

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: T.E.

Date of Birth: [redacted]

Dates of Hearing:

October 31, 2012

December 7, 2012

December 18, 2012

CLOSED HEARING

ODR Case # 3472-1213KE

Parties to the Hearing:

Parents

Cumberland Valley School District
6746 Carlisle Pike
Mechanicsburg, PA 17050

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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January 14, 2013

January 22, 2013

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [teenaged] student residing in the Cumberland Valley School District (“District”). The parties do not dispute whether the student qualifies as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. Parents claim that the District owes the parents tuition reimbursement for a unilateral private placement undertaken for the 2012-2013 school year because the District’s proposed program and placement is not designed to provide a free appropriate public education (“FAPE”) to the student. The District counters that its 2012-2013 program and placement provide FAPE to the student and, as such, parents are not entitled to tuition reimbursement.

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

ISSUES

Are the parents entitled to tuition reimbursement for the unilateral private placement undertaken for the 2012-2013 school year?

¹ 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 §§14.101-14.162.

FINDINGS OF FACT

1. The student has been identified with needs in speech and language since kindergarten. In elementary school, the student was identified with a specific learning disability in reading. (Parents' Exhibit ["P"]-2; Notes of Testimony ["NT"] at 412).
2. In November 2010, during the student's 7th grade year, parents withdrew the student from the District and enrolled the student at a private school which specializes in addressing the needs of students with language-based reading disabilities. The student attended the private placement for the remainder of the 2010-2011 school year. (P-2, P-3, P-5, P-7; School District ["S"]-1; NT at 196-200, 205-206).
3. In the summer of 2011, the student attended an out-of-state program to address needs in reading. (P-6; NT at 213-215, 270-279).
4. Parents filed a special education due process complaint, seeking tuition reimbursement for the 2010-2011 school year. In October 2011, the parties resolved the dispute. (S-1).
5. Under the terms of the October 2011 settlement agreement, the District agreed to reimburse the parents for tuition payments in the 2010-2011 school year and to fund a placement at the private school for the 2011-2012 school year. (S-1).

6. Additionally, under the terms of the agreement, the parents agreed to cooperate in a District re-evaluation process in the spring of 2012 in order to allow the District an opportunity to issue a re-evaluation report (“RR”) and, by the end of April 2012, an individualized education plan (“IEP”). (S-1).
7. In February 2012, the District requested permission to re-evaluate the student. (S-2; NT at 336-337, 422-425).
8. In April 2012, in accord with the settlement agreement, the District issued a RR which incorporated the results of an earlier independent educational evaluation (“IEE”) completed in June 2011. The RR concluded that the student continued to be a student with a specific learning disability in basic reading, reading fluency, and reading comprehension. (P-4, P-7).
9. Based on the April 2012 RR, the District designed an April 2012 IEP.² (P-5; S-4; NT at 339-341).
10. The April 2012 IEP identifies the following needs related to the student’s disability: basic reading skills, fluency, writing mechanics, spelling, application of synthesis of language concepts learned in reading and spelling, and memory strategies. (P-5 at page 25).

² The April 2012 IEP was revised and updated in June 2012. Even though the last-offered IEP included June 2012 revisions, it is dated April 2012. For clarity in the decision and going forward, then, the reference will be to the April 2012 IEP. (P-5 at page 1).

11. The April 2012 IEP contains five goals in the following areas:
written expression, reading fluency, reading comprehension,
decoding multi-syllabic words, and encoding multi-syllabic words.
(P-5 at pages 33-37; NT at 439).³
12. The April 2012 IEP calls for one period per day of direct
instruction in a multisensory approach to reading instruction with
continuing instruction in vocabulary, decoding, and encoding
skills. This instruction will be rooted in the Wilson Reading model
and will take place outside of the regular education setting. (P-5 at
pages 38, 45; S-10; NT at 227-234, 287, 344-351, 427-433, 530-
553).
13. The April 2012 IEP calls for one period per day of direct
instruction in English, including writing. This instruction will take
place outside of the regular education setting. (P-5 at page 38, 45;
NT at 288, 428-429, 446, 553-554).
14. The April 2012 IEP contains additional specially designed
instruction and accommodations in classroom testing, access to a
word processing program, graphic organizers/writing models/peer
& teacher editing, memory aides, prompting, preview and review of
novel academic material, preview and review of content area
vocabulary, transition survey, and an extra set of texts for
highlighting. (P-5 at pages 38-42; NT at 227-234, 288-289).

³ Baselines for the goals are to be established within 30 days of the student's return to the District. (P-5 at pages 33-37).

15. The April 2012 IEP contained provisions for extended school year services over the summer. (P-5 at pages 43-44).
16. In May 2012, parents returned a notice of recommended educational placement (“NOREP”), indicating disagreement with the April 2012 IEP. (S-4, S-5; NT at 218-219, 444-445).
17. In June 2012, parents returned a second NOREP, formally rejecting the District’s proposed program by indicating a request for a special education due process hearing on the NOREP. (P-5 at pages 2-5; S-6; NT at 237, 444-445).
18. The student completed the 2011-2012 school year at the private school. (P-6; S-1, S-8).
19. In the summer of 2012, the student attended an out-of-state program to address needs in reading. (P-6; NT at 213-215, 255-256, 262, 292-300, 306-307).
20. In August 2012, parents filed the special education due process complaint which led to these proceedings. (P-1).
21. In September 2012, the student returned to the private school for the 2012-2013 school year. (S-8; NT at 135-136, 337).
22. In October 2012, the private evaluator who issued the June 2011 IEE updated her IEE, opining that the private school placement was appropriate to address the student’s needs in reading. (P-12).

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 (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)).

Long-standing case law and the IDEIA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); *see also*, 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). A substantive examination of the parents’ tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEIA. (34 C.F.R. §§300.148(a),(c),(d)(3)).

In the three-step analysis, the first step is an examination of the school district’s proposed program and whether it was reasonably calculated to yield meaningful education benefit (34 C.F.R. §300.17; Rowley; Ridgewood; M.C. v. Central Regional School District). In this

case, the District's April 2012 IEP is reasonably calculated to yield meaningful education benefit.

Neither party disputes that the student has a significant learning disability and requires intensive daily instruction in reading, instruction that addresses decoding, encoding, comprehension and, by extension, writing. The District's IEP identifies these needs and addresses the needs in appropriate ways. The student's goals are explicit and measurable. The specially designed instruction creates appropriate vehicles for the delivery of instruction to help the student make progress on those goals. Perhaps most importantly, the District recognizes the need for (1) systematic daily instruction in a multisensory reading program that (2) takes place in a resource setting with a trained instructor. Along the same lines, the application of those reading skills in English will also take place in a resource setting. In sum, then, the District's program, from needs-identification to goals to instruction to placement, is reasonably calculated to yield meaningful education benefit.

Having said that, there is one small matter that will be addressed in the order. The student's IEP calls for baselines for the student's goals to be established within 30 days of the date the student would re-enroll in the District. A 30-day period would encompass roughly 20 instructional days. Based on this record, including the voluminous evaluation data and the District's understanding of the student's needs in light of the reading program that the student envisions for the

student, that window for establishing baselines seems overbroad.

Therefore, the order will require the District to establish baselines within 10 instructional days (or approximately two weeks).

When the school district's program and placement are found to be appropriate, as here, examinations at the second step (whether the private program and placement are appropriate) and the third step (a weighing of the equities between the parties) of the Burlington-Carter analysis are unnecessary. Therefore, the Burlington-Carter analysis ends at this point.

The District's proposed program and placement for the 2012-2013 school year are appropriate. Accordingly, the parents are not entitled to tuition reimbursement.

CONCLUSION

The program and placement proposed by the District for the 2012-2013 school year are appropriate. Therefore, the parents are not entitled to tuition reimbursement.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District has proposed an appropriate program and placement for the student's 2012-2013 school year. Therefore, under the terms of the IDEIA and relevant case law, the parents are not entitled to tuition reimbursement for the 2012-2013 school year.

Once the student has re-enrolled in the District, the District shall establish baseline data for the student's IEP goals after the student has attended 10 instructional days in the District.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

January 22, 2013