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Pennsylvania Special Education Hearing Officer

DECISION

Child's Name: KL

Date of Birth: xx/xx/xx

Date of Hearing: November 6, 2008

CLOSED HEARING

ODR No. 9253/08-09 KE

Parties to the Hearing:

Parents:

School District:
James Dewitt, Supervisor of Special Education
West Chester Area School District
829 Paoli Pike
West Chester, PA 19380-4551

Representative:

Pro Se

School District Attorney:
David T. Painter, Esq.
Sweet, Stevens, Katz & Williams
331 Butler Avenue
P.O. Box 5069
New Britain, PA 18901-5069

Date Record Closed: November 14, 2008

Date of Decision: November 22, 2008

Hearing Officer: Daniel J. Myers

INTRODUCTION AND PROCEDURAL HISTORY

Student (Student)¹ is a teen-age high school student attending the [REDACTED] Charter School (Charter School) located more than 10 miles outside the borders of the West Chester Area School District (School District), in which Student lives. Student asks me to order the School District to provide transportation for Student to and from the Charter School. For the reasons described below, I find for the School District.

ISSUE

Is School District required to transport Student to and from Student's home and the Charter School?

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a teen aged high school student who has been diagnosed with Asperger Syndrome, anxiety and congenital heart disease. (N.T. 23, 31; S1,p.2)² Student lives within the boundaries of the School District and has attended the School District's public schools since second grade. (N.T. 31) When Student was younger, Student took a small, special bus to school, but as Student got older Student began taking a regular school bus with typical,

¹ All future references to Student will be generic and gender-neutral. These impersonal references to Student are not intended to be disrespectful but rather to respect his/her privacy.

² References to "P", "S" and "HO" are to the Parent, School District and Hearing Officer Exhibits, respectively. References to "N.T." are to the transcript of the November 6, 2008 hearing.

- nondisabled peers to the School District's schools. (N.T. 45-46) Student's educational difficulties are in the classroom, and not on the bus. (N.T. 46)
2. For the 2008-2009 school year, Student enrolled at the Charter School, which is located at [REDACTED]. (32; S1,pp.1-2; S9) Student's parents decided to enroll Student in the Charter School because they were dissatisfied with Student's educational progress at the School District. (N.T. 24) So far, Student seems to be doing better in the Charter School's smaller (5-10 students) classes and in the Charter School's roundtable classroom environments. (N.T. 24) Currently, the Charter School is implementing Student's School District IEP until the Charter School develops a new IEP in December. (N.T. 33, 34)
 3. All parties agree that, regardless of which route is taken, the Charter School is located more than 10 miles outside School District boundaries, and is approximately 15 miles from Student's house as well as from School District boundaries. (N.T. 32, 41, 48; S2; S8; S11) The Charter School does not provide its own transportation; most of Charter School's students are transported by their school districts of residence. (N.T. 47) After enrolling Student in the Charter School, Student's parents asked the School District to transport Student to and from the Charter School, which request was denied. (N.T. 25)
 4. On September 10, 2008, Student's parent filed a due process hearing request seeking School District transportation of Student to and from the Charter School. (N.T. 26; S1) On September 17, 2008, the parties conducted an unsuccessful resolution meeting. (N.T. 33-34; S3)

5. On September 29, 2008, I rejected the School District's challenge to the sufficiency of Student's complaint. (HO2; S4) I concluded that the complaint does meet the Individuals with Disabilities Education Improvement Act's (IDEIA's) relatively minimal pleading sufficiency requirements and, therefore, a record must be developed before I can render a decision on the merits of the complaint. (HO2; S4)
6. I conducted a due process hearing on November 6, 2008. School District exhibits S1-S11, and Hearing Officer exhibits HO1 and HO2 were admitted into the record. (N.T. 43) Student's exhibits P1, P2 and P3 were not admitted into the record. (N.T. 22) This is because I determined that those exhibits, concerning Student's educational experiences at the School District in past years, were not relevant to the issue in this case. (P1; P2; P3; N.T. 22, 35-36, 42, 50) Parent's request to present Student's former School District personal care assistant was denied for the same reason. (N.T. 36-37) The record in this case was closed on November 14, 2008 upon my receipt of the written transcript of the November 6, 2008 hearing.

DISCUSSION AND CONCLUSIONS OF LAW

Parents may request an impartial due process hearing if they disagree with either their school district's, or their charter school's, provision of a free and appropriate public education (FAPE). 22 Pa. Code 14.162(a); 22 Pa. Code 711.62 The United States Supreme Court has held that in a special education administrative hearing the burden of persuasion (which is only one element of the larger burden of proof) is upon the party seeking relief, whether that party is the disabled child or the school district. Schaffer v.

Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); In Re a Student in the Ambridge Area School District, Special Education Opinion No. 1763 (2006)

There are two legal bases for publicly-funded transportation of charter school students in Pennsylvania. First, IDEIA and its implementing state and federal regulations require that children with disabilities receive special educational instruction and "related services" designed to meet the child's unique needs. Transportation qualifies as a "related service" if it is necessary to some integral part of the student's special educational needs. 34 C.F.R. §300.34; 22 Pa. Code §14.102(a)(2)(vii); North Allegheny School District v. Gregory P., 687 A.2d 37, 25 IDELR 297 (Pa. Cmwlth. 1996); Alamo Heights Independent School District v. State Board of Education 790 F.2d 1153 (5th Cir. 1986); In Re a Student in the North Penn School District, Pa. Spec. Ed. Op. 1798 (2007) Even charter schools are required to provide transportation that qualifies as a "related service." 22 Pa. Code §711.42(b) Second, even when transportation does not qualify as a "related service," a child with disabilities is entitled to transportation by his/her public school districts to his/her charter school if the charter school is located outside school district boundaries at a distance not exceeding 10 miles by the nearest public highway. 22 Pa. Code §711.42(a)

In this case, Student's transportation to Charter School does not qualify as a "related service" because it is not necessary to some integral part of Student's special educational needs. Student's educational difficulties are in the classroom, and not on the bus. (N.T. 46) When attending public school, Student took a regular school bus with typical, nondisabled peers. (N.T. 45-46) Thus, Student has no special education need specifically that requires special transportation that might qualify as a "related service."

Accordingly, the first legal basis for requiring public transportation to Charter School does not apply.

The second legal basis for requiring transportation also does not apply. All parties agree that, regardless of which route is taken, the Charter School is located more than 10 miles outside School District boundaries, and is approximately 15 miles from Student's house as well as from School District boundaries. (N.T. 32, 41, 48; S2; S8; S11) This exceeds the 10 miles by the nearest public highway. 22 Pa. Code §711.42(a) Thus, the second legal basis for requiring the School District to provide transportation to Charter School does not apply.³

CONCLUSION

Student asks me to order School District to provide transportation to Charter School. There is no legal basis for such an order, however, because such transportation does not qualify as a "related service" and because the Charter School is located more than 10 miles outside School District boundaries. Thus, I must find for the School District in this case.

ORDER

The School District is not required to transport Student to and from Student's home and the Charter School.

³ It also is not clear to me whether I even have jurisdiction over Student's complaint that School District violated this second, "non-FAPE" public transportation requirement, because my jurisdiction is limited to disputes regarding FAPE violations and gifted education disputes. 22 Pa. Code §§14.162,16.63, 711.62 On the other hand, this second legal basis for transportation is explicitly tied to IDEIA and Section 504 students, 22 Pa. Code §711.42(a), which arguably throws such disputes into my jurisdiction.

Daniel J. Myers

HEARING OFFICER

Date of decision: November 22, 2008