Pennsylvania

Special Education Hearing Officer

DECISION

ODR No. 00007-0910KE

Child's Name: S.L.

Date of Birth: [redacted]

Dates of Hearing: 5/12/11, 7/6/11

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents Parent[s]	Parent Attorney Benjamin Geffen, Esq. Public Interest Law Center of Philadelphia 1709 Benjamin Franklin Parkway, 2nd Floor Philadelphia, PA 19103
School District Lower Merion 301 E. Montgomery Avenue Ardmore, PA 19003-3338	School District Attorney Gail Weilhimer, Esq. Wisler, Pearlstine, LLP 484 Norristown Road, Suite 100 Blue Bell, PA 19422
Date Record Closed:	July 21, 2011
Date of Decision:	August 10, 2011
Hearing Officer:	Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

The sole substantive issue for decision in this case is whether the School District should have provided an independent educational evaluation (IEE) for Student in the fall of 2009 pursuant to Parents' due process complaint.[1] The complaint was initially dismissed based upon the IDEA regulations specifying how Parents may obtain an IEE at public expense.

Upon appeal to the U.S. District Court for the Eastern District of Pennsylvania, the dismissal was reversed, requiring a hearing to determine the appropriateness of the District's initial evaluation of Student during the 2008/2009 school year. The hearing was conducted over 2 sessions in May and July 2011. For the reasons that follow, the District's initial evaluation was appropriate and yielded accurate results, justifying the District's substantive conclusion that Student was not IDEA eligible. In addition, since Student graduated from high school before the conclusion of the hearing in this matter, no IDEA remedy could properly be awarded at this time. Parents' request for an IEE is, therefore, denied.

ISSUE

Was the School District's initial evaluation of Student during the 2008/2009 school year appropriate, and if not, is the District required to fund an independent educational evaluation of Student at this time?

FINDINGS OF FACT

1. Student is a late teen-aged [individual, born {redacted}]. At all times relevant to the matter in dispute, Student was enrolled in the School District pursuant to an Affidavit of Resident Application completed by Student's Grandmother, certifying that Student was residing with her and that she agreed to accept full educational responsibility for Student. (Stipulation, N.T. p. 34; S-4)

[1] Prior to the Parents' due process complaint, and as required by the IDEA regulations, the District filed a due process complaint to support the appropriateness of its evaluation after denying an IEE request from Parents. The case initiated by the District's complaint was resolved by the parties' agreement that the District would conduct a re-evaluation of Student in the fall of 2009. The re-evaluation was conducted in accordance with the parties' agreement and also resulted in the conclusion that Student was not IDEA eligible. There was no suggestion by either party that Parents requested another IEE or challenged the District's second non-eligibility conclusion.

2. Student has never been identified as eligible for special education services, and at all times relevant to the matter in dispute had no disability diagnosis. At this time, jurisdiction of this matter is based upon an order of court requiring a hearing with respect to whether Student was entitled to an IEE at public expense based upon the District's initial evaluation. (December 14, 2010 Order of the District Court, attached hereto as Appendix A)

3. At the time the hearing in this matter began, Student was enrolled in an alternative school pursuant to an agreement of the parties. The alternative school was neither a special education placement nor a disciplinary placement. Student graduated from the District at the end of the current school year, prior to the date of the second hearing session in this matter. (N.T. pp. 36 (Stipulation), 283, 284, 299)

4. Prior to enrolling in the District for high school, Student resided and was enrolled in [a neighboring school district] through 8th grade. (N.T. p. 261; S-5, p. 2)

5. At all times relevant to this matter, Student resided with Grandmother on weekdays to attend school in the District and returned to [the neighboring district] to stay with Student's natural Parents on the weekends and during the summers. (N.T. pp. 262, 264, 285; S-5, p. 2)

6. At the end of 9th grade, the District undertook an evaluation to determine whether Student might be IDEA eligible. Student had come to the attention of the child study team due to overall poor academic performance and behavior issues such as off-task behaviors, work avoidance, fatigue/sleepiness during classes, regular failure to complete homework, distracting comments to other students, immaturity, disorganization. (N.T. pp. 54—56; P-4, S-1, S-5, p. 2)

7. Student's Mother agreed with the District's proposal to evaluate Student because she believed that Student needed additional help. (N.T. pp. 274; S-1)

