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## Pennsylvania Special Education Hearing Officer

### DECISION

Child's Name: KP

Date of Birth: xx/xx/xx

Date of Hearing:

11-06-07

OPEN HEARING

ODR #8098/07-08 LS

Parties to the Hearing:

Mr. and Ms.

Juniata County School District  
RR 4 Box 259  
Mifflintown, PA 17059-9806

Date Record Closed:

Date of Decision:

Hearing Officer:  
Jr., Esquire

Representative:

Pro Se

Scott C. Etter, Esquire  
720 South Atherton St.  
State College, PA 16801

November 16, 2007

December 1, 2007

William F. Culleton,

## INTRODUCTION

Student is an xx year old eligible student of the Juniata County School District (District). (NT 17-2 to 7, 24-7 to 8.) She is identified with Multiple Disabilities (Mental Retardation and Other Health Impairment), due to a diagnosis of partial Agenesis of the Corpus Collosum. (S-2 p. 30.)

The District requested due process to resolve a question whether or not it had provided training in public transportation that was reasonably calculated to provide meaningful educational progress. The District also seeks a ruling that its offer of such training meets its obligations under a Compensatory Education Agreement. (NT 21-14 TO 25.)

Mr. and Ms. (Parents) questioned the Hearing Officer's jurisdiction to make any finding with regard to compliance with a compensatory education agreement resulting from corrective action plan ordered by a Compliance Officer. The Parents also assert that the District's offer did not provide a FAPE.

## ISSUES

1. Does the hearing officer have jurisdiction to determine whether or not the District complied with the Compensatory Education Agreement dated June 4, 2007?
2. Did the District's offer - of either a taxi, a limousine service, or district transportation as part of a training exercise involving public transportation - comply with the Agreement?
3. Was the District's offer - of either a taxi, a limousine service, or district transportation as part of a training exercise involving public transportation - reasonably calculated to provide meaningful educational opportunity?
4. Was the District's proposed IEP with transition service utilizing District transportation to teach mobility skills reasonably calculated to provide meaningful educational opportunity?

## PROCEDURAL HISTORY

The Student has been receiving special education services since 1997, when she was in Kindergarten. (S-2.) In January 2007, a new IEP specified that the District would provide transition services including accessing and utilizing public transportation. (S-3 p. 11.) In April 2007, the Parents filed a complaint with the Bureau of Special Education for noncompliance with this provision of the IEP. (P-26.) In an amended CIR dated June 11, 2007, the Special Education Adviser ordered compensatory education. (P-26.) The team completed and signed a Compensatory Education Agreement. (P-26.) On August 20, 2007, the Parents filed another complaint with BSE alleging noncompliance with the Compensatory Education Agreement. (P-26.) On September 7, 2007, the District filed its request for due process. The hearing was held on November 6, 2007. Written summations and related correspondence were received on November 16, 2007, and the record closed on that date.

## FINDINGS OF FACT

### COMPLIANCE WITH COMPENSATORY EDUCATION AGREEMENT

1. A January 30, 2007 IEP required the District to provide the Student with training to help the Student to learn how to "access and utilize public transportation ... ." (S-3.)
2. This educational service was in support of the Student's need to learn independent living skills. (S-3 p. 11.)
3. The Special Education Adviser found that the District failed to provide such training, and ordered the District to convene an IEP team meeting and that the IEP team complete a form entitled "Compensatory Education Agreement" (Agreement) enclosed with the order. (P-26.)
4. The order provided for verification of compliance by submission of the completed Agreement, the IEP, and the NOREP. (P-26.)

5. The Agreement form contained boilerplate language providing that the details of the compensatory education would be determined by the IEP team "based on the Student's needs" and that any disputes concerning those details would be subject to mediation or a hearing. (S-5.)
6. The parties signed the Agreement form on June 4, 2007. (S-5.)
7. The Parents signed a NOREP dated June 4, 2007, noting their disagreement and requesting mediation. (S-6.)
8. The Parents subsequently requested a BSE investigation. (P- 26.)
9. The District declined to participate in mediation and instead requested due process, after the Parents filed a complaint with the BSE alleging failure to comply with the Agreement. (P-22, 23, 26.)
10. The Adviser held the Parents' request for investigation in abeyance pending the outcome of this due process hearing. (P-24, 26.)
11. The Compensatory Education Agreement required the District to provide training to the Student in utilizing bus services. (S-5.)
12. The Compensatory Education Agreement did not require the District to provide training to the Student in utilizing bus services from the inception of the trip or during every minute of the trip. (NT 95-3 to 97-10, 100-12 to 22; S-5.)
13. The compensatory Education Agreement did not require the District to provide an overnight stay at State College. (S-5.)
14. There is no public bus service that would permit the Student to travel by bus to State College and return on the same day. (NT 44-12 to 24, 45-12 to 46-23.)

