

*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

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### DECISION

Child's Name: J. G.

Date of Birth: [redacted]

Dates of Hearing:

September 23, 2014

October 1, 2014

November 21, 2014

### **OPEN HEARING**

ODR Case # 15168-1314KE

Parties to the Hearing:

Parent[s]

Peters Township School District  
631 East McMurray Road  
McMurray, PA 15317

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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

Jocelyn Kramer, Esquire  
445 Fort Pitt Boulevard / Suite 503  
Pittsburgh, PA 15219

January 20, 2015

January 30, 2015

Jake McElligott, Esquire

## **INTRODUCTION**

Student<sup>1</sup> is an early elementary school age student who formerly resided in the Peters Township School District (“District”). Over the course of the 2013-2014 school year, the parties dispute the appropriateness of the educational programming for the student as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”).<sup>2</sup> Parent<sup>3</sup> claims that the student was denied a free appropriate public education (“FAPE”) and seeks compensatory education as a remedy, as well as reimbursement for transportation related to the student’s attendance at an after-care program.

The District counters that, at all times, it met its obligations to the student under IDEIA/Chapter 14. Consequently, the District claims that no remedy is owed.

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

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<sup>1</sup> Even though the parent elected to have an open hearing, the generic use of “student”, rather than a name and gender-specific pronouns, is employed as the regular practice of this hearing officer.

<sup>2</sup> It is this hearing officer’s preference to cite to the implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162.

<sup>3</sup> [redacted] Even though the singular “parent” is used in this decision because the student’s mother filed the complaint, both parents were fully involved in the student’s education, attended the hearing, and were heard. In effect, both parents were engaged in their child’s education and in the hearing, but the singular “parent” is used as a procedural necessity.

## **ISSUES**

Did the District provide FAPE to the student under its IDEIA obligations in the 2013-2014 school year?

If not,  
is compensatory education owed to the student?

Should the parent be reimbursed for transportation?

## **FINDINGS OF FACT**

1. In November 2012, the student was enrolled in an early childhood education program. As part of that program, the student had been identified as a student who needed supports and services through an individualized family services plan (“IFSP”). (School District Exhibit [“S”]-28).
2. The November 2012 IFSP contained goals in speech and language, fine and gross motor skills, attention/direction-following, social skills, and academics. The most significant area of need was the student’s communication needs due to apraxia of speech, an impairment which led to difficulties in expressive communication with peers and adults. (S-28).
3. The November 2012 IFSP indicated that the student had communication needs but did not exhibit behaviors that interfered with the student’s learning or the learning of others. (S-27).

4. In June 2013, in anticipation of the student's transition to District kindergarten for the 2013-2014 school year, the District performed an evaluation of the student. (S-27).
5. The June 2013 evaluation report ("ER") identified the student with a health impairment (attention deficit hyperactivity disorder/combined type), and speech and language impairment (apraxia). (S-27).
6. The June 2013 ER recommended a learning support environment with related services in speech and language and occupational therapy ("OT"). (S-27).
7. In September 2013, the student's individualized education plan ("IEP") team met to design the student's IEP. (S-26).
8. The September 2013 IEP contained eleven goals, including three academic goals, six OT goals, and two speech and language goals (articulation and expressive language). (S-26).
9. The September 2013 IEP indicated that the student had communication needs but did not exhibit behaviors that impeded the student's learning or the learning of other. (S-26).
10. The District's kindergarten program is a half-day program, and the student attended the morning session. The student attended an after-care program in the afternoon, run by a private provider unaffiliated with the District; the after-care program, however, rented space in the District building where the student

attended kindergarten. (Notes of Testimony [“NT”] at 45-47, 168-169, 484-495).

11. The speech and language and OT services were initially, at parents’ request, to be delivered by the District during the after-care program. A former District practice had permitted this service-delivery model, and the District acquiesced to parents’ request. A September 6, 2013 notice of recommended education placement (“NOREP”), which accompanied the September 2013 IEP, indicated that these related services would be provided in the after-care program. (S-25; NT at 484-495).
12. Whether or not a kindergarten student attends the private after-care program impacts District transportation of that student. The District does not transport students from the private program. (NT at 484-495).
13. Thereafter, the building-level principal, unaware that the District practice of delivering related services in the after-care program had changed, was informed of the change. (NT at 484-495).
14. On September 30, 2013, the District issued a NOREP, indicating that the speech and language and OT services would be delivered during the student’s kindergarten day. (S-24).
15. The change in the delivery model impacted the transportation of the student because of the student’s involvement

- in the after-care program. Parents were now responsible for transportation related to retrieving the student from the after-care program. (NT at 51-54, 484-495).
16. In October 2013, the student's IEP team met to discuss concerns of the student's mother related to classroom behavior. The student's mother had requested a one-on-one aide for the student. The classroom teacher indicated that she did not feel the student required that level of support but indicated that continued monitoring would be employed. (Parent's Exhibit ["P"]-1).
  17. In November 2013, the parent filed a mediation request related to the transportation issue, and a mediation agreement resulted where the District agreed to provide the related services in the after-school program one day per week (Wednesday), the day the student received services, and arranged for transportation on that day. (S-20, S-21; NT at 612-614).
  18. In November 2013, the student was not following directions and was sent to the principal's office. The student was referred not as a disciplinary matter but as a break from the classroom environment to allow the student to re-focus. (P-3, NT at 496-500).
  19. In February 2014, the parent sought a private OT evaluation, which indicated that the student might have a sensory processing disorder, but the independent evaluator could not definitively diagnose such a condition. (S-19).

20. In February 2014, the parties discussed a functional behavior assessment for the student. The District requested permission to perform the FBA, but the parent was resistant and did not provide permission. (S-18).
21. In late March 2014, the District re-issued the permission to conduct a FBA. Parent granted permission. At the same time, the parent provided the private OT report and requested an IEP team meeting. (S-14, S-17, S-18, S-19, P-2).
22. In mid-April 2014, the student's IEP team met. The meeting was contentious and ended abruptly. (S-15; NT at 84, 91-92, 629-630).
23. In May 2014, the District issued the FBA. (S-10, S-12, S-13).
24. In May 2014, the District issued a re-evaluation report ("RR"). (S-9).
25. The May 2014 RR included updated academic information, updated speech and language reporting, updated OT reporting, as well as the results of the May 2014 FBA. (S-9).
26. The May 2014 RR continued to identify the student as a student with a health impairment and speech and language impairment. Based on the May 2014 FBA, the RR recommended that the student be recognized as a student whose behavior impeded the student's learning or the learning of others and that a positive behavior support plan ("PBSP") be developed. (S-9).

27. In June 2014, the District proposed a revised IEP, incorporating the recommendations of the May 2014 RR. (S-2).
28. The June 2014 IEP indicated that the student exhibited behaviors that impeded the student’s learning or that of others. A PBSP was included as part of the June 2014 IEP. (S-2, S-8).
29. After the 2013-2014 school year concluded, the student was withdrawn from the District and enrolled in a neighboring school district. (NT at 19-20, 83, 632).
30. The student made progress on the IEP goals over the course of the 2013-2014 school year. (S-5, S-6, S-7, S-26, S-29; NT at 282-325, 327-359, 367-469).
31. The student’s behavior was uneven over the course of the school year. But, on balance, the District addressed the student’s behavior and monitored the behavior over the course of the school year. Even given some behavioral challenges, the student was available for instruction and made educational progress. (P-4, S-3, S-4, S-5, S-6, S-7, S-26, S-29; NT at 114-198).

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **FAPE**

To assure that an eligible child receives FAPE,<sup>4</sup> an IEP must be “reasonably calculated to yield meaningful educational...benefit and

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<sup>4</sup> 34 C.F.R. §300.17.



student...progress.”<sup>5</sup> “Meaningful benefit” means that a student’s program affords the student the opportunity for “significant learning”,<sup>6</sup> not simply *de minimis* or minimal education progress.<sup>7</sup>

In this case, the entirety of the record decidedly supports the conclusion that the student was provided FAPE by the District. The District’s evaluation processes in June 2013 and May 2014 were appropriate. The student’s September 2013 IEP was reasonably calculated to yield meaningful education benefit, and the record clearly shows that the student made educational progress under the terms and implementation of the September 2013 IEP.

