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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: I.W.

Date of Birth: [Redacted]

Date of Hearing:

June 4, 2012

CLOSED HEARING

ODR Case # 3111-1112KE

Parties to the Hearing:

Parent

School District of Philadelphia
440 N. Broad Street
Suite 313
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Brian Subers, Esquire
Fox Rothschild
10 Sentry Parkway
Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001

June 4, 2012

June 18, 2012

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [teen-aged] student residing in the School District of Philadelphia (“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”).¹ Specifically, the student has been identified as a student with specific learning disabilities and communications needs.

While the parties broadly agree on most aspects of the student’s individualized education plan (“IEP”), parent asserts that certain provisions of the IEP are inappropriate. The District counters that the IEP is appropriate as proposed.

For the reasons set forth below, I find in favor of the District although under the terms of the order, the District must undertake explicit revisions to the IEP at issue.

ISSUES

Are the contested provisions
of the proposed IEP appropriate?

¹ 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.

FINDINGS OF FACT

1. On April 13, 2012, the parties met to discuss the student's IEP for the 2012-2013 school year. (School District Exhibit ["S"]-1).
2. The parties reached broad agreement on most aspects of the IEP. In the upcoming 2012-2013 school year, however, the student will begin a split-day educational placement where half of the school day will be academic instruction, and the other half of the school day will be vocational instruction. (S-1; Notes of Testimony ["NT"] at 40-41, 57-59, 62-63, 68-69).
3. Parent objected to three specific provisions of the proposed April 2012 IEP. (P-1; NT at 20-34).
4. The first provision of the April 2012 IEP that parent objected to is the student's Postsecondary Education and Training Goal under section III of the IEP ("Education/Training Transition Goal"). (S-1 at page 12; P-1).
5. The second provision of the April 2012 IEP that parent objected to are the specially designed instruction/services/activities that will be used to support the student's Education/Training Transition Goal and aligned measurable annual goal for instruction at the vocational setting. (S-1 at pages 12-13, 20; P-1).
6. The third provision of the April 2012 IEP that parent objected to is the student's Employment Goal under section III of the IEP ("Employment Transition Goal"). (S-1 at pages 14; P-1).
7. The Education/Transition Goal proposed in the April 2012 IEP reads as follows: "(The student) will develop the skills necessary to prepare (the student) for competitive employment in a construction-related occupation through participation in the construction technology program at (the vocational setting) on a part-time basis and attendance at (the academic

setting) for the remaining part of the school day for the 2012-2013 school year.” (S-2).

8. Specially designed instruction proposed in the April 2012 IEP in support of the Education/Training Goal and aligned measurable annual goal for instruction at the vocational setting includes the following:

- Repeated simplified directions;
- Extended allotted time;
- Modeling;
- Test read to (the student) as needed;
- Test preparation coordinated between (the academic setting) and (the vocational setting);
- Provide opportunity to retake tests;
- When retaking tests, repeat incorrectly-answered questions only;
- Peer buddy;
- Shared notes;
- Step by step directions;
- Beginning of year syllabus.

(S-1 at page 20, S-2).

9. The Employment Transition Goal proposed in the April 2012 IEP reads as follows: “(The student) will develop the skills necessary to prepare (the student) for competitive employment in a construction-related occupation.” (S-2).

10. The student’s long-range employment goal, building on the experience gained through such employment, is to own a roofing and home-repair contracting company. (P-1; NT at 22-23, 30).

DISCUSSION AND CONCLUSIONS OF LAW

Provision of FAPE

To assure that an eligible child receives a 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” (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

In this case, the proposed April 2012 IEP is appropriate in terms of the Education/Training Transition Goal. (FF 3, 4, 7). The Education/Training Transition Goal accurately relates the student’s Education/Training Transition Goal for the 2012-2013 school year. The goal is reasonably calculated to yield meaningful education benefit regarding the student’s postsecondary education and training for the 2012-2013 school year as proposed in the totality of the April 2012 IEP. (FF 2, 7).

The proposed April 2012 IEP is appropriate in terms of the specially designed instruction in support of the Education/Training Goal and aligned measurable annual goal for instruction at the vocational setting. (FF 3, 5, 8). The specially designed instruction in support of the Education/Training Goal and aligned measurable annual goal for instruction at the vocational setting is reasonably calculated to yield meaningful education benefit. Indeed, the District’s special education liaison testified credibly that the individualized instruction in both the academic and vocational settings, and the coordination between the two,

is unique to the student and is designed especially to support the student across both settings. (*See generally* NT at 38-81).

The proposed April 2012 IEP is appropriate in terms of the student's Employment Transition Goal. The goal is appropriate so far as it goes (FF 3, 6, 9). The student's parent testified credibly that the student's employment goal is not simply to obtain "employment in a construction-related occupation" (FF 9); the student's long-range employment goal, building on the experience gained through such employment, is to own a roofing and home-repair contracting company. (FF 10). This is a wonderful aspiration, and the District's appropriate implementation of the student's IEP combined with the student's hard work and dedication to the course of study at the vocational setting and the academic setting will hopefully place the student in a position where the student can gain the years of employment experience necessary to start a company. But the law does not require that the Employment Transition Goal program for long-range aspirations; it requires that the Employment Transition Goal be reasonably calculated to yield meaningful education benefit.

CONCLUSION

The student and the student's parent are both obviously dedicated to making sure the student has every opportunity for success in the 2012-2013 school year under the terms of the IEP. The April 2012 IEP,

as proposed, is reasonably calculated to yield meaningful education benefit.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the April 2012 IEP, as proposed, is appropriate. It is reasonably calculated to yield meaningful education benefit.

Within 20 days of the date of this order, the District shall incorporate explicitly into the April 2012 IEP the language addressing the three contested areas. The language shall be adopted from this decision as reflected in findings of fact 7, 8, and 9, and shall be incorporated appropriately as provisions of the IEP as indicated.²

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 18, 2012

² Over the course of the parties' attempts to reach agreement on the April 2012 IEP, the proposed IEP document (S-1) was supplemented by a separate document containing revisions proposed by the District (S-2). The student's program, then, is the April 2012 IEP read in conjunction with the proposed revisions. Obviously, however, the IEP document itself must be an integral whole, so the revisions must be incorporated into the IEP as ordered. Also, the language of findings of fact 7, 8, and 9 is language discussed between the parties; the language has not been crafted or developed by this hearing officer on his own.