

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: J.G.

Date of Birth: [redacted]

Dates of Hearing:

March 5, 2013

April 10, 2013

June 14, 2013

CLOSED HEARING

ODR Case #13471-1213KE

Parties to the Hearing:

Representative:

Parent

Pro Se

Parent

Pro Se

Agora Cyber Charter School
995 Old Eagle School Road
Suite 315
Wayne, PA 19087

Jeffrey Champagne, Esq.
McNees, Wallace & Nurick, LLC
100 Pine Street / P.O. Box 1166
Harrisburg, PA 17108

Date Record Closed:

June 14, 2013

Date of Decision:

July 8, 2013

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [teenaged] student who attends the Agora Cyber Charter School (“Charter School”). All parties agree that 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 for hearing impairment and speech and language impairment.

The dispute has an uncommon procedural background. In effect, the Charter School stands in a neutral position between the parents. While the Charter School explicitly stands by the appropriateness of the programming it has offered, and stands ready to continue that programming, the Charter School finds itself as mostly a bystander in a substantive dispute between the parents. Specifically, each parent favors a different educational placement for the student. The student’s father feels the student’s educational program should be delivered in a residential program at a school specializing in deaf education. The student’s mother feels the student should continue to be educated through the Charter School’s cyber programming.

For the reasons set forth below, I find that the student’s current educational placement should continue, namely that the student should

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.

continue to be educated through the Charter School's cyber programming.

ISSUES

Should the student's educational programming be delivered in a residential program at a school specializing in deaf education, or continue through the Charter School's cyber programming?

FINDINGS OF FACT

1. The student was raised in an overseas orphanage, foster home, and residential school until being adopted in December 2005. (Notes of Testimony ["NT"] at 549).
2. The student has profound bilateral sensorineural hearing loss. In 2006, the student received cochlear implants. (School District Exhibit ["S"]-11).
3. Upon being adopted, the student had no language skills and relied on pantomime and gesture for communication. (NT at 550).
4. The student's current program at the Charter School is delivered at home under the terms of a September 2012 individualized education plan ("IEP") and through the Charter School's cyber-programming. (S-12).
5. The student's present levels of performance in the September 2012 IEP, and progress reports, show that the student had made progress in the months leading up to the issuance of the IEP. (S-9, S-10, S-12 at pages 6-12).
6. The student's September 2012 IEP identified needs in expressive and receptive communication, including auditory awareness, sound development, and vocabulary. Additionally, the IEP identified the need for self-advocacy. Academically, the IEP identified needs in reading comprehension, math computation, measurement, sight word recognition, and writing. (S-12 at page 13).

7. The September 2012 IEP included eight goals in the following areas:
- expressive and receptive vocabulary and the answering of “wh-” questions;
 - written communication;
 - conversational comprehension;
 - total communication effectiveness (including sign, gesture, and writing);
 - reading comprehension;
 - mastery of sight words;
 - spelling; and
 - math calculation.
- (S-12 at pages 20-29).
8. In the September 2012 IEP, the student’s mother serves as the student’s learning coach. The learning coach works directly with the student in delivering the Charter School’s curriculum in conjunction with a Charter School special education teacher and general education teacher. The learning coach and teachers confer using phone, email, and web-based video-conferencing. (S-12 at pages 29-30).
9. The student’s communication plan in the September 2012 IEP includes primary languages as American Sign Language (“ASL”), signed language other than ASL, cued English, pidgin signing, and spoken English. Primary modes of both expressive and receptive communication include cued language, finger spelling, gestures, and pidgin signing. An additional primary mode of expressive communication includes oral/spoken English. Additional primary modes of receptive communication include ASL and auditory/oral. (S-12 at page 37).
10. Witnesses from the Charter School, including a special education supervisor who oversees the implementation and progress of the student’s program, and the two speech and language therapists who deliver speech and language services to the student in person, testified credibly that the student is making progress under the terms of the September 2012 IEP. (NT at 129-347).

11. The student's father seeks placement at a residential program at a school specializing in deaf education. (NT at 66-67, 74).²
12. In January 2012, a school psychologist affiliated with the school privately evaluated the student. (S-8).
13. In February 2013, the student underwent a series of evaluations at the school. (Parent's Exhibit ["P"]-2, P-3, P-4).³
14. Witnesses from the school for the deaf, including the school psychologist who performed the private evaluation and a school administrator who oversees the residential and other non-academic components of the school's operations, testified credibly that the student has the profile of a student who could make educational progress at the school. (NT at 354-419, 504-545).
15. Parents share a highly contentious relationship, including heavy involvement with custody matters by the Court of Common Pleas.

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

² The student's father opined that a residential placement is not entirely necessary, although he testified that, by his estimate the student's one-way commute to the school would be approximately 90-95 miles. (NT at 79. *See also* 537-541).).

³ Each parent brought forward exhibits at the hearing. To differentiate the two sets of exhibits, father's exhibits were marked as Parent's Exhibits ["P"] as he was the moving party. Mother's exhibits were marked as Mother's Exhibits ["M"].

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

A central tenet of special education law is that a student's program must be delivered in the least restrictive environment. That is, a school district or charter school must "ensure that to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment 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." (34 C.F.R. §300.114(a)(2); *see also* 22 PA Code §14.145(1)-(2); Oberti v. Board of Education, 995 F.2d 1204 (3^d Cir. 1993)). A student's placement surfaces along a continuum of potential placements where the student may receive some or all educational programming in regular education classes, special education settings, private educational settings, or residential educational settings. (34 C.F.R. §300.115; 22 PA Code 14.145(5)).

In this case, each parent's preferred placement is highly restrictive. The student's father seeks a residential program at a school specializing in deaf education. The student's mother seeks to have the student remain in home-based cyber-schooling. Along a continuum of potential placements, both of these are clearly toward the more restrictive end of

the continuum. Still, between the two placements, the student's current cyber-schooling through the Charter School is relatively less restrictive.

The analysis between the two proposed placements begins with an examination of the student's current placement. The student has made progress while enrolled in the Charter School. While the student presents with significant communication needs, the September 2012 IEP provides for a multi-faceted communication plan that, based on the entirety of the record, is allowing the student to progress academically. The IEP goals address the student's identified needs. And the testimony of the witnesses regarding implementation of the IEP, and the student's progress under the terms of the IEP, was credible and persuasive.

A placement at the school for the deaf, then, must be judged in light of the appropriateness of the September 2012 IEP as delivered by the Charter School. Put succinctly, is there any reason that the Charter School placement should be disturbed? The entirety of the record weighs against such a course of action. First, while there may be certain elements of the student's programming that might be perfected at the school, or might be delivered quite differently, such differences do not render inappropriate the Charter School's September 2012. Second, as indicated above, both placements are highly restrictive. So, in effect, any argument that the home-based Charter School program is restrictive is mooted by an equivalent level of restrictiveness at the residential school.

Accordingly, the student's educational programming will continue through the Charter School's cyber programming

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the educational program for the student in the 2013-2014 school year shall continue to be delivered through the Charter School.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

July 8, 2013