

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

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 30258-24-25

Child's Name:

D.H.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Pottsgrove School District
1301 Kauffman Road,
Pottstown, PA 19464-2303

Counsel for the LEA:

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Hearing Officer:

Charles W. Jelley Esq.

Decision Date:

November 26, 2024

Introduction

This due process hearing addresses the educational rights of a high school Student ("the Student") under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The parties agree that the Student is a child with a disability as defined by the IDEA and the Parties agree the Student requires specially designed instruction. The parties also acknowledge that the Student is [redacted] and entitled to the protections and services mandated by the McKinney-Vento Act. Notably, McKinney-Vento ensures that [redacted] youth have equal access to public education on par with their non-[redacted] peers.

On September 12, 2024, the Parent ("the Parent") filed a Due Process Complaint ("the Complaint") against the Pottsgrove School District ("the District"), identifying it as the responsible Local Education Agency (LEA) for the 2024-2025 school year. The Parent, representing herself and the Student, alleges that the District failed to provide a FAPE under the IDEA and seeks declaratory relief clarifying the District's responsibilities, particularly concerning the implementation of the Parental Notification provision found in the Student's individual education program (IEP) and the end of the school day dismissal routine.

The District denies all allegations, asserting that it fully implemented the Student's IEP as written and complied with all relevant laws.

After reviewing the evidence and applying the legal standards under the IDEA, I conclude that the Parent did not meet the burden of proving, by a preponderance of the evidence, that the District committed either a substantive or procedural violation, regarding the end of the school day dismissal routine that denied the Student a FAPE. I next find the District made a harmless procedural error in failing to notify the Mother when the Student may be disciplined. Although this error did not deny the Student a FAPE, it did interfere with the Parent's participation in the IEP process.

Accordingly, an appropriate Order directing the District to provide inservice training to the Student IEP follows along with a Notice of Appeal.¹

Statement of the Issue

Did the District fail to implement the Student's individualized education program at any time from the first day of school in August 2024 to September 6, 2024? If yes, what, if any, relief is appropriate?²

Findings of Fact

2023-2024 School Year

1. The Student enrolled in the Pottsgrove School District as an eligible student under the McKinney-Vento Act following the Parent's complaint to the Pennsylvania Department of Education after the District refused enrollment. (N.T. pp.150-151).
2. Upon enrollment, the Student was identified as eligible for services under the IDEA due to an Emotional Disturbance. (S-2 p.21).
3. During the 2023-2024 school year, the IEP team discussed the need for transportation as a related service. The Parent declined the District's offer, opting to provide transportation personally. (S-1 p.11).

September 29, 2023

4. The District offered transportation via email, but the Parent reiterated her intention to transport the Student. (S-7 pp.1-2).

¹. The Mother's Opening Statement addressed multiple non IDEA topics like claims of retaliation, intentional discrimination and associational discrimination. (NT pp.13-61). I advised the Mother, on the record, that since she did not raise those claims in the four corners of the September 12, 2024, due process Complaint these alleged violations would not be addressed herein. See 34 CFR §300.511(d). Pursuant to 20 USC §1415 (I) all non IDEA FAPE claims are dismissed without prejudice. (NT p.213).

² The Mother's factual statement of the issue alleges that the District failed to implement the Student's IEP. First, she contends that the social worker failed to tell her, contrary to a provision in the Student's individual education program, about a phone call to the Student's [redacted] that may have resulted in discipline. Second, she alleges that the District failed to supervise the Student or prevent the Student from leaving the school grounds on September 6, 2024, after being dismissed.

January 2024

5. The District offered, and the Parent agreed to add a one-on-one paraprofessional throughout the school day. (N.T. pp.110-112).

2024-2025 School Year

6. When the Parent attempted to re-enroll the Student for the 2024-2025 school year, the District initially refused to identify the Student as [redacted], leading to another McKinney-Vento complaint. The Parent filed a Complaint with the Pennsylvania Department of Education, which ruled in the Parent's favor, and the Student was re-enrolled. (N.T. pp.126-127; S-7 p.6).
7. The District again offered transportation, but the Parent declined, stating she would arrange the Student's transportation. (S-7).
8. Each day, the paraprofessional meets the Student at the front door, escorts the Student throughout the day, and accompanies the Student to dismissal at the front door of the high school. The IEP does not include accommodations or specific instructions for the dismissal routine. (N.T. pp.110-113; S-7 p.11).
9. Although the IEP required staff to notify the Mother if the Student was subject to disciplinary action or referred for discipline the social worker never called the Mother. The social worker, at the direction of the Director of Pupil Services, reported a disciplinary review of the Student's alleged misconduct to [redacted]. When the social worker called [redacted] she learned that the office was aware of the District's review. The social worker also testified that she was not aware of the IEP provision requiring Parental notification. (N.T. p.73, pp.76-77).

