

*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 Hearing Officer

## DECISION

Child's Name: RM

Date of Birth: xx/xx/xxxx

Dates of Hearing:  
December 1, 2008, December 30, 2008

### **CLOSED HEARING**

ODR Case # 9138-08-09-KE

Parties to the Hearing:

Representative:

Mr. StudentHaslett  
Director of Special Education  
Moon Area School District  
8353 University Boulevard  
Moon Township, PA 15108

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Date Record Closed:

January 19, 2009

Date of Decision:

February 3, 2009

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student is a 21-year old student residing in the Moon Area School District (“District”) who has been identified as a child with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup> and Chapter 14 of the Pennsylvania education regulations (“Chapter 14”)<sup>2</sup>. The student’s parents and the District disagree over the necessity to provide special education and related services given that the student has reached the age of 21.

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

## **ISSUES**

Must the District continue to provide special education and related services for the student after the student has reached the age of 21?

## **FINDINGS OF FACT**<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 22 PA Code §§14.101-14.163.

<sup>3</sup> The parties have drafted, jointly offered, and stipulated to, these findings of fact. Notes of Testimony from 12/30/08 session (“NT”) at pp. 7-8. Furthermore, to clarify the nature of these proceedings, the parties agreed that hearing sessions were unnecessary

1. Student was born on [Redacted].

[Redacted].

2. Student resides with his parents who live within geographic boundaries of the District. Under the IDEIA, the District is Student's local education agency.
3. Student has been identified as a student with an eligible disability under the IDEIA and receives educational services from the District.
4. Student has been diagnosed with CHARGE syndrome. CHARGE Syndrome is a rare genetic condition that involves many different physical and mental impairments.
5. Student has been identified as having significant auditory impairments, limited functional vision, severely limited communication skills, and severe cognitive and developmental delays. The parties stipulate to the admissibility of Student's re-evaluation report of May 16, 2007 for additional information regarding the scope of Student's disability. (Joint Exhibit ("J")-1).
6. Due to his disability, Student has attended the [Redacted APS] since preschool.
7. Currently, Student attends the [Redacted APS]. The Education Center is an approved private school in the Commonwealth of Pennsylvania that serves children with autism, cerebral palsy, neurological impairments, and other developmental disabilities.
8. During the school year, Student attends the [Redacted APS] through his individualized education plan ("IEP") developed by his IEP team. The parties stipulate to the admissibility of Student's most recent IEP, dated April 30, 2008. (J-2).
9. After the 2007-2008 school year, Student received extended school year services at the [Redacted APS] from June 30 to July 25, 2008. The parties stipulate to the admissibility of the notice of recommended educational placement, dated March 19, 2008. (J-3).

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and that a decision would be rendered based on stipulated findings of fact and legal briefs by the parties.

10. The parties stipulate that the [Redacted APS] has provided, does provide, and would continue to provide Student with a free appropriate public education under the IDEIA. The parties stipulate that, but for Student's age, there would be no dispute between them regarding Student's educational placement.
11. The District's school term began September 2, 2008.
12. On June 13, 2008, the program director of the [Redacted APS] issued a summary of student performance to the parents. The summary indicated that Student would had graduated or was beyond school-age eligibility.
13. Parents believe Student is entitled to an additional year of education for the 2008-2009 school year.
14. The District's position is that Student is not entitled to an additional year of eligibility because his 21<sup>st</sup> birthday fell before the beginning of the 2008-2009 school year. (NT at 11)

## **DISCUSSION AND CONCLUSIONS OF LAW**

The provision of special education and related services for students with disabilities is addressed in federal law (IDEIA) and Pennsylvania law (Chapter 14).<sup>4</sup> The IDEIA requires that "(a) free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive,....".<sup>5</sup> This provision of the IDEIA is explicitly adopted under Pennsylvania's Chapter 14 regulations.<sup>6</sup>

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<sup>4</sup> 34 C.F.R. §§300.1-300.818; 22 PA Code §14.101-14.163.

<sup>5</sup> 34 C.F.R. §300.101(a).

<sup>6</sup> 22 PA Code §14.102(a)(2)(x).

In the parties' briefs, neither party was able to cite to binding authority regarding the age-eligibility provisions of the IDEIA.<sup>7</sup> Instead, the parties put forth arguments in terms of statutory construction.

The District argues that the words "between the ages of 3 and 21, inclusive" should have their plain meaning under the Pennsylvania Statutory Construction Act of 1972 ("Statutory Construction Act")<sup>8</sup>, namely that the District's obligation to provide educational services to the student terminates at age 21. Furthermore, the District points out that the Pennsylvania School Code of 1949 ("School Code") explicitly speaks to age ranges for attendance in Pennsylvania public schools:

"(e)very child being a resident of any school district between the ages of six (6) and twenty-one (21) may attend school in his district....Notwithstanding any other provisions of law to the contrary a child who attains the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his District free of charge until the end of the school term."<sup>9</sup>

"School term" is defined elsewhere in the School Code as "the period of time elapsing between the opening of the public schools in the fall of one

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<sup>7</sup> Parents cite to St. Johnsbury Academy v. D.H., 240 F.3d 163 (2d Cir. 2001) and C.T. v. Verona Bd. of Educ., 464 F.Supp.2d 293 (D.N.J. 2006), but neither of these cases is persuasive.

<sup>8</sup> 1 Pa.C.S.A. §1921(b).

<sup>9</sup> 24 P.S. §13-1301.

year and the closing of the public schools in the spring of the following year.”<sup>10</sup>

In sum, then, the District argues that since the student turned 21 before the 2008-2009 school term began the student is not entitled to educational services from the District under the plain meaning of the applicable statutory language.

Parents counter with various arguments, the most pointed of which is that the Statutory Construction Act defines “year” as “a calendar year unless the context clearly indicates otherwise”.<sup>11</sup> It further argues that the Pennsylvania Superior Court has instructed that the plain meaning of “calendar year” is a stretch of 365 calendar days.<sup>12</sup> Thus, the parents argue that an accurate interpretation of the School Code’s age-attendance parameters at §13-1301 dictate that a student is eligible to attend public schools for twenty-one 365 day periods, in effect through the day before a student’s 22<sup>nd</sup> birthday.

This argument fails for two reasons. First, this hearing officer’s reading of Habecker indicates that the Pennsylvania Superior Court did not look favorably upon the substitution of “year” as a period of 365 consecutive days for “calendar year”, generally indicating a period from January 1<sup>st</sup> through December 31<sup>st</sup>.<sup>13</sup> Second, and more importantly, the context of the statutory provisions clearly indicates that the actual birth

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<sup>10</sup> Id. at §1-102.

<sup>11</sup> 1 Pa.C.S.A. §1991.

<sup>12</sup> Habecker v. Nationwide Ins. Co., 445 A.2d 1222 (Pa. Super. 1982).

<sup>13</sup> Id. at 1227.

date of the student is the context of construing the word “years”. Again, federal law mandates “(a) free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive,....”.<sup>14</sup> While this statutory provision does not speak to defining “age 21”, it does speak in detail to defining “age 3” as “the child’s third birthday”.<sup>15</sup> Likewise, the operative language in the School Code to define ages of attendance states “a child *who attains the age of twenty-one (21) years* during the school term”.<sup>16</sup> The term “years”, then, seems to be clearly defined in the context of these statutory provisions as a period of time marked by a student’s birthday.

Furthermore, the Pennsylvania Special Education Appeals Panel (“Panel”) has considered the question of the eligibility of a student for special education and related services when that student has turned 21 over the summer before the school term begins.<sup>17</sup> In that case, a student turned 21 on August 14<sup>th</sup>, before the school term began. The Panel affirmed the hearing officer’s finding that the student no longer qualified for special education and related services as of his 21<sup>st</sup> birthday. The Panel held the same statutory provisions being considered in the instant case apply only to the student’s 21<sup>st</sup> birthday “since, technically, after that he or she is ‘aged’ more than 21 years. The legal obligation,

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<sup>14</sup> 34 C.F.R. §300.101(a).

<sup>15</sup> *Id.* at 300.101(b).

<sup>16</sup> 24 P.S. §13-1301 (emphasis added).

<sup>17</sup> Pennsylvania Special Education Opinion 1246 (May 2002). While the opinion was rendered before the passage of the IDEIA in 2004, the statutory language under consideration is identical to the previous controlling statute, the Individuals with Disabilities in Education Act of 1997.

therefore, since the statute does not extend it beyond age 21, ends on the student's 21<sup>st</sup> birthday".<sup>18</sup>

Therefore, it is the finding of this hearing officer that the student's entitlement to special education and related services from the District ended on July 12, 2008, the student's 21<sup>st</sup> birthday.

### **CONCLUSION**

The student turned 21 on xx/xx/xxxx, before the beginning of the 2008-2009 school term. Under the terms of federal and Pennsylvania special education laws, as well as the terms of the Pennsylvania School Code, the student is not entitled to special education and related services from the District as of this date.

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### **ORDER**

In accord with the findings of fact and conclusions of law set forth above, the District is not required to provide special education and related services to the student for the 2008-2009 school year.

*Jake McElligott, Esquire*

Jake McElligott, Esquire

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<sup>18</sup> Id. at page 7.



Special Education Hearing Officer

February 3, 2009