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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: A.G.

Date of Birth: [redacted]

Date of Hearing: February 11, 2016

CLOSED HEARING

ODR Cases #17271-1516AS

Parties to the Hearing:

Parent[s]

Marple-Newtown SD
40 Media Line Road
Newtown Square, PA 19073

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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Media, PA 19063

February 11, 2016

March 6, 2016

Jake McElligott, Esquire

INTRODUCTION

[The student] (“student”)¹ is [an early teenaged] student residing in the Marple-Newtown School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA)². The student has been identified under the terms of IDEIA as a student with specific learning disabilities.

The student was initially evaluated, and identified as a student who required special education under the IDEIA, in December 2011. The District, as required, re-evaluated by the District in December 2014. In November 2015, the student’s parents requested an independent educational evaluation (“IEE”) at public expense. While the parties attempted to see if an IEE at public expense could be arranged, ultimately those attempts were unsuccessful. Pursuant to 34 C.F.R. §§300.502(b)(1),(2); 22 PA Code §14.102(a)(2)(xxix), then, the District filed the special education due process complaint which led to these proceedings.

For the reasons set forth below, I find in favor of the District. The December 2014 District re-evaluation report is appropriate.

¹ The generic “student”, and gender-neutral pronouns will be utilized throughout the decision to protect the student’s confidentiality.

² 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* 24 PA Code §§14.101-14.162.

Although the District need not provide an IEE at public expense pursuant to 34 C.F.R. §§300.502(b)(1),(2); 22 PA Code §14.102(a)(2)(xxix), however, the hearing officer feels the parties may be well-served by an independent evaluator providing a neutral evaluation of the student for consideration by the student’s individualized education program (“IEP”) team. Therefore, under a hearing officer’s authority pursuant to 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the District must provide an option to the parents for an independent evaluation at public expense.

ISSUE

Did the District evaluation process and re-evaluation report of December 2014 meet its obligations to the student under IDEIA?

FINDINGS OF FACT³

1. The student was initially evaluated by the District in December 2011. (Parents’ Exhibit [“P”]-1).
2. In the December 2011 evaluation report (“ER”), the student was identified as a student eligible for services under IDEIA, specifically

³ Certain findings of fact were stipulated to, and drafted by, the parties. These findings of fact are noted by reference to hearing Officer Exhibit-1. The hearing officer, having reviewed the stipulations of the parties, accepts the stipulated findings of fact as drafted. For stylistic consistency with his decision-writing, certain stylistic changes, however, have been made.

- as a student with specific learning disabilities and speech/language impairment. (P-1).
3. The December 2011 ER included parent background information and input, classroom observation, teacher input, and formal assessments. (P-1).
 4. Cognitive testing assessed the student's full-scale IQ as 83, in the low average range. (P-1).
 5. The formal assessments indicated that the student had needs in reading comprehension and math problem-solving. The student also showed needs in memory. (P-1).
 6. The December 2011 ER contained emotional/social/behavioral assessment. Across two instruments with different score measures, the parent report did not indicate any clinically significant or very elevated scores. One teacher indicated that the student was at-risk, and very elevated, for learning problems. A second teacher indicated clinically significant scores in anxiety, withdrawal, and functional communication, as well as nine additional scores as at-risk (including learning problems); the second teacher indicated very elevated scores in inattention, learning problems/executive functioning, learning problems, executive functioning, peer relations, and attention deficit hyperactivity disorder ("ADHD")/inattention. (P-1).

7. The student had received private speech and language services in 2007. In a 2008 evaluation, the District determined the student did not qualify under IDEIA as a student with speech and language impairment. The December 2011 ER contained speech and language assessments. The speech and language evaluator in the December 2011 ER determined that the student qualified as a student with a speech and language impairment in expressive and receptive language. (P-1).
8. The December 2011 ER concluded that the student difficulties with reading comprehension and math problem-solving, undergirded by deficits in memory. The student was identified as having a speech and language impairment. Given the variability in social/emotional/behavioral assessments, and the characterization of observable behavior affect, the evaluator recommended consideration of individual school counselor support. (P-1).
9. The December 2011 ER determined that the student was a student with specific learning disabilities in reading comprehension and mathematics, as well as a speech and language impairment. The December 2011 ER recommended special education for the student in the form of learning support and speech/language support. (P-1).

