

This is a redacted version of the original hearing officer decision. Select details may 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

Due Process Hearing

For

KS

Date of Birth: xx/xx/xx

Date of Hearings: July 16, August 15, 20, 30, 2007

Closed Hearing

Parties to the Hearing:

Methacton School District
1001 Kriebel Mill Road
Norristown, PA 19403-1047

Representative:

Pro se

Sharon Montanye, Esquire
Sweet, Stevens, Katz, &
Williams
PO Box 5069, 331 Butler Avenue
New Britain, PA 18901
smontanye@sweetstevens.com

Transcript Received: September 12, 2007

Record Closed: September 25, 2007

Date of Decision: October 1, 2007

Hearing Officer: Max Wald, Ed.D.

Background

Student is a xx year old young women who resides with her Parent within the Methacton School District (hereinafter District). The Student, who has been identified as learning disabled, also has several specific health issues.

The Parent filed a request for a due process hearing on May 8, 2007 asserting that the District, during the September 2007-2008 school year would allow the Student to attend school only two hours per day instead of six. Additionally, the Parent asserted that the Student would be required to accept a graduation diploma prior to her completing her allotted hours in cosmetology at the [redacted] (hereinafter Vo-Tech).

The Parent also complained that the District was requiring her to drive her daughter “to a location in the District; make her wait at that location and then go to the school.” The Parent indicated in her complaint that “the District was not cooperating with her in structuring the Student’s IEP in an appropriate way.”

Among other issues the Parent asserted that the District was withholding documents and that her daughter was reevaluated without her permission.

The Hearing Officer contacted the parties and requested that they participate in a conference call with the purpose of clarifying the issues. The conference call was held on May 22, 2007 at 11:30 a.m. The Parent indicated during the conference call that she wanted her daughter

To attend the Vo-Tech school for (six) hours per day,

To participate in her high school graduation ceremony but not receive her diploma until her cosmetology hours were completed,

And to receive “door to door transportation” to and from school.

The representative for the District indicated that the District had already agreed to items one and two but not three. Following the conference call the Parent telephoned the Hearing officer and indicated that she still had concerns regarding the Student’s IEP. The Hearing Officer referred the Parent to the District for further discussion.

An additional conference call was arranged and held on July 2, 2007. The appropriateness of the IEP, the availability of records, and the need for the Superintendent to testify were among the issues discussed.

Subsequently a meeting intended to resolve the IEP issue was held with the IEP Team on July 25, 2007 but did not result in resolution.

The first hearing session was held on July 16, 2007 and the fourth and concluding session was held on August 30, 2007. All hearing sessions except the first were conducted in the evening and were focused on the issues addressing transportation and the delivery of a free appropriate public education (FAPE) for this student.

Issues

1. Is the District required to provide the Student with “door to door” transportation to and from school?
2. Is the currently offered IEP appropriate and does it provide the Student with a Free Appropriate Public Education (FAPE)?

Findings of Fact

1. The Student, born on xx/xx/xxx, attends High School and as a special education student received learning support services in a resource room setting. Her currently offered IEP (7/25/07) calls for her to receive learning support from an “Itinerant” staff member. (S-2 at 15, S-11 at 14)
2. The Student’s offered March 26, 2007 IEP identified the Student’s need for transportation as a “Related Service” to be provided “Home to school and School to Home”. (NT-33, S-2 at 13)
3. Resolution Meeting Notes dated May 17, 20007 indicated that transportation will be provided by the Methacton School District. A bus will pick up Student at [redacted intersection] at approximately. 7:35- 7:40 AM. The bus will make one stop at High School to pick up students (Student will remain on the bus). The bus will go to Vo-Tech arriving at 8:08 AM for the 8:10 AM. session. In the afternoon, she will be dropped off at [redacted intersection].” (S-2 at 6)
4. The offered July 25, 2007 IEP indicates transportation to/from Vo-Tech daily “for the duration of the IEP”. (S-11 at 13)
5. The Student will attend Vo-Tech in the regular education setting with adaptations and accommodations until she completes 1250 hours of instruction. The Student will then receive her graduation diploma. (S-11 at 6, P-13 at 2)
6. The Student’s cardiologist indicated that because “she does not have a car to drive, and does not have other ways to get there, she does require school bus

transportation. It is our recommendation that she be picked up and dropped off by the school bus at her home”. (NT-54. P-23)

