

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

ODR No. 15445-1415KE

Child's Name: J.S.

Date of Birth: [redacted]

Dates of Hearing: 11/6/14, 11/20/14

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent[s]

Parents' Attorney

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Date Record Closed:

December 5, 2014

Date of Decision:

December 19, 2014

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student in this case is a high school-age resident of the School District, who was evaluated and identified as IDEA eligible due to emotional disturbance during the 2010/2011 school year. The primary symptom affecting Student's education is an inability to attend school regularly, which began in middle school and worsened over the past several school years.

Teachers report that when able to get to school, Student is appropriately engaged in classroom activities and peer relationships. Despite missing most days of school, Student has generally been able to maintain passing grades in regular education, grade level material. Although the District, and especially Parents, have attempted a number of interventions to encourage and assist Student's school attendance, none has been consistently successful and none has been effective at all for more than a short period.

After a May 2014 review of records, which served as the District's triennial reevaluation, Parents requested an independent educational evaluation, specifically including a neuropsychological evaluation, with ability, achievement, social and emotional assessments, a functional behavioral assessment (FBA) and a psychiatric examination.

The District filed the complaint in this case to defend its reevaluation, but offered to provide a psychiatric evaluation by a doctor of its choice, as well as a psycho-educational evaluation by a District school psychologist. The District declined to provide either a neuropsychological evaluation or an FBA, contending that neither will yield information that will help the parties solve Student's serious school attendance problem.

For the reasons that follow, the District is ordered to fund independent evaluations in all areas requested by Parents, conducted by evaluators of Parents' choice .

ISSUES

1. Should the School District be required to fund an independent psycho-educational evaluation of Student, including a neuropsychological evaluation and functional behavioral assessment (FBA)?
2. If so, are Parents entitled to their choice of evaluators?
3. Are Parents entitled to choose the psychiatrist who will conduct the psychiatric evaluation that both parties agree is necessary for Student?

FINDINGS OF FACT

Background/Initial Evaluation

1. Student, born [redacted], is [a high school-aged] resident of the School District and eligible for special education services. (Stipulation, N.T. p. 11)
2. Student has been identified as IDEA eligible in the disability category emotional disturbance (ED), in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(4); 22 Pa. Code §14.102 (2)(ii). (Stipulation, N.T. p. 12)
3. Student's primary disability-related issue affecting educational progress has been progressively worsening school attendance since the 2009/2010 school year. The District has also identified educational needs in the areas of work completion, development of coping skills and maintaining focus in the classroom. (N.T. pp. 44, 45, 62, 104; P-7 p. 2)
4. Because of excessive absences from school, Student's academic performance declined significantly during the 2009/2010 school year. Failing grades in several subject areas resulted in Student repeating the year. (N.T. pp. 137, 357, 362; P-2, P-7 pp. 4, 5)
5. Student was first evaluated for a potential disability in the spring of 2011, toward the end of Student's second year of difficulty with attendance. Parents were seeking help for Student due to medical diagnoses of depression and anxiety. The District's reason for proposing an evaluation was to determine whether Student's social/emotional functioning was interfering with academic progress. (N.T. pp. 62, 353—355, 377; P-7 pp. 1, 2, 4)
6. The evaluation included individual cognitive testing with the WISC-IV, which resulted in a full scale IQ score in the average range (104), with some scatter among the index scores, indicating stronger verbal and memory abilities and some difficulty with processing speed. (P-7 pp. 6—8)
7. Despite reports and comments from most core subject teachers that Student was not meeting grade level expectations, was not completing course work, was working and

learning less than peers, and was missing instruction in skills needed for high school, the school psychologist determined that standardized academic achievement testing was unnecessary. (N.T. p. 357; P-7 pp. 2—5, 8, 9)

