

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

Child's Name:

A. S.

CLOSED HEARING
ODR Case #21886-18-19

Date of Hearing:

March 8, 2019

Parents:

[redacted]

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Counsel for Parents

School District:

Colonial School District – 230 Flourtown Road
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Date of Decision:

April 5, 2019

Hearing Officer:

Michael J. McElligott, Esquire

INTRODUCTION

Student (“student”)¹ is an early elementary school student who has been identified as a student with autism. The student resides in the School District (“District”).

The parties do not dispute that the student is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)². The parties’ dispute centers on extended school year (“ESY”) programming for the summer of 2019. The parties do not dispute the student’s eligibility for ESY services. Instead, the parties dispute the appropriateness of the District’s proposed ESY program and the parents’ preferred ESY program.

For the reasons set forth below, I find in favor of the parents, although there will be directives to the District in terms of programming for ESY that intersect with the decision and order in an affiliated hearing process at ODR file number 21435-1819 (see the *Procedural Background* section immediately below).

¹ To protect the confidentiality of the student, the generic use of “student”, rather than a name or gender-specific pronouns, will be employed and will be substituted in direct quotes throughout the decision.

² 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 §14.132.

PROCEDURAL BACKGROUND

The parties engaged in a previous round of special education due process which resulted, in May 2018, in a decision and order at ODR file number 19718-1718 (Hearing Officer Exhibit ["HO"]-1). The decision at 19718-1718 found that, *inter alia*, the District's evaluation process and report were prejudicially flawed and could not serve as the basis for appropriate programming. The hearing officer in that matter, a hearing officer different from the undersigned hearing officer, ordered an independent educational evaluation ("IEE") to serve as the basis of a new individualized education program ("IEP") and explicitly established the private placement the student attended at that time as the student's pendent placement.

In August 2018, the IEE had not yet been issued, and the District convened the student's IEP team (Parent Exhibit ["P"]-5, P-6). Dissatisfied with the IEP proposed by the District in the absence of the IEE, the parents requested mediation. (HO-2).

In October 2018, mediation concluded and was unsuccessful. The IEE had still not been issued and, in November 2018, the parents filed a complaint at ODR file number 21435-1819AS, alleging that the student was denied a free appropriate public education ("FAPE") through the District's program/placement proposed in August 2018. (HO-2). Throughout these events, the student's placement continued to be

pendent at the private placement which the student was attending when the May 2018 decision was issued. (HO-1).

As part of the November 2018 complaint at 21435-1819, parents requested a pendency ruling given the August 2018 IEP meeting and fall 2018 mediation process. (HO-2). At approximately the same time as the filing of the complaint, the IEE was issued. (P-3). With the issuance of the IEE, the student's IEP team met in December 2018, and parents amended their complaint, disagreeing with the proposed December 2018 IEP. (School District Exhibit ["S"]-12; HO-4). In February 2019, pending the hearing process at 21435-1819, the undersigned hearing officer issued a pendency ruling, maintaining the student's private placement where the student had been attending throughout the 2018-2019 school year. (HO-7).

In the midst of these procedural elements over the fall of 2018 and winter of 2019, the parties continued to attempt a resolution of their dispute, including a dispute as to ESY programming for the summer of 2019. These efforts did not bear fruit, and the parents formally rejected the District's ESY programming on March 6, 2019. (HO-8). This decision on the ESY-2019 programming follows.³

³ Contemporaneously, the decision at 21435-1819 is being issued, addressing the broader issue of the appropriateness of the proposed December 2018 IEP and placement.

ISSUE

Is the District's proposed ESY programming appropriate, or should the student receive ESY programming in the parents' preferred ESY program?

FINDINGS OF FACT

1. Under the February 2019 pendency ruling, the student attends a private school ("private school #1"). This placement is being maintained under the stay-put doctrine of the IDEIA, which itself is a continuation of a pendency determination made by a hearing officer in the parties' prior round of special education due process at ODR file number 19718-1718. (HO-1, HO-7).
2. To provide support and services for its students, private school #1 contracts with another private academy ("Academy") that focuses on serving students with autism. The student in this matter receives services from Academy providers while attending private school #1. (HO-1; Notes of Testimony ["NT"] at 59-112, 137-171).
3. In the summer of 2018, the student attended a community summer camp, a camp which the student had attended annually each summer since 2014. (School District Exhibit ["S"]-1; NT at 22-46, 59-112).
4. The camp, like private school #1, contracts with the Academy to provide support and services to campers who have autism-support needs. (HO-1; NT at 22-46, 59-112).

5. For the summer of 2019, parents wish to see the student return to the community summer camp with support and services to be provided by the Academy. (Parent Exhibit ["P"]-9; S-1; NT at 59-112).
6. At the camp in the summer of 2018, the student received itinerant autism-support services at the camp. In the summer of 2019, these services would be maintained. (NT at 22-46).
7. At the camp in the summer of 2018, the student received a one-to-one aide for support in social-skills needs. In the summer of 2019, these services would be maintained. (NT at 22-46).
8. At the camp in the summer of 2018, the student received 30 minutes of speech and language ("S&L") services, three times per week. In the summer of 2019, this would be reduced to twice per week. (NT at 22-46).
9. At the camp in the summer of 2018, the student received 30 minutes of occupational therapy ("OT") services, twice per week. In the summer of 2019, this would be reduced to once per week, in addition to weekly consultation. (NT at 22-46).
10. At the camp in the summer of 2018, the student received 45 minutes of specialized academic instruction daily. In the summer of 2019, this instruction would be maintained. (NT at 22-46).

11. The community summer camp also includes regular camp activities for all campers, activities in which the student participates. (NT at 22-46, 59-112).
12. The District does not dispute the student's need for ESY programming and even supports the notion that a camp-based experience with supports is an appropriate placement for the student. (NT at 137-171).
13. The District's position, however, is that the IEP team discussed the student's potential enrollment in a new private school ("private school #2") for the upcoming 2019-2020 school year, and the District recommends that the student attend a summer camp run directly by private school #2. (P-10, P-11; S-7, S-10; NT at 137-171).
14. The District feels that ESY programming at the camp run by private school #2 will allow the student to transition more easily to a placement at private school #2 in the 2019-2020 school year. (NT at 137-171).
15. The parents are willing to consider a placement at private school #2 for the 2019-2020 school year but only if the student's services are provided by Academy providers.⁴ For the summer of

⁴ The student's continued placement at private school #1 is viewed as no longer appropriate for the student and potential placement at private school #2 was the basis of the IEP team's discussions in December 2018. The District is willing to recommend placement at private school #2, but it is the particular concern of the parents that, regardless of the student's placement in the 2019-2020 school year, the student continue to receive autism-support services from Academy

2019, however, the parents seek to have the student returned to the community summer camp the student has attended since summer 2014. (NT at 59-112).

16. There was no testimony from anyone at the summer camp offered by private school #2. The testimony about this camp presented by witnesses at the hearing was sparse-to-nonexistent, and only very slight documentary evidence about this camp came into the record. (P-8; NT at 59-112, 114-134, 137-171).
17. The District's ability to understand fully the summer programming at the summer camp run by private school #2 has been hampered by the parents' withholding of consent to allow the District to communicate with private school #2. (P-11; S-10; NT at 137-171).
18. This decision is issued contemporaneously with the decision at ODR file number 21435-1819. (HO-10).
19. Because this decision was handled in one hearing process contemporaneously with the issues presented at 21435-1819, and the witnesses nearly mirrored each other in both cases, the testimony of witnesses sometimes crossed over from this ESY issue

providers. At the time of the hearing, private school #2 was in the midst of negotiations with the Academy, and approval from the Commonwealth, for the provision of autism-support services by Academy providers at private school #2 (akin to the arrangement the Academy currently has with private school #1). It is unclear whether those negotiations will result in an agreement. This trajectory of the parties' positions—the December 2018 IEP and the student's placement for the 2019-2020 school year—is the basis of the decision and order at the affiliated case at ODR file number 21435-1819.

to the issues presented in the hearing for 21435-1819. For that reason, the transcript for the case at ODR file number 21435-1819 is made part of the record here, should clarity be required on certain points. (HO-9).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of ESY services is governed by both federal and Pennsylvania special education law. (34 C.F.R. §300.106; 22 PA Code §14.132). Where the IDEIA speaks generally to the availability of and qualification for ESY programming (34 C.F.R. §§300.106(a)(2), (b)), Pennsylvania special education regulations speak in detail about the provision of ESY services. (22 PA Code §14.132).

In this case, there is no dispute as to the student's eligibility for ESY programming. The parties' dispute is rooted in the parents' desire to have the student continue with the ESY program which the student has attended since 2014 while the District feels that ESY programming at private school #2 would be appropriate in light of the student's potential transition to that placement in the upcoming 2019-2020 school year.

Having cast this matter as a choice between ESY programs, this dispute plays out within the broader context of the parties' dispute at 21435-1819 as to the appropriateness of the program/placement proposed in the December 2018 IEP. In the mind of the undersigned hearing officer, the result here dovetails with the result in 21435-1819 so

that the student can be provided with appropriate programming for the summer of 2019, both as offered and as a transition for the upcoming 2019-2020 school year.

Here, the record in its entirety supports a conclusion that the student should return to the community summer camp the student has attended since 2014, with support services provided by the Academy, for ESY programming. This ESY programming, however, will provide the pivot around which the student's programming will turn as the student will transition to a District-based program in the upcoming 2018-2019 school year.⁵

Specifically, the student will attend the community summer camp preferred by the parents. There, the student will participate in regular camp activities and will receive the support services outlined at the hearing—a one-to-one aide, daily academic instruction, weekly S&L services, and weekly OT services.

Accordingly, the District will be ordered to provide for the student's ESY programming for the summer of 2019 at the community summer camp the student has attended since 2014. As set forth in the order below, that ESY program shall serve as the means for the student to acclimate to new District-based support providers in anticipation of the

⁵ Under the terms of the order at the affiliated decision at 21435-1819, the December 2018 IEP will be implemented in a District-based placement beginning in the 2019-2020 school year.

student attending a District-based placement in the 2019-2020 school year.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student shall receive ESY programming in the summer of 2019 at the community summer camp which the student has attended since 2014, the summer camp preferred by the parents. The District shall pay the tuition for this camp, including any charge or fee for the ESY support services provided at the camp. As outlined below, any charge for District-based support service providers to coordinate with Academy providers at the ESY program shall also be borne by the District.

The ESY program at the community summer camp shall serve as a transition to a District-based placement for the implementation of the December 2018 IEP.⁶ The District shall coordinate with the ESY program and the Academy providers to introduce District-based providers (one-to-one aide, S&L therapist, occupational therapist, and special education teacher) to the student who, in the student's District-based placement in the 2019-2020 school year, will be providing services to the student.

If at all possible, but not as a directive (as it involves contractual obligations and the personal/professional commitments of others to which the undersigned hearing officer cannot speak), the District-based providers should be those with whom the student will work in the student's District-based placement in the 2019-2020 school year, so that

⁶ See decision and order at ODR file number 21435-1819.

the student might gain experience with the District-based support providers who will be working with the student in the upcoming school year.

Over the course of the summer in the ESY program, the student's current providers from the Academy and the District-based providers shall communicate and shall coordinate a process, in their sole collaborative discretion, that leads to an eventual diminution of the time the providers from the Academy work with the student and a concomitant increase in the time the District-based providers work with the student, such that by the time the ESY program at the community-based summer camp concludes in late summer, the student is receiving services largely from the District-based providers.

Nothing in this order shall be read to limit the ability of the student's IEP team to amend the terms of the order as the IEP team shall determine and the parties shall agree in writing through an approved-NOREP process.

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

April 5, 2019