7. The Student has been diagnosed with irritable bowel syndrome (IBS). This “condition is not dangerous, contagious or life threatening and does not require limitation of activities. Student does require unlimited access to bathroom facilities. She may require additional time between classes to go to the bathroom.” (NT 54, P-24)
8. The physician at [redacted] Hospital recommended in May of 2004 that because of unexplained loss of consciousness, Student should receive home to school and school to home transportation. This recommendation should however be reviewed in September 2004 after input from other physicians. (NT 67, P-28)
9. In November 2004 Student’s cardiologist reported that the Student has not “passed out” and that her symptoms of dizziness can be prevented by drinking fluids in the morning and to not leave for school until she starts feeling better.” A similar letter was sent in February 2006 and again on April 26, 2007. There was no recommendation for “door to door” transportation. The Student’s cardiologist indicated that “Student is allowed to participate in all routine age related activities.” (NT 68, 289 – P-29, P43-44)
10. Student’s 11/9/2006 offered IEP indicated that “she will be provided transportation to and from the Vo-Tech unless she gets a parking pass.” She will return in the fall of 2007 at Vo-Tech to complete her cosmetology hours. (NT 95-96, P-40 at 6)
11. Student’s 5/11/2007 IEP states that “she will be provided transportation to and from Vo-Tech from a Methacton residence.” (NT 102, p-41 AT 5)
12. The Parent refuses to sign a “records release” to allow the District to speak with any of the “therapists or physicians providing service to the Student.” (NT 112, 116-117, 120, 1222-1223)
13. Student has not ever used transportation provided or offered by the District. Transportation has always been provided by friends who are no longer in school. (NT 153, 186, 194, 380, 381)
14. The bus stop at which the Student would board her bus is approximately a two (2) minute walk and is located 500 feet from her residence. She is the only student currently assigned to this bus stop. (NT 159, 178, 200)
15. Two transportation schemes had been prepared for the Student. The first was to “pick up Student along with other high school students, take them to the high school and then take all students to the Vo-Tech Center.” This

arrangement was not acceptable to the Parent. The District attempted to “accommodate Student by sending another bus to the bus stop to pick up Student, then go back to the high school to get the other students to go up to the Vo-Tech.” This arrangement was to accommodate the Parent’s feeling that her daughter would be uncomfortable riding a bus on which there would be other students who knew that Student had completed her high school program. (NT 191, 304-305)

16. The counselor currently treating the Student is a graduate of the Institute of Transpersonal Psychology in California. He is a contract counselor not licensed as a counselor, social worker, or psychologist and not licensed to diagnose in Pennsylvania. (NT 206, 222-224)
17. The conclusions drawn by Mr. E, Student’s counselor, regarding the District were based exclusively upon statements from the Parent and Student. No contact had been made with any employee of the District. He has seen his client once in the past 12 months. (NT 226-227)
18. Student’s counselor had never seen the area in which she lived and was told that the bus stop was in an isolated area in which “an attractive young woman might be vulnerable if she is by herself.” (NT 229)
19. Student can be left alone at times and in fact is left alone. (NT 245, 247)
20. Student earned and was given her Pennsylvania State Drivers License on June 6, 2007. There were no medical restrictions other than a requirement to wear corrective lenses. The Student currently drives a car on occasion. (NT 262-263, 426, 428, S-4)
21. There was no mention of serious medical conditions such as seizures on her permit application. A physician completed the application certifying there were no medical problems. (NT 264, 270, S-4 at 2)
22. The Parent testified that she took her daughter out driving and that she is driving better as a result. Earlier the Parent testified that she was uncertain as to whether her daughter had a driver’s license. (NT 97, 268)
23. The school nurse has never seen Student for complaints regarding “fainting or anything relating to fainting.” (NT 276, S-6 at 304B)
24. The school nurse has received no medical documentation from any of Student’s physicians since November 2004. (NT 283-284)
25. Student, per her cardiologist, “is allowed to participate in all routine age related activities.” (NT 68, 289 – P-44)