15. The District offered to provide a trip to State College that would involve the use of a bus and bus transfer in the town, but would begin with a ride to State College by either a taxi, an automobile and driver provided by a private transportation agency, or the private automobile of the teacher. (NT 49-4 to 51-2, 94-12 to 24.)
16. The Parents rejected these alternatives and insisted that the trip begin by bus and include an overnight stay in State College. (NT 51-3 to 53-21; S-9, 10, 11, 12.)
17. The alternatives presented by the District would have provided a meaningful opportunity for educational benefit addressing the Student's need for training in the utilization of public transportation. (NT 53-22 to 54-14, 102-3 to 104-10.)

ADEQUACY OF THE TRANSPORTATION TRAINING OFFERED IN THE  
AUGUST 2007 IEP

18. The District offered transportation training in the August 2007 draft IEP discussed with the Parents in the IEP team meeting on August 21, 2007. (NT 55-4 to 56-6; S-13.)
19. The IEP offered by the District would have simulated the process of utilizing the telephone to schedule a ride with a taxi or ride service, rather than with a bus. It would have utilized vehicles provided by the District to accomplish this training, in coordination with classroom exercises. (S-13 p. 13.)
20. The proposed IEP would have provided for one trip per semester on District provided transportation. (NT 64-3 to 25.)
21. The Parents did not accept the proposed IEP because it did not provide for transportation training on public conveyances. (NT 55-4 to 56-6; S-15, 16.)

22. The Student could have been included in trips as often as once per month. (NT 64-8 to 19.)
23. The Student due to her disability has needs in generalization from one activity to another of the same type. (NT 70-22 to 71-3, 104-11 to 105-11.)
24. The offered program would have provided opportunities for repetition of basic skills needed to utilize public transportation in the local area where the Student lives. (NT 70-22 to 71-25, 72-17 to 23, 105-12 to 106-17.)
25. The offered services would have provided sufficient repetition to allow the Student to generalize what she had learned so as to receive meaningful educational benefit for purposes of training in independent living skills. (NT 109-10 to 110-7.)
26. The offered services would have provided more opportunities for the Student to learn how to negotiate the requirements and obstacles presented by public transportation available in the area in which the Student lives, as contrasted with exercises based upon using public bus services, which are limited to one bus line that runs through the area twice per day. (NT 56-12 to 25, 58-5 to 13, 82-23 to 83-10.)

## DISCUSSION AND CONCLUSIONS OF LAW

### JURISDICTION

The District requested the hearing officer to decide two issues: first, whether or not the District complied with the Compensatory Education Agreement by offering to provide the Student with a trip to State College utilizing one of three alternative forms of transportation, but not utilizing the bus or offering to provide an overnight stay; second, whether or not the District provided an offer of FAPE in its latest draft IEP by providing for district transportation for training the Student to access public transportation. The Parents challenged the hearing

officer's jurisdiction to decide the first issue. The hearing officer concludes that he has jurisdiction.

The IDEA requires states to provide "an opportunity for any party to present a complaint ... with respect to any matter relating to ... the provision of a free appropriate public education ... ." 20 U.S.C. §1415(b)(6)(A). While the provision of compensatory education is not per se the provision of FAPE, it seems clear that it is a "matter relating to" the provision of FAPE. Thus, the hearing officer has jurisdiction of the issue.

The question is whether or not the filing of a complaint with the BSE divests the hearing officer of jurisdiction. Here, the BSE acquired jurisdiction first. (FF 8,9.) However, the IDEA regulations provide that where due process has been requested also, an investigation of this nature is held in abeyance pending the due process decision. 20 U.S.C. §300.152(c). This was done in the present matter. (FF 10.)

Moreover, the CIR and its corrective action order did not specify the operational details of the transportation training to be offered pursuant to that order, although it did specify the educational activities that the Student should be required to perform. (FF 6, 11 to 13.) The order required the District to schedule an IEP team meeting, fill out the attached form of Compensatory Education Agreement, and verify compliance by submitting the Agreement, IEP and NOREP to the Adviser. (FF 3.) Thus, the issue raised in this due process request - whether or not the District was obligated to provide a trip that would be by bus at its inception, was not decided or encompassed by the CIR corrective action order.

Rather, the CIR required the parties to devise compensatory education through the IEP process. (FF 3.) The form Compensatory Education Agreement provided that the Agreement be attached to the IEP, and that any disputes be resolved through either mediation or the due process hearing process. (FF 5.) As noted, the Adviser has deferred decision until the present due process procedure is completed. (FF 10.) Notably, the Parents, when they disagreed with the NOREP, initially requested mediation, not a BSE investigation (the District declined to participate.) (FF 7, 9.)

Based upon these facts, the hearing officer concludes that BSE has not exercised jurisdiction over this dispute. In its written forms setting forth the terms of the corrective action order requiring compensatory education, it did not purport to determine the details of the public

transportation to be provided, and the forms refer disputes to due process, not to further action by the Adviser. Moreover, its Adviser has in fact deferred upon receipt of the Parents' complaint. Therefore, the BSE has not divested the hearing officer of jurisdiction on the facts of this matter.

#### COMPLIANCE WITH COMPENSATORY EDUCATION AGREEMENT

The hearing officer concludes that the District has complied with the Agreement. The essence of the Agreement is set forth in handwriting at the bottom of the Agreement form. (FF 11.) The terms chosen are not consistent regarding the exact nature of the public carrier to be utilized throughout each of the two trips provided in the document. The first trip is designated as a "bus" trip. However, the second trip is not so designated - rather it is called "State College public transportation with one transfer." Nevertheless, taken as a whole, the document requires that each trip provide training in using a bus; the reference to "transfer" in the designation of the second trip clearly indicates the use of a bus. (FF 11.)

However, the document does not bind the District to utilizing only busses during the trip or to starting the trip on a bus. (FF 12.) Nowhere does it state what kind of vehicle is to be used at the trip's beginning or end, or otherwise require the District to utilize a bus to start the trip. Moreover, nowhere does the language attempt to designate how every minute of the trip will be utilized.

There would have been no educational reason to micromanage the trips to that level of precision. Obviously, the amount of time on a bus was not the point of the agreement; the point was to teach the Student to schedule, plan, call and make necessary arrangements, use a bus transfer, and actually experience riding on a public bus. (FF 17.)

The District's alternative plans would have provided the Student with the opportunity to experience all of these things to a meaningful extent. (FF 17.) Thus, as an attachment to an IEP, the alternatives would have been sufficient to provide the Student with compensatory education as required by the CIR and the Agreement.

The Parents couch their argument in this case as being "about taking responsibility for wrongful actions." (HO-2



p. 1.)<sup>1</sup> This administrative hearing officer does not view it that way. It is not the function of these hearings to impose a moral mandate on the parties; the scope of these hearings is much more limited because of its administrative nature tied closely to the need for objective, impartial fact finding. The purpose is simply to determine whether or not the District has complied in fact with the obligations that are the subject of the hearing.

The Parents argue that even District personnel contemplated that the second trip would be by bus. There is some support for this argument in the record, but it is beside the point. The point is that the Student would have received meaningful training in taking a bus even with the District's alternatives for the inception of the trip. (FF 15, 17.) Again, the amount of time spent riding in a bus was not the heart of the Agreement. The essence was the education of the Student. The District complied with the essential requirement that it educate the Student in how to use public busses to get from one point to another.

The Parents raise the argument that the changes should have been made in the context of an IEP meeting. (HO-2.) The hearing officer knows of no authority that the IDEA requires an IEP meeting to change every detail of a training trip in the transitional services portion of an IEP. Here, such a meeting might have delayed the second trip beyond the deadline of August 22, 2007 specified in the CIR. Thus, in this case, even if the changes were required to be made in the context of an IEP meeting, the important thing was to teach the Student as soon as possible in compliance with the CIR order. This the District tried to do. Their failure to bring the matter to an IEP team meeting is not a denial of FAPE.