10. In June 2013, the student met the speech and language goals in the IEP at that time and was exited from speech and language support. (School District Exhibit ["S"]-12).
11. In December 2014, the student was re-evaluated as part of the required triennial re-evaluation process for any student with a disability under IDEIA. (P-3; S-4).
12. The December 2014 re-evaluation report ("RR") included a review of the December 2011 ER. (P-3; S-4).
13. The December 2014 RR included parent input and results of the Pennsylvania System of State Assessment scores for 3rd, 4th, and 5th grades (the student was "Below Basic" in 5th grade math, "Below Basic" in 3rd grade reading, "Basic" in 4th and 5th grade math, "Basic" in 3rd grade science, and "Basic" in 5th grade writing). (P-3; S-4).
14. On assessments of the student's reading in the fall of 2014, the student continued to show needs in reading in the areas of comprehension and inferencing. (P-3; S-4).
15. The student's grades ranged from C- to B. (P-3; S-4).
16. The December 2014 RR included the input of multiple teachers. The student's strengths, as indicated by teachers, included working hard and completing tasks, participation, friendliness, respectfulness, willingness to help, and preparedness. The student's needs included math facts, frequent check-ins, re-

- reading of math problems, understanding material, focus during direct instruction, communication (self-advocacy, asking questions, working with peers), and additional tutoring in reading. (P-3; S-4).
17. The December 2014 RR contained additional assessments of the student's memory and achievement. (P-3; S-4).
 18. The student's scores on the memory assessment was overall in the low average range, with the lowest scaled scores in story memory and story memory recall. (P-3; S-4).
 19. The student's scores on the achievement assessment revealed difficulties in oral language with following directions or the oral presentation of information, difficulties in reading comprehension, and difficulties in mathematics reasoning and problem-solving (especially as complexity increased and multi-step solutions were required). (P-3; S-4).
 20. The December 2014 RR continued to identify the student as a student with specific learning disabilities in listening comprehension, reading comprehension, and mathematics calculation/reasoning. (P-3; S-4).
 21. Following the December 2014 RR, the District recommended that the student continue with special education supports through an IEP, a recommendation which the parents approved. (S-6).

22. The District school psychologist who drafted and issued the December 2014 RR testified extensively about her evaluation process and the drafting/issuance of the RR. This testimony was credible and accorded heavy weight. (Notes of Testimony ["NT"] at 27-99).
23. On November 2, 2015, the student's parents requested, through counsel, a comprehensive independent neuropsychological evaluation and speech and language evaluation. (Hearing Officer Exhibit ["HO"]-1; S-7).
24. On November 3, 2015, the District responded, agreeing to fund an independent evaluation and included a list of several possible evaluators. (HO-1; P-7).
25. On November 6, 2015, the parents, through counsel, responded by indicating that they wanted the independent neuropsychological evaluation to be conducted by one of three named evaluators. (HO-1; P-8).
26. Thereafter, the District responded that it would agree to fund an evaluation by one of the parents' proposed evaluators, who later advised that she could not conduct the IEE. (HO-1; P-8).
27. The parents, through counsel, notified the District that this evaluator could not conduct the IEE, and requested that a second evaluator from the parents' list conduct the IEE. (HO-8).

28. Thereafter, the District responded by agreeing to an evaluation by the second evaluator, who also later advised that he could not conduct the IEE. (HO-1).
29. Based upon concerns expressed to the parents by the second of these evaluators, the parents renewed their request, through counsel, for an independent speech and language evaluation and requested specific speech and language evaluators. As a compromise, the District agreed to conduct a speech and language evaluation and have the [local] Intermediate Unit conduct an evaluation for central auditory processing disorder, and to continue to fund an independent neuropsychological evaluation. Such an agreement, however, was not finalized between the parties because the parents requested that the IEE be conducted by a third, specifically identified evaluator. The District advised parents that it would not agree to fund an evaluation by this evaluator. (HO-1; P-14).
30. On or about January 21, 2016, the District filed the special education due process complaint in defense of its re-evaluation process and the December 2014 RR, the complaint which led to these proceedings. (HO-1).
31. The student's mother testified about her child and the concerns the family has with the December 2014 RR in conjunction with its request for an IEE at public expense. This

testimony was credible and, in terms of the family's view, was accorded weight as to those views. (NT at 101-137).

DISCUSSION AND CONCLUSION OF LAW

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), a student must be undergo an appropriate evaluation process for initial services and, once identified as an eligible student under IDEIA, must be re-evaluated periodically to make sure the student's IEP has a period sense of the student's strengths and needs, at a minimum once every three years. (34 C.F.R. §300.303; 22 PA Code §§14.102(a)(2)(xxv), 14.124).

Where the family of a student disagrees with the evaluation process and/or evaluation reports issued by a school district, the family may request an IEE at public expense. (34 C.F.R. §§300.502(a),(b); 22 PA Code §14.102(a)(2)(xxix)). When faced with a request for an IEE at public expense, the school district must either (a) provide the IEE at public expense or (b) file a special education due process complaint in defense of its evaluation. (34 C.F.R. §§300.502(b)(1),(2); 22 PA Code §14.102(a)(2)(xxix)). The District in this matter has chosen the latter option.

