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Pennsylvania Special Education Hearing Officer

Final Decision and Order

OPEN HEARING

ODR File Number 20278 17 18

Child's Name: J. S.

Date of Birth: [redacted]

Dates of Hearing:

05/23/2018, 06/06/2018

Grandparents/Guardians:

[redacted]

Pro Se

School District:

Keystone Central School District, 86 Administration Drive
Mill Hall, PA 17751

Carl Beard, Esquire, 3366 Lynnwood Drive
Altoona, PA 16602
Counsel for the LEA

Hearing Officer: Michael J. McElligott

Date of Decision: 07/31/2018

INTRODUCTION

Student (“student”)¹ is a [mid-teen age] student who resides in the Keystone Central School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with an intellectual disability, an emotional disturbance, and a health impairment.

Based on their amended complaint, guardians claim that the student was denied a free appropriate education (“FAPE”) from February 2018 through the end of the 2017-2018 school year, a period of approximately four months. The District asserts that over that period, it provided a FAPE to the student.³

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

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is 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 §§14.101-14.163 (“Chapter 14”).

³ On February 14, 2018, the guardians filed the complaint that led to these proceedings (Hearing Officer Exhibit [“HO”]-1). The guardians’ claims in the complaint alleged multiple deprivations of FAPE for prior school years. On March 19, 2018, at the directive of the hearing officer, the District responded to the guardians’ complaint. (HO-2). The District asserted that the guardians’ claims were barred by a settlement agreement between the parties, an agreement through which, on its face, guardians waived all claims for denial of FAPE, in addition to other claims related to the student’s education, for all periods through February 8, 2018, the date that guardians signed the agreement. (HO-3). On April 2, 2018, the hearing officer granted the District’s motion as to claims prior to February 8, 2018, finding that there was no dispute as to the authenticity of the February 8, 2018 settlement agreement and that the guardians were disputing the terms of the agreement (including provisions related to a trust arrangement for compensatory education) as those terms might or might not impact the position between the parties. (HO-4). The hearing officer found that the guardians’ complaint was in the nature of a contractual dispute involving the specific provisions of an agreement between the parties. (HO-4). Guardians were, however, granted an opportunity to amend their complaint to allege any denial-of-FAPE claims for the period on and after February 9, 2018. Guardians filed their amended complaint on April 13, 2018, which led to the hearing sessions in this matter. (HO-5).

ISSUES

Was the student provided with a FAPE over the period February 2018 through the end of the 2017-2018 school year?

FINDINGS OF FACT

1. At the outset of the 2017-2018 school year, the student was in a homebound educational setting. (School District ["S"]-1; Notes of Testimony ["NT"] at 142-143).
2. In August 2017, an independent evaluator issued an independent educational evaluation ("IEE") of the student. (S-1).
3. The August 2017 IEE noted that, at the time of the IEE, the student had been identified multiple times by the District. (S-1).
4. The August 2017 IEE found that the student was eligible for special education as a student with an intellectual disability, an emotional disturbance, and a health impairment, identifications which had been previously been made by the District through its evaluation processes. (S-1).
5. The August 2017 IEE recommended that the student return to a school-based educational placement, with life skills support and emotional support, as well as academic support in reading, mathematics, and written expression. (S-1).
6. In August and September 2017, the student's individualized education program ("IEP") team met to craft the student's IEP. (S-2, S-3, S-4).
7. In mid-September 2017, the student's IEP and educational placement was proposed by the District. (S-5, S-6).
8. The student's guardians did not return the notice of recommended educational placement, and, with no objection from the guardians, the District moved to implement the September 2017 IEP. (S-5, S-6; NT at 143-147).
9. The September 2017 IEP was the IEP in place, governing the student's educational programming, on February 8, 2018. (S-6).

10. The September 2017 IEP included present levels of educational and functional performance based on the August 2017 IEE as well as other private and District evaluations from the student's educational history. (S-6 at pages 6-12).
11. The September 2017 IEP contained transition goals and services in post-secondary education/training, employment, and independent living. (S-6 at page 14).
12. The September 2017 IEP contained 13 goals, four in behavior (coping strategies and de-escalation, sensory processing, following prompts/re-direction, and attention), three in reading (fluency, accuracy, reading comprehension), three in mathematics (problem-solving, calculation, and money), two in expressive language (naming, and similarities/differences), and one in written expression (3-sentence paragraph writing). (S-6 at pages 19-31).
13. The September 2017 IEP contained specially designed instruction and related services (individual speech and language therapy - 30 minutes per school week, group speech and language therapy - 30 minutes per school week, occupational therapy - 60 minutes per month). (S-6 at pages 32-33).
14. The student's placement in the September 2017 IEP called for supplemental life skills and emotional support, with the student in the regular education environment for 43% of the day. (S-6 at pages 36-37).
15. In October 2017, the members of the IEP team agreed that an evaluator should perform a functional behavior assessment ("FBA"). The student's guardians requested that the FBA be undertaken after the holiday break. (S-8).
16. In January 2018, the behavior specialist performed observations of the student in the educational environment for the FBA. (S-8, S-10, S-11; NT at 29-66).
17. In February 2018, the behavior specialist issued the FBA. (S-10).
18. In February 2018, the student's IEP team met to revise the student's IEP. (S-7, S-12).
19. The February 2018 IEP contained updates to the student's present levels of educational and functional performance, transition planning, and specially designed instruction, based on the FBA and updated progress monitoring data. (S-7).

20. The February 2018 IEP contained updated reading goals, based on goal progress and mastery. (S-7 at pages 39-58).
21. The February 2018 IEP contained revised behavior goals, based on the FBA including a positive behavior support plan. (S-7 at pages 39-62).
22. The February 2018 IEP found the student eligible for extended school year services. (S-7 at pages 68-71).
23. The student's guardians did not return the notice of recommended educational placement, and, with no objection from the guardians, the District moved to implement the February 2018 IEP. (S-12).
24. In April 2018, the student's IEP team met again. (S-7).⁴
25. The student made progress over the period February 2018 through the end of the school year. (S-17, S-18, S-19, S-21, S-22, S-23, S-24, S-25, S-26, S-28, S-29, S-32, S-33, S-34).
26. The student's grandmother, the guardian who attended both hearing sessions and represented the family's interest, chose not to testify. (NT at 313-318).

DISCUSSION AND CONCLUSIONS OF LAW

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 needs (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 29,

⁴ The IEP team met on April 18, 2018, five days after the filing of the guardians' amended complaint. So where the parties continued to work on the student's programming, the IEP under consideration at the time the District was placed on notice of guardians' claims was the student's February 2018 IEP. (S-7).

197 L. Ed. 2d 335 (2017); Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (Andrew F.; M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).⁵

Here, both the September 2017 and February 2018 IEPs were reasonably calculated to yield meaningful education benefit. The IEPs were based on an extensive and comprehensive IEE. The IEP goals were concrete and measurable and addressed all areas of the student's needs, as did the specially designed instruction and related services. The independent FBA process, designed collaboratively, yielded a positive behavior support plan. When implemented, the IEPs provided the student with significant learning. In sum, the record in its entirety supports a finding that the student was provided with FAPE over the period February 2018 through the end of the 2017-2018 school year.

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⁵ While in some parts of the United States the U.S. Supreme Court decision in Andrew F. presented a new and higher standard to gauge the appropriateness of special education programming, the standard laid out in Andrew F. has been, largely, the longstanding standard enunciated by the Third Circuit Court of Appeals and has been the applicable standard to judge the appropriateness of special education programming in Pennsylvania.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District has met its obligations to provide the student with a free appropriate public education over the period February 2018 through the end of the 2017-2018 school year.

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

July 31, 2018