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Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: BL
Date of Birth:

Dates of Hearing: July 13 and July 28, 2009

CLOSED HEARING

ODR Case # 10040-08-09-KE

Parties to the Hearing:

Representative:

Pro Se

Mr. Jenna Rufo
North Penn School District
401 E. Hancock Street
Lansdale, PA 19446

Thomas Warner, Esquire
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Date Record Closed:

August 17, 2009

Date of Decision:

September 1, 2009

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student (“student”) is a 19-year old student residing in the North Penn School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹. The parents requested an independent occupational therapy/sensory integration (“OT/SI”) evaluation at District expense. The District requested a due process hearing to defend the appropriateness of its occupational therapy evaluation.

ISSUE

Is the District’s OT/SI evaluation appropriate, or are the parents entitled to an independent evaluation at District expense?

Are the parents entitled to reimbursement of fees for services provided by a neuro-developmental disability case manager?

FINDINGS OF FACT

1. The student has multiple diagnoses, primarily Asperger’s syndrome. For the purposes of this decision, the student has also

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.

- been diagnosed with sensory integration dysfunction and dysgraphia. (Parents' Exhibit ["P"]-3; Notes of Testimony ["NT"] at 243-244).
2. The student has a history of difficulty with fine motor skills and writing. These difficulties sometimes lead to the student falling behind on assignments and becoming frustrated. At this point, in the words of the student's individualized education plan, the student often "shuts down" and refuses to do work. This behavior is also address through study skills and organization strategies(P-4).
 3. In January 2009, the District issued a notice of recommended educational placement ("NOREP"), indicating that the student would continue to receive special education services. (P-5).
 4. In early April 2009, the student's mother emailed the District's supervisor of special education with various concerns, including concerns about the student's handwriting and keyboarding. (P-19; NT at 146-147).
 5. The District contracted with an independent service agency to perform an occupational therapy screening, and a re-evaluation report ("RR") was issued on May 1, 2009. (School District Exhibit ["S"]-1; NT at 33, 38).
 6. The parents attached a lengthy addendum to the RR. (P-18).

7. The occupational therapist who performed the screening observed the student for 30 minutes during a regular education class and reviewed a writing sample provided to her by the District. (S-1, S-2; NT at 39, 42).
8. The evaluator testified that, during the observation, the student wrote for approximately 10 of the 30 minutes. She did not see any signs of fatigue or problems during the observation. She further testified that the handwriting sample revealed writing that was legible and appropriately spaced. (NT at 38-42, 44, 46).
9. The evaluator testified that she did not see the need for further evaluation. (NT at 49-50).
10. None of the student's teachers, who gave input into the RR, found that the student had difficulty with handwriting or that the student's handwriting interfered with educational progress. (S-2).
11. The student's special education teacher testified that she was not aware of any sensory issues or issues related to the student's handwriting. She further testified that she had no discussions with the student, the student's teachers, or the student's parents regarding these issues. (NT at 100-103).
12. The parents presented evidence from three witnesses—a neuro-developmental disability case manager, a behavioral health case worker, and the student's mother. (NT at 240-241, 352-353, 375).

13. None of the witnesses testifying on behalf of the parents have experience or expertise in OT, or have observed the student in the school setting. (NT at 319-320, 369-370).

DISCUSSION AND CONCLUSIONS OF LAW

Whenever parents disagree with a school district evaluation/re-evaluation, the parents may request an independent evaluation/re-evaluation at public expense. (34 C.F.R. §300.502[b][1]). The school district may either fund the independent evaluation/re-evaluation or request a due process hearing to validate its own evaluation/re-evaluation. (34 C.F.R. §300.502[b][1][i-ii]).

Here, the District has met the burden of proof that its re-evaluation was appropriate. While the OT/SI screening may not have been extensive, it was responsive to the parents' request (FF 4). At the hearing, much of the parents' evidence involved assistive technology and behaviors/complaints at school but very little focused on the student's handwriting, the basis of the parents' request for re-evaluation. (FF 4, 12, 13). Yet the evidence surfacing in the school environment indicated that the student did not exhibit any difficulties with handwriting. (FF 5, 6, 7, 8, 9, 10, 11).

In short, the District received complaints about the student's handwriting and gathered data/observations geared to determining the student's need in that area. The evidence at the hearing supports the

position that the District's RR was appropriate. This finding, however, does not forestall parents from seeking their own independent OT/SI evaluation at their own expense. (34 C.F.R. §300.502[b][3]).

Furthermore, because the District's evaluation was appropriate, the parents' claim for reimbursement of the fees for the neuro-developmental disability case manager is denied. The District argues that these fees are expert fees and thus not recoverable. *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006). In the estimation of this hearing officer, the fees of the neuro-developmental disability case manager are not expert fees. That individual works with the student, provides direct services, and has participated in various meetings with school-based teams. As such, if the District had failed in its burden, the fees may have been recoverable. Given the fact that the District's re-evaluation was appropriate, however, the fees are not recoverable.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District's re-evaluation report is appropriate regarding the student's occupational therapy/sensory integration needs in handwriting. Parents' request for fees related to the services of the neuro-developmental disability case manager is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

September 1, 2009