

*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.D.

Date of Birth: [redacted]

Date of Hearing: July 8, 2010

### **CLOSED HEARING**

ODR Case # 17881-1516KE

Parties to the Hearing:

Representative:

Parent[s]

Frederick Stanczak, Esq.  
179 North Broad Street – 2<sup>nd</sup> Floor  
Doylestown, PA 18901

Quakertown Community School District  
100 Commerce Drive  
Quakertown, PA 18951

Mark Walz, Esq.  
331 East Butler Avenue  
New Britain, PA 18601

Date Record Closed:

July 8, 2016

Date of Decision:

July 13, 2016

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

[The Student] (“student”)<sup>1</sup> is a [late teenaged] student who resides in the Quakertown Community School District (“District”). The student is eligible as a student with a disability Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>2</sup>, namely as a student with multiple health impairments and a speech/language impairment. The parties’ dispute centers on the student’s extended school year (“ESY”) program for the summer of 2016. The parents maintain that the District’s proposed ESY program is inappropriate and request alternative ESY arrangements. The District maintains that the proposed ESY program it has offered is appropriate and, as such, has complied with its duties under federal and Pennsylvania law to offer the student a free appropriate public education (“FAPE”).

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

## **ISSUES**

Is the District’s proposed ESY program appropriate?

If not, is the student entitled to remedy?

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<sup>1</sup> The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

<sup>2</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §14.132.

## **FINDINGS OF FACT**

1. The student has been diagnosed with attention deficit hyperactivity disorder (“ADHD”), speech/language disorder, autism spectrum disorder, and mixed developmental delays. The student also has a medical diagnosis of 48XXYY syndrome which impacts the student’s physical, language, and social development. (Parents’ Exhibit [“P”]-2; School District Exhibit [“S”]-3).
2. In May 2014, as the result of a prior round of special education due process, the parties entered in an agreement through which the District funded a private placement for the student, including ESY programming at the private placement, for the 2014-2015 and 2015-2016 school years and encompassing ESY programming for the summers of 2014 and 2015. (S-1).
3. As part of the agreement, the parents provided consent to the District to conduct a multidisciplinary evaluation of the student in the spring of 2016. The parties agreed that over the course of the spring of 2016, the student’s individualized education program (“IEP”) team would meet to design an IEP for the student, including any program deemed necessary as part of ESY for the summer of 2016. (S-1).

4. In early March 2016, as outlined in the agreement, the District issued its re-evaluation report (“RR”) for the student. (S-3).
5. In late March 2016, the student’s IEP team met to design the student’s IEP. Needs were identified in reading and writing, processing speed/fluency, language skills (including pragmatic language), sensory processing, and organizational skills. (S-4).
6. The March 2016 IEP included ESY programming based on the reading and writing goals in the IEP, as well as organization skills and pragmatic language. (S-4 at page 58).
7. The District’s ESY placement takes place three days per week, 9 AM to 2:30 PM, over July 5<sup>th</sup> through August 4<sup>th</sup>. (S-4 at page 59).
8. Based on the March 2016 IEP, the District issued a notice of recommended educational placement (“NOREP”). While the NOREP addressed the student’s placement generally for the 2016-2017 school year, as part of that programming, the NOREP included a recommendation for the student to engage in the District’s ESY program from July 5<sup>th</sup> through August 4<sup>th</sup>. (S-5).
9. In late May 2016, the student’s NOREP was revised. The proposed ESY programming was identical to the ESY programming in the March IEP, although an element was added in terms of transition planning for the student’s attendance at the District high school

for the 2016-2017 school year.<sup>3</sup> A NOREP was issued for the May 2016 IEP, again recommending the District's ESY program. (P-6; S-7).

10. In June 2016, the parents rejected the May 2016 NOREP and filed the special education due process complaint which led to these proceedings. Hearing Officer Exhibit ["HO"]-14; S-7).

11. The parents preferred that the student's ESY programming for the summer of 2016 continue at the private placement where the student had been attending under the terms of the March 2014 agreement. (P-9, *see also* P-12; S-1; NT at 68-69, 99-135).

## **DISCUSSION AND CONCLUSIONS OF LAW**

The provision of ESY services is governed by both federal and Pennsylvania special education law. (34 C.F.R. §300.106; 22 PA Code §14.132). Where the IDEIA speaks generally to the availability of, and qualification for, ESY programming (34 C.F.R. §§300.106(a)(2), (b)),

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<sup>3</sup> The District's ESY programming is located at a District middle school. As part of the IEP for the 2016-2017 school year, the student's ESY program included weekly visits to the high school for transition experiences. (Notes of Testimony ["NT"] at 141).

<sup>4</sup> The parents filed their complaint (HO-1), and the District responded to the complaint. (HO-2). In prehearing communications, the District also objected to the expedited nature of the proceedings under 22 PA Code §14.132(e) and requested that the case proceed on a non-expedited timeline. This request was denied by the hearing officer. (HO-3). The parties and the hearing officer presented views on the record about each party's view, and the hearing officer's view, on the issue of expedited proceedings for an ESY complaint. (NT at 24-33).

Pennsylvania special education regulations speak in detail about the provision of ESY services. (22 PA Code §14.132).

As such, to assure that an eligible child receives a FAPE (34 C.F.R. §300.17), an IEP must be “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.”

Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (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 (3<sup>rd</sup> Cir. 1999).

In this case, the District’s proposed ESY program is appropriate. The student would work on reading and writing goals and engage in programming to address other needs (organization skills and pragmatic language). There is no doubt that the ESY program at the private placement, on this record, appears to be very good. But the District does not need to compete with the private placement; instead, its obligation is to propose an ESY program that is reasonably calculated to yield meaningful education benefit. It has done that—the ESY programming proposed in the March and May 2016 IEPs is appropriate.

### **CONCLUSION**

The District’s proposal for ESY programming is appropriate.

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**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the School District has proposed an appropriate extended school year program for the student for summer 2016.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

July 13, 2016