

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: B. B.

Date of Birth: xx/xx/xx

Dates of Hearing:
January 5, 2006 and January 19, 2006
CLOSED HEARING
ODR #6061/ 05-06 LS

Parties to the Hearing:

Mr. and Mrs. [Parents]

Council Rock School District
The Chancellor Center
30 North Chancellor Street
Newtown, PA 18940

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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January 26, 2006

February 9, 2006

William F. Culleton, Jr., Esquire

INTRODUCTION

Student is a [teenaged] eligible student residing within the Council Rock School District. Student attended the High School for ninth and tenth grades; however, between December 8, 2005 and January 2, 2006, his parents, Parents, unilaterally placed him in a private school. (NT 28-16 to 22, 29-8 to 13.) The Student has been classified with other health impairment due to Attention Deficit Hyperactivity Disorder, and Specific Learning Disability in written expression. He has been diagnosed with Asperger's Disorder. The Parents have requested an independent evaluation at District expense, and the District has filed for a due process hearing to determine whether or not the District's latest evaluation, dated June, 2005, was appropriate.

The District asserts that its evaluation of June 29, 2005 was appropriate because it was conducted by qualified personnel, was comprehensive and otherwise complied with the requirements of the IDEA and Section 504 of the Rehabilitation Act of 1973. It ruled out Autism and found that any educational interference was due to oppositional behavior due to social maladjustment, and not due to emotional disturbance.

The Parents assert that the evaluation was not appropriate because it was not comprehensive in light of the history of prior evaluations and classifications, and because it employed instruments that were not valid for the purposes for which they were used. As a result, they assert, the Evaluation failed to classify the Student as a child with a disabilities of Asperger's Syndrome and serious emotional disturbance.

PROCEDURAL HISTORY

On September 29, 2004, the Student's IEP team met to discuss Student's needs. (S-13 P. 1.) The team decided to refer Student for reevaluation of his disability classifications. The District received the Parents' permission to evaluate on March 11, 2005. The District produced its Evaluation Report on June 29, 2005. (S-13.) Subsequently, the Parents submitted additional reports to the District and discussed them at an IEP meeting on October 18, 2005. (S-14, 15, 16, 20, 21, 22, 24.) By email dated October 30, 2005, as well as by telephone on November 3, 2005, the Parents requested an independent evaluation at District expense. (S-17, 18.) By email dated November 3, 2005, the District requested that the Parents join it in mediation of the disagreement over the June 29, 2005 ER. (S-20.) The District filed a request for due process on November 14, 2005. The hearing was held on January 5, 2006 and January 19, 2006. The record was held open to receive additional materials from counsel, which were received by the hearing officer on January 25 and 26, 2006, and the record was closed on January 26, 2006.

ISSUE

1. Was the evaluation of June 29, 2005 appropriate so as to divest Parents of their right to an independent Educational Evaluation at District expense?

FINDINGS

1. As early as first grade, Student exhibited psychosocial immaturity and problematic behaviors in school, including inattentiveness, impulsiveness, disruptive behaviors and social difficulties. These behaviors were reported in evaluations from 1997 to 2005. (NT 69-24 to 70-13, NT 76-6 to 12; S-1 p. 4, 6, S-2 p. 5, 6, 8, 9, S-3 p. 1, 7, 8, S-5 p. 3, S-6 p.10, 11, S-7 p. 11, S-12 p. 3, S-13 p. 5, 6, 12, 13.)
2. [Redacted.]
3. Student was diagnosed in first grade and continues to be diagnosed with Attention-Deficit Hyperactivity Disorder. (NT 64-10 to 65-22; S-1 p. 5, S-2 p. 11, S-3 p. 8, S-13 p. 12, 15.)
4. The District completed a CER dated February 13, 1997 [which included] concerns regarding organization and task completion. (NT 64-10 to 65-6; S-1.)
5. By report dated July 1, 1997, a private evaluator diagnosed Student with Attention Deficit Hyperactivity Disorder. (S-2 p. 11.)
6. By report dated January 8, 2000, the same private evaluator confirmed the diagnosis of ADHD. (S-3 p. 8.)
7. The District completed a CER dated February 28, 2000, when Student was in fourth grade, which identified him with [three] exceptionalities: Specific Learning Disability in written expression, Other Health Impairment, ADHD and Eligible for Occupational Therapy Services. He was recommended for Learning Support and Occupational Therapy Support services. (S-5 p. 5, 6, 7.)
8. The February 28, 2000 CER also recognized Student's emotional and behavioral problems and recommended a behavior management plan and opportunities for enhancing feelings of self worth and competence and social skills development. (S-5 p. 36.)
9. The District completed a CER dated April 15, 2003, when Student was in seventh grade, which identified him with [two] exceptionalities: Specific Learning Disability – Written Expression, and Child with Disability – Autism. The CER recommended part time support in a program designed for Pervasive Developmentally Delayed students, inclusion setting with specific instruction for the development of social skills, medication for attentional deficits and emotional stability, athletics, and group and individual counseling. (NT 77-21 to 79-13; S-6 p. 11 to 13.)

10. The April 15, 2003 CER found that Student exhibited difficulty with attending to social cues and appeared to be isolated from his peers. (NT 78-13 to 22; S-6 p. 2, 3.)
11. In May 2003, the IEP team recommended assigning the Student to a part time placement in an Autistic Support Class in Middle School, where he was assigned for his eighth grade year. (NT 79-6 to 9; S-13 p. 3.)
12. The District provided an IEP dated July 13, 2004, after Student's eighth grade year, which set forth goals and objectives in social discrimination skills and study skills. The IEP prescribed a mainstreamed setting with accommodations and modifications and a Resource Room Study Skills program. Supports included autistic support. In addition, the Student was assigned to [another school] for morning classes in physics and engineering. (NT 29-23 to 31-7; S-7 p. 11, S-13 p. 3, 10.)
13. On October 7, 2004, during his ninth grade year, the IEP team at High School referred Student for psychoeducational evaluation and reevaluation to review Student's diagnoses of Asperger's Disorder, ADHD and learning disability, due to continuing behavioral issues. (NT 31-8 to 32-14, NT 66-18 to 67-10; S-8.)
14. By report dated May 25, 2005, a private evaluator diagnosed Student with Generalized Anxiety Disorder, Depressive Disorder, and ADHD. The evaluator did not diagnose Asperger's Disorder but included it as a "rule out" diagnosis. (S-12 p. 5.)
15. The Student experienced clinically significant symptoms of depression and anxiety and difficulties with concentration and impulse control which severely interfered with his school performance after his parents and doctor withdrew his medication in January or early February 2005. (NT 91-4 to 9, NT 94-6 to 96-13, NT 128-14 to 129-8; S-12, S-13 p.5.)
16. The Student passed four courses in tenth grade and failed one course, study skills; however, his grades in academic subjects included "C" in two courses and "D" in one. This was substantially worse than his grades in 2004. (S-27.)
17. In June and July 2005, the District's School Psychologist conducted a reevaluation of the Student. The reevaluation was intended to consider whether Student's present classifications were still appropriate and whether or not a classification of emotionally disturbed would be appropriate. (NT 67-24 to 69-1, NT 139-4 to 141-12, NT 146-19 to 150-15, NT 157-8 to 158-2.)
18. The District completed an ER dated June 29, 2005, after Student's ninth grade year, which identified him as a student with a disability – Other Health Impaired and Specific Learning Disability in written expression. (S-13 p.15.)

19. The June 29, 2005 ER confirmed that Student continues to experience a substantial discrepancy between ability and achievement in written expression, including flow of ideas, organization of material, difficulty formulating ideas and quality of writing. However, the ER suggested that the resource room may be too restrictive a setting for Student because he is performing well in comparison with other students in the resource room. (S-13 p. 14.)
20. The June 29, 2005 ER found that attention and focus deficits impeded Student's progress in school. While Student knew what he needed to do to succeed, the ER found that there were documented performance issues or deficits requiring intervention. The ER suggested a behavior management plan. (S-13 p. 15.)
21. The June 29, 2005 ER found that Student does not meet eligibility criteria for classification as a child with the disability of Autism. (S-13 p. 15.)
22. The June 29, 2005 ER set forth two criteria for the diagnosis of autism found in the American Psychiatric Association's Diagnostic and Statistical Manual –IV – TR: severe and sustained impairment in social interaction, and the development of restricted, repetitive patterns of behavior, interests and activities. The ER also set forth the criterion that the disorder cause a significant degree of adverse effect in educational performance. (S-13 p. 15.)
23. The June 29, 2005 ER found that there was no clear evidence that Student met these criteria. It attributed Student's documented difficulty with social interaction to withdrawal and depression due to lack of academic success, rather than lack of interest. It noted the report of Student's Mother that he did not experience social difficulties until his second grade in school. (S-13 p. 6, 15.)
24. The June 29, 2005 ER was based in part upon teachers' reports that Student contributes to class discussion and that his written work is exceptionally good when done with a word processor. His mathematics and study skills teachers reported that Student was passive and did not interact with them or peers, except to be argumentative with the teacher at times. The ER reports substantial social difficulties that result in isolation from peers. (S-13 p. 4, 5, 10, 11, 12.)
25. The June 29, 2005 ER generally relied upon all of the data reviewed as the basis for the conclusion that Student could not be classified with Autism. This included interview with parents, teacher input, review of educational records, and review of all private evaluations. (S-13 p. 15.)
26. The June 29, 2005 ER did not classify Student with serious emotional disturbance. It attributed his documented refusal to do assignments and opposition and defiance to social maladjustment, precluding classification. There was no discussion of the criteria or factual bases for this differential determination. (S-13.)

27. The June 29, 2005 ER was conducted by the school psychologist, who is appropriately credentialed and trained in the administration of the specific instruments and methods relied upon. (NT 58-17 to 63-20, NT 98-15 to 25, NT 100-10 to 24.)
28. The June 29, 2005 ER was based upon a thorough review of previous evaluations, both by the District and by private evaluators. ((NT 68-8 to 17; S-13 p. 2, 3,)
29. The June 29, 2005 ER also reported results of an interview with student, and was based upon observations of Student in a variety of settings within the school. (NT 135-15 to 136-5, NT 190-8 to 16, NT 218-9 to 220-22, NT 238-10 to 239-2, NT 256-1 to 11; S-13 p. 4, 5.)
30. The June 29, 2005 ER reported the written reports of teachers. (S-13 p. 4.)
31. The June 29, 2005 ER reported relevant conversations with the Student's Mother regarding her concerns about Student's behavior and functioning. (S-13 p. 5, 6.)
32. The District considered all data submitted by the Parents. Parental input was gleaned from the psychologist's memory of statements made by the Parents at meetings and in other conversations with the psychologist, because the parents did not submit any written statements pursuant to the custom and practice of the District in preparing for evaluations. (NT 35-9 to 37-25, NT 92-23 to 93-25.)
33. The District considered three evaluation reports submitted by Parents after the June 29, 2005 ER. First, it considered a Quantitative Electroencephalogram report by a private psychologist. Next it considered a summary of evaluative supports for a diagnosis of autism, again by a privately retained psychologist. Finally, it considered a report of neurological consultation by a neurologist at [redacted].. (NT 38-1 to 41-5; S-14, S-17, S-21, S-24.)
34. The June 29, 2005 ER was based in part upon various standardized instruments, including the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), the Wechsler Individual Achievement Test, Second Edition (WIAT-II), the Developmental Test of Visual-Motor Integration (VMI), the Behavior Assessment System for Children, Parent Report Scale and Teacher Report Scale (BASC), and the Connors Rating Scales – Revised, Connors-Wells Adolescent Self-Report Scale, Long Version (CASS:L). (S-13 p. 6-12.)
35. The June 29, 2005 ER also reported results of a mental health assessment in May 2005 through [a facility], and a Functional Behavioral Assessment completed in October 2004. (S-13 p. 12, 13, 19-26.)
36. The instruments utilized in the June 29, 2005 ER were valid and reliable for the purposes for which they were used. (NT 144-1 to 147-6, NT 235-24 to 236-23; S-13.)