8. In the evaluation report (ER), the decision not to do academic achievement testing was based entirely on Student's PSSA scores at the Advanced level in reading and math between 3rd grade and the end of 7th grade, and at the Proficient level in writing in 5th grade. The school psychologist also believed that information in Student's records indicated "sound" academic performance, notwithstanding the need to repeat a grade, low grades in the classes that were being repeated and that all available PSSA scores predated the issues that led to the evaluation. (N.T. pp. 358—362, 372, 463; P-7 p. 8)
9. The school psychologist relied on Student's elementary and early middle school records to conclude that Student had no learning disabilities, which she considered an additional reason that academic achievement testing was unnecessary. (N.T. pp. 364—366)
10. The school psychologist acknowledged that standardized achievement tests would have provided specific information concerning Student's academic functioning at the time of the evaluation. (N.T. pp. 387)
11. Knowing that Student had been diagnosed with anxiety, the school psychologist did not want to create a stressful situation by engaging Student in 3—4 hours of standardized individual achievement tests. She did not record any observation of anxiety symptoms during the cognitive testing, and acknowledged that observing whether Student exhibited anxiety during academic achievement testing, which is similar to school-related tasks, might have provided additional insight into the source of Student's anxiety. (N.T. pp. 359, 363—366, 452—454; P-7)
12. In discussions with the school psychologist during the evaluation, Student described concerns about overdue school work, which triggered longer absences because of Student's anxiety over the amount of uncompleted work Student would face upon returning to school. (N.T. p. 457)
13. Student's social/emotional functioning was assessed by means of the BASC-2 rating scale forms completed by both Parents, two teachers and Student. Parents' and Student's scores were elevated in the areas of anxiety and somatization. One of the teacher's ratings were average in all areas, while the other teacher's ratings were elevated on several scales assessing adaptive behavior. (N.T. pp. 376, 377; P-7 pp. 9—13)
14. Parents' general input and Student's interview with the school psychologist described anxiety that interfered with Student's ability to get ready and go to school in the morning, including physical symptoms such as headaches, stomach aches and vomiting. Parents and Student also reported that Student had low self-confidence and low self-esteem. (P-7 pp. 2, 8, 9)

15. The school psychologist noted in the ER that a functional behavioral assessment (FBA) could not be completed because Student was not in school to be observed. She also did not see the need to develop a behavior plan because teachers reported that when able to get to school, Student was polite and respectful to peers and adults, appropriately socialized with peers and appropriately engaged in classroom activities. The school psychologist could not identify a target behavior that occurred in the school setting to address through a behavior plan. (N.T. pp. ; 379—381, 383, 385, 401, 402, 442—445; P-7 pp. 9, 14)
16. The only behavior of concern that the District could identify was Student’s inability to get to school. Although not attending school was the primary interference with Student’s school functioning, whatever behaviors led to Student’s non-attendance were occurring at home. Since the District programs for the school setting, the school psychologist saw no basis for conducting an FBA in the home setting. She noted that both an FBA and a behavior plan are designed to address behaviors that occur in the school setting, not in the home. (N.T. pp. 380—383, 385, 442)

IEPs/Services

17. The parties met in June 2011 to develop an IEP for the 2011/2012 school year. The IEP included a goal for school attendance, a goal for developing strategies to handle feelings of frustration and anxiety in the school setting and a goal for employing “consequence reasoning skills” to determine actions when a “problematic” situation occurred. (N.T. pp. 57, 58; P-10 pp. 12—14)
18. The IEP provided for academic instruction in English and social studies in the emotional support (ES) classroom and all other instruction in the regular classroom. Specially designed instruction (SDI) consisted of copy of a study guide; tests taken in the special education classroom; extended time for tests and long-term projects; opportunities to meet with the case manager and scheduled breaks. (P-10 pp. 15, 20)
19. The next annual IEP, developed in June 2012, contained three different goals, a goal for self-advocacy, a goal for recording long-term assignments in an agenda book and a goal for writing. The SDI and the breakdown of academic instruction in the ES and regular education classrooms remained the same. Group counseling was added as a related service. (N.T. pp. 60, 61; P-14 pp. 9—12)
20. Subsequent IEPs from October and November 2013, June and October 2014 changed the goals to work completion and sustaining attention. Group counseling remained as a related service, and the opportunity to meet with a counselor was added to the SDI beginning in October 2013. The most recent IEP offer in October 2014 included individual counseling as an additional related service. The school attendance goal appeared only in the first IEP. (N.T. pp. 60—63, 76, 78, 84, 102, 103, 115; P-10 p. 12, P-14 pp. 9—11, P-18 pp. 10—12, S-3 pp. 11—13, S-7 pp. 11—13, S-14 pp. 10—12, S-21 pp. 11—13)

21. None of the therapies, home strategies/ supports provided by Parents, and/or the District have been successful in increasing Student's attendance. Student is unable to consistently access services included in the IEP much of the time due to irregular attendance. Student's anxiety and other mental health issues continued to interfere with regular school attendance, to the point that during the 2013/2014 school year Parents and the District considered whether Student should be withdrawn from the District to either pursue a GED or enroll in a cyber school. (N.T. pp. 63, 64, 72—75, 112, 113, 123—125, 399, 400,404, 405, 497, 500—502; S-27)
22. At about the time the initial evaluation was completed in the beginning of April 2011, Student began receiving homebound instruction, which continued for the remainder of the school year and was re-instituted when Student was not attending school for significant periods of time. (N.T. pp. 64, 65; P-7 p. 4)

District Reevaluation

23. In May 2014, the District issued a reevaluation report (RR) that consisted entirely of a review of records, but did not include current teacher observations, since Student was not attending school at the time the report was being compiled. The RR stated that "The IEP team determined that additional data are not needed" because information in the records was sufficient to determine that Student's IDEA eligibility in the ED category continued. Parents were unaware that a reevaluation of any kind was underway until they received the RR. (N.T. pp. 499, 500; S-13 pp. 2, 5)
24. The District did not consider it necessary to conduct a comprehensive reevaluation of Student in 2014 to provide additional information to address Student's school attendance issues because Student's history indicates that Student's inability to attend school regularly arises from a significant mental health condition related to home issues that need to be addressed through psychiatric care. (N.T. pp. 404, 405)
25. The school psychologist who conducted the initial evaluation of Student had no involvement in the May 2014 triennial reevaluation and report (RR). The special education teacher is responsible for drafting triennial RRs unless there are indications that there may be a change in disability status or category. (N.T. pp. 394—396, 414; S-13)
26. Not responding to special education supports is also an indication of the need for a comprehensive triennial reevaluation. (N.T. p. 414)

Parents' IEE Request/District Response

27. In July 2014, Parents, through counsel, submitted a letter requesting that the District fund independent evaluations, including a neuropsychological and a psychiatric evaluation. (N.T. pp. 93, 96; S-16)
28. The District immediately denied the request for an IEE at public expense, but also sent a Parents a PTRE to allow it to conduct a reevaluation, including, *inter alia.*, standardized

assessments of intellectual ability and academic achievement, assessments of social, emotional and behavior development, assessments of executive functioning and processing skills and a psychiatric evaluation. (N.T. pp. 99, 100; S-17, S-18 p. 1)

29. Although issued in response to Parents' IEE request, the July 2014 PTRE stated that the reason for the proposed evaluation was "Parent request for reevaluation." (S-18 p. 1)
30. Although the same school psychologist who conducted the initial evaluation would be responsible for completing the psycho-educational evaluation of Student proposed by the District in July 2014, she had no involvement in drafting the permission to reevaluate, including selecting the areas to be evaluated. (N.T. pp. 405, 406, 427)
31. The District considers a neuropsychological examination to be warranted when there is a concern that a physiological issue is impacting functioning, *e.g.*, a medical condition such as concussion or seizure disorder. Depression is also a physical illness. (N.T. pp. 407—409, 451)
32. Depending upon a student's needs, a neuropsychological evaluation can assess attention, organization, concentration and academic achievement. A neuropsychological evaluation can also provide an in-depth analysis of executive functioning issues/deficits. In the school psychologist's experience, neuropsychological examinations often focus on the impact of physiological processes on executive functioning skills. (N.T. pp. 409, 425, 451)
33. Executive functioning is a global term that encompasses the ability to organize information, initiate and complete tasks, maintain attention, shift to different tasks, monitor and regulate mood. The abilities and skills included in executive functioning impact all aspects of living, not only academics. (N.T. p.451)
34. District staff believes that a neuropsychological evaluation of Student is not needed because Student demonstrates appropriate executive skills in terms of attention and organization and is able to monitor and control emotions and transition between tasks in the school environment when Student does manage to get to school. (N.T. p. 426)
35. The school psychologist did not assess Student's executive functioning at the time of the initial evaluation in 2011 because she saw no indications of teacher concerns with Student's thought processes, attention, distractibility or organization at the times Student was in school. (N.T. pp. 378, 379)
36. Parent (Mother) observed difficulties with Student's ability to plan for, initiate and complete long-term projects for several years. Parent also observed that Student had difficulty with writing and found it stressful. (N.T. pp. 490—493, 495)
37. District staff believes that negative thoughts and emotional preoccupations are so adversely affecting Student's coping and adaptive skills that despite significant educational consequences, *i.e.*, insufficient credits toward graduation, Student is unable

to overcome the anxiety that makes it difficult for Student to leave the house for school and other activities. (N.T. pp. 419, 420, 444, 445)

38. The District had not formally proposed a psychiatric evaluation prior to July 2014, *i.e.*, by means of a PTE/PTRE requesting Parents' permission to for a psychiatric evaluation. New information provided by Parents concerning Student's increasing difficulties leaving the house for any reason was the reason the District gave for proposing a psychiatric evaluation in July 2014. Although the District special education supervisor recalls informal discussions about the possibility of a psychiatric evaluation, Parents have no recollection that a psychiatric evaluation was proposed or discussed prior to July 2014. (N.T. pp. 105, 106, 117, 509)

DISCUSSION AND CONCLUSIONS OF LAW

Legal Standards

IDEA Evaluations/Reevaluations

The IDEA statute and regulations require an initial evaluation, provided in conformity with statutory/regulatory guidelines, as the necessary first step in determining whether a student is eligible for special education services and in developing an appropriate special education program and placement. *See* 20 U.S.C. §1414; 34 C.F.R. §300.8(a). The primary purpose of the initial evaluation is, of course, to determine whether the child meets any of the criteria for identification as a "child with a disability" as that term is defined in 20 U.S.C. §1401 and 34 C.F.R. §300.8, as well as to provide a basis for the contents of an eligible child's IEP, including a determination of the extent to which the child can make appropriate progress "in the general education curriculum." 34 C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

After a child is determined to be eligible, the IDEA statute and regulations provide for periodic re-evaluations, which "may occur not more than once a year unless the parent and public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that an evaluation is unnecessary." 20 U.S.C. §1414(a)(2)(B)(i), (ii); 34 C.F.R. §300.303(b). School districts, however, also have the obligation to "ensure that a

reevaluation of each child with a disability is conducted” at any time “the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child’s parent or teacher requests a reevaluation.” 20 U.S.C. §1414(a)(2)(A)(i), (ii); 34 C.F.R. 300.303(a).

The standards for an appropriate evaluation or re-evaluation, found at 34 C.F.R. §§300.304—300.306, require a school district to: 1) “use a variety of assessment tools;” 2) “gather relevant functional, developmental and academic information about the child, including information from the parent;” 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. 34 C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs, ” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

For a reevaluation, the district must review the existing evaluation data and identify data needed to determine whether the child continues to have a disability, the present levels of academic achievement and related developmental needs of the child, whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet IEP goals. 34 C.F.R.

300.305(a)(1) and (2). A district must also use the data/information it is required to gather to determine whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum. 34 C.F.R. §§300.305(a)(2)(iv).

The evaluation data required for an initial evaluation, however, is not absolutely mandated for a reevaluation “if the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and the child’s educational needs.” 34 C.F.R. 300.305(d)(1). In that event, however, the district “must notify the child’s parents of that determination and the reasons for the determination, and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational needs.” 34 C.F.R. 300.305(d)(1)(i), (ii). Upon such notification, the district is relieved of the obligation to conduct an assessment for continued eligibility and/or to determine current educational needs unless the parents request it. 34 C.F.R. 300.305(d)(2).

Once an evaluation or reevaluation is completed, a group of qualified school district professionals and the child’s parents determine whether he/she is a “child with a disability” and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, the district is required to: 1) “Draw upon information from a variety of sources,” including those required to be part of the assessments, assure that all such information is “documented and carefully considered.” 34 C.F.R. §300.306 (c)(1).

Independent Educational Evaluations

The IDEA also provides that Parents have the right to obtain an independent educational evaluation (IEE) and, if the private evaluation meets the standards of the local education agency

(LEA), and parents share it with the district, to have the evaluation considered in making decisions concerning the provision of FAPE to a child. 34 C.F.R. §300.502(a), (b)(3), (c)(1).

Parents can obtain an IEE at public expense if they disagree with an evaluation obtained by the district and it either agrees to fund the independent evaluation or the district evaluation is found inappropriate by the decision of a hearing officer after an administrative due process hearing. 34 C.F.R. §300.502(b)(1), (2)(ii). Once a parent has requested an IEE, the district “must, without unnecessary delay,” file a due process complaint to show that its evaluation is appropriate or assure that the IEE is provided. 34 C.F.R. §300.502(b)(2)(i), (ii).

An IEE is defined in the IDEA regulations as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” 34 C.F.R. §300.502(a)(3)(i),

Burden of Proof

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. In this case, because the District was required to submit a due process complaint to support the appropriateness of its evaluation after denying Parents’ request for an IEE, the District bears the burden of persuasion.

The burden of persuasion, however, affects the outcome of a due process hearing only in that rare situation when the evidence is in “equipoise,” *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012).

In this case, the burden of persuasion has no effect on the outcome of the case since the evidence at the due process hearing overwhelmingly established that the District's evaluations were insufficient.

Appropriateness of the District's Evaluations/Parents' Entitlement to an IEE

Although the appropriateness of the District's May 2013 reevaluation is most directly at issue as closest in time to Parents' IEE request, it cannot stand alone since it is based entirely upon a review of records. (FF 23) Consequently, the District's initial evaluation was also reviewed to determine whether it met IDEA standards for an appropriate evaluation before considering whether the records review was an appropriate reevaluation.

Overall, the District's position in this matter, as established by the documents and testimony it produced, was circular and contradictory. The testimony of the District witnesses was obviously designed to justify factually and legally indefensible contentions with respect to whether it met the IDEA standards for an appropriate evaluation, for an appropriate triennial reevaluation, and with respect to whether it should fund the independent evaluations requested by Parents. There is no real dispute between the parties that Student was appropriately identified as IDEA eligible due to an emotional disturbance based upon severe anxiety, and that the primary manifestation of Student's disability in the school setting is Student's intractable inability to attend school regularly, regardless of various supports and strategies implemented by both Parents and the District.

The District, however, asserts that on the rare occasions when Student attended school, at least through the end of the 2013/2014 school year, no disability-related issues were evident in the classroom, where it appeared that Student functioned quite well, based on teacher reports compiled when Student was in school long enough and often enough for the teachers to observe

and form an opinion of Student. Nevertheless, the IEPs developed by the District provide for supports and services in the school setting that Student can rarely access due to non-attendance, and that the District, in essence, likely considers unnecessary if Student exhibits no disability-related symptoms at school.

The District argued that there is nothing it can do to address the only disability-related issue affecting Student's education that it has identified, non-attendance, because Student's inability to get to school is based upon a significant mental health issue, debilitating anxiety, that arises only at home. The District's apparent position is that it addresses only emotional and behavior issues that occur in the school setting and affect educational progress.

It is not entirely clear whether the District has a coherent and fully developed theory of its overall IDEA obligations to Student under the circumstances presented here, where out of school matters substantially impact Student's ability to access and benefit from educational services, but that is not the question directly presented by this case. Insofar as the issues in this case are concerned, the District's position is that it fully complied with the evaluation/reevaluation aspects of its IDEA responsibilities by conducting an initial evaluation that resulted in identifying Student as IDEA eligible and by recently determining that Student remains IDEA eligible via a review of records reevaluation.

The legal standards applicable to IDEA evaluations/reevaluations make it clear, however, that determining initial and continuing IDEA eligibility, and identifying a disability category are only the first part of the reason for sufficiently comprehensive initial evaluations and reevaluations. The second important aspect of the evaluation requirements is identifying all of the student's special education and related service needs. In this case, it is obvious that the initial evaluation was not sufficiently comprehensive to fulfill that requirement.

The most significant flaw in the initial evaluation was the District's failure to conduct standardized assessments of academic achievement. (FF 7) The District's reasons for skipping that aspect of an initial evaluation cannot be accepted as reasonable under the circumstances that existed at the time of the initial evaluation in 2011. The school psychologist purportedly saw no reason to administer academic achievement tests to Student because of "sound" academic performance. (FF 8) The initial evaluation, however, was conducted during a school year in which Student was repeating a grade due to failing several subjects in the year the non-attendance problem began. (FF4) Moreover, the initial ER is replete with teacher comments indicating that although Student had the ability to master grade level content, Student's absences were negatively impacting academic performance. (FF 7, 8) The PSSA scores that the District school psychologist believed were an acceptable substitute for the nationally-normed, standardized achievement tests generally included in initial evaluations, in particular, were from tests Student took in the years before the attendance problem arose. (FF 8)

