming ("IEE evaluator[s]"), to make themselves available to conduct an independent educational evaluation ("IEE") at District expense.
- On or before Wednesday, September 23, 2015, the District's special education liaison responsible for the student shall select one of the IEE evaluators to conduct an IEE. The District may research the backgrounds of the

potential IEE evaluators but shall not contact the IEE evaluators prior to making the selection.

- The cost of the IEE shall be at the IEE evaluator's rate or fee and shall be borne by the District at public expense. Communications regarding arrangements between the District, the student's father, and IEE evaluator shall include all three parties.
- If the student's father has not provided by email on or before September 9, 2015 the names and contact information of the potential IEE evaluators, the roles of the parties in determining the independent evaluator shall flip. In such a case, on or before September 23, 2015 the District's special education liaison responsible for the student shall provide by email to the student's father the names and contact information for three IEE evaluators, to make themselves available to conduct an IEE at District expense. In such a case, on or before October 7, 2015 the student's father shall select an IEE independent evaluator from the lists provided and inform by email the special

education liaison of the selected IEE evaluator. Similarly, the student's father may research the IEE evaluators identified by the District but shall not contact them. And again, the cost of the IEE shall be at the IEE evaluator's rate or fee and shall be borne by the District at public expense; communications regarding arrangements between the District, the student's father, and IEE evaluator shall include all three parties. If, by October 7, 2015, the student's father has not communicated with the District on a selection of the IEE evaluator, the District may select the IEE evaluator from the list it provided to the student's father.

- The input, assessments, scope, details, findings and recommendations of the independent evaluation report shall be determined solely by the IEE evaluator. Notwithstanding the provisions of this paragraph, observations by the IEE evaluator shall be only school-based and shall not take place in the home environment.
- After the IEE evaluator has issued the independent evaluation report for the student,

the student's IEP team shall meet to consider the findings of the evaluation in light of the student's IEP and educational programming ("the independent evaluation IEP meeting"). At the independent evaluation IEP meeting, the IEP team shall invite and include the IEE evaluator in the IEP team meeting (making scheduling accommodations for his/her participation as necessary). The District shall bear any cost, or rate, for the appearance of the IEE evaluator at the independent evaluation IEP meeting.

- The terms of this order regarding the involvement of the IEE evaluator shall cease after the IEE evaluator has participated in the independent evaluation IEP team meeting, although nothing in this order should be read to limit, or interfere with, the continued involvement of the IEE evaluator as one party, or both parties, see(s) value in such continued involvement and might make arrangements therefor.

Nothing in this order should be read to limit or interfere with the ability of the IEP team, by agreement of the student's father and the

District, to alter the explicit directives of this order related to the IEE evaluator and/or evaluations, or the student's IEP generally.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

August 26, 2015