

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the 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 No. 28268-22-23

Child's Name

T.G.

Date of Birth

[redacted]

Parents

[redacted]

Counsel for Parent

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

08/31/2023

Introduction

This special education due process hearing concerns the educational rights of T.G. (“student”), a student who attended the Philadelphia Performing Arts Charter School, a school operated by String Theory Schools (“charter school”).¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)² as a student with a specific learning disability.

Through the 2022-2023 school year, as in prior school years, the student attended a nearby private school, a placement agreed upon between the parties and supported by the charter school. In the spring of 2023, the parties dispute whether the student qualified to take a diploma or met criteria for exit from special education. As a result of that dispute, on June 30, 2023, parents filed a complaint as to that issue, among others.³

In the complaint, parents also asserted pendency in the student’s last agreed-upon program and placement at the private school. (Hearing Officer Exhibit [“HO”]-1). In the response to the complaint, the charter school

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 IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§711.1-711.62 (“Chapter 711”).

³ That dispute proceeds at ODR file number 28428-23-24.

maintained that the student no longer qualified for special education. (HO-2).

Because the charter school's position is that the student took a diploma, or qualified for exit from special education, it was unclear whether a pendent placement at the private school was available pending a decision on the parents' complaint. The parties were unsuccessful in agreeing as to whether pendency should be established at the private school. This hearing process was required to make an evidence-based decision regarding the student's pendent placement as well as to determine whether the private school placement was still an available option.

For reasons set forth below, the student's pendent placement will be ordered at the private school where the student attended in the 2022-2023 school year, pending a final decision on the issues in parents' complaint.

Issue

What is the student's pendent placement,
pending a final decision on the parents' complaint?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. In the 2022-2023 school year, the student attended a private school placement which the student had attended for multiple prior school years. This private school placement was agreed upon between the parties and was supported by the charter school. (Notes of Testimony ["NT"] at 46).
2. In February 2022, the student's individualized education program ("IEP") team met for the annual revision of the student's IEP. The IEP was to be in effect until February 2023. (S-5).
3. The parents approved the notice of recommended educational placement ("NOREP") outlining that the February 2022 IEP would be implemented at the private school. (S-6; Parties' Stipulation, NT at 30-31).
4. Under the terms of the February 2022 IEP, the student received full-time learning support at the private school. (S-5; NT at 50-51; Parties' Stipulations, NT at 31).

5. In February 2023, the student's IEP team met for the annual revision of the student's IEP. The parties were unable to agree upon the student's program and placement as reflected in a NOREP.
6. Through the spring of 2023, the parties differed over whether the student would or should take a diploma or be exited from special education services, or should continue with special education programming.
7. Ultimately, on June 30, 2023, the parents filed a special education due process complaint regarding the issue of diploma-taking/exit-from-services, among other issues. The charter school responded to the complaint. (HO-1, HO-2).
8. In their complaint, parents asserted pendency in the student's current educational program. (HO-1).
9. The private school can implement the February 2022 IEP in the upcoming 2023-2024 school year. (NT at 52-53, 55).
10. The private school has space available for the student in its full-time learning support class at the campus the student had historically attended and is willing to enroll the student at that location for the 2023-2024 school year. (NT at 53-54).

11. The private school can enroll the student on a month-to-month basis at the outset of the 2023-2024 school year, pending the issuance of a final decision on the parents' complaint. (NT at 54-55).

Discussion

Under the terms of the IDEA, "during the pendency of any ...due process hearing...unless...(the school district or charter school) and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement." (34 C.F.R. §300.518(a); 22 PA Code §711.3(b)(28); Drinker v. Colonial School District, 78 F.3d 859 (3d Cir.1996)). Here, the question is not the identity of the last agreed-upon program or placement when the dispute arose—that is understood by both parties to be implementation of the February 2022 IEP at the private school placement. Instead, the question is whether the private school is available as a pendent placement for implementation of the February 2022 IEP.

Evidence at the hearing supports a course of action where the student can return to the last agreed-upon placement at the private school under the terms of the last agreed-upon IEP. This arrangement can be undertaken on a month-to-month basis, pending a decision on the parents' complaint, which is unfolding at a separate ODR file number.

Accordingly, the student's pendent placement will be ordered at the private school which the student attended in the 2022-2023 school year, under the terms of the last agreed-upon IEP, pending the issuance of a decision on the parents' complaint.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the [Charter School] shall undertake, forthwith, a process by which the student shall be enrolled for the 2023-2024 school year in the private school which the student attended in the 2022-2023 school year. The enrollment and financial arrangements for the student's attendance at the private school placement shall be on a month-to-month basis from the outset of the 2023-2024 school year. The family shall cooperate in any paperwork processing required of them for the student's enrollment at the private school.

The placement shall be at the private school campus location which the student attended in the 2022-2023 school year. The student shall be educated under the terms of the last agreed-upon IEP, from February 2022, including daily transportation to and from the student's home to this campus location.

Within 10 school days of first day of classes at the private school campus which the student will attend, the private school shall obtain new baselines for the goals in the student's February 2022 IEP so that instruction and services can account for current levels of student goal-performance.

The pendent placement at the private school campus, under the terms of the February 2022 IEP, shall continue on a month-to-month basis until the issue of the student's ongoing education, or exit-from-services, is determined through a final decision on parents' complaint, or until the parties agree otherwise through a NOREP issued by the charter school and approved by parents.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

08/31/2023