

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: C.C.

Date of Birth: [redacted]

Dates of Hearing:

September 11, 2013

November 5, 2013

CLOSED HEARING

ODR Case #13439-1213AS

Parties to the Hearing:

Representative:

Parent[s]

Charles Steele, Esquire
428 Forbes Avenue / Suite 700
Pittsburgh, PA 15219

Armstrong School District
West Hills Intermediate School
175 Heritage Park Drive
Kittanning, PA 16201

Patricia Andrews, Esquire
1500 Ardmore Boulevard
Suite 506
Pittsburgh, PA 15221

Date Record Closed:

November 27, 2013

Date of Decision:

December 17, 2013

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student) is a pre-teen-age student residing in the Armstrong School District (“District”). The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹ for specially designed instruction/related services as a student with an intellectual disability and a speech/language impairment.²

Parent asserts a number of claims related to the student’s past educational programming that, in parent’s view, denied the student a free appropriate public education (“FAPE”) for the student. Parent asserts that the student’s individualized education plans (“IEPs”) over the 2010-2011, 2011-2012, and 2012-2013 school years were not reasonably calculated to yield meaningful education benefit and, when implemented, the student failed to make educational progress.

As a result of these claims, parent claims that compensatory education should be awarded for a period beginning in January 2011 (two years prior to the filing of the complaint in January 2013) through May 2013 (when the parties agreed to a revised IEP which parent agrees ended the denial-of-FAPE claims).³

¹ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”) for Pennsylvania’s special education regulations.

² As of the date of this decision, the student has been identified as a student with autism and specific learning disabilities in reading and mathematics. One of the issues in the hearing, however, is parents’ child-find claim that the District did not timely identify the student with a specific learning disability.

³ The complaint was filed in January 2013. In March 2013, the parties reported that settlement of the dispute seemed to be in view, and so a conditional-dismissal order

The District counters that, at all times, it met its obligations under the IDEA and provided the student with FAPE.

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

ISSUES

Was the student provided with FAPE over the relevant time periods in the 2010-2011, 2011-2012, and 2012-2013 school years?

If the answer to this question is in the affirmative, what remedy is available to the student?

FINDINGS OF FACT

1. The student has attended District schools since kindergarten, and has been long-identified as a student with an intellectual disability and speech and language impairment who requires specially designed instruction and related services. (Joint Exhibit ["J"]-1, J-2, J-3, J-4, J-5).
2. In the 2010-2011 school year, the student was in 3rd grade. (J-6).

March 2011 IEP

3. In March 2011, the student's IEP was revised. (J-6).⁴
4. In the March 2011 IEP, in the special considerations section, the IEP indicated the student had communication needs. No other special considerations were indicated. (J-6 at page 3-4).

was issued. The terms of the order allowed for reinstatement of the complaint if momentum toward settlement should have stalled, and the parties needed to move to a hearing. In May 2013, the order was extended for another 30 days, and similarly, the order was extended again in June 2013 with the indication that it would not be extended any further. In mid-July 2013, near the end of the reinstatement period, parent requested reinstatement of the complaint, and the first hearing session was held September 11, 2013. (Hearing Officer Exhibit ["HO"]-3, HO-4, HO-5; Notes of Testimony ["NT"] at 38-40).

⁴ Although parent's claim is from January 2011, the first IEP placed at issue in the record is the March 2011 IEP.

5. The March 2011 IEP contained five academic and life-skills goals: one in community-based instruction, two in reading (decoding and sight-word accuracy), one in money skills, and one in mathematics. (J-6 at pages 11-24).⁵
6. Each goal contained multiple short-term objectives. (J-6 at pages 11-24).
7. In April 2011, approximately one month after the drafting of the March 2011 IEP, the first progress monitoring reports were issued. Progress on goals was gauged using each of the short-term objectives. Progress on the various objectives was noted as “some progress”, “ongoing”, or “not introduced at this time”. (J-9).
8. In June 2011, year-end progress monitoring reports were issued at the end of 3rd grade. In November 2011 and January 2012, progress monitoring reports were issued during the first half of 4th grade. (J-11, J-12).
9. By January 2012, one short-term objective for the community-based instruction goal was indicated to be “anticipate meeting objective”. The remaining two objectives were noted as “some progress” and “ongoing”. (J-12 at page 2).
10. By January 2012, the student had met one short-term objective for the decoding goal and was making some progress on the remaining four short-term objectives. Overall, the decoding goal was noted as “some progress” and “ongoing”. (J-12 at page 3).
11. By January 2012, the student was showing progress on all three short-term objectives for the sight-word goal. In the prior school year, as of April 2011, none of these objectives had yet been introduced. Overall, the sight-word goal was noted as “some progress” and “ongoing”. (J-12 at page 5).
12. By January 2012, the student had met all three short-term objectives for the money-skills goal and, overall, had met the goal. (J-12 at page 3).
13. By January 2012, the student had met one of the three short-term objectives for the mathematics goal. The other two

