

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

THE SPECIAL EDUCATION DUE PROCESS APPEALS REVIEW PANEL

COMMONWEALTH OF PENNSYLVANIA

**IN RE THE EDUCATIONAL ASSIGNMENT OF : SPECIAL EDUCATION
S. J., A STUDENT IN THE :
NORRISTOWN AREA SCHOOL DISTRICT : OPINION
: NO. 890**

**BEFORE APPEALS OFFICERS GONICK, McELLIGOTT & SKIDMORE OPINION BY
McELLIGOTT, APPELLATE OFFICER.**

BACKGROUND

Student, born xx/xx/xxxx, is a student residing in the Norristown Area School District (the District). This case is a companion case considered jointly with In Re the Educational Assignment of S.J., Special Education Opinion No. 891. S.J. and Student are twins.

Student is multiply disabled, non-mobile and medically fragile, and suffers from seizures and respiratory disorders, all as a result of Rett's syndrome.¹ There is no dispute between the parties as to the content of Student's Individualized Education Plan (IEP; the dispute between the parents and the District centers on the appropriate placement for the implementation of Student's IEP.²

Prior to July 1, 1998, Student attended for a number of years a class for multiply disabled students at the Montgomery County Intermediate Unit (IU) as Wissahickon School District, her home school district until that time, could not implement her IEP.³

¹District exhibit (D)- 1.2, 17.

²Notes of Transcript (NT) at 11, 17.

³Hearing Officers Opinion (HO Opinion) at 2-3.

On or about July 1, 1998, Student and her family moved into the Norristown Area School District.⁴

The District operates a multi-disabilities classroom at its Middle School and began planning to accommodate Student in its multi-disabilities classroom.⁵ The District and the parents disagreed over transitioning Student from the IU to the District's classroom and, pending the outcome of their discussions, the District requested that Student remain at the IU.⁶

IEP meetings were scheduled for August 27, October 9 and November 19, 1998. After a failed attempt at mediation⁸, the District issued an IEP and Notice of Recommended Assignment (NORA) on December 7, 1998 for implementation of Student's IEP at Middle School.⁹

The parents filed for a due process hearing, which was concluded in one session on December 22, 1998. The Hearing Officer found the District's proposed placement in the multi-disabilities classroom at Middle School to be appropriate and entered judgment in favor of the District.¹⁰

The parents filed timely exceptions to this decision.

⁴ D-3; NT at 33.

⁵ D-5, 6; NT at 34.

⁶ D-6.

⁷ D-5, 10, 15.

⁸ D-16.

⁹ D-17.

¹⁰ HO Opinion at 12.

DISCUSSION

Because there is no dispute over the contents of the IEP proposed in December 1998¹¹, the narrow issue presented is whether placement in the multi-disabilities support classroom in the District's Middle School is appropriate. It should be noted that the proposed placement in the program developed by the District is not a change in placement because the family has only recently moved into and become residents of the District.

Review by the Appeals Panel of a decision by a hearing officer requires an independent examination of the record evidence, as well as a determination of whether an error of law has been committed.¹² The brief record in this case consists of testimony by the District's supervisor of special education and the special education teacher of the multi-disabilities support classroom where the District proposes to place both Student and her sister S. The District also submitted exhibits. The father of the girls also testified on behalf of the parents. We must therefore determine whether, based on this record, the evidence supports the hearing officer's decision that the District's proposed placement at Middle School is appropriate.

While the sympathies of the Panel are clearly with the parents over their very genuine concern for Student and her sister, the law directs that her IEP be implemented at Middle School.

The Individuals with Disabilities in Education Act (IDEA) requires the states to provide a "free appropriate public education" to all students who qualify for special

¹¹ NT at 11, 18-19, 47, 69.

