

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 Due Process Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number

23449-1920AS

Child's Name

D.S.

Date of Birth

[redacted]

Parents

[redacted]

Counsel for LEA

Pro Se

Local Educational Agency

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

10/28/2020

Introduction

This special education due process hearing concerns the educational rights of D.S. ("student"), a student who took a diploma from the Jersey Shore Area School District ("District") in June 2019 and still resides in the District.¹ The parties agree that the student qualified under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student who required special education to address the student's needs. The parties disagree over whether the District correctly identified the student's needs and programmed for the student.

The student's parents claim that the District did not appropriately identify the student and program for the student's needs, thereby denying the student a free appropriate public education ("FAPE"). Analogously, the parent asserts these denial-of-FAPE claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³

The District counters that at all times it met its FAPE obligations to the student under IDEIA and Section 504. Accordingly, the District argues that the student is not entitled to any remedy.

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

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 ("Chapter 14").

³ 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").

Issues⁴

1. Did the District deny the student FAPE for the period February 2018 through June 2019?
2. If this question is in the affirmative, is the student entitled to remedy?

Findings of Fact

All evidence in the record, both exhibits and testimony, were considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

Prior Educational History

1. The student had been long-identified as a student with autism. This identification was made in early intervention and was continued through identification processes in a neighboring school district where the student attended through 6th grade. (Parents Exhibit ["P"]-21; School District Exhibit ["S"]-7, S-26).

⁴ Parents' complaint contained a number of allegations which could not be heard through this process and requested remedies that could not be awarded. Parents' complaint, however, clearly presented the listed issues and requested a remedy—compensatory education—which is within the authority of a hearing officer to grant. (Hearing Officer Exhibit ["HO"]-1 - Complaint, HO-3 - Hearing-Planning Email of May 20, 2020).

2. As part of the student's evaluation history in the neighboring school district, the student underwent cognitive ability testing. In February 2012, the student's full-scale IQ was scored at 84. (P-21; S-26).
3. In February 2014, the student enrolled in the District in 7th grade. (S-7).
4. Although not made part of this record, the District re-evaluated the student in February 2015. District's February 2015 RR found the student continued to be eligible as a student with autism. (P-21; S-26).

2017-2018 School Year (February – June 2018)

5. In the 2017-2018 school year, the student was in 11th grade.
6. The individualized education program ("IEP") in effect at the outset of the 2017-2018 school year was an IEP developed a year earlier, in February 2017. The IEP was revised in August 2017 and October 2017. (S-3, S-4, S-5).
7. In early January 2018, the student was re-evaluated by the District. (S-7).
8. Cognitive testing in the January 2018 RR indicated a general intellectual ability of 70. Given the student's engagement in the assessment process, however, the evaluator cast doubt on the validity of this score, finding that the comparison of certain composite scores indicated that an IQ score of 84 was likely a more accurate reflection of the student's cognitive ability. (S-7).

9. The January 2018 RR indicated certain areas of academic weakness and recommended social skills instruction for the student. The RR recommended that the student continue to be identified as a student with autism. (S-7).
10. The student's IEP was revised in light of the January 2018 RR. (S-8).
11. The student's most intensive need in the educational environment was appropriate socialization with peers (especially female peers) and observing boundaries/appropriate interaction with adults, including inordinate focus on certain female staff members. (S-8).
12. The January 2018 IEP had two goals, one in mathematics and one in social skills. (S-8).
13. The student received instruction in a special education setting for math, social studies, social skills, and transition. The student received supported services in the regular education setting for all other academic areas. The student was in regular education for approximately 66% of the school day. (S-8).
14. The January 2018 IEP indicated that the student's mother was "interested and consented to" the attendance at IEP meetings of a representative from a state vocational assistance office. (S-8).
15. In late January 2018, only a few weeks after the January 2018 RR and earlier IEP meeting, the student's IEP was revised to remove social skills instruction. The student voiced displeasure with the class and requested that the social skills instruction be removed from the student's schedule, a request which the student's mother supported.

The District was wary but acquiesced in the student's request. (S-9; Notes of Testimony ["NT"] at 53-83, 388-441).

16. The student's placement in regular education increased to approximately 76% of the school day. (S-9).

17. The student made progress on the math goal for the remainder of the 2017-2018 school year. (S-10; NT at 53-83).

2018-2019 School Year

18. In September 2018, the student's IEP was revised. The student began to receive instruction, with supports, entirely in regular education settings. (S-11).

19. A representative from the state vocational assistance office was invited to the September 2018 IEP meeting but could not attend due to the representative's schedule. (S-11).

20. In October 2018, the student's IEP was revised. The student was involved in a [redacted] incident which involved inappropriate and distasteful behavior directed toward the student by fellow members of a sports team. (S-13, S-37; NT at 256-316, 388-441, 457-498).

21. The behavior directed toward the student was handled as a disciplinary matter by the District's administration and athletics staff. (NT at 256-316).

22. The IEP team decided that the student should again receive social skills instruction. Academically, the student was struggling, so the IEP team provided additional supports and changes in the student's placement. (S-13; NT at 88-174).

23. At the October 2018 IEP meeting, the IEP team discussed a re-evaluation of the student. In early November 2018, the District requested permission to re-evaluate the student, but parents did not provide permission, indicating that the parents wished to pursue mediation. (S-15).
24. In late November 2018, the District requested permission to evaluate the student for potential speech and language needs. In early January 2019, the parents provided permission for this evaluation. (S-16; NT at 88-174).
25. As a result of mediation and the parties' ongoing consultation, parent requested, and the District agreed to, an independent educational evaluation ("IEE"). (P-7, P-21; S-26; NT at 179-251).
26. In January 2019, the student's IEP team met and revised the student's IEP. The IEP team's decision to increase supports for the student in special education classes was made part of the student's IEP, with instruction in reading and math in special education classes. The student's social skills instruction was also made part of the student's programming. (P-9; S-17).
27. The January 2019 IEP included four goals, two in mathematics, one in reading, and one in social skills. (P-9; S-17).
28. The January 2019 IEP indicated a representative from the state vocational assistance office was invited to the January 2019 IEP meeting but did not attend. (P-9; S-17).
29. As of March 2019, the student was making progress on all four IEP goals. (S-20, S-23).

30. In March 2019, the District issued its speech and language re-evaluation. The speech and language evaluation contained assessments for articulation, expressive and receptive language, and overall language functioning. The student's assessment results were all within the normal range, and evaluator concluded that the student did not require speech and language services. (S-20).
31. The District issued a revised IEP to include that results of the speech and language evaluation. (S-21).
32. The March 2019 IEP indicated a representative from the state vocational assistance office was invited to the March 2019 IEP meeting but did not attend. (S-21).
33. In April 2019, the student's physician provided a prescription for homebound instruction, for educational purposes related to autism and anxiety. The District provided homebound instruction, and the student completed the 2018-2019 school year on homebound instruction. (P-18; S-25; NT at 179-251).
34. The physician's letter was the first time that anxiety was made part of anyone's indication of the student's needs. (NT at 88-174, 179-251).
35. In April 2019, the student's IEP team met to determine the student's homebound instruction program. (S-24).
36. In May 2019, the independent evaluator issued the IEE. (P-21; S-26).
37. The private evaluator concluded that the student did not qualify for special education as a student with intellectual disability but, in accord with the student's evaluation history, recommended that the

student continue to be identified as a student with autism. (P-21;S-26).

38. Parents wanted the private evaluator to participate in any IEP meeting to discuss the IEE, but the evaluator was not available until June 2019, after the District's graduation ceremony. (NT at 88-174, 179-251, 457-498).
39. After receiving the IEE, the District issued a re-evaluation report to incorporate the findings of the IEE. (S-27).
40. The student participated in the District's graduation ceremony. (NT at 256-316, 388-441, 457-498).
41. The student's IEP team met in mid-June 2020. (S-29).
42. At the June 2019 IEP meeting and thereafter, parents were conflicted about whether the student should take a diploma and move beyond schooling at the District, or should return to the District for continued schooling. The student wished to retain the diploma and not to return to the District. (NT at 388-441, 457-498).
43. Parents filed a special education due process complaint in the summer of 2019. Ultimately, the student elected to retain the diploma, and parents withdrew that complaint. (HO-3; NT at 388-441, 457-498).⁵
44. In February 2020, parents filed the complaint which led to these proceedings. (HO-1).

⁵ This hearing officer had jurisdiction over the parents' complaint in the summer of 2019.

45. At the hearing, parent attempted to make a specific evidentiary point that the District in some way impeded the parents' ability to access vocational services through a state agency. (P-58; NT at 457-498).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. Where particular emphasis was accorded to a witness's testimony on a particular issue or event, that is pointed out above in a specific finding of fact, as applicable. It must be noted here, however, that the student testified. The student's testimony was well-received and can be easily characterized as clear, articulate, and courageous.

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 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)).

Before any provision of special education through an IEP, however, a student must be identified as a "child with a disability" under the terms of IDEIA and Chapter 14. A child with a disability is a child who, as the result of

an evaluation process, has one or more of an array of identified disabilities “and who, by reason thereof, needs special education and related services.” (34 C.F.R. §300.8(a)(1); 22 PA Code §14.102(a)(2)(ii)). A school district must identify students with potential special education needs and, through an initial evaluation and—once identified as a student with a disability—ongoing re-evaluation processes, make concrete programming decisions based on these evaluation processes and the input of parents and educators. (34 C.F.R. §§300.300 – 300.311; 22 PA Code §§14.102(a)(2)(xxiv-xxvi)).

Here, the student was appropriately identified as a student with autism. On this record, the evaluation history of the student, from early intervention through evaluation processes at the neighboring school district through the District’s evaluations through the IEE all consistently determined that the student qualified for special education as a student with autism but did not have an intellectual disability. Therefore, the District’s identification of the student as a student with autism was wholly appropriate.

The student’s IEPs were also appropriate. The student required academic supports. Those supports were provided, predominantly in mathematics but in reading as well, and the progress reporting shows consistent progress across all academic goals, resulting in significant learning.

The student’s predominant need, however, was addressing socialization and appropriate interactions with others. This need was consistently addressed in the student’s IEPs outside of the fall of 2018 when the IEP team acquiesced in the student’s request to forego these services. In this regard, there is a question as to whether, regardless of a student’s wishes, an IEP team should acquiesce a student’s request where appropriate special education programming would indicate that those wishes cannot be accommodated. On balance, however, this record supports a finding that even though the student’s IEP was revised to cease necessary social skills

instruction, the District was vigilant as to the student's needs and, when it became evident that the social skills instruction needed to be reinstated, that happened. The record, taken in its entirety, does not support a finding that that District denied the student FAPE in its handling of the student's social skills needs.

Accordingly, the District has not denied the student FAPE.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Jersey Shore Area School District did not deny the student a free appropriate public education.

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

s/ *Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire
Special Education Hearing Officer

10/28/2020