

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. 28731-23-24

Child's Name:

V.C.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents

None

Local Education Agency:

Laboratory Charter School
926 W Sedgley Avenue,
Philadelphia, PA 19140

Counsel for the LEA

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1635 Market Street
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Hearing Officer:

James Gerl, CHO

Date of Decision:

November 28, 2023

BACKGROUND

The parent filed a due process complaint alleging that the charter school violated IDEA by providing Extended School Year services (hereafter sometimes referred to as "ESY") to the student at a non-preferred campus of an approved private school. The parent seeks as relief that funds be added by the charter school to the student's educational trust. The charter school denies any violation of IDEA. I find in favor of the charter school concerning all issues raised by the due process complaint.

PROCEDURAL HISTORY

This matter was treated as an expedited hearing because the parent did not comply with requests from the hearing officer or counsel for the charter school to clarify the issues or to provide dates and times for a prehearing conference. As a result, the hearing officer only learned of the issue raised by the complaint at the beginning of the due process hearing. Because the issue in this case involves only ESY for a prior school year and not for the current school year, the matter did not require an expedited hearing, but because the hearing had already begun before that fact was revealed, the case remains on the expedited timeline.

The parent was advised prior to the hearing that parties to these matters have the right to hire a lawyer to represent them at the hearing and all prehearing and posthearing proceedings. The parent elected to proceed without being represented by a lawyer.

Neither party complied with the direction of the hearing officer to submit a prehearing brief at the outset of the expedited hearing. The parties did not agree to any stipulations of fact.

The hearing was concluded in one in-person hearing session. Parent exhibit P-1 was admitted into evidence, and charter school exhibits S-1 through S-3 were admitted into evidence. Two witnesses testified at the due process hearing.

At the end of the hearing, each party presented oral closing arguments. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUE PRESENTED

The due process complaint presents the following single issue:

1. Whether the parent has proven that the charter school violated IDEA by failing to have the student attend extended school year services after the 2022 – 2023 school year at the location of the approved charter school preferred by the parent?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

1. The student's date of birth is [redacted]. The student is eligible under the category of autism. (S-2; NT 94)

2. The student's mother had previously filed substantially the same due process complaint. The prior complaint was dismissed by a different hearing officer because the parent did not participate in the mandatory resolution meeting or cooperate with the determination of the hearing location and other prehearing preparation requirements. (S-1, NT 54-60)

3. The student had attended an approved private school pursuant to the student's IEP with the charter school through [redacted] grade during the 2022-2023 school year. (NT 28-29, 41, 67, 70, 73)

4. At a March 2023 IEP team meeting, the student's extended school year program after the 2022-2023 school year was discussed. Present were the student's mother, the charter school's special education supervisor, the school principal, the student's teacher, the counsellor, the student's behavioral analyst, a speech/language person and the vice-principal. (NT 59-62, 50)

5. The student's IEP provided that the student would attend ESY services after the 2022-2023 school year at the campus of the private school where the student had attended [redacted] grade during the 2022-2023 school year. The student's mother wanted the student to receive extended

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; and "S-1," etc. for the charter school's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

school year program at another campus of the private school that the student would begin attending for [redacted] beginning with the 2023-2024 school year. The charter school did not have a contract with the campus of the private school that the student would be attending for the 2023-2024 school year. (P-1; NT 41-42, 30, 60-62, 79-80)

6. The student attended ESY after the 2022-2023 school year at the campus of the private school where the student had attended [redacted] grade during the 2022-2023 school year. The student was successful and made progress during the extended school services after the 2022-2023 school year. The student met the student's IEP goals concerning ESY. The staff at the ESY program was outstanding. The charter school provided transportation for the student to attend the ESY program. During the ESY program, the student participated in a shadow day and a visitors day at the campus of the private school that the student would be attending for the 2023-2024 school year so that the student could meet the teachers for the next year and become accustomed with the new campus in order to help smooth the transition. (NT 41-- 53, 66-68)

7. The student is now doing well in [redacted] grade at the parent's preferred campus of the private school. Since the beginning of the 2023-2024 school year, the charter school is no longer the student's local education agency. (NT 43-44, 67-69)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education (hereafter sometimes referred to as "FAPE"). IDEA §615(b)(6)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. The United States Supreme Court has developed a two-part test for determining whether a local education agency has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a local education agency has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child's unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. ___, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

3. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

4. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a local education agency to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER,

680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

5. Charter schools that are local education agencies are responsible for compliance with IDEA and its implementing regulations. Children with disabilities receiving their education in such charter schools are entitled to the same substantive and procedural protections as their counterparts in other public schools. 34 C.F.R. § 300.209; 22 Pa. Code § 711; Frequently Asked Questions About the Rights of Students with Disabilities in Public Charter Schools Under the Individuals With Disabilities Education Act, 69 IDELR 78 (OSERS 2016). See, Weber, Mark C., "Special Education from the (Damp) Ground Up: Children With Disabilities in a Charter School – Dependent Educational System," 11 Loyola J. of Pub Interest Law 217, 246 and n. 137 (Spring 2010)

6. A parent cannot compel a local education agency to provide services at a specific location. A local education agency is generally afforded the discretion to select the location at which at which a student's IEP is implemented. RB v Mastery Charter School, 762 F. Supp. 2d 745, 55 IDELR 282 (E.D. Pa 2012); See, A.W. v. Fairfax County School Board, 372 F.3d 674, 41 IDELR 119 (4th Cir. 2004); JL & JF ex rel CC c NYC Dept of Educ, 65 IDELR 137 (SDNY 2015); MA v Jersey City Bd of Educ, 63 IDELR 9 (DNJ 2014); KB by Brown v Dist of Columbia, 66 IDELR 63 (DDC 2015).

