

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 Due Process Hearing Officer

**Final Decision and Order
ODR No. 20805-1718KE
OPEN HEARING**

Child's Name:

C.M.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

Pro Se

Local Education Agency:

West Chester Area School District
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Exton, PA 19341

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Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

11/30/2018

Introduction

This special education due process hearing concerns the educational rights of a young adult (the Student), a former student of the West Chester Area School District (the District). This matter was initiated by the Student's parents (the Parents) who allege that the District failed to provide a free, appropriate public education (FAPE) to the Student during the 2017-18 school year in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* For reasons discussed below, I find that the District offered a FAPE to the Student during the 2017-18 school year.

Procedural History

For context, this is not the first due process hearing between the parties. Between March 2016 and August 2017, the Parents filed three due process complaints against the District and the District filed one due process complaint against the Parents. Those matters were all consolidated and assigned to Hearing Officer Charles W. Jelley. The consolidated case was complex, involving not only claims going back to the 2013-14 school year, but also contract law issues not typically seen in special education cases. *See* ODR Nos. 17866-1516KE, 19245-1617KE, 19399-1617KE, 19562-1718KE.

The Parents requested this due process hearing on June 10, 2018. At that time, the evidentiary record of the prior proceedings had closed, but Hearing Officer Jelley had not yet entered a final decision. This hearing convened in the morning of July 30, 2018. Hearing Officer Jelley issued a decision later the same day. This hearing then reconvened on August 31 and September 21, 2018. The fact that the Student's current receipt of FAPE is not an issue in this hearing was a factor in my consideration of scheduling motions.¹ The Parents requested and were granted extended time to draft and submit a written closing statement. I received written closing statements from the parties on November 16, 2018.

Issue and Demanded Remedies

The Parents present a single issue in their complaint: Did the District deny the Student a FAPE during the 2017-18 school year. The Parents demand reimbursement for the cost of psychological treatment that the Student obtained during the 2017-18 school year, including both cognitive behavioral therapy and medication.

Regarding remedies, there is some ambiguity as to whether the Parents demand reimbursement for therapy and medication that the Student received during the 2017-18 school year or after the 2017-18 school year. *See, e.g.* NT 16. It is also not clear that reimbursement for medication or cognitive behavioral therapy are available remedies under the IDEA for the particular claims

¹ The hearing was originally scheduled for July 15, 2018, but was continued upon the parties' motion. All claims raised in this matter are retrospective; none concern the current provision of FAPE to the Student. Consequently scheduling motions were liberally granted. The timeline of this matter should not be taken as a signal of this hearing officer's willingness to prolong due process hearings that concern an alleged ongoing denial of FAPE.

raised in this matter. I do not discuss the availability of such relief in detail because I find that the District provided a FAPE to the Student during the 2017-18 school year.

Findings of Fact

Throughout these proceedings, the Parents expressed concern about their ability to present evidence as *pro se* litigants. I appreciated that concern and attempted to explain what their burden is, what type of evidence is relevant, and what type of evidence is not relevant. I made several such attempts in several different ways. Generally, I emphasized that relevant evidence provides information about the Student's needs during the 2017-18 school year, the services that the Student received during the 2017-18 school year, or both. I explained that my primary task was to examine the Student's needs and see if they square with the services that the District offered.

My efforts to help the Parents drew respectful objections from the District. I concede that my efforts to help the Parents walked as close to the line as neutrality permits. Yet, by the final session the Parents made it clear that my help was neither requested nor appreciated. *See, e.g.* NT 508. Even so, I continued to make a concerted effort to fully explain all evidentiary rulings on the record. My goal in doing so (beyond creating a complete record) was to explain in as many ways as possible what the Parents' burden was, what they had to do to meet that burden, and what type of evidence is probative in this case. Despite this effort, and in concession to the Parents' *pro se* status, a large amount of non-probative evidence became part of the record in this case.