26. The District has not received any current medical information regarding Student's transportation needs. Letters from the Student's cardiologist do not make mention of transportation needs. (NT 301, P29, P43, P 44)
27. The IEP Team (with Parental objection) has determined that Student can be picked up for school at the closest bus stop to her home. "She will be provided transportation to and from Vo-Tech from a Methacton residence." The 9/25/06 IEP offered that the student will be provided transportation to and from Vo-Tech from her home unless she gets a parking pass." (NT 327, S-11 at 6, P-56 at 3)
28. The Student and Parent have refused to allow the District the opportunity of speaking with the Student's physicians or accessing her medical records. (NT 354-355)
29. Among the accommodations needed by the Student is to be able to borrow forgotten equipment without penalty, (NT 419) extra time to complete projects and assignments, open book test taking, extra time for toileting, study notes for test preparation, and reading assistance when taking a test. The modifications are listed in the 7/25/07 offered IEP. (NT 419-422, S-11 at 11-12)
30. The Student is currently employed but refused to divulge where or when she is working. As of 2/21/07 the Student was employed part-time in a beauty salon and also as a hostess in a restaurant. (NT 427, 4229-430, S-13 at 11)
31. During the past twelve months the Student felt that she was going to pass out but in fact did not do so. (NT 433)
32. Accommodations requested of the State for participating in licensing examinations must be submitted to and requested directly of the State and are not part of the IEP. (NT 443-444, S-11 at 11)
33. The Student, while at the Vo-Tech school will not have to sign the Contract required of other Students. (NT 447-448)
34. All accommodations listed in the currently offered IEP (7/25/07) can and will be implemented at the Vo-Tech. The IEP crafted for the Student by the IEP Team is fully implementable at the Vo-Tech School. (NT 454-455, 466, 533-534, S-11 at 11-12)
35. The Student will not be required to take any tests while engaged in her cosmetology program other than practice tests for her licensure. These tests are not graded and have no impact on passing or failing her cosmetology program. She is only required to be present and on task. There is no specific

grade related to the program. Participation in state or local assessments is not indicated. (NT 455-456, S-11 at 8)

36. The Student will receive the following accommodations:

- *assignments and instructions will be broken down into small segments,
 - *extra time will be permitted to complete tasks,
 - *extra time will be provided between classes though there is only one class throughout the day,
 - *a “bathroom” is located within the classroom for frequent student use if necessary,
 - *no penalties will be assigned for forgetting cosmetology equipment which may be borrowed if forgotten,
 - *Student will be taught the general curriculum in all classes with modification and adaptation.
- (NT 455-458, 498, S-11 at 11-12, 15)

37. The Student is permitted by her parent to leave her house unaccompanied. (NT 538-539)

38. The Parent is employed at a law firm and leaves her home for work at varying times. At times her flexible work schedule allows her to start work at 9:00 or 9:30 AM. It appears that the Parent’s work schedule is flexible. (NT 540-543)

39. Student has been seizure free for two years. (NT 546)

40. The Parent’s demand for “door to door” transportation for the Student is based upon a note submitted by the Student’s [redacted] Hospital Cardiologist. Dr. G’s letters of 2/22/06 and 4/26/07, however, do not mention transportation. Dr. G’s letter of 6/14/2007 recommends that “since she does not have a car to drive”, that she be picked up and dropped off by the school bus at her home. (NT 544, P-23, P-43, P-44)

41. The Parent was provided with a Notice of Recommended Educational Placement (NOREP) and a proposed IEP on 7/25/2007.

42. The IEP calls for the Student to be provided with a modification calling for a special education setting as part of her regular class placement. The special education setting at the Vo-Tech is in a small room with a special education teacher who provides opportunities for extended time for various activities. This was a result of the reevaluation. (NT 564, S-11 at 12-18, S-13)

43. School District and Parent agreed on 9/25/06 that reevaluation of the Student was unnecessary. Subsequently a reevaluation report was completed with a note that Parent did not return an input form. (NT 398, P-54 at 2, S 13 at 4)

44. The Parent was elusive and vague in her responses to questions regarding driving, transportation, the IEP, accommodations, and work schedule.(NT 538, 540-42, 545-46, 547-49, 558, 561)
45. A reevaluation report was issued on March 1, 2007. The report indicated that “no medical condition was indicated that would cause any educational difficulties. “Irritable Bowel Syndrome and Heart Syncope were noted as a basis for the Student to receive extra time to pass from class to class or to spend additional time in the restroom.” (NT 514, 409-410, S-13 at 6)

Discussion and Conclusions of Law

This has been a hearing involving a District and a pro se Parent. It has been difficult in that the Parent required a great deal of deference in presenting her evidence, questioning witnesses and maintaining the decorum necessary to provide a cogent, orderly record that contains the information necessary to provide a just and impartial decision. Parent exhibits P-33 through 39, P-40, P-47, and P-68 describes the difficulties perceived by the Parent in her relationships with the District. Despite the challenges presented in this hearing, this Hearing Officer believes that he has been able to obtain the information necessary to render a fair and impartial decision based upon the law and the information obtained at the hearing.

The hearing focused on two issues, two questions. Each shall be addressed separately.

Is the Student entitled to “door to door” transportation from home to school and return?

The Student as part of the supportive services listed in her IEP is entitled to transportation to and from school. Transportation to and from school is a related service that must be provided for in a student’s IEP. The 2006 regulations at 34 CFR 300.34 (c) (16) clearly indicates that such service must be provided to an eligible student:

§ 300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education

(16) Transportation includes —

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings;

The specific nature of the transportation provided to a child is dependent on the needs of the particular child for whom the transportation is being provided.

There was no evidence introduced, however, that stated that if the Student is not picked up by the school bus directly at her door she will not be able to benefit from the educational program crafted for her by the IEP team.

The School District has great leeway in determining the nature of the transportation that it provides to students. Generally, at the secondary level, students who live within 2.0 miles of school do not receive transportation services. (S-7 at 1) In this case the District has offered the Student transportation services as indicated in the Student's IEP, "To/From Vo-Tech. (S-11 at 13) In addition, the District has offered the Student additional transportation accommodations to address specific needs. (F of F #'s 3 & 15)

The bus stop established by the District for students in the vicinity of Student's home is a 500 foot walk and is in eyesight of her home. (F of F # 14)

The Parent has testified that unless her daughter is picked up at her door her child might faint on the street and perhaps even die. Assertions have also been made that an attractive girl such as the Student might be subject to harm by others if she were required to stand by herself at a bus stop. No evidence as to the dangerous nature of the neighborhood was offered and the hearing officer must assume that such dangerous conditions do not exist more so than at other bus stops designated by the District. (f of F #18) These assertions were not substantiated with evidence of any kind.

Insofar as requests for "door to door" pickup from the student's doctors are concerned they are at best vague and outdated.

One physician indicated that the student should be picked up at home until she was able to drive herself in her own car because she sometimes experienced periods when she felt she might faint. His advice to the Student was to remain at home until she felt better and then start off to school. (F of F # 6) It appears contradictory to this Hearing Officer that the physician feels that it is permissible for the Student to drive but not be able to walk 500 feet to a bus stop because of the possibility of fainting. In addition, the Parent has testified that the Student has not fainted in two years.

Another physician in a letter on behalf of the Student wrote that the student is permitted to participate without restriction in all age related activities. Certainly, one can surmise that walking 500 feet to a bus stop is an age related activity. (F of F # 9)

Still another physician wrote regarding as he said "bussing" and referred to still another physician's letter which was not introduced into evidence. This particular letter appeared to be of dubious value to the Hearing Officer and is only mentioned to ascertain that it was read.

Much has been made by the Parent of the child walking to and standing at the bus stop by herself, and if in event of a medical emergency, help would not be available. Upon reflection by the Hearing Officer it became somewhat evident that being in the house by one's self is possibly ever more isolating. Especially if there is no telephone other than a cell phone which would also

be available at a bus stop in addition to the help of neighbors to whom a child in distress would be more visible at a bus stop than inside of a home.

To conclude, this hearing officer did not receive evidence which would be sufficiently compelling to order “door to door” transportation for the Student.

As a matter of dictum, however, to the District, this Hearing Officer found in reading IEPs that were offered but not implemented that wording could easily convey to many readers that it was offering “door to door” transportation. The specific wording for such service should be clarified and explained to all parties. Wording such as “home to school” or a “residence to school” can be somewhat confusing.

It is also possible that all along, prior to the District’s most recently offered IEP that it indeed did offer portal to portal transportation as the Parent alleges. These IEP’s were not accepted by the Parent and therefore were not implemented and are clearly not enforceable.

It appears that the District made an attempt to be conciliatory to the Parent and Student and offered two transportation plans both of which were refused by the Parent. Apparently because the acceptance of one would cause her to ride the bus with other children and possibly become a source of embarrassment to the Student since all of her friends had graduated the semester before. The second plan requires the student to ride to the High School by herself from her “home” bus stop and then transfer to another bus and ride with other children to the Vo-Tech. One can not help but muse, that perhaps this matter would not have come to a hearing had the District, since the Student is the only child on the bus, relented and had the bus go the additional 500 feet and pick up the child at the door. Possibly the Parent misunderstood earlier transportation offers because of the language used and convinced herself that the Student was entitled to more than what was offered.

In any event this discussion was a matter of dictum and bears no weight insofar as this decision is concerned. In addition, as the Parent’s written closing statement indicates, “Student is now driving herself to and from school each day.” Contrary to the Parent’s statement, however, this Hearing Officer was not aware of this situation until reading the Parent’s written closing. Indeed this Hearing Officer relied upon the Parent’s testimony that a car was not available to the Student.

Though the point is moot, it will be the intention of this Hearing Officer to order that the District provide transportation for the Student from the bus stop that it has established for this purpose to and from the school that she will be attending.

Does the currently offered IEP offer a Free Appropriate Public Education (FAPE) to the Student?

The individuals with Disabilities Education Act (IDEA) requires that states receiving federal funds for education must provide every child with a disability with a free appropriate public education (FAPE). This entitlement is delivered by way of the IEP. A detailed written statement arrived at by the IEP team which summarizes the child’s

abilities, outlines goals for the child's education and specifies the services the child will receive. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir.1993). A school district's failure to offer an IEP reasonably calculated to enable the child to receive meaningful educational benefit will be deemed a denial of FAPE. Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct... 3034 (1982). Where violations of IDEA procedural safeguards result in the loss of educational opportunity, a denial of FAPE also will be found. W.G. v. Board of Trustees of Target Range School District, 960 F.2d 1479 (9th Cir. 1992); Ben G., Special Education Opinion No. 555 (1992).

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The *Rowley* standard is only met when a child's program provides him or her with more than a trivial or *de minimis* educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988).

An appropriate IEP is defined as and consists of:

300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include —

(1) A statement of the child's present levels of academic achievement and functional performance, including —

- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to —

- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the child's other educational needs that result from the child's disability;

- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of —

- (i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and**
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;**
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —**
 - (i) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;**
- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act.**

A review of the IEP has convinced the Hearing Officer that these 5 points were appropriately addressed where needed and that the IEP as offered will provide the Student with a Free Appropriate Public Education (FAPE). Item # 6 is not an issue because the District has provided testimony that the Student will not be participating in testing including the PSSA. The District has also indicated that it has no power in granting accommodations in State licensure examinations. (NT 442-443) It must be noted that the IEP offered to the Student is limited to a program in Cosmetology that is the result of additional hours being provided to the Student. Upon completion of these hours the Student will be awarded her high school diploma for which she was eligible in June 2007. (F of F # 5)

The Parent was given opportunity for substantial input to this IEP. The Hearing Officer requested that the Parent attend an IEP team meeting prepared with specific information in the form of a list of specific items which she would like added, changed, or deleted regarding the IEP content. And second to provide a sample of the draft IEP with entries as to changes, additions, and deletions that she would like to have in the IEP. The Parent, according to testimony did neither. (NT 567)

The Hearing Officer, after reviewing the July 25, 2007 IEP finds it to be, as crafted by the IEP Team, appropriate and offers the Student a Free Appropriate Public Education. It is the intention of this Hearing Officer to order that the IEP be implemented as written making certain that the accommodations as noted are provided to the Student.

Order

It is hereby ordered that:

1. The Student is to be provided transportation by the District to and from school from the designated school bus stop which is located approximately 500 feet from her home.
2. The IEP, as offered, is to be implemented by the District making certain that all accommodations listed therein are provided to the Student.
3. The District is to assist the Parent, if requested, in applying to the State Board of Cosmetology for accommodations for the Student for taking the licensure test in cosmetology.
4. The District, upon the Student's completion of her hours in cosmetology taken at the [Vo-tech] will award the Student a high school diploma.

October 1, 2007

Max Wald, Ed.D.
Hearing Officer