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Pennsylvania Special Education Due Process Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number

23431-1920KE

Child's Name

T.D.

Date of Birth

[redacted]

Parents

[redacted]

Counsel for Parents
John Minora, Esquire
700 Vine Street
Scranton, PA 18510

Local Educational Agency

Valley View School District
1 Columbus Drive
Archbald, PA 18403

Counsel for LEA

William J. McPartland, Esquire
50 Glenmaura National Boulevard
Moosic, PA 18507

Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

09/21/2020

Introduction

This special education due process hearing concerns the educational rights of T.D. (“student”), a student who formerly resided in the Valley View School District (“District”).¹ At the time the student enrolled in the District, the student had been identified in a neighboring school district as a student who qualified under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with a health impairment. The parties disagree over the appropriateness of the District’s programming while the student was enrolled at the District.

The student’s parents claims that the District denied the student a free appropriate public education (“FAPE”) through various acts and omissions related to the student’s educational programming between April 2018, when the student enrolled at the District from the neighboring school district, through January 2019, when the student re-enrolled in the neighboring school district— approximately six-to-seven months of schooling.

Analogously, the parent asserts these denial-of-FAPE claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute (“Section

¹ The generic use of “student”, and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² 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. See *also* 22 PA Code §§14.101-14.162 (“Chapter 14”).

504”).³ Furthermore, the parent claims that the District acted with deliberate indifference toward the student’s needs and, therefore, makes a claim for disability discrimination under Section 504.

The District counters that at all times it met its obligations to the student under IDEIA and Section 504. Accordingly, the District argues that the parent is not entitled to any remedy.

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

Issues

1. Has the District provide the student with FAPE over the period of the student’s enrollment at the District, from April 2018 through January 2019?
2. Has the District treated the student with deliberate indifference, amounting to discrimination against the student on the basis of disability?
3. If either/both of the questions is/are answered in the affirmative what, if any, remedy is owed to the student?

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See also 22 PA Code §§15.1-15.11 (“Chapter 15”).

Findings of Fact

All evidence in the record, both exhibits and testimony, were considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

2017-2018 School Year / 4th Grade (April- June 2018)

1. In December 2017, the student was re-evaluated by the neighboring school district. (Joint Exhibit ["J"]-2).⁴
2. The December 2017 re-evaluation report ("RR") showed that the student was "well below expectations" in word reading, reading comprehension, spelling, and math computation". The student received direct instruction/academic support in reading and mathematics. (J-2).
3. The December 2017 RR recommended that the student continue to be identified as a student with a health impairment and that the student continue to receive academic support. (J-2).
4. The student attended the neighboring school district until mid-April 2018, when the student enrolled at the District in 4th grade. (J-2, J-6; Notes of Testimony ["NT"] at 26-54, 74-123).
5. Upon enrolling, the District issued a notice of recommended educational placement ("NOREP"), indicating that the District would implement the student's individualized education program ("IEP") from

⁴ In December 2017, the student had only just enrolled in the neighboring school district, transferring there from a different school district, where the student had been identified as a student with a health impairment. (J-2 at pages 2-3). Four months later, in April 2018, the student enrolled in the District, against whom the complaint in this matter was filed.

the neighboring school district as the student transitioned to the District. Within 30 days, the NOREP indicated that the District would develop its own IEP. (J-6).

6. On May 1, 2018, two weeks after the student enrolled in the District, the District held an IEP meeting to discuss the student's programming at the District. Parents did not attend the IEP meeting. (J-3, J-6; NT at 26-54, 58-71, 74-123).
7. The May 2018 IEP included curriculum-based assessments for the present-levels of functional and academic performance, which showed adequate achievement at the 3rd grade level and lower levels of achievement at the 4th grade level. (J-3; NT at 74-123).
8. The May 2018 IEP contained five goals (reading fluency, reading comprehension, written expression, math computation, and math concepts/applications). (J-3).
9. The student's special education teacher testified credibly that the goals in the May 2018 IEP were written at the 4th grade level to show one year's progress over the instructional year. (NT at 74-123).
10. Over the six weeks remaining in the 2017-2018 school year, the student showed progress across all five IEP goals. (J-3 at pages 18-22).
11. The student lacked focus and needed significant re-direction. Specially designed instruction and program modifications in the May 2018 IEP addressed this need. (J-3; NT at 74-123).

12. 2018-2019 School Year / 5th Grade (August 2018 – January 2019)

13. The May 2018 IEP was in effect at the outset of the 2018-2019 school year, the student's 5th grade year. (J-3; NT at 163-181, 186-208).

14. Over the first quarter of the 2018-2019 school year, the student continued to exhibit progress on the five IEP goals. (J-3 at pages 18-22; NT at 163-181, 186-208).
15. The student withdrew from the District on January 8, 2019, prior to the end of the second quarter. Formal progress monitoring was not available, but the student's 5th grade teachers testified credibly that the student was making progress throughout the second quarter. (NT at 26-54, 163-181, 186-208).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. Where particular emphasis was accorded to a witness's testimony on a particular issue or event, that is pointed out above in a specific finding of fact, as applicable.

Discussion

IDEIA/Denial-of-FAPE

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a

student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Here, the District clearly provided the student with FAPE. The record contained a focus by parents on scores in the December 2017 RR and whether or not those scores provided an appropriate understanding of the student's present levels of academic performance in light of the May 2018 IEP goals. But the testimony of the student's 4th grade special education teacher was heavily credited that the May 2018 IEP goals were the product of Student's curriculum-based assessment after the student had entered the District and were written at an instructional level, not an independence level, to allow the student to make progress over the ensuing year of instruction. And over the approximately five-to-six months of instruction, the student made demonstrable progress on all of the IEP goals.

In sum, then, the student benefited from significant learning across all IEP goals, and the District provided the student with FAPE from April 2018 through January 2019. Accordingly, there is no remedy owed to the student or parents for a denial of FAPE.

Section 504/Denial-of-FAPE

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §15.1).⁵ The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (*See generally P.P. v. West Chester Area School District*, 585 F.3d 727 (3d Cir. 2009)).

Therefore, the foregoing analysis is adopted here— the District did not deny FAPE to the student in the design and/or implementation of its programming over the period from April 2018 through January 2019.

Section 504/Discrimination

Additionally, the provisions of Section 504 bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program or otherwise discriminated against on the basis of disability, has been subject

⁵ Pennsylvania's Chapter 14, at 22 PA Code §14.101, utilizes the term "student with a disability" for a student who qualifies under IDEIA/Chapter 14. Chapter 15, at 22 PA Code §15.2, utilizes the term "protected handicapped student" for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term "student with a disability" will be used in the discussion of both statutory/regulatory frameworks.

to disability discrimination in violation of Section 504 protections. (34 C.F.R. §104.4; S.H. v. Lower Merion School District, 729 F. 3d 248 (3d Cir. 2013)). A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district in its purported acts/omissions. (S.H., *id.*).

Here, the District did not act with deliberate indifference toward the student. The entirety of the record shows that the District was responsive to the student's needs and worked diligently to provide programming for the student which would provide the student with access to, and the opportunity to benefit from, District programs.

Accordingly, the District has not acted with deliberate indifference toward the student.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Valley View School District met its obligations to propose and to implement appropriate special education programming for the student. The school district did not treat the student with deliberate indifference as a student with a disability.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

09/21/2020