

*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.B.

Date of Birth: [redacted]

Date of Hearing:  
December 5, 2012

### **CLOSED HEARING**

ODR Case #13185-1213KE

Parties to the Hearing:

Parents

Avon Grove School District  
383 S. Jennersville Road  
West Grove, PA 19390

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

L. Lee Wentz, Esquire  
2424 E. York Street  
Suite 316  
Philadelphia, PA 19125

Kathleen Metcalfe, Esquire  
331 Butler Avenue  
P.O. Box 5069  
New Britain, PA 18901

December 24, 2012

January 4, 2013

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

[Student] (“student”) is a [pre-teenaged] student residing in the School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup> for specially designed instruction/related services for a speech and language impairment. As the result of a parental request for objective data, the District evaluated the student using two subtests of a speech and language assessment. Based on the results of this assessment, the District’s speech and language therapist found that the student no longer required speech and language services in the area of written language which led to the removal of a writing goal from the student’s individualized education plan (“IEP”). As a result, the Parents requested an independent educational evaluation for speech and language (“IEE”) at public expense. The District denied this request for an IEE and requested this special education due process hearing to defend its denial of the parents’ request.

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

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<sup>1</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163.

## **ISSUES**

Must the District provide an IEE at public expense?

## **FINDINGS OF FACT**

1. In December 2010, the District completed a re-evaluation of the student. (Hearing Officer Exhibit ["HO"]-1<sup>2</sup>; School District Exhibit ["S"]-1).
2. In January 2011, the parents disagreed with the findings of the re-evaluation report and requested an independent speech and language therapy evaluation. (HO-1; S-2).
3. In April 2011, the independent speech and language therapy evaluation was issued. (HO-1; S-2).
4. In May 2012, the parents requested a standardized assessment of the student's written language. The parties agreed to utilize the Test of Written Language – 4<sup>th</sup> edition ("TOWL"). (HO-1).
5. As of May 2012, the student's IEP contained a writing goal and specially designed instruction for direct instruction in written expression in a small group setting for 30 minutes daily in a learning support environment. (HO-1).
6. In late August 2012, a District speech and language pathologist administered two subtests of the TOWL (contextual conventions and story composition). (HO-1; S-3).
7. On September 10, 2012, in a document entitled "speech/language summary", the District provided the results of the TOWL subtests assessment. The speech and language pathologist concluded: "Based on (the student's) performance on these subtests of the Test of Written Language:4<sup>th</sup> edition, (the student) does not qualify for therapy in the area of written language through Speech and Language Services." (HO-1; S-3).
8. On September 12, 2012, the student's IEP team met. The writing goal was removed from the student's IEP, and the daily direct

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<sup>2</sup> The parties stipulated to certain facts. These stipulations were entered into the record as a two-page document as HO-1.

instruction in writing was replaced with specially designed instruction in writing as follows: “As per Revision dated: 9/12/12. (The student’s) teachers will revisit writing pieces in content areas to explain areas of need or ways to improve the piece.” (HO-1; S-3).

9. On September 24, 2012, the student’s mother emailed the District to voice disagreement with the changes to the student’s goal and instruction in writing based on the TOWL subtests results. The student’s mother also informed the District that the family had not yet received a notice of recommended educational placement (“NOREP”). (HO-1; Parents’ Exhibit [“P”]-8).
10. On September 28, 2012, the District sent a NOREP addressing the writing goal and instruction. The NOREP also addressed certain IEP changes that the IEP team had discussed regarding the student’s reading instruction. On October 10, 2012, parents returned the NOREP marked in agreement with the NOREP on aspects of the IEP dealing with reading. The student’s mother, however, explicitly reiterated that the parents were not in agreement with the changes related to the student’s writing goal and instruction. (P-2).
11. On October 12, 2012, the parents requested an IEE for speech and language services, including written language and auditory processing. (HO-1; S-6).
12. On October 19, 2012, the District denied the parents’ request for an IEE. On October 24, 2012, the District filed a special education due process complaint to defend its denial of parents’ request. (HO-1; S-6).

## **DISCUSSION AND CONCLUSIONS OF LAW**

Where a parent disagrees with an evaluation by a school district, parents may request an IEE at public expense.<sup>3</sup> When that happens, the school district must take one of two actions, either granting the parents’ request and proceeding with an IEE at public expense, or filing a special

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<sup>3</sup> 34 C.F.R. §300.502.

education due process complaint to defend the appropriateness of its evaluation.<sup>4</sup>

Here, even though the District filed for a special education due process hearing, it is not to defend a District evaluation. The District takes the position that the September 2012 assessment using the TOWL subtests was not an evaluation at all and that subsequent IEP changes were merely a change in instructional approach. As such, the District asserts, there is no entitlement to an IEE because there is no evaluation, or re-evaluation, on the part of the District. The record does not support such a conclusion.

First and most persuasively, at the recommendation of the District evaluator, and based explicitly on the TOWL results, a very intricate writing goal was removed from the student's IEP. Also removed was daily direct instruction in writing in a special education setting, to be replaced by monitoring and support by regular education teachers in a regular education environment. Both were profound changes in the student's programming that should only follow an in-depth consideration of multiple factors, not simply the results of two subtests on a single assessment tool. In this, too, the District violated the provisions of IDEIA by using only a single measure or assessment as the sole criterion for gauging the student's needs in writing.<sup>5</sup>

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<sup>4</sup> 34 C.F.R. §300.502(b)(1-2).

<sup>5</sup> 34 C.F.R. §300.304(b)(1-2).

Second, the language of the NOREP issued by the District on September 28<sup>th</sup> reflects the magnitude of the changes that the District was proposing. The NOREP indicates that: “(The student) is no longer in need of special education services for written expression. (The student) will receive...writing instruction in the regular education classroom” and “The results of the TOWL Test of Written Language indicated that (the student) did not require special education services for written language.” In effect, based solely on two subtests of one assessment, the student’s needs in writing entirely disappear from the IEP. And significantly, at both points in the NOREP where these changes are offered, the student’s mother has written explicit disagreement, echoing disagreements shared with the District at the IEP meeting and in email communication prior to the issuance of the NOREP.

In sum, then, the District significantly changed the student’s IEP based on two subtest results on a single assessment. Whatever one wishes to call that chain of events, it is not progress monitoring or temperature-taking. It is a change in placement and programming based on evaluative data, and, in this case, it is inappropriate. Therefore, parents are entitled to an IEE at public expense.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the School District must provide at public expense a comprehensive independent speech and language evaluation, to include auditory processing. The parties may also agree to include in the evaluation process other aspects of functioning as the parties deem appropriate. The details of the evaluator(s) chosen to perform the evaluation shall be worked out between the parties.

Any claim not specifically addressed in this decision and order is denied.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

January 4, 2013