

*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: ZR

Date of Birth: [redacted]

Date of Hearing:  
November 15, 2011

### **CLOSED HEARING**

ODR Case # 2285-1112-AS

Parties to the Hearing:

Representative:

Pro Se

School District of Cheltenham Township  
2000 Ashborne Road  
Elkins Park, PA 19027

Claudia Huot, Esq.  
Wisler Pearlstine LLP  
Blue Bell Executive Campus  
460 Norristown Road/Suite 110  
Blue Bell, PA 19422

Date Record Closed:

November 15, 2011

Date of Decision:

December 8, 2011

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (hereinafter “student”)<sup>1</sup> is an early-teen-aged student residing in the School District of Cheltenham Township (“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>2</sup> Specifically, the student has been identified as a student with autism and mental retardation.

The student’s mother, proceeding *pro se*, requested a due process hearing by filing a complaint with the Office for Dispute Resolution (“ODR”), listing the Chester County Intermediate Unit (“Chester County IU”) as the local education agency responsible for the student’s education. In a section labeled “nature of the problem”, mother referenced the District by name. Therefore, as the only school district mentioned in the complaint, ODR entered the complaint against the District.

Upon receiving the complaint from ODR, the District filed a motion to dismiss, asserting that while it funds the student’s program at a

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<sup>1</sup> The generic use of “student”, rather than a name or gender-specific pronouns, is used to protect the confidentiality of the student.

<sup>2</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.

residential program, the facility is geographically located in [redacted] School District (“other school district”). Therefore, pursuant to §13-1306 of the Pennsylvania School Code<sup>3</sup> (“Section 1306”), the District argued that the other school district, as the school district where the facility is located, is responsible as the local education agency for the student’s special education program. As such, the District sought dismissal of mother’s complaint against it based on substantive allegations of a denial of a free appropriate public education (“FAPE”).

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

### **ISSUE**

Is the District the local education agency responsible for the substantive provision of FAPE to the student?

### **FINDINGS OF FACT**

1. The student has been identified as a student with autism and mental retardation. (School District Exhibit [“S”]-4).
2. The District does not dispute that the student’s parent resides in the District. (Notes of Testimony [“NT”] at 12).
3. In the fall of 2008, the student was removed from home by Montgomery County Children and Youth Services (“CYS”) and was placed by CYS in a residential facility. Since that time, the student has resided, and has received special education services, at the same facility. (S-1, S-2, S-3, S-4 at pages 1 and 3, S-5, S-6 at page 36, S-7 at pages 1-4, S-8; NT at 19-20).

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<sup>3</sup> 24 P.S. §13-1306

4. In November 2008, on a form entitled “Determination of District of Residence for Students in Facilities or Institutions in Accordance with Section 1306 of School Code” (“Section 1306 Verification”), the District acknowledged that the student resided within the District and that the other school district was the “host” school district where the residential facility is located. (S-1; NT at 20-21).
5. Since the student entered the residential placement in the fall of 2008, the other school district has contracted with the Chester County IU to provide the student’s special education programming at the facility. (S-1, S-3, S-5, S-8; NT at 21-22, 24-26).
6. In July 2009, June 2010, and September 2011, the District continued to acknowledge in its Section 1306 Verifications that the student resided within the District and that the other school district was the host school district where the residential facility is located. (S-3, S-5, S-8; NT at 20-24).
7. The District maintains financial responsibility for the special education services provided by the Chester County IU as contracted-for by the other school district. (NT at 24).
8. In September 2011, mother filed a pro se complaint. Mother listed the Chester County IU as the local education agency responsible for the student’s education. (Hearing Officer Exhibit [“HO”]-1).
9. In a section of the complaint labeled “nature of the problem”, mother referenced the District by name. Therefore, as the only school district mentioned in the complaint, ODR entered the complaint against the District. (HO-1, HO-2).
10. In September 2011, the District filed a motion to dismiss the complaint, asserting that while it funds the student’s program at the residential facility, the facility is geographically located in the other school district. The District argued that, pursuant to §13-1306 of the Pennsylvania School Code, the other school district, as the “host district” for the facility, is responsible as the local education agency for the substance of the student’s special education program. (HO-3).
11. The initial hearing session, scheduled in October 2011, was rescheduled to November 2011 at the request of

parent. Because a ruling on the District's motion to dismiss required a factual record, the initial session of the hearing was devoted to the taking of evidence regarding the status of the District as the local education agency responsible for the provision of the student's special education program. (NT at 5-10).

12. Although informed of the November 2011 hearing date, including date, time, and location, mother did not attend the hearing. (HO-4; NT at 34-38).

### **DISCUSSION AND CONCLUSIONS OF LAW**

Under the terms of the Pennsylvania School Code, "a child shall be considered a resident of the school district in which his parents or the guardian...resides."<sup>4</sup> Given that, "(e)very child, being a resident of any school district...may attend the public schools in his district."<sup>5</sup>

Section 1306, however, envisions that some students may reside "in a 'children's institution'....(one of) a variety of residential centers, homes or institutions, ...treatment centers, homes for orphans or other institutions...." which do not lie within the geographic boundaries of the school district where those students' parents reside.<sup>6</sup> In those instances, Section 1306 requires the host district, the school district where the facility is located, to provide an education to those students.<sup>7</sup>

More pointedly, whenever such a student "is (an)... identified eligible student as defined in (22 PA Code §§14.101-162), the school

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<sup>4</sup> 22 P.S. §13-1302(a).

<sup>5</sup> 22 P.S. §13-1301.

<sup>6</sup>Pennsylvania Department of Education, Basic Education Circular – "Nonresident Students in Institutions" (July 1, 1999).

<sup>7</sup> 22 P.S. §13-1306(a).

district in which the institution is located is responsible for (1) providing the student with an appropriate program of special education and training consistent with...(22 PA Code §§14.101-162), and (2) maintaining contact with the school district of residence of the student for the purpose of keeping the school district of residence informed of its plans for educating the student and seeking the advice of that district with respect to the student.”<sup>8</sup> Other provisions of the same section, as well as other provisions of the Pennsylvania School Code, address the administration of financial arrangements between the districts for the education of the student.<sup>9</sup>

In the instant case on this record, the District has established that, since 2008, the student has been receiving special education services at a residential facility, where the student was placed by county-based CYS. (FF 3, 5). Since being placed in the facility, the District has proceeded under the terms outlined in Section 1306— the District, as the school district of residence, continues to absorb financial responsibility for the student while ceding to the host district, in this case the other school district, responsibility for substantive special education programming. (FF 2, 4, 5, 6, 7). Therefore, mother’s complaint against the District, alleging substantive denial of a FAPE, was not brought

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<sup>8</sup> 24 P.S. §13-1306(c).

<sup>9</sup> 24 P.S. §13-1306, 13-1309. *See generally* Pennsylvania Department of Education, Basic Education Circular – “Nonresident Students in Institutions” (July 1, 1999).

against the school district which is the local education agency responsible for providing FAPE to the student. (FF 8, 9, 10).

Accordingly, the District's motion to dismiss will be granted.

### **CONCLUSION**

The District is the student's school district of residence but the other school district, as the host school district pursuant to §13-1306 of the Pennsylvania School Code, is the local education agency responsible for the substantive provision of FAPE to the student.

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### **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the School District of Cheltenham Township is not responsible for the substantive provision of special education services to the student.

The mother's complaint at 2285-1112AS is dismissed.

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

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

December 8, 2011