

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

Child's Name: C.H.

Date of Birth: [redacted]

Date of Hearing: September 21, 2010

CLOSED HEARING

ODR Case # 01346-0910JS

Parties to the Hearing:

[Parent[s]

Ms. Jean Purnell
Director of Special Education
Waynesboro Area School District
Waynesboro, PA 17268

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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September 21, 2010

October 6, 2010

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [teen-aged] student who is thought by parents to be eligible for special education under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The student resides in the Waynesboro Area School District (“District”). The parents filed a complaint at a different file number (01131-0910JS) asserting that the District denied the student a free appropriate public education (“FAPE”) under the IDEIA. One of the parents’ claims in their complaint is that the student is entitled to an independent educational evaluation (“IEE”) at public expense. The District did not agree to pay for an IEE and, as required under the IDEIA, filed the complaint in the instant case to defend the appropriateness of its evaluation.² The District also asserts that, to better understand the student’s needs, a psychiatric evaluation of the student is necessary. The parents have refused to grant permission for a psychiatric evaluation, and so the District also seeks an order for such an evaluation.

For the reasons set forth below, I find in favor of the parents.

ISSUES

Is the District’s evaluation appropriate?

¹ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818.

² 34 C.F.R. §300.502(b)(2)(i).

Must the student undergo a psychiatric assessment and evaluation for educational purposes?

FINDINGS OF FACT

School-Based Programming

1. In 2001-2002 school year, the student was attending a neighboring school district. The student was identified in January 2002 as a student with a serious emotional disturbance and learning disability. (School District Exhibit ["S"]-29).
2. The student was re-evaluated by the other school district in January 2003. (S-28).
3. While the student still exhibited some problematic behaviors in the school environment, the re-evaluation report indicated that the student's behavior had improved markedly since the January 2002 evaluation. (S-28).
4. The January 2003 re-evaluation notes: "Achievement testing in the past concluded that (the student) had learning difficulties. These difficulties were always considered secondary to (the student's) emotional needs. This is no longer true because (the student) is doing so well emotionally." (S-28 at page 1).
5. The student's January 2003 individualized education plan ("IEP") in the neighboring school district included a behavioral goal—"(The student) will develop appropriate classroom behaviors by learning

- how to express...anger and resolve conflicts in a socially acceptable fashion.” Because of the student’s behavioral success, the student received itinerant emotional support services rather than the more restrictive part-time emotional support the student had been receiving. (S-27 at pages 7, 11, 14).
6. One year later, in January 2004, the student’s IEP contained no behavioral goals and the IEP was almost entirely focused on academic, rather than behavioral, issues. (S-24).
 7. The student began attending District schools in the 2004-2005 school year. The District accepted the January 2003 re-evaluation report and the January 2004 IEP as it began to work with the student. (Notes of Testimony [“NT”] at 134).
 8. Based on this re-evaluation and IEP, and the data and observations the District collected over the first month of the 2004-2005 school year, in September 2004 the District recommended that the student be exited from special education. Parents agreed. (S-23).
 9. Approximately six months later, however, parent voiced concern over the absence of special education programming and, in March 2005, parents requested a re-evaluation. (S-20, S-21).
 10. The District issued its re-evaluation in September 2005 (including detailed reporting of the student’s, parent’s and teacher’s emotional/behavioral rating scales), finding that the

student was not eligible for special education programming.

Parents agreed. (S-17, S-18).

11. In December 2009, the parents requested a re-evaluation for the student and gave permission for the re-evaluation. (S-4, S-5, S-6).
12. The District issued its re-evaluation report in February 2010, indicating that the reason for the referral was “Parent request due to concerns regarding (the student’s) persistent academic and behavioral difficulties.” (S-9 at page 1).
13. The picture that emerges of the student in the February 2010 stands in stark contrast to the picture of the student that emerged in the re-evaluation of January 2003, the IEP of January 2004 (the last substantive IEP), and re-evaluation of March 2005. (S-9, S-23, S-24, S-28).
14. The re-evaluation of February 2010 documents the following:

“Historically and currently teachers have observed that (the student) does not work to capacity and when (the student) does, (the) work is submitted late and oftentimes incomplete. Teachers have also noted that (the student) does not take responsibility for missing work. Again, historically and currently, teachers have noted that (the student) is often ‘off-task’, talks out of turn, exhibits violent outbursts, and is generally disruptive in class. Still further, historical and current observations found that (the student) reportedly exhibits apparent disrespect or negative attitude, an apparent problem with authority figures, classroom rules and peer relations as well. Lastly, (the student) has had frequent absences to include 32.5 (days) at the end of the 08-09 school year and 24.5 (days) for the current school year, the latter of which include 17 days that were due to out of school suspension. The latter has been, in part, due to an

extensive history of behavioral issues or actions to include general disrespect, abusive language to include threatening remarks, general harassment, physical harassment and sexual harassment. With regard to the latter (e.g., sexual harassment), the school guidance counselor reported that (the student) had exhibited a historical profile of harassing young [redacted] teachers [redacted] and had done so with at least two teachers in the middle school over the past two years.” (S-9 at page 2-3).

15. The student underwent cognitive (IQ) testing and achievement assessments. Apparently, there were ostensibly rating scales used to assess the student for attention deficit hyperactivity disorder and other potentially problematic behaviors, although summary and sub-scale data were not reported. (S-9 at pages 4-6, 14).
16. The cognitive and achievement testing revealed a significant discrepancy between measured IQ (95) and an achievement score in broad mathematics of 56. The evaluator concluded that the student did not have a specific learning disability in mathematics, instead referencing the student’s effort and persistence on the instrument. (S-9 at page 10).
17. The student has historically scored at Basic or Below Basic in mathematics on Pennsylvania System of School Assessment standardized testing over 2006-2009. (S-9 at page 5).
18. The District school psychologist reports behavioral rating scales that rate the student’s self-report as clinically significant for opposition and defiance, as well as significant feelings of

- gloominess, sadness, irritability, loss of interest, and a propensity toward fire setting. (S-4 at page 3).
19. Parents' rating scales rate the student as clinically significant for inattention and hyperactivity as well as emotional instability. The parent rating also indicates significant levels of worrying, self-control for worry, nervousness, and irritability. (S-9 at page 4).
 20. The District school psychologist testified that teacher rating scales passed out to the student's teachers and collected, but that data is not reported in the re-evaluation report. (S-9; NT at 273-279).
 21. The report concluded that the student does not have a disability under IDEIA so does not qualify for special education and related services. (S-9).
 22. Parents filed a complaint seeking due process on May 18, 2010, seeking, among other remedies, an IEE. (S-1).
 23. On May 25, 2010, the District filed the complaint at this file number to defend the appropriateness of its re-evaluation of February 2010.

Evaluation/Diagnostic History

24. From the beginning of formalized schooling, the student has exhibited problematic behaviors in educational environments. The

- student was disruptive in preschool, collapsing, crying, and/or becoming very angry. In kindergarten at the neighboring school district, the student was reported to have trouble listening, following directions, and was unable to remain seated. Additionally, the student talked back to teachers and would distract other students. (S-30).
25. In 1st grade in the neighboring school district, early on the student was sent to the principal's office twice per day and was suspended for a day in mid-September 2001. In the fall of 2001, the student entered a partial hospitalization program. (S-30).
26. In October 2001, the student was diagnosed by a psychologist with a rapid cycling form of bipolar disorder, leading to a clinical diagnosis of Bipolar Disorder-Not Otherwise Specified. Additionally, the student was diagnosed with attention deficit hyperactivity disorder ("ADHD")/hyperactive-impulsive type, and with oppositional defiant disorder ("ODD"). (S-30).
27. The October 2001 diagnostic report was referenced in the student's first comprehensive educational evaluation performed by a neighboring school district in January 2002. The school district evaluation report identified the student as having a serious emotional disturbance and specific learning disabilities in reading and mathematics. (S-29).

28. The student was evaluated by the neighboring school district in January 2003 and showed marked improvement in school-based problematic behaviors. (S-28).
29. In June 2003, the student was receiving mental health services with the continuing diagnoses of bipolar disorder, ADHD, and ODD. Treatment goals included reducing outbursts of temper, appropriate expressions of anger, increasing on-task behavior, developing positive peer relationships, and terminating disruptive, attention-seeking behavior. (S-25).
30. In September 2004, the District exited the student from special education and, in September 2005, re-evaluated the student and found that the student continued to remain ineligible for services under IDEIA. (S-17, S-18, S-20, S-23).
31. At approximately the same time, in September 2005, it was reported that the student was diagnosed by a psychiatrist with bipolar disorder, ADHD, ODD, and anxiety disorder. (S-14 at pages 1-2).
32. Between September 2005 and February 2010, the District performed no evaluations of the student.
33. In January 2010, the student began homebound instruction under the prescription of a treating psychiatrist with diagnoses of bipolar disorder, ADHD, ODD and learning disorder. (S-37 at pages 1-2. *See also* S-9 at page 1).

34. In February 2010, the District issued a re-evaluation report. (S-9).
35. The February 2010 re-evaluation included references to the diagnoses in the homebound prescription, a psychological evaluation of April 2009 (not made part of the record by either party, the District's September 2005 re-evaluation report, and a treatment plan created contemporaneously with the psychological evaluation of the student in October 2001. (S-9 at pages 1-2).
36. The April 2009 psychological evaluation diagnosed the student with ADHD and Adjustment Disorder with Mixed Disturbances of Emotion and Conduct. (S-9 at page 1).
37. On September 10, 2010 (eleven days prior to the hearing), the District was presented with an independent psychological evaluation report and a psychiatric services evaluation. (S-13, S-14).
38. The psychiatric evaluation by a treating psychiatrist, dated August 24, 2010, diagnosed the student with bipolar disorder-not otherwise specified, ADHD, obsessive-compulsive traits, and learning disorder-not otherwise specified. (S-14 at page 3).
39. The psychiatrist who issued the evaluation was the same psychiatrist who had prescribed homebound instruction in January 2010. (S-14, S-37).

40. The District school psychologist reports that the student's behaviors "are not the result of sensory, health, or intellectual issues but rather seem more likely a result of modeling, learned behavior, and reinforced successful negative patterns. Consequently, (the student's) behaviors and expressed feelings seem more likely the product of social-maladjustment....and (the student) needs to undergo a district psychiatric evaluation to rule out or verify the veracity of certain coincidental symptomatic patterns and to differentially diagnose (the student's) presentations." (S-9 at page 12).
41. The District School psychologist believes that the history of bipolar disorder diagnoses is inconsistent with the April 2009 diagnosis of Adjustment Disorder, and believes further psychiatric testing of the student is necessary. (NT at 156-165, 172-173, 176-177).
42. On May 25, 2010, the District filed a complaint at this file number to defend the appropriateness of its re-evaluation of February 2010. In this complaint, the District also requested an order to allow it to proceed with a psychiatric evaluation.

DISCUSSION AND CONCLUSIONS OF LAW

Independent Educational Evaluation

When parents disagree with the conclusions of a school district evaluation, they may request an IEE at public expense.³ In response, the school district may acquiesce in a parent's request for an IEE at public expense or file for due process to defend the appropriateness of the school district's evaluation.⁴ In this case, the District is seeking to defend the appropriateness of its February 2010 evaluation.

In this case, the District's evaluation is substantively inappropriate. Neither party disputes the fact that the student has exhibited deeply problematic school-based behaviors. (FF 1, 14, 24, 25, 27). It is also evident from the record that there appears to be a period from approximately January 2003 through September 2005 where the student responded well to emotional support services in school, that school-based behaviors may have been less of a concern and may not have interfered with the student's learning or the learning of others, and/or emotional support services may not have been necessary. (FF 2, 3, 4, 5, 6, 7, 8, 10, 28).

But by February 2010, the District's re-evaluation confirmed that the student, for some years prior to the re-evaluation, had been exhibiting deeply problematic school-based behavior. (FF 13, 14). Yet the

³ 34 C.F.R. §300.502(b).

⁴ 34 C.F.R. §300.502(b)(2).

District, in its re-evaluation of February 2010, reports minimal emotional/behavioral assessments. (FF 15). Indeed, in a 15-page report that is filled with documentation of, and voiced concerns about, the student's deeply troubling school-based behaviors, there are only two paragraphs addressed to the results of the parent's and student's emotional/behavioral rating scales. (FF 12, 18, 19). And whereas the District's re-evaluation report of September 2005 had given full reports of the sub-scales and index scores on the emotional/behavioral assessments of the student, parent, and teachers, there is no score reporting at all for the student and parent rating scales in the February 2010 re-evaluation. (FF 10, 15).⁵

And this highlights the fatal flaw in the District's re-evaluation report. With the knowledge and experience the District had regarding the student's school-based behaviors, the February 2010 re-evaluation contains no data or reporting scales from the student's teachers. (FF 20). Apparently the data was obtained (FF 20), but without emotional/behavioral data from the educators who worked with the student and observed (and ostensibly suffered under) the school-based behavior of the student, the District's re-evaluation report is rendered useless for interrogating questions about school-based programming.

⁵ This would seem incongruous with the District's position, *supra*, regarding the need for psychiatric testing of the student. The District has taken the position that the granular data involved in psychiatric testing and evaluation must be sifted and understood to program for the student. Yet the District's own emotional/behavioral assessment is not reported in any way that would allow for a nuanced and granular understanding of what that instrumentation may be indicating. (FF 10, 15, 18, 19, 40, 41).

For the foregoing reasons, the student's parents are entitled to an IEE at public expense.

Psychiatric Assessment/Evaluation

In any evaluation process, school districts are obligated, among other things, to assess students comprehensively in all areas of suspected disability, including social and emotional status, and to use assessment tools and strategies that provide relevant information that directly assists in the determination the educational needs of a student.⁶ To that extent, the District is being diligent in its request for psychiatric data. And if there was no psychiatric data available to the District, it might result in an order for psychiatric assessment.

But this record is replete with psychiatric diagnoses that are remarkably consistent over the course of time. (FF 26, 29, 31, 33, 38). The District notes, and perhaps with reason, that one diagnosis presents a differing view of the student (FF 40, 41). But the record is substantial and consistent in its provision of psychiatric data (including explicit diagnoses) that (a) the student has exhibited deeply problematic school-based behavior over time and (b) would allow the District to assess whether or not that data and diagnoses support an identification, under IDEIA, as a student with an emotional disturbance who requires special

⁶ 34 C.F.R. §300.304(c)(4, 6-7).

education and related services.⁷ (FF 12, 13, 14, 24, 25, 26, 27, 29, 31, 33, 36, 38). Put simply, additional psychiatric assessment and evaluation is unlikely to yield data that the team considering the student's eligibility does not already have at its disposal to adequately assess the student's educational needs, or lack of needs.

CONCLUSION

The District must provide an IEE at public expense. Additionally, the student need not undergo additional psychiatric assessment or evaluation in order to make decisions regarding school-based programming.

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⁷ 34 C.F.R. §300.8(b).

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student's parents are entitled to an independent educational evaluation of the student at public expense. Furthermore, the student need not undergo additional psychiatric assessment or evaluation in order to make decisions regarding school-based programming.

Any claim by the parties not specifically addressed by this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

October 6, 2010