

This is a redacted version of the original hearing officer decision. Select details may have been removed to preserve anonymity of the student. The redactions do not affect the substance of the document.

Due Process Hearing

Student (#8457/07-08 LS)
Date of Birth: xx/xx/xx
Date of Hearing: March 3, 2008
Closed Hearing

Parties to the Hearing

Parent

Mr. and Mrs.

Representative

Jeffrey J. Ruder, Esq.

Transcript

Completed

March 7, 2008

Date of Decision

March 14, 2008

School District
Allegheny IU/EI

Representative
Christina Lane, Esq.

Hearing Officer

David Y. K. Lee

II. BACKGROUND

Student is a xx-year-old student who resides in Shaler Area School District (hereafter Shaler). An Individualized Education Program (hereafter IEP) was developed when Student transitioned from Infant and Toddler (zero to three) Early Intervention to the Preschool (three to five) Early Intervention (hereafter EI) Program. The Allegheny Intermediate Unit (hereafter IU) is the Mutually Agreed upon Written Agreement (hereafter MAWA) holder for the School Districts within the IU. The various School Districts, however, are responsible to transport those eligible students to the respective EI center-based programs. Since Student goes for child-care at a day-care center located outside the boundaries of Shaler, Shaler would not transport between the day-care center and the Shaler EI classroom. The parents opined that transportation should be so provided and requested a due process hearing.

III. FINDINGS OF FACT

1. Student, date of birth xx/xx/xx, resides within Shaler. (N.T. 19. P. #1 @ 1.)
2. The IU is the MAWA holder to provide EI services to Shaler. (N.T. 130.)
3. An IEP was developed on January 9, 2008, for a center-based EI program when Student became three years old. (N.T. 73-74. P. #2 @ 11-14.)
4. The center-based EI program, with the acronym of DART, is located in a Shaler classroom located geographically in Glenshaw. (N.T. 111, 132.)
5. Transportation, with Shaler as the agency, was identified as one of the EI services on the IEP. (N.T. 74. P. #2 @ 14.)

6. Student has been going for child-care, since 8 weeks old, at the [redacted] Learning Center (hereafter Learning Center) which is located within the boundaries of neighboring Fox Chapel School District (hereafter Fox Chapel). (N.T. 130-131.)

7. Students eligible for a DART classroom are transported by their resident School District, in this instance Shaler, but not crossing boundaries according to District's Transportation Policy. (N.T. 112, 114, 122-123, 128. S.D. #1.)

8. The parents opined that Student should be transported between Learning Center in Fox Chapel and her DART classroom in Glenshaw, and requested a due process hearing.

9. A due process hearing session was held on March 3, 2008.¹

IV. ISSUE

Is Student to be transported by the IU between her child-care² location in a neighboring School District to her Shaler EI classroom? (N.T. 6.)

V. DISCUSSION AND CONCLUSIONS OF LAW

The instant matter before this Hearing Officer is solely on the issue of transportation. There is no dispute that Student is eligible for EI services. There is no dispute regarding the appropriateness of Shaler's DART classroom recommended by the IEP team. Regarding transportation, the parents have made concerted efforts to

¹ It was agreed that Closing Statements would be submitted in writing.

² Although not an issue before this Hearing Officer, the term child-care is used for the purpose of illustrating the nature of services being provided for the student at Learning Center as being more "child-care:" in nature than a special educational program. (N.T. 107.) Student started at Learning Center when she was eight weeks old and the diagnosis of "Autism" did not occur until last October. (N.T. 20, 22, 96.)

transport Student to DART since she turned three and are pleased with her progress at DART even though it has only been a short time. (N.T. 33-34, 48, 55-58.)

In the Preface of a Transportation Q & A drafted on 03/05/07, the Pennsylvania Department of Education states as follows:

The school district has the option to transport the child. If the school district can't or won't, the MAWA agency must if transportation, which is not a mandate, is on the child's IEP. If the IEP team does not feel transportation was necessary, it would not be on the IEP. If transportation is on the IEP, then the MAWA agency must find a way to transport the child even if the MAWA agency has to pay the parent or some other responsible person to transport. In preschool, it is preferable for the parent to transport their child to and from the preschool program so the parent has an opportunity for daily contact with the child's teacher. Transportation becomes a related service when the parent is unable to transport their child to and from the education program.³

Although the Q & A is not at equal footing as legally binding requirements, it does provide an operational framework under which School Districts and MAWA holders can develop their working arrangements. This Hearing Officer is not aware of any regulatory uniformity regarding transportation arrangements between agencies. In the instant case, the arrangement for the IU as the MAWA holder with it's 42 School Districts is that each School District is responsible to transport children to the EI programs. (N.T. 112, 114, 122-123, 128.)

Transportation is written in Student's IEP as a related service. (F.F. #5.) 34 CFR §300.34 states (a)...related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a

³ Pennsylvania Department Education Early Intervention Preschool Special Education Transportation Q & A, draft 03-05-07.

disability to benefit from special education...[and] (c)(16) transportation includes-(i) travel to and from school and between schools. There is no statutory language, however, that defines transportation in terms of geographical boundaries. For a child with a disability, transportation is a related service if it is necessary for the child to benefit from special education.

This matter would not have come before this Hearing Officer if Student was receiving child-care at home or even within the geographical boundaries of Shaler. By arrangement between the agencies, the provision of transportation in the service area of the IU is the responsibility of the School District of residence of the child. Such transportation is within the geographical boundaries specified by the transportation policy of each School District. (S.D. #1.) It is well established in the statutory language and case law that there are no district boundaries in transportation if it is needed to benefit from special education such as an approved private school or a program that is not available in the School District.⁴ For Student, there is an appropriate program within her School District of residence.

The Pennsylvania Court has held that School Districts are not obligated to change its transportation guidelines to accommodate non-educational purposes for a child with a disability.⁵

⁴ As a practical necessity in more rural areas where school districts may share the same EI classroom, transportation then does occur across district boundaries as a matter of daily operation. See also Alamo Heights Independent School District v. State Board of Education, 790 F.2d 1153 (5th Cir. 1986).

⁵ See N. Allegheny School Dist. v. Gregory P., 687 A.2d 37, 40 (Pa. Cmwlth. 1996).

Student's DART classroom, identified in her IEP, is located in a school building in Shaler. (P. #2 @ 14.) Student has been going for child-care at Learning Center, within the boundaries of Fox Chapel, since infancy.⁶ (F.F. #6.) As in the case of many families, it is of necessity that the [parents] need child-care for Student in order for them to be gainfully employed. Student is at Learning Center for around 10 hours a day, 4 days a week. (N.T. 20-21.) Although not her legal residence, Student has been "residing" in Fox Chapel four out of a five days per week. It is certainly understandable that the parents would want some place that is deemed safe and reputable for them leave Student. At the same time, it is unequivocal that going to Learning Center is not a component of Student's special education program due to her disability. Transportation to and from Learning Center therefore is not a related service under the IDEA, and thus not mandated. Although it may be a reasonable request in terms of the physical distance that is involved (N.T. 57-58.), this Hearing Officer does not have the authority to order Shaler⁷ to transport a child from a location that is not within its district boundaries, given the factual arrangements it has with the IU in the provision of EI services, in order to accommodate a particular lifestyle or personal needs of the parents.

This Hearing Officer is not without sympathy regarding the seemingly difficult obstacles faced by the parents in trying to obtain appropriate EI services for Student, to

⁶ It is of interest to note that, according to its website, Learning Center's postal address is Glenshaw.

⁷ Shaler was not a party to the hearing. Even if it was, the factual matters remain and the outcome would not be different.

look for appropriate child-care, and in trying to balance their practical financial needs. The IU, at the same time, is not free from confines in terms of their operational procedures with Shaler as the MAWA holder. The parties are urged to continue to work toward a creative solution to this transportation issue in the interest of Student. This Hearing Officer, without authority to order or to limit, offers the following suggestions:

1. The parents may wish to approach Shaler to plead their circumstances for a variance.
2. Arrange for individual transportation between Learning Center and DART, with the parents and Shaler splitting the cost, since the [parents] are halfway in between.
3. Negotiate with Fox Chapel and Shaler for Student (going from Learning Center) to attend DART at Fox Chapel with reimbursement from Shaler to Fox Chapel. It is not expected that this would exert unreasonable burden on either School District.
4. Continue to explore day-care alternatives within Shaler boundaries.

It is further suggested that the IEP team, thus the IEP, should be more specific, in the notation for transportation under related services. Uncertainty and confusion can be avoided by indicating transportation points and any unusual circumstances when the IEP was drafted. (N.T. 132-133.)

Accordingly, it is hereby ordered:

VI. ORDER

The IU is not ordered to provide transportation under related services between Learning Center and Shaler for Student.

March 14, 2008

Date

David Y. K. Lee

Hearing Officer