

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

Final Decision and Order

CLOSED HEARING

ODR File Number 22040 18 19

Child's Name: J. M.

Date of Birth: [redacted]

Parent:

[redacted]

Charter School:

York Academy Charter School
32 West North Street
York, PA 17401

Maria Ramola, Esquire
McKenna Snyder
350 Eagleview Boulevard – Suite 100
Exton, PA 19341
Counsel for the Charter School

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

08/15/2019

INTRODUCTION

Student (“student”)¹ is a middle school student who attends the Charter School (“Charter School”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with autism and attention deficit hyperactivity disorder (“ADHD”), a health impairment under IDEIA.

The student’s parent claims that the Charter School is not providing an appropriate program for the student. The Charter School counters that it has met its obligations to the student under IDEIA in its evaluation process and proposal of programming for 2019-2020 school year.

For the reasons set forth below, I find that the Charter School’s proposed program requires significant revisions.

ISSUE

Is the Charter School’s proposed program appropriate?

FINDINGS OF FACT

1. Prior to attending the Charter School, the student attended a nearby school district. (School District Exhibit [“S”]-1, S-2).
2. The student enrolled in the Charter School in October 2018. (Notes of Testimony [“NT”] at 24-25, 78).

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 pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 (“Chapter 14”).

3. The prior school district did not provide complete information to the Charter School upon the student's enrollment. (NT at 25-26).
4. An October 2018 Section 504 plan, developed by the prior school district shortly before the student enrolled in the Charter School, was provided to the Charter School. It is unclear whether the Section 504 plan was provided by the prior school district or the parent. (S-2; NT at 24-25).
5. The student exhibited behavioral and social difficulties in the Charter School. (Parent's Exhibit ["P"]-2; NT at 58-59, 78-80).
6. In December 2018, the student's mother requested, and provided permission for, an evaluation. (S-3).
7. In December 2018, pending issuance of the evaluation report ("ER"), the Charter School performed a functional behavior assessment ("FBA") and developed a positive behavior support plan ("PBSP"). (S-4, S-5).
8. In January 2019, three months after the student's enrollment in the Charter School, the prior school district provided a November 2017 re-evaluation recommending that the student no longer required special education. The Charter School never received a copy of any IEP document from the prior school district. (S-1; NT at 53).³
9. In January 2019, the Charter School issued its ER. (S-7).
10. The January 2019 ER identified the student as a student with autism and the health impairment ADHD. (S-7).
11. The January 2019 ER identified the student's needs as follows: a low student-to-teacher ratio, a counseling component, self-regulation and self-advocacy to engage replacement behaviors, improvement of responses to teacher task-demand in all academic areas, social skills, and satisfactory interaction with staff and peers. (S-7).
12. In January 2019, the Charter School developed an individualized education program ("IEP") and recommended that the student receive programming in a specialized school or classroom outside of the Charter School. (S-10, S-11).

³ The November 2017 re-evaluation report indicated that the student had been identified with autism and ADHD, including significant behavioral needs. The appropriateness or inappropriateness of the prior school district's recommendation to exit the student from special education services was not at issue in these proceedings.

13. The IEP team's deliberations included discussions of an aide in the classroom. The student's mother had also requested an independent educational evaluation ("IEE"). (S-9, S-11).
14. The student's mother toured specialized classrooms in other placements but was not interested in those placements. (S-12).
15. In late January 2019, the Charter School issued a notice of recommended educational placement ("NOREP"), recommending that the student receive services in an emotional support classroom at the local intermediate unit. (S-13).
16. The student's mother disapproved the NOREP, indicating that "this recommendation is not the right recommendation for my [child]". (S-13, emphasis in the original).
17. In late January 2019, contemporaneously with the issuance of the educational-placement NOREP, the Charter School agreed to provide an IEE. (S-14).
18. In February 2019, the Charter School drafted a Section 504 plan to address the student's behavior and social skills. (S-15).
19. In March 2019, the student's mother had identified an evaluator to perform the IEE. (P-2).
20. In early April 2019, the parent filed the special education due process complaint which led to these proceedings. (Hearing Officer Exhibit-1).
21. In late April 2019, the Charter School recommended that the student receive 1:1 academic instruction for three hours per day, noting that during this time "(the student) will not participate in the regular education setting with other...peers". The student's parent approved the recommendation. (S-16).
22. By early June 2019, the IEE had still not been issued. (NT at 7-8).
23. In early June 2019, in anticipation of the special education due process hearing that had been scheduled as the result of parent's complaint, the Charter School proposed a revised IEP. (S-17).
24. On June 7, 2019, the parties and the undersigned hearing officer gathered for the hearing. In prehearing discussions with the parties, the undersigned hearing officer was made aware that the parties were awaiting an IEE and hoped to hold an IEP meeting thereafter. (NT at 7-8).

