

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: K.P.

Date of Birth: [redacted]

Date of Hearing:

November 14, 2012

CLOSED HEARING

ODR Case # 13123-1213KE

Parties to the Hearing:

Representative:

Parent

Pro Se

Upper Darby School District
4611 Bond Avenue
Drexel Hill, PA 19026

Scott Gottel, Esq.
Holsten & Associates
One Olive Street
Media, PA 19063

Date Record Closed:

November 14, 2012

Date of Decision:

December 4, 2012

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] (“student”) is [an elementary school-aged] student residing in the Upper Darby School District (“District”). The District seeks to perform an initial comprehensive evaluation to see if the student should be identified as a student with a disability under both the federal Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”)¹. Parent has not responded to the District’s requests seeking permission to evaluate the student. Consequently, the District sought special education due process for authority to proceed with the evaluation process.²

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

ISSUE

Is the District authorized to proceed with an evaluation process involving the student?

FINDINGS OF FACT

1. The student currently attends 4th grade at a District elementary school, the same school the student has attended since 1st grade. (School District Exhibit [“S”]-2, S-3, S-7; Notes of Testimony [“NT”] at 16).

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. *See also* 22 PA Code §§14.101-14.162.

² The student’s parent did not communicate with the parent or this hearing officer after the filing of the District’s special education due process complaint. The parent did not attend the hearing. (Notes of Testimony at 5-10, 29-31.)

2. In the second semester of the student's 3rd grade year, the 2011-2012 school year, the student began to exhibit problematic behaviors. From January-June 2012, the student was involved in various behavioral incidents including disrespect to staff, physical contact, classroom disruption, disregard of school rules, and verbal aggression. (S-1; NT at 17-18, 20-21).
3. In May 2012, the District approached the student's parent about implementing behavioral interventions for the student. The parent declined the interventions. (S-5; NT at 17-19).
4. On June 7, 2012, at the end of the student's 3rd grade year, the District sought permission to evaluate ("PTE") the student. At a meeting to discuss the PTE, parent did not indicate in writing on the PTE form that she either rejected the PTE or consented to the PTE. The student's mother verbally indicated that she did not consent to an evaluation of the student. (S-5; NT at 22-24).
5. On September 16, 2012, at the beginning of the current school year and following a behavioral concern, the District reiterated its request to evaluate the student. The student's mother again indicated that she was not interested in behavior interventions or other plans to address the student's needs. (S-6; NT at 24-27).

6. On October 4, 2012, feeling strongly that it needed to evaluate the student, the District filed a special education complaint, seeking authorization to engage in the evaluation process.³

DISCUSSION AND CONCLUSION OF LAW

A school district may initiate a request for the initial evaluation of a student.⁴ Where a parent does not provide permission to evaluate the student, a school district may file a special education due process complaint to seek authorization to perform the evaluation.⁵

In this case, the student has exhibited problematic behaviors in the school environment, behaviors which intensified at the end of the 3rd grade. When the District sought permission to evaluate, parent declined to provide consent for the evaluation. At the outset of the 4th grade year, the current school year, the District reiterated its request. Again, parent declined.

The record in its entirety supports the conclusion that the District reasonably and appropriately sought permission to evaluate the student. Where parent has refused permission to evaluate the student, this decision will provide authority for the District to pursue the evaluation and issue an initial evaluation report.

³ In the PTE, the District indicates the evaluation will consist of: “cognitive assessment, academic achievement, social/emotional functioning, functional behavior assessment, classroom observations, review of records, and parent and teacher input”. (S-4).

⁴ 34 C.F.R. §300.301(b); 22 PA Code §14.102(a)(2)(xxiv).

⁵ 34 C.F.R. §300.507; 22 PA Code §14.162(c).

CONCLUSION

The District may proceed with the initial evaluation process involving the student.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District is authorized to proceed with the evaluation process of the student as outlined in the permission to evaluate form dated June 7, 2012.

The District is authorized to undertake the evaluation process as of the date of this order. Accordingly, the District's evaluation report must be issued within 60 calendar days of the date of this order.⁶

If the student should withdraw from the District before the completion of the evaluation process, this decision and order will be operative upon any subsequent re-enrollment of the student in the District.

Any claim brought forward by the parties and not made part of this order is denied.

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

December 4, 2012

⁶ 22 PA Code §14.123(b).