

*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

ODR No. 01802-1011JS

Child's Name: R.B.

Date of Birth: [redacted]

Date of Hearing: 1/5/11

### OPEN HEARING

Parties to the Hearing:

Parents  
Parent[s]

School District  
Philadelphia

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney  
David Berney, Esquire  
8 Penn Center  
1628 JFK Boulevard Suite 1000  
Philadelphia, PA 191038

School District Attorney  
Heather Matejik, Esq.  
Office of General Counsel  
440 North Broad Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19130

January 10, 2011

January 25, 2011

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

This case involves Parent's right to examine Student's full educational records. Parent did not allege that she has been unable to fully participate in developing a program and placement for Student because all records were not produced. Consequently, the only matter heard and decided in this case is a claim **relating to the provision of FAPE** to the Student, not a claim for denial of FAPE.

By the time the hearing was convened, both parties acknowledged that only one of the documents originally sought by Parent had not been produced by the District or its absence explained to Parent's satisfaction. The purpose of the short hearing session conducted on January 5, 2011 was to determine whether the District has made all reasonable efforts to locate the missing document, the results of a speech language assessment administered to Student in 2006 as part of an evaluation to determine Student's eligibility for school-age IDEA services. The evidence disclosed that the only reasonable means to obtain the document that the District failed to undertake was a formal, written inquiry to the entity whose employee conducted the evaluation. The District, therefore, will be directed to make a formal inquiry to the provider of the evaluation, followed by a written notification to Parent and her counsel of its response, and to add the inquiry and the response to the Student's educational record.

### **ISSUE**

Is the School District required to take any additional steps to locate the original report of a speech/language evaluation of [Student] conducted in May 2006?

### **FINDINGS OF FACT**

1. In connection with a prior due process complaint in 2009 and in response to the current complaint, the School District provided educational records concerning Student to an attorney representing the School District, who then transmitted some or all of the records to Parent's Counsel. (N.T. pp. 17—21; S-1, pp. 3, 4).

2. In response to the due process complaint and at the request of its current counsel, the District's Director of Special Education, Academic Division explicitly undertook a search of the District's files to locate the TELD-3 (Test of Early Language Development (TELD-3) administered as part of a speech/language evaluation conducted in May 2006 by [Redacted Center], the center where Student was then attending preschool. (N.T. pp. 22, 23; P-1, pp. 1, 5, S-3)
3. Members of Student's IEP team also received the e-mail request from counsel to search for that document in their personal files. (N.T. pp. 24, 25)
4. The special education liaison, who is responsible for maintaining the central file for special education students, was aware of the request to locate the TELD-3 test and undertook a search of the central file. (N.T. p. 35, 36, 39)
5. The special education liaison spoke directly with Student's current speech/language therapist, who confirmed that she did not have the TELD-3 results, had only her progress monitoring data since beginning to work with Student in September 2010 and had no records at all concerning Student's past speech/language therapy. (N.T. pp. 33, 35)
6. The special education liaison also contacted Student's speech/language therapist for the previous school year (2009/2010), who likewise did not have a copy of the TELD-3 results and had left all of her files at the District when she left. (N.T. pp. 36, 37)
7. The special education liaison saw the name of an earlier speech/language therapist on some documents and attempted to contact that person by e-mail, but assumed she was no longer employed by the District when her name did not appear on a current e-mail list. No additional attempts were made to locate that therapist. (N.T. p. 37)
8. Student's speech/language therapist from the 2006/2007 school year retired from the District and contact information was not available for her. (N.T. p. 38)
9. Neither the Special Education Director nor anyone else inquired of [Center] or of the speech therapist who conducted the evaluation whether either maintained a record of the speech/language evaluation, specifically, the TELD-3 test results. (N.T. pp. 26, 27, 40, 44)

### **DISCUSSION AND CONCLUSIONS OF LAW**

Based on its challenge to the sufficiency of the complaint and several motions to dismiss, it is obvious that the District considered the narrow issue in dispute in this case to be unwarranted and unnecessary. The District noted many times throughout the proceedings that numerous documents were produced to Parent on several occasions. (FF 1, S-1) The District

further noted that it would have produced all of the documents sent to Parent before the hearing without a due process complaint had it been notified that Parent believed the District failed to produce all of Student's educational records. *See, e.g.*, District's Opening Statement, N.T. pp. 14—16.

The question of the District's good faith and willingness to produce documents was not, in general, an issue in dispute by the date of the hearing in this case. Parent acknowledged that all documents concerning Student in the District's possession appeared to have been produced. The single document Parent still seeks is the actual test results underlying the speech/language section of the District's initial evaluation as Student transitioned from early intervention to school age special education services. P-1, pp. 1, 5. As Parent at least tacitly acknowledged, the District has conducted a thorough but unsuccessful search of its own records in an effort to locate that document. (FF 2—7) The only possible conclusion to be drawn from the District's inability to find and produce the test results is that the document is not presently in the District's possession. The remaining question, therefore, is whether the District did everything that could reasonably be expected to locate the document.

The entire May 2006 evaluation, including the speech/language component, was conducted at the preschool Student was attending in 2006. (FF 2) Since the speech/language evaluation was completed at [Center], it is logical to assume that if the document sought by Parent exists anywhere, it would be there. Consequently, it is somewhat puzzling that no one from the District made a formal, written inquiry to determine whether [Center] maintains a file on Student which include the test results, and if so, how the District can obtain a copy. Such an inquiry is certainly within the realm of reasonable, not extraordinary effort to assure that the

District fulfills an important obligation embodied in the IDEA statute and regulations.

Moreover, it may have obviated the need for the due process hearing.

Among the procedural safeguards guaranteed to Parents of an IDEA eligible child is the “opportunity for the parents of a child with a disability to examine all records relating to such child...” 20 U.S.C. §1415(b)(1); 34 C.F.R. §300.501(a). The IDEA statute and regulations also provide that procedural violations may constitute a denial of FAPE to an eligible child if such inadequacies

significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free, appropriate public education to the parents’ child.

20 U.S.C. §1415(f)(3)(E)(ii)(II); 34 C.F.R. §300.513(a)(2)(ii)

Given the amount of time that has passed since the evaluation at issue, it is unlikely that the District’s failure to either maintain or obtain more information concerning the speech/language evaluation conducted in 2006 significantly impedes Parent’s right to participate in decisions concerning Student’s current speech/language program. There is, however, a gap in Student’s educational records because the initial speech/language test results are missing, and it is understandable that Parent wants to assure that Student’s records are complete. Parent is willing to accept the possibility that the actual test results may never be located, but requests that the District take all reasonable steps to determine whether the document is available. An inquiry to [Center], which provided the evaluation on which the District relied to determine Student’s IDEA eligibility and to initially identify Student’s needs, is the final step needed to determine whether the document exists.

## **ORDER**

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

1. Contact [Center], in writing no later than February 7, 2011 to ask whether it has any records of the evaluation of [Student] completed in May 2006, particularly the actual test scores and/or any other information concerning the TELD-3 assessment, and if so, how the District can obtain a copy.
2. Request a written response from [Center] and take whatever steps are necessary to obtain and produce to Parent any records located by [Center].
3. Provide a copy of the request and [Center]'s response to Parent and place copies in Student's educational file maintained by the District

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

*Anne L. Carroll*

---

Anne L. Carroll, Esq.  
HEARING OFFICER

January 25, 2011