25. The hearing did not convene and was rescheduled to July 30, 2019 to allow for the issuance of the IEE and its consideration by the IEP team. (NT at 7-8).
26. In mid-June 2019, the Charter School proposed an IEP with further revisions (“June 13th IEP”). The June 13th IEP is the Charter School’s last offer of programming for the provision of a free appropriate public education for the student. (S-18, S-19).
27. The June 13th IEP indicated that the student exhibited behaviors that impeded the student’s learning, or that of others. (S-18, S-19).
28. The June 13th IEP identified needs in mathematics, reading, and behavior.
29. The June 13th IEP contained four goals, two in behavior, one in mathematics, and one in reading comprehension. (S-18, S-19).
30. The June 13th IEP was drafted without the IEE available to the IEP team.
31. At the same time that the Charter School issued the June 13th IEP, the Charter School sought permission to evaluate the student for speech and language (“S&L”), and occupational therapy (“OT”), needs. The parent did not grant permission for those evaluations. (S-20, S-21; NT at 34-36).
32. The IEE was issued after business hours on July 22, 2019, so it was not in the possession of the Charter School until the morning of July 23rd. (S-24, S-25, S-26; NT at 36).⁴
33. The July 2019 IEE confirmed the student’s prior identification as a student with autism and the health impairment of ADHD. (S-24).
34. The July 2019 IEE contained cognitive-ability and achievement assessments. The student’s full-scale IQ was measured at 113, in the high average range. The student’s achievement assessments indicated severe discrepancies between ability and achievement in reading comprehension and mathematics. (S-24).

⁴ At the prehearing conference on June 7th, the hope was that the IEE (at that point, already over four months post-request) would be in hand in early July to allow for the IEP team to consider its findings. By June 13th, the parties were aware that the student was not scheduled for testing until mid-July, although this information was not shared with the hearing officer. (S-22). The IEE was not issued until July 22, 2019. (S-24).

35. The evaluator cautioned that the student's cognitive rigidity and lack of direction-following likely impacted the student's scores in reading comprehension and mathematics, although she recommended support in both areas. Overall, however, the student exhibits strong academic skills. (S-24; NT at 65-66).
36. The July 2019 IEE contained a number of recommendations. (S-24).
37. The evaluator recommended that "if (the student's) current academic institution is unable to meet (the student's) needs...other options will need to be explored". (S-24).
38. The evaluator recommended "autism services" with learning support for areas where the student exhibits cognitive rigidity (reading comprehension and mathematics). (S-24).
39. The evaluator recommended certain accommodations in academic settings. (S-24).
40. The evaluator recommended counseling services for school-related anxiety (academics and socialization). (S-24).
41. The July 2019 IEE does not recommend any further evaluations. The Charter School feels that the S&L evaluation is necessary because of the content of the IEE (and its experience with the student generally); it feels that the OT evaluation is necessary for ruling-out those potential aspects of the student's needs. (NT at 62-63).
42. The student does not exhibit sensory needs or perseverative behaviors. (NT at 62-64, 95-96).
43. In the 2019-2020 school year, the Charter School schedule provides daily 50-minute periods for core academic classes. (NT at 56).
44. The Charter School, through counsel, requested rescheduling of the July 30th hearing date. The request was denied by the hearing officer, and a one-session hearing was held on July 30th. (S-25; NT at 7-8).
45. After the hearing session, the student's mother requested that a diagram and text from the student explaining Student's feelings about the prior school district and the Charter School be admitted to the record. There was no objection from the Charter School, so the submission was reviewed by the hearing officer and will be made part of the record. (P-3).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives 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 in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, F.3d (3d Cir. at No. 17-3605, September 18, 2018)).

The Charter School has worked appropriately with the information it had (or, more accurately, with what little it had from the prior school district) in the fall of 2018. By January 2019, an evaluation was in place and an IEP was being developed, but parent did not approve that IEP. This is understandable, as the Charter School’s recommendations—placement outside of the school—was a restrictive placement recommendation, especially since it had not yet had a chance to work with the student under the terms of an IEP.

