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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: G. W.

Date of Birth: [redacted]

Dates of Hearing:

October 23, 2015
December 22, 2015
January 11, 2016

CLOSED HEARING

ODR Case # 16718-1516AS

Parties to the Hearing:

Parent[s]

Methacton School District
1001 Kriebel Mill Road
Norristown, PA 19403

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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February 8, 2016

March 2, 2016

Jake McElligott, Esquire

INTRODUCTION

Student is a [mid-teen aged] student residing in the Methacton School District (“District”). The parties do not dispute whether the student qualifies as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. Parent claims that the District owes the parent tuition reimbursement for a unilateral private placement undertaken for the 2015-2016 school year because the District’s proposed program and placement was not designed to provide a free appropriate public education (“FAPE”) to the student. Parents also make a claim for reimbursement for a private evaluation of the student.

The District counters that its program and placement proposed for the 2015-2016 school year are reasonably calculated to provide FAPE to the student and, as such, parent is not entitled to tuition reimbursement for alleged violations of IDEIA, nor to reimbursement for the private evaluation of the student.

For the reasons set forth below, I find in favor of the parent on the issue of tuition reimbursement but in favor of the District on the issue of reimbursement for the evaluation.

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. *See also* 22 PA Code §§14.101-14.162 wherein Pennsylvania education regulations explicitly adopt most provisions of 34 C.F.R. §§300.1-300.818.

ISSUES

Is the parent entitled to tuition reimbursement for the unilateral private placement undertaken for the 2015-2016 school year?

Is parent entitled to reimbursement for the private evaluation of the student?

FINDINGS OF FACT

1. At the outset of the 2006-2007 school year, the student's 1st grade year, the student was identified by the District as a student with a disability, namely a specific learning disabilities in reading and written expression, and a speech/language impairment. In re-evaluation report ("RRs") of April 2012, June 2013 and August 2013, the District continued to identify the student as having learning disabilities in reading and written expression; the student was also identified with health impairments related to attention deficit hyperactivity disorder ("ADHD") and anxiety. (Parents' Exhibit ["P"]-21; School District Exhibit ["S"]-2).
2. The parties engaged in a prior round of special education due process, resulting in a decision in November 2013. (P-34).
3. In December 2013, in light of the issuance of the November 2013 decision, the parties reached a settlement of that dispute through a written settlement agreement. (P-35).

4. The December 2013 settlement agreement settled all claims between the parties “from the beginning of time” through the end of the 2014-2015 school year. (P-35).²
5. In its relevant parts, the December 2013 settlement agreement provided that the District would provide tuition for the student at a private placement for the 2013-2014 and 2014-2015 school years. (P-35).
6. The December 2013 settlement agreement also provided that, in the spring of 2015, the student would undergo a District re-evaluation process in which parent would cooperate and provide requested permissions, consents, and/or input. (P-35).
7. In the spring of 2015, pursuant to the relevant provisions of the December 2013 settlement agreement, the District undertook its re-evaluation process.
8. In April 2015, following the re-evaluation process, the District issued its RR. (P-36; S-1).
9. In April 2015, following the issuance of the April 2015 RR, the student’s individualized education plan (“IEP”) team met to design the student’s IEP for the 2015-2016 school year. (P-37, S-3, S-4).

² At the initial hearing session on October 23rd, the parents, through the testimony of the student’s mother, spent an inordinate amount of time on evidence related to the student’s education prior to the November 2013 decision and December 2013 settlement agreement. Parents were permitted to utilize the time allotted to the mother’s testimony in the way they saw fit. It must be noted, however, that the mother’s testimony was largely spent on evidence that was entirely non-probative of the issues in this matter.

