

*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: C.R.

Date of Birth: [redacted]

Dates of Hearing:<sup>1</sup>

November 2, 2016

November 3, 2016

November 11, 2016

### **CLOSED HEARING**

ODR Case # 17992-1617AS

Parties to the Hearing:

Hempfield School District  
200 Church Street  
Landisville, PA 17538

Parent[s]

Representative:

Mark Cheramie Walz, Esquire  
331 East Butler Avenue  
New Britain, PA 18601

Judith Gran, Esquire  
19 Chestnut Street  
Haddonfield, NJ 08033

Date of Decision:

January 10, 2017

Hearing Officer:

Michael J. McElligott, Esquire

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<sup>1</sup> The evidence concluded at the November 11<sup>th</sup> session. Counsel for the parties requested the opportunity to submit written closing arguments, which were due December 12, 2016 (thereafter extended at the unopposed request of parents' counsel, due December 19, 2016).

## **INTRODUCTION**

[The student] (hereinafter “student”)<sup>2</sup> is a post-teenaged student residing in the Hempfield School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”).<sup>3</sup> Specifically, the student has been identified as a student with autism.

Parents allege that substantive flaws in the design and implementation of the student’s individualized education plans (“IEPs”), and more specifically the post-secondary transition planning and programming contained in the IEPs, denied the student a free appropriate public education (“FAPE”) for the 2014-2015 and 2015-2016 school years. Parents seek compensatory education for alleged deprivations in the student’s programming. Additionally, parent claims that the District has violated its obligations to the student under Section 504 of the Rehabilitation Act of 1973 (“Section 504”).<sup>4</sup>

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<sup>2</sup> The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

<sup>3</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.164.

<sup>4</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. *See also* 22 PA Code §§15.1-15.11 wherein Pennsylvania education regulations explicitly adopt the provisions of 34 C.F.R. §§104.1-104.61 for services to “protected handicapped students”.

The District counters that the post-secondary transition planning and programming in the student's IEPs were appropriately designed and implemented. Therefore, the District's position is that the student was provided with FAPE at all times.

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

### **ISSUES**

Was the student provided FAPE through the design and implementation of the post-secondary transition planning contained in the student's IEPs for the 2014-2015 and 2015-2016 school years?

### **FINDINGS OF FACT**

1. The student has been identified as a student with autism. (School District Exhibit ["S"]-2).

#### Re-Evaluation Report – March 2013

2. In March 2013, the student was re-evaluated by the District. (S-2).
3. By history in the March 2013 re-evaluation report ("RR"), as a 1<sup>st</sup> grade student in 2001, the student was identified in a school district in an adjoining state as having a disability, under that state's nomenclature, as "educable mental disability". By 3<sup>rd</sup> grade, in a repeated year in 2005, the student had been identified as a student with autism and attention deficit hyperactivity disorder, and the student's disability status was changed to "physically impaired". (S-2 at pages 1-2).
4. In 2007, the student moved into the District for 6<sup>th</sup> grade. In November 2007, the District identified the student as a student with autism, speech/language impairment, and a health impairment. (S-3 at page 2).

5. On cognitive testing in the March 2013 RR, the student's full-scale IQ was 71, in the borderline range. This cognitive profile is consistent with other cognitive assessments in the student's evaluation history. (S-2 at pages 3-4, 17-18).
6. Input in the March 2013 RR from the student's academic support teacher related to transition planning indicated that "(The student) has a lot of anxiety surrounding school assignments and life beyond high school...brings up the topic of careers daily...(and) is very stressed about figuring out what to do for the rest of (the student's) life. (The student) is very concerned about what others want (the student) to do. Much focus is put on what (the student) wants when we have these discussions....". (S-2 at page 10, emphasis in the original).
7. Input from the March 2013 RR from the job training instructor at the local intermediate unit ("IU") indicated that the student had visited the local community college, a Commonwealth vocational college, and the IU vocational program. The student "participated in our mini business by working a day at Art printing and was part of a paid work crew at (a local market). (The student) participates in classroom activities related to the transition from high school to post secondary pursuits, writing (the student's) signature, first impressions, and internet safety", as well as community-based engagement in grocery shopping. (S-2 at page 11-12).
8. The March 2013 RR indicated that the student participated in a regular education physical education class called "Fitness for Life", a class where students learn skills and activities for sports that can be engaged in throughout the lifespan. (S-2 at page 12).
9. The March 2013 RR indicated that the student was participating in a preschool classroom experience, assisting teachers with younger students. The student worked with teachers to manage classroom responsibilities and tasks and to plan activities. (S-2 at page 15).
10. The evaluator for the March 2013 RR shared that, interacting with the student during testing, the student "shared career interests in the areas of dancing, learning about airplanes, and computers", although the interest in computers was suggested by family and was not an area of personal interest for the student. (S-2 at page 17).
11. The March 2013 RR recommended that the student continued to be identified as a student with autism and speech/language impairment. (S-2 at page 24).