¹² Millersburg School District v. Lynda T., 707 A.2d 872 (Pa. Commw. 1998); Carlisle Area School District v. Scott P., 62 F.3d 520 (3d Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

education services.¹³ 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 burden is on the school district to establish that the program offered by its [EP is appropriate.¹⁴

The “appropriate program” to which a student is entitled is defined in 22 Pa. Code § 14.1 and includes the requirements that the services be individualized to meet the educational needs of the student, be reasonably calculated to yield meaningful educational benefit, and be provided in conformity with an IEP. An appropriate placement is not the “best” possible placement, nor is a district required to provide the optimal level of services.¹⁵ Furthermore, both federal and Commonwealth statutes and regulations, supported by case law, are clear that whenever possible within the framework of an IEP, students with special needs are to have their IEPs implemented in the least restrictive environment (LRE).¹⁶ The LRE is to be selected from a mandated continuum of services and placements to allow for tailoring these services and placements to a student’s individual needs while at the same time, if appropriate, to allow for education alongside students without special needs.¹⁷

In this matter, the District’s special education supervisor and the teacher of the multi-disabilities support classroom both testified that the IEP could be implemented in

¹³ 20 U.S.C. §1412.

¹⁴ Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)

¹⁵ Rowley, *supra*.

¹⁶ 20 U.S.C. §1412(a)(5); Oberti, *supra*.

¹⁷ 22 Pa. Code 14.42, 342.42; Rowley, *supra*.

the classroom at Middle School.¹⁸ A review of this uncontroverted evidence supports this conclusion:

- . the District has a placement available which can appropriately meet the needs of Student;¹⁹
- . the District operates a classroom for multiply disabled students;²⁰
- . both the District special education supervisor and the proposed special education teacher at Middle School have many years of experience teaching students with multiple disabilities;²¹
- . the special education teacher has worked with a student with Rett's syndrome and has knowledge of the condttion;²²
- . the teacher credibly testified that she has experience, methods and supports to implement Student's IEP at Middle School;²³
- . requirements related to support services, nursing and health issues, and dietary concerns can also be met at the District's proposed placement²⁴ and
- . the District provides Student a structured and consistent opportunity to interact with non-disabled students from the Middle School student population.²⁵

Even given the appropriateness of the placement proposed by the District as the LRE for Student, she has an obvious need for multiple supports for her condition and the successful implementation of her IEP. The parents' testimony described their understandable concern with their daughters' abilities to adapt to a change in the educational environment. There was no concrete evidence, however, that the Middle School placement could not meet Student's needs. While the Panel appreciates the parents' desire to continue Student's education in a placement which has proven to provide meaningful educational benefit, and with which Student is familiar, that does not

¹⁸ NTat36,41-47.

¹⁹ Id.

²⁰ NT at 34, 41.

²¹ NT at 32-33, 41.

²² NT at 45, 64-65.

²³ NT at 41-47, 59-61, 64-65.

²⁴ NT at 59-60,61-63. Due to word processing problems, footnote 25 appears at the bottom of Page 6.

²⁵ NT at 44-45. The author was unable to produce this footnote appropriately at the bottom of Page 5.

equate to a finding that the District's proposed placement is not also appropriate. The record simply does not compel the conclusion that Student's educational placement should remain outside the District at the IU.

The Panel thus concludes that the IEP offered by the District at Middle School is an appropriate program. The District shall, however, be required to develop and implement a plan of transition to facilitate Student's adjustment to the new educational setting. The transitional plan should account for a gradual move to the Middle School, and include a specific plan of initial introduction to teachers, nurses and aides, as well as progressively increased integration with non-eligible peers. The plan should also specifically provide for consistent communication with the parents to address their concerns that Student's medical needs are competently met. This plan shall be developed prior to institution of the District's proposed placement.

ORDER

Accordingly, this 8th day of March, 1999, the Order of the Hearing Officer is modified as follows:

1. Within 10 days of the date of this Order, the Norristown Area School District shall begin to develop an appropriate plan for the transition of Student from the Montgomery County Intermediate Unit placement to the Middle School. The transition shall be completed within 45 days of the date of this Order. The persons involved in the development of the transition plan shall be the same persons who were members of the IEP team, and shall include the parents and a representative of the Montgomery County Intermediate Unit. The transition plan shall be in accordance with this Opinion.

2. In all other respects, the order of the Hearing Officer is affirmed.

All other exceptions not address in this Order are dismissed.

In accordance with 22 Pa. Code § 14.64(m), the parties are advised that this matter may be appealed to the Commonwealth Court of Pennsylvania or to the appropriate federal district court.

Michael J. McElligott

for the Appeals Panel

Date signed: 03/08/99

Date mailed: 03/09/99