

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: A.V.

Date of Birth: [redacted]

Dates of Hearing:

May 14, 2015

June 30, 2015

CLOSED HEARING

ODR Case # 15833-1415KE

Parties to the Hearing:

Parent[s]

Capital Area Intermediate Unit
55 Miller Street
Summerdale, PA 17093

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

David Walker, Esquire
221 E. Chestnut Street
Lancaster, PA 17602

June 30, 2015

July 31, 2015

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (“student”)¹ is a [preschool-aged] student who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)². The student has been identified with multiple disabilities, including medical diagnoses for, among others, hypoxic eschemic encephalopathy, cerebral palsy, epilepsy, vision impairment, and hearing loss. The student is eligible for early intervention services through the Capital Area Intermediate Unit (“IU”).

The student’s initial early intervention placement was for the 2014-2015 school year. The student’s individualized education plan (“IEP”) team, including the parents, considered a placement for the student in an IU classroom. Ultimately, however, the student’s IEP team agreed to a placement in a private preschool with supports and accommodations to implement the student’s IEP. The student attended the private placement in the 2014-2015 school year.

In the midst of the 2014-2015 school year, the student’s father voiced disagreement with the private preschool placement. The student’s mother and the IU continued to support the placement, however, and the

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 implementing regulation of the IDEA at 34 C.F.R. §§300.1-300.818.

student's father filed the special education due process complaint which led to these proceedings.

The father's primary disagreement with the appropriateness of the private preschool placement is the nature and length of the daily transportation to and from the placement. Throughout the record on these proceedings, the IU continues to view the private preschool placement as appropriate.³

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

ISSUES

Was the program/placement for the student's 2014-2015 IEP, including transportation as a related service, reasonably calculated to provide a free appropriate public education ("FAPE")?

FINDINGS OF FACT

1. The student has been diagnosed with multiple medical conditions that led the student to be identified under IDEA as a student with multiple disabilities. (Intermediate Unit ["IU"] Exhibit-13).
2. In the spring of 2014, the student came to the IU in a planned transition from infant/toddler programming. (IU-13).

³ The student's mother was included in the communications related to this matter, listened to the proceedings by speakerphone, and testified as to her views (which aligned with the IU's). The student's mother was not, however, a party to the dispute.

3. In May 2014, the IU completed and issued an evaluation report (“ER”). (IU-13).
4. While the student’s needs are multi-faceted, for the purposes of this decision, two aspects of those needs frame the dispute between the parties: the student’s sleep schedule can be impacted by a necessary attentiveness to feeding and the student’s use of a wheelchair for mobility. (IU-13; Notes of Testimony [“NT”] at 306-308, 378-379, 386).
5. In June 2014, the student’s IEP team met to discuss the May 2014 ER and to plan for the student’s educational programming for the 2014-2015 school year. (IU-4, IU-7).
6. The student’s IEP team’s deliberations resulted in a collaborative decision for the IU to issue a notice of recommended educational placement (“NOREP”) for a private preschool placement where the student’s IEP could be implemented. (IU-7, IU-23, IU-24).
7. The June 2014 NOREP noted that other options, including a placement in an IU classroom, were considered and rejected by the IEP team. The IU-classroom was noted as rejected due to “parents (refuse) to consider the option”. Both parents signed the NOREP indicating agreement with the placement recommendation. (IU-7).
8. The student’s IEP was fully implemented at the private preschool placement, including goals in communication (including signing), gross motor skills, fine motor skills, and following directions. The

- student received specially designed instruction and related services. (IU-4, IU-16, IU-17, IU-18, IU-19, IU-20, IU-21, IU-22; NT at 187-288).
9. The private preschool includes typically-developing peers in other classrooms. The typically-developing peers interact regularly with special needs students at the preschool. (NT at 65-66).
 10. The private preschool placement is housed in a facility which presents slight mobility challenges for the student. (NT at 253-254, 306-308, 378-379).
 11. The private preschool placement is located approximately 45-60 minutes from the residences of the parents. The student is transported by the IU each day, to the private placement in the morning and then from the private placement at the end of the school day. (NT at 149-150).
 12. The student's needs related to feeding require that the student arise early in the morning for feeding and to be ready for the transportation. (NT at 306-308, 378-379, 386).
 13. In early December 2014, the student's IEP was slightly revised. (IU-5; NT at 65-66).
 14. In late December 2014, the student's father contacted the IU, for the first time voicing displeasure with the student's educational placement. An IU special education administrator explained that a change in placement required the IEP team to

- convene. The father indicated that, at that time, he was not interested in an IEP team meeting. (NT at 66-67).
15. By early January 2015, the father's stance had changed, and he requested an IEP team meeting to discuss the student's placement. (NT at 68).
 16. In January 2015, the student's IEP team met to discuss the father's concern. The father requested that the student's educational placement be changed to the IU classroom. (IU-12; NT at xxx).
 17. The student's IEP could be fully implemented at the IU classroom, including all goals. The student would receive the specially designed instruction and related services in the IEP. (IU-5; NT at 321-383).
 18. The IU classroom does not include access to typically-developing peers. Interaction with typically-developing peers would take place only during intermittent activities in the community.
 19. The IU classroom is located approximately 25-40 minutes away from the residences. As with the private preschool placement, the IU would provide transportation to/from the IU classroom. (NT at 152-153).
 20. The father's concerns center on the length of the student's daily travel to/from the private preschool placement and the effect of potential fatigue on the student's learning. The father is also

concerned about access/mobility issues at the private preschool placement. (NT at 384-418).

21. The IU-based members of the IEP team and the student's mother disagreed with the father's position. The IU issued a NOREP for a continuing placement at the private preschool placement. The student's mother approved the NOREP. The student's father disapproved the NOREP and filed the complaint that led these proceedings. (IU-6, IU-8, IU-9).

DISCUSSION AND CONCLUSION OF LAW

FAPE in the Least Restrictive Environment ("LRE")

To assure that an eligible child receives FAPE,⁴ an IEP must be "reasonably calculated to yield meaningful educational...benefit and student or child progress."⁵ "Meaningful benefit" means that a student's program affords the student the opportunity for "significant learning",⁶ not simply *de minimis* or minimal education progress.⁷

Moreover, both federal and Pennsylvania law require that the placement of a student with a disability be in the LRE.⁸ Pursuant to the mandate of 34 C.F.R. §300.114(a)(2):

⁴ 34 C.F.R. §300.17.

⁵ Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

⁶ Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999).

⁷ M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996).

⁸ 34 C.F.R. §§300.114-120; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993).

“Each (school district) must ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled, and...separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

Pennsylvania special education regulations mirror this emphasis on LRE, requiring supplementary aids and services, where those are required for a student to make meaningful education progress on IEP goals in...the IEP.⁹

In this case, the parties each have a different view of what constitutes the LRE for this student. The IU’s contention that the student’s access to typically-developing peers in the private preschool placement provides a substantive component to the LRE that is not available in its own placement. The father’s contention is that the length of the student’s daily commute to/from the private preschool placement—amounting to a cumulative 1.5-2 hours per day, depending on which parental residence is involved—amounts to an overly restrictive aspect of the student’s program when another placement, an IU placement, is available much closer to the student’s residences with father and mother; father also has concerns about the student’s access

⁹ 22 PA Code §14.145(3).

to the private preschool placement. Each party's contention has some degree of merit.

The private preschool placement is substantively appropriate. It provides the student with an appropriate education through its implementation of the IEP. While access to the facility by wheelchair is not entirely optimized, the student is able to access the facility on a daily basis; access and mobility do not prevent the student from receiving FAPE. The father's concerns about the length of the student's transportation and the potential effects of fatigue, however, are legitimate.

The IU classroom placement would also be substantively appropriate. It too would provide the student with an appropriate education through implementation of the IEP. The lack of any regular interaction with typically-developing peers is, however, a serious flaw in programming at that location. The issue of fatigue, to the extent there is any, would be obviated by a placement in the IU classroom.

On balance, the substantive advantage of regular interaction with typically developing peers at the private preschool placement outweighs the shorter transportation time that would be involved in the IU classroom placement. Substantively, the LRE is the private preschool placement. While the length of transportation for any student is important, and at some point would amount to an impermissibly restrictive aspect of a placement, the record in this case does not support

such a conclusion here. To the extent that there were fatigue issues for the student, and that cannot be established as a fact on this record, any such issues were intermittent and did not rise to the level where the student was denied FAPE as a result of the transportation.

Accordingly, the record does not support a conclusion that the IU's placement of the student at the private preschool placement for the 2014-2015 school year amounted to a denial of FAPE.

CONCLUSION

On balance, the student's placement in the 2014-2015 school year provided FAPE in the LRE.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Capital Area Intermediate Unit provided the student with a free appropriate public education in the 2014-2015 school year that, on balance, meets the Intermediate Unit's least restrictive environment obligations.

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

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

July 31, 2015