12. In terms of transition planning, in addition to academic, social skills, and organization needs, the March 2013 RR also identified career exploration and identifying post-secondary options as an educational need for the student. The RR indicated that the student would be attending the [specific career] cluster at the IU vocational education program in the upcoming school year. (S-2 at page 25-26).

### 2014-2015 School Year

13. Following the March 2013 RR, in the 2013-2014 school year, the student attended a half-day program at the IU vocational program in the [specific career] cluster with academic programming for a half-day at the District high school. (S-3, S-4).<sup>5</sup>

14. In June 2014, the student's IEP team met in its annual meeting to consider the student's IEP. The June 2014 IEP is an IU document. (S-6).

15. The student's IEP team did not recommend that the student continue in the vocational [specific career] program. Instead, the student's post-secondary transition planning was developing in a direction where the student would explore vocational options and, potentially, pursue post-secondary academic study. (S-6).

16. The June 2014 IEP included a survey of nine present levels of functional skills. The survey indicated that the student would need assistance in most areas, with job applications/employment documents, interviewing, banking/making purchases, public transportation, and health care information. (S-6 at pages 8-10).

17. The June 2014 IEP included a survey of 24 present levels of work-orientation skills. The survey indicated that the student exhibited 19 of the skills; needs were indicated in having a realistic understanding of workplace environments, working without supervision/work-behavior expectations (due to repeated questioning of whether work was being done correctly or not), managing stress, and decision-making. (S-6 at pages 8-10).

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<sup>5</sup> The student's 2013-2014 IEP, along with some testimony, was made part of the record for chronology and context but is not a school year or programming at issue.

18. The June 2014 IEP included a survey of three present levels of career/life-planning skills. The survey indicated the student did not have a realistic sense of personal interests/abilities (instead, always seeking to make others happy) or—related to this— a realistic sense of how interests/abilities match with job/career goals. (S-6 at pages 8-10).
19. The June 2014 IEP indicated that the student is interested in an academic-support/academic-experience program for students with disabilities, associated with the IU program. (S-6 at pages 8-10).
20. The June 2014 IEP indicated that the student might pursue post-secondary education at a community college, was uncertain about post-secondary employment (indicating interest in being a tour guide), and would reside at home after graduation. (S-6 at page 8).
21. The transition-services section of the June 2014 IEP indicated that the student would take a diploma based on completion of IEP goals, not on high school credit accumulation or some combination of the two. (S-6 at page 11).
22. The transition-services section of the June 2014 IEP contained the post-secondary education and training goal “(The student) may attend a community college post-graduation”. (S-6 at page 11).
23. This post-secondary education/training goal included three services/activities such as investigation/research into post-secondary institutions, including admission requirements, with recruiters and at college fairs. Included in these, given the interactivity required, social skills instruction in the IEP were part of these services/activities geared to this goal. (S-6 at page 11).
24. The transition-services section of the June 2014 IEP contained the employment goal “(The student) is unsure of (employment) in the future. (The student often has changes of mind) and is influenced easily. At (the May 2014 IEP meeting), (the student) stated (an interest in being) a tour guide”. (S-6 at page 11).
25. This post-secondary employment goal included five services/activities such as various work-related experiences, functional academics and independent living skills, and resume creation. Included in these, given the interactivity required, were