I carefully considered all evidence that was made part of the record. I make findings of fact only as necessary to resolve the issue before me. I find as follows:

1. There is no dispute that the 2016-17 school year was the Student's 12th grade year.
2. At the end of the 2016-17 school year, the Student had earned enough credits to graduate from the District. However, the Student's IEP team agreed to withhold the Student's diploma so that the Student could participate in a college transition program. S-1, S-2, S-4, S-30.
3. The [local] Intermediate Unit (IU) runs a college transition program called the Aspire program. NT *passim*. The Aspire program is detailed in the discussion section below.
4. The IU also runs a vocational transition program called the Discover program. NT *passim*. The Discover program is detailed in the discussion section below.
5. Eligibility to participate in the Aspire program is conditioned upon dual enrollment both at a high school within IU and [a local] University. S-3. There is no dispute that the District is within the boundaries of the IU.
6. There is no dispute that the Student participated in the Aspire and Discover programs throughout the 2017-18 school year. During this time, the Student was enrolled both in the District and in [the local university].

7. The Student took one [local university] academic class during the fall semester, and another during the spring semester. As described below, the Student earned poor-but-passing grades.
8. Aspire program personnel sought the Student's consent to share information with [the local university]. This would enable Aspire to coordinate services and supports for the Student with [the local university]. The Student withheld consent. *See, e.g.* NT at 150-151, 215-216, 227.
9. Aspire and Discover program personnel recorded and reported the Student's progress towards IEP goals and the goals of the programs. That progress is detailed in the discussion section below.
10. At the end of the 2017-18 school year, the Student asked the District to issue a diploma. The Student intended to enroll in [a] County Community College (CCC) and required the diploma for admission.
11. The District convened an IEP team meeting and decided to honor the Student's request to issue the diploma. The Student then enrolled in CCC.

Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v. Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

All witnesses testified credibly.

Applicable Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed. Appx. 920, 922 (3rd Cir. 2010),

citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parents are the party seeking relief and must bear the burden of persuasion.

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a “free appropriate public education” to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child’s individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew F.* case was the Court’s first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id.* at 3015.

Historically the Third Circuit has interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003).

Under the historical meaningful benefit standard, a school district is not required to maximize a child’s opportunity; it must provide a basic floor of opportunity. See *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), cert. denied, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than “trivial” or “*de minimis*” benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), cert. denied 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than *de minimis*” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in

turn, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id* at 1000. In terms of academic progress, grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics — as is clearly evident in this case.

The essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student’s circumstances.

Discussion

I. Background

The 2016-17 school year was the Student’s 12th grade year. The parties decided that the Student would benefit from a 13th year of school. Specifically, the Student had expressed a desire to go to college, and the Student’s IEP team concluded that participation in a transition program would help the Student reach that goal. S-1. Consequently, the Student’s IEP team agreed that the District would withhold the Student’s diploma and refer the Student to programs run by the Intermediate Unit (IU). S-1, S-2, S-4.

II. The Aspire and Discover Programs

The IU transition programs are the “Aspire” program and the “Discover” program. The Aspire program is designed for students with Autism Spectrum Disorder (ASD) who wish to attend a two or four year college. S-3, S-4. The Aspire program helps students with ASD who have anxiety, executive functioning, or social skills deficits prepare for college. *Id.* The Aspire program is housed at [the local university]. S-4. To participate in the Aspire program, Students must be 18 to 21 years old and dually-enrolled in both a high school in [the local] County and [the local university]. S-3.

While attending the Aspire program, students take a class at [the local university] and receive support from [the] IU. The IU support is designed to improve self-regulatory skills, time management, organization and planning of assignments, social skills, and independent living skills. S-3. [The] IU does not, however, run or supervise the [local university] classes that Aspire students take. Those classes are college-level general education classes that are taught by [the local university] professors. Said differently, the Aspire program provides support to students with disabilities who are taking [the local university] classes, but the [local university] classes are not ‘part of’ the Aspire program. The Aspire program boosts skills needed for transition from high school to college, but is not an academic program.