For a school district evaluation or re-evaluation to be appropriate, the evaluation must, among many more detailed requirements, 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....”. (34 C.F.R. §§300.304(b)(1) and *see generally* 34 C.F.R. §§300.304(a),(c), 300.305-300.311; 22 PA Code §§14.102(a)(2)(xxv, xxvi)).

Here, the December 2014 RR was appropriate. The evaluator comprehensively reviewed the December 2011 ER and took input from the parents and teachers. The December 2014 RR included assessment data in reading and standardized assessment data in memory and student achievement. In gauging the student’s past evaluation history, gauging what the parents and teachers contemporaneously knew about the student, and supplementing those understandings with formal assessment data, the December 2014 RR placed the student’s IEP team in a position to continue to provide appropriate programming for the student. Indeed, a comparison of the two evaluations—December 2011 and December 2015—supports the finding that the student’s educational needs were consistent across those years, and that the District appropriately recognized those needs.

Nothing in this decision should be read to diminish parents’ concerns with the District’s December 2014 RR. The record taken as a whole, including the documentary evidence and the testimony of the District school psychologist, though, support a finding that the District

has met its burden of proof regarding the appropriateness of the December 2014 RR.

Having found that the District's December 2014 RR was appropriate, however, the demeanor of the student's mother during her testimony leads this hearing officer to believe the relationship of the parties is at a potential inflection point. While the record in this matter, given the focused nature of the issue, is condensed, it appears the parties may be on the cusp of an ongoing dispute. This, however, may not be the case, and there may be a meeting of the minds on the future trajectory of the parties' collaboration over the student's IEP and educational program generally.

Thus, it is the considered opinion of this hearing officer that, even though December 2014 RR is appropriate and the District has met its burden of proof on a claim pursuant to 34 C.F.R. §§300.502(b)(1),(2)/22 PA Code §14.102(a)(2)(xxix), the parties may be well-served by an independent evaluator providing a neutral evaluation of the student for consideration by the student's IEP team. It will either be a helpful signpost on a journey which is collaborative, or an important independent voice should the stance between the parties deteriorate. Either way, it may help the parties move forward on a level of trust that will serve well the parties, and more importantly the student, as they seek to understand and to program for the student's needs.

Accordingly, under the hearing officer's authority to order an evaluation pursuant to 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the order will structure a process by which the parents will have an option for an independent evaluator to issue a report by hearing officer directive.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above:

The December 2014 re-evaluation report is appropriate. The District need not provide an IEE at public expense pursuant to 34 C.F.R. §§300.502(b)(1),(2)/22 PA Code §14.102(a)(2)(xxix).

Pursuant to the authority of a hearing officer as granted in 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), it is ordered that:

- On or before Wednesday, March 16, 2016, the District's supervisor of special education shall provide, through email communications of the parties' counsel, the names and contact information of a minimum of three, but no maximum number, independent evaluators experienced in conducting comprehensive psycho-educational evaluations for educational

programming (“independent evaluator[s]”), to make themselves available to conduct an independent evaluation at District expense.

- On or before Monday, April 4, 2016, the student’s parents may, if they wish, select one of the independent evaluators to conduct an independent evaluation, the indication to be communicated through email by the parties’ counsel.
- If parents select one of the independent evaluators, the cost of the independent evaluation shall be at the evaluator’s rate or fee and shall be borne by the District at public expense.
- The input, assessments, scope, details, findings and recommendations of the independent evaluation report shall be determined solely by the independent evaluator. Notwithstanding the provisions of this paragraph, observations by the independent evaluator shall be only school-based and shall not take place in the home environment.

- After the independent evaluator has issued the independent evaluation report 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 evaluator in the IEP team meeting (making scheduling accommodations for his/her participation as necessary). The District shall bear any cost, or rate, for the appearance of the independent evaluator at the independent evaluation IEP meeting.
- The terms of this order regarding the involvement of the independent evaluator shall cease after the independent evaluator has 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 evaluator as both parties may mutually agree and may make arrangements therefor.

- If parents do not wish to select one of the independent evaluators, or wish to secure their own evaluation at private expense pursuant to 34 C.F.R. §300.502(b)(3)/ 22 PA Code §14.102(a)(2)(xxix), they may so indicate by April 4th through email communications of the parties' counsel, and the District is not obligated to provide an independent evaluation under the terms of this order.
- If the parents have not provided through email communications of the parties' counsel by April 4th any indication as to the independent evaluator list, the District is not obligated to provide an independent evaluation under the terms of this order.

Nothing in this order should be read to limit or interfere with the ability of the IEP team, by agreement of the student's parents and the District, to alter the explicit directives of this order related to the independent evaluator and/or evaluations, or the independent evaluation IEP team meeting.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

March 6, 2016