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Pennsylvania

Special Education Hearing Officer

FINAL DECISION AND ORDER

Student's Name: S.F.

Date of Birth: [redacted]

ODR No. 16552-1516AS

CLOSED HEARING

Parties to the Hearing:

Parent[s]

Representative:

Pro se

West Chester Area School District
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Date of Hearing: 07/24/2015

Record Closed: 08/14/2015

Date of Decision: 08/21/2015

Hearing Officer: Brian Jason Ford

Introduction

This special education due process hearing was requested by the West Chester Area School District (District) to determine whether F.F. and J.F. (Parents) are entitled to an independent educational evaluation (IEE) at public expense. The Parents are parents of S.F., who is a child with disabilities. For reasons explained below, I find that the District is not required to pay or reimburse the Parents for an IEE.

I note that the Parents represented themselves without an attorney. I avoid legal terminology as much as possible, and try to explain it when it cannot be avoided.

Issue

Is the District required to pay for an IEE?

Findings of Fact

1. The Student and Parents reside within the District.
2. The District evaluated and reevaluated the Student in 2009, 2012, 2013. (S-4)
3. The District's 2013 evaluation concluded that the Student qualified for special education under the disability category Other Health Impairment (OHI) as a result of the Student's "anxiety and the significant impact it has on [Student's] education..." (S-4 at 25)
4. In 2013, the District's evaluator determined that OHI was a more appropriate category than Emotional Disturbance (ED), because the Student's symptoms were elevated in the months prior to the evaluation, but there was no history of anxiety or depression. (S-4 at 25).
5. Sometime after the 2013 testing, the Student began to attend a private school.
6. The 2014-15 school year was the Student's 8th grade year.
7. Starting in February 2015, the District sought consent to reevaluate the Student. After some discussion about the testing, the Parents provided consent for the reevaluation in March 2015. (S-2).
8. Some time during the 2014-15 school year, prior to the reevaluation, the Student sustained a concussion or concussions. The Student also contracted a respiratory infection during the 2014-15 school year.¹ Both of these caused the Student to miss school, and the private school reduced the Student's workload by 50% so that the Student could catch up with missed work.
9. The reevaluation included a review of existing data, including:
 - A. A review of the prior testing from 2009 through 2013. (S-4 at 3-25).

¹ It appears that these facts are not in dispute. Specific evidence concerning the concussion itself or the infection was not provided, except by reference in other evaluations. This is particularly true of the concussion within the District's vision assessment, S-4 at 48-56.

- B. A review of the Student's attendance records at the private school from late April 2014 through May 2015. This shows eight unexcused absences, 22 excused absences, two days marked just as "Absent," two days that the Student left early, and one day that the Student was late as a result of a transportation problem. (S-4 at 2).²
- C. The results of standardized reading and math tests conducted by the private school in September 2014. At the time of the assessment, the Student was starting 8th grade. On the reading assessment, the Student scored in the average or above average range in all domains. However, the Student was given extra time to answer each question. The Student also scored in the average range on the math assessment. (S-4 at 26-27).
10. After reviewing existing data, the evaluation team determined that additional data was required. (S-4 at 28).
11. The District conducted new testing and obtained new information including:
- A. An interview of the Student. (S-4 at 29)
 - B. An observation of the Student's Reading and Math classes at the private school. (S-4 at 29-32).
 - C. Structured but open-ended input forms completed by the private school's personnel (specifically, the school counselor, reading teacher, math teacher, science teacher, learning specialist, and school nurse). (S-4 at 32-40).
 - D. Curriculum-based, standardized reading and math assessments. (S-4 at 41).
 - E. The Behavior Assessment System for Children, Second Edition (BASC-2), a norm-referenced behavior scale, completed by the Student's reading and math teachers, and the Student's case manager from the private school. (S-4 at 43-44).
 - F. The Woodcock-Johnson III Test of Cognitive Abilities (WJ-III COG) was administered to assess cognitive abilities. (S-4 at 46-48).
 - G. The District conducted a Functional Vision Assessment, as the Student had received vision support in the past. (S-4 at 48-56). Regarding the Functional Vision Assessment, evaluator cautioned that the vision tests must be interpreted with caution, as the Student had recently sustained a concussion and was tested without glasses or contact lenses.³ While the Student expressed a preference for slightly enlarged font, all vision skills were tested within functional limits even without correction. (S-4 at 48-56).
12. Standardized, normative tests were completed under standard conditions. (S-4)

² The Parents argue that the Student's absences are all related to either illness or the concussion. The District's witnesses could not agree or disagree with that claim, but noted that the Student has a history of absenteeism predating the private school placement that was linked to the Student's anxiety.

³ Although testimony is too scant and vague to make a definitive finding, it appears that either glasses or contact lenses had been ordered for the Student but had not arrived by the time of the evaluation.

13. The forms completed by private school personnel, along with less formal conversations between the District and private school personnel reveal that the Student uses a calculator for math, is tested in a quiet room, receives an extra study hall, additional time for tests, printed class notes or guides, preferential seating due to vision weakness, and one-on-one math tutoring. (See S-4 at 56). With these accommodations, and the 50% reduced workload, the Student was meeting or exceeding grade-level expectations at the private school. *Id.*
14. The curriculum-based math testing revealed that the Student was performing in the 25th percentile in math computation and just below the 10th percentile in math concepts and applications as compared to 8th grade spring norms. Results of the curriculum-based reading assessment are not reported. (S-4 at 41).
15. The BASC-2 ratings are typically compared to ratings from the parents. The District provided rating scales to the parents, but they were not returned. The ratings from the private school employees were somewhat variable compared to each other, but generally indicated elevated symptoms of anxiety and somatization (both in the "At Risk" level).
16. The WJ-III COG testing revealed that auditory processing had improved over prior testing and was now in the average range. The same testing revealed a weakness in processing speed, which is consistent with prior testing. Processing speed was the only statistically significant weakness revealed by the testing. All other sub-tests and clusters were in the average range of standard scores. (S-4 at 46-48).
17. Regarding the Functional Vision Assessment, evaluator cautioned that the vision tests must be interpreted with caution, as the Student had recently sustained a concussion and was tested without glasses or contact lenses. While the Student expressed a preference for slightly enlarged font, all vision skills were tested within functional limits even without correction. (S-4 at 48-56).
18. The reevaluation concludes that the Student is a child with a disability, falling under the category of Emotional Disturbance (ED). (S-4 at 57).
19. The District's evaluator concluded that ED, as opposed to OHI, was now the appropriate category for the Student, as the Student's anxiety has now continued over a long time.
20. The RR lists "respects authority," "academic performance," and "strong interpersonal communication skills" as strengths. Listed needs are "visual scanning weakness which [affects] fluency across subjects," "coping skills for anxiety reduction," "time-management for missing assignments," and "transition to post-secondary endeavors." (S-4 at 57).
21. The RR includes recommendations to the IEP team. (S-4 at 58-59). Included with those recommendations is the conclusion that the Student is not eligible as a student with a Visual Impairment and that the Student "does not demonstrate adverse educational impact resulting from [Student's] vision and does not require specially designed instruction in this domain to make appropriate educational progress." (S-4 at 58).
22. Other recommendations in the RR (S-4 at 58-59) include:
 - A. Placement in the District's high school with access to an Emotional Support program.