The Parents argue that the purpose of the trips was to teach the Student to be independent, and that the use of a ride service or the teacher's car would not support that goal. (HO-2.) While the hearing officer understands that the trips were aimed at developing the Student's independence, he concludes that the alternatives proposed by the District were reasonably directed toward that goal. The fact that the Student would not be exercising completely independent travel on the State College trip does not mean that the trip would fail to provide meaningful opportunity to address the need to learn independent living skills.

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<sup>1</sup> The hearing officer appends two exhibits of his own. HO-1 is the District's written summation, and HO-2 is the Parents' written summation.

The Agreement itself provided that the trip would not be truly independent; it provided for the Student to be accompanied by the teacher. Thus, the trip was intended to provide meaningful steps toward the goal of independence, and the fact that the initial ride to State College would not be on a bus is irrelevant to that purpose. Indeed, the taxi offered by the District is a mode of transportation used by independent people, and even a ride service can be for independent people. The hearing officer rejects the Parents' argument because it does not logically compel the conclusion they seek.

The Parents seek to impugn the District's witnesses' veracity, asserting contradictions in their testimony as well as referring to evidence not of record. The hearing officer, on the contrary, finds the District's witnesses to have been credible. Matters not of record will not be considered, and the alleged contradictions go to semantic distinctions that are not material to the issues in this case.

The Parents argue that the District should have known about the problem with the bus schedule to State College, and should not have promised what they could not deliver. Be that as it may, the District did not promise perfect attainment of whatever may have been contemplated at the time the Agreement was signed. No one can promise that there will be no problems with the details of a plan; it is unreasonable to insist upon perfection. The hearing officer finds that the Agreement required adequate training in utilizing public transportation, and that is what the District was prepared to deliver.

#### ADEQUACY OF THE TRANSPORTATION TRAINING OFFERED IN THE AUGUST 2007 IEP

The District requested a decision on the adequacy of their offer in the proposed IEP dated August 21, 2007, specifically with regard to the transportation training in the section on transitional services. (S-13 p. 13.) The hearing officer finds that this provision of the IEP is reasonably calculated to provide meaningful educational benefit to the Student.

The District declined to utilize public transportation in its plan to train the Student in transportation skills. (FF 18, 19, 21.) Instead, the plan was to provide classroom simulation of transportation problems in which the Student would have to call a transportation office of

the District and plan a trip that would utilize a District van. (FF 19.) The District's witnesses testified that this plan would offer more opportunities to practice relevant skills than a plan based upon utilization of scarce public transportation options in the local area where the Student lives. (FF 24, 26.)

The Parents objected because the plan did not utilize public transportation. (FF 21.) They point out also that the plan called for only two trips per year - one per semester. (FF 20, 22.) They argue that there is no goal for transportation training, ostensibly because there is no educational need; yet, the transition services section of the IEP provides for transportation services, an anomaly according to the Parents.

The hearing officer will not impose on the District either his or the Parents' views of how to provide this service to the Student. There was no expert testimony contradicting the District's witnesses' testimony that the plan would be superior to any plan based upon taking trips on public transportation. The hearing officer defers to the District's witnesses' expertise in this regard. (FF 23 to 26.)

While the sheer amount of offered services - limited to two trips per year - seems ungenerous to this lay person, there is no basis in the record to conclude that this degree of actual traveling, when added to the use of classroom simulation, will fall below the "floor of opportunity" that the IDEA requires: that the offer be reasonably calculated to confer meaningful educational benefit on the Student. Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982); L. E. v. Ramsey Bd. of Educ., 435 F.3d 384, 390 (3d Cir. 2006) ("The education provided must be sufficient to confer some educational benefit upon the handicapped child"). The standard of the law is not that the Student's abilities be maximized, but that "some" educational benefit be conveyed - enough to be "meaningful." There is no basis on this record to find that the District's offer would not convey such a level of benefit.

ORDER

1. The hearing officer has jurisdiction to determine whether or not the District complied with the Compensatory Education Agreement dated June 4, 2007.
2. The District's offer - of either a taxi, a limousine service, or district transportation as part of a training exercise involving public transportation - complied with the Agreement.
3. The District's offer - of either a taxi, a limousine service, or district transportation as part of a training exercise involving public transportation - was reasonably calculated to provide meaningful educational opportunity.
4. The District's proposed IEP with transition service utilizing District transportation to teach mobility skills was reasonably calculated to provide meaningful educational opportunity, and thus provided a free appropriate public education.

December 1, 2007

*William F. Culleton, Jr.*  
HEARING OFFICER