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ML / 6991/06-07 AS

Name/File Number

Xx/xx/xx

Date of Birth

2/08/06

Dates of Hearing

Closed

Type of Hearing

Parties to the Hearing:

Mr. & Mrs.

Parent(s) Name(s)

12/13/06

Date Transcript Received

Address

12/28/06

Date of Decision

Mid Valley

School District

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School District Address

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Hearing Officer Name

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I. BACKGROUND

In a due process complaint notice dated September 25, 2006, Parents alleged that Student had been evaluated at [redacted medical] Center in 2002 and diagnosed with a neurological impairment. Parents further alleged that the School District had previously provided special needs transportation for Student, and later agreed to provide transportation on the regular school bus as a less restrictive alternative. In order to assure that family members could supervise Student both while waiting for the bus in the morning and after school, the Parents requested that the School District establish a bus stop near his grandmother's home. The School District agreed to that request as a negotiated settlement of a prior due process hearing request.

Before the current school year began, however, the Parents learned that the School District's new transportation provider had eliminated Student's bus stop. When the issue of reinstating the bus stop could not be resolved between the parties, the Parents submitted their September 25 due process complaint notice.

After an early conference call to discuss the School District's request to continue the November 15, 2006 hearing date, counsel for both parties believed that the issue could be resolved. The hearing date, therefore, was postponed until December 8 to give counsel additional time to resolve what then appeared to be a single issue. Although the School District reestablished the Parents' preferred bus stop beginning November 20, 2006, the Parents declined to withdraw their hearing request. Consequently, the due process hearing was convened via telephone on December 8.

At the hearing, the Parents acknowledged that the School District had reinstated

Student's bus stop, but requested a decision ordering the School District to prepare a new IEP to add Student's neurological impairment as an identified disability and to add their preferred school bus stop as an accommodation to address Student's needs arising from that disability. They also requested reimbursement for their costs to transport Student to and from school from the first day of the current school year until his school bus stop was reinstated. The School District requested an order dismissing the complaint because it had complied with the only resolution suggested by the Parents in their due process hearing complaint notice.

II. FINDINGS OF FACT

1. Student is a xx year old child, born xx/xx/xx. He is a resident of the Mid-Valley School District. (N.T. p. 20).
2. Since the 2004/2005 school year, Student has attended a parochial school, where he is now in 4th grade. (N.T. pp. 20, 21)
3. Student receives speech and language services through Northeast Intermediate Unit pursuant to an IEP prepared by the IU to address his speech/language impairment, the only disability currently identified in accordance with Federal and State Standards. 20 U.S.C. §1401(3)(A), 34 C.F.R. §300.7(a)(1), (c)(11); 22 Pa. Code §14.102 (2)(ii); (N.T. pp. 21, 29, 30, 33).
4. In 2002, Student's Parents had him evaluated at Center, where he was diagnosed with a neurological impairment. Upon providing the School District, where Student was then enrolled, with a copy of the diagnostic report, the District began providing Student with specialized transportation via mini-van or private vehicle. (N.T. pp. 22, 23)
5. Subsequently, the Parents requested that Student be transported to school via a regular school bus, but that a stop be established near his grandmother's house to assure that he could be supervised by family members due to behaviors such as impulsivity and hyperactivity resulting from his neurological impairment. (N.T. pp. 23– 25)
6. When the School District refused the Parents' request, they initiated a due process hearing during the 2004/2005 school year. That matter was ultimately resolved without a hearing and decision when the parties entered into a written agreement which provided that a regular District school bus would pick Student up and drop him off at the Parents' requested stop. (N.T. pp. 25– 27)

7. That arrangement continued during the 2005/2006 school year, but when the Parents received the school bus schedule for the 2006/2007 school year, they noted that Student's bus stop had been eliminated by the District's new transportation carrier. (N.T. pp. 27–28)
8. Although the School District transportation coordinator believed that the issue could be resolved, the Parents were later informed that because the bus stop arrangement was not incorporated into Student's IEP, the stop could not be reestablished. (N.T. p. 28)
9. At a September 21, 2006 IEP meeting held to update Student's speech/language IEP, which a representative of the School District attended, along with Student's Parents, the IU speech therapist and a representative from Student's school, the Parents asked the School District to incorporate transportation into the IEP, but the District refused. (N.T. pp. 29– 30)
10. On September 25, 2006, the Parents filed a due process complaint notice in which they described Student's neurological impairment, and requested an order that the School District reestablish the bus stop near Student's grandmother's house, but did not request a change or addition to his disability category, or any revision to his IEP. (S-1, p. 4)
11. On November 14, 2006, the School District notified the Parents that Student's prior bus stop would be reestablished beginning November 20, 2006. (N.T. p. 34; S-2, p. 2)
12. On November 15, 2006, counsel for the School District sent a letter to counsel for the Parents requesting that the Parents withdraw the due process complaint based upon the School District's actions to resolve the only issue asserted by the Parents in the complaint notice. (N.T. p. 14; S-2, p. 1)
13. At the due process hearing, conducted via telephone on December 8, 2006, the Parents requested that the School District be ordered to incorporate the transportation/bus stop into a new IEP for Student, based upon the medically diagnosed neurological impairment, in order to assure that the bus stop will remain the same in future school years. (N.T. pp. 11, 42)
14. The Parents also requested reimbursement for the costs they incurred in transporting Student to school from the first day of the school year to November 20, 2006 at \$0.44.5/mile for a 2.5 mile round trip each school day. (N.T. pp. 11, 36, 38)
15. At the due process hearing, the School District, through counsel, requested that the September 25, 2006 due process complaint notice be dismissed based upon resolution of the only issue raised in the notice, and further requested that the additional issues raised by the Parents at the hearing not be considered because they were not included in the complaint notice. (N.T. pp. 12 – 14, 35)

III. ISSUES

1. Should the Mid Valley School District be required to prepare an IEP for Student based upon a medically diagnosed neurological impairment and include in the IEP a requirement that his school bus stop remain near his grandmother's home?
2. Should the Mid Valley School District be required to reimburse Student's Parents for their costs incurred for transporting him to school from the first day of the 2006/2007 school year until November 20, 2006?
3. Should the Parents' due process complaint notice be dismissed due to resolution of the only issue explicitly raised in the complaint notice or otherwise?

IV. DISCUSSION AND CONCLUSIONS OF LAW

The School District based its request to dismiss this matter entirely on procedural grounds relating to the due process hearing complaint notice, contending that a hearing officer may not consider issues not explicitly raised in the complaint notice. *See*, 20 U.S.C.

§1415(f)(3)(b); *In Re: The Educational Assignment of A.P.*, Special Education Opinion No. 1744 (June 30, 2006). Although that is certainly true, in this case there are also more basic, and perhaps more important, procedural/substantive reasons why the Parents' additional issues, raised for the first time at the due process hearing on December 8, 2006, cannot presently be considered.

As noted on the record (N.T. pp. 43 – 46), the questions whether this Student has a neurological impairment which should be recognized by the School District as a disability, and whether by reason thereof, he requires special education and related services under IDEA, are not yet ready for determination in a due process hearing because none of the usual –and required– IDEA procedures have yet been invoked to make those determinations.

In accordance with the statute [20 U.S.C. §1401(14) and §1414(d)(1)(a)], an IEP is “a

written statement...that is developed, reviewed and revised in accordance with [20 U.S.C. §1414].” Under §1414(a)(1)(A), the School District is explicitly not permitted to provide special education or related services to a “child with a disability” without conducting “ a full and individual initial evaluation in accordance with this paragraph and subsection (b)....”

Consequently, even if the parties were to agree that Student is a “child with a disability,” such agreement would not abrogate the need for an evaluation, or the requirements, in terms of both process and contents, for developing an appropriate IEP as set forth in 20 U.S.C. §1414(d).

At the due process hearing in this matter, testimony by the Parent revealed that the neurological impairment underlying the Parents’ request for transportation accommodations has never been identified as a basis for Student’s eligibility for either specially designed instruction or related services in accordance with IDEA procedures. Student’s IEP addresses only an identified speech/language disability for which he receives IDEA services through the local IU. In the absence of a disability identified in accordance with IDEA procedures, there is no legally cognizable basis under IDEA for ordering the School District to develop an IEP for Student based upon a medical diagnosis of a neurological impairment, or to provide any services based upon that diagnosis. Parents’ request that the School District be ordered to provide a new IEP for Student and/or to add transportation accommodations to his existing IEP based upon the medical diagnosis of neurological impairment must, therefore, be denied for lack of jurisdiction on multiple procedural and substantive grounds, including the absence of this issue from the due process hearing complaint notice. It must be noted, however, that had such issues been explicitly raised in the complaint notice, the outcome would have been the same, based upon the foregoing discussion of IDEA procedural requirements relating to identifying a “child with a disability”

and developing an IEP.

Since the School District had no obligation under IDEA to provide transportation accommodations for Student, it follows that there is likewise no basis—and, indeed, no jurisdiction, for ordering the School District to reimburse the Parents for their costs to transport Student to school until November 20.¹

Finally, the School District is entitled to have the due process complaint notice dismissed, since there is no issue in dispute between these parties which may be determined in the context of a special education due process hearing at this time.

V. SUMMARY

Based upon the facts of record adduced in a telephone hearing on December 8, 2006, and the applicable law, the School District's request to dismiss the due process hearing request will be granted and the Parents' requests for reimbursement of transportation costs and for an order requiring the School District to provide an IEP for Student based upon a medically diagnosed neurological impairment will be denied.

¹ It should also be noted that nothing prevents the School District from acknowledging that Student has behavioral issues for which he requires supervision, and which can be addressed in the context of providing transportation to and from school with special accommodations, such as a special bus stop, whether or not he is ultimately determined to be a "child with a disability" under the IDEA. The Parents are simply not entitled to an IEP until and unless Student is evaluated in accordance with IDEA procedures and found to be eligible for special education and related services through that process.

VI. ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Mid Valley School District is required to take no action with respect to the matters raised by Student's Parents at the December 8, 2006 due process hearing in this matter.

It is **FURTHER ORDERED** that the Parents' requests for reimbursement of transportation costs and for an IEP based upon a medical diagnosis of neurological impairment, and which includes accommodations for such impairment, are **DENIED**.

It is **FURTHER ORDERED** that this matter is **DISMISSED**.

Dated: 12/28/06

Anne L. Carroll

Anne L. Carroll, Esq., Hearing Officer