- communication and social skills instruction in the IEP were part of these services/activities geared to this goal. (S-6 at pages 11-12).
26. The transition-services section of the June 2014 IEP contained the independent living goal “Mom stated that (the student) will live at home after graduation”. (S-6 at pages 12-13).
  27. This post-secondary independent living goal included two services/activities, including having the student liaise with community resources/agencies and functional instruction (banking/budgeting, organization, basic self-care). (S-6 at pages 12-13).
  28. The June 2014 IEP contained three goals, one for receptive language, one for social skills, and one for managing anxiety. (S-6 at pages 17-18).
  29. Specially designed instruction and program modifications in the June 2014 IEP included, in part, community-based instruction related to appropriate social behaviors, understanding and working with public transportation schedules/fees, and essential vocational skills (acquiring and maintaining employment). (S-6 at page 19).
  30. Related services in the June 2014 IEP included job training over the course of the IEP. (S-6 at page 20).
  31. Ultimately, the June 2014 IEP recommended that the student participate in an IU school-to-work program where students work in an individualized capacity on their academic needs and the employment/job-development skills with a job coach. (Notes of Testimony (“NT”) at 425-490).
  32. The IU school-to-work program is not vocational, in that it works on a specialized course of study in a certain vocational area. Instead, it provides students with individualized instruction and experiences based on their skills, needs, and interests. (NT at 425-490).
  33. In explaining the proposed educational placement in the June 2014 IEP, the educational placement was described as follows: “The IEP team has determined that (the student’s) transition needs are best met in a program that focuses on functional life skills and development of work skills. These needs can best be met in the (IU school-to-work) program with focus on integration into the community while developing work skills for a competitive employment setting. (The student) will actively

- participate in the community with involvement in job training activities and community-based vocational activities.” (S-6 at page 21).
34. In June 2014, in conjunction with the June 2014 IEP, the District issued a notice of recommended educational placement (“NOREP”), recommending that the June 2014 IEP be implemented at the IU school-to-work program. Parents approved the NOREP. (S-7).
35. The student studied in the IU school-to-work program through the fall of 2014. Approximately mid-year, the student’s interest in post-secondary study became the focus of planning. (NT at 57-148, 322-490, 501-630).
36. In February 2015, the student’s IEP was revised. (S-8).
37. The February 2015 IEP revision accounted for a 7-week academic-skill-building program at a local community college. From approximately mid-February through early April, the student spent each morning at the community college, engaging in skill-building related to post-secondary study/success. The student would return to the IU school-to-work program in the afternoon. (S-8 at pages 7, 18, 29).
38. In the spring of 2015, the District was made aware that the student was pursuing potential admission to a local university for a certificate program designed for students with an intellectual disability to attend the university for campus/career/life-development coursework and experiences. A special education administrator completed a reference form for the program. (S-9, S-20; NT at 57-148, 322-422, 501-630).
39. In May 2015, anticipating that the student was intent on attending the local university and would graduate informally from the school-to-work program, the IU prepared a summary of achievement/functional performance for the IU school-to-work outcomes. (S-9).
40. Over the course of the 2014-2015 school year, the student made progress, by and large, on the speech and language, social skills, and anxiety-management goals. (S-10).

## 2015-2016 School Year

41. In June 2015, the student's IEP team met in its annual meeting to consider the student's IEP. The meeting was focused on the fact that the student was intent on/planning to attend the local university. (S-12; NT at 57-148, 322-422, 501-630).
42. The District was aware that the student was intent on attending the local university, but the student had not taken a diploma nor indicated that the student was exiting special education due to goal-completion. (NT at 57-148, 322-422).
43. In June 2015, the District proposed an IEP where the transition planning included the post-secondary education goal as "(The student) will be attending a post-secondary college program at (the local university) during the 2015-2016 school year." (S-12 at page 13).
44. The June 2015 IEP transition planning included an employment goal as "Due to (the student) attending a post-secondary college program, full-time, (the student) will not be seeking employment at this time". (S-12 at page 14).
45. The June 2015 IEP transition planning included an independent living goal as "(The student) will be living on campus (at the university) during the 2015-2016 school year." (S-12 at page 14).
46. The June 2015 IEP had two goals, a personal finance/checkbook-balance goal, and a behavior goal for the management of stress/anxiety/frustration. (S-12 at page 18).
47. The June 2015 IEP was drafted for provision of specially-designed instruction and program modifications to be delivered by District personnel on campus at the local university. (S-12 at page 19).<sup>6</sup>
48. The June 2015 IEP characterized the student's educational placement as follows: "(The student) will be participating in dual enrollment receiving all of (student's) programming at (the local university) in the Career and Life Studies program. (The student) will receive itinerant learning support form (the District)." (S-12 at page 21).

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<sup>6</sup> The District and the physical location of the local university are very close.

49. The June 2015 IEP indicated that instead of being provided at the neighborhood school, or even in the District, “(s)ervices will be provided at (the local university) when the Coordinator of Special Education from (the District) travels to (the local university) for their bi-weekly visits with (the student).” (S-12 at page 24).
50. In June 2015, in conjunction with the June 2015 IEP, the District issued a NOREP, recommending the following: “(The student) will be a full-time student at (the local university) participating in the Career and Life Studies program and receiving itinerant learning support to increase skill independence in the area of banking and coping with anxiety through (the District) as a dual enrollment student.” Parents disapproved the NOREP and requested mediation. (S-13).
51. The career and life studies program at the local university is a program for students with an intellectual disability in a four-semester program “who are interested in participating in an academic, vocational, and social university experience”. (Parents’ Exhibit [“P”]-4, P-5; S-21).
52. Even though the student has not been identified as a student with an intellectual disability, the career and life studies program director met with the student, and the student was accepted into the program, beginning studies on campus at the local university in August 2015. (P-3; NT at 149-219).
53. Students in the career and life studies program take certain classes where those classes are thought to be appropriate given the student’s profile. Each student is supported individually by program-funded academic coaches and program mentors, as well as university faculty/staff, who all help the student to socialize, to maintain academic performance, to focus on career development, and to navigate the campus environment. (P-4, P-5; NT at 149-219).
54. The student flourished at the local university, socializing, making friends, engaging in studies, finding a job in a field of interest—overall, everyone who engaged with the student over the 2015-2016 school year (the career and life studies program director, District personnel who worked with the student on campus under the terms of the June 2015 IEP, the student’s mother) found the student to have flourished. (NT at 140-219, 322-422, 501-630).

55. District personnel coordinated with the student to provide the campus-based services listed in the student's June 2015 IEP. The student and/or family often cancelled sessions, or failed to attend. The District director of special education testified credibly that the student, being immersed in a university life through the career and life studies program, had, in effect, moved on from District-based services and did not engage with the offered instruction and services. (S-14; NT at 322-422).
56. In June 2016, the student [was beyond] age 21. The District attempted to schedule an IEP meeting to discuss the status of the student's 2015-2016 progress on IEP goals and final report of student academic achievement/functional performance. Parents did not attend the IEP meeting. (S-16).
57. In early July 2016, the District issued a NOREP for the issuance of a diploma from the District. The District sent the student academic achievement/functional performance document and the student's diploma from the District. (S-16; NT at 322-422).
58. Shortly thereafter, in July 2016, parents filed the special education due process complaint which led to these proceedings. (S-18, S-19).
59. In October 2016, parents ascertained an expert report in the form of a transition assessment. The evaluator testified at the hearing. While the evaluator clearly has expertise in this area, the evaluator was not familiar with the student or the student's needs. (P-1; NT at 232-320).
60. The testimony of the parent, the District director of special education, and the District coordinator of secondary special education were given the heavy weight. (NT at 57-148, 322-422, 501-630).
61. The testimony of the director of the university career and life studies program and the IU school-to-work program were given a medium degree of weight. (NT 149-219, 425-490).
62. The testimony of parents' expert witness was given little weight. (NT at 232-320).

## **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 (3<sup>rd</sup> Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)).

Part of delivering a FAPE to a student with a disability includes transition services, “a coordinated set of activities for a child with a disability...designed to be within a results-oriented process that is focused on improving academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities” which “based on the individual child’s needs”. (34 C.F.R. §300.43(a)). Where appropriate, transition services must be included as part of a student’s IEP (34 C.F.R. §300.320(b)), and, in Pennsylvania, this includes all students with IEPs who have reached age fourteen. (22 PA Code §14.131(a)(5)).<sup>7</sup>

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<sup>7</sup> While counsel for both parties ably argued for their clients’ positions in written closing statements using arguments grounded in certain court decisions, there is no controlling appellate case law in Pennsylvania or the Third Circuit that definitively addresses the appropriateness of the nature or design of transition services. Those written closing statements are included as hearing officer exhibits. (Hearing Officer Exhibit [“HO”]-1, HO-2).

In this case, the student's transition programming in the June 2014 IEP, the February 2015 IEP revision, and the June 2015 IEP were all reasonably calculated to yield meaningful education benefit and were implemented appropriately, allowing the student to make progress (where the student engaged the instruction/services under the IEPs). Coming out of the purely vocational program involving the [specific career] cluster at the IU vocational program, the District identified in the June 2014 IEP a broad survey of the student's needs, interests, and plans. This formed the foundation for appropriate goals in post-secondary study, employment, and independent living. And the June 2014 IEP is detailed and explicit in how programming and instruction would be geared to these goals through the IU school-to-work program in the 2014-2015 school year.

Half way through that school year, in February 2015, the student's interest and planning took a decided turn toward post-secondary study, an interest which had been previously identified and for which programming was in already in place. By February 2015, however, the student was identifying a program—the career/life studies program at the local university—and the student's IEP was revised (and school-day schedule reconfigured) to provide for an intensive daily program geared to gaining skills for post-secondary academic success. The District entirely supported the student's desire to pursue post-secondary study,

even providing an individual recommendation for the career/life studies program.

The student made progress under the terms of the June 2014 IEP and, indeed, as the IEP team met to see where/how the student's programming would unfold, it was clear that the student was focused on a 2015-2016 school year at the local university. Yet the student had not aged-out of special education services under IDEIA, had not taken a diploma, and the IEP team did not agree that IEP goals had been met for an exit from special education. Therefore, the District designed an IEP under a dual enrollment structure where the student would attend the career/life studies program at the local university, and the District would provide instruction and support to the student under the terms of the June 2015 IEP on the university campus. The District stood ready to provide this programming, as indicated, on campus, but the student had moved on—emotionally and physically—and did not engage the District providers who came to campus, either cancelling or missing most sessions.

One of the most powerful aspects of the record, though, is the near-uniform admiration and respect shown to the student by those who know the student on this record—the career and life studies program director, District employees and, of course, the student's mother— in how the student has flourished in the career and life studies program at the local university. To read the June 2014 IEP, the February 2015 IEP

revision, and the June 2015 IEP is to see a student's transition planning come together cohesively and powerfully. By June 2015, the transition planning for the student was to move into post-secondary study and succeed, supported by the District which recognized its ongoing IDEIA obligations. The record as to the 2015-2016 school year shows exactly that—a student academically, socially, and career-developmentally succeeding in a campus environment. Quite simply, the record clearly supports the finding that the transition planning for the student over the years at issue was supple, effective, and worked.

The design and implementation of post-secondary transition planning in the IEPs were reasonably calculated to yield meaningful education benefit. Specifically, the record as a whole reveals that the District appropriately and effectively planned for and provided a coordinated set of activities for the student, designed within a results-oriented process that were focused on improving academic and functional achievement of the student to facilitate the student's movement from District-based to post-District activities, all based on the student's individual needs. The District did not deny FAPE to the student. Accordingly, there is no award for compensatory education.

## **CONCLUSION**

The District did not deny the student FAPE through the design or implementation of the transition planning in the student's IEPs over the 2014-2015 and 2015-2016 school years.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student was not denied FAPE by the School District in the 2014-2015 or the 2015-2016 school years. The District has met its IDEIA and Section 504 obligations to the student. Additionally, the District has not discriminated against the student under its Section 504 obligations in that regard.

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

*Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire  
Special Education Hearing Officer

January 10, 2017