

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: N.R.

Date of Birth: [redacted]

Date of Hearing: June 3, 2015

CLOSED HEARING

ODR Case # 16318-1415AS

Parties to the Hearing:

Parent[s]

Pine-Richland School District
702 Warrendale Road
Gibsonia, PA 15044

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pamela Berger, Esquire
434 Grace Street
Pittsburgh, PA 15211

Patricia Andrews, Esquire
Andrews & Price
1500 Ardmore Boulevard
Suite 506
Pittsburgh, PA 15221

June 3, 2015

June 18, 2015

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a mid-teen aged student who has been identified as a student with health impairments (inattention and executive functioning) and specific learning disabilities. The student resides in the Pine-Richland School District (“District”).

The parties do not dispute that the student is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)¹. The parties’ dispute centers on summer programming for the summer of 2015. The positions of the parties are somewhat unique. The parents maintain that the District failed to offer an extended school year (“ESY”) program to the student, including not having data to gauge the student’s needs. The District maintains that the student does not qualify for an ESY program; notwithstanding this assertion, the District has offered summer tutoring to the student.

For the reasons set forth below, I find in favor of the District to the extent that the student does not qualify for an ESY program. Having offered some degree of summer tutoring, however, the District must stand by the offer it made to the parents and provide that programming.

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. *See also* 22 PA Code §14.132.

ISSUES

Does the student qualify for an ESY program?

If so, what should the student's ESY program look like?

If not, does the District otherwise have obligations to the student for summer programming?

FINDINGS OF FACT

1. The student's most recent re-evaluation report ("RR") was issued in April 2013. The student was identified with health impairments and various specific learning disabilities. (Joint Exhibit ["J"]-1).
2. In May 2013, following the April 2013 RR, the individualized education plan ("IEP") developed for the student indicated that the student did not qualify for an ESY program. (J-4 at page 37).
3. In past summers, the parents provided privately funded tutoring services for the student. (Notes of Testimony ["NT"] at 42-43).
4. In February 2014, the student's IEP team met for the annual review of the student's IEP. (J-3).
5. Over the spring of 2014, parents voiced dissatisfaction with the student's IEP and programming. In June 2014, the District acknowledged parents' feeling of dissatisfaction and, in order to maintain a good faith relationship with the parents, the District offered 20 hours of tutoring for the student over the summer of 2014. (Parents' Exhibit ["P"]-3, P-4; NT at 115-116).

6. Parents accepted the offer and the student engaged in 14 hours of private tutoring over June and July 2014. The District reimbursed the parents for this private tutoring. (School District Exhibit ["S"]-2).
7. The student's February 2014 IEP was revised to indicate that the student did qualify for ESY programming, indicating that the student "will be provided with 20 hours of tutoring services." (J-3 at pages 41-42).
8. In September 2014, the District issued a retrospective notice of recommended educational placement ("NOREP") to document the programming of the summer. The September 2014 NOREP indicated that the student had been provided with 14 hours of private tutoring in light of parental concerns over prior IEP services. Parents approved the retrospective NOREP. (J-5; S-7 at page 10).
9. In March 2015, the student's IEP team met for the annual review of the student's IEP. The IEP meeting was far-ranging and, if not contentious, filled with pointed disagreements. (S-8).
10. The March 2015 IEP indicated that the student did not qualify for ESY programming. Parents disagreed and, again, via NOREP the District offered 24 hours of compensatory tutoring hours for the summer of 2015. (J-2 at page 38; P-5, P-6; S-3, S-8 at page 7; NT at 119-122).

11. In April 2015, parents filed the complaint that led to these proceedings.²
12. Over the first three quarters of the 2014-2015 school year, the student's academic progress over the course of the 2014-2015 indicates that the student's quarterly grades ranged from 84% - 100%. (S-4; NT at 136-137).
13. The student's special education teacher, who works with the student and sees the student for academic support on a daily basis and in a co-taught English class, testified that she does not feel the student requires ESY programming. (NT at 134-140).

DISCUSSION AND CONCLUSIONS OF LAW

The provision of ESY services is governed by both federal and Pennsylvania special education law. (34 C.F.R. §300.106; 22 PA Code §14.132). Where the IDEA speaks generally to the availability of and qualification for ESY programming (34 C.F.R. §§300.106(a)(2), (b)), Pennsylvania special education regulations speak in detail about the provision of ESY services. (22 PA Code §14.132).

In this case, the record in its entirety supports a finding that the student does not qualify for ESY programming. While the parents

² The parents filed their complaint in April 2015, assigned at a different file number. Initially, the parties reported settlement on the ESY issues and that file was closed out. The settlement could not be consummated, however, so the ESY issues were re-filed in May 2014, assigned at the instant file number for resolution on or before June 19, 2015.

presented evidence that tutoring (both private tutoring and tutoring by the student's father, over the course of the school year and in the summer) added support to the student's academic performance, the record does not support a finding that the student requires programming over the summer to aid in necessary recoupment or to prevent regression.

Of course, parents would argue that this determination cannot be made because of the lack of data-based analysis of the need for ESY programming. But nothing indicates that the District should have been in a position to collect such data or engage in such an analysis. In the spring of 2014 (and prior to that), the issue of ESY programming had never been seen as necessary by either party. In the spring of 2015 IEP meeting, which was thoroughly documented by parents with multi-page summary notes (S-8), the IEP team considered the issue of ESY programming; the parties simply reached differing conclusions about its necessity. This record does not support a conclusion that the District denied the student a free appropriate public education in its position that the student does not require ESY programming in the summer of 2015.

As set forth at the beginning, however, the issues are unique because, having taken that position, the District did offer compensatory summer tutoring to the student in the summer of 2015. It is clear that the District considered its offer of tutoring services in the summers of

2014/2015 to be a conciliatory gesture. Still, in both cases it documented the offer through NOREPs and, as such, the offer of services becomes part of the student's special education program. While not strictly "ESY programming" for the summer of 2015 under 34 C.F.R. §300.106; 22 PA Code §14.132, it is an offer of summer programming which the District must stand by.

Accordingly, the District will be ordered to provide 24 hours of tutoring services to the student in the summer of 2015.

CONCLUSION

The student does not qualify for an ESY programming in the summer of 2015. However, the District must stand by its offer of summer programming in the form of tutoring for the student.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District must offer 24 hours of tutoring for the student in the summer of 2015.

These hours may be offered through a District tutor or through a private tutor retained by parents. The determination of whether the tutoring is provided by a District tutor or a private tutor shall be

determined by the student's parents. If the tutoring is provided by a private tutor, the hourly rate for reimbursement for the private tutoring shall not exceed the hourly rate paid by the District to its tutors. The nature and focus of the tutoring shall be determined by the student's parents, although the nature and focus of the tutoring shall be related only to the student's academics and/or the IEP goals.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 18, 2015