

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: K.S.

Date of Birth: [redacted]

Date of Hearing:

August 22, 2011

CLOSED HEARING

ODR Case # 2012-10-11-AS

Parties to the Hearing:

Parent[s]

Penn Hills School District
260 Aster Street
Pittsburgh, PA 15235

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Chelsea Dice, Esq.
787 Pine Valley Drive
Pittsburgh, PA 15238

August 22, 2011

September 2, 2011

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a teen-aged student residing in the Penn Hills School District (“District”) who is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The parties do not dispute that the student qualifies for special education and related services under the IDEA. The parties dispute whether or not the student resides in the District. Particularly, parent claims that the student resides with parent in the District and, as such, the District is responsible for providing the student’s special education programming. The District counters that, when asked to verify proof of residency, the parent did not comply with its policies, and so the student was disenrolled appropriately from the District. Furthermore, parent claims the student was denied a free appropriate public education (“FAPE”) when the student was denied summer programming as the result of being disenrolled from the District in May 2011.

For the reasons set forth below, I find that the parent has failed to provide the required proof of residency and will be allowed to do so under the terms of the order in this decision.

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.

ISSUES

Does the student reside in the School District?

If so, was the student denied a FAPE in the summer of 2011?

FINDINGS OF FACT

1. The student moved into a rented residence within the District and enrolled in District schools in April 2010. (School District Exhibit ["S"]-1, S-2; Notes of Testimony ["NT"] at 33).
2. The student attended a private placement at District expense. (Parent's Exhibit ["P"]-6; NT at 33, 57).
3. In February 2011, the student relocated to a new rented residence within the District ("February 2011 registration address"). (P-3; S-3, S-4).
4. The student's parent informed the District of the relocation, and the District updated its student registration records to reflect the new residence at the February 2011 registration address. (P-3; S-3).
5. On May 3, 2011, as the result of a complaint filed by the landlord of the rented residence, a Pennsylvania magisterial court entered an order for possession of the residence at the February 2011 registration address due to non-payment of rent. (S-5).

6. On May 5, 2011, a copy of the magistrate's order for possession was posted on the front door of the rented residence at the February 2011 registration address. (S-5).
7. On May 10, 2011, as the result of a complaint filed by the landlord of the rented residence, the civil division of the Court of Common Pleas of [Redacted] County entered an order for damages for non-payment of rent and for possession of the residence at the February 2011 registration address. (S-6).
8. On approximately May 18, 2011, the District's director of special education received a phone call from a bus route supervisor with the District that the student was not appearing for daily bus pick-up. The director of special education contacted the District's office for pupil services, transportation, and security ("pupil services"²), the office responsible for monitoring student enrollment and transportation in the District. (NT at 116-117, 168-169).
9. The director of pupil services referred the issue to one of his office's employees, a District school and home visitor. (NT at 140, 210).
10. Not hearing anything from pupil services on her inquiry, the director of special education contacted pupil services on May 25, 2011 for an updated status. (NT at 140-141, 210).

² Throughout the hearing, this office was referred to as "pupil personnel". The letterhead from that office at P-1, however, indicates that the office is called Office of Pupil Services. Also, it is not uncommon for some Pennsylvania school districts to refer to the provision of counseling, school psychology, and other special services provided under a Pennsylvania Department of Education certificate as pupil personnel services. Therefore, this decision will refer to the District office as "pupil services" even though the reference throughout the transcript is to "pupil personnel services".

11. That day, on May 25th, the director of pupil services went to the residence at the February 2011 registration address and saw the magistrate's order for possession posted on the front door. The director of pupil services inspected the property and determined that the residence was unoccupied. (NT at 141-143, 210).
12. That day, on May 25th, the director of pupil services instructed the school and home visitor to contact the student's parent. (NT at 143-144, 190).
13. That day, on May 25th, the District home and school visitor spoke with the student's parent by phone. The student's parent indicated that, due to a broken pipe, the family had vacated the rented residence at the February 2011 registration address. When the home and school visitor asked for details on a new residence within the District, or details on the family's dislocation, the phone call ended abruptly. (NT at 155-156, NT at 190-193).
14. That day, on May 25th, the District issued a notice to parent that it was disenrolling the student due to non-residency within the District. The District also informed the private placement where the student was attending that the student had been disenrolled. (P-1; NT at 155-156, 193-194).
15. On May 26, 2011, the private placement informed the student's parent that it could no longer provide education services

to the student due to the student's disenrollment from the District.
(P-1 at page 1).

16. On May 27, 2011, the parent contacted the Pennsylvania Department of Education ("PDE") regarding the disenrollment. (P-2).
17. Over June and July 2011, PDE attempted to contact the District. The superintendent's office referred PDE to the District's pupil services. The voicemail system for the pupil services office was, however, constantly full. Despite repeated attempts, PDE was unable to leave a message and emails to the superintendent's office cycled PDE back to pupil services; the end result was that PDE was unable to communicate with the District from June 1, 2011 through July 26, 2011. (P-2; NT at 47-48, 161, 173-176).
18. On June 17, 2011, parent filed a due process complaint, alleging that the student had been inappropriately disenrolled. The complaint contained a new address for the student within the District ("complaint address"). (NT at 87-88, 118, 123)
19. On July 7, 2011, the District's director of special education sent materials to the parent regarding residency requirements and a resolution meeting. The director of special education sent copies, via both regular and certified U.S. mail, of these materials to the District's February 2011 registration address and to the complaint address. (S-8, S-9, S-10; NT at 118-121).

20. Both the regular and certified U.S. mail sent to the February 2011 registration address were returned to the District with the indication “vacant”. Both the regular and certified U.S. mail sent to the complaint address were delivered at that address. The signature of the person signing for the certified U.S. mail sent to the complaint address is indecipherable. (S-8, S-9, S-10; NT at 118-123).
21. Aside from a resolution meeting in July 2011, neither party communicated with the other about the residency issue. (NT at 48, 118, 123, 146-147, 149-151, 162, 194-195)
22. The District’s policy for verification of residency when a student relocates from one residence within the District to another residence within the District is as follows:
- The parent must appear in person at pupil services.
 - Walk-in service is not available; parents must make an appointment with pupil services.
 - A parent must provide (1) a current Pennsylvania driver’s license or identification card with a District address, (2) a lease, deed, or sales agreement for the residence, and (3) two utility bills for the address or—if utility bills are unavailable or are in the name of someone else—two documents containing address information such as a Pennsylvania Department of Public Welfare letter, a Social Security letter,

a bank statement, employer verification, or U.S. Post Office change of address form. (S-11).

23. The District stands ready to re-enroll the student if parent complies with its residency verification policy. (NT at 150-151).

DISCUSSION AND CONCLUSIONS OF LAW

Residency

Under the terms of the IDEA, for a school district to be responsible for the provision of special education and related services to a student with a disability, the student must reside within the school district. (34 C.F.R. §§300.2, 300.111(a), 300.200-201, 300.323(a); *see also* 22 PA Code §§14.102(a)(2)(xxvii), §14.104(c), §14.121).

Here, the parties are at loggerheads over the verification of student's residency in the District. The record supports the conclusion that, as of May 2011, the District had grounds to investigate the student's residency status at the last known residency provided to the District. (FF 3, 4, 5, 8, 11) That investigation created a credible question as to the student's residency status. (FF 5, 6, 7, 8, 11, 12, 13, 19, 20). Still, based on the information the District had at the time, the decision to disenroll the student was not undertaken in bad faith. (FF 8, 10, 11, 12, 13, 14).

Lack of communication seems to be at the heart of the dispute. (FF 21). The District's policy for residency verification seems clear, and the District, as it should, is ready to provide special education services to the student once such verification of residency is provided. (FF 22, 23). As of the date of the hearing, however, the parties were unable to agree that the necessary verification had been provided.

The record is clear that the student does not reside at the residency address established in February 2011. (FF 3, 4, 6, 7). But there are indications that the student may reside in the District at another address even though parent has not complied with the residency verification requirements. (FF 18, 19, 20, 21). An issue involving residency, however, requires absolute clarity in terms of fact-finding.

Accordingly, the parties will be ordered to collaborate on a process that will provide clarity on the student's residency verification at the District. A major part of this process will be the means by which information is shared between the parties. Given the sloppy, if not negligent, means by which the pupil services office's communications unfolded in the period from late May – late July 2011, especially in light of its own directives barring walk-in services but making appointment-by-phone (indeed, any phone messaging) unavailable to callers (FF 16, 17, 21, 22), the order issued as part of this decision will necessitate a highly structured process to ensure that the parent and the District are able to communicate regarding the student's residency verification.

Compensatory Education

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 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)).

Where a school district has denied a student a FAPE under the terms of the IDEIA, 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)).

Here, the cloudiness of the residency issue makes an award of compensatory education, as matter of fairness between the parties, impossible. It may be that the student resided in the District throughout the course of events covered by this hearing. (FF 2, 16, 18, 19, 20). As such, the student would have been denied a FAPE for the denial of special education services since May 25, 2011. It may be, however, that the District’s disenrollment on May 25, 2011 was wholly appropriate (FF

8, 11, 12, 13, 14, 20, 21), in which case the issue of FAPE in terms of the District's obligation would be moot.

Without the necessary clarity in the record, and especially given the mutual lack of communication between the parties (FF 21), the equitable considerations in this case weigh against an award of compensatory education. A provision in the order will be entered accordingly.

CONCLUSION

The record does not present the necessary evidentiary clarity to make a determination of the student's residency status for the period from May 25, 2011 through the date of this order. The parties will be ordered to engage in a collaborative, structured process to verify the student's residency in the District.

There will be no award of compensatory education.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, within 31 days of the date of this order, parent shall provide the following to the director of pupil services in order to verify the student's residency status in the District:

- a current Pennsylvania driver's license or Pennsylvania identification card for parent with the student's District residency address,
- a full copy of a lease, deed, or sales agreement for the student's District residency address, and
- two utility bills for the student's District residency address or—if utility bills are unavailable or are in the name of someone else—two documents containing the student's District residency address, such as a Pennsylvania Department of Public Welfare letter, a Social Security letter, a bank statement, employer verification, or U.S. Post Office change of address form.

The documents shall be provided at an in-person meeting, or at multiple in-person meetings, between the parent and the director of pupil services to be held at the District's Office of Pupil Services, 260 Aster Street, Pittsburgh, PA 15235 during the regular business hours of the Office of Pupil Services.

The in-person meeting(s) shall be scheduled directly between the parent and the director of pupil services. Parent is instructed to use the general phone number for District business—412-793-7000—and the direct extension

of the director of pupil services as indicated at page 179 of the Notes of Testimony. The director of pupil services is instructed to use the phone number provided by parent as “home phone number” on the special education due process complaint.

The District shall ensure that the student’s special education programming is fully provided under the terms of the student’s individual education plan in effect at the time.

If, within 31 days of the date of this order, the parent does not comply with the terms of this order regarding verification of residency within the District, the District may deem the student to reside outside the geographical boundaries of the District.

There is no award of compensatory education.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

September 2, 2011