

Before the
Administrative Hearing Commission
State of Missouri



, in the interest of,)
)
 Petitioner,)
)
 v.)
)
 AURORA R-VIII SCHOOL DISTRICT,)
)
 Respondent.)

No. 18-0156

CONSENT DECISION

(Father) filed due process complaints against the Aurora R-VIII School District (District), alleging that the District failed to provide a free and appropriate public education (FAPE) to his daughter, (Student) under the Individuals with Disabilities in Education Act (IDEA).

Procedure

On March 8, 2018, Father filed a due process complaint in the interest of Student. We set this case for hearing on April 16-17, 2018. On March 16, 2018, the District filed a response. We held a prehearing conference on March 30, 2018. We convened a second prehearing conference on April 3, 2018. At the second prehearing conference, the parties orally agreed to continue the hearing to May 15-16, 2018 to allow for additional preparation time with a decision date of June 15, 2018. On April 30, 2018, Father filed a second due process complaint in the interest of

Student. On April 30, 2018, the District filed a motion to consolidate the cases. On May 2, 2018, we consolidated the cases. Petitioner's request for continuance of the hearing and decision date was granted on May 7, 2018. We set the case for hearing on June 28-29, 2018 with a decision date of July 30, 2018. On May 15, 2018, the District requested a continuance of the hearing and decision date, which we granted, setting the hearing for July 11-12, 2018 with a decision date of August 13, 2018. We held another prehearing conference on June 28, 2018, for the purposes of taking up the District's motion to quash subpoenas and limit the number of witnesses, which we granted per our order of June 29, 2018. At the prehearing conference, Father orally moved for a continuance, which was opposed by the District. We denied the request for continuance.

On July 11-12, 2018, we held a hearing on the complaint. Father appeared *pro se*. Shellie L. Guin, Guin Mundorf, LLC, appeared on behalf of the District. On July 12, 2018, following a full day of evidence from the parties that occurred on July 11, 2018, Father filed motions to dismiss that were opposed by the District. On the record of the proceedings, the Commission denied the requests to dismiss pursuant to 1 CSR 15-3.431(1)(B).

Also on July 12, 2018, Father and the District agreed to a stipulated decision pursuant to 1 CSR 15-3.431(3)(A), and further agreed to dispose of this case without further hearing and without a formal decision by the Commission. The parties stipulated that the Commission could enter a consent decision based on their stipulation entered into on the record on July 12, 2018, and based upon the exhibits that were admitted into evidence.

**Findings of Fact for Purposes of this
Consent Decision**

1. Student is enrolled at the District and will be a junior in the fall of 2018.

2. Father and (Mother) have joint legal custody of Student. Father's address is designated for purposes of mailing and educational purposes. Pursuant to the parenting plan, Father is responsible for daily care and may make emergency decisions for medical or dental care; however, Father and Mother share in all educational decision making for Student.¹

3. Student had an Individualized Education Plan (IEP) with a diagnosis of Intellectual Disability (ID) in 9th and 10th grade.²

4. On December 14, 2017, the District completed a review of existing data.³ The District proposed re-evaluation in the areas of General Intelligence, Adaptive Behavior, Academic, and Transition. Father was provided a Notice of Action.

5. On February 20, 2018, a meeting was held to determine continued eligibility, review/revise the IEP, and consider post-secondary transition. The District had conducted an evaluation of Student and presented that evaluation at the meeting for discussion by the IEP team. The IEP team concluded that based upon the evaluation, Student's educational diagnosis should be changed from ID to Other Health Impairment (OHI). Mother agreed with the change. Father disagreed with the change.

6. Father was provided a Notice of Action that proposed changing Student's educational diagnosis from ID to OHI.

7. ID was defined as being a combination of a low cognitive score, low adaptive score, and low academic scores and where classroom performance and the whole picture of the student points to an intellectual disability. OHI was defined as being one or many outside diagnoses that could be combined to have an effect on educational outcome. In Student's situation, while she

¹ Ex. TTT.

² Exs. XX and SS.

³ Exs. PP and OO.

had borderline IQ scores, her adaptive scores were very good as well as her ability to do school work and function in a general classroom setting. Additionally, Student excelled at extracurricular activities. So while Student was identified as intellectually deficient, she also had diagnoses of social anxiety, auditory processing, and other medical diagnoses. Therefore, the category of OHI better met and was more appropriate as an educational diagnosis. The change from ID to OHI did not result in changes in placement or services; however, it did allow for more specific diagnoses to be addressed in providing an education to Student.⁴

8. The District provided Father with a Notification of Meeting for March 7, 2018 for the IEP team to review/revise the IEP and to consider post-secondary transition.⁵ This notice was revised to include consideration of outside information and to discuss further testing that Father requested.⁶

9. At the IEP meeting on March 7, 2018, the IEP was reviewed and revised. Father was provided with a Notice of Action. Mother waived the Notice of Action and requested that the revisions in the IEP commence immediately.⁷

10. Father filed this due process matter on March 8, 2018.⁸

11. On April 13, 2018, the IEP team held an additional meeting to consider additional medical reports regarding Student provided by Father. This meeting was recessed and completed on April 20, 2018.⁹

12. On April 27, 2018, Father filed an additional due process complaint.¹⁰

⁴ Tr. Vol I, pp. 222-225.

⁵ Ex. EE.

⁶ Ex. CC.

⁷ Ex. X.

⁸ Ex. W.

⁹ Ex. L.

¹⁰ Ex. F.

CONSENT DECISION

Pursuant to 1 CSR 15-3.431(3)(A), Father and the District stipulate and agree that the following stipulation made on the record at Tr. Volume II, July 12, 2018, pages 430-438, the substance of which is set forth below, shall constitute the Commission's Decision in this case:

1. On March 8, 2018 and on April 27, 2018, Father filed due process complaints concerning educational issues of Student with the Department of Elementary and Secondary Education against the District, which are contained in Exhibits W and F. As referenced above, those complaints were consolidated into one case and one hearing.

2. The Commission received a full day of evidence from the parties on Wednesday, July 11, 2018.

3. Father and the District agree that this stipulated consent decision addresses and finally resolves all of the issues set forth in the due process complaints, Exhibits W and F.

4. Student's evaluation report dated February 20, 2018, Exhibit E, is an appropriate comprehensive evaluation of Student and complies with the requirements of state and federal regulations implementing IDEA. Further, the parties stipulate that the report accurately reflects Student's level of functioning in the various areas addressed by the report.

5. Father and the District agree that a change should be made to Student's current IEP, Exhibit B, which is dated May 11, 2018, based upon information provided in a report from Dr. Kim Dionysus, PsyD, dated June 15, 2018 (Exhibit YYY). On Exhibit B, Page ASD0011 of the IEP, under the first section, the IEP currently states that: "[Student's] health impairment (Global Processing Delay, Social Anxiety Disorder, Mild Intellectual Disability, Receptive and Expressive Language Disorder, and Neurodevelopmental Disorder) adversely affects her educational performance." Father and the District stipulate and agree that this sentence in the IEP shall be revised and shall state instead that: "**[Student's] health impairment (Global**

Processing Delay, Social Anxiety Disorder, Mild Intellectual Disability, Receptive and Expressive Language Disorder, Neurodevelopmental Disorder, and Depression) adversely affects her educational performance." The Commission hereby orders that the May 11, 2018 IEP be changed immediately.

6. Nothing in the IEP, Exhibit B, with the change agreed to by the parties and ordered by the Commission, and nothing in the due process complaints (Exhibits W and F) filed in this case by Father addresses the issue of whether Student should graduate based upon her IEP goals or whether Student graduates based on credits with a regular high school diploma, and this issue is not covered by this stipulated consent decision.

7. The IEP, Exhibit B, with the change agreed to by the parties and ordered by the Commission, will be implemented with the start of the 2018/2019 school year. Further, no IEP meeting is required or necessary to revisit the June 15, 2018 report from Dr. Dionysus (Exhibit YYY). With this change, Father, and the District agree and stipulate that the IEP for Student is appropriate to meet her needs and enables her to progress in light of her unique circumstances, and provides Student with FAPE.

8. Father had requested an independent educational evaluation, (IEE), which request was previously granted by the District. The District and Father agree that the consultation and report of Dr. Dionysus dated June 15, 2018, Exhibit YYY, is the IEE. As part of that IEE, the District has a maximum cost limit of \$750 that may be paid to Dr. Dionysus for her assessment and evaluation of Student as reflected in an invoice to be submitted by Dr. Dionysus directly to the District. Upon submission of the invoice, the District will directly pay Dr. Dionysus in an amount not to exceed \$750. Father is ordered to contact Dr. Dionysus and to inform her that she will need to submit an invoice to the District not to exceed \$750, for payment by the District.

9. Father withdraws the complaints filed in this matter as reflected by Exhibit SSS. Father agrees, stipulates, and authorizes the District's attorney, Shellie L. Guin, Guin Mundorf, LLC, to contact the entities reflected in Exhibit SSS and to advise the entities based upon this stipulation and consent decision that the complaints are withdrawn. Father further agrees that the issues raised in Exhibit SSS have been resolved by this stipulation and that he will not file any further due process or other complaints like the ones in Exhibit SSS on the same issues that have been resolved in this due process proceeding. If there are any other issues addressed in the complaints found in Exhibits SSS that this stipulation does not address, they are deemed waived.

10. Father understands and agrees that the court order on dissolution and the parenting plan, Exhibit TTT, provides that Father and Mother are to consult jointly with each other on educational decisions affecting Student and that there is nothing contained in Exhibit TTT that gives Father the ultimate authority or decision-making authority in decisions affecting Student's education.

11. The Commission finds that this stipulation resolves all of the due process issues raised in Father's complaints.

12. The Commission further finds and concludes that the IEP as modified by the parties is appropriate to meet Student's needs and enable her to progress in light of her unique circumstances and provides Student with FAPE.

SO ORDERED on July 19, 2018.

AUDREY HANSON MCINTOSH
Commissioner