

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

Student's Name: J.H.

Date of Birth: [redacted]

ODR No. 13564-12-13-KE

CLOSED HEARING

Parties to the Hearing:

Representative:

Parent

Pro Se

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

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

Date of Hearing:

May 8, 2013

Record Closed:

May 13, 2013

Date of Decision:

May 28, 2013

Hearing Officer:

William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student named in the title page of this decision (Student) is an eligible resident of the school district named in the title page of this decision (District). (NT 68.) Student is not currently identified as a child a disability pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 68.) The District requested due process in this matter, requesting an order authorizing it to evaluate Student in the absence of Parent's consent. Parent strenuously objects to the proposed evaluation.

The hearing was concluded in one day and the record closed upon receipt of the transcript. I conclude that the District has good reason to evaluate the Student, and I will enter an order authorizing it to do so.

Parent raised numerous objections to this proceeding¹, and eventually refused to return to complete the hearing after a lunch break. I overruled each of Parent's objections after hearing them (NT 5-63), and decided to complete the hearing when Parent did not return, because I concluded that Parent's excuse was not credible, and was part of a deliberate attempt to manipulate the proceedings for purposes of delay. (NT 142-145.)

I want Parent to understand that nothing in this decision requires the Parent to do anything. My order is limited to telling the District that it can legally do what it can to evaluate the Student. I do not order the Parent to do anything or not do anything.

¹ Parent objected to holding a hearing at all, due to alleged lack of notice of the nature of the proceedings and due to an assertion that the law does not permit any proceeding to evaluate a child when the parent does not consent; to the making of a record, to the swearing in of witnesses at any time later than the very beginning of the hearing, to the District's attorney not being sworn, and to the admission of documents based upon alleged lack of five day notice. (NT 5-63.)

ISSUE

1. Should the Hearing Officer order that the District is authorized to proceed with an educational evaluation of Student without parental consent, in spite of Parent's objection to such an evaluation?

FINDINGS OF FACT

1. Student is in second grade at a District elementary school. Student is [elementary school-aged] and is in second grade appropriately because of a [redacted] birthdate. (NT 66.)
2. Student is a regular education student. Student has not been identified as a child with a disability under the IDEA. (NT 68.)
3. In the beginning of November, 2012, Student was brought to a District Student Support Team (SST) for review, due to concern that Student was not making expected or adequate academic progress in second grade. (NT 92 – 95.)
4. The SST was concerned about student's decoding, reading fluency, reading comprehension, math and writing. Student's teacher reported that Student could not do any work independently, and was not able to keep up even with differentiated teaching of phonics on a one to one basis. Student was unable to write. (NT 92 – 95; S 1.)
5. Teaching staff reported that student was having articulation errors, fluency difficulties, difficulty expressing thoughts and ideas, and difficulty understanding remembering or attending to what is said to student. Thus, Student needed speech and language evaluation. (S 1.)
6. The SST team placed Student in levels two and three of its response to intervention program, successively. In these levels, Student received intensive, research – based interventions, including small group and one – to – one interventions for reading. Interventions included multi—sensory and sequential small group instruction in phonemic awareness and decoding provided by the District's reading specialist. (NT 97 – 100, 118-119, 161 – 164.)
7. Student did not make adequate or appropriate progress, even with these interventions in the response to intervention program. Throughout second grade, Student could not read. Student remained very seriously below grade level in reading, spelling, writing, mathematics and other academic subjects. Student's regular education teacher provided extraordinary differentiated teaching to Student, but Student did not make progress even

with special accommodations provided by the teacher. (NT 147 – 154, 170 – 174; S 4, 5, 6, 7.)

