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Decision

Due Process Hearing for ZW

Date of Birth: xx/xx/xx

File Number: 7373/06-07AS

Date of Hearing:

March 19, 2007

OPEN HEARING

Parties:

Mr. and Mrs.

Francine Fulton
Imani Education Circle Charter School
5612 Greene Street
Philadelphia, PA 19144-2808

Date Transcript Received:

March 21, 2007

Date of Decision:

April 4, 2007

Hearing Officer:

David F. Bateman, PhD

I. BACKGROUND

Student is a xx-year old student who attends the Imani Education Circle Charter School (hereinafter Charter School). She is eligible for special education and related services as a student with autism and PDD. She also receives speech and occupational therapy services, and has problems with a seizure disorder and scoliosis. Student has attended the Charter School since kindergarten.

The Parent requested the due process hearing because they feel the program offered by the Charter School is inappropriate and is requesting a placement at either an Approved Private School (APS) or an Alternative Education School (AES). The Charter School feels it has an appropriate program and placement for Student.

II. ISSUES PRESENTED

- 1) Is the IEP appropriate for Student's needs?
- 2) Is Student eligible for placement at either an APS or AES?

III. FINDINGS OF FACT¹

1. Student was born on xx/xx/xx. She is currently xx-years of age (NT 11).
2. Student lives in Philadelphia, Pa (P-4, 5, 6).
3. Student is eligible for special education and related services as a student with autism and pervasive developmental disability (NT 11). She also is eligible for speech and occupational therapy, has a seizure condition, and has scoliosis (NT 11).
4. Student has attended the Imani Education Circle Charter School since kindergarten (NT 12).
5. Student is currently in third grade (NT 11) at the Charter School (NT 11).
6. The Parents requested a psychoeducational evaluation for Student on March 27, 2006 (P-6). The specific request for the evaluation was due to concerns of how Student was progressing in the curriculum.
7. Dr. H completed a psychological evaluation on March 31, 2006 (P-2; NT 19-21). The evaluation found a WISC-IV full scale IQ of 83, and WIAT-II

¹ References to notes of testimony will be designated "NT" followed by the relevant page number. References to Charter School evidentiary exhibits will be designated "S" followed by the relevant exhibit number. References to Parents' evidentiary exhibits will be designated "P" followed by the relevant exhibit number.

standard scores of 94 in word reading, 80 in reading comprehension, 93 in numerical reasoning, 87 in math reasoning, 92 in spelling, and 90 in written expression. The report's recommendations indicate Student is eligible for special education and related services due to her problems with reading comprehension. The report also indicates she may be eligible under other health impaired, and she should have her vision checked.

8. The Charter School held an IEP team meeting on June 5, 2006 (P-4). The IEP indicates she is eligible for special education and related services for a specific learning disability, with a secondary disability being that of speech and language impairment.
9. A notice of recommended educational placement (NOREP) was issued on June 5, 2006 (P-5). The NOREP listed as the placement a learning support instructional group with speech/language support. There is no indication whether the Parents accepted or rejected the placement.
10. Dr. M, psychiatrist with the [redacted] Hospital, completed a psychiatric evaluation on July 10, 2006 (P-1). Specific recommendations include further management of medication, and mediation to pursue an appropriate educational program.
11. On July 11, 2006, the second grade teacher wrote a letter describing Student's academic progress. He is unsure of what is needed to address her difficulties (P-8).
12. The Parents and the Charter School participated in mediation on July 12, 2006 (SD-1). There were numerous points of agreement including: the

school would reconvene the IEP team to include information from a functional behavioral plan. The handwriting on the Mediation Agreement is unclear making the other parts of the agreement difficult to read.

13. The Charter School completed disciplinary reports on student R., who has hit Student, pulled her hair (twice), hit her in the face, and confronted Student at her desk (P-3). The events occurred in December 2006 and January 2007 (NT 25).
14. The Charter School completed a functional behavioral assessment (FBA) on March 14, 2007 (SD-2; NT 57-58). The FBA summary indicates Student is a student with mild to moderate difficulty with self-regulation. She tends to respond to verbal prompts and does not exhibit any oppositional behavior when redirected to task. The recommendations include the IEP team should meet develop a plan to teach Student appropriate learning behaviors, specifically when she is receiving instruction in the general education class.
15. The Charter School offered an individual education program (IEP) on March 15, 2007 (SD-4).
16. The IEP details Student's present levels of academic achievement as: Student is performing as a level that is below her current grade assignment in reading especially and, to a lesser extent, in mathematics reasoning. Her functioning in the latter domain appears to be affected by her difficulties in reading for understanding and delays in her general comprehension skills (SD-4, p. 4).
17. Student's IEP contains speech goals (SD-4, p. 8), an annual goal in reading/written expression (SD-4, p. 9), an annual goal in mathematics (SD-

4, 10), an annual goal in occupational therapy (SD-4, p. 11), and three annual goals in social and emotional (SD-4, p. 12-14). The IEP also contains specially designed instruction and an indication of the related services to be provided (SD-4, p. 15-16).

18. The Charter School provided a NOREP on March 15, 2007 (SD-3). The NOREP recommended placement in a resource room learning support classroom with participation in the regular classroom curriculum and modifications as needed. It went on to state Student would participate with her regular education peers for: reading/language arts, lunch, specialty classes and social studies.
19. On March 16, 2007 the Parents provided information to the Charter School on how to recognize the signs of a stroke (P-7). They specifically pointed out that Student had a stroke in 2004 (NT 17).

IV. DISCUSSION AND CONCLUSION OF THE LAW

The Individuals with Disabilities Education Act (IDEA) requires states to provide a "free appropriate public education" to all students who qualify for special education services.² Pennsylvania implements IDEA by way of 22 Pa. Code Chapter 14. However, Pennsylvania charter schools are designed to be "independent public schools." Act 22 of 1997 provides charter schools with autonomy from school districts and freedom from certain regulations. Specifically, charter schools are exempt from complying with Pennsylvania's special education regulations and standards.³ The Charter School Law was passed June 12, 1997. As of June 12, 1997 charter schools have had special education duties, as Act 22 of 1997 requires charter schools to comply with federal laws and regulations governing children with disabilities.

However, on June 8, 2001, the Charter School Services and Programs for Children with Disabilities Law,⁴ was adopted and became effective on June 9, 2001 to specify how the Commonwealth of Pennsylvania would meet its obligations to ensure that charter schools comply with the IDEA and its implementing regulations.⁵ Accordingly, from June 12, 1997, to June 8, 2001, Pennsylvania charter schools were governed in the area of special education under the Federal Laws. Effective

² 20 U.S.C. §1412.

³ 22 Pa. Code Chapters 14 and 342. (See, the Charter School Law, Act 22 of 1997, 24 P.S. §17-1732-A; see also, 22 Pa. Code §711.2(c)).

⁴ 22 Pa. Code §711.1 et seq

⁵ 34 CFR Part 300, and Section 504 and its implementing regulations in 34 CFR Part 104

June 9, 2001, 22 Pa. Code §711.1 et seq., also governs special education in Pennsylvania Charter Schools.

Specifically, the Charter School regulations regarding IEP's state:

§ 711.41. IEP. When a child with an IEP transfers to a charter school from another public agency, private school, approved private school or private agency in this Commonwealth, the charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of the IDEA.

Student is an eligible handicapped student, as such is entitled to the protections of the Individuals with Disabilities Education Act as Reauthorized by Congress November, 2004, 20 U.S.C. Section 600-687 ("IDEA") and its implementing regulations, 34 C.F.R. Part 300, which entitle eligible students to receive a free appropriate public education. This entitlement is conveyed by means of the IEP, a specific written document forged by the IEP team in consideration of the child's strengths and needs from which flow educational goals and objectives that are addressed through various services. *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1995).

Is the IEP appropriate for Student?

Before evaluating the Charter School's actions in this regard, the educational standard to which the Charter School is held must be briefly addressed. The IDEA does not require states to develop IEP's that "maximize the potential of handicapped

children.” *Board of Education v. Rowley*, 458 U.S. 176, 189 (1982). What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989); See also *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995) (School districts “need not provide the optimal level of service, or even a level that would confirm additional benefits, since the IEP required by IDEA represents only a “basic floor of opportunity”) (quoting *Rowley*, 458 U.S. at 201).

An appropriate IEP is one that meets the procedural and substantive regulatory requirements and is reasonably calculated to enable the child to receive meaningful educational benefit to the child at the time that it was developed. *Rowley*; *Rose by Rose v. Chester County Intermediate Unit*, 24 IDELR 61 (E.D. PA. 1996)). The IEP must be likely to produce progress, not regression or trivial educational advancement [*Board of Educ. v. Diamond*, 808 F.2d 987 (3d Cir. 1986)]. The IEP must afford the child with special needs an education that would confer meaningful benefit. *Polk v. Central Susquehanna IU #16*, 853 F.2d 171, 183 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989), citing *Diamond*, held that “*Rowley* makes it perfectly clear that the Act requires a plan of instruction under which educational *progress* is likely.” (Emphasis in the original).

An IEP need not provide “optimal” benefit. If personalized instruction is being provided with sufficient supportive services to permit the student to benefit from the instruction the child is receiving a “free appropriate public education as defined by the Act.” *Polk, Rowley*.

The IEP for each child with a disability must include a statement of the child's present levels of educational performance; a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting the child's other educational needs that result from the child's disability; a statement of the special education and related services and supplementary aids and services to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals (and) to be involved and progress in the general curriculum...and to be educated and participate with other children with disabilities and nondisabled children; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. CFR §300.347(a)(1) through (4).

The school feels it provides Student with a free, appropriate public education. The Charter School presented testimony and evidence that it has provided significant learning and a meaningful benefit to Student, gauged in respect to her potential. *See Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3d Cir. 1999); *see also Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

As a program, the March 2007 IEP offered by the Charter School for Student contains every element required by federal regulations and by state regulations (which adopt the federal regulations in this area). Student's IEP includes a statement of her present levels of educational performance; a statement of measurable annual

goals, including benchmarks or short-term objectives, related to her needs that result from her disability to enable her to be involved in and progress in the general curriculum and meeting her other educational needs that result from her disability; a statement of the special education and related services and supplementary aids and services to be provided to Student and a statement of the program modifications or supports for school personnel that will be provided for Student to advance appropriately toward attaining her annual goals and to be involved in the progress in the general curriculum. The goals and objectives are specific and measurable with the method and schedule of evaluation set forth clearly. Modifications and specially designed instruction are extensive.

Student is progressing from grade to grade, making adequate progress (NT 60). Granted, there have been some problems with another student in the class (FF:13), but according to testimony from the staff at the Charter School Student's behavior do not rise to the level of needing additional supports (NT 61). Student is also functioning at the level of her peers (NT 60). There was no testimony or evidence placed on the record to indicate Student was not making appropriate progress, or the program and placement was not appropriate.

Given the IEP is appropriate, as is the program and placement, an Order for Student to attend an approved private school (APS) cannot be issued. This is also clearly the case given there was no evidence or testimony provided indicating the sought after APS's are appropriate for Student and can meet her needs.

VI. ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** the Imani Education Circle Charter School IEP is appropriate for Student and the Parents' request for placement at an approved private school is denied.

Date

Hearing Officer