

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

(CASE # LL 19-06)

STUDENT: JOHN DOE

SCHOOL DISTRICT: EAST PROVIDENCE SCHOOL DISTRICT

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LEXICON

For the purposes of the decision in the within hearing and to ensure confidentiality of the Student, the following Lexicon shall be used in this decision:

STUDENT:

[REDACTED]

MOTHER, PETITIONER:

[REDACTED]

FATHER, PETITIONER:

[REDACTED]

RESPONDENT: EAST PROVIDENCE SCHOOL DISTRICT

HEARING OFFICER: FREDERICK G. TOBIN, ESQ.

ATTORNEY FOR SCHOOL DISTRICT: MICHAEL J. POLAK, ESQ.

ATTORNEY FOR PARENTS: ELLEN SAIDEMAN, ESQ.

**STATE OF RHODE ISLAND
DEPARTMENT OF EDUCATION**

**SPECIAL EDUCATION
DUE PROCESS HEARING**

**C.W. and SCOTT and GINA W., PARENTS,
INDIVIDUALLY and ON BEHALF OF C.W.**

VS.

CASE NO.: LL 19-06

EAST PROVIDENCE SCHOOL DISTRICT

C.W. is a sixteen year-old student entering eleventh grade later this year at East Providence High School. C.W. suffered a traumatic brain injury when he was an infant. As a result thereof, he is severely disabled with multiple handicaps. He is non-verbal, he uses a wheelchair, and he requires one-on-one care for all his daily needs. Tr. 8:17-20. He also has had seizure disorders as a result of his traumatic brain injury, which requires him to take medication to reduce the intensity and frequency of his seizures (see Bayada Home Health certification and plan of care – Ex 1 at 1-2).

The parties agree that C.W. is eligible for services under IDEA, is entitled to an IEP, and qualifies for Extended School Year services (ESY). C.W. receives special education from the respondent school district and related services, which include nursing services, physical therapy, occupational therapy and speech therapy. Jt. Ex at 29-31. With regard to C.W.'s ESY, the parties do not agree. (See P Ex. 2). Petitioners (C.W.'s parents) believe that the Meeting Street Summer School Placement should be the location of the ESY services. C.W. has attended there in prior years. The respondent (East Providence School Department) has offered its own program, to which petitioners object, for several reasons. See petitioner's Ex 2. See also Tr. 19: 1-10.

ISSUE

Is the ESY program offered by respondent appropriate for C.W.?

Does said ESY program violate Section 504 of the Rehabilitation Act of 1973?

DISCUSSION / FINDINGS OF FACTS

Respondent has offered an ESY program that runs for five weeks during the summer from July 9, 2019 to August 8, 2019. It typically runs on Tuesday, Wednesday, and Thursday each week from 7:30 a.m. to 10:30 a.m. C.W. was also offered related services for one hour after the regular academic portion concluded at 10:30. He was also

offered an additional day of vocational services on Fridays following each ESY week of the program.

C.W.'s parents rejected that offer, requesting that the Meeting Street Summer School Program be funded by respondent instead, which would provide C.W. with eight weeks of ESY at five hours per day, or approximately 65 hours of additional school time in the summer. See Petitioner's Ex. 2. Said exhibit also noted that C.W. would miss the start of each school day due to the doses of anti-seizure medication that he requires to avoid seizures overnight.

C.W. is given a number of medications in both the morning and evening to control his seizures. Among them is phenobarbital. He takes one 32.4 mg tablet in the morning and three 32.4 mg tablets at night around 7:30 p.m. Tr. 16: 10-12. See also Joint 1.

According to Steven Feldman, M.D., phenobarbital is an anti-convulsive medication that is highly sedating which stays in effect in the body eight to twelve hours after taken. Tr. 190: 11-24 and 191:1.

As a result of the medication C.W. takes, when he's awakened in the morning he can't get out of bed by himself, and he still feels the effects of the medication. Tr. 17: 2-10. He's checked out, brought to the bathroom, has breakfast, gets ready for school, and is transported to school between 8:00 and 8:30 a.m., usually up to one hour late. Tr. 17: 11-19.

Petitioners alleges C.W. will miss part of the ESY day in respondent's program because of the 7:30 a.m. start of its program, while Meeting Street's program begins at 8:00 a.m. Petitioners also note that respondent's program runs for three hours per day on Tuesdays, Wednesdays, and Thursdays, while Meeting Street's program is from Monday through Friday for five hours daily. Petitioners claim the Meeting Street program would provide an additional 65 hours over that of the district's program. Pet. Ex. 2.

Respondent has raised the issue of whether C.W. could take medications earlier in the evenings so that C.W. would not be consistently late for the start of school. Dr. Feldman, who had never seen nor examined C.W. nor had spoken to C.W.'s physician, opined that there would normally not be a problem if the medication for C.W. was taken earlier, but he was unaware of why it was being given when it was in the evening. See Tr. 194: 20-24. See also Tr. 195: 17-20 and 22-24 and Tr. 196: 1-10.

C.W.'s mother testified that giving C.W. medication earlier in the evening would take away from his quality of life Tr. 58: 1-3.

Petitioners are also concerned that C.W. will regress if there is a three week gap between the end of the school year and the start of the respondent's ESY program. Tr. 28: 16-24. The Meeting Street ESY program has no such gap. The parents allege that in prior years even two-week vacation periods have indicated regression for C.W.

Respondents dispute this. Kristin Carreiro, C.W.'s special education teacher, testified that she tracks his regression and recoupment. She said her data did not reflect any pattern of regression with his academics. She noted:

“so one day he will do it excellent, and the next day he may or may not know. And then the following day he will know.” Tr. 92: 17-19.

Ms. Carreiro, who would also be C.W.'s ESY teacher, Tr. 86: 12-15, testified that the length of a break in school attendance did not correlate to his ability to demonstrate knowledge when he returned. Tr. 94: 16-17. She also testified that consistency of the program would be more beneficial to C.W. than the time attending the program. Tr. 115: 8-24. See also Resp. Ex. 8.

Karen Scarborough, C.W.'s physical therapist, testified that a three-week break in therapy would not lead to regression in C.W.'s therapy needs. Tr. 136: 3-4.

Julian MacDonnell, Director of Pupil Personnel at East Providence, testified that the school's ESY program was modified for C.W. to meet his needs by providing related services and nursing services. See Tr. 167: 16-19 and Tr.

DECISION


Both of the ESY programs, the one offered by the District and that offered by Meeting Street, appear to provide appropriate ESY locations for student C.W. While the Meeting Street ESY placement was not significantly described in the testimony, other than the times C.W. would be included in it, little information detailing the academics and related services was provided. But C.W. has attended Meeting Street's ESY program in prior years and the parties have agreed to C.W.'s attendance there this summer as an interim order, so this program would on that basis appear to be appropriate.

The ESY program offered by the District was discussed significantly in the hearing. While petitioner objected to the shortened day, week, and number of weeks for various reasons, it too seems appropriate for C.W. Testimony was received by his special education teacher and those providing related services and nursing services that the District's ESY program would be appropriate to meet C.W.'s needs. In fact, by modifying the program for C.W., his individual needs appear to have been taken into consideration. Was the District's program for C.W. as good as that offered by Meeting Street? Maybe, maybe not. But it is not the function of the hearing officer in this matter to determine which is the best program for C.W., only whether the program offered by the District is appropriate and designed to address the student's unique needs. I hold that the respondent's program does that. It also addresses petitioners' claim that the District's ESY program violates Section 504 of the Rehabilitation Act. C.W.'s ESY program from the City incorporated a fourth day of related services together with related services after the scheduled three days normally provided. I therefore hold that the respondent's ESY program did not violate Section 504 of the Rehabilitation Act, since reasonable

accommodations were provided to allow the student to access a free and appropriate public education.

C.W.'s late arrival at school is not a reasonable basis for providing the extra weeks at Meeting Street's ESY. As the evidence showed the decision as to what time to give C.W. his medication was that of his parents. Dr. Feldman testified that the evening doses could have been taken earlier, absent some specific reason determined by C.W.'s treating physician. No medical opinion was presented in evidence by petitioner. Therefore, it cannot be used as justification for a longer ESY program.

Dated: 8/6/19



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