

*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: B.S.

Date of Birth: [redacted]

Dates of Hearing:

August 22, 2012  
September 24, 2012

### **CLOSED HEARING**

ODR Case # 3440-1213AS

Parties to the Hearing:

Parents

Beaver Area School District  
855 Second Street  
Beaver, PA 15009

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Christina Lane, Esquire  
1500 Ardmore Boulevard  
Suite 506  
Pittsburgh, PA 15221

September 24, 2012

October 16, 2012

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

[Student] (hereinafter “student”) is [a late teen-aged] student who resides in the Beaver Area School District (“District”) and 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>1</sup> The student has been identified as a student with visual impairment; specifically, the student has low vision due to a genetic trait. Parents allege that the student was denied a free appropriate public education (“FAPE”) as the result of allegedly inappropriate extended school year (“ESY”) programming in the summer of 2012.<sup>2</sup>

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

## **ISSUES**

Did the District meet its obligation to provide FAPE to the student through ESY programming in the summer of 2012?

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<sup>1</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.

<sup>2</sup> Parents’ complaint was filed on August 4, 2012, on the cusp of the 2012-2013 school year. Pennsylvania special education regulations require that a special education due process hearing related to ESY programming be held on an expedited timeline. Because the window for ESY programming had effectively closed by the time parents filed a complaint and the hearing process was initiated, making parents’ claims largely retrospective, at the initial hearing session, the parties agreed to proceed in a non-expedited manner. (Notes of Testimony at 16-20, 46.)

## **FINDINGS OF FACT**

1. There is a history between the parties of strained communications and problematic relationships between the student's mother and the District, including, specifically, service providers contracted through the District for the provision of the student's vision support programming. (Parents' Exhibit ["P"]-24; School District Exhibit ["SD"]-W, SD-X, SD-Z, SD-BB, SD-CC; Notes of Testimony ["NT"] at 40-44, 67-72, 84-90, 111-114; *see generally* NT at 381-446.)
2. In February 2012, the student's IEP team met to discuss the student's ESY programming. The student's mother was emotional; the meeting was filled with acrimony and ended abruptly when the student's mother and her social agency advocate left the IEP meeting. (SD-F; NT at 54-55, 269-277, 322-323).
3. The IEP meeting continued after the mother's departure and the District sent the student's mother a detailed letter regarding what was considered at the IEP meeting and the recommendations the District would be making for ESY programming. (SD-F).
4. For the summer of 2012, the District was proposing six weekly sessions, 45 minutes each, of vision support and six weekly sessions, 45 minutes each, of orientation and mobility ("O&M") services. (SD-E, SD-F, SD-G).
5. In April, May, and June of 2012, the District sent a notice of recommended education placement ("NOREP") to the parents regarding the ESY programming. Parents did not return the NOREPs. (P-24; SD-H, SD-I, SD-J; NT at 57-61).
6. Having waited well beyond 10 calendar days for parents' response and not having received any NOREP regarding the student's ESY programming, the District moved to implement the ESY programming. (NT at 61-63).
7. The District contracted with outside providers to provide vision support and O&M services and to arrange transportation for the student to attend the sessions. Through the sharing of emails, a schedule for the ESY programming was established. (P-24; SD-K,SD-W; NT at 62-63).
8. In July 2012, after the first ESY session for the student, the student, student's mother, social agency advocate, vision support

teacher and the District director of special education met to discuss a broad range of issues, including the vision support and O&M services, adapted materials, and assistive technology. (P-1; SD-N, SD-O; NT at 99-108).

9. Throughout July 2012, the parties communicated regarding various matters related to the student's programming. (P-24; SD-BB).
10. In mid-July 2012, an incident at the District occurred at the District high school, rooted in a misunderstanding between the parties. [Redacted.] The situation ended acrimoniously. (P-24; SD-C, SD-BB; NT at 77-81, 387-389).
11. On July 23, 2012, parents sent an email to the District asking that ESY programming be suspended. The District issued a NOREP to obtain parents' written agreement that ESY services should be terminated. The NOREP was not returned, and programming continued to be provided. (P-24, P-28; SD-C, SD-D; NT at 46-50).
12. On July 29, 2012, parents sent an email asking that remaining ESY programming sessions be rescheduled to accommodate the student's participation in band camp. (SD-C).
13. The student attended ESY programming intermittently. (P-24; SD-C, SD-X, SD-Y).
14. Parents returned the July 23<sup>rd</sup> NOREP when they filed for a due process hearing on August 4, 2012, at which point remaining scheduled sessions of ESY programming were cancelled. (SD-A, SD-C, SD-D; NT at 46-50).
15. The student's final progress reports showed that the student had gained benefit from the ESY programming. (SD-Y).

## **DISCUSSION AND CONCLUSIONS OF LAW**

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 (3<sup>rd</sup> Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)). Where a student requires special education programming beyond the normal school year, the provision of FAPE requires that ESY programming be provided. (34 C.F.R. §106; 22 PA Code §14.132).

In this case, the stance of the parties, especially the stance of the family vis a vis the District, has complicated the provision of ESY services to the student in the summer of 2012. (FF 1, 2, 10). At the end of the day, however, the District placed the student in a position to receive FAPE through the ESY programming in summer of 2012.

The District made timely and repeated attempts to make sure that services were appropriate and in place when the 2011-2012 school year ended. (FF 2, 3, 4, 5, 6, 7). As the summer unfolded, the ESY programming provided by the District was appropriate. (FF 4, 8). Granted, the student’s parents disagreed with the appropriateness of the

services (FF 9). But the entirety of the record supports the finding that the student's ESY programming was reasonably calculated to provide meaningful education benefit and, in fact, provided such benefit. (FF 4, 8, 15).

Accordingly, there was no denial of FAPE.

### **CONCLUSION**

The District met its obligations under both IDEIA and Chapter 14 to provide FAPE to the student through ESY programming in the summer of 2012.

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**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the District met its obligations to the student to provide FAPE through ESY programming in the summer of 2012.

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

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

October 16, 2012