8. The evaluation was conducted by a District school psychologist who used individually administered standardized tests, recognized as valid and reliable, to measure intellectual capacity (Wechsler Intelligence Scale for Children-Fourth Edition-WISC-IV), and academic achievement (Wechsler Individual Achievement Test-Second Edition- WIAT II. (N.T. pp. 56, 161, 164, 165; S-5, pp. 5—7)

9. Student's full scale IQ score (FSIQ) of 83 on the WISC-IV was in the low average range of intellectual functioning, but Student's unusual profile makes the FSIQ an unreliable measure of Student's true ability. The Verbal Comprehension (VCI) and Perceptual Reasoning (PRI) index scores of 73 and 77, respectively, fell within the borderline range, but the Working Memory (WMI) and Processing Speed (PSI) index scores were in the solidly average range. As part of the testing observation, the school psychologist noted that Student found PSI subtests challenging, but was able to persevere and complete the tasks with encouragement and support. (N.T. pp. 88, 89, 163; S-5, pp. 5, 6)

10. Student's WIAT-II achievement scores were in the average range for reading and in the low average range for math and writing compared to a nationally standardized sample of same age peers. Student's overall reading score was higher than predicted based upon the WISC-IV VCI score, but reading comprehension was below average. Overall, Student's academic skills were commensurate with cognitive ability. (N.T. pp. 166, 167; S-5, pp. 6, 10)

11. The school psychologist concluded that Student did not have a specific learning disability because there was no significant discrepancy between cognitive ability and academic achievement as measured by the standardized tests. (N.T. pp.183, 189; S-5, p. 10)

12. Student's social and emotional functioning was assessed by means of an interview and by having Student complete two self-report rating scales, the BASC-II (Behavior Assessment System for Children-Second Edition) and the School Motivation and Learning Styles Inventory (SMALSI). Based upon validity scales built into the instruments, the school psychologist concluded that Student understood the questions, did not respond randomly and had produced a valid response profile on both assessments. (N.T. pp. 56, 59—64; S-5, p. 7—9)

13. Student's self report of academic skills and abilities on the SMALSI and in the interview compared with test data and input from teachers indicates that Student's self-perception was inconsistent with both objective measures and the perceptions of teachers. The results indicate that Student is aware of what an academically successful student should do and attributes those traits to him/herself. Demonstrating such understanding helps to rule out an executive processing or learning disorder. (N.T. pp. 98—100, 169, 170; S-5, pp. 7, 8)

14. In addition to providing input via a telephone conversation with the school psychologist, Student's Mother completed the Parent Rating Scales of the BASC-II. (N.T. pp. 66; S-5, pp. 2, 3)

15. The evaluation also included a classroom observation of Student for a class period in biology, which Student failed for the first 2 quarters and received a "D" during the 3rd and 4th quarters. Student exhibited some of the difficulties which prompted the evaluation, such as not completing the assigned homework and not being prepared with all necessary materials for class, but participated in the lesson and appeared attentive and engaged, *i.e.,* looking at the teacher when the teacher was talking, working on assigned tasks—in general doing what was required. (N.T. pp.158, 159 ; S-5, p. 3)

16. Input from several teachers and support staff who provided regular education interventions such as tutoring, was obtained by means of a survey questionnaire specifically directed toward the educational program. The school psychologist typically does not use the BASC-II teacher rating scales for high school students because the limited time each teacher spends with students does not provide sufficient information for completing the BASC-II ratings. (N.T. pp. 66—68, 171—173)

17. Teacher descriptions of Student's functioning in school settings were inconsistent, with some staff members finding Student very distracted and others noting that Student was could be very focused. (N.T. pp. 58, 185; S-5, p.4)

18. The school psychologist ruled out depression as a source of or contributing factor to Student's school difficulties based upon the interviews with Student, Mother and the teachers, as well as the results of the BASC-II ratings by Student and Mother, which placed Student in the average range for depressive symptoms. In addition, depression is often associated with poor scores on the WISC-IV PSI and WMI on which Student scored in the average and upper end of the average range of functioning. (N.T. pp. 70, 71, 86, 87; S-5, p. 5)

19. The school psychologist included the components of a Functional Behavioral Assessment in the ER but due to an oversight did not report the results as a separate section or document. The absence of a separate FBA section or separate document had no impact on the outcome of the evaluation. (N.T. pp. 103, 104, 178)

20. The components of an FBA found [in] the ER were identification of problem behaviors/concerns, description of possible causes of and relevant factors associated with the behaviors of concern and hypotheses concerning the reasons the behaviors occur. Immaturity and low frustration tolerance were found to be the underlying reasons for Student's unwillingness to persevere without supports and prompts. (N.T. pp. 174—177; S-5)

21. The evaluation included also assessments of behavior, functional and developmental skills using Parent, teacher and Student input, data from Parent and teachers, classroom and test setting observations by the school psychologist. (N.T. pp. 178—181)

22. Based upon the assessments, rating scales and input from Mother, Student and teachers, the school psychologist concluded that Student did not have a disability and, therefore, was not eligible for special education. The psychologist further concluded that Student's needs could be met within the regular education setting and included recommendations in the ER for the child study team to consider in order to support Student's educational progress. All of the District members of the evaluation team indicated agreement with the results and conclusion of the ER with their signatures on the final page. (N.T. pp. 183—186, 189; S-5, pp. 11, 12)

23. The evaluation results, including Student's cognitive ability and achievement test scores, also led the school psychologist to conclude that Student can be successful in school with significant work and effort, but was unwilling to make the required effort because academics was not a priority for Student. In the interview with the school psychologist, Student admitted to choosing not to do the work necessary to succeed in school. (N.T. pp. 141—143; S-5, p. 9)

24. Although Student's Mother initially agreed to the results of the evaluation, she later notified the District of her disagreement with the evaluation results and requested an independent educational evaluation (IEE) in February 2009, after consulting with an educational advocate. (N.T. pp. 265, 268—274; S-5, p. 13, S-6, S-7)

25. Parent believes that Student needed more help based upon a possible disability in reading, but not in math. Mother identified the disability she perceived as difficulty in adjusting to a new school with a tougher curriculum and living away from home. Although Mother was concerned about the possibility of emotional disturbance, she did not believe Student was depressed. Mother had no concerns about attention deficit/attention deficit hyperactivity disorder (ADD/ADHD) or mental retardation. (N.T. pp. 274—277)

26. Due to Student's emotional reactions to school difficulties and frustration with being so far behind other students, Mother had Student examined privately by a psychologist who did not provide a diagnosis. (N.T. pp. 279—281)

27. After denying the IEE request, the District filed a due process complaint to support the appropriateness of its evaluation. Before the hearing commenced, the parties, including both Mother and Grandmother agreed after a resolution meeting that the District would conduct a new evaluation of Student at the beginning of the school year and that the District would look into an alternative placement. The parties further agreed that Parents would withdraw the IEE request and the District would withdraw its due process complaint. (N.T. pp. 298—301, 360—362; S-13, S-20, S-21)

28. Based upon the parties' agreement, the assigned hearing officer closed the case initiated by the District and canceled the hearing. (N.T. p. 362; S-22)

29. Pursuant to the parties' agreement, the District subsequently conducted a new evaluation and the parties agreed to Student's placement in the alternative education setting that Student was attending at the time the hearing in this case began. (N.T. pp. 299, 301, 304, 306; S-39)

30. Parents subsequently filed the complaint for an IEE, based upon the same initial evaluation, ultimately resulting in the hearing in this matter pursuant to the district court order at Appendix A. (S-27)

DISCUSSION AND CONCLUSIONS OF LAW

In addition to the substantive issue concerning the appropriateness of the District's evaluation in the spring of 2008/fall of 2009, there were a number of procedural and evidentiary issues raised by each party that merit brief discussion in light of the facts of this case and the applicable legal standards.

Procedural Issues

Burden of Proof

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, in this case, because Parent filed the complaint for an IEE and thereby challenged the appropriateness of the District's initial evaluation, the rule established in *Schaffer* requires Parents to bear the risk of non-persuasion.

Parents argued at the outset of the hearing, however, that the District should bear the burden of proof in this case in light of the explicit IDEA standards governing the procedures for Parents to obtain an IEE at public expense. 34 C.F.R. §300.502. Parents argued that although they initiated the complaint, it would be unfair to require them to bear the burden of proof since the regulations provide that upon a parent request for an IEE at public expense, school districts are required to either provide the evaluation or initiate a due process complaint. Parents contend that this case should, in essence, be treated as if the District had initiated the complaint, otherwise school districts would have an incentive to unduly delay filing a complaint after receiving an IEE request in the hope that parents would file the complaint and thereby be obligated to assume both the burden of production and the burden of persuasion.

If valid at all, however, that argument can reasonably apply only to factual circumstances far different from this case. Here, the District followed the IEE regulations by initiating a complaint after Parent's original IEE request, and the parties resolved that case with an agreement that provided for an additional School District evaluation, but not an independent evaluation. (FF 27) The District subsequently fulfilled the agreement in all respects. (FF 29) Notwithstanding that agreement, Parent filed her own complaint to seek an IEE before the time

for the District's performance under the agreement and successfully appealed the order dismissing the case without a hearing. Under these circumstances there was no justification for shifting the burden of proof to the District.

Moreover, in *Schaffer* the Supreme Court has addressed only the burden of persuasion component. Pennsylvania federal courts have generally required preponderant evidence to meet that burden. *See Jaffess v. Council Rock School District,* 2006 WL 3097939 (E.D. Pa. October 26, 2006). Consequently, the *Schaffer* rule defeats the claim of the party seeking relief only when the parties' evidence is evenly balanced or in "equipoise." Here, however, as discussed in more detail below, the record established that the District's evaluation fulfilled all IDEA requirements and Parents provided no evidence to establish that the District's evaluation was inappropriate. The District, therefore, prevails without relying on the *Schaffer* rule.

Presence of Proper Parties

The District contended that the hearing should not have gone forward due to the absence of Student's Grandmother, either in person or via telephone, at both hearing sessions. The District argued that Grandmother was the only person who could serve as Parent in this case, since the Student was enrolled in the District only because Grandmother agreed to assume all responsibility for Student's education, including special education participation. Under the IDEA regulations, however, and under the factual circumstances presented by this case, that position has no merit.

A natural Parent is clearly permitted to participate in special education proceedings in accordance with the definition of "parent" found in 34 C.F.R. §300.31(a). Moreover, unless a judicial decree or order provides that a different person has the right to act as "Parent" or the natural parent "has no right to make educational decisions for the child," a natural Parent

attempting to act on behalf of the child is presumed to be the Parent for IDEA purposes. C.F.R. §300.31(b)(1), (2). Here, the record established only that Student was enrolled in the District pursuant to the affidavit of a District resident that Student was living with her and that she accepted full educational responsibility. (FF1) That document, however, is not a judicial decree appointing Grandmother the sole IDEA decision-maker and did not divest Mother of her right to make educational decisions for Student. To the contrary, Mother stated, and the evidence confirms, that Student's natural Parent fully participated in all educational decisions concerning Student throughout the time Student was enrolled in the District, and that there was no court order terminating her right to make such decisions. (N.T. pp. 11, 12)

Moreover, the District objected to Mother's participation only at the due process hearing conducted as a result of the remand decision from the district court. The District certainly had no problem with Mother's full participation in the initial evaluation and in the negotiation of the agreement that resulted in the District's withdrawal of its IEE complaint and the location of an alternative placement for Student. (FF 7, 14, 22, 27, 29) Even the NOREPs issued by the District in this matter were addressed only to the natural Parents and actions were taken based upon the signature of Mother alone. *See* S-6, S-12. Communications concerning the IEE request and the District's response were also directed only to Parents. *See, e.g.*, S-8, S-9, S-10,

Under these circumstances, the District's belated insistence that Grandmother actually had to participate in the hearing was nothing more than an attempt to exalt form over substance.

Student's Residence/Entitlement to Educational Services

The District further contended that Parents' claims should be dismissed because Student was never truly a District resident and entitled to IDEA services, or any other educational services from the District. The District contended that it learned from Mother's testimony at the

hearing that Student lived with Grandmother during the week but returned to [the neighboring district] on the weekends. That contention is inaccurate at a matter of fact, and it would be inequitable to declare Student a non-resident of the District and dismiss Parents' IDEA due process claims on that basis under the circumstances presented by this case.

The District's contention is factually inaccurate because the District's 2009 ER disclosed that Student lived with Grandmother during the week and returned to [the other district] on weekends. (S-5, p. 2) If the District believed that its residency requirements were violated by Student returning to [the other district] on the weekends and in the summer, the time to raise that issue was at the time the evaluation report was issued or shortly after. Instead, however, the District did not assert the issue until the second session of the hearing on the appropriateness of the evaluation, nearly 2 years after the ER plainly described the very situation that the District now suggests supports dismissal of the due process complaint. The circumstances suggest that the District is willing to overlook what it considers a violation of the affidavit of residency--unless there is an IDEA due process hearing. The fact that the District knew of but ignored Student's living situation from the time the issues in this case arose until nearly the end of the due process hearing is enough to conclude that it would be inequitable to permit the District to prevail on that basis. The District permitted Student to enroll in high school pursuant to a facially valid affidavit of residency that it now contends was invalidated by circumstances of which the District was, or certainly should have been aware, and did not seek to enforce the terms of the residency requirement by other means or in another forum for the entire time Student was enrolled in the District.

As noted in the discussion of the procedural issue concerning who should be considered the "Parent" in this case, the District entered into an agreement with Mother and Grandmother

that it sought to enforce in this case, and in all other ways acted as Student's LEA for the entire four years of high school. It is far too late now to assert that the issues in this case that arose under the IDEA are governed by its interpretation of Pennsylvania general school law concerning residency.

Substantive Claims/Issues

Child Find

Both the federal IDEA and Pennsylvania special education regulations require school districts to seek children who may be eligible for special education services and evaluate them to determine eligibility. 34 C.F.R. §300.111; *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007); *Annika T. v. Unionville Chadds-Ford School District*, 2009 WL 778350 (E.D.Pa. 2009); *A.P. v. Woodstock Bd. of Education*, 572 F.Supp.2d 221 (D.Conn. 2008); *Charlotte-Mecklenburg Bd. of Educ. v. B.H.*, 2008 WL 4394191 (W.D.N.C. 2008); 22 Pa. Code §14.121, 122.

The IDEA further requires school districts to conduct a "full and individual initial evaluation" …using "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 whether the child is a child with a disability." 20 U.S.C §1414(a)(1)(A), (b)(2)(A)(i).

The purpose of the evaluation is to obtain "accurate information on what the child knows and can do academically, developmentally and functionally … ." 20 U.S.C. §1414(b)(3)(A)(ii). In order for a school district to properly fulfill its evaluation obligations, the child must be "assessed in all areas of suspected disability, and the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs … ." 20 U.S.C. §1414(b)(3)(B); 34 C.F.R. §300.304(c)(6).

In this case, the District obviously met the first part of the part of the child find obligation, since it was the District that identified academic and behavior issues suggesting a possible disability and conducted an evaluation after obtaining Parent's permission. (FF 6)

Appropriateness of District's Evaluation

The substance of this case centers on the District's 2009 evaluation, including whether it was sufficiently comprehensive to explore all areas of potential disability. The record established that the District fulfilled the IDEA standards for an appropriate evaluation found at 34 C.F.R. §§300.304—300.306, in that the District "use[d[a variety of assessment tools; " 2) "gather[ed] relevant functional, developmental and academic information about the child, including information from the parent;" 3) "Use[d] technically sound instruments" to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain[ed] from using "any single measure or assessment as the sole criterion" for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3).

In addition, the District fulfilled its responsibility to 1) "Draw upon information from a variety of sources," including those required to be part of the assessments, assure that all such information is "documented and carefully considered." 34 C.F.R. §300.306 (c)(1) and to provide a copy of the evaluation report and documentation of the eligibility determination to the Parents. 34 C.F.R. §300.306(a)(2). (FF 8, 12, 14, 15, 16, 19, 20, 21)

Although Parent's questions directed to the District's school psychologist tried to suggest, and Parents subsequently argued, that other assessments might have been used and other factors considered that might have resulted in a determination of disability, the District school psychologist clearly explained how and why the measures chosen for the evaluation led to the determination that Student did not have a disability. (FF 9, 10, 11, 13, 17, 18, 22)

It is, of course, always possible to conduct different and additional assessments, but Parent presented absolutely no evidence concerning any additional assessments that might have been warranted in this case. Moreover, just as the District is not required to provide an ideal program and placement for Student, as stated in *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982) and *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3rd Cir. 2009) and many other court decisions, the District is not required to produce the most detailed report possible, using every available measure and sub-test that might provide additional information about Student. In this case, Parent's arguments concerning the purported inappropriateness of the District's evaluation, reduced to their essence, were that the District's evaluation must be inappropriate because no disability was identified.

Most tellingly, Parent's own testimony did nothing to support the contention that the evaluation was inappropriate because Parent perceived indications of a disability that the District failed to consider. Parent's testimony suggested that in her view, a disability is anything, including situational and adjustment problems, that interferes with academic progress. *See* FF 25 As Student's Mother testified at the hearing, her primary concern was that Student needed help to succeed in school given the difficulties associated with living away from home and transferring to a different, far more academically rigorous school district for high school.[2] (FF 7, 25, 26) These circumstances, however, do not suggest a disability, and do nothing to call into question the District's evaluation results. The District appropriately considered and appropriately ruled out specific learning disabilities and emotional disturbance arising from depression, as potential causes of Student's school difficulties. (FF 10, 11, 13, 18)

[2] Although Student was never identified as IDEA eligible, Mother appears to have succeeded in her primary purpose of assuring Student's success in high school, since the parties agreed on an alternative school and Student was able to graduate from high school at the end of the current school year. (FF 2, 3, 29)

Parents' Additional Complaints About the ER

Many of Parent's arguments concerning the purported flaws in the District's evaluation addressed the evaluator's failure to include sufficient or sufficiently detailed suggestions for regular education supports or interventions that might have been effective in addressing Student's academic and behavior/disciplinary issues. The purpose of an IDEA evaluation, however, is not to identify and address academic and behavioral needs that do not arise from a disability, or are not disability-related. Such omissions, therefore, do not implicate the appropriateness of the evaluation in terms of IDEA requirements, *i.e.*, as a means for determining whether Student had a disability. Since the District's school psychologist appropriately determined that Student did not have a disability, the other issues raised by Parents with respect to changes or additions to the evaluation that might have made it better as a means for addressing Student's school functioning in general merit no further discussion. Those matters are irrelevant to the issue of the appropriateness of the evaluation as a means for making an IDEA disability/eligibility determination.

Effect of Post-Hearing Events on Potential Remedy

Although the conclusion that the District's initial evaluation was appropriate and reached an appropriate non-eligibility conclusion obviates the need to consider a remedy, it is nevertheless possible that the conclusion could be reversed by another district court decision, should Parents again elect to file a civil action to challenge the decision. In light of that possibility, it is appropriate to consider whether an IEE would be a permissible remedy under the IDEA statute and regulations in light of Student's graduation with a regular high school diploma in June 2011 without ever having been identified as IDEA eligible. Because Student is no longer even potentially eligible for IDEA services due to graduation from high school, an IDEA remedy

is no longer available to Student since IDEA eligibility cannot be extended. *See Ferren C. v. School District of Philadelphia,* 612 F.3d 712, 718 (3rd Cir. 2010) In that case, the student had passed the statutory maximum age of 21, but the requirement for states to provide special education services to eligible students until age 21 "does not apply with respect to children aged…18 to 21 in a State to the extent that its application would be inconsistent with state law or practice." 20 U.S.C. §1412(a)(1)(B)(i). Under Pennsylvania law, "School age is the period of a child's life from the earliest admission age to a school district's kindergarten program until graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first." 22 Pa. Code §11.12. Student's graduation, therefore, eliminates any entitlement to educational services under Pennsylvania law. Moreover, the IDEA regulations explicitly provide that there is no obligation to provide a free, appropriate public education (FAPE) to an eligible student who graduated from high school with a regular diploma. 34 C.F.R. §300.102(a)(3).

Although in *Ferren C.*, equitable considerations convinced the court that appropriate equitable relief for past denials of FAPE required the school district to remain involved in supervising previously awarded compensatory education services, this case does not present even remotely similar circumstances. Since Student received a regular high school diploma, this case is far more similar to *Dracut School Comm. v. Mass. Bureau of Special Ed. Appeals*, 737 F.Supp.2d 35, 54 (D. Mass. 2010), in which the court concluded that notwithstanding the hearing officer's broad equitable power to fashion an appropriate remedy, it was improper to extend IDEA eligibility and remedies to a student who had graduated from high school. Consequently, even if the District's initial evaluation had been inappropriate and under other circumstances,

Student would, therefore, have been entitled to an IEE, that IDEA remedy is not available under these circumstances.

Under IDEA, there are 2 purposes for an evaluation: 1) determining eligibility, *i.e.*, the existence of a disability and need for specially designed instruction; 2) determining the educational and social needs arising from the Students' disability and how to appropriately meet those needs. Although a flawed District evaluation would ordinarily require an IEE at public expense as a remedy, and in this case such an evaluation might provide some general insight into Student's functioning in both learning environments and other contexts, an IEE conducted at this time could not possibly fulfill the purposes of an IEE under the IDEA statute and regulations. Such a remedy, therefore, would be unavailable since it would not further the remedial purposes of the IDEA.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' request for an Independent Educational Evaluation (IEE) at public expense is **DENIED.** The School District is required to take no further action concerning the claims asserted in this matter

It is **FURTHER ORDERED** that any claims or issues not specifically addressed by this decision and order are denied and dismissed.

August 10, 2011

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER