



The University of the State of New York
The State Education Department
State Review Officer

No. 07-013

Application of a CHILD WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Carmel Central School District

Appearances:

Family Advocates, Inc., attorney for petitioner, RosaLee Charpentier, Esq., of counsel

Shaw, Perelson, May & Lambert, LLP, attorney for respondent, Michael K. Lambert, Esq., of counsel

DECISION

Petitioner appeals from a decision of an impartial hearing officer insofar as it denied her request to observe her daughter for a school day at respondent's school. The appeal must be dismissed.

At the time of the impartial hearing on October 17, 2006, petitioner's daughter was 11 years old and attending sixth grade at respondent's middle school (Parent Ex. A at p. 1). Pursuant to her September 2006 individualized education program (IEP), the student attended general education classes for English language arts (ELA), science, and social studies, where she received direct consultant teacher services (*id.*). The student was assigned a 1:1 aide and received the support of a teacher assistant in her general education classes (*id.* at pp. 1-2). The student attended a 15:1+1 special class for math and a 4:1 special class for reading (*id.* at p. 1). The student had the assistance of a monitor for transitions to and from classes, in and out of her chairs, through the halls, and in the bathroom (Parent Ex. B at pp. 1-2; Parent Ex. A at p. 2). Related services for the student included a speech-language consultation; occupational therapy; physical therapy with a weekly consultation; and vision therapy three times weekly, plus a monthly consultation (Parent Ex. A at p. 2). The September 2006 IEP also provided for monthly parent counseling (*id.*). The student's eligibility for special education and related services as a student with orthopedic impairment is not in dispute (Parent Ex. A at p. 1; *see* 8 NYCRR 200.1[zz][9]).

The student reportedly has a medical diagnosis of cerebral palsy (Tr. p. 7; Parent Ex. A at p. 5). She presents with increased muscle tone in her extremities, as well as low muscle tone in

her trunk muscles, and exhibits delays in fine and gross motor development (Parent Ex. A at p. 5). The student requires a walker for ambulation (Parent Exs. A at p. 5; B at p. 1). Her cerebral palsy affects her oral motor control, resulting in drooling (Tr. p. 7). The student's speech is not affected (id.). According to her September 2006 IEP, the student is "legally blind" and has a seizure disorder (Tr. pp. 7-8; Parent Ex. A at p. 5). The student has been prescribed medication to address motor functioning and mobility (Tr. pp. 7-8; Parent Ex. A at p. 6). Academically, the student demonstrates weaknesses in reading, writing and math (Parent Ex. A at p. 4). The student reads "well below her grade level," but demonstrates "excellent" comprehension skills when presented with books read aloud and on tape (id.). The student has memorized some basic math facts; however, automaticity of basic addition and multiplication facts is needed (Parent Ex. A at p. 4). The student's IEP includes a variety of program modifications, accommodations, and supplementary aides and services to address the student's visual and motor needs (Parent Ex. A at pp. 2-3). The IEP also includes provisions for assistive technology devices and testing accommodations (Parent Ex. A at p. 1).

In May 2006, petitioner contacted respondent to request permission to view a full day of the student's classes in preparation for the annual review by respondent's committee on special education (CSE) (Tr. pp. 8-9, 23-24). Petitioner noted that previously she had been permitted to observe the student's classes in September 2004 and September 2005 at respondent's elementary school (Tr. pp. 9, 48). Respondent denied petitioner's request (Tr. pp. 8-9). Subsequently, petitioner asked to see two classes back-to-back, with the stated intention of observing both the classes and the student walking in the hall between those classes (Tr. p. 9). Although respondent also refused petitioner's second request, respondent offered petitioner an opportunity to observe the student during one 39-minute instructional period (Tr. p. 9, 24).

In spring 2006, prior to the student's annual review, petitioner observed a class period selected by respondent (Tr. pp. 24-25, 30). A written test was administered during the class period offered by respondent, and petitioner described her observation as "useless" (Tr. pp. 25-26, 31).

The CSE convened for the student's annual review on June 12, 2006 (Parent Ex. A at p. 7). The June 2006 CSE recommended direct consultant teacher services in general education ELA, science and social studies; special classes for reading and math; a 1:1 teacher assistant; occupational therapy; physical therapy; speech consultation; a shared monitor; and vision services (id. at p. 13). The CSE conducted two subsequent program review meetings on August 8, 2006 and September 27, 2006, after which the September 2006 IEP was completed for the student's sixth grade 2006-07 school year (id. at pp. 6-7).

Following the June 2006 CSE meeting, petitioner submitted a due process complaint notice dated July 25, 2006, requesting an impartial hearing (IHO Ex. 1). Petitioner indicated that she needed to observe and evaluate the appropriateness of the academic milieu in the student's various classrooms and to assess the student's developing life skills and mobility, as well as safety issues in the school setting (Tr. pp. 22-23; IHO Ex. 1; see also Tr. pp. 9-12). In addition, petitioner requested parent counseling in order to assist her with carrying over instructional intervention for homework and life skills (Tr. p. 22; IHO Ex. 1).

At the impartial hearing held on October 17, 2006, petitioner asserted that the 39-minute, test-taking classroom observation permitted by respondent was inadequate for her to assess the

student's mobility and academic issues (Tr. pp. 24-26, 31-33). Petitioner testified that she had requested the observation in order to assess: 1) whether the student's medication was at an appropriate level; 2) whether the student's science class was appropriate; 3) the student's complaint about a math extension class and whether the class was appropriate; 4) the appropriateness of the student's placement in an ELA class and a Wilson reading class; and 5) the student's movement between classes and transitions to and from her chair and walker (Tr. pp. 10-18). Petitioner argued that an observation was necessary because without one she would be the only member of the CSE who was not able to observe the student in the school setting (Tr. pp. 10, 31-32). Additionally, petitioner asserted that she had been permitted to observe the student for a full day at respondent's elementary school in September 2004 and September 2005 (Tr. pp. 9, 48).

Respondent contended that, by offering petitioner a 39-minute classroom observation, it properly balanced its own interests with petitioner's interest in observing her daughter at school (Tr. pp. 36-40). Respondent also asserted that it complied with the requirements of the Individuals with Disabilities Education Act (IDEA) (Tr. pp. 37-40).

The impartial hearing officer determined that petitioner does not have a statutory or regulatory right to observe her daughter in class and that granting such permission is in respondent's discretion (IHO Decision at p. 5). The impartial hearing officer denied petitioner's request for permission to observe her daughter in class for an entire day, but directed respondent to allow petitioner to observe one 39-minute class during which there is instruction, not a test (*id.*).

Petitioner appeals and asserts that the impartial hearing officer erred by overly restricting her access to observe the student in class and during transitional activities. Petitioner further contends that such restrictions are a procedural violation of the IDEA that has denied the student a free appropriate public education (FAPE).¹ Petitioner seeks an order expanding her right to observe the student in school and a declaration that she is entitled to receive a reasonable opportunity to participate in the observational aspects of evaluating the student's progress on the IEP goals and objectives.

Respondent asserts that petitioner has failed to sustain her burden of proving that she has a right to observe the student in school, respondent contravened such purported right, and respondent's actions denied the student a FAPE. Respondent requests that the impartial hearing officer's decision be upheld on appeal.

The central purpose of the IDEA (20 U.S.C. §§ 1400-1482) is to ensure that students with disabilities have available to them a FAPE (20 U.S.C. § 1400[d][1][A]; see Schaffer v. Weast, 546

¹ The term "free appropriate public education" means special education and related services that--

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(20 U.S.C. § 1401[9]).

U.S. 49, ___, 126 S. Ct. 528, 531 [2005]; Bd. of Educ. v. Rowley, 458 U.S. 176, 179-81, 200-01 [1982]; Frank G. v. Bd. of Educ., 459 F.3d 356, 371 [2d Cir. 2006]). A FAPE includes special education and related services designed to meet the student's unique needs, provided in conformity with a written IEP (20 U.S.C. § 1401[9][D]; 34 C.F.R. § 300.17; see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.22).² The burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer, 546 U.S. at ___, 126 S. Ct. at 531, 536-37 [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Pursuant to the IDEA, when procedural violations are alleged, an administrative officer may find that a child did not receive a FAPE only if the procedural inadequacies (a) impeded the child's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; see Matrejek v. Brewster Cent. Sch. Dist., 2007 WL 210093, at *2 [S.D.N.Y. Jan. 9, 2007]). Also, an impartial hearing officer is not precluded from ordering a school district to comply with the IDEA's procedural requirements (20 U.S.C. § 1415[f][3][E][iii]; 34 C.F.R. § 300.513[a][3]).

While the IDEA establishes that parents must be afforded an opportunity to participate in the development of their child's IEP, "neither the statute nor the regulations implementing the IDEA provide for a general entitlement for parents of children with disabilities . . . to observe their children in any current classroom" (Letter to Mamas, 42 IDELR 10 [OSEP 2004]; see 20 U.S.C. § 1415[b][1]). However, school districts and parents are encouraged "to work together in ways that meet the needs of both the parents and the school, including providing opportunities for parents to observe their children's classrooms" (Letter to Mamas, 42 IDELR 10 [OSEP 2004]; see also In re: Student with a Disability, 43 IDELR 214 [SEA NV 2005] [upholding a school district's decision to discontinue classroom observations by a parent's representative after permitting two months of half-day observations twice per week]).

The record reveals that petitioner was not denied access to respondent's staff for her questions regarding the student's progress in school and that she regularly received progress reports and report cards (Tr. pp. 27-28, 31). While petitioner reported some inconsistencies with

² The Code of Federal Regulations (34 C.F.R. Parts 300 and 301) has been amended to implement changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004. The amended regulations became effective October 13, 2006. In this case, none of the new provisions contained in the amended regulations are applicable because all the relevant events occurred prior to the effective date of the new regulations. However, for convenience, citations herein refer to the regulations as amended because the regulations have been reorganized and renumbered.

respondent's staff returning her phone calls, petitioner testified that she was able to get her questions answered (Tr. pp. 27, 31). Moreover, petitioner attended and meaningfully participated in the three CSE meetings that resulted in the September 2006 IEP (Parent Ex. A at pp. 6-7). Petitioner testified that during the CSE meetings she received answers from respondent's staff regarding how the student was doing in school (Tr. p. 29). In addition, petitioner acknowledged that, as requested in her due process complaint notice, parent counseling was added to the student's IEP (Tr. p. 23). Under the circumstances presented in this case, I find that the limitation on petitioner's classroom observation did not significantly impede petitioner's opportunity to participate in the development of the student's IEP (see Cerra, 427 F.3d at 192-94; Perricelli, 2007 WL 465211, at *10-*15). Therefore, there is no need to modify the determination of the impartial hearing officer (see 34 C.F.R. § 300.514[b][2]; Educ. Law § 4404[2]).

I have considered petitioner's remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
March 16, 2017**

**PAUL F. KELLY
STATE REVIEW OFFICER**