Still, it meant that the student went without an IEP—which is quite necessary for the student’s education—pending the issuance of the IEE. This

came months after the evaluator had been identified and, even now, on the cusp of the upcoming school year, the student's program is indeterminate.

Weighing the record as a whole, these are the conclusions that can be drawn from it:

The Charter School can provide programming to the student. The parties considered, and perhaps are still considering, placements in specialized classrooms or specialized schools outside of the Charter School. Certainly, if the student's IEP team agrees otherwise, and the parties agree on such a placement, this decision and order will not stand in the way of that course of action. But under the terms of this decision at this time, the student will remain in the Charter School.

The student requires a PBSP, and the Charter School had developed one. In the order below, an independent FBA and the development of a PBSP based on that FBA will be ordered. The student's current PBSP was not included in the June 13th IEP—it must be added to that document and, pending the independent FBA, revised as the student's IEP team may agree.

Given the student's S&L needs, including social skills and pragmatics, an independent S&L evaluation will be ordered. The student's needs do not support the need for an OT evaluation, so there will be no order for such an evaluation.

Finally, there is no counseling component in the June 13th IEP, but that service will be added to the student's IEP given the anxiety identified by the independent evaluator, anxiety that is school-related. Likewise, there is no

transition-planning as part of the June 13th IEP, and directives in that regard will be made part of the order.

Therefore, the terms of the order below will provide directives for the IEP team and will provide a means to continue gathering expert information on the student's needs.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student's placement shall be at the Charter School.

Within 10 days of the date of this order, the student's IEP team shall meet to discuss content reflected in the June 13th IEP, including the crafting of these revisions:

- The student shall receive instruction in mathematics and English classes, with support, in the learning support classroom daily for 50-minute sessions each.
- The accommodations recommended by the independent evaluator at #5 on page 10 of the July 2019 IEE shall be made part of the student's IEP. The student's instruction, with modifications and accommodations as indicated, shall be delivered in the regular education classroom.

- The IEP team shall develop a social skills goal, and the student shall receive social skills instruction twice per week for in two 25-minute sessions.
- The student's IEP shall include school-based counseling for one 25-minute session weekly.
- The student's current PBSP shall be made part of the IEP. The IEP team shall explicitly consider revising the student's behavior goal and behavior strategies (pending the results of an independent FBA and PBSP (see below)).

Because the student turns [transition age] this year [redacted] within 14 days of the date of this order, the Charter School shall perform transition assessments. Based on these assessments, the student's IEP team shall design the transition goals and services for inclusion in the student's 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), the terms of this order shall be permission, as of the date of this order, for the Charter School to arrange (at Charter School expense) for an independent S&L evaluation (to include articulation, expressive & receptive language, and pragmatics). The evaluator shall be identified and retained no later than two weeks after the date of this order. The evaluator shall be made to understand that, if warranted, the independent reports shall include educational recommendations and that the reports shall be issued no later than 75 days after the date of this order.

Additionally, pursuant to the same legal authority, the terms of this order shall be permission, as of the date of this order, for the Charter School to arrange (at Charter School expense) for both an independent functional behavior assessment and a positive behavior support plan (“PBSP”) by a board-certified behavior analyst (“BCBA”). The BCBA shall be identified and retained no later than two weeks of the date of this order. The independent BCBA shall be made to understand that the independent FBA shall be issued no later than 75 days after the date of this order.

After the independent evaluators have issued the independent S&L report and the independent FBA/PBSP, the student’s IEP team shall meet to consider the findings and recommendations of those documents in light of the student’s IEP and educational programming (“the independent evaluations IEP meeting”). At the independent evaluations IEP meeting, the IEP team shall invite to, and include the independent evaluators in, the meeting (making scheduling accommodations for their participation as necessary). The Charter School shall bear any cost, or rate, for the appearance of the independent evaluators at the independent evaluations IEP meeting.

Pending the issuance of the independent FBA/PBSP, this order will not address whether or not the student requires an aide as such a modification should be considered (or not) in light of that assessment and the recommendations of the independent BCBA.

Nothing in this decision and order, regarding the student's placement or programming, should be read to limit the parties' ability to agree otherwise in writing as to any aspect of that placement or programming.

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

With the issuance of this final decision and order, the undersigned hearing officer releases jurisdiction.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

August 15, 2019