7. A local education agency must provide extended school year services to a child with a disability when necessary to provide a free appropriate public education because the benefits that the disabled child gains during the regular school year will be significantly jeopardized if he or she is not provided with an extended school year program. 34 C.F.R. § 300.106; 22

Pa. Code § 14.132; LG and EG ex rel. EG v. Wissahickon School District, 55 IDELR 280 @ n.3 (E.D. Penna. 2011); see, MM v. School District of Greenville County, 37 IDELR 183 (4th Cir. 2002).

8. The parent has not proven that the charter school's provision of extended school year services to the student after the 2022 – 2023 school year was a denial of a free and appropriate public education to the student or otherwise violated IDEA.

DISCUSSION

1. Whether the parent has proven that the charter school violated IDEA by failing to have the student attend extended school year services after the 2022 – 2023 school year at the location of the approved charter school preferred by the parent?

It should be noted at the outset that this is not a case about eligibility for ESY services. All parties agree that the student was entitled to ESY after the 2022-2023 school year and that the charter school would pay for the ESY services and provide transportation for the student to attend ESY. The only dispute concerns the location where the student would receive the services. The parent wanted ESY to be provided at the campus of the private school that the student would attend for [redacted] grade at the beginning of the 2023-2024 school year. The charter school contends that it only had a contract with the campus of the private school where the student had attended [redacted] grade in the 2022-2023 school year and that that campus was

appropriate for the student to receive the ESY program specified by the student's IEP.

The entire dispute here concerns where the student would receive the ESY program. The caselaw provides that the location at which services are provided is generally within the discretion of the local education agency. The parent has not proven that the selection of the ESY location violates IDEA.

Neither party cites any caselaw, or statute or regulations in support of their arguments. Obviously, this makes it difficult to understand their legal arguments. It is assumed that the parent contends that the provision of ESY services at the designated location constituted a denial of FAPE.

At the heart of the mother's closing argument and the mother's testimony was the assertion that it was not in the student's "best interest" to receive ESY services at the location at which the services were provided because the student has difficulty with transitions. The special education laws do not, however, require the charter school to provide an ideal education for the student or one that maximizes the student's potential.

It is understandable that the mother would want an ideal education for her child. IDEA does not, however, require a local education agency to provide the best possible education for a child with a disability. Instead, IDEA requires that a child with a disability be provided with an IEP that is reasonably calculated to provide meaningful educational benefit given the individual circumstances of the student. In the instant case, the charter school provided ESY services to the student in accordance with the student's IEP. The ESY program provided to the student was appropriate.

IDEA does not require any particular outcome for a child with a disability; instead, the FAPE requirement is that a student's IEP must, at the

time that it was written, be reasonably calculated at the time that it was written to confer meaningful educational benefit given the unique individual circumstances of the child. Nonetheless, in this case, the record evidence establishes that the student did, in fact, make meaningful progress during the ESY period in question. All witnesses testified that the student was successful and met the ESY goals. The student's mother testified that the staff at the campus of the private school where the student received ESY did an outstanding job. Thus, even though actual progress is not required, the student did meet the student's ESY goals and did make substantial progress during ESY. Clearly the ESY program at the location where it was implemented was appropriate. The parent has not shown that the student has suffered any educational harm caused by the location of ESY after the 2022-2023 school year. The parent has not proven a denial of FAPE.

Moreover, there appears to be a logical flaw in the mother's argument. If the student has difficulty with transitions, providing the ESY program at a school that the student had previously attended and was familiar with would likely be preferable to providing the ESY program at a whole new school at a different location. Thus, the problem with transitions asserted by the parent would have been an issue regardless of the location where the services were provided. The argument is rejected.

The parent's due process complaint also raises an issue concerning transportation, but the parent made clear that there was no issue with transportation for this student. Accordingly, the issue has been waived by the parent. Even assuming *arguendo* that the issue has not been waived, the parent has not proven a factual basis for the allegation.

The testimony of the charter school witness was more credible and persuasive than the testimony of the student's mother. This conclusion is

made because of the demeanor of the witnesses, as well as the following factors: the mother's testimony concerning the March 2023 IEP team meeting was somewhat evasive. Also, the mother's testimony that she did not understand that the resolution meeting was required by the statute, despite the fact that the parent had previously filed a due process complaint that was dismissed because of her failure to cooperate in participating in a mandatory resolution meeting, was very evasive and not believable.

It is concluded that the parent has not proven that the ESY services provided by the charter school after the 2022 – 2023 school year denied a free and appropriate public education to the student or otherwise violated IDEA.

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** that all relief requested in the due process complaint is hereby denied. The complaint is dismissed.

IT IS SO ORDERED.

ENTERED: November 28, 2023

James Gerl

James Gerl, CHO
Hearing Officer