

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

M.H.6092/05-06 AS

Name

Xx/xx/xx

Date of Birth

02/06/06

Date of Hearing

Closed

Type of Hearing

Parties to the Hearing:

Parent(s)

Parents' Names

02/09/06

Date Transcript Received

Address

02/21/06

Date of Decision

Chichester

School District

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Hearing Officer Name

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School District Superintendent

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I. BACKGROUND

Student is a xx year old eligible student currently enrolled in the 10th grade in the Chichester School District [District]. He has been receiving special education services for learning disabilities since enrolling in the District as a fifth grade middle school student.

Student was making appropriate progress until 8th grade, at least, but serious problems developed when he entered high school in the 2003/2004 school year. After a year of many missed school days and disciplinary problems, Student was retained in 9th grade because he failed all but one class.

In June 2004, the school psychologist notified the District's director of pupil services of the problems Student had exhibited in school and suggested a reevaluation. The School District proposed a complete psycho-educational and psychiatric evaluation, but when Student's Mother did not consent to the evaluation, the school psychologist was told to monitor his progress until October of the next school year.

In September 2004, the beginning of his second year in 9th grade, Student was injured in a non-school related assault. Due to a continuation of his problems with truancy and issues with headaches and anxiety which his Mother attributed to the assault, the School District proposed a new IEP in November 2004 to provide him with Instruction in the Home, which was approved by Student's Parents. Student received one to one instruction at home for the remainder of the 2004/2005 school year, passed all of his classes and was promoted to 10th grade for the 2005/2006 school year. In November 2005, at the end of the Instruction in the Home IEP, the School District again sought parental permission for a comprehensive psycho-educational and psychiatric evaluation to determine Student's current educational needs and develop an

appropriate special education program/placement in a less restrictive environment. Although Student's Mother indicated her willingness to permit the psycho-educational evaluation, she continues to object to the psychiatric portion of the evaluation and, therefore, still refused permission to evaluate. Consequently, the School District requested the instant due process hearing to seek an order for a psycho-educational and psychiatric evaluation.

II. FINDINGS OF FACT

1. Student is a xx year old child, born xx/xx/xx. He is a resident of the School District and is eligible for special education services. (N.T. pp. 20, 32; S-1, S-2)
2. Student has a current diagnosis of learning disabilities in accordance with Federal and State Standards. 20 U.S.C. §1401(3)(A), (30)(A)(2004); 34 C.F.R. §300.7(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii); (N.T. p. 21; S-1, S-2)
3. An initial evaluation report establishing Student eligibility for special education services was issued by the School District in March 2000. Student first enrolled in the District as a 5th grade student in September 1999, and received instructional support services prior to completion of a psycho-educational evaluation which established his eligibility for special education and resulted in his subsequent placement in part time learning support classes for reading and math instruction. (N.T. p. 20; S-1, S-2)
4. Although Student made progress in word recognition, reading comprehension, and math calculation skills between the end of 5th grade, when he first began receiving learning support services, and the end of 7th grade, the School District's reevaluation completed in February 2004, in the middle of Student's 8th grade year, noted a decline in Student's grades and classroom behavior. (N.T. p. 20; S-2)
5. Both evaluation reports noted Student's dislike of being placed in learning support classes and his desire to be placed in the regular classroom. (S-1, S-2)
6. Issues concerning Student's school performance, attendance and cutting classes were first brought to the attention of the School District's Director of Pupil Services in June 2004, at the end of his 9th grade year. Student had experienced significant and increasing problems in school, however, from the time he entered 9th grade in the 2003/2004 school year. (N.T. pp.19, 40, 41, 50, 51; S-3, S-4, S-6, S-18)
7. The School District requested parental permission for a comprehensive reevaluation of Student, including a psychiatric evaluation, at the end of the 2003/2004 school year, when he was retained in 9th grade. When Student's Mother refused consent, the school

psychologist and Student's teachers were asked to monitor his progress at the beginning of the 2004/2005 school year. (N.T. pp. 21– 23, 42, 51; S-6, S-9, S-15, S-18)

8. Due to ongoing behavioral problems, truancy, cutting classes and lack of academic progress, the School District again sought permission for a comprehensive evaluation of Student in November 2004. In the absence of parental consent for additional testing and a psychiatric evaluation, the School District conducted a reevaluation of Student in November 2004 which consisted of a review of prior records and current classroom observations only. (N.T. pp. 22– 24, 42, 52; S-6, S-7)
9. Following the November 2004 records review, the School District recommended changing Student's special education program/placement to Instruction in the Home because Student was not attending school in any event, and the District hoped that he would begin to experience academic success in that placement. (N.T. pp. 25, 26; S-8, S-11)
10. Student's Mother did not request home instruction but agreed to the new placement. (N.T. pp. 25, 35)
11. Although Student was failing all but one of his classes at the time of the November 2004 reevaluation, he ultimately passed all of his special education classes with the one on one instruction provided by the School District and was recommended for promotion to 10th grade for the 2005/2006 school year. (N.T. pp. 38, 52; S-6, S-11, S-13)
12. In June 2005, the IEP team recommended ESY for Student, with a continuation of Instruction in the Home as Student's special education placement for the summer program. The IEP team noted that he had responded well to entirely individualized instruction and that it was not possible to make valid recommendations concerning Student's program/placement in the future without more information concerning his neuro-psychological condition. (N.T. pp. 28, 53; S-11, S-12)
13. In October 2005, approximately a year after Student's placement was changed to Instruction in the Home, the School District again sought parental consent for a complete psycho-educational and psychiatric evaluation of Student. (N.T. pp. 29, 30; S-15)
14. Although Student's Parents are willing to consent to the School District's proposed evaluation with respect to the psychological and educational testing components, they are unwilling to agree to a psychiatric evaluation, which they believe is unnecessary. (N.T. p. 38)

III. ISSUE

Should the School District be permitted to conduct a comprehensive psycho-educational

and psychiatric evaluation of Student?

IV. DISCUSSION AND CONCLUSIONS OF LAW

Under the IDEA framework for providing special education services to eligible students, school districts are required to conduct a reevaluation of students previously determined to be eligible when the district determines that the student's educational or related service needs warrant it. 20 U.S.C. §1414(a)(2)(A). In conducting either an initial evaluation or a reevaluation, the school district is further required to:

use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining –

...

The content of the child's education program, including information related to enabling the child to be involved in and progress in the general education curriculum....

20 U.S.C. §1414(b)(2).

The record in this case leaves no doubt that a comprehensive reevaluation of Student is warranted, indeed, overdue. The documentary evidence establishes that Student began a downward academic and behavioral slide as early as the middle of his 8th grade year, and that his difficulties dramatically increased in 9th grade, when he went from middle school to high school. (*See, e.g.*, S-2 at 5; S-3; F.F. 4, 6 above). During the 2003/2004 school year and the few months during which he was supposed to report to school during the 2004/2005 school year, Student's disciplinary infractions increased dramatically. (S-18) Most serious, however, was Student's escalating class cutting and refusal to attend school at all. (S-18) Such behaviors made it impossible for him to succeed, since even an appropriate IEP cannot produce meaningful educational progress if the student is not present for the IEP to be implemented or the services

delivered. Clearly, a comprehensive reevaluation is absolutely necessary to attempt to determine how the School District can address the behavioral as well as the academic issues. The record also makes abundantly clear that Student made no real progress academically during the last full and partial school years when he was supposed to be attending high school. (F.F. 11)

By the end of the due process hearing, it was clear from Student's Mother's testimony that she did not object to standardized testing of Student and other components of a comprehensive psycho-educational evaluation. Consequently, the only area of real dispute which remains is the School District's insistence upon including a psychiatric evaluation in its proposed reevaluation.¹

Among the reasons cited by the School District for seeking a psychiatric evaluation of Student is the possibility that emotionally disturbed (ED) should be added to his eligibility category. As the Appeals Panel has noted, a psychiatric evaluation is not absolutely essential to determine whether ED should become a new or additional disability category for an eligible student. *In re: The Educational Assignment of M.B.*, Special Education Opinion No. 1381 (2003). Moreover, since a psychiatric evaluation implicates important parental liberty and privacy concerns, it should not be undertaken lightly, or as a matter of course, even when serious behavioral concerns arise. *Id.* In this case, however, although the evidence concerning the

¹ It is possible that the reevaluation controversy in this matter could have been narrowed to only this issue prior to the hearing had the parties tried harder to keep lines of communication open, especially after Student's placement was changed to Instruction in the Home. Even in the absence of a psychiatric evaluation, much important information might have been gained from a comprehensive psycho-educational evaluation which included achievement, aptitude and psychological tests. Instead, however, Student's most recent evaluation was limited to a review of records and observations, and as a result, he has received only part-time academic instruction in basic subject areas, has had no access to related services which might be needed to provide him with FAPE and as of the date of the hearing had an

student's functioning in school is unfortunately sparse, the record does support the District's request for a psychiatric evaluation. As noted above, the primary issue affecting Student's academic progress is his refusal to attend school and to cut classes when he did report to school during the 2003/2004 and 2004/2005 school years. Until and unless the underlying reason for that behavior is determined, it will be impossible for the School District to develop and implement an appropriate program for Student, including a truly effective transition plan.

At the due process hearing, Student's Mother attributed all of his school attendance problems to the [redacted] which occurred in September 2004, claiming that the physical effects of that incident, including headaches, made it difficult for Student to attend school during the 2004/2005 school year and that he is still suffering from the residual effects of that incident. (See, N.T. pp. 35, 36, 38). Both the testimonial and documentary evidence, however, clearly establish that Student's behavior, school performance and attendance were on a downward trend since at least the middle of eighth grade, approximately 1½ years before he was [redacted]. (See, S-2) Student's difficulties in school significantly increased when he began attending the high school in 9th grade, resulting in his having to repeat the year. (See, S-3, S-18) The [redacted] occurred in the beginning of the 2004/2005 school year, as Student was beginning his second year in 9th grade. (S-6) Although the residual effects of the [redacted] may have justified Instruction in the Home as Student's new special education placement for the remainder of the 2004/2005 school year, that incident was not the root of Student's problems in school. Moreover, the occurrence of the [redacted] creates the need for additional evaluation components to assure a complete and comprehensive picture of Student's current status, functioning and

outdated and inadequate transition plan. See, S-7.

needs, such as a complete physical examination and neuro-psychological testing, as well as a psychiatric evaluation, all directed toward fashioning an appropriate IEP and transition plan designed to meet Student's individual needs.

A physical examination and neuro-psychological testing are needed as a follow-up to the March 2005 neurologist's report provided to the School District by Student's Parents in June 2005. (S-10) The doctor who examined Student at that time noted the need for neuro-psychological testing if Student continued to experience cognitive difficulties. The existence or extent of any cognitive difficulties Student may presently be experiencing, whether resulting from or pre-dating the September 2004 [redacted], must be determined if an effective academic program is to be developed for him. In addition, an appropriate transition plan must be based upon a realistic assessment of Student's abilities in order to plan for post-high school outcomes that are likely to be successful.

It is most essential, however, to determine the underlying causes of Student's refusal to attend school. Although there are references in the School District's documentary evidence indicating that Student was unhappy about being assigned to special education classes, there is no way to determine from the record whether his class cutting was limited to the learning support classes. (*See*, S-2, S-18) In any event, extensive truancy, whether from individual classes or school in general, seems an extreme reaction to simple resistance to receiving special education services in learning support classes. The record also demonstrates that Student can be successful when he is provided with one-to-one instruction. (F.F. 11, S-2) Although it is encouraging that Student is willing to complete his work and is successful with private instruction, such success comes at a high price in terms of the restrictiveness of his educational

program and placement. Both social interactions and the ability to work alongside peers are important aspects of the educational experience. Student's reluctance to attend school requires investigation because an adolescent who seems to prefer academic and social isolation is unusual and continuing such isolation is certainly not beneficial to him. In addition, the pattern of absenteeism Student has established in high school may continue to affect him in other training or work settings. It is unlikely that the usual components of a psycho-educational evaluation alone will shed sufficient light on the truancy issue to enable the School District to address it effectively, especially if Student isolates himself from peers in general. The present record provides no information in that regard. If Student is suffering from a true phobia, or if the root of his truancy problem is a metabolic disorder, it may be that such underlying causes can be accurately diagnosed only by a psychiatrist and that effective strategies for dealing with the problem, in an educational setting or otherwise, can only be developed with the insight and assistance provided by a doctor who understands both psychological and medical processes. For these reasons, the School District will be permitted to arrange for a psychiatric evaluation of Student notwithstanding his Mother's objection.

The limitations on the School District's use of information from the various evaluations, and particularly the psychiatric evaluation, cannot be overemphasized. It must safeguard the confidentiality of such information and is permitted to use it only for the purpose of developing an appropriate IEP and transition plan for Student. In order to protect the privacy of Student and his family, dissemination of the full psychiatric report should be limited, if possible, to Student's Parents, the school psychologist, school nurse, and a behavior specialist, if behavioral services prove necessary to meet Student's needs. In addition, such information should be provided only

to the extent necessary for those professionals to have a full understanding of the nature and underlying basis of Student's needs and to the extent that such needs may require their specific attention and services. Consideration should be given to limiting the information from the psychiatric evaluation provided to other members of Student's IEP team to generalized statements of Student's educational needs and recommended strategies for meeting such needs.

It is also important to emphasize that no matter what information or recommendations may result from a psychiatric evaluation, such as suggesting medication, the decision to accept or reject medical intervention rests entirely with Student's Parents. The IDEA statute specifically provides as follows:

PROHIBITION ON MANDATORY MEDICATION.—

IN GENERAL.—The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

20 U.S.C. §1412(a)(25)(A). Consequently, if Student's Mother objects to putting Student on medication, she need not accept such recommendation of a psychiatrist if it is made, and the School District may not condition the services it is required to provide to Student upon his Parents' acceptance of any such recommendation.

Finally, the order which accompanies this decision will require the School District to provide Student's Parents with the names and professional information of at least two psychiatrists who would be acceptable to the School District as evaluators. Student's Parents

may then speak to those doctors and make the final selection of the psychiatric evaluator, as long as they do so in a timely manner. In addition, the order will be structured in such a way that the non-controversial components of a comprehensive evaluation of Student can begin immediately even if Student's Parents elect to appeal the portion of the order permitting a psychiatric evaluation.

V. SUMMARY

Student is an eligible student who resides in the School District and is presently assigned to 10th grade. His current special education placement is Instruction in the Home due to Student's truancy and class cutting when his IEP provided for a mix of learning support and regular education classes at the high school. Student clearly needs a comprehensive evaluation which includes psychological, neuro-psychological and intelligence/achievement testing, a current physical examination to determine whether his current educational needs are affected by a [redacted] injury he suffered in September 2004, and a psychiatric evaluation in order to determine the basis for Student's refusal to attend school. Since his Parents have refused consent for the psychiatric evaluation, an order will be entered permitting the School District to proceed with the entire evaluation for which it requested the instant due process hearing.

VI. ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the School District is directed to take the following actions:

1. Immediately commence a comprehensive psycho-educational evaluation of Student which includes standardized intelligence and achievement testing, as well as psychological testing and all other necessary components of an evaluation for purposes of determining Student's current educational and transition needs, to determine whether any changes or additions are necessary to his current disability

category of learning disabilities, to develop an appropriate IEP, including a transition plan, and to determine an appropriate educational placement for Student.

2. Consult and cooperate with Student's Parents to obtain a complete physical examination of Student in order to determine the residual effects, if any, of the [redacted] injury Student suffered in September 2004 on his current educational needs and development of an appropriate program, placement and transition plan.
3. Develop a list of at least two psychiatrists acceptable to the School District for conducting a psychiatric evaluation of Student; provide the names and professional *curricula vitae* of those doctors to Student's Parents, who will then be permitted to speak to the recommended psychiatrists and make the final decision with respect to which doctor should evaluate Student. The School District is further directed to contact the psychiatric evaluators it recommends to notify them of this procedure. The Parents shall have two (2) weeks after receiving the School District's information to select a psychiatric evaluator. If they fail to do so, the School District shall select the psychiatrist to evaluate Student from the list provided to Student's Parents.
4. Immediately begin working with Student and his Parents to update the transition plan for Student based upon currently available information and information from the evaluations as it becomes available, such as an interest inventory, vocational assessments and discussions with Student and his Parents concerning his vocational and other interests.
5. Continue to provide Student with Instruction in the Home pending completion of the psycho-educational evaluation and the outcome of all appeals of this order unless Student's Parents object to continuing services, agree to discontinue services from the School District or withdraw Student from the School District.

Dated: 02/21/06

Anne L. Carroll, Esq., Hearing Officer