37. The school psychologist does not employ projective instruments to assess emotional disturbance because she does not believe that such instruments have adequate psychometric validation. (NT 67-24 to 68-11, NT 169-10 to 18.)
38. The school psychologist obtained data from three teachers to whom the Student had been assigned during the 2004-2005 school year: the mathematics teacher, the Study Skills teacher, and the Learning Resource Center teacher of English. Data was solicited by asking the teachers to fill out forms consisting of two checklists that the psychologist had developed herself, along with the Computer Entry Form of the Behavior Assessment System for Children (BASC), Teacher Rating Scales –A, for ages 12 to 18. Two other teachers were asked to fill out only the psychologist’s self-devised teacher observation form. (NT 86-7 to 88-17; S-37, S-38, S-39.)
39. None of the teacher observation forms are normed or validated for any purpose. (NT 91-12 to 92-7.)
40. The psychologist in declining to classify Student as a disabled student with autism, relied in part upon responses to her self-devised checklist, which was based upon the DSM-IV_TR diagnostic criteria for Autism. (NT 88-18 to 89-7; S-37, S-38, S-39.)
41. The checklist was used only for the purpose of eliciting from the teachers any observations of behaviors that might be relevant to the assessment of autism. (NT 199-5 to 200-23)
42. Regarding autism, the psychologist relied upon the comprehension subtest of the Verbal Comprehension Scale of the WIAT II instrument, which she interpreted to indicate that Student has above average comprehension of social norms. (NT 102-3 to 17.)
43. Regarding autism and emotional disturbance, the psychologist relied in part upon the BASC rating scales as rated by the Student’s Mother and three teachers. (NT 110-22 to 112-19; S-13 p. 10, 11, 12, S-37 p. 2, 3, S-38 p. 2, 3, S-39 p. 3, 4, S-41.)
44. In reporting the BASC scores in the ER, the psychologist averaged the scores of the three teacher scales into one score. However, she was fully aware of any differences in the individual teachers’ scores and considered those differences in reaching her conclusions. (NT 112-20 to 113-8, 114-14 to 115-3.)
45. The psychologist concluded that the responses did not demonstrate agreement that the Student’s social interactions were entirely non-reciprocal, in part because some raters indicated that the Student would compliment others when they did well, and exhibited other reciprocal social behaviors. (NT 117-24 to 118-22.)

46. The psychologist viewed and relied upon the BASC scores only as a screening instrument, that is, its purpose is only to identify issues. The psychologist did not view these scores as determinative of the presence or absence of autism or emotional disturbance. Rather, she relied upon the congruence of the BASC scores with other observations by teachers, Mother, Student himself and her own observations. (NT 226-21 to 232-8.)
47. The psychologist relied upon her own interview with Student, as well as her observation of him in class and at meetings and in the school building. These observations totaled five to six hours. In all of these observations, Student did not exhibit social interactions typical of autism or emotional disturbance. The psychologist found these observations to be consistent with the Student's interactions with teachers as required to satisfy his educational needs. (NT 135-15 to 136-5, NT 190-8 to 16, NT 218-9 to 220-22, NT 238-10 to 239-2, NT 256-1 to 11.)
48. The BASC scales provided scores in areas including hyperactivity, conduct problems, withdrawal, somatization, depression, anxiety and attention and learning problems. (NT 118-23 to 121-2.)
49. The psychologist concluded that the BASC scales results, while they did support concern about possible depression, did not support a classification of emotional disturbance. (NT 118-23 to 122-10.)
50. The psychologist had reviewed the report of a psychologist at the [other facility] dated May 25, 2005, whose initial diagnosis included Generalized Anxiety Disorder and Depressive Disorder NOS. This report noted a history of change in behavior, motivation and academic ability, displaying extreme ADHD symptoms, anger, anxiety and depression. A Youth Self Report instrument had elicited somatic concerns, and symptoms of depression and anxiety. Other instruments confirmed these reports. (NT 121-14 to 122-10, NT 243-18; S-12 p. 3, 5.)
51. Student had been referred for the [other facility] by the District's High School Student Assistance Program. The school's referral had reported disruptive behavior, lethargy, incomplete or missing work, falling asleep in classes, apparent depression, sudden mood changes, disorganization, sloppy work and inability to work independently. (NT 121-14 to 122-10, NT241-23 to 242-1.)
52. The teacher forms submitted to the psychologist confirmed depressive symptoms, falling asleep in class, failure to complete assignments, careless errors, unsatisfactory work, sadness, social difficulties, and sloppy handwriting not due to specific learning disability. (S-37, S-38, S-39.)
53. The psychologist relied in part on the functional behavioral analysis as evidence of what behaviors were interfering with Student's educational performance when