September 6, 2024

10. On this day, the paraprofessional followed the usual routine, escorting the Student throughout the day. As the school day ended, the aide escorted the

Student to the front door of the high school, and the Student exited the building. After leaving the building, the Student walked off campus. District policy and practice permit students to leave by walking, bus, or parent pickup. This day the Parent did not inform the District of any change in transportation plans. (N.T. p.66, p.112, p.200; S-7 p.11).

11. The Student's whereabouts after leaving campus were unknown. (S-7 p.6).

September 9, 2024

12. The Parent called the school and reported that the Student had not returned home. The District contacted the Student's [redacted] and reviewed video footage showing the Student leaving campus and disappearing out of camera range. The video footage was shared with the Mother. (N.T. p.84, pp.135-136, pp.154-155; S-10 p.10; S-7 p.6).

September 20, 2024

13. A teacher reported overhearing a conversation about the Student's sighting on social media. The information was shared with the Assistant Principal. The Director of Pupil Services directed the Assistant Principal to report the classmate's sighting to the local police. Neither the Assistant Principal nor the Director of Pupil Services informed the Parent of this positive development. (N.T. pp.195-196, NT pp.203-204).

September 30, 2024

14. The Student walked back into the High School after taking public transportation from [redacted]. The record does not describe what occurred when the Student was missing. (NT *passim*). The Parties were aware of an [redacted] issued after the Student disappeared. The District called the Parent with the good news and the Parent transported the Student to [redacted] to turn [themselves] in. (N.T. pp.115-116.)

GENERAL LEGAL PRINCIPLES

BURDEN OF PROOF AND WITNESS CREDIBILITY

Generally, the burden of proof consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. In this case, the Parent is the party seeking relief and must bear the burden of persuasion.³ During a due process hearing, the hearing officer makes "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses."⁴ Explicit credibility determinations give courts the information that they need in the event of a judicial review. While no one-factor controls, a combination of factors causes me to pause and comment on the testimony of particular persons.⁵

On the Parents' side, the Mother did not testify; therefore, I make no conclusions about her credibility. On the District's side, I next find that the testimony of the one-on-one aide's support on September 6, 2024, was candid, cogent, and straightforward. I also found his testimony persuasive. The aide's testimony about the beginning and the end of the day routine was specific, explicit, and forceful.

³ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion rests with the Parent, who requested this hearing, while the burden of production rests with the District. In IDEA disputes, the hearing officer applies a preponderance of proof standard.

⁴ *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003).

⁵ The fact finder's determination of witness credibility was based on many factors. Clearly, the substance of the testimony, the amount of detail and the accuracy of recall of past events affected my credibility determination. Whether the witness contradicts him or herself or is contradicted by the testimony of other witnesses can play a part in the credibility determination. When the testimony is delivered in a persuasive fashion factors like body language, eye contact, and whether the responses are direct or appear to be evasive, unresponsive or incomplete are important in determining persuasiveness. *Id.*

The testimony proffered by the Director of Pupil Services, the special education teacher, and the Assistant Principal did not demonstrate any first-hand knowledge of the events on September 6, 2024. Instead, the testimony from these individuals focused on the 24 days after the Student went missing and the role each played in interacting or not interacting with the Mother, other District staff, [redacted], and the police. That testimony was not helpful in addressing the failure to implement the IEP or the call to [redacted]. Therefore, as this testimony and conduct is related to the Parent's non-IDEA allegations, I make no specific judgments or findings about the credibility or persuasiveness of their testimony.

I will, however, give significant weight to the social worker's admission that although she attends the Student's IEP meetings, she was unaware of the IEP requirement to contact the Mother regarding actions that could result in discipline. Based on the surrounding circumstances I accept this testimony as evidence of a harmless procedural violation.

Overview of Individuals with Disabilities Act

The Individuals with Disabilities Act ("IDEA") allows states to access federal funds for the education of disabled children. See 20 U.S.C. §§ 1400, *et seq.*; see also *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 267 (3d Cir. 2014). As a condition of receipt, states must ensure disabled children within their borders receive a free appropriate public education ("FAPE"). 20 U.S.C. §§ 1412(a), 1413(a); see also *Blunt*, 767 F.3d at 267-68. If a child is deemed to have a disability, then a state and the District satisfies its duty to provide a FAPE by providing an [Individualized Education Program ('IEP')], which is 'an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.'" *J.M. v. Summit City Bd. of Educ.*, No. 19-159, 2020 WL 6281719, at *1 (D.N.J. October 27, 2020) (citing *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017)), *aff'd*, 39 F.4th 126 (3d Cir. 2022).

Generally, an IEP is a written statement "developed, reviewed, and revised by the IEP Team—a group of school officials and the parents of the student—that spells out how a school will meet an individual disabled student's educational needs." *Y.B. v. Howell Twp. Bd. of Educ.*, 4 F.4th 196, 198 (3d Cir. 2021) (quotation marks omitted) (quoting 20 U.S.C. § 1414(d)(1)(A), (B)). "[A]n IEP describes a child's 'present levels of academic achievement,' offers 'measurable annual goals' to 'enable the child to ... make progress in the general educational curriculum,' and describes 'supplementary aids and services ... provided to the child' to meet those goals." *Id.* (quoting 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II)(aa), (IV)).

The educational benefit conferred to the Student through the IEP must be "meaningful," *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988), meaning "more than a trivial educational benefit" in light of the Student's "individual abilities," *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Once the IEP is put in place, the school district must implement the IEP in the least restrictive environment ("LRE"). See 20 U.S.C. § 1412(a)(5) ("To the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."). "If parents are dissatisfied with the district's determinations or IEP, they may bring a challenge in a state administrative process and then seek review in court." *J.M.*, 2020 WL 6281719, at *1 (citing *Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66-67 (3d Cir. 2010)).

Conclusions of Law and Analysis

The IDEA requires states to ensure students with disabilities receive a FAPE through an IEP tailored to the child's unique needs. The IEP must provide a meaningful educational benefit, measured by progress appropriate to the Student's circumstances. Furthermore, schools must implement the IEP with fidelity, ensuring participation in the least restrictive environment consistent with the Student's needs. Procedural violations that interfere with parental participation or materially impact the provision of FAPE are actionable under IDEA.

While the single procedural violation of not informing the Mother about the call to juvenile services here is troubling, the evidence does not support a finding that the failure resulted in substantive harm to the provision of FAPE. The testimony of the social worker, who acknowledged attending the Student's IEP meetings yet remained unaware of the requirement to immediately notify the Parent about actions that could lead to discipline, while a harmless error now requires the District to prospectively provide the social worker with training on how to implement the IEP. The social worker's failure to contact the Mother contravenes the IEP's specific specially designed instruction statement requiring Parental notification "when any issue arises that may warrant disciplinary action." Therefore, I now find the testimony does provide evidence of a harmless procedural violation that significantly impeded the Parent's participation in the IEP process. Therefore, the District is directed to provide the social worker with necessary in-service training on how to implement the IEP.

Finally, the record is preponderant that the one-on-one aide implemented the IEP as written. Simply put, the Parent did not meet her burden of proof that the IEP included a specific provision requiring the aide to escort the Student to the awaiting transportation.

Moving forward, procedural compliance with the IEP, under these circumstances, is critical to fostering transparency, collaboration, and trust between the District and the Mother.

Order

NOW, on this 26th day of November 2024, it is **ORDERED** as follows:

1. The Parent's claim that the IEP's one-on-one aide failed to implement the IEP on September 6, 2024, is **DENIED**.
2. The Parent's claim that the social worker failed to implement the IEP is **GRANTED**. The District is now **DIRECTED** to provide all necessary in-service training to the social worker to ensure her complete understanding and implementation of the Student's IEP within five (5) school days of this Order.
3. All other IDEA claims are **DISMISSED** with prejudice.
4. All non-IDEA claims are exhausted and **DISMISSED** without prejudice.

November 26, 2024

/s/ Charles W. Jelley, Esq., LL.M.
Special Education Hearing Officer