

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

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: J.A.
ODR #6341/05-06 LS

Date of Birth: [redacted]
Date of Hearing: April 18, 2006

CLOSED HEARING

Parties to the Hearing:
Parent[s]

Representative:
Pro Se – Did not appear

School District of Philadelphia
Office of General Counsel
440 N. Broad Street, 3rd Floor
Philadelphia, Pennsylvania 19130

Kimberly Caputo, Esquire
Office of General Counsel
440 N. Broad Street, 3rd Floor
Philadelphia, Pennsylvania 19130

Date Transcript Received:

April 20, 2006

Date of Decision:

April 23, 2006

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

[Student] is a [teenaged] 8th grade student in regular education attending [redacted] Elementary School in the School District of Philadelphia (hereinafter District). Pursuant to academic and behavioral issues the District sought to evaluate [Student] to determine whether [Student] is eligible for special education services. [The Parent] (hereinafter Parent) has been non-responsive to the District's communications regarding permission to evaluate. The District, pursuant to its childfind obligations, requested this hearing to seek a hearing officer's order to conduct an evaluation of [Student] without parental consent.

The Parent did not appear for the hearing at the scheduled 9:00 a.m. start time. The hearing officer telephoned her home at 9:12 and received a recorded message, "This number has been suspended; calls cannot be completed at this time". The hearing officer telephoned the Office for Dispute Resolution (ODR) at 9:18 a.m. and left a voicemail message for the case manager, asking that she call the hearing officer on her cell phone in the event that the Parent had called to report a problem with her attending the hearing. There was no contact from ODR.

Given the Parent's absence the hearing officer declared the hearing a Closed Hearing and began the proceedings. The hearing concluded at 10:10 a.m. The Parent did not appear.

Issue

Should the School District be permitted to conduct a multidisciplinary evaluation of [Student] without the permission of the Parent?

Findings of Fact

1. [Student] is a [teenaged] 8th grade student enrolled in regular education in the School District at [redacted] Elementary School. (NT 12)
2. [Student] is small of stature [redacted]. (NT 48-49)
3. [Student] resides with [Parent and other family.] [Student's other Parent] is not available to participate in [Student]'s educational planning. (NT 30-31; S-4)
4. [Student] is a likeable child who at times is very defiant. [Student] is often involved in mischievous or disruptive behaviors that disrupt [Student's] academic success and that of other students. (NT 21)
5. An example of [Student]'s behavior is walking into class late and screaming/yelling "What's up?" at the top of [Student's] lungs to the teacher and

- the class and addressing [Student's] classmates in an inappropriate manner. (NT 22)
6. On December 6, 2004 when [Student] was in grade 7.4 and was age 13-1 the District administered the Woodcock Reading Mastery Test – Revised. [Student] scored the following standard scores/percentile ranks/ grade equivalents/age equivalents: Word Identification 68/2nd/2.6/8-2; Word Attack 80/9th; 2.8, 7-10; Word Comprehension 83/12th/4.4/9-10; Passage Comprehension 82/11th/4.0/9-4; Basic Skills Cluster 71/3rd/2.5/8-0; Reading Comprehension Cluster 82/11th; 4.2/9-7; Total Reading-FS Cluster 75/5th/3.1/8-7. (NT 36-37; S-6)
 7. On December 9, 2004 the District administered the KeyMath – Revised to [Student]. [Student] scored the following standard scores/percentile ranks/grade equivalents/age equivalents: Basic Concepts 80/9th/4.2/9-8; Operations 79/8th/4.3/9-10; Applications 85/16th/4.9/10-5; Total Test 81/10th/4.5/10-0. (NT 36-37; S-7)
 8. [Student]'s final report card grades for 7th grade, the 2004-2005 school year were as follows: Reading F, Mathematics D, Science F, Social Studies F, Writing F, Technology and Computer Studies B, Physical Education A, Music F, Visual Arts A. (S-2)
 9. [Student] was retained in grade 7, but attended a Summer Program at [Student's] school and successfully completed (passed) reading and mathematics courses, allowing [Student's] promotion to 8th grade. (NT 24-27; S-3)
 10. The Summer Program lasted twenty-two instructional days over four weeks, there were eight to ten children per class, and structured literacy and math programs were utilized for instruction. (NT 25-27)
 11. [Student] was required to come to class every day, on time, complete all work and pass a test at the end of the program. (NT 25)
 12. [Student]'s report card grades for the first and second marking periods of the current 2005-2006 school year are as follows: Reading F/F; Mathematics F/F; Science C/F; Social Studies F/F; Technology and Computer Studies B/C; Physical Education A/A; Dance B/C; Visual Arts B/B; Algebra NA/F. (NT 20; S-1)
 13. Comments on [Student]'s report card are: disrupts instruction (reading, mathematics, social studies); excessive lateness (reading); failure to make up work (reading); homework missing (reading); assignments incomplete or missing (mathematics, science, social studies); low test grades (mathematics, science, social studies). (S-1)
 14. [Student] has engaged in a variety of behaviors that violate the Student Code of Conduct. Some of these are listed on an EH-21 dated October 13, 2004. As

- follows: 1-29-04 Calling out, making fun of others, making inappropriate noises, ran around the room, hit other classmates; 1-30-04 Repeated disruptive behavior, became confrontational and argumentative with the teacher; 4-20-04 Did not report to the Dean of Students following minor violations in the lunchroom; 5-17-04 Refused to attend assigned detentions for the period April 26th to May 17th; 9-24-04 [redacted]; 10-7-04 [redacted] on multiple occasions including on October 5th. (S-9)
15. On October 12, 2004 following a Level II violation of the Code of Student Conduct the District contemplated sending [Student] to a disciplinary setting, but first conducted the mandatory Behavior/Performance Review. (NT 42-43)
 16. Based on a review of [Student]'s cumulative records and of [Student's] academic performance and [Student's] behavioral problems the review team concluded that [Student] is a student who is "thought to have a disability" and therefore must remain in [Student's] current educational placement until an evaluation is completed. (NT 43; S-10)
 17. [Student] was offered the following interventions/services: Referral to CSAP, Referral to Saturday SMART, Referral to Wordsworth, Referral to private counselor, School-based counseling. (NT 39—41, 43-44; S-9, S-11)
 18. The District issued Permission to Evaluate forms to the Parent on November 29, 2004 and on January 12, 2006. The forms were sent by regular mail, by certified mail return receipt requested, and the November form was placed into [Student's sibling's] backpack in a sealed envelope. Neither form was returned to the school and no return receipts were received. (NT 32-35; S-5, S-8)
 19. There has been no communication from the Parent approving or disapproving the District's written requests to evaluate [Student]. (NT 33-34)
 20. In addition to efforts by [a school] special education liaison, the school principal made numerous unsuccessful personal attempts to speak with the Parent about evaluating [Student]. The principal attempted telephone calls. The principal hoped to speak with the Parent when [Student] was suspended and needed to be reinstated, but the Parent did not accompany [Student] back to school having someone else take [Student] back instead¹. The principal attempts to catch up with the Parent when she occasionally drops [Student] off at school but the Parent drives away. The principal sent the school police officer to knock on the Parent's door to ask her to come to the school to speak about an evaluation for [Student]. The principal herself, on an occasion when [Student] was not picked up after a school trip after a two hour wait, took [Student] home and knocked on the door at 1 a.m. hoping to speak with the Parent in the process of returning [Student], but

¹ The EH-21 (S-9) contradicts this, noting "reinstatement conference with Parent". The hearing officer, who found the principal entirely credible, trusts her verbal sworn testimony rather than the computer-generated form. Unfortunately the discrepancy was not noticed during the hearing.

the Parent did not come to the door. The Parent has not attended report card conferences. (NT 28-29, 32)

21. The District sent a letter to the Parent on March 2, 2006 by regular mail and by certified mail return receipt requested asking her to attend a resolution meeting with school and regional staff on March 9, 2006 to discuss issues pertaining to the request to evaluate [Student] . The Parent did not respond to the letter and did not attend the meeting. (NT 29-30; S-4)

Discussion and Conclusions of Law

Legal Basis - Evaluations

Federal law, namely the Individuals with Disabilities Education Improvement Act (IDEIA), reauthorized in 2004, at Section 612 under CHLDFIND provides that

IN GENERAL – All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

At Section 614 the IDEIA provides that

IN GENERAL -- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

REQUEST FOR INITIAL EVALUATION – Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

PARENTAL CONSENT – The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

ABSENCE OF CONSENT – If the parent of such child does not provide consent for an initial evaluation under clause (i)(1), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the

child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

Discussion

As the party requesting this hearing the District bore the burden of proving to this hearing officer that she should order an evaluation for [Student] despite the Parent's not having given nor withheld consent. The Parent did not attend the hearing and submitted no evidence for the hearing officer's consideration. The evidence presented by the District clearly demonstrates that [Student] should be evaluated to determine whether or not [Student] is eligible for special education. [Student's] grades are poor and [Student's] behavior has been poor. Interestingly, however, [Student] participated in a summer program at [Student's] school and, coming every day and being on time, [Student] passed reading and mathematics thus winning promotion to eighth grade. It is notable that the summer program was taught to small groups of students using a structured curriculum. It is also interesting that [Student] performed well in school in subjects with less of a demand for reading – computer education, physical education, dance and visual arts. If [Student] requires special education programming to assist [Student] in areas of weakness and [Student's] chances of remaining in school are enhanced, [Student] may find [Student's] niche in a vocation that utilizes [Student's] strengths.

There is no reason that [Student] should be denied the right to have an evaluation. This hearing officer will order that the District proceed with an evaluation as proposed.

ORDER

It is hereby ORDERED that:

1. The School District must conduct a multidisciplinary evaluation of [Student], even though the Parent has not granted permission.
2. The multidisciplinary evaluation must be completed and a report written and transmitted to the Parent before the end of the 2005-2006 school year.
3. The District must conduct an IEP meeting or meetings and have an IEP developed prior to the start of the 2006-2007 school year. If the Parent does not respond to the invitation(s) to attend the IEP meeting(s) the District must still complete the IEP, without the Parent's participation, prior to the start of the 2006-2007 school year.
4. The District must issue a Notice of Recommended Educational Placement (NOREP) prior to the start of the 2006-2007 school year.

April 23, 2006

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer