

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: N.M.

Date of Birth: [redacted]

Date of Hearing: June 19, 2015

CLOSED HEARING

ODR Case # 16242-1415KE

Parties to the Hearing:

Representative:

Parent[s]

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Date Record Closed:

July 20, 2015

Date of Decision:

August 4, 2015

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION

[Student] (“student”)¹ is [an early teenaged] student who has been identified as a student with a disability under federal and Pennsylvania special education laws,² namely as a student with an emotional disturbance, autism, and a specific learning disability. For approximately ten weeks from late February – early May 2015, the student was at a psychiatric facility within the geographical boundaries of the Wyoming Valley West School District (“District”). The student resides in another school district.

Parent claims that under the terms of the Section 13-1306 of the Pennsylvania Public School Code (“Section 1306”),³ the student was a ‘non-resident inmate’ while at the psychiatric facility. Therefore, the parent argues that the District had statutory duties to provide the student with special education under the terms of the student’s individualized education plan (“IEP”). Parent claims that the student was not provided with appropriate programming by the District while at the facility and, as a result, parent claims that the student was denied a free appropriate public education (“FAPE”).

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”) at 20 U.S.C. §§1415, *et. seq.* It is this hearing officer’s preference to cite to the IDEIA’s implementing regulations at 34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-162.

³ 24 P.S. §13-1306.

The District counters that the psychiatric facility within the boundaries of the District does not qualify under the terms of Section 1306 and, therefore, the District had no obligations to provide FAPE to the student. The District also presents alternative arguments related to potential outcomes should this position not be adopted.

For the reasons set forth below, I find that the District denied the student FAPE but that the student is not entitled to compensatory education.

ISSUES

Does the District have obligations to the student regarding the provision of FAPE?

If so, was the student denied FAPE by the District?

If so, is compensatory education owed to the student?

FINDINGS OF FACT

1. The student's date of birth is [redacted]. (Stipulated Fact at Hearing Officer Exhibit ["HO"]-2).⁴

⁴ The parties stipulated to twelve findings of fact. These stipulations are memorialized at HO-2.

2. Student is [an early teenaged] resident of [another] School District (“[Other District]”). (Stipulated Fact at HO-2).
3. At all times relevant to the complaint, the student has been eligible for special education under the disability category of emotional disturbance with secondary exceptionalities of autism and specific learning disability. (Stipulated Fact at HO-2; *see also* Parent’s Exhibit [“P”]-1).
4. The student’s IEP from [Other District] is dated February 4, 2014, and its anticipated duration was through February 3, 2015. (P-2).
5. The student’s IEP team at [Other District] did not convene between February 3, 2015 and February 25, 2015. (NT at 30).
6. On February 25, 2015, the student was admitted to the emergency room at a local hospital. A few hours later, the student was transported by ambulance to [Redacted] Hospital. (Notes of Testimony [“NT”] at 28).
7. The student was admitted to [Redacted] Hospital on February 25, 2015. (Stipulated Fact at HO-2).
8. [Redacted] Hospital is a private psychiatric hospital serving children, adolescents, and adults. (Stipulated Fact at HO-2).
9. The District was not notified of the student’s admission to [Redacted] Hospital. The student’s mother requested that [Redacted] Hospital notify [Other District] of the student’s

admission to the facility and signed a release for contact between [Redacted] Hospital and [Other District]. To the mother's knowledge, [redacted] Hospital did not communicate with [Other District]. (Stipulated Fact at HO-2; NT at 38-39).

10. The student was never enrolled in the District. (Stipulated Fact at HO-2).
11. While at [Redacted] Hospital, the student did not receive instruction under the IEP. The student's mother inquired about education for the student while the student was at the facility. The student's doctor and counselor indicated that they were not aware of educational needs but would investigate; after the mother's initial inquiry, neither communicated with the student's mother about the student's educational needs. (NT at 30-33).
12. Given the student's lack of engagement with tasks/requirements at [Redacted] Hospital, the student was barred from receiving educational services as a consequence. (NT at 37-38).
13. The District had no knowledge of the student's existence until the filing of the special education due process complaint on April 28, 2015. (Stipulated Fact at HO-2, HO-3).
14. Upon receiving the complaint, a District special education administrator contacted the chief executive officer of [Redacted]

Hospital. The hospital administrator declined to share information with the District administrator because the student did not reside in the District. (NT at 51).

15. The District has not received any bills from [Redacted] Hospital or the [Redacted] School regarding the student. (Stipulated Fact at HO-2).
16. The District's Special Education Plan Report for the period 2014-2017, filed with the Pennsylvania Department of Education, indicates that the District recognizes [Redacted] Hospital as a facility where its students, or students from other school districts, receive special education. (P-3 at page 12; NT at 44-46).
17. The District acknowledges that it is aware [Redacted] [Other District] Hospital employs special education teachers who provide instruction to students at [Redacted] Hospital and, additionally, has communicated with these teachers, although the District has communicated with these teachers only regarding students who reside in the District. (NT at 49-50, 52).
18. The student was discharged from [Redacted] Hospital on May 5, 2015. (Stipulated Fact at HO-2).
19. The District was not notified of the student's discharge from [Redacted] Hospital by either [Redacted] Hospital or the parent. (Stipulated Fact at HO-2).

20. The student is currently enrolled in [Redacted] residential treatment facility. (Stipulated Fact at HO-2).

DISCUSSION AND CONCLUSIONS OF LAW

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

Section 1306

Under the terms of Section 1306, “(t)he board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children’s home, or other institution for the care or training or orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district....”⁹ Regarding students with special

⁵ 34 C.F.R. §300.17.