- B. Placement in a study skills class or directive study hall to mirror a period at the private school that the Student uses to organize assignments, seek clarification from teachers, and make up missing work.
 - C. A curriculum that teaches coping strategies for dealing with social anxiety and peer conflict.
 - D. Extended time on tests.
 - E. Testing in a quiet location.
 - F. Providing teacher notes or study guides.
 - G. A prompt from the teacher so that the Student will know in advance that the teacher will call on the Student.
 - H. Teacher-initiated checks for comprehension.
 - I. Development of a college transition plan, based on assessments to be conducted by a guidance counselor.
23. The RR concludes that the Student is not eligible as a student with a specific learning disability for this reason:
- Cognitively, Student's performance produces an overall cognitive profile in the Normal range compared to same-grade peers, with one exception: Student's Visual processing speed is a factor of [Student's] cognition that results in laborious performance on timed tasks to require visual scanning. Student's results on this task fall into the normative weakness range compared to same age peers. Certainly, this cognitive processing weakness adversely impacted student's performance of math fluency; however, special education eligibility does not include this domain as a category of eligibility should be considered by the IEP Team. (S-4)
24. The Parent testified and argued throughout these proceedings that to whatever extent the Student's primary disability (whether OHI or ED) is a function of anxiety, that anxiety is a result of poor treatment at the hands of the District prior to enrollment in the private school. (NT *passim*).
25. The Student understood that the District's evaluation was conducted by District personnel. This fact produced some anxiety during testing. (S-4).

Discussion

While the scope of this hearing is narrow, it is important to understand the broader context of this case. The history between the parties has brought the Parents to a point where they distrust the District and, whether justified or not, believe that any evaluation performed by the District will be skewed and motivated by an improper purpose. Further, discord about the Student's program and placement is brewing. The Parents are happy with the Student's private school placement, and view the District's evaluation as the beginning of the end of that placement.

The issue that I must resolve, however, is limited to the question of whether the District must fund an IEE. Questions of how that IEE will ultimately be used are not before me, and I can only address the issues that are raised in the District's complaint.⁴

Special education laws and regulations set the framework to determine whether parents are entitled to an IEE at public expense. In this case, "at public expense" means at the District's expense. The law in question is the Individuals with Disabilities Education Act (IDEA).⁵ Under the IDEA, parents have the right to request an IEE at public expense if they disagree with a school district's evaluation.⁶ When parents request an IEE at public expense, the school district must either agree to pay for the evaluation or request a due process hearing.⁷ If the school district requests a due process hearing, it must prove that its evaluation is appropriate.⁸

The IDEA and its regulations also set a framework for evaluations and reevaluations.⁹ If the District's reevaluation complies with the IDEA's requirements, it is appropriate. Those criteria are numerous, and the Parents do not highlight any particular standard that they believe the District violated. But they do not have to – the Parents do not have to prove anything at all. Instead, the District must prove that its evaluation is appropriate.

The IDEA's criteria for reevaluations are substantively the same as for initial evaluations. I reference criteria for initial evaluations in this decision because in this case there is no difference.

The IDEA establishes two purposes for the reevaluation: to determine whether the Student is a child with a disability, and to determine the Student's educational needs.¹⁰ The District must use assessment tools and strategies that enable the IEP team to determine an appropriate educational program and help the Student participate in the general education curriculum.¹¹ The purpose of assessment tools and materials is to obtain accurate information on what the Student knows and can do academically, developmentally and functionally.¹²

⁴ See 20 U.S.C. § 1415(f)(3)(B), which prohibits parties from raising issues that are not plead.

⁵ 20 U.S.C. § 1400 *et seq.*

⁶ 34 C.F.R. § 300.502(b)(1)

⁷ 34 C.F.R. § 300.502(b)(2)(i)-(ii)

⁸ 34 C.F.R. § 300.502(b)(2)(i). Also, as the party requesting this hearing and, technically, seeking relief in the form of an order concluding that it need not fund an IEE, the burden of proof is assigned to the District. The District must meet this burden by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

⁹ 20 U.S.C. § 1414.

¹⁰ 20 U.S.C. §1414(a)(1)(C)(i)

¹¹ 20 U.S.C. §1414(b)(1)(A)(ii) and (B)

¹² 20 U.S.C. §1414(b)(3)(A)(ii).

The Student must be assessed in all areas of suspected disability.¹³ The assessments must account for the Student's social and emotional status.¹⁴ Assessments and other evaluation materials must be tailored to assess specific areas of educational need.¹⁵

The District must use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. No single measure or assessment can be used to determine eligibility or an appropriate program. Those tools (that is, the tests and assessment instruments) must be technically sound, used for their intended purposes, administered by trained and knowledgeable personnel in accordance with the publishers' instructions, and must assess the relative contribution of cognitive and behavioral factors. The purpose of assessment tools and materials is to obtain accurate information on what the Student knows and can do academically, developmentally and functionally.¹⁶

The District must also review classroom-based assessments, state assessments and observations of the child by teachers and related service providers.¹⁷ Similarly, the District must solicit and include parental input in the reevaluation.¹⁸

Ultimately, the evaluation must present information that will help the IEP team determine the content of the Student's IEP.¹⁹ To do this, the evaluation must be sufficiently comprehensive to identify all of the Student's special education and related service needs.²⁰

I find that the District's reevaluation satisfies all of the foregoing criteria. Multiple, technically sound instruments were used for their intended purposes by trained personnel in conformity to publisher's guidelines.²¹ The District collected and included information from the Student's teachers and counselor at the private school, and solicited parental input (although the Parents did not return the BASC-2).²² The evaluation in its entirety was calculated to obtain an accurate picture of the Student's current functioning, and resulted in a trove of valuable information for the Student's IEP team.²³

While the evidence of the reevaluation's appropriateness is preponderant, I will address the Parents' evidence and arguments. First, the Parents argue that the reevaluation itself was a source of stress for the Student and, consequently, the reevaluation's findings are inaccurate. There is some evidence to suggest that the reevaluation itself was stressful. However, based on the record of this case, I do not find that the Student's anxiety invalidated any test results. Moreover, the Parent testify that the Student is anxiety-free at the private school, and that only

¹³ 20 U.S.C. §1414(b)(3)(B)

¹⁴ 34 C.F.R. §300.304(c)(4)

¹⁵ 34 C.F.R. §300.304(c)(2)

¹⁶ 20 U.S.C. §1414(b)(2)(A); 34 C.F.R. §300.304(b); 20 U.S.C. §1414(b)(2)(C); 20 U.S.C. §1414(b)(3)(A)(ii)

¹⁷ 20 U.S.C. §1414(c)(1)(A)(ii),(iii); 34 C.F.R. §300.305(a)(1)

¹⁸ 20 U.S.C. §1414(c)(1)(A)(i); 34 C.F.R. §300.305(a)(1)(i);

¹⁹ 34 C.F.R. §300.304(b)(1); *see also Brett S. v. West Chester Area School District*, No. 04-5598 (E.D. Pa., March 13, 2006), at 25.

²⁰ 34 C.F.R. §300.304(c)(6)

²¹ FF 11, 12.

²² FF 11, 15.

²³ I note, again, that the appropriateness of any decisions based on the reevaluation is a subject that falls outside the scope of this hearing.

the District's intrusion prompted an anxiety response. This is not consistent with what the private school personnel reported to the District both informally and on the BASC-2.

Second, the Parents argue that the District's evaluation is somehow inherently biased or used for an improper purpose. While I acknowledge the negative history between the parties, the Parents' concerns about the District's bias are not supported by the record before me.

Conclusion

The District has established by preponderant evidence that its reevaluation satisfies all legal requirements. Consequently, the reevaluation is appropriate and the District need not fund an IEE at public expense.

ORDER

Now, August 21, 2015, it is hereby **ORDERED** as follows:

1. The District is not required to fund an independent educational evaluation for the Student.
2. Nothing in this Decision and Order prohibits the Parents from obtaining an independent educational evaluation at their own expense. If the Parents obtain such an evaluation, the District is obligated to consider that evaluation when developing the Student's program and placement.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER