

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

26767-22-23

Child's Name

L.T.

Date of Birth

[redacted]

Parent:

[redacted]

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Date of Decision:

01/03/2023

Introduction

This special education due process hearing concerns the educational program and placement of L.T. ("student"), a student who resides in the Cheltenham School District ("District").¹

The parties disagree over the educational programming and placement of the student under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA"), specifically as to whether the District's most-recently proposed individualized education program ("IEP") and placement, developed and proposed in May 2022, are reasonably calculated to provide the student with a free, appropriate public education ("FAPE") under the terms of the IDEIA.² The parent also asserts similar claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³

To the extent that the student is being educated under a previous IEP, an IEP developed in February 2022, the parent further claims that the student has been denied FAPE since the beginning of the current 2022-2023 school year through the date of this decision. Parents claims compensatory education as a remedy for this alleged deprivation of FAPE.

For reasons set forth below, I find that the May 2022 IEP is an appropriate offer of FAPE. The District thus met its obligations to the student under IDEIA and Section 504 for that proposed programming and placement. Additionally, the District provided FAPE to the student through its

¹ The generic use of "student", and avoidance of personal pronouns, are 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).

³ Likewise, 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 ["Chapter 15"]).

implementation of the pendent February 2022 IEP, and no compensatory education will be awarded.

Issues

Is the most-recently proposed IEP and placement, from May 2022, appropriate to meet the educational needs of the student?

Is the student entitled to compensatory education for the period from the beginning of the 2022-2023 school year through the date of this decision?

Findings of Fact

Exhibits of record and testimony were considered in their entirety in writing this decision. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue presented.

1. The student is identified as a student with an intellectual disability and speech and language ("S&L") impairment. (School District Exhibit ["S"]-3).
2. The student enrolled in the District in the summer of 2020 and attended a District middle school in the 2020-2021 ([redacted] grade) and 2021-2022 ([redacted] grade) school years. (Parent Exhibit ["P"]-8; S-1, S-2; Notes of Testimony ["NT"] at 67-167).
3. In June 2021, the student's IEP team put in place a program/placement for the student for implementation through June

2022, an IEP which was revised in the 2021-2022 school year in October 2021, January 2022, and February 2022.⁴ (P-8; S-4, S-5).

4. With a transition from [redacted] grade at the District middle school to [redacted] grade at the District high school in the 2022-2023 school year, in May 2022, the student's IEP team met to revise the student's IEP for implementation at the high school. (S-7; NT at 67-167, 291-412, 418-514).
5. In mid-June 2022, the parent disapproved the May 2022 IEP, as offered by the District through a notice of recommended educational placement. (S-7 at pages 78-82).
6. As of June 30, 2022, the parties resolved a prior special education dispute through a written settlement agreement, effective through that date. (P-1 at page 7; NT at 3-52).
7. As of June 30, 2022, then, the February 2022 IEP was the pendent IEP and the May 2022 IEP was the most-recently proposed IEP. (S-5, S-7).
8. In mid-July 2022, the parent filed the complaint which led to these proceedings, making claims that implementation of the February 2022 IEP in the 2022-2023 school year is a denial of FAPE and should lead to a compensatory education award, in addition to claims that the May 2022 IEP is an inappropriate IEP. (P-1).⁵

⁴ Given the fact that the most recent revision was in February 2022, in the hearing this document was referred to as the "February 2022 IEP". This term will be used in the decision. (S-5).

⁵ The views of counsel and the hearing officer were shared about developing an evidentiary record that included matters of implementation of the February 2022 IEP in the 2022-2023 school year. Counsel further developed their views in the parties' closing statements. (See NT at 246-268; Hearing Officer Exhibit ["HO"]-3, HO-4).

February 2022 IEP

9. The February 2022 IEP identified the student's needs as strengthening the following skills: adaptive, reading, math, written expression, and listening comprehension. Additional needs were identified in organization/task-approach/task-completion, endurance and gross motor strength, occupational therapy ("OT") [visual-perceptual, visual motor integration, fine motor), S&L concepts and intelligibility. (S-5 at page 37).
10. The February 2022 IEP contained twelve goals in the following areas: oral reading fluency, basic reading, math computation (addition and subtraction), S&L concepts, S&L articulation, gross motor skills (stair-climbing), OT visual-perceptual, OT visual motor/fine-motor, S&L receptive language (retelling), written expression, organization/task, and math calculation. (S-5 at pages 46-68).
11. The February 2022 IEP contained specially designed instruction and related services, including the support of a 1:1 aide, individual and group S&L, individual physical therapy, and individual OT. (S-5 at pages 69-74).
12. The student's placement in the February 2022 IEP called for the student to receive mathematics, reading, English, social studies, and science in special education settings. The student would also receive S&L, OT, and physical therapy services in special education settings. (S-5 at page 85).
13. The student's placement would be in special education settings for 86% of the school day in the student's neighborhood school. (S-5 at pages 85-87).

May 2022 IEP

14. The present levels of academic achievement and functional performance in the May 2022 IEP are written utilizing data gathered in the spring of the 2021-2022 school year. These levels also include information looking forward to the 2022-2023 school year at the high school, with a high school schedule built around functional mathematics and functional English/language arts in a life skills setting. (S-7, generally at pages 9-33, specifically at pages 17-18).
15. The May 2022 IEP largely identifies the same student needs as in the February 2022 IEP (strengthening adaptive, reading, math, written expression skills; organization/task-approach/task-completion; endurance and gross motor strength; OT visual-perceptual, visual motor integration, fine motor; S&L concepts and intelligibility). (S-7 at page 34-35).
16. The transition goals in the May 2022 IEP are written for high school coursework. (S-7 at pages 36-37).
17. The May 2022 IEP contains ten goals in the following areas: oral reading fluency, reading comprehension, math computation (addition and subtraction), S&L concepts, S&L articulation, gross motor skills (stair-climbing), OT visual-perceptual, OT visual motor/fine-motor, written expression, and organization/task. (S-7 at pages 43-58).
18. The May 2022 IEP contains specially designed instruction and related services, including the support of a 1:1 aide, individual and group S&L, individual physical therapy, and individual OT. The

therapies were designed for a global number of service minutes “per IEP term”. (S-7 at pages 59-69).

19. The student’s placement in the May 2022 IEP calls for the student to receive mathematics, English/language arts, social studies, and science in special education settings. Functional mathematics and functional English/language arts would be delivered in a life-skills setting. Social studies and science would be delivered in a learning support setting. (S-7 at page 74-76).
20. The student’s placement would be in special education settings for 67% of the school day in the student’s neighborhood school. (S-7 at page 77).⁶

2022-2023 School Year/Implemented

21. The District is implementing the February 2022 IEP. (S-5; NT at 67-167, 178-185, 291-412, 418-514).
22. The student currently receives a computer-based reading curriculum in a classroom setting that includes both special education and regular education students, although all students require support (whether through an IEP or otherwise). (NT 67-167, 178-285, 418-514).
23. The student currently receives a functional math curriculum in a life skills setting. (NT at 67-167, 178-285, 291-412, 418-514).

⁶ The educational placement calculation for the District high school is somewhat impacted by the block schedule, rather than a period schedule, employed by the District at its high school.

24. The student receives science instruction in a co-taught classroom where all students have IEPs. The student receives social studies instruction in a co-taught classroom where some students have IEPs and some students are regular education students. (NT at 67-167, 178-285, 418-514).
25. On this record, progress monitoring on the student's goals from the February 2022 IEP show that the student made progress through the first marking period of the 2022-2023 school year. (S-11, S-12).

2022-2023 School Year/Proposed

26. Much of the February 2022 IEP is mirrored in the May 2022 IEP. (S-5, S-7).
27. The largest differences between the views of the parties are the nature of the curriculum—functional-based mathematics and English/language arts curriculum in the view of the District versus academic-based curriculum in those areas in the view of the parent—and the location of the delivery of those curricula—in a life skills setting in the view of the District versus learning support or regular education in the view of the parent. (NT at 67-167, 178-285, 291-412, 418-514).
28. The student is making progress in the functional mathematics curriculum currently being taught in the life skills setting. (S-12; NT at 178-285, 291-412).
29. The functional English/language arts instruction in a life skills setting would involve concrete (paper and pencil) instruction rather than computer-based instruction. The reading component would

include a comprehensive approach to the five areas of reading instruction (phonemic awareness, decoding, fluency, vocabulary, comprehension) with a focus on decoding/fluency. (NT at 418-514).

30. The testimony of the District witnesses was accorded heavy weight that the student participates more, and more authentically, in the life skills setting in mathematics than in the learning support setting in reading, requires less prompting and aide support in the life skills setting, chooses free association with life skills peers rather than other peers, and that English/language arts instruction would be more effective in a functional English/language arts curriculum. (NT at 178-285, 291-412, 418-514).

31. The second semester of the 2022-2023 school year begins in late January 2023. (NT at 418-514).

Discussion

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, or 'some' education progress. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

A necessary aspect of the provision of FAPE requires that the placement of a student with a disability take into account the least restrictive environment (“LRE”) for a student. Educating a student in the LRE requires that the placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting as close as possible to regular education, especially affording exposure to non-disabled peers. (34 C.F.R. §300.114(a)(2); 22 PA Code §14.102(a)(2)(xii); Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

May 2022 IEP. Here, the most-recently proposed May 2022 IEP is appropriate. It is reasonably calculated to provide meaningful education benefit to the student in the form of significant learning in light of the student’s unique needs. Taking the May 2022 IEP as written, its goals address the student’s needs, just as those needs were identified in the pendent February 2022 IEP. In each area of student need, there are meaningful, well-written goals, to be delivered through concrete specially-designed instruction in reading, mathematics, written expression, and executive functioning.

The student’s needs related to S&L, OT, and physical therapy are also addressed by meaningful, well-written goals and include specific therapy interventions in all those areas. One aspect of the order will address a revision as to the delivery schedule for those therapy interventions but that is revision will be substantive and will not impact the District’s appropriate offer of FAPE as to those needs.

And in support of this delivery of specially-designed instruction and therapy interventions, the May 2022 IEP contains numerous modifications of materials, methods, environments, and approaches designed to allow the student to access that instruction and/or work toward goal progress.

Taken all together, the May 2022 IEP is reasonably calculated to yield meaningful education benefit in the form of significant learning in light of the student's unique needs. It is an appropriate offer of FAPE.

As for the specific areas of contention between the parties—functional curricula in mathematics and English/language arts and delivery of those curricula in a life skills setting—the record weighs in favor of the appropriateness of those aspects of the May 2022 IEP. First, as to the functional curricula, the student is making progress in the functional mathematics curriculum being delivered as part of the pendent February 2022 IEP. And the testimony of the District witnesses was persuasive that a functional English/language arts curriculum would be more appropriate for the student to make progress on the student's two reading goals and the written expression goal. This, too, is a critical point: The academic goals in reading fluency, reading comprehension, math calculation, and written expression will remain—there will be no change to the rigor of the goal focus in the student's learning. Clearly, the instruction and curricular framework would change under the terms of the May 2022 IEP. But taking the evidence in its entirety, the record supports a conclusion that the District's approach to that instruction and that framework is reasonably calculated to yield meaningful education benefit.

Second, as to the life skills setting, the testimony of the District witnesses—the special education teacher/case manager, the special education teacher delivering mathematics instruction and monitoring other goal-progress, and the special education supervisor—was heavily credited that the engagement and affective performance of the student in the life skills setting, and with life skills peers, leads to significant learning. Is there a lack of learning in the current English/language arts setting? The answer is no. But where the District proposes to move that instruction to a life skills setting, the record supports a conclusion that the learning will be more

meaningful—with the student more engaged and less reliant on general prompting or the involvement of the aide—than in the learning support setting.

To the extent that LRE considerations are proffered as a reason to maintain the delivery of English/language arts in the learning support setting rather than the life skills setting, it is not unimportant. But the computer-based nature of the current instruction does not allow for the engagement with regular education peers that might otherwise take place (for example, in the co-taught social studies and science classes). Also, as is always the case with LRE considerations, the standard is two-pronged— (1) the least restrictive environment (2) to the extent appropriate for the student’s needs. Here, and as set forth just above, the substantive appropriateness of a functional English/language arts curriculum delivered in a life skills setting outweighs the environmental considerations of the student working through a computer-based model in a classroom with regular education peers. To repeat, it is not unimportant; but the District’s proposal to deliver a functional English/language arts curriculum in a life skills setting is not overly restrictive, given the unique needs of the student.

Accordingly, the May 2022 IEP is an appropriate offer of FAPE.

Implementation of February 2022 IEP. During the hearing, the parties each had definitive views as to whether the parent had brought forward denial-of-FAPE claims related to the implementation of the February 2022 IEP and, if so, whether those claims were impacted at all by the pendency requirements that the District must implement the February 2022 IEP. The record (NT at 246-268) and the closing statements submitted by the parties (HO-3, HO-4) flesh out these positions as a matter of legal argument.

As a matter of evidence, however, the record clearly supports a finding that through the fall of 2022 (as the evidence was developed) in

implementing the February 2022 IEP, the student made meaningful education progress in the form of significant learning in light of the student's unique needs. Across all goal areas, the student made progress (S-11, S-12). As special education due process unfolded through the fall of 2022, day by day the District was implementing the February 2022 IEP, and the student was making progress under its terms.

Accordingly, and legal arguments notwithstanding, the District met its FAPE obligations to the student in implementing the February 2022 IEP through the date of this decision, and there will be no compensatory education remedy.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the May 2022 IEP is an offer of a free appropriate public education for the student. The Cheltenham School District shall make arrangements for the student's transition to the new programming and placement for full implementation of the May 2022 IEP by late January 2023 at the commencement at that time of the second semester of the 2022-2023 school year.

The provision of speech and language therapy, occupational therapy, and physical therapy interventions on a "per IEP term" basis in the May 2022 IEP shall be revised and calculated for delivery on a weekly basis, or monthly basis, as most practicable for the delivery of those services in the block schedule employed by the school district at its high school.

The school district met its obligations to provide a free appropriate public education to the student from the outset of the 2022-2023 school year through the date of this decision. Accordingly, there is no award of compensatory education for this span of the student's education.

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

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

01/03/2022