

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: J.F.

Date of Birth: [redacted]

Date of Hearing:

June 24, 2013

CLOSED HEARING

ODR Case # 13952-1213KE

Parties to the Hearing:

Parent

Representative:

Pro Se

Penn Hills School District
260 Aster Street
Pittsburgh, PA 15235

Craig Alexander, Esq.
Bruce Dice & Associates
787 Pine Valley Drive
Pittsburgh, PA 15238

Date Record Closed:

June 24, 2013

Date of Decision:

July 5, 2013

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [teenaged] student residing in the Penn Hills School District (“District”). The student is identified as a student with a disability, specifically speech and language impairment, under both the federal Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”)¹. Based on emergent in-school behaviors and declining academic performance, the District seeks to perform a re-evaluation that includes cognitive, achievement, social/emotional, and behavioral, and other, assessments. Parent has not responded to the District’s requests seeking permission to re-evaluate the student. Consequently, the District sought special education due process for authority to proceed with the re-evaluation process.²

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

ISSUE

Is the District authorized to proceed with a re-evaluation process involving the student?

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 District 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 3-5, 21-22.)

FINDINGS OF FACT

1. The student attends District schools and, in the 2012-2013 school year, completed 6th grade. (School District Exhibit ["S"]-1, S-2, S-4).
2. At the end of the prior school year, the 2011-2012 school year (the student's 5th grade year), the student was increasingly argumentative and defiant. (Notes of Testimony ["NT"] at 13-14).
3. The student had been previously identified as a student with speech and language impairment in the 2012-2013 school year. The student received speech and language services through an individualized education plan ("IEP"). (S-5, S-6; NT at 18).
4. In September 2012, the student was involved in a fight. The incident resulted in disciplinary action. (S-1, S-2; NT at 14).
5. In October 2012, the student engaged in unsafe hallway behavior which resulted in disciplinary action. Additionally, the student engaged in disruptive classroom behavior which resulted in disciplinary action. (S-1, S-2).
6. In October 2012, the student's parent indicated she would not participate in an IEP team meeting. (S-7).
7. In November 2012, the student engaged in defiant and combative classroom behavior with a teacher. The incident resulted in disciplinary action. (S-1, S-2).

8. In November 2012, at the student's annual IEP review, the student's parent accepted the District's recommendation that the student continue in speech and language services only. (S-6; NT at 14-15).
9. In December 2012, the student was involved in a fight. The incident resulted in disciplinary action. (S-1, S-2).
10. In March 2013, the student engaged in disruptive classroom behavior, unsafe hallway behavior, and cut class, each incident resulting in disciplinary action. (S-1, S-2).
11. In April 2013, the student was found to be in an off-limits area and showed disrespect to staff when confronted. The incident resulted in disciplinary action. (S-1, S-2).
12. In April 2013, the District requested permission to re-evaluate the student ("PTRE"). The student's IEP team met, and the student's parent indicated that she did not want further assessment or evaluations of the student. The student's parent did not return the permission to re-evaluate. (S-9, S-11; NT at 15-16).
13. In May 2013, the student was twice defiant to staff. The incidents resulted in disciplinary action. (S-1, S-2).
14. In May 2013, the District requested a meeting of the IEP team. Student's mother indicated that she would not attend the meeting. (S-8; NT at 15-16).

15. From May 2012 (the end of 5th grade) to May 2013 (the end of 6th grade), the student’s final grades in core academic areas—reading/language arts, mathematics, science, and social studies—all declined. In mathematics and social studies, the declines were significant. (S-3, S-4; NT at 17-18).
16. On May 29, 2013, feeling strongly that it needed to re-evaluate the student, the District filed a special education complaint, seeking authorization to engage in a re-evaluation process.³ (S-10).

DISCUSSION AND CONCLUSION OF LAW

A school district may request a re-evaluation of a student.⁴ Where a parent does not provide permission to re-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 over the course of 6th grade. The District attempted to work collaboratively with the parent. Ultimately, though, the District sought permission to evaluate, and

³ In the PTRE, the District indicates the evaluation will consist of: “measures of cognitive abilities, executive functioning/attention, academic achievement, sensory, motor, speech and language skills, social/emotional functioning, behavioral functioning, adaptive skills, review of records, parent input, teacher input, and observations”. (S-11).

⁴ 34 C.F.R. §300.301(c)(1)(i); 22 PA Code §14.102(a)(2)(xxiv).

⁵ 34 C.F.R. §§300.300(a)(3)(i), 300.507; 22 PA Code §§14.102(a)(2)(xxiv), 14.162(c).

parent declined to provide consent for the evaluation. In addition to the intensifying behavioral issues, by the end of the school year, the student exhibited declining academic achievement.

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

CONCLUSION

The District may proceed with a re-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 a re-evaluation process of the student as outlined in the permission to re-evaluate form dated April 5, 2013.

The District is authorized to undertake the re-evaluation process as of the date of this order. The District's re-evaluation report must be issued within 60 calendar days of the first day of the fall 2013 school term.⁶

If the student should withdraw from the District before the completion of the re-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

July 5, 2013

⁶ 22 PA Code §14.124(b).