

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: R.C.

Date of Birth: [redacted]

Dates of Hearing:

September 21, 2015

October 1, 2015

October 6, 2015

CLOSED HEARING

ODR Case # 16677-1516KE

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Pittsburgh Public Schools
341 South Bellefield Avenue
Pittsburgh, PA 15213

Rebecca Heaton Hall, Esquire
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Date Record Closed:

October 6, 2015

Date of Decision:

October 20, 2015

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[The student] (“student”)¹ is an [early elementary school-aged] student 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 with multiple disabilities, including intellectual disability, disruptive behavior disorder, and attention deficit hyperactivity disorder. The student also has significant needs in speech and language.

The student has attended a supplemental life skills support program in a District elementary school. In June 2015, the student’s individualized education plan (“IEP”) team met, and the District recommended a change in the student’s placement to the District’s full-time life skills support program at another District school.

Both parties agree that the supplemental life skills support program is inappropriate for the student as the student requires more behavioral and instructional support. The student’s guardian objected, however, to the District’s proposed placement.

The guardian’s primary disagreement with the placement included concerns over the age-range of students in the program and

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

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.

transportation time. The guardian requested instead that the student be placed in a private setting near to the guardian's home.

For the reasons set forth below, I find in favor of the District, although the order contains certain directives to the student's IEP team.

ISSUES

Is a placement in the District's full-time life skills program reasonably calculated to provide a free appropriate public education ("FAPE")?

FINDINGS OF FACT

1. The student has attended District schools. In the 2014-2015 school year, the student's 3rd grade year, the student attended a supplemental life skills classroom at a District elementary school. The placement was not at the student's neighborhood school as the neighborhood school did not provide life skills support. The student was included in regular education environments for 23% of the school day. (School District ["S"]-5).
2. The student's educational needs have always included programming to address serious in-school behavior issues, including non-compliance, laying on the floor, elopement, work refusal, yelling, running around the room, disrupting other students during work, hiding in a locked bathroom stall, and

- aggression (spitting, pushing, hitting, biting). (Guardian's Exhibit ("P")-1, P-6, P-7, P-14; S-3, S-8, S-15, S-19).
3. In October 2015, the student's IEP team met and crafted an IEP. The IEP included two academic goals (color identification/matching, shape identification/drawing), two occupational therapy goals (cutting, copying), two physical therapy goals (descending steps, running and kicking), a speech goal (articulation), and a bus behavior goal. (S-5).
 4. The student's programming included a functional behavior assessment and behavioral strategies. (S-3).
 5. In December 2014, the student's aggressive behaviors increased. The student underwent a functional behavioral assessment, and, in January 2015, the student's IEP was revised. An additional physical therapy goal was added (hopping), the bus behavior goal was modified, and a classroom behavior goal was added. (S-8, S-9).
 6. In January 2015, the guardian requested that the student be re-evaluated and granted permission to the District to perform the re-evaluation. (S-11, S-12).
 7. In March 2015, the District issued its re-evaluation report ("RR"). On the Wechsler Nonverbal Scale of Ability, the student's full-scale IQ was 48, in the moderate range of intellectual disability. (S-15, S-16).

8. The March 2015 RR included results of the Adaptive Behavior Assessment System/2nd Edition. The student's scores in communication, community, functional academics, school living, self-care, self-direction, and socialization were all in the extremely low range. (S-15, S-16).
9. The March 2015 RR included results of the Devereux Scales of Mental Disorders. All scales (attention, externalizing, anxiety, depression, internalizing, autism, acute, and critical) were in the elevated range, with the scale for conduct in the very elevated range. (S-15, S-16).
10. The March 2015 RR indicated the student is a multi-modal communicator, using 2-3 word verbal utterances, verbal approximations, gestures, signs, and a picture flip book. (S-16).
11. In May 2015, the student's IEP team met to revise the student's IEP in light of the March 2015 RR. (S-20).
12. The student's May 2015 IEP included one occupational therapy goal (cutting), two physical therapy goals (ascending/descending steps, hopping), two academic goals (color matching, identifying/copying shapes), and three speech and language goals (articulation, sentence-length utterances, and Q&A/conversational skills). (S-20).
13. The May 2015 included a functional behavior assessment and positive behavior support plan. (P-16; S-19, S-21).

14. The May 2015 IEP included door-to-door transportation of no more than 30 minutes one way. (S-20).
15. In June 2015, the District proposed that the student's May 2015 IEP be implemented in a full-time life skills placement. The guardian agreed that the student's supplemental life skills placement was no longer appropriate but disagreed with the student's placement in the District's full-time life skills program. (P-18; S-25; NT at 177-178, 251, 253-254).
16. The District's full-time life skills program is in a self-contained building. It provides programming to students with significant special education needs at all grades and through age 21. Programming is individualized in classroom settings that range from a student: teacher ratio of approximately 10:1. Classrooms are staffed with classroom aides and, where a student's program calls for it, one-to-one aides. A full-time behavior specialist is on staff. The student's placement would be in a classroom within regulatory age-range limits. (NT at 181-189, 208-212).
17. In early August 2015, the student's guardian filed the special education due process complaint that led to these proceedings. The guardian's complaint explicitly focused on the length of the transportation to the proposed placement and the age-range of the students in the placement. The guardian requested a private

placement. (Hearing Officer Exhibit ["HO"]-1; P-17; NT at 251, 254-256).

DISCUSSION AND CONCLUSION OF LAW

To assure that an eligible child receives free appropriate public education ("FAPE"),³ an IEP must be "reasonably calculated to yield meaningful educational...benefit and student or child progress."⁴ "Meaningful benefit" means that a student's program affords the student the opportunity for "significant learning",⁵ not simply *de minimis* or minimal education progress.⁶

Moreover, both federal and Pennsylvania law require that the placement of a student with a disability be in the least restrictive environment ("LRE").⁷ Pursuant to the mandate of 34 C.F.R.

§300.114(a)(2):

"Each (school district) must ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled, and...separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the

³ 34 C.F.R. §300.17.

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

⁵ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁶ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

⁷ 34 C.F.R. §§300.114-120; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3^d Cir. 1993).

use of supplementary aids and services cannot be achieved satisfactorily.”

Pennsylvania special education regulations mirror this emphasis on LRE, requiring supplementary aids and services, where those are required for a student to make meaningful education progress on IEP goals in...the IEP.⁸

In this case, the parties agree that the supplemental life skills support program at the District elementary school is inappropriate. The record supports the views of the parties—the student needs more structured and targeted programming than the regular education setting can provide. The question at the forefront, then, is whether the District’s proposed placement in its full-time life skills placement is appropriate.

On this record, it is an appropriate placement. Instruction on the student’s goals, including the related services of speech and language therapy, occupational therapy, and physical therapy, can be provided in the full-time life skills placement.

In terms of the guardian’s explicit concerns, the student will be educated with same-age peers within the Pennsylvania special education regulations for the appropriate age-range in a special education classroom. (22 PA Code §14.146). The student’s May 2015 IEP requires 30-minute one-way transportation to/from the student’s current placement; this will remain in place as part of the student’s

⁸ 22 PA Code §14.145(3).

programming, but it will be made explicitly so under the terms of this order.

There is one aspect of the student's programming, however, that will change markedly in the full-time life skills placement, and that is the student's access to a regular education environment/typically-developing peers. In the current supplemental life skills placement, the student is in a regular education environment approximately 25% of the time. In the proposed full-time life skills placement, the program is self-contained and the student's access to a regular education environment and typically-developing peers will be diminished. Therefore, the IEP team will be directed to add explicitly goals and programming to ensure that the student continues to engage in community-based/regular-education settings.

Accordingly, the record supports a conclusion that a placement in the District's full-time life skills support program under the terms of the May 2015 IEP is reasonably calculated to yield meaningful education benefit.

CONCLUSION

On balance, the student's placement in the District's full-time life skills support program under the terms of the May 2015 IEP is calculated to provide FAPE in the LRE.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, placement of the student in the District's full-time life skills support program under the terms of the May 2015 IEP is calculated to provide a free appropriate public education in the least restrictive environment.

The student's door-to-door transportation to and from the full-time life skills placement shall remain no more than 30 minutes one way.

The student's IEP team shall convene no later than 10 school days after the date of this decision to revise the student's IEP, crafting an IEP goal (or goals) for programmatic community-based instruction and/or interaction with regular education peers. The IEP team will also add modifications, specially-designed instruction, related services, and/or supports for school personnel as necessary in light of the goal(s).

The student's IEP team shall also consider the utility of whether a transition plan is advisable, or not, in acclimating the student to the full-time life skills placement. To the extent the IEP team deems that such a transition plan is advisable, the team shall design a plan.

Furthermore, regardless of when the student's IEP is finalized with the additions outlined in the foregoing paragraphs, the anticipated duration of services and program in the May 2015 IEP shall remain May 12, 2016.

Nothing in this order should be read to limit, or interfere with, decisions of the student's IEP team to the contrary, to the extent there is agreement by the team.

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

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

October 20, 2015