

*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.*

Due Process Hearing for I.W.

Date of Birth: [redacted]

ODR File Number: 6109/05-06

Date of Hearing: January 26, 2006

### CLOSED HEARING

Parties:

Parent

School Dist. Of Philadelphia  
440 N. Broad St.  
Philadelphia, PA 19130-4015

Date Transcript/Exhibits Received:

Date Closing Statements/Record  
Closure:

Date of Decision:

Hearing Officer:

Representative:

Pro se

Kenneth Cooper, Esq.  
440 N. Broad St.  
Philadelphia, PA 19130-4015

February 2, 2006

February 6, 2006

February 20, 2006

Joy Waters Fleming, Esq.

## **Background**

Student, “Student”, is currently enrolled in the School District of Philadelphia, “District”. The District requested this due process hearing seeking to compel the evaluation of Student.<sup>1</sup>

## **Issue**

Is an evaluation of Student appropriate at this time, without consent from his Parent?

## **Findings of Fact**

1. Student, “Student”, is currently xx years of age and enrolled as a student in the School District of Philadelphia.
2. In September 2003, while in the first grade, Student was referred for a comprehensive evaluation because of concerns about his academic progress. (SD-7)
3. During the evaluation, Student exhibited significant speech articulation problems that made him difficult to understand.
4. On the WISC-III, Student received a verbal IQ score of 85 and a performance IQ score of 82 resulting in a full scale IQ score of 83. (SD-7)
5. Student’s scores on the IRI were below the limits of the test. (SD-7)
6. After the evaluation, the team concluded that Student, although intellectually low average that he is unable to learn up to his potential. (SD-7)

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<sup>1</sup> Although much of Parent’s testimony focused on her alleged request for a due process hearing, a review of the Office for Dispute Resolution records confirmed that Parent did previously request a hearing. That hearing was requested on May 18, 2005 and was dismissed by the Hearing Officer on June 23, 2005 because of his inability to schedule a hearing with Parent.

7. Based on the evaluation results, the team concluded that Student had a specific learning disability and was in need of full time learning support. (SD-7)
8. Since 2004, Student has made minimal and very slow academic progress not consistent with his academic potential. (N.T. 48)
10. Student's currently receives special education through a placement in part-time special education learning support. (N.T. 57)
11. Student has difficulty staying focused, on task, completing assignments, fine motor tasks and he [engages in certain behavior] during class. (N.T. 52, 60, 61)
12. Parent has not been willing to participate in IEP conferences. (N.T. 52-54)
13. Parent has refused to sign Permission to Evaluate so that Student can be assessed and his program updated. (N.T. 59)

## **Discussion**

The Individuals with Disabilities Education Act (IDEIA) requires states as well as local school districts to identify locate and evaluate all children with disabilities. Additionally, State and Federal regulations describe, in detail, the procedures that school districts must follow when conducting an initial evaluation as well as a reevaluation to determine a student's eligibility for special education and related services. 34 C.F.R. §§300.505, 300.531-300.535; 22 Pa. Code §14.123. These procedures include the requirement that school districts obtain informed parental consent prior to the initial evaluation and reevaluation of a student. 34 C.F.R. §300.505.

A parent's refusal to permit a reevaluation does not relieve a school district of its obligations to identify, locate and evaluate a student with a

disability. A school district's failure to meet these obligations is a matter of serious concern with respect to the student's educational well-being as well as to the district's liability for compensatory education or tuition reimbursement.

In this case, the District believes a comprehensive re-evaluation, including occupational and physical therapy evaluations of Student are necessary because of his minimal academic progress, his struggle with staying focused, his [behavior] and his poor fine motor abilities. (FF. 8,11) At this juncture, Parent refuses to consent a re-evaluation seemingly because, the District, she contends already has enough school based information concerning her son's academic deficiencies. (FF.12-13)

School districts must seek informed parental consent before conducting any reevaluation. However, lack of such consent does not prohibit a reevaluation because school districts may continue to pursue a reevaluation through due process or mediation if parental consent for a reevaluation is refused. 34 CFR §§300.505(a) (1), 300.505(b); 22 Pa. Code §new cite. While the federal regulations clearly recognize a distinction between an evaluation and a reevaluation, they do not expressly describe what distinguishes them. It appears that the term "evaluation" is simply reserved for the initial determination of whether or not a child has a disability, 34 CFR §300.500(b)(2), whereas any assessments that are administered after a child has been determined to have a disability are considered "reevaluations."<sup>2</sup> Thus, if Student had not yet been identified as having a disability, then the particular assessments that the District seeks to conduct, in this case, would be considered a "reevaluation," because Student has already been identified as a child with a disability.

The IDEIA clearly states that:

"Each local educational agency shall obtain informed parental consent, in accordance with subsection (a) (1) (D) prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond." Sec. 614 (3)

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<sup>2</sup> An evaluation is defined as the procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 CFR §300.500(b) There is no definition of the term "reevaluation."

Although the term “reevaluation” is not defined in the federal regulations, it is clear that a reevaluation should occur if conditions so warrant or if the child’s parent or teacher requests a reevaluation, but at least once every three years. 20 U.S.C. 1414(a) (2); 34 CFR §300.536(b). Three of these regulatory triggers are essentially procedural: 1) when the child’s parent requests a reevaluation; 2) when the child’s teacher requests a reevaluation; and 3) at least once every three years. Only one of these regulatory triggers is substantive, i.e., **if “conditions warrant a reevaluation.”** This suggests that the legal standard to be applied when a parent refuses to consent to a reevaluation should be when “conditions warrant a reevaluation.” See, Los Angeles Unified School District, 38 IDELR 56, 102 LRP 36451 (2002).

Where “conditions warrant a reevaluation” does suggest that the decision must be factually based, and that a reasonable relationship between the facts and the reevaluation sought should exist. Thus, the standard that must be applied, in this case is whether the factual circumstances specific in this case warrant a reevaluation. If so established, Parent's refusal to consent to the reevaluation must be overridden. Clearly, in this case, a delicate balancing act between the parent’s right to privately select an appropriate mode of evaluation and treatment must be balanced against the District's obligation to provide a free and appropriate public education to this eligible Student.

For the following reasons, the District has sufficiently established that factual circumstances warrant overriding parent consent to the proposed evaluation.

Student received an initial evaluation in 2001 that identified him as eligible for special education. (FF. 2-7, 9-10) The District has presented credible and convincing testimony that Student's needs have changed and that a reevaluation is needed to address his changing behaviors. His academic performance is inconsistent and he has failed to make progress consistent with his abilities. (FF. 8, 11) Furthermore, Student [engages in behavior] in school and is frequently off task and unable to pay attention. (FF.11) These concerns are somewhat different than the issues that precipitated Student’s initial evaluation. Based on the evidence presented, the District has established that circumstances have changed to warrant the collection of additional information in order to offer appropriate programming to Student.

**ORDER**

**NOW, IT IS HEREBY ORDERED** that the District shall complete a comprehensive evaluation of Student to include but not limited to psycho-educational testing, a behavioral assessment and occupational and physical therapy assessments.

By: Joy Waters Fleming  
Joy Waters Fleming  
Hearing Officer  
Office of Dispute Resolution  
Date: February 20, 2006