8. Therefore, the District's school psychologist, who had followed Student in the response to intervention program, concluded that Student needed an evaluation to determine whether or not the Student is a child with a disability under the IDEA. (NT 97 – 100.)
9. In December 2012, the school psychologist and other District personnel met with Student's Parent to discuss possible evaluation of Student. Parent suggested alternative regular education interventions, and District personnel decided to try those interventions for one month. (NT 101 – 103, 115-116.)
10. District personnel offered Parent a Permission To Evaluate form (PTE), soliciting informed consent for an evaluation. The PTE form listed the evaluation strategies to be provided in detail. All evaluation strategies were explained to Parent during the meeting in December. Parent made it clear that Parent did not want to discuss the details of an evaluation and did not want an evaluation. Parent refused to take a copy of the PTE form to think about after the meeting, and refused to sign the form. (NT 101 – 105; S2.)
11. The District's reading specialist continued ongoing progress monitoring and the Student's homeroom teacher made the accommodations requested by Parent and continued to monitor progress. Student did not make adequate or appropriate progress. (NT 105 – 107, 115-116.)
12. District personnel attempted again in January 2013 to contact Parent to obtain consent for a special education evaluation of Student, and in the meeting, Parent was more cooperative. However, Parent maintained Parent's opposition to any evaluation. (NT 105 – 106, 128 – 129.)
13. Throughout the second half of the 2012 – 2013 school year, Student failed to make adequate or appropriate progress in academic subjects. DIBELS assessments showed inadequate progress in phoneme segmentation, reading fluency (speed), decoding, spelling, reading comprehension, vocabulary, handwriting, printing, mathematics, and science. (NT 106 – 110, 166 – 176; S 3, 4, 5, 6, 7.)
14. Although Student is relatively young in second grade, because of a [redacted] birth date, this is not the cause of Student's lack of progress. (NT 157 – 158.)

DISCUSSION AND CONCLUSIONS OF LAW

I conclude² that Student needs to be evaluated to determine whether or not Student is a child with a disability under the IDEA. Student made minimal progress in first grade. Student made no progress in second grade, and even regressed somewhat in terms of Student's decoding ability. In other words, by the time of the hearing, Student could not read at all.

Student is far behind where Student should be in second grade, and this is not because of Student's age. As a result, Student struggles in reading, spelling, writing, mathematics, and other academic subjects.

Student failed to make progress in spite of extraordinary interventions, including special interventions to help Student with understanding the sounds that letters and words make. Without special education, Student may continue to fail in every grade, and may even start to have trouble with Student's behavior and feelings. Under these circumstances, the District is correct that Student should be evaluated for special education.

Again, I emphasize that my order today authorizes the District to proceed with evaluating Student, but does not order Parent to do or not do anything.

Parent argued at the hearing that the District failed to consider providing tutoring after school to the Student, as a regular education intervention to find out if Student could catch up to the rest of the class in reading, writing, mathematics and other academic subjects. (NT 123 – 127.) This argument does not change my decision, because all of the evidence proves by more than a preponderance that any such tutoring would not be enough to help Student learn to read,

² In this matter, the District requested due process and the burden of proof is allocated to the District, which bears the burden of persuasion on all issues. In other words, under the law, the District's evidence must be more persuasive to me than the Parent's evidence. I find that the District's evidence is more persuasive.

write and spell. Such tutoring would not be enough to help Student with all of these needs as well as being far behind in mathematics and in science.

I conclude that the District made appropriate efforts to determine whether or not an evaluation was necessary, without providing tutoring after school. Thus, its conclusion that an evaluation was necessary was based upon sufficient information without resorting to tutoring after school. I conclude, therefore, that the District's request for permission to evaluate was appropriate under the IDEA, and that it was correct to determine that an evaluation is necessary for this child.

During cross-examination, Parent also argued that a private tutoring service could do an educational evaluation as comprehensive as that which the District proposed to do. There was evidence that Parent had proposed such an evaluation – an independent educational evaluation (IEE) – instead of the initial evaluation that the District proposed. However this argument does not show that the District should not be authorized to proceed with an initial educational evaluation. There are two reasons for this. First, the Parent is not entitled to an IEE because there has been no evaluation, and Parent has not disagreed with an evaluation as required by the IDEA. 34 C. F. R. §502 (b) (1). Second, there was no evidence that a private tutoring agency was capable of doing a comprehensive initial evaluation as required by the IDEA.

CONCLUSION

I conclude that the District is correct and I will authorize the District to evaluate the Student. Any claims regarding issues that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. I hereby order that the District is authorized to proceed with an initial educational evaluation of Student without parental consent, in spite of Parent's objection to such an evaluation.

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

May 28, 2013