The Discover program is a work transition program that is available to students who are enrolled in the Aspire program. The Discover program lets Aspire students participate in work experience programs in the community. In the Discover program, students are paired with a job trainer. The students and job trainers set goals collaboratively, then the students and job trainers go to employment experiences provided by participating businesses. The students are not paid, but they receive support and feedback from the job trainers. NT 418-421, 436-438, 452-453. Job

trainers also score students using a standardized measure of employment skills. S-20, S-29. Typically, job trainers provide a greater level of support as students start employment experiences and then pull back as students become accustomed to the work. This titration of support is often accompanied by short term decreased scores on the standardized measure of employment skills. NT 427-428.

III. The Student's Experience in the Aspire and Discover Programs

It is not entirely clear when the District referred the Parents to the Aspire program. Regardless, the Student applied to the Aspire program on March 21, 2017, and was accepted on April 16, 2017. S-3, S-4. Around the time of the application, the IEP team discussed the Student's need to develop "soft skills" of self-advocacy, stress and time-management, and organization as part of a "slow launch" into college. NT 295-296. There is no evidence that the Parents disagreed with that assessment either at the time or any time after. More generally, there is no dispute that the Student had the needs discussed by the IEP team when the District referred the Student to the Aspire program.

The Student and Parents completed application paperwork for Aspire, and the Student was accepted into the program. The Student applied for and was accepted into the Discover program around the same time. The Student also applied for admission to [the local university], and was conditionally admitted because the Student did not have a high school diploma. After the acceptance to the Aspire program, [the] IU employees from the Aspire program became part of the IEP team. On September 19, 2017, the IEP team revised the Student's IEP to reflect the Student's participation in the Aspire program. S-13.

At all times, the Student was protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. Under FERPA, [the] IU required the Student's permission to communicate with [the local university] professors and vice versa because the Student was over 18 years old.² NT at 176-177. Aspire personnel sought the Student's permission to communicate with [the local university] professors, but the Student did not grant such permission. *See, e.g.* NT at 150-151, 215-216, 227. Consequently, the Student received supports from [the] IU's Aspire program and took [the local university] classes, but there was no communication between Aspire and [the local university].

During the fall 2017 semester, the Student took History 100 at [the local university]. The Student selected History 100 and [the local university] approved the class. The Student's work experiences facilitated by the Discover program were in the Prothonotary's Office for [the local] County and the [the] County Adult Probation Office. NT at 417-418. The Student attended the Aspire program five days per week, and the Discover vocational exploration program two days per week. S-13. The Student was also paired with a job coach who worked with the Student for 600 minutes (10 hours) per semester and a vocational specialist who worked with the Student for 30 minutes per month. In addition to the direct work with a vocational specialist, the Student

² It is possible in theory that the Parents could have given [the] IU permission to communicate with [the local university] regardless of the Student's wishes. However, under FERPA, [the local university] would still need permission from the Student to communicate with [the] IU. Without the Student's permission directly, communication could have been one way at best.

also participated in group vocational instruction for 90 minutes per month. Consultative speech services were also provided. S-13.

Aspire program staff monitored the Student's progress in the Aspire program but did not monitor the Student's academic progress in [the local university] classes. NT at 57, 129, 236-237. *See also*, NT at 225-226, S-19 (concerning [the local university]'s designation of, and control over, academic accommodations that the Student received, if any). More specifically, the Aspire program monitored the Student's creation of a daily organization sheet, organizing and writing down assignments, and managing homework. NT at 217, 220.

Regarding academics, Aspire staff encouraged the Student to work with a tutor during the fall semester, but the Student rejected the suggestion. NT 203-204, 226-227. Like other academic supports, the Student was responsible for seeking tutoring services from [the local university]. NT at 129-130. Aspire staff could have helped the Student coordinate with [the local university] but, as described above, was blocked in that effort by the Student's refusal to provide consent for Aspire and [the local university] to share information with each other about the Student. Ultimately, the Student received a "D" in History 100, and received course credit from [the local university] for that class. P-8.

In the spring semester, the Student continued to participate in the Aspire and Discover programs. There was no substantive change to either program as delivered. The Student continued to participate in work experiences in the Prothonotary's Office and Adult Probation Office. The Student also enrolled in Sociology 200 at WCU. P-8. Unlike the fall semester, the Student accepted help from a tutor in the spring semester starting in late January 2018. S-27. To the best of the Aspire staff's knowledge, the tutor helped the Student review class notes, assignments, and topics. *Id.* However, for the same reasons described above, the Aspire staff could not monitor the frequency or duration of the Student's meetings with the tutor, and was not responsible for the content of the tutoring itself. The Student finished the spring semester with a D- in the class, and earned [local university] credit for it. P-8.

IV. The Student's IEPs and Progress

When the 2017-18 school year began, the Student's operative IEP was an IEP dated April 16, 2017. S-2. That IEP was revised for the Student's participation in the Aspire and Discover programs on September 19, 2017. S-13. The revisions were not drafted into a revised IEP but rather were listed on a sheet submitted by Aspire staff and approved by the Parents via a NOREP. P-6. The revisions did not change the Student's IEP goals. Rather, the revisions specified that services would be delivered by [the] IU (not the District) at [the local university]. The revisions also provided for the job coaching and vocational specialist. *Id.* The Student then participated in the Aspire and Discover programs under the revised IEP.

The April 16, 2017 IEP was set to expire on April 17, 2018. The IEP team reconvened and drafted a new IEP on April 12, 2018. S-22. The 2017 IEP had two study skills goals. The Student mastered one of those goals during the spring semester, and so it was removed in the 2018 IEP. S-24. The Student was making progress towards the other goal, and it was carried over into the 2018 IEP. The September 2017 revisions were also incorporated into the 2018 IEP.

The Student made meaningful progress as measured by IEP goals during the 2017-18 school year. The two goals in the 2017 IEP were previously found to be appropriate in a prior due process hearing. The Student mastered one of those goals and made significant progress towards the other. It was appropriate for the District to continue to withhold the Student's diploma and issue the 2018 IEP. That action enabled the Student to finish the spring semester at [the local university] with support from the Aspire program.

Although not directly related to IEP goals, the Student also made progress in the Discover program. S-20, S-29. That progress was neither perfect nor linear, but followed an expected pattern. The Student's job performance ratings decreased in several categories as supports were withdrawn. However, the fact that the Discover program was able to withdraw supports while the Student continued to participate in work experiences is a strong indication of progress.

V. The Student's Diploma

At the end of the 2017-18 school year, the Student asked the District to issue a diploma. The Student had earned enough credits for a diploma from the District at the end of the 2016-17 school year, and the District had only withheld the diploma so that the Student could participate in the Discover and Aspire programs. *See, e.g.* S-30. The Student made a direct appeal for the diploma, bypassing the Parents but including them in the request. The Student also provided an outline of what the Student learned through participation in the Aspire program. S-28. The Student expressed a desire to attend [another] County Community College (CCC), and required a high school diploma to obtain admission. The IEP team then met, discussed the Student's potential need for an additional transition year, and decided to issue a diploma. NT at 573-574. The Parents objected to the issuance of the diploma, but the Student came to the District to collect the diploma. The Student was then accepted to CCC and, to the best of the District's knowledge, continued enrollment there through the end of this due process hearing. NT at 217, 232.

