

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.F.

Date of Birth: [redacted]

Dates of Hearing:

May 15, 2014

May 27, 2014

CLOSED HEARING

ODR Case # 14806-1314KE

Parties to the Hearing:

Parent[s]

Pennridge School District
1200 North 5th Street
Perkasie, PA 18944

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Frederick Stanczak, Esquire
179 North Broad Street
2nd Floor
Doylestown, PA 18901

Mark Walz, Esquire
331 East Butler Avenue
New Britain, PA 18601

May 27, 2014

June 17, 2014

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is an elementary school age student residing in the Pennridge School District (District) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA)¹. The student has been identified under the terms of IDEA as a student with an intellectual disability and speech/language impairment. The 2013-2014 school year, the student's kindergarten year, was the student's first year in District schools after multiple years in early intervention programming. The parents requested an independent educational evaluation (IEE) at public expense, including the services of a specific evaluator and/or specific types of assessments.

The District declined to provide an IEE under the terms requested by parents and, in March 2014 shortly after parents' request, filed a special education due process complaint to defend its evaluation processes and reports related to the student.

For the reasons set forth below, I find that the District's evaluation processes and reports are appropriate and so parents are not entitled to an IEE at public expense under their specific terms. For reasons again set forth below, however, the District is ordered to provide an independent evaluation at public expense under the terms of the hearing officer's order.

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.

ISSUES

Are parents entitled to an IEE at public expense?

FINDINGS OF FACT

1. Prior to entering District schools, the student received early intervention services. These early intervention services followed birth-to-3 services which had been provided to the student. (School District ["S"]-1, S-2).
2. In March 2010, the student was evaluated upon entering early intervention. The report noted significant cognitive delays, as well as significant expressive and receptive language delays. (S-1).
3. The evaluator observed that the student exhibited elopement behavior, and the evaluator noted potential safety concerns given the student's inconsistent response when called by name or told "no". Similar behavior was reported by the parents in community and family settings. (S-1).
4. In April 2012, the student was re-evaluated in the midst of early intervention programming. (S-2).
5. The student continued to exhibit similar delays and similar problematic behaviors. Additional problematic behaviors reported intermittently in the early intervention environment included

- difficulty with self-regulation and attention, moving around the classroom, and jumping. (S-2).
6. In December 2012, in anticipation of the student's transition to kindergarten in the District in the 2013-2014 school year, the District held a transition meeting regarding the student. In April 2013, the District issued its re-evaluation report (RR). (S-3).
 7. The April 2013 RR contained data from the 2010 early intervention report. Additional assessments administered by the District included academic readiness skills, cognitive testing, behavioral ratings, adaptive behavior, speech and language, occupational therapy, as well as observations of the student by the various District evaluators. (S-3).
 8. The April 2013 RR recommended a continuation of the student's identification as a student with an intellectual disability and speech/language impairment. (S-3).
 9. The April 2013 RR noted needs related to elopement by the student from environments. (S-3).
 10. The April 2013 RR was reviewed by the member of the student's multi-disciplinary team (MDT), including both parents, a special education teacher, a District school psychologist, a speech and language therapist, an occupational therapist, and a District special education administrator. (S-3).

11. In a section of the April 2013 RR entitled “Evaluation Team Participation”, the signatures and titles of each of these participants are listed. Next to these signatures/titles are two columns of check-boxes, one labeled “Agree” and “Disagree”. The heading over these two columns provides the following statement: “Agreement and Disagreement required ONLY when evaluating students for specific learning disability.” There are handwritten checkmarks in the “Agree” checkboxes next to each participant’s signature/title. (S-3 at page 17).²
12. The student entered kindergarten at the District in the fall of 2013. (Notes of Testimony [“NT”] at 161-164).
13. In October 2013, approximately six weeks into the school year, concerns by both the student’s teacher and parents over the student’s behaviors in school (including elopement from the instructional area, classroom, and building, laying/rolling on the floor, crawling under furniture, kicking, and loud vocalizations) led the District to perform a functional behavior assessment (FBA). (Parents’ Exhibit [“P”]-2; S-4; NT at 165-181, 280-281).
14. In November 2013, the District issued an updated RR to include the results of the FBA. (S-5)

² Furthermore, an asterisk for the agree/disagree columns directs the reader to the following explanation for any team member who checks “disagree”: “For specific learning disability only, if a team member disagrees with the team’s conclusion related to the identification of the student as having a specific learning disability, the member must submit a separate statement presenting the member’s dissent....” S-3 at page 17.

15. The November 2013 RR included an “Evaluation Team Participation” section where the MDT participants, including the student’s mother, signed their names and checked “agree”. (S-5 at page 12).
16. In signing and checking the participation pages in the District RRs, the student’s mother testified credibly that she felt she was indicating only her attendance at the MDT meetings and agreement that the RR was discussed with, and explained to, her. (NT at 289-290, 333-335).
17. The November 2013 RR led the student’s individualized education plan (IEP) team to revise the student’s IEP. (S-6).
18. Over the course of December 2013, January 2014, and February 2014, the student’s behavior continued to be problematic, including occasions where the parents were summoned to remove the student from school. (P-1; NT at 292-296).
19. The student’s IEP team met in February 2014. (S-8).
20. In March 2014, the parents requested another IEP team meeting. Team members included District personnel and parents, as well as an advocate who was working with the parents. (P-1).
21. As the result of that meeting, parents requested that the District retain a certain evaluator to conduct a series of assessments through the evaluator’s organization. The requested

assessments included: a functional behavior analysis (different from the FBA—functional behavior assessment—referenced above), a VB-MAPP, an occupational therapy evaluation, and observations in the home environment. (P-1).

22. In the alternative to the named evaluator, the parents requested an IEE which would include these assessments in addition to an applied behavior analysis evaluation and a speech and language evaluation. (P-1).

23. Following the March 2014 IEP meeting, the District requested permission to re-evaluate, including many, but not all, of the assessments listed by parents. (S-9).

24. In late March 2014, however, the District filed a complaint in defense of its evaluation process and RRs.

DISCUSSION AND CONCLUSION OF LAW

IEE

A school district’s evaluation process “must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent” and must ensure “the child is assessed in all areas related to the suspected disability.”³

³ 34 C.F.R. §§300.303, 300.304(b)(1), (c)(4).

Once the evaluation report has been issued, “a group of qualified professionals and the parent(s)” meets to review the results of the evaluation.⁴

When parents disagree with the conclusions of a school district evaluation, they may request an IEE at public expense.⁵ After a school district has issued its evaluation report, and parents request an IEE at public expense, the school district must acquiesce in a parent’s request for an IEE at public expense, or file for due process hearing to defend the appropriateness of the school district’s evaluation.⁶

Here, the District’s evaluation processes and reports were appropriate. The District planned for the student’s transition from early intervention services with a comprehensive RR in March 2013. As the student began to attend District kindergarten, and the District could gauge the student’s needs in the classroom, a FBA and updated RR in October and November 2013 followed. Certainly, as the student’s behaviors intensified over the months thereafter, both parents and the District recognized that the student’s behaviors required continued interventions. But the parents’ claim for an IEE at public expense hinges on a finding that the District’s evaluation processes and RRs are inappropriate. The record in its entirety supports the conclusion that the District met its obligations under IDEA in its evaluation processes and RRs.

By way of dicta, one aspect of the District’s argument must be addressed. The District argued that the parents’ signatures and indicating “agree” in the Evaluation Team Participation section of the RRs was an agreement and adoption of the RRs.

⁴ 34 C.F.R. §§300.303, 300.306(a).

⁵ 34 C.F.R. §300.502(b).

⁶ 34 C.F.R. §300.502(b)(2).

As such, the District argued, parent’s “right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the (school district)” [emphasis added] could not be exercised because the parents in this case “agreed” with the evaluation.⁷ This argument must be rejected. First, the very section of the RRs which the District cites has nothing to do with a parent agreeing with the result of the RR, or adopting its terms in some way which binds a parent. It is a section geared explicitly and exclusively to aspects of a RR that deal with specific learning disabilities; it is not a binding statement of “agreement” with the RR that, as the District would have it, acts as a waiver or bar to requesting an IEE. Second, even if one concluded that a statement by a parent (whether oral or written) was an “agreement” with a RR, the very next day the parent could, literally, change her mind and come to “disagree” with the RR. At that point, this hearing officer sees nothing that would, as a matter of law, impede that parent from requesting an IEE, prior “agreement” notwithstanding.

Hearing Officer-Ordered Evaluation

As part of a hearing on a special education due process complaint, a hearing officer may order an independent educational evaluation.⁸ In such a case, the hearing officer-ordered independent evaluation is at public expense.⁹

This hearing officer will order such an independent evaluation for the following reasons:

⁷ 34 C.F.R. §300.502(d)(1).

⁸ 34 C.F.R. §300.502(d).

⁹ Id.

One, the student presents a mosaic of complex behaviors which, even in a highly-supported life skills classroom for young students, was making the educational environment progressively more challenging as the school year unfolded.

Second, in its decision to request permission to re-evaluate in March 2014, the District implicitly recognizes that, while it has fully met its obligations, a comprehensive, independent evaluation would be helpful to everyone involved in the student's educational decision-making.

Third, and vitally important in the view of this hearing officer, the parties do not share an adversarial relationship. The communications between the parties in the exhibits, the tenor and tone of the testimony at the hearing, and the demeanor of District witnesses and parents—all build a picture of a team of educators and parents who are dealing with each other in good faith with the appropriateness of the student's educational programming at the heart of everyone's considerations. The parties will be sharing a relationship for years to come, engaged in trying to understand and program for the very complex needs of the student. Here, at the very outset of the student's education, a foundation for understanding the student that is built on a comprehensive, independent evaluation is something that, in the view of this hearing officer, both parties recognize will be mutually valuable.

Accordingly, the order will structure for an independent evaluation.

CONCLUSION

The District's evaluation process and RRs are appropriate; therefore, parents are not entitled to an IEE at public expense under the terms they requested. For the reason set forth above, however, a hearing officer-directed, independent evaluation at public expense will be ordered.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District has met its obligations to the student under IDEA through its evaluation processes and reports.

As further set forth above, and as authorized under 34 C.F.R. §300.502(d), the District is ordered to provide an independent evaluation of the student at public expense as follows:

- On or before July 14, 2014, the District shall provide in writing to the student's parents information (as set forth below) for three independent evaluators experienced in the conducting of data-gathering for, and authorship of, evaluation reports in each of the following areas:
 - Assessment through the VB-MAPP
 - An occupational therapy evaluation
 - A speech and language evaluation
 - A functional behavior assessment
- To the extent an evaluator has the qualifications and experience to administer/perform more than one of the above assessments/evaluations, that particular evaluator may be involved in more than one area for evaluation.

- Regardless of the background of the selected evaluators, parents must have at least three potential evaluators to choose from in each of the listed areas for evaluation.
- The three potential evaluators for the functional behavior assessment shall be board certified behavior analysts (BCBAs).
- The District's selection of the potential evaluators shall be based solely on the background and experience of the evaluators. Communications by the District with a potential evaluator shall not include any discussion of an evaluator's rate or fee, and, in selecting the potential independent evaluators, the District shall not give any consideration to its estimation of the cost of the evaluations.
- The information provided to the student's parents regarding the selected evaluators shall include the full curricula vitae for the evaluators. The student's parents may review the evaluators' curriculum vitae but shall not contact any of the potential evaluators.
- The cost of the independent evaluations shall be at the evaluator's rate or fee and shall be borne by the District at public expense.
- On or before August 4, 2014, the student's parents shall contact the District's director of special education by email to

inform the District of the evaluators selected by the parents to conduct the independent evaluations.

- If the student's parents have not emailed a selection of the independent evaluators by August 4, 2014, the District shall select the independent evaluators. Even if the District makes the selection of the independent evaluators, all other aspects of this order related to the independent evaluators and/or the independent evaluation reports shall be followed.
- The selected evaluators shall coordinate with the District on the scheduling of assessment sessions and observations in the classroom environment, but the number and nature of those assessments and observations shall be determined solely by the evaluators. Furthermore, the scope, details, findings and recommendations of the independent evaluation reports shall be determined solely by the selected evaluators. Notwithstanding the provisions of this paragraph, assessments and observations by the independent evaluators shall be only school-based and shall not take place in the home environment.
- The evaluators may request that assessment sessions and, necessarily, the observations in the classroom environment take place after the 2014-2015 school year commences.

- After the independent evaluators have issued the independent evaluation reports for the student, the student's IEP team shall meet to consider the findings of the evaluation in light of the student's IEP and educational programming ("the independent evaluation IEP meeting"). At the independent evaluation IEP meeting, the IEP team shall invite and include the independent evaluators in the IEP team meeting (making scheduling accommodations for the participation of the evaluators as necessary), and the District shall bear any cost, or rate, for the appearance of the independent evaluators at the independent evaluation IEP meeting.
- The terms of this order regarding the involvement of the independent evaluators shall cease after the independent evaluators have participated in the independent evaluation IEP team meeting, although nothing in this order should be read to limit, or interfere with, the continued involvement of the independent evaluators as one party, or both parties, see(s) value in such continued involvement and might make arrangements therefor.

Agreements Otherwise by the IEP Team. Nothing in this order should be read to limit or interfere with the ability of the IEP team, by

agreement of the parents and the District, to alter the explicit directives of this order related to the independent evaluators and/or evaluations.

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

s/Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 17, 2014