that assessment was requested. The issues about which assessment was requested supported the psychologist's conclusion that social skills and emotional disturbance were not interfering with educational performance at the time prior to when the Parents withdrew the Student's medication. (NT 251-23 to 252-24, NT 262-12 to 20, NT 265-22 to 25; S-13 p. 19 to 21.)

54. The functional behavioral analysis corroborated the school psychologist's conclusion that some of the behaviors reported in the referral to [the other facility] had begun recently, after medication had been withdrawn. (NT 292-24 to 293-22.)
55. The psychologist also relied upon the Connors Rating Scales Revised, which confirmed attention issues but did not confirm emotional problems. The psychologist considered the Connors scales to emphasize attentional issues. (NT 122-14 to 123-20; S-13 p. 12, S-40.)
56. Regarding oppositional and defiant behavior, the psychologist relied upon the Student's initial refusal to complete the writing portion of the WIAT and its correlation with responses given by teachers that Student refuses to do work that they assign. The functional behavioral assessment also corroborated her conclusion that Student's arguing with teachers and refusal to work were due to willful refusal rather than emotional disturbance. (NT 107-10 to 108-4, NT 284-25 to 287-14.)

DISCUSSION AND CONCLUSIONS OF LAW

Credibility and Burden of Proof

This hearing officer finds that the school psychologist was credible, and therefore accords her testimony determinative weight as to the appropriateness of the evaluation that was essentially her work product. By a decision prior to the hearing, the hearing officer placed the burdens of persuasion and production of evidence upon the District, based upon his interpretation of Schaffer v. Weast, 546 U.S. __ (November 14, 2005).

Governing Legal Standard

The Parents have asserted their right under the IDEA to have an independent educational evaluation at District expense, as they disagree with the District's evaluation. 20 U.S.C. §1415(b)(1); 34 C.F.R. §300.502(b)(1). The District has filed for due process to show that its evaluation was appropriate, as provided by the federal regulations. 34 C.F.R. §300.502(b)(2)(i). If the District can show that its evaluation was appropriate, the hearing officer's order obviates the parents' right to independent evaluation at public expense, but they can still submit an independent evaluation at their own expense, which

the District will be obligated to consider. 34 C.F.R. §300.502(b)(3). In this case, the hearing officer finds that the District's evaluation was appropriate.

In determining whether or not the District's ER is appropriate, the hearing officer will refer to the statutory requirements for reevaluations under 20 U.S.C. §1414(a)(2). This section incorporates extensive procedural and methodological requirements for evaluation, which are set forth at 20 U.S.C. §1414(b) and (c). Under these sections, the local education agency must "use a variety of assessment tools and strategies" to gather relevant information, 20 U.S.C. §1414(b)(2)(A). It must utilize information provided by the parent. *Ibid.* The District must not rely upon a single measure or assessment. 20 U.S.C. §1414(b)(2)(B). It must use technically sound instruments capable of assessing the relative contribution of cognitive, behavioral, physical and developmental factors. 20 U.S.C. §1414(b)(2)(C).

The District's evaluation met all of these standards. The evaluation utilized a variety of assessment tools and strategies. Several different standardized tests were used to evaluate not only the Student's cognitive ability but also his educational attainment. (FF 34.) These included well recognized, validated and frequently utilized tests of intelligence, achievement, and visual-motor integration. (FF 36.) Also included was a screening instrument that identifies emotional issues, an independent evaluation of emotional disturbance and a Functional Behavioral Assessment. (FF 43, 50, 53.) Extensive information from the Parents was considered. (FF 25, 31, 32, 33.)

Assessment materials must be free of racial, cultural and linguistic bias. 20 U.S.C. §1414(b)(3)(A)(i), (ii). They must be used for purposes for which they are valid and reliable. 20 U.S.C. §1414(b)(3)(A)(iii), and they must be administered by trained personnel, in accordance with the producer's instructions. 20 U.S.C. §1414(b)(3)(A)(iv), (v). In addition, the evaluation must assess all areas of suspected disability, with tools and instruments that provide relevant information. 20 U.S.C. §1414(b)(3)(B), (C). IEP teams must "review existing evaluation data on the child ..." and determine whether any additional data is needed to properly assess "the educational needs of the child ..." 20 U.S.C. §1414(c)(1)(A), (B).

These requirements also were met. There was no question of bias. The District's school psychologist was qualified. (FF 34, 36.) Existing data was reviewed comprehensively. (FF 28.)

Comprehensiveness

The Parents first challenge the appropriateness of the District's ER on grounds that it did not sufficiently assess the Student's emotional and developmental functioning to account for educational deficits due to autism or autistic like behaviors. IDEA requires "at a minimum," 34 C.F.R. § 300.532, that the assessment be "sufficiently comprehensive to identify all of the child's special education and related services needs". 34 C.F.R. § 300.532(h). Evaluation must be sufficient to both identify the child as a child with a disability and also to determine the child's educational needs. 20 U.S.C. §1414(b)(3)(A)(iii). Moreover, the evaluation must include tests and other evaluation

materials “tailored to assess specific areas of educational need”. 34 C.F.R. § 300. 532(d). Thus, there is a basic standard that assessments must address all areas of suspected disability. 34 C.F.R. § 300.532(g). This includes social and emotional “status”. Ibid.

Thus, if an evaluation fails to address emotional needs that are reported to be interfering with learning, or utilizes incomplete or inadequate instruments for this purpose, the evaluation may be inadequate. In re the Educational Assignment of M.P., Special Education Opinion No. 1350 at 11 to 13 (May 3, 2003). In M.P., the Appeals Panel criticized an ER in part because it failed to account for a glaring contradiction between two previous ERs. M.P. at 13-14.

Regarding the comprehensiveness requirement, the Appeals Panel has held that a failure to “garner together more than a minimal amount of information pertaining to the Student’s previously acknowledged serious disability, is a fatal flaw” In re the Educational Assignment of V.S., Special Education Opinion No. 1590 at 7 (April 1, 2005). In V.S., the Panel addressed an evaluation in which there was a discrepancy between verbal ability and performance, and an identified “need” to address slow performance in timed tasks, pointing out:

Merely dismissing the finding is not sufficient, given the purpose of the ER, which, according to the spirit of the Individuals with Disabilities Education Act (“IDEA”) and federal and state regulations governing the evaluation, requires the ER to provides [sic] for the compilation of as much information as possible, with the possibility of uncovering a suspected disability and providing a remedy for the problem (See 34 CFR §300.532 and 22 PA Code §14.123).

The Panel concluded that the evaluator, faced with the discrepancy, should have conducted further testing, and repeated this finding with regard to other areas of identified difficulty in the ER. Id. at 7-8. In In re the Educational Assignment of C.F., Special Education Opinion No. 1496 at 6 (July 14, 2004), the Panel criticized the failure of an ER to explore the educational implications of a previous identification of the student as developmentally disabled by reason of mental retardation.

The hearing officer finds that the ER in the instant matter was sufficiently comprehensive. It addressed all of the classifications that had been given to Student in previous assessments, and also explored whether or not he was a child with a disability by reason of emotional disturbance. (FF 17.) Thus it addressed all areas of suspected disability and all area of educational need. It did not ignore the questions of autism or emotional disturbance; rather, the District’s psychologist described her careful and comprehensive attempt to harmonize a vast amount of often contradictory data, both standardized and historical, observed and subjective. (FF 23-26, 28-35, 38, 40, 42, 43, 47, 50, 53, 55.)

The evaluation relied upon far more than a minimal amount of data regarding all of these suspected and identified disabilities. It relied upon an extensive review of history and several previous evaluations. (FF 28.) It was based upon standardized testing

that addressed all of the issues, including ability, achievement, visual-motor integration, and emotional/developmental issues. (FF 34.) It utilized parent and teacher interviews, an independent evaluation of symptoms of emotional disturbance, and the Student's self report on a standardized instrument that addressed both attention issues and emotional issues. (FF 34, 35, 38, 40, 42, 43, 47, 50, 55.) The District's school psychologist also relied upon her own extensive observations of the Student in a variety of settings. (FF 47.)

Thus, the evaluation included assessments "tailored" to address specific areas of educational need, by addressing the emotional needs of the Student through the BASC and Connors scales, as well as by a searching inquiry into the record and history available to the school psychologist, and direct interviewing and observation of the Student.

The evaluation addressed the discrepancy among the previous evaluations by the District, which had classified the Student as other health impaired but not a student with a disability when the Student was in fourth grade, and then, when the Student was in seventh grade, had classified him as having the disability of autism. (FF 9.) The evaluation concluded that the autism classification had been erroneous because it had been determined atypically late in life, and because the Student had very high educational achievement, indicating that any autism had not impeded his educational progress. The District's psychologist also relied upon her own observations of the Student, corroborated by other observers, that the student's social interactions did not reveal any characteristics of autistic like behavior. (FF 21-25, 29, 45, 47.)

The Parents argue that the school psychologist erred by not including projective testing, on grounds that she does not believe that projective tests are psychometrically valid. (FF 37.) However, nothing in the IDEA requires a district to utilize all conceivable forms of tests in a reevaluation. On the contrary, the law requires the district to use a "variety" of assessment methods. 22 C.F.R. §300.5332(b). This the District did. It is not required to use projective instruments per se.

Appropriateness of Utilization of Instruments

The Parents argue that the psychologist's use of the self-devised teacher response form for autism symptoms was inappropriate. As part of this argument, they point out that the 2004 IDEIA seems to broaden the requirement of validity and reliability in assessment techniques. The IDEA required that "any standardized tests" must be "validated" for their purpose in the evaluation. 20 U.S.C. §1414(b)(3)(B)(i) (1994). The new act applied the requirement to all "assessments and other evaluation materials", and it required that these be "valid and reliable" for their intended use. 20 U.S.C. §1414(b)(3)(A)(iii) (2004).

Parents point out that the District's evaluation actually spanned the effective date of the 2004 act, since parts of it extended into July despite its stated date of June 29, 2005. Therefore they argue that the 2004 standard applies here. It is not necessary to reach this question of law. The forms submitted to the teachers were used only for the purpose of eliciting from them any observations of behaviors that might be relevant to the

assessment of autism. They did not purport to provide a scale that could be relied upon for differential diagnosis of autism, emotional disturbance or attention deficit disorder. (FF 38-41.) Thus, utilization of these forms would not contravene even the arguably broader requirements of the 2004 IDEIA. They were not used for purposes that would require psychometric properties.

There was considerable testimony concerning the psychologist's use of and reliance upon the BASC scales. Arguably, their prominence in this evaluation could have been severely misleading, since they failed to elicit any objective evidence of autism or emotional disorder, despite the substantial history and several evaluations indicating emotional disturbance. (FF 1-15.) Not only did the psychologist rely heavily upon these instruments; she also deviated from the ordinary use of the scores by averaging the scores of the three teachers in her ER summary. (FF 44.) Arguably the averaging of scores and the use of a screening instrument as the lynchpin of the evaluation in ruling out autism and emotional disturbance may have violated the IDEA requirement that instrument are administered in accordance with instructions and that no single instrument be the sole determinant. 20 U.S.C. §1414(b)(2)(B), 20 U.S.C. §1414(b)(3)(A)(v).

The Parents argue that the school psychologist's decision not to classify Student as disabled with autism or emotional disturbance was based upon instruments that are not validated for purposes of such decisions. These included the BASC, which is a screening instrument that calls for further assessments, and the psychologist's self-generated forms that she distributed to the teachers to elicit their observations of behaviors relevant to autism and emotional disturbance. However, this hearing officer finds that the psychologist was truthful when she clearly stated that she did not rely on the BASC as anything more than a screening instrument, and that she recognized that her teacher forms were not diagnostic instruments. (FF 41,43,46.) Further, she truthfully recounted that she had based her determinations on the record as a whole, including her careful review of the previous evaluations, information from teacher interviews and the functional behavioral analysis, the Connors Self Report instrument, and her personal observations of Student in multiple settings over the course of several hours. (FF 25, 28, 29, 53, 55.) In short, the psychologist's conclusion was based upon an inclusive overview of all the available information. No one instrument or questionnaire or form was determinative, and the data supporting her conclusion was not limited to the instruments and forms that Parents criticized as lacking in psychometric validity for differential diagnostic purposes.

The law does require instruments to be used only for purposes for which they are valid and reliable, and only according to instructions in the manual. 34 C.F.R. §300.532(c)(1). However, nowhere does the law require that standardized tests be administered for every conclusion to be made in an evaluation. Thus the Parents' argument must fail insofar as they assert that, because the BASC is only a screening instrument, further standardized testing was required in order to render the evaluation "appropriate" within the meaning of 34 C.F.R. §300.502(b)(2)(i). In this case, the District's credible witness testified that her utilization of data was within the proper application of professional judgment. (NT 225-18 to 226-7, NT 235-24 to 236-23.) Moreover, she credibly explained why she did not utilize other available standardized

instruments that are known to address autism. (NT 144-1 to 145-2.) Parents brought forth no professional literature or testimony to show that the psychologist violated the tenets of proper professional practice in choosing the instruments she used. Thus, her evaluation of the data was appropriate.

The Parents argue that the psychologist failed to utilize the BASC according to the instructions contained in the score printout, because she ignored validity warnings. However, the psychologist testified that she relied on the scores for screening purposes despite the validity warnings because the warnings themselves permitted such use if there was corroboration of the scores. In her judgment, there was such corroboration. (NT 207-22 to 208-24.) Thus there can be no finding that the BASC was utilized contrary to its instructions.

The psychologist did average the scores of the teachers in reporting them in the ER document. (FF 44.) This appears not to be authorized in the BASC manual. However, even if this was an inappropriate way to report the scores, this hearing officer finds that this did not distort the weight given to the scores or the psychologist's utilization of the scores in reaching her conclusions. Her testimony reveals that she was well aware of the individual scores, and that, in any event, she did not place undue reliance upon the scores, whether individualized or averaged. Her focus was upon congruence of multiple sources of information, and the way she reported the BASC scores in the ER did not affect her ability to do that validly within the exercise of her professional judgment.

The psychologist emphasized that her classification judgment was not a diagnosis, but incorporated the essential factor of impact on educational performance. She carefully considered this and did not find that any emotional disturbance was having a substantial impact over a long period of time. While that seems to conflict with the findings of the [other facility's] evaluation, (FF 50), it must be remembered that this evaluation came after the Parents withdrew Student's medications from him, medications that addressed both his attention difficulties and his depression. (FF 15.) It was only in the last half of the 2004-2005 school year that Student's grades seriously declined. (FF 16.) Thus, it was not beyond reason for the psychologist to conclude that symptoms so severe as to have had a substantial educational impact were not demonstrated for a long enough period of time to qualify for classification – especially in light of the Student's tested achievement levels. Moreover, it clearly was her view that any interference with educational performance prior to the withdrawal of medications was either due to ADHD and its emotional sequelae or due to simple oppositional and defiant behavior – refusal to work - which is not in itself classifiable. There was no evidence that this behavior was caused by the emotional disturbances that had been noted in prior evaluations. None of those documents made that link so compellingly that the psychologist would be bound reasonably to adopt such a finding.

ORDER

The District's evaluation was appropriate. Therefore, Parents are not entitled to an independent educational evaluation at District expense.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

February 9, 2006