⁵ Parent’s claims, in the complaint and in substance at the hearing, focused on the student’s academic and life skills goals. Therefore consideration of the two speech and language goals and an occupational therapy goal were not considered in this decision. (HO-1; J-6, J-7; NT at 32-38).

short-term objectives were indicated to be “anticipate meeting objective”. Overall, the District anticipated that the student would meet this goal. (J-12 at page 4).

February 2012 IEP

14. In February 2012, the student’s IEP was revised. (J-7).
15. The February 2012 IEP contained three academic and life-skills goals: one daily living skills goal, one reading goal, and one mathematics goal. (J-7 at pages 12-16).
16. The reading goal in the February 2012 IEP is overly generalized when compared to those in the March 2011 IEP. The decoding goal in the March 2011 IEP was written as follows: “Given a group of CVC words, (the student) will demonstrate functional literacy skills that promote greater independence by sounding out at least 15 words with various letter patterns, 80% of the time for 3 consecutive trials.” The sight-word goal in the March 2011 IEP was written as follows: “Given a list of Dolch sight words, (the student) will demonstrate functional literacy skills that promote greater independence by reading at least 80 words with 80% accuracy for 3 consecutive trials.” By contrast, the reading goal in the February 2012 IEP was written as follows: “The student will increase...functional literacy skills including reading, vocabulary, and writing.” (J-6 at pages 16, 23; J-7 at page 13).
17. The mathematics goal in the February 2012 IEP is overly generalized when compared with that in the March 2011 IEP. The mathematics goal in the March 2011 IEP was written as follows: “Given a worksheet containing single digit addition problem with sums up to 10, (the student) will demonstrate functional mathematic skills that promote greater independence by providing a verbal and/or written answers with 80% accuracy for 3 consecutive trials.” By contrast, the mathematics goal in the February 2012 IEP was written as follows: “(The student) will learn functional math concepts in order to solve problems as independently as possible.” (J-6 at page 18, J-7 at page 14).
18. Similarly, the short-term objectives in the February 2012 IEP are overly generalized when compared to the March 2011 IEP. For example, the first short-term objective in the March 2011 IEP decoding goal is as follows: “(The student) will identify the vowel sound [in a CVC word] in isolation with 80% accuracy.” By contrast, the first short-term objective in the February 2012 IEP reading goal is as follows: “(The student) will use phonics, picture,

and context clues to decode and understand new words during reading.” (J-6 at page 16; J-7 at page 13).

19. Comparing the short-term objectives in the academic and life-skills goals, goal by goal, between the March 2011 and February 2012 IEPs, the fourteen objectives in the March 2011 IEP are uniformly more concrete and detailed than the nine objectives in the February 2012 IEP. (J-6 at pages 14-17, 20-21, 23-24; J-7 at pages 12-15).⁶
20. Progress monitoring on the February 2012 IEP took place over the latter half of 4th grade and the first half of 5th grade, in March 2012, June 2012, October 2012, and January 2013. (J-13, J-14, J-15, J-16).
21. By January 2013, progress on all the short-term objectives in the February 2012 IEP goals was noted as “some progress”, or “ongoing”, except for one reading goal objective (as referenced above, “will use phonics, picture, and context clues to decode and understand new words during reading”), which was noted as “anticipate meeting objective”. (J-16).

March 2013 IEP

22. In March 2013, the student’s IEP was revised. (J-8).
23. The March 2013 IEP contained three academic and life-skills goals: one daily living skills goal, one reading goal, and one mathematics goal. (J-8 at pages 12-16).
24. Although detailed baseline data was added to the goals, the substance of the goals and short-term objectives in the March 2013 IEP remained largely the same as in the February 2012 IEP. (J-7 at pages 12-15; J-8 at pages 12-17).

⁶ This decision will not provide the difference between all short-term objectives in the March 2011 and February 2012 IEPs, but another example of the difference between the short-term objectives follows. In the March 2011 IEP, the first short-term objective for the math goal is: “(The student) will count sets of pictures, with sums no greater than 10, on a worksheet and will write or verbally give the answer to the question ‘how many altogether?’ with 80% accuracy.” J-6 at page 20. In the February 2012 IEP, the first short-term objective for the math goal is: “(The student) will use addition and subtraction skills in everyday situations.” J-7 at page 15. The counterpart of the finding of fact is repeated here; the short-term objectives in the February 2012 IEP were uniformly over-generalized and unmeasurable.

25. With the parties having agreed to a revised IEP in May 2013, the record does not contain any progress monitoring on the March 2013 IEP.

Witness Credibility

26. All witnesses were found to have testified credibly. (NT at 45-359).

DISCUSSION AND CONCLUSIONS OF LAW

To assure that an eligible child receives a free appropriate public education (“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” (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Here, the student’s March 2011 IEP was appropriate. Both the goals and the short-term objectives, which were the progress monitoring engine of the IEP, were detailed, explicit, and concrete. The progress monitoring itself over 3rd grade into 4th grade shows a textured growth in the student’s progress from April 2011 through January 2012.

The goals and short-term objectives in the February 2012 IEP, however, are inappropriate. The goals and objectives became overly

generalized and unmeasurable. This diminished the value of the progress monitoring. While the progress monitoring over 4th grade into 5th grade indicated that progress was ongoing and some progress was being made, the inappropriateness of the goals and objectives undermines the potential for accurate progress monitoring.

The goals and short-term objectives in the March 2013 IEP are also inappropriate, continuing to be generalized and unmeasurable. A large amount of baseline data, from standardized achievement and other assessments in a March 2013 re-evaluation report, was added to the goals. But that data does not enter into the goal/objective writing, which is largely carried over from the February 2012 IEP. In effect, the baseline data appears to be grafted onto the goals, but does not change the inappropriateness of the goals.

In sum, then, the student's IEPs were substantively inappropriate due to generalized and unmeasurable goals and short-term objectives, from February 2012 through the point in May 2013 where the parties agreed to an IEP that was not at issue. An award of compensatory education will be fashioned accordingly.

Compensatory Education

Where a school district has denied a student a FAPE under the terms of the IDEA, compensatory education is an equitable remedy that is available to a claimant when a school district has been found to have

denied a student FAPE under the terms of the IDEIA. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). In this case, the District has denied the student a FAPE from the date of the February 2012 IEP through the date of the May 2013 IEP where the parties agreed to the student's programming.

In Pennsylvania, an elementary school student must be provided with a minimum of five hours of education per school day. (22 PA Code Section 11.3). Here, the student was denied a FAPE. The denial-of-FAPE surfaces out of the goals and objectives which, on their face, are inappropriate. The record, though, especially through the testimony of the student's life skills teacher in the 4th and 5th grades, supports a finding that the District implemented the student's IEPs in good faith. And to the extent that the substantively inappropriate goals do not afford reliance on the progress monitoring on its face, nothing in the record leads to a definitive conclusion that progress did not occur. In effect, the progress the student made, or did not make, is unknown.

What is known is that the goals and objectives in the February 2012 and March 2013 IEPs are inappropriate. Therefore, the compensatory education award will reflect some degree of deprivation but will be less than what might amount to a full award of compensatory education. As a matter of equity, then, the student will be awarded 1.5 hours of compensatory education for every school day the student

attended for the period covered by the February 2012 and March 2013 IEPs.

As for the nature of the compensatory education award, the parent may decide in her sole discretion how the hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, when convenient for the student and the family.

There are financial limits on the parent's discretion in selecting the appropriate developmental, remedial or enriching instruction that furthers the goals of the student's IEPs. The costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the District professionals who provided services to the student during the period of the denial of FAPE.

In sum, then, an award of compensatory education will be made for a denial of FAPE as outlined above.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student was denied a free appropriate public education by the School District from February 2012 through May 2013.

The student is awarded 1.5 hours of compensatory education for every school day attended between the date the February 2012 IEP was first implemented and the date in May 2013 when the parties agreed to an IEP which was not at issue in this matter.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

December 17, 2013