The additional justification the school psychologist offered for not administering standardized achievement tests, a desire not to increase Student's anxiety, is similarly unpersuasive. First, one basis for the District's position that its evaluations were sufficiently comprehensive, and that neither a neuropsychological evaluation nor an FBA are necessary, is the contention that Student's anxiety abates, and Student functions well in the school setting. Since academic achievement tests are similar to school tasks, there is no reasonable basis for assuming that additional assessments would have increased Student's anxiety. In addition the school psychologist noted no anxiety related to the cognitive assessment she administered. (FF 11) She also acknowledged that achievement assessments would have provided information

concerning Student's basic academic skill levels and that displaying anxiety, or not, might have provided some insight into the source of Student's anxiety. (FF 10, 11)

The District school psychologist also saw no reason to assess Student's executive functioning in 2011 because she found no indication of executive functioning issues. (FF 35) Student's Mother, however, noted problems with organization that had persisted for some time, another District witness noted needs in the areas of work completion, coping skills and maintaining focus in the classroom at the time of the initial evaluation. (FF 3, 36) Student's IEP goals and SDI also suggest executive functioning issues, since they include a work completion goal and organizational supports. (FF18, 19, 20)

Since the initial evaluation was not sufficiently comprehensive to fully assess and identify Student's disability-related needs, it follows that the 2014 records review RR was also deficient. Despite even longer periods of absence from school between the initial and reevaluations, and despite never having conducted a full assessment of Student's academic achievement using nationally-normed standardized assessments, District staff concluded that a comprehensive reevaluation was unnecessary. (FF 24) The District assumed that assessment results would have confirmed that Student's academic achievement is commensurate with Student's cognitive ability. That may be true, but standardized achievement test results would provide valuable insight into whether, or how significantly, Student's disability is impacting academic functioning regardless whether the District's assumption proves to be accurate or inaccurate. Without assessments, the impact of Student's non-attendance on academic achievement can only be a matter of surmise and speculation.

The District also attempted to justify its decision not to conduct a comprehensive triennial reevaluation of Student by stating, in essence that it knows that Student's issues are

entirely home-based, so there was no new information to be gathered by a full reevaluation. Clearly, however, that is an assumption that was never tested at any time. According to the school psychologist's testimony, Student expressed school-related anxiety at the time of the initial evaluation. (FF 12) That information was not included in the ER and there is no evidence that such potential source of school-related anxiety was ever explored or addressed.

Full compliance with evaluation/reevaluation requirements is the best means to assure that program and placement decisions for eligible students are based upon sufficient, objective data, not subjective beliefs. There is a very real possibility that an evaluation based almost entirely on past educational records and information conveyed informally by Parents from time to time will be skewed by subjectivity and pre-conceived conclusions, especially when there are no current observations by teachers due to almost constant absence from school.

With or without a comprehensive reevaluation, there is no doubt that Student remains IDEA eligible and continues to need special education and related services. But it is quite possible a comprehensive evaluation may provide insight into whether/how much Student's anxiety is related to fear that Student has reached the point of being unable to "catch up" academically, whether Student's executive functioning ability has been adversely impacted by anxiety or other mental health issues—or whether executive functioning issues are contributing to Student's anxiety, and most important, whether additional information yielded by the evaluations suggest therapeutic or educational approaches that may yield greater success in reducing Student's anxiety to the point of allowing more regular school attendance. It is possible, *e.g.*, that if academic achievement testing reveals, as the District staff believes, that Student's academic achievement is at an average or above average compared to a national sample, such results may relieve some of Student's anxiety. In any event, regardless of results,

or any possible effect on Student, it is important to know where Student stands with respect to basic academic skills as compared to national norms to determine the full academic impact, if any, of Student's non-attendance at school over the past several years.

In short, there is no suggestion in the IDEA statute and regulations that a belief by school staff that they can predict the outcome of an evaluation relieves a school district of the obligation to comprehensively evaluate a student. The IDEA regulations are clearly meant to assure that potentially eligible students receive a fully comprehensive initial evaluation, regardless of the nature of the suspected disabilities and that students who have been identified as IDEA eligible have a real opportunity for a fresh, objective look at educational needs on a regular basis.

IEE Request

After two District witnesses vigorously defended the decisions in both 2011 and 2014 not to conduct fully comprehensive evaluations, the District now asserts that it should be permitted the opportunity to fix its evaluation mistakes by having its school psychologist conduct the full psycho-educational evaluation, including academic achievement testing and assessment of Student's executive functioning—assessments that it did not even realize were needed before Parents requested an IEE. (FF 28)

As a matter of law, fact and common sense, the District's request must be denied. First, there is a district court decision holding that once a school district evaluation is determined to be inappropriate, the district is required by the IDEA statute and regulations to fund an IEE, and a hearing officer may not permit the district another opportunity to conduct its own evaluation instead of providing the IEE. *M.Z. v. Bethlehem Area School District*, 2011 WL 2669248 (E.D. Pa. 2011).

Second, the District in this case had ample opportunity to conduct its own comprehensive evaluations in both 2011 and 2014 and saw no need to do so because it believed it had all the information it needed. In addition, the District still does not believe that either a neuropsychological evaluation or an FBA will provide useful information about Student, although the District school psychologist acknowledged that a neuropsychological evaluation can comprehensively explore executive functioning issues, is warranted when there is a physiological component to a disability, and that depression, with which Student has been diagnosed, has a physiological component. (FF 31, 32, 33, 34) Other areas measured in a neuropsychological evaluation include adaptive behavior/self-help skills, emotional functioning, general intellectual skills and academic achievement, learning and memory, personality and problem-solving. *See, Sattler, J., Foundations of Behavioral, Social, and Clinical Assessment of Children, Sixth Edition, pp. 660, 661 (2014, Jerome M. Sattler, Publisher, Inc.)*

Given the intractable nature of Student's inability to attend school despite almost constant attempts to address the underlying anxiety issues with therapy, it is difficult to understand why the District persists in its position that evaluative information about Student should be limited. Although it is possible that the District is correct, and that even additional information obtained via a neuropsychological evaluation will not ultimately help Student return to school, it is certain that the District does not presently have sufficient information to determine supports and services that might make a difference. The possibility that no information will ever be sufficient to accomplish that is no reason to refuse an evaluation that will include all of the information that the District proposed to obtain through a psycho-educational evaluation plus a more in-depth analysis provided by a psychologist with additional training and access to a broader range of assessments.

Finally, as a matter of common sense, it is unlikely that Parents would accept results from District staff that confirms the District's position that additional assessments will yield no different or additional useful information about Student. The District has, after all, vigorously denied that its evaluations were insufficient, yet now proposes that it provide what it still obviously believes is unnecessary. Permitting the District to conduct an evaluation now will almost certainly result in further controversy if the evaluation results provide no information or recommendations suggesting a new approach to Student's disability-related needs. On the other hand, evaluation results obtained by an evaluator of Parents' choice, even if the results confirm the District's position, will be accepted and provide a better basis for the parties to move in whatever direction the evaluation results suggest.

Psychiatric Evaluation

The parties agree that a psychiatric evaluation of Student should be conducted, but still disagree over whether Parents or District should select the evaluator. Although the District's proposed psychiatric evaluator may do a fine evaluation, it is obvious, as noted above, that Parents are unlikely to accept adverse information from an evaluator chosen by the District. Moreover, the District could have proposed a psychiatric evaluation by the psychiatrist in whom it has such great confidence at any time from 2011 until Parents requested a psychiatric evaluation. The District asserted throughout the hearing that Student's disability is psychiatrically based, but never before sought a psychiatric evaluation.

Parents submitted a proposal by a board certified child/adolescent psychiatrist with experience in evaluating students with complex mental health and special education needs, along with her CV. (P-34) The District was given the opportunity to hold the record open to challenge the psychiatrist's qualifications and proposal but chose not to do so. There is no reason to

conclude that the Parents' choice does not meet District criteria for a psychiatric evaluation, which it did not describe. The District, therefore, will fund the psychiatric evaluation by the evaluator Parents propose.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to take the following actions:

1. Fund independent evaluations of Student as requested by Parents in letters dated July 9 and October 23, 2014 including a psychiatric examination/evaluation, a neuropsychological evaluation and a functional behavioral assessment of Student in the home setting, at school if possible, and/or other locations/settings in order to obtain a full picture of Student's behaviors in various settings.
2. The independent evaluations shall be conducted by evaluators chosen by Parents.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

December 19, 2014