10. The April 2015 IEP contained 10 goals in the following areas:
two in written expression, two in organization/study skills, two in speech and language, three in reading, and one in mathematics.
(P-37; S-4).
11. The goals in the April 2015 IEP did not contain any baseline information. Each goal indicated that “baseline has been identified in (present levels of educational performance)” and that the District planned to gather further baseline data during summer 2015 programming at the District. (P-37; S-4).
12. The present levels of educational performance in the April 2015 IEP were reports of the standardized achievement testing from the evaluation process; the goals were written in terms of District curriculum, assignments, or instructional results. (P-37; S-4).
13. The April 2015 IEP contained a broad assortment of program modifications and specially designed instruction. (P-37; S-4).
14. The April 2015 IEP calculates that the student will be in the regular education environment for 67% of the school day. (P-37; S-4).
15. In May 2015, the District issued a notice of recommended educational placement (“NOREP”), formally offering the April 2015 IEP as the student’s program/placement for the 2015-2016 school

- year. The student's parents rejected the proposed program. (P-38; S-3).
16. In June 2015, the District updated the April 2015 RR to include further information. The student's IEP met again to revise the student's IEP. (S-2, S-3, S-4).
 17. In July 2015, the student underwent a private evaluation which resulted in the issuance of an independent educational evaluation ("IEE"). The July 2015 IEE included one reading assessment and one behavior assessment, as well as record review and interviews with the student and a parent. (P-43; S-7).
 18. In early August 2015, the student's IEP was revised. (S-3, S-4).
 19. The goals in the August 2015 IEP remained the same. Some of the goals contained intermittent baseline information. Where baseline data was provided, it was reported as results from assessments in the evaluations, or earned grades from the private placement where the student had been attending; the goals were written in terms of District curriculum, assignments, or instructional results. (S-4).
 20. Whether goals contained baseline data or not, half of the goals indicated that data would be ascertained within 2 weeks within the implementation date of the IEP. Some goals were noted as not being part of the student's programming at the private

- placement; for these goals, the baseline data indicated: “If (the student) were to return to the District, the District would conduct probes to determine (the student’s) present level in order to measure (the student’s) progress accurately.” (S-4).
21. On August 20, 2015, the District issued to the parents by email this IEP (August 20th IEP) and a NOREP. (S-5).
 22. The next day, on August 21, 2015, the parents filed a special education due process complaint, the complaint which led to these proceedings. (P-52; S-6).
 23. The student returned to the private placement where the student attended the 2013-2014 and 2014-2015 school years under the terms of the December 2013 settlement agreement. (P-40).
 24. The private placement provides individualized instruction geared to students with learning difficulties in reading, written expression, and/or mathematics, including supports for students with ADHD. (P-31, P-32, P-33, P-42, P-56; *see generally* Notes of Testimony at 177-240).
 25. In the most recent school year at the private placement, the 2014-2015 school year, the student made progress. (P-46).
 26. On August 26, 2015, the District offered a revised IEP. The last-revised and offered IEP, upon which the parents based their

decision for unilateral private enrollment, was the August 20th IEP. (P-50).

DISCUSSION AND CONCLUSIONS OF LAW

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)).

Tuition Reimbursement

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 (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); *see also* 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). A substantive examination of the parents’ tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated

into IDEIA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

The August 20th 2015 IEP. In the three-step analysis, the first step is an examination of the school district's proposed program and whether it was reasonably calculated to yield meaningful education benefit (34 C.F.R. §300.17; Rowley; Ridgewood; M.C.). In this case, the August 20th 2015 IEP proposed by the District is inappropriate.

The August 20th 2015 IEP is not reasonably calculated to yield meaningful education benefit for one primary reason: The lack of useful baseline data for any of the student's ten goals is a fatal flaw.

Appropriate goal-writing starts with an understanding of a student's current achievement levels in a goal area, commonly referred to as a goal's baseline data. From there, weighing this data and the IEP team's consideration of a student's strengths, areas of need, and the District's understanding of potential instructional strategies, the goal itself can be written (a) to guide instruction over the course of the IEP and (b) to provide the IEP team with a sense of the progress, or lack of progress, exhibited on any particular goal over the course of the student's instruction under the IEP.

Most goals in every IEP on this record (April 2015, June 2015, and August 20th 2015) indicate that baseline data would be ascertained early on when the student returned to the District. This approach must be rejected on this record. The District made no effort to obtain baseline

data while the student was at the private placement (over April-June 2015), or over the summer (June-August 2015). Given the procedural history of these matters, it is surprising that the District did not have in place a plan to gather concrete, detailed baseline data based on the District curricular materials written into the goal. The student was not out-of-state, or in a private placement which was inaccessible. And, more specifically, the point here is not that the District even needed to go to the student; at any point from April through August 2015, the District could have requested permission to evaluate the student to establish concrete, detailed baseline data on the very curriculum materials that were the focus of the student's goals.

And this is a second element of the baseline data that underpins a finding of inappropriateness: Even where, in the August 20th 2015 IEP, there was some degree of baseline data listed, the baseline was written in terms of assessment results from evaluations, or grades at the private placement. Yet the student's goals are written in terms of probes and progress on District curricular materials. To be colloquial, these are apples and oranges, when written in the same goal. By assessing the student on those District curricular materials, baseline data could have, and should have, been ascertained to allow the student's IEP team to craft entirely appropriate goals that included baseline data which aligned with the goal. The lack of such data is a substantive, and prejudicial, flaw in the design of the IEPs.

By not including baseline data in the student's proposed goals, or by presenting baseline data plucked out of the student's evaluation history/private placement grades which are both unrelated to the curricular nature of the goals, the goals in the IEPs were inappropriate. Parents were asked to approve a program/placement that, in terms of the student's IEP goals, were prejudicially incomplete. Accordingly, the District's offer of programming in all three IEPs on this record, including the August 20th 2015 IEP, was inappropriate.

The Private Placement. For the foregoing reasons, the August 20th 2015 IEP proposed by the District is inappropriate. When a school district program is found to be inappropriate at step one of the Burlington-Carter analysis, step two of the analysis is an examination of the appropriateness of the private placement which the parents have selected.

Here, the private placement is appropriate. The private placement provides individualized instruction that directly addresses the student's needs. And the student's performance at the private placement in the most recently completed school year supports a finding that the programming at the private placement allows the student to make meaningful education progress. The private placement for the 2015-2016 school year is appropriate.

Balancing of the Equities. Where the school district has proposed an inappropriate program, and parents' unilateral placement in a private

setting provides an appropriate program, the third step of the Burlington-Carter analysis involves a balancing of the equities between the parties. Here, the equities do not significantly weigh for, or against, either party.

Accordingly, the parent is entitled to tuition reimbursement.

Reimbursement for IEE

Parents have requested, as a remedy, reimbursement for the July 2015 IEE, including costs associated to having the evaluator testify at the hearing. In considering the substance of the July 2015 IEE substantively, the report did not present information that was entirely new for an understanding of the student's needs or potential programming in school. While it may to deepen understanding of the student's needs, or help to flesh out further details related to programming, the July 2015 IEE did not place the parties in a position where the trajectory of understanding the student's needs was changed or deeply enhanced.

Accordingly, there will be no order for reimbursement for the IEE or for the evaluator's participation at the hearing.

CONCLUSION

The August 20th 2015 IEP proposed by the District for the 2015-2016 school year is not reasonably calculated to yield meaningful

education benefit. The program provided by the private placement is appropriate. And the equities do not impact the determination as to tuition reimbursement. Therefore, the parent is entitled to tuition reimbursement.

There is no support on this record for reimbursement to parents for the July 2015 IEE, or the evaluator's participation in the hearing.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the parent is entitled to tuition reimbursement for the unilateral private placement undertaken for the 2015-2016 school year.

To the extent that the parent has been placed in a position to absorb out-of-pocket payment(s) for tuition and fees at the private placement for the 2015-2016 school year, the District is ordered to reimburse parent. Upon presentation to the District by the parent of proof(s) of payment for the 2015-2016 school year, reimbursement shall be made to parent within 60 calendar days of the date the parent presents the documentation. Upon presentation to the District by the parent of any unpaid outstanding balance for the student's 2015-2016 school year, payment shall be made directly by the District to the private school within 90 calendar days of the date parent presents the documentation.

The District is not required to reimburse parents for the cost of the July 2015 independent evaluation process, or for the cost of the evaluator's participation in this hearing.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

March 2, 2016