VI. The Parents' Claims

The Parents present a broad claim that the Student was denied a FAPE during the 2017-18 school year.³ None of the evidence in this case supports that claim. According to their complaint, the Student regressed "socially, emotionally and academically" during the 2017-18 school year as compared to the 2016-17 school year. No evidence whatsoever was presented concerning the Student's social or emotional wellbeing in the 2016-17 or 2017-18 school years. Frankly, these domains were not the focus of the 2017 IEP that was in place for nearly all of the 2017-18 school year. That IEP was found to be appropriate at the time it was offered by another Hearing Officer. Nothing in the record of this case suggests, let alone proves, that the District should have re-opened the Student's IEP at any point in time to provide additional social or emotional support. This includes the 2018 IEP team meeting.

³ It is not clear if the Parents properly raise any issues concerning the Discover program in their complaint. Given the sweeping nature of their claim, I have discussed the Discover program, and the Student's participation in it. I find no denial of FAPE based on the Student's participation in this optional, supplementary program.

Regarding academics, the 2017 IEP contained no academic goals. Again, this IEP has already been deemed appropriate at the time it was offered. The only evidence suggesting that the Student may have required additional academic support is the grades that the Student received from [the local university]. To be clear, no evidence supports a conclusion that [the local university] grades are comparable to District grades. An “A” in a competitive, four-year university and an “A” in high school do not necessarily mean the same thing.⁴ Even so, the Student’s passing-but-poor grades stand in sharp contrast to the grades that the Student received in high school. *See, e.g.* S-30. However, the Student received academic accommodations in high school pursuant to IEPs, even in the absence of academic goals. *See* S-1, S-2. It is not at all surprising that the instant and near-complete elimination of all academic supports⁵ at the same moment that the Student entered a college environment resulted in decreased grades. Beyond that, and perhaps more importantly, the Student refused to let the Aspire program share information with [the local university]. As a result, the program designed to support the Student was hamstrung in its efforts. The District cannot be responsible for the Student’s refusal to let the Aspire program communicate with [the local university].

The District argues that it has no responsibility for the Student’s academic success in the 2017-18 school year. The District’s argument has merit, but I ultimately disagree. The Student was enrolled in the District during the 2017-18 school year. The Student’s simultaneous enrollment in [the local university] does not diminish the District’s responsibilities to the Student. I find that the District discharged those obligations by withholding the Student’s diploma in recognition of the Student’s transition needs and placing the student into a college transition program, despite the fact that the Student had enough credits to graduate. It was appropriate for the District to place the Student into a program designed for young adults who want to attend college, but who have needs similar to the Student’s. Those decisions were appropriate at the time they were made. As a result, the Student made progress during the 2017-18 school year as measured by the Aspire and Discover programs themselves. The Student also made progress as measured by the Student’s IEPs.

In sum, the only evidence in the record suggesting that the Student did not receive a FAPE is the Student’s [local university] transcript. That document does not substantiate a denial of FAPE for all of the reasons expressed above. Consequently, the Parents have not proven their claim. I affirmatively find that the District offered a FAPE to the Student during the 2017-18 school year.

VII. Remedies

Above, I find that the District satisfied its obligation to offer a FAPE to the Student during the 2017-18 school year. Beyond that, I am compelled to note that the Parents presented no evidence whatsoever concerning the remedy they demand. Nothing in the record substantiates the Parents’ claim that they incurred expenses providing psychological services and medication to the Student during the 2017-18 school year. If such expenses were incurred, nothing in the record links those expenses to defects in the Aspire or Discover program. This type of evidence was not excluded

⁴ The Student took some honors classes, but no AP classes. S-30. No evidence suggests that the Student’s high school credits were transferable to [the local university] or CCC.

⁵ The Student could have time and a half for testing, and could take tests in a proctoring center. S-17.

— the Parents did not offer it. The Parents also did not address my lack of authority to provide money damages. As such, my authority to award the remedy the Parents demand is suspect, even if they had substantiated their denial of FAPE claim.

ORDER

Now, November 30, 2018, it is hereby **ORDERED** that the Parents' complaint is **DENIED** and **DISMISSED**.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER