

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

Open Hearing

ODR No. 29828-23-24

Child's Name:

C.E.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

Pro Se

Local Educational Agency:

Chichester School District
401 Cherry Tree Road
Aston, PA 19014

Counsel for LEA:

Gabrielle Sereni, Esquire
32 Regency Plaza
Glen Mills, PA 19342

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

08/20/2024

Introduction

This special education due process hearing concerns the educational rights of C.E. ("student"), a student whose family resides in the Chichester School District ("District").¹ For the 2024-2025 school year, the student is transitioning from [redacted] programming to [redacted] programming. The student qualifies as a child with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a deaf child who has also been identified with autism.

The parties agree that the student should attend a specialized school for children who are deaf. The parties disagree, however, between two such specialized schools.

The District proposes that the student should attend a school for the deaf in the Commonwealth of Pennsylvania. Parents seek to have the student attend a school for the deaf in a neighboring state.

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

Issue

Which school for the deaf should the student attend
in the 2024-2025 school year?

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 §§14.101-14.162 ("Chapter 14").

Findings of Fact

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

1. The student has been in [redacted] programming with the local intermediate unit since being evaluated for [redacted] services in June 2022. (School District Exhibit ["S"]-1).
2. The student has a severe-to-profound bilateral sensorineural hearing loss and uses American Sign Language ("ASL") as a primary means of communication. (S-1).
3. In the initial evaluation report, there were indications that the student might be on the autism spectrum. (S-1).
4. In September 2022, the student began to attend the Pennsylvania School for the Deaf ("PSD") for [redacted] programming. (S-7; Notes of Testimony ["NT"] at 28-106, 296-366).
5. The student attended [redacted] programming at the PSD for the 2022-2023 and 2023-2024 school year. (NT at 28-106, 296-366).
6. In November 2023, the student was formally diagnosed with autism. (Parents Exhibit ["P"]-6).

7. In December 2023, the intermediate unit communicated with the student's parents about a potential transition to [redacted] programming. (S-4).
8. In May 2024, the student was re-evaluated. (S-7).
9. Contemporaneously with the May 2024 re-evaluation, the student's individualized education plan ("IEP") underwent its annual revision. (P-7; S-11).
10. The May 2024 IEP for [redacted] contains seven goals, including goals in occupational therapy (fine motor skills), following directions with spatial components (e.g., in, on, under, next to, etc.), answering complex W/W/W/W/H questions, two in physical therapy (posture/core-strengthening and navigating stairs), transitioning between activities, and toileting. (P-7; S-11).
11. As part of the student's need for support in toileting, the student resists using the toilet and wears pull-up diapers. (P-7; S-3, S-5, S-11).
12. As part of the transition from [redacted] programming, the District recommended that the student continue to receive school-age programming at the PSD. (NT at 28-106, 296-366).

13. The parents preferred that the student attend specialized school, the Delaware School for the Deaf (“DSD”). (NT at 107-209, 296-366).
14. In terms of the [redacted] programming that the student would receive, both schools are broadly similar. Both schools offer programming geared to deaf students, utilizing ASL as a primary means of communications. Instruction includes ASL itself and academics, delivered through ASL, aligned with age/grade-appropriate standards. Related services such as occupational therapy, physical therapy, and audiological services are available at both schools, and both schools provide a full range of instruction and support for students who are identified under IDEA in areas in addition to deafness/hard-of-hearing. (NT at 28-209).
15. Both schools would admit the student for the 2024-2025 school year and implement the May 2024 IEP from [redacted] as a comparable-services IEP. Upon gauging the student’s strengths and needs as part of working with the student in the initial weeks of the school year, each school would develop a school-age IEP. (NT at 28-209).³

³ In mid-July 2024, after parents had filed their complaint and approximately two weeks prior to the hearing session, the PSD issued a re-evaluation report. Ostensibly, that report would play a role in [redacted] programming that the PSD might recommend for the student. (S-12).

16. The District would provide transportation to either school.
(NT at 212-288).
17. The parents live in the [redacted] of Philadelphia, a handful of miles from the Pennsylvania border with Delaware.
(P-4, P-5).
18. The PSD is located in north Philadelphia, approximately 27 road miles from the student's home. (P-5).
19. The DSD is located north of Wilmington, Delaware, approximately 21 road miles from the student's home. (P-4).
20. The District administrator who testified at the hearing indicated that the District's transportation to the PSD would be direct, with no stops between the student's home and the PSD; the District's transportation to the DSD might include other students who would need to be picked up and dropped off at private schools or other educational sites along the way. (NT at 212-288).
21. Parents filed their complaint in early June 2024. (Hearing Officer Exhibit ["HO"]-1).
22. In mid-June 2024, recognizing that with the resolution period the hearing process would not resolve itself until August 2024, this hearing officer ordered the District to undertake application processes at both PSD and DSD to place itself in a

position to initiate enrollment of the student prior to the 2024-2025 school year. This order was revised by a subsequent order issued in the latter half of June to clarify that the order pertained only to application processes and not formal enrollment or expenditure of District funds. (HO-4).

23. The District complied with the order. If the student remained at the PSD, the internal process for the student to move from [redacted] programming to [redacted] programming would not be overly complicated. The District contacted the DSD and was given very general information about applying for enrollment. (S-13; NT at 28-106, 212-288).
24. At the hearing, the DSD administrator who testified outlined a much more intricate process for the student to be able to enroll at DSD, including parental consent to share records with the DSD, a formal application, and a signed memorandum of understanding between the District and the DSD outlining enrollment/payment. (NT at 107-209).
25. Both the PSD and the DSD have space available and can enroll the student for the 2024-2025 school year. (NT at 28-106, 107-209).

26. Both the PSD and the DSD commence programming for the 2024-2025 school year after the Labor Day holiday. (NT at 107-209, 366-367).

Credibility of Witnesses

All witnesses testified credibly. The testimony of each witness was accorded roughly the same degree of weight, with no one witness's testimony accorded more weight than any other.

Legal Framework

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17), the child's special education programming 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, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (Endrew 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)).

Discussion & Conclusions

Here, each placement—the PSD placement proposed by the District and the DSD placement sought by the parents—are very similar. Parents clearly have a decided preference for the DSD placement. While the testimony of each parent provided reasons for their preference for the DSD, on balance the two programs seem to be very similar. The largest difference between the two placements appears to be the time that would be involved in the transportation of the student to/from each placement each day.

Parents provided exhibits (P-4, P-5) from a mapping software program illustrating the routes between the student’s home and each school. The exhibits contain approximate time-of-travel and approximate miles. Travel times may vary, depending on variables of traffic on any given day, and therefore cannot be reliably utilized to understand the transportation involved. The road miles, however, are constant and therefore reliable; hence, those approximate miles are made part of fact-finding above. Given that, the daily transportation to/from the DSD would be a shorter linear distance than transportation to/from the PSD.

In addition, there is a qualitative component to the two transportation routes. Transportation to the PSD would be from one end of the Philadelphia metro area to the other, with transportation into the city and then across town during both the morning and afternoon rush hours. Transportation to the DSD would go toward and away from the Wilmington, Delaware metro area during transportation to/from the school, but it would almost certainly be less congested than the transportation route to the PSD. While it cannot be made definitive as a matter of fact-finding, a conclusion that, day to day, transportation to the DSD will not take as long as to the PSD is a conclusion that resonates with anyone considering the issue. This generic conclusion—that rush-hour transportation of 27 miles across Philadelphia will take longer than rush-hour transportation of 21 miles to/from Wilmington, Delaware—may be mediated somewhat by the exact routing worked out by the District as it accommodates other students’ transportation needs. But, on balance, it appears that transportation to the DSD will not take as long as transportation to the PSD.

For a student with autism, this is an important consideration. But there is a substantive issue that applies directly to the student’s needs regarding the length of time during transportation. The student begins [redacted] programming without toileting skills; indeed, on this record the student appears to be resistant to toileting. As the student’s programming works toward more independent toileting, moving away from reliance on diapering

will drive that goal. A transportation schedule that involves less time may have significance for helping the student move away from diapering (or, said conversely, transportation that takes longer may jeopardize building such skills).

In sum, then, on this record the student's programming should be implemented at the DSD, with the time involved in transportation to/from the student's home to the DSD being a substantive consideration, related to the student's unique needs, supporting such a placement.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student's placement for the 2024-2025 school year shall be at the Delaware School for the Deaf ("DSD"). On or before Thursday, August 22nd, the District's special education administration shall communicate with the DSD to obtain a detailed understanding of the application process for the student to enroll at the DSD, including obtaining the memorandum of understanding to be considered and executed by the District. While not having authority to order or to structure internal processes at the District, and thus not made an explicit aspect of this order, the District is urged to move with all speed to process necessary paperwork and execute the

memorandum of understanding so that the student can attend the DSD on the first day of student attendance.

Parents shall be copied on any email communication between the District and the DSD regarding enrollment at DSD, including record-sharing, applications, the memorandum of understanding, and programmatic intake (e.g., evaluation and/or IEP development).

On or before Thursday, August 22nd, the District's special education administration shall communicate with the District's transportation department to begin making arrangements for the student's daily transportation to/from the DSD.

Although it is almost certainly going to be an aspect of the student's ultimate programming at the DSD, the student's IEP team, when it convenes to design and implement a school-age IEP at the DSD, shall explicitly design goal-oriented support for increased independent toileting, including a functional behavior assessment of toileting behavior if the team deems such an assessment to be helpful.

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

08/20/2024