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: MP

Date of Birth: xx/xx/xx

Date of Hearing: January 8, 2009

#### **OPEN HEARING**

ODR Case # 9470-08-09-AS

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Date Record Closed: January 26, 2009

Date of Decision: February 10, 2009

Hearing Officer: Jake McElligott, Esquire

## INTRODUCTION AND PROCEDURAL HISTORY

Student is a student residing in the Fox Chapel 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")¹ and Chapter 14 of the Pennsylvania education
regulations ("Chapter 14")². The student's parents and the District
disagree over the appropriateness of the student's transition plan from
Student's current District placement to Student's post-graduation
placement outside of the District.

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

## **ISSUES**

Is the District's transition plan inappropriate?

### FINDINGS OF FACT

1. Student was born xx/xx/xx.

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

- 2. Student has a diagnosis of autism with intellectual functioning in the very low range.<sup>3</sup> Student is non-verbal. (P-1, P-2).
- 3. Student has attended District schools since kindergarten and will graduate from the District at the end of the 2008-2009 school year. (P-1 at pages 1-2; School District Exhibit ["S"]-1 at page 1, S-5 at page 1; Notes of Testimony ["NT"] at 28, 167).
- 4. The student's placement is full-time life skills and autistic support. (S-2).
- 5. In October 2008, Student's individualized education plan ("IEP") team met for its annual review of Student's program and placement. As part of that meeting, the IEP team discussed the issue of beginning a transition from the school-based placement to Student's post-graduation placement. (S-2; NT at 34-36, 41-42, 130-131).
- 6. At an October 6, 2008 IEP meeting, the issue of Student's post-gradation transition to the Vocational Training Center at University [redacted] Center ("UC program") was discussed with the director of the UC program. The parents, with the support of the UC program supervisor at the meeting, were interested in a transition to the UC program beginning in January 2009. (S-1 at page 5; NT at 35-36, 130-131).
- 7. The District indicated that the IEP team needed to coordinate with service agencies who would service Student in the transition and in post-graduation servicing, and so requested a follow-up IEP meeting with individuals from those agencies in attendance. (NT at 130-131, 155).
- 8. On October 23, 2008, parents rejected the District's recommended placement offered in a Notice of Recommended Educational Placement ("NOREP") dated October 6, 2008. The rejection was explicitly on the grounds that "undiscussed subject matter...at the October 6, 2008 (IEP) meeting is now presenting a problem with starting the transition process." (S-2).

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<sup>&</sup>lt;sup>3</sup> Student scored below the 1<sup>st</sup> percentile on the nonverbal IQ, pictorial nonverbal IQ, and geometric nonverbal IQ composites of the Comprehensive Test of Nonverbal Intelligence. Parents' Exhibit ("P")-1 at pages 8-9.

- 9. The transition services listed in the October 6<sup>th</sup> IEP include "Student desires to participate in a sheltered workshop and attend UC supported vocational training program". (S-1 at page 8).
- 10. The IEP team again on November 10, 2008. In attendance were various individuals from adult service agencies who would work with Student in the transition and post-graduation servicing, including an educational specialist from the county, the case manager and case manager's supervisor from the agency that will provide Student's post-graduation vocational program, and the UC program supervisor. (S-5; NT at 152-159).
- 11. Student's November 10<sup>th</sup> IEP was changed from October 6<sup>th</sup> in terms of parental concerns over a showering goal. The November 10<sup>th</sup> IEP indicates on its first page that the IEP section to be amended was "revision of transition section of iep (sic)". The transition sections in both IEPs are identical. (S-1 at page 8-9, S-5 at pages 1, 8-9; NT at 147-152).
- 12. The District issued a NOREP on November 10, 2008, recommending that Student's transition to the UC program begin one day per week for three weeks starting the week of April 13<sup>th</sup>, increase to two days per week for two weeks starting the week of May 4<sup>th</sup>, and increase to three days per week for three weeks starting May 18<sup>th</sup> until June 8<sup>th</sup>, the last day in the District for seniors. (S-3).
- 13. The District's transition coordinator testified that a transition beginning in April was appropriate because the student's summer extended school year services ("ESY") over six summers, cumulatively amounting to 50+ weeks, have been at the UC program and therefore have provided a degree of transition to the UC program. (NT at 31, 71, 132-134, 164-165).
- 14. Student's life skills teacher testified that Student experienced recoupment and regression issues with life skills instruction when returning to the District each school year from the ESY programming at the UC program. The teacher also testified that life skills instruction was beneficial and important for Student through the end of the 2008-2009 school year. (NT at 179-185, 192-200).
- 15. Student participates in community-based instruction on Monday and Friday each week, such as going to the grocery store and/or fast food restaurants. Monday and Friday instruction also includes keyboarding/computer skills, functional reading (such as

picture sequencing), certain academic instruction, and adaptive physical education. Instruction on Tuesday, Wednesday, and Thursday is in the life skills setting, focused on functional living skills including cooking, cleaning, using household appliances, using ATM machines, and functional math skills using money. (NT at 179-183).

16. On November 14, 2008, parents rejected the District's NOREP dated November 10, 2008. Again, the rejection was explicitly on the grounds that "(Student) now be permitted to transition to the (UC program) in January 2009." (S-3).

## 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> Under both IDEIA and Chapter 14, transition services are defined as:

a coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
- (i) Instruction;
- (ii) Related services;

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

- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.<sup>5</sup>

As has been pointed out, however, there is very little precedential case law to explicate these statutory/regulatory mandates.<sup>6</sup> It is clear from the record that the District has provided a full complement of transition services as defined in federal and Pennsylvania special education law. Where the District fails, however, is the implementation schedule of those coordinated set of activities.

The District's reliance on years of ESY instruction over summers at the UC program is misplaced. (FF 13). The District agrees with the parents that the student benefits from "compartmentalized" experiences, that is systematic environments and routines. (NT at 33-34, 132-133). In fact, the District posits that school-based instruction until April is vital to Student's educational progress and the maintenance of gains. (FF 14). Yet the student's return each school year from the UC program entailed recoupment and regression issues in terms of Student's life skills instruction. (FF 14). Therefore, it seems contradictory to this hearing officer that Student's summer ESY experiences over the years would form

<sup>&</sup>lt;sup>5</sup> 34 C.F.R. §300.43(a); 22 PA Code §102(a)(2)(ix).

<sup>&</sup>lt;sup>6</sup> <u>See</u> Pennsylvania Special Education Opinion 1639; Pennsylvania Special Education Opinion 1644.

a firm basis for a transition to the UC program when Student clearly needs "compartmentalized" experiences, and the District's own experience is that changes in environment affect Student's acclimation and learning.

In short, Student requires a transition plan to the UC program aligned with the start of a new chapter in Student's life, "designed to be within a results-oriented process, that is focused on improving...(Student's)... academic and functional achievement...to facilitate (Student's) movement from school to post-school activities" (emphasis added). It is the considered opinion of this hearing officer that the implementation of District's proposed transition plan—sixteen days of transition over eight weeks from April 13th to June 8th—is inadequate and inappropriate. (FF 12).

### CONCLUSION

The District's transition plan as proposed is appropriate in its substance. But its implementation schedule is inadequate to afford Student an appropriate transition to Student's post-graduation programming and placement. An order will be entered accordingly.

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## **ORDER**

In accord with the findings of fact and conclusions of law set forth above, the transition plan proposed by the District is inappropriate as to its scheduled implementation. The transition for Student shall proceed as follows:

The District shall make all necessary preparations with the [REDACTED] University [REDACTED] Center ("UC program") to transition Student to the UC program.

No later than the week beginning March 2, 2009, the District shall transport Student from Student's home to the UC program one day per week for four weeks. The day of the week shall consistently be a Tuesday, Wednesday, or Thursday as the collaboration of the IEP team and the UC program determines is most appropriate.

Beginning the week of March 9, 2009, the District shall transport Student from Student's home to the UC program two days per week for four weeks. The two days of the week shall consistently be the Tuesdays and/or Wednesdays and/or Thursdays as the collaboration of the IEP

team and the UC program determines is most appropriate.

Beginning the week of April 6, 2009 and continuing through

Thursday, June 4, 2009, the District shall transport Student from

Student's home to the UC program three days per week each Tuesday,

Wednesday, and Thursday.

Student shall continue to attend Student's District life skills class

each Monday and Friday through June 8, 2009.

Jake McElligott, Esquire

Jake McElligott, Esquire

Special Education Hearing Officer

February 10, 2009

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