

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 28990-23-24

Child's Name:

Y.A.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

Pro Se

Local Educational Agency:

Hanover Public School District
403 Moul Avenue
Hanover, PA 17331-1541

Counsel for LEA:

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331 E. Butler Avenue
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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

05/31/2024

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a [redacted] school student who attends the Hanover Public School District. The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")¹ as a student with an emotional disturbance.

In the complaint, parents claim that the District denied the student a free appropriate public education ("FAPE") through its treatment of the student in terms of six specific issues, outlined below.

The District's position is that it did not deny the student FAPE and met its obligations to the student at all time.

Issues

1. Was the family provided with a copy of the student's Section 504 plan?
2. From April – June 2023, was the student dismissed from school at 10:30 AM each day?
3. In September 2023, did the school counselor handle appropriately significant health/risk information shared by the student?

¹ It is this hearing officer's preference to cite to the federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162.

4. Were the student's break-from-class accommodations followed in the section 504 plan and individualized education program ("IEP")?
5. In the 2021-2022 school year and in spring 2023, did the District handle appropriately fights and other problematic peer interactions?
6. Did the District handle appropriately the requirement that the student and a classmate not be in physical proximity to each other?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

Prior to [redacted] School

1. Over previous three school years (2018-2019, 2019-2020, 2020-2021), the student had, respectively, twenty-one, eight (prior to the school closure in March 2020), and three disciplinary incidents. (School District Exhibit ["S"]-7 at page 18).
2. In March and April 2021, in the spring of the student's [redacted] grade year, the student was involved in a situation with a classmate which led the student's family to seek court intervention. A court order limited contact between the student and the classmate. (S-20 at pages 1-13).

2021-2022 / [redacted] Grade

3. The student entered the District [redacted] school without a Section 504 plan or an IEP.
4. As part of the student's transition to [redacted] school, administrators and counselors from the [redacted] school met with [redacted] school administrators. As part of that transition process, it is unclear if there was discussion of the court order from the spring of 2021. (S-20 at pages 1-13).
5. In the fall of 2021, the school counselor was in contact with the student during the school day to help the student with various emotional challenges. (S-21 at pages 1-7; Notes of Testimony ["NT"] 23-82).
6. In September - November 2021, the student had ten discipline referrals
7. In mid-October 2021, the student was referred to the student assistance program. (S-21 at page 52).
8. In November 2021, the student participated from school in videoconference counseling sessions with community mental-health counseling. (S-21 at page 52).
9. In December 2021, the student was referred for medical transport from school to a hospital for self-harm. (S-18; NT at 23-82).

10. Shortly before the winter break, after an absence of approximately two weeks. (S-21 at page 9).
11. In December 2021, the District developed an individualized behavior plan for the student, including hallway escorts for the student, restricted use of passes, work with a behavior specialist for coping strategies, both scheduled and extemporaneous breaks, and access to school counselor or administrators when needed. (S-1).
12. In early January 2022, the hallway escorts were removed from the individualized behavior plan. (S-1 at page 2).
13. In mid-January 2022, based on her interaction with the student in the fall and early winter 2021, the school counselor referred the student for county-based mental health support. (S-17).
14. For the first time on this record, in the referral, a diagnosis of the student is listed for disruptive mood dysregulation. (S-17).
15. Over January and February 2022, District staff including the school counselor worked with the student who often worked collaboratively with staff but at times exhibited defiance in communications. (S-21 at pages 18, 20-22, 40-43).
16. In January and February 2022, the restricted use of passes in the individualized behavior plan was heightened to limit the student's classroom/work avoidance. (S-1, S-21 at pages 13-17, 23-24, 27, 34).

17. In early February 2022, the student was suspended for cutting class multiple times. (S-21 at pages 25-26, 46).
18. In late February 2022, District administrator and school psychologist attended a family team meeting convened by the community-based mental health agency. An additional diagnosis of major depressive disorder was added to the student's profile. (S-21 at pages 71-72).
19. In late February 2022, the student was found eligible for a Section 504 plan. (S-2, S-21 at page 36-38).
20. The student's disability was confirmed as disruptive mood dysregulation, impacting the major life activities of "caring for one's self" and "task completion". (S-2 at page 2).
21. The impact of the student's disability was determined to be "extremely limiting", requiring "constant reinforcement and prompting". Examples included: "(The) student requires near constant physical prompting to maintain attention such as hand on the shoulder, or physical guidance to complete or remain on task, or near constant verbal prompting or redirection to complete task...(the) student needs significantly more prompts than the average/typical student in the class". (S-2 at page 2).

22. As part of the Section 504 meeting, the student's individualized behavior plan was updated to include the use of fidget objects and to modify the student's break schedule. (S-1).
23. By early March 2022, the student had sought out the school counselor 32 times in the school year. (S-21 at page 52).
24. In early March 2022, the District requested permission to evaluate the student for special education. (S-4).
25. In mid-March 2022, the student's Section 504 plan was put in place with the approval of the father. (S-3 at page 6, S-21 at page 57-69).
26. The Section 504 plan identified the following areas of concern: classroom avoidance, lack of focus, refusal to complete work/task, emotional dysregulation that presents as agitation, yelling, defiance to adults, verbal aggression and anxious behaviors, and difficulty caring for one's self. (S-3 at pages 1, 3).
27. Accommodations in the Section 504 plan include preferential seating, "free time contingent upon academic productivity", positive reinforcement, use of fidgets, modified breaks from class/environment, accounting for student's sensitivity to criticism, access to the school counselor, and implementation of the individualized behavior plan. (S-3 at pages 2, 5).

28. At the same time in mid-March 2022 when father approved the Section 504 plan, the father provided consent for an evaluation for special education services. (S-4).
29. In the days after the implementation of the Section 504 plan, in the latter half of March 2022, the student was involved in a disciplinary incident, being under the influence of a controlled substance. (S-5 at page 1).
30. For the first time on this record, the extent of the student's disciplinary history came to light. To that point in the school year, the student had been referred for disciplinary matters 35 times, had undergone five days of in-school suspension, and had been suspended from school for seven days. The incident involving the controlled substance yielded a 10-day suspension, for a total of seventeen days of suspension. (S-6 at page 1).
31. In addition to the incident involving the controlled substance, the student had been disciplined over the course of the school year for cutting class, disrespectful behavior, tardiness, attendance, dress code violations, and inappropriate behavior. (S-6 at page 3).
32. As a result of the suspensions exceeding 15 cumulative school days, the District held a manifestation determination review. (S-6).
33. The student recognized the infraction but seemingly showed indifference to the behavior and consequence. The review indicated a

degree of self-awareness of the impact of the student's disability:
“(The student)...prefers not to be in school as (the student) struggles with focus.” The building principal did not take this into consideration in light of the student's disability or its educational impact: “The building principal shared that (the student) can talk about that with (the student's) medical doctor.” (S-6 at page 4).

34. The student “also stated that (the student) has gotten lots of help and...is not fixable”. (S-6 at page 4).
35. In mid-May 2022, the District issued an evaluation report (“ER”) for the student. (S-7).²
36. The May 2022 ER documented the student's visits to the school counselor and behavior specialist, including a newly implemented daily check-in/check-out system with the behavior specialist. (S-7; NT at 145-178).
37. In the May 2022 ER, the student's teachers input indicated that the student “lacks focus, turns in assignments late or not at all, copies work from others, does not make up assignments that are late or missing, continually on (the) cell phone, has head down a lot in class”; “is often in the hallways, is either late to class or asks to leave class,

² The May 2022 ER indicated that the student's father would not share the student's mental health diagnosis and that “verbal report” was, as indicated, disruptive mood dysregulation and major depressive disorder, although the District evaluator not only attended the community mental health family team meeting but was provided with the written summary of that meeting. (S-7 at page 7, S-21 at pages 70-73).

at times may have head down, does not focus”; “impulsive and short-tempered, gives into impulses that are not in best interest”; and “lacks focus, will often show up to class without materials”. (S-7).

38. The May 2022 ER identified the student as a student with an emotional disturbance and recommended that the student’s programming focus on safety, work completion, and appropriate school behaviors. (S-7 at page 28).

39. Over much of the 2021-2022 school year, the student regularly communicated with the school counselor and behavior specialist about accessing snacks in that office. (See *generally* S-21 at pages 1-103).

2022-2023 / [redacted] Grade

40. The student’s IEP team did not meet until August 2022. (S-9, S-10, S-21 at pages 104-105).

41. Even though the student was [redacted] years old at the time that the August 2022 IEP was drafted, the transition section of the IEP is largely incomplete and, where completed, is entirely vague. (S-10 at pages 31-32).

42. The August 2022 IEP contains one goal for task completion. (S-10 at page 37).

43. The August 2022 IEP entirely removed access to the school counselor and behavior specialist. (S-10).

44. The August 2022 IEP indicates that the student “will participate with non-disabled peers in regular education classes” and “will participate in the general education curriculum with non-disabled peers and will be provided specially-designed instruction as found in the IEP”. (S-10 at page 41).
45. The specially-designed instruction includes three accommodations (extended time on tests, reading aloud tests, and “use of (emotional support) classroom if experiencing anger”. (S-10 at page 38).
46. The August 2022 IEP calculates that the student would be in regular education for 49% of the day and in special education 51% of the day. The special education teacher’s testimony indicated that the student would spend one or two periods per day in special education, up to 86 minutes with periods 43 minutes long, so the indication in the IEP is incorrect. (S-10 at page 44; NT at 193-198).
47. A positive behavior support plan (“PBSP”) was made part of the August 2022 IEP. (S-8).
48. The PBSP does not incorporate any behavior strategies. Instead, the PBSP deals entirely in regular-education/disciplinary responses (non-verbal and verbal redirection, communication with home, verbal reprimands, written reprimands, after school detention, discipline referrals and school discipline). (S-8 at pages 13-14).

49. A special education teacher did not attend the IEP meeting. (S-8 at page 1, S-9 at page 1).
50. At the outset of the school year, the student again communicated regularly with the behavior specialist about breaks from class and snacks. (S-21 at pages 107-138).
51. In October 2022, the court issued another order limiting contact between the student and the classmate (re-visiting the order issued in spring 2021). (S-20 at pages 14-27).
52. As a result of the court's new order, the District convened a safety meeting regarding the student and the classmate. (S-11, S-21 at 143-151, 154, 156-157-162).
53. In December 2022, the student was involved in a significant behavior incident where [redacted] intruded in classroom to confront another student, used excessive profanity, caused significant disruption in the classroom and hallway, and physical contact with a staff member. (S-5 at pages 2-3, S-12).
54. The December 2022 incident resulted in a 3-day suspension. (S-5 at pages 2-3).
55. As a result of the December 2022 incident, District members of the IEP team discussed the possibility of an out-of-District emotional support placement with a therapeutic component. (S-12).

56. In April 2023, the student was placed on remote instruction and the student's PBSP would be re-visited. (S-12; NT at 181-220).
57. In mid-May 2023, the student requested to leave the building at 10:30 AM each day, and the District allowed the student to do that, although the student's IEP was not revised to reflect this change. (NT at 206-208).
58. In May 2023, the student's PBSP was revised based on data and observations in April 2023 and the modified school schedule. (S-21 at pages 166-169, S-22; NT at 222-240).
59. The 2022-2023 school year ended in late May 2023. (NT at 222-240).

2023-2024 / [redacted] Grade

60. In September 2023, the student's IEP was revised. (S-14).
61. The transition section in the September 2023 IEP is more complete than in the August 2022 IEP. (S-10, S-14).
62. The goal and specially-designed instruction in the September 2023 IEP remained the same as in the August 2022 IEP. (S-10, S-14).
63. As in the August 2022 IEP, the calculation of the time the student spent in regular education was again in error. (NT at 212-213).

64. In September 2023, the student indicated to the school counselor that the student was having ideations of self-harm. The school counselor consulted with parent and the special education teacher and, assessing that the student was not working toward concrete steps and was in a regulated state, did not feel the need to make a crisis referral. (NT at 37-42).
65. The student attended in-person classes at the District at the outset of the school year, but there was significant absenteeism. (NT at 23-82).
66. In January 2024, the student's family filed the complaint which led to these proceedings.
67. In approximately March 2024, as a result of the resolution meeting held with the filing of the complaint, the student began to attend school through remote learning, except for an in-person [redacted] class at the District. (NT at 23-82, 181-220).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the high school principal (NT at 85-143) was accorded less weight as a result of the principle's affect in light of the totality of the record leads one to conclude that the principal's

leadership is somewhat authoritarian in nature; while not a definitive conclusion regarding credibility, it leads this hearing officer to decrease the weight of the testimony because of a perceived lack of subtlety and flexibility in the principal's interaction with others and, therefore, his recall of events.

The testimony of the school counselor (NT at 23-82) was accorded very heavy weight. The school counselor's affect and consistency of recall led this hearing officer to heavily credit her testimony. Moreover, through her work with the student (and, one can imagine, with all students), she clearly exhibits care and concern, deep authenticity, and consummate professionalism.

The testimony of the director of special education (NT at 222-240) was accorded heavy weight because of the depth of her experience and professional demeanor. Additionally, the forthright answers to questions lead this hearing officer to feel deeply credit her testimony about the District's processes, in general and with the student's situations specifically.

Legal Framework

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, with appropriately ambitious programming 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)).

Discussion & Conclusions

Each issue will be considered in order.

Provision of Section 504 Plan. Based on the evidence in this record, parents were provided with a copy of the student's Section 504 plan in the spring of 2022. (Findings of Fact 19-22, 25-28).

10:30 AM Dismissal in Spring 2023. Based on the evidence in this record, the decision to have the student's school day end at 10:30 AM was not a denial of FAPE. First, it appears that the decision was collaborative, including input from the student, based on concern for the student's affect in school in the spring of 2023. Second, the change in programming lasted only a handful of school days, over the latter half of May, before the school year ended at the end of May. (Findings of Fact 56-59).

Whether or not the District should have acquiesced in the request, or whether the early dismissal was advisable, are separate questions. These types of questions—how the District accommodated the student’s program and placement, and whether those things were effective—will be addressed below. But the institution of the early dismissal is not a denial of FAPE.

Report of Potential Self-Harm Ideation in September 2023. Based on the evidence in this record, the school counselor’s response to the student’s ideation of potential self-harm in September 2023 was handled by the counselor appropriately. As pointed out above, the school counselor’s work with the student is to be entirely lauded. Her professionalism in handling all of the student’s emotional and behavioral needs is prevalent throughout her testimony and in the exhibits. Her response to the student’s ideation of self-harm was appropriate and professional. (Finding of Fact 64).

Access to Breaks under Section 504 Plan. Based on the evidence in this record, the District did not wrongfully restrict the student’s access to breaks, or access to the school counselor, under the individualized behavior plan or the Section 504 plan. (Findings of Fact 11, 12, 16, 17, 19, 22, 23).

Handling of Peer Interactions & Separating the Student from Classmate regarding Court Order. Both of these issues will be addressed together because both deal with the District’s handling of the student’s interactions with others. Based on the evidence in this record, the District responded appropriately when the student had problematic interactions with

other students. Even in December 2022, when the student was involved in the serious behavior incident involving another student, staff, and school disruption, the District handled matters appropriately, levying discipline with a recognition that the student's behavior was a manifestation of the student's disability. There is no doubt that the student had problems with peers—some of the student's creation, some not—but the District handled those situations appropriately. (Findings of Fact 2, 5, 15, 26, 27, 31, 51-53).

Student's Program/Placement. Based on the evidence in this record, this hearing officer is concerned that the student may need much more structure, and therapeutic support, as part of the student's program and placement. The District came to a similar conclusion but did not follow through, or use special education due process to pursue that placement in the face of parents' disapproval. (Finding of Fact 53-55). In short, much of the student's frustration in the District and the District's frustration with unsuccessful approaches to programming for the student, is because the District is not equipped to provide the programming that the student needs. The director of special education, a deeply experienced administrator, recognized this fact, and the entire record supports the notion that the student's needs are deep and complex, needs that require a therapeutic component for daily support. The order below will address this.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the claims asserted by the family in their complaint are not supported by the evidence or do not amount to a denial of FAPE.

This evidence, however, requires that the student's IEP team take action over the summer of 2024 to consider the appropriate program and placement for the student.

The IEP team is ordered to consider programming involving an out-of-District therapeutic placement. Within 20 calendar days of the date of this order, the District shall identify a minimum of two, but no maximum number, of emotional support placements where a structured, daily therapeutic component of programming will be available to the student.

This order shall serve in place of parental consent to share educational records with those placements to see if a therapeutic placement is a good fit for the student. If the student wishes to continue accessing [redacted] or other career/vocational programming, consideration shall be given to the student's access to this programming, even part-day at the District or a split-day between the therapeutic placement and another placement.

Parents and student shall be offered the opportunity, at their convenience, to tour the potential therapeutic placement(s), including separate tours for each parent if necessary. The District shall arrange for an interpreter to accompany the family on any such tour(s).

No later than 45 calendar days from the date of this order, the student's IEP team shall meet to discuss the potential therapeutic placement(s), including the IEP and program that would be implemented there.

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

05/31/2024