The fulcrum of the dispute is whether the District adequately addressed the student’s behavior needs. Here, the record supports a conclusion that the District met its obligations to the student regarding understanding and support of the student’s behavior. Understandably, the District familiarized itself with the student—just entering kindergarten—in the initial months of the school year. Nothing in the preschool IFSP indicated that the student had deeply problematic behaviors that argue against this approach. The student’s teachers and related-service therapists all testified credibly that, while the student’s behavior presented challenges, the behaviors never rose consistently to the level where the student was unavailable for instruction, or disrupted

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

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

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

the classroom/therapeutic environment. And the record bears this out: Instances of challenging behaviors, and communications between the parties, are in the record, and these are not merely intermittent; but also in the record is the diligence of the District in addressing and monitoring the behavior and, overarching everything, the student's consistent progress.

As the school year progressed, both parents' engagement with the District continued. Here, it must be made explicit that both parents were active in communicating with the District over their concerns and were acting in good faith. At the end of the day, the relationship between the parents and District was somewhat acrimonious, but that does not negate the good-faith, proactive engagement on the part of both parents. By February 2014, with a better understanding of the student and gauging the parents' continuing concerns, the District requested permission to evaluate to perform a FBA. Despite the initial reluctance of the parent, ultimately this process resulted in a PBSP and proposed changes in the student's IEP. The June 2014 IEP was also appropriate.

But the chronology of events does not support the conclusion that the District failed in its obligations, or denied the student FAPE. There were significant differences between the approaches to the student's behavior in the September 2013 and June 2014 IEPs. The District's understanding of the student, however, had deepened and changed, and understandably so— it was trying to gauge the behavior of a

kindergarten student, a student with complex learning, speech/language, and occupational therapy needs. By February 2014, it decided that it needed to assess the student's behaviors more precisely, and by May/June 2014 had issued a timely RR and revised IEP. Taken all together, the record supports the conclusion that the District did not deny the student FAPE in its handling of the student's behavior in the school setting.

Accordingly, the District met its obligations to the student in providing FAPE, and there will be no award of compensatory education.

#### Reimbursement for Transportation

Parent claims that the District failed to provide transportation related to the provision of speech and language therapy and OT services in the after-care program for a period of weeks in October 2014, after the correct District transportation practice was implemented, and mid-November 2014, prior to the mediation agreement. Parent claims that reimbursement is owed one day per week over this period of time where the student's parents undertook transportation.

This claim is rejected on two grounds. First, the District was under no obligation to provide the transportation as a matter of delivering the speech/language services and OT services. While the initial September 6<sup>th</sup> NOREP indicated that the District would provide the services in the after-care program (which would then impact transportation), the

September 30<sup>th</sup> NOREP corrected this, implementing the District's updated practice, and indicating that the services would be provided during the kindergarten day. In effect, then, the delivery of those services did not hinge on the transportation; the exact opposite was true—the services could be delivered during the kindergarten day and the District sought to do so. Indeed, had the District filed a special education due process complaint seeking to deliver the services during the kindergarten day, there would be no argument that the services, by necessity, needed to be delivered in the after-care program, and the District would have prevailed on such a complaint. Mis-communication within the District, and consequent impact on the NOREPs, do not create a situation where the District denied the student FAPE.

This leads to the second grounds for not awarding reimbursement—the equities weigh in favor of the District on the issue. The dispute over the transportation issue was not centered whether the student would receive speech/language and OT services, or where those services would be delivered. Ultimately, the parties' dispute was over parent's disagreement with the District's policy that it would not transport from the private after-school program, and the District's insistence on that practice. While parent's position is understandable as a matter of convenience, and the NOREPs undoubtedly said what they said, neither the parents' convenience nor the NOREPs themselves impact the provision of FAPE—the services were available to the student

and, in fact, were provided. Following mediation, the November 2013 NOREP issued by the District speaks to the equitable decision by the District: The services were delivered in the after-care program “in order to satisfy a previous commitment to do so” and to fulfill “parental expectation to provide follow-through” on the after-care arrangements. Did the District, by necessity, need to provide the services in the after-care program? No. As such, did it need to provide the transportation—two days per week—that it ultimately agreed to? No. Yet the District did those things. Therefore, as a matter of the equities, parents will not be awarded reimbursement for the brief period of weeks where, over those Wednesdays, the parents transported the child home from after-care.

Accordingly, there will be no reimbursement ordered.

### **CONCLUSION**

The District provided a FAPE to the student in the 2013-2014 school year. Parent is not entitled to compensatory education. There will be no reimbursement for transportation.

**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the School District met its obligations to provide the student with a free appropriate public education in the 2013-2014 school year. Parent is not entitled to reimbursement for transportation.

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

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

January 30, 2015