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

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

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

⁹ 24 P.S. §13-1306(a).

needs, Section 1306 requires that: “whenever a student described in this section is...(an) identified eligible student as defined in 22 PA Code Chapter 14..., the school district in which the institution is located is responsible for: providing the student with an appropriate program of special education and training consistent with this act and 22 PA Code Chapter 14...; and maintaining contact with the school district of residence of the student for the purpose of keeping the school district of residence informed of its plans for educating the student and seeking the advice of that district with respect to the student.”¹⁰

The provisions of Section 1306 also envisions that systems for educating non-resident students in facilities are in place, and communications flow between the school district where the facility is located and school districts of residence. Namely, “(t)he student’s school district of residence and the school district in which the institution is located may agree to an arrangement of educational and procedural responsibilities other than as contained in (24 P.S. §13-1306(c)), provided that the agreement is in writing and is approved by the Department of Education after notice to and an opportunity to comment by the parents of the student.”¹¹

The District’s first argument is that [Redacted] Hospital is not a facility which falls under the auspices of Section 1306. This argument is

¹⁰ 24 P.S. §13-1306(c).

¹¹ 24 P.S. §13-1306(d).

rejected. Section 1306 uses language which is overly inclusive (“any orphan asylum, home for the friendless, children’s home, or other institution for the care or training or orphans or other children”) and, frankly, pointed and connotative (“any children who are inmates of such homes”).¹² In this case, [Redacted] Hospital is a facility/institution for the care of children. And although not explicitly addressed on this record, the record supports a conclusion that the student was not self-admitted or even voluntarily admitted; the student cannot leave the facility. A fair reading of the thrust of Section 1306 is: Students who find themselves in a facility away from their home school districts must look to the school district where the facility is located for their educational services. This is the situation of the student at [Redacted] Hospital; and as a student with an IEP, those educational services include special education.

Added to these general requirements of Section 1306 are the factual supports in this record. In its 2014-2017 Special Education Plan Report, the District is aware of [Redacted] Hospital as a provider of educational services. The District is aware of educational components of students’ stays at [Redacted] Hospital, including specific services provided through IEPs provided by special education teachers. And the District has communicated with [Redacted] Hospital regarding the provision of services to students with IEPs.

¹² 24 P.S. §13-1306(a).

Section 1306 mandates in a situation like the instant case that the District assume responsibility for the special education programs of students are enrolled as ‘inmates’ in institutions within its geographical boundaries but ostensibly outside its control. This is, understandably, an administrative burden for the District, or any school district where such facilities are geographically located.¹³ But it is clear that Section 1306 requires such an undertaking. In that regard, Section 1306 would seem to require, as a practice, that a school district where a facility/institution is located maintain regular contact with both the facility itself and, once informed of a student’s admission, with the school district of residence (collaborating where possible even to the point of a written agreement adjusting between the districts, and in consultation with the parents, the stance or programming for a student).¹⁴ This paragraph, though, is provided by way of dicta. In short, the nature of [Redacted] Hospital under the terms of Section 1306 supports a finding that the District had an obligation to provide FAPE to the student.

¹³ The Pennsylvania School Code makes provisions, however, that undertaking the provision of services under Section 1306 does not have adverse financial consequences for the district where the facility is located. The district where the facility is located may bill the district of residence for the provision of the services provided to a student at the facility. 24 P.S. §13-1308.

¹⁴ Here, the use of releases, consents, and authorizations—provided to parents by and in collaboration with the facility—to allow the school district where a facility is located to contact parents and districts-of-residence would seem to be necessary. Again, this requires a degree of administrative attention by school districts where facilities are located, but, it seems clear, that is part of the communication/collaboration process necessary to abide by Section 1306.

Accordingly, the District's argument that it has no obligations to the student under the terms of Section 1306 is rejected.

Denial of FAPE

As set forth above, the District had obligations to provide FAPE to the student. While it is clear that the District did not provide any educational services to the student under the IEP, and that is attributable to a lack of communication with the facility, a critical fact forestalls any compensatory education remedy.

First, the student's parent is blameless in any regard. The parent communicated with the student's doctor and counselor at [Redacted] Hospital regarding the student's educational needs and was told that those individuals would follow up regarding those needs. The parent also requested that [Redacted] Hospital communicate/coordinate with [Other District], the student's district of residence. [Redacted] Hospital took no action on any of these communications. Parent did not contact the District, but the onus is not on a parent to make sure a school district complies with its obligations under Section 1306, which, in this case, the District did not.

Thus, the student went without educational services under an IEP for the nearly ten weeks of the admission to [Redacted] Hospital. It would seem, then, that the District is liable for a compensatory education remedy for the denial of FAPE. However, a critical factor intervenes to

disrupt this remedy. Even had the District communicated and collaborated with [Redacted] Hospital and [Other District] as Section 1306 envisions, it would not have been allowed to provide educational programming to the student due to the student's non-engagement with [Redacted] Hospital tasks/requirements (see Finding of Fact 12).

It is a difficult situation and a hard result for the parent. The parent has, as indicated, been entirely inquisitive and communicative regarding the student's needs while at [Redacted] Hospital. Yet the District, while failing in its duty under Section 1306 on these facts, would have been unable to provide services even if it had been entirely collaborative with [Redacted] Hospital and [Other District]. On balance, it does not seem equitable to hold the District liable for remedy in a situation where, even had it acted flawlessly, it could not meet its obligations.

Accordingly, while the District did not meet its obligations to provide FAPE to the student under the terms of Section 1306, there will be no compensatory education awarded.

CONCLUSION

The District did not meet its obligations to provide FAPE to the student under the terms of Section 1306. There is, however, no award of compensatory education.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District did not meet its obligations to provide FAPE to the student under the terms of 24 P.S. §13-1306. On this record and as a matter of equity, however, there will be no award of compensatory education.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

August 4, 2015