

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: EM

Date of Birth: XX-XX-XXXX

Dates of Hearing:
November 3, 2009 & January 25, 2010

OPEN HEARING

ODR Case # 00261-09-10-LS

Parties to the Hearing:

Representative:

Mr. .

Pro Se

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Date Record Closed:

January 25, 2010

Date of Decision:

February 9, 2010

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

“Student” (“student”) is a 18-year old student residing in the Pittsburgh School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. Namely, the student has been identified as having an emotional disturbance, attention deficit hyperactivity disorder (“ADHD”), and a speech and language impairment. The parent has alleged that the District has mis-served the student in various capacities over many years and that the District has committed procedural and substantive violations of IDEIA. The District maintains that it has acted appropriately at all times towards the student in the design and implementation of the student’s special education programming.

ISSUES

Has the District failed to provide a free appropriate public education (“FAPE”) to the student through procedural acts and/or omissions?

¹ 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.

Has the District failed to provide a free appropriate public education (“FAPE”) to the student through substantive acts and/or omissions?

FINDINGS OF FACT

1. The student attended District schools until 4th grade (the 2000-2001 school year). Part way through the student’s 5th grade year (the 2001-2002 school year), the student transferred from District schools to another school district. (Notes of Testimony at 20-21).
2. The student attended the other school district for 6th grade (the 2002-2003 school year). At the end of the school year, the other school district recommended a private placement. The student attended the private placement for 7th, 8th, and 9th grades (the 2003-2004, 2004-2005, and 2005-2006 school years). (NT at 21-32).
3. The student attended a second private placement for 10th grade (the 2006-2007 school year). (School District Exhibit [“S”]-12; NT at 39-40).
4. In the fall of 2007, the student’s family moved within the geographic boundaries of the District . (NT at 40).
5. In September 2007, the student entered a District school for students with emotional support and behavioral needs. Even though the student was chronologically in the 11th grade, the

- student's earned credits placed him at 10th grade. (S-13, S-15, S-16; NT at 99, 109-110, 140-141).
6. An intake individualized education plan ("IEP") was developed at that time. The student's parent approved the notice of recommended educational placement ("NOREP"). In November 2007, a new IEP was developed based on data gathered at the District placement. The District did not present a NOREP with the November 2007 IEP. The District began to implement the November 2007 IEP. (S-18; NT at 102-103, 128-129; 255-262).
 7. On December 3, 2007, the student was involved in an altercation with another student that resulted in the student's jaw being broken. The student left school that day and was medically excused until February 5, 2008. (S-25; NT at 105-106).
 8. The parties dispute whether the student was enrolled in homebound instruction in February 2008. The parent testified that he hand-delivered to District special education offices a copy of the application for homebound instruction. District witnesses testified that the application was never received. (NT at 72-73, 106-108, 114-115).
 9. On February 15, 2008, the IEP team met to discuss the student's continued absence from school. The District requested permission to evaluate the student. Permission was never granted by the parent. (NT at 146-148).

10. After leaving school in December 2007, the student did not attend school for the remainder of the 2007-2008 school year. (S-25).
11. The IEP team met in October 2008 to consider the student's present levels of academic and functional performance. (S-21; NT at 151-152).
12. The student did not attend school in the 2008-2009 school year. (S-25).
13. In September 2009, the parent sought to have the student enroll in the school the student would attend if not identified. The student's IEP team met to re-visit the student's most recent IEP. (S-21; NT at 158-159).
14. At that time the parent asked to have the student re-evaluated, and parent granted permission. Thereafter, however, the student was not made available to the District for testing and parental behavior rating scales were not returned by the parent. (S-19, S-26; NT at 198-200, 345-348).
15. Through January 2010, the student has not attended school in the 2009-2010 school year. (NT at 200).

DISCUSSION AND CONCLUSIONS OF LAW

The District has largely met its procedural requirements under Pennsylvania and federal special education laws. The IDEIA requires, however, that parents be given notice whenever a school district “proposes to initiate or change the...educational placement of the child.” 34 C.F.R. §300.503(a)(1). In Pennsylvania, this notice is commonly referred to as a notice of recommended educational placement (“NOREP”). Here, the District did not issue a NOREP in November 2007 when the IEP team was ready to develop the student’s IEP after he had been in the District for approximately six weeks. (FF 4, 5, 6). The principal of the school testified: “we don’t present a NOREP every time we write an IEP unless there is a change in placement.” (NT at 128).

First, a placement is not a school assignment, or a classroom designation; it is the mosaic of individualized services that a student requires. Second, in this case, the November 2007 was wholly different from the September 2007 IEP. This is to be expected— the September 2007 IEP was an intake IEP with very little information presented to the District for the IEP team’s consideration. (FF 6). Thus, when the IEP team met in November 2007 and crafted the new IEP, a NOREP should have been issued reflecting that the IEP team had gathered data, had used that data in its deliberations, had used it to craft entirely new goals, and that the District had a recommendation as to the implementation of the IEP. (FF 6). The NOREP is the proper vehicle to summarize that information and to present it to the parent, and that was not done.

In the instant case, however, the student was not denied FAPE as a result of this procedural error. Indeed, the student was not denied a FAPE due to any substantive error on the District's part. The November 2007 IEP is appropriate, having present levels of performance, concrete, measurable annual goals, specially designed instruction and related services, and post-secondary transition planning. (34 C.F.R. §300.320(a),(b); see FF 6 at S-18). The District has also sought to work with the parent to evaluate the student and to ensure that special education programming was being delivered. (FF 6, 9, 11, 13, 14). The student has been absent from school without excuse since February 2008, and before then attended only intermittently in the period September 2007 – February 2008. (FF 7, 10, 12, 15). The District has worked with the parent and the student to provide FAPE. Even if this were not the case, with the student voluntarily withholding himself from any District educational programming, the District could not be held liable for any award.

Accordingly, there is no award for the student.

CONCLUSION

Since the District began serving the student in the fall of 2007, the District has sought to provide the student with a FAPE, notwithstanding the procedural error of not presenting a NOREP in November 2007 to accompany the November 2007 revised IEP. The student's non-

attendance at school, and the District's inability to re-evaluate the student, have materially interfered with the District's ability to implement the student's special education programming. There is no award for the student.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, from September 2007 through the date of this order, the Pittsburgh School District has provided, or stood ready to provide, a free appropriate public education to the student.

There is no award for the student.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

February 9, 2010