

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

DUE PROCESS HEARING

Name of Child: F.C.
ODR #2061/10-11-AS

Date of Birth:
[redacted]

Date of Hearing:
July 29, 2011

CLOSED HEARING

Parties to the Hearing:
Parent[s]

Representative:
Pro Se [Did Not Appear]

Chester Community Charter School
302 E. 5th Street
Chester, PA 19013

Gabriele Sereni, Esquire
Raffaele & Puppio
19 West Third Street
Media, PA 19063

Date Transcript Received:

July 29, 2011

Date Record Closed:

July 29, 2011

Date of Decision:

August 2, 2011

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

Student is an elementary-school-aged child enrolled in regular education in the Chester Community Charter School (hereinafter School). Because of behaviors Student is exhibiting in the school setting the School has sought permission to evaluate Student in order to assist in developing an appropriate program. As Student's mother (hereinafter Parent) refused to give her permission for an evaluation to be performed, the School requested this due process hearing.

The Parent did not respond to an email sent by the hearing officer on July 6th inquiring about a possible medical issue that might delay the hearing. The Parent did not respond to an email sent by the hearing officer on July 20th inquiring about the status. On July 20th a courier engaged by the School's counsel dropped off the exhibit packet needed for the hearing to the Parent's home, leaving it in the door as instructed by a household member. [NT 15-16; S-23] On the morning of the hearing when the Parent did not appear, the hearing officer contacted the ODR case manager by email and by voicemail to see if the Parent had called to ask for a rescheduling. The case manager informed the hearing officer by email that ODR had received no communication from the Parent. The hearing officer called the telephone number listed for the Parent and left a voicemail informing her that the hearing would proceed. The Parent did not contact the hearing officer that morning and had not appeared by the time the hearing session had ended. As per protocol the hearing was declared "Closed". As of the writing of this Decision the Parent has not contacted the hearing officer.

Issue

Should the Charter School's request for an Order to perform a multidisciplinary evaluation of Student over the objections of the Parent be granted?

Findings of Fact

1. Student has been attending the School since kindergarten. In October 2010 Student was placed in the School's TAAAS program, developed for students who are having behavior difficulties in the regular classroom. The program is supported by [a behavioral health agency] which supplies behavior specialists and clinical specialists. [NT 50-51]
2. TAAAS is a point and level system, wherein the students have certain rules and procedures that they have to follow, and they have a behavior chart that goes along with these requirements. Students are in the TAAAS program full-time, although they have lunch, gym, and recess with the rest of the student body. [NT 51, 53-54; S-20]

3. Although Student has good and bad days, Student has consistently engaged in various inappropriate behaviors in school, even after being placed in the TAAAS program. Student has been easily “set off”, has been violent, has been disruptive and hard to control and has used foul and violent language. Student has thrown furniture, hit smaller children, fought children who were two to three years older, tried to hit the principal, the teacher, the assistant teacher, the [behavioral health agency] staff or whoever was trying to control Student. Student tried to elope from the classroom or the building many times. Student stood out from the other children in the TAAAS program. Student’s disciplinary record extends from the 2008-2009 school year through the 2010-2011 school year. [NT 64-74, 86-87; S-2, S-3, S-11]
4. On May 20, 2011 Student eloped from the cafeteria, went to the classroom and took some items and change, and when confronted became belligerent and needed to be taken to the positive behavior support room. Student was unable to calm down, throwing things, attempting to rip things off the wall, attempting to choke self and attempting to jump out a second story window. As the Parent could not come to pick Student up the police needed to be called to take Student to the emergency room. Student said to the police officer, "Can you just give me your gun so I can shoot everybody in the room?" [NT 80-83, 89-90]
5. On May 11, 2010 the School issued a Permission to Evaluate form; the Parent did not give her consent to the proposed evaluation. [NT 40; S-6]
6. On May 13, 2010 the Parent created her own Permission to Evaluate form and signed it on May 13, 2010 giving consent for specific tests she listed. However the Parent later contacted the School and rescinded her permission. [NT 45-46; S-7]
7. On May 6, 2011 the School issued another Permission to Evaluate form; the Parent did not receive this form. [NT 41-42; S-12]
8. On May 16, 2011 the School re-issued the Permission to Evaluate form; a teacher handed it to the Parent. The form was not received back by the School. [NT 43; S-13]
9. On July 13, 2011 the School issued one more Permission to Evaluate form. It was not returned to the School. [NT 46; S-17]
10. Because of trust issues between the Parent and the School, the School has offered to have the evaluation performed by an independent psychologist who is not affiliated with the School. [NT 19, 47-50]
11. Although her clear preference is to interview the Parent as part of her evaluation of Student, when provided with School records, including an abridged copy of an

evaluation dated 4-1-10 from a child and family service agency, the independent evaluator is willing to conduct an evaluation of Student. [NT 19-35; S-9]

Discussion and Conclusions of Law

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) which took effect on July 1, 2005. 20 U.S.C. § 1400 *et seq.* The IDEA sets forth the responsibilities (commonly referenced as “child find” responsibilities) borne by Local Educational Agencies including school districts and charter schools, for identifying which children residing in its boundaries are in need of special education and related services such that “[all] children with disabilities residing in the State...regardless of the severity of their disabilities...are identified, located and evaluated...” 20 U.S.C. §1412(a)(3). Parents do not have a duty to identify, locate, or evaluate their child pursuant to IDEA. This obligation falls squarely upon the district. Hicks, ex rel. Hicks v. Purchase Line School Dist. 251 F.Supp.2d 1250, 1253 (W.D.Pa., 2003), citing, M.C. v. Central Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir.1996).

In the discharge of its Child Find obligations, the IDEA requires a local educational agency to conduct a “full and individual initial evaluation” 20 U.S.C §1414(a)(1)(A). The purpose of assessment tools and materials is to obtain “accurate information on what the child knows and can do academically, developmentally and functionally” 20 U.S.C. §1414(b)(3)(A)(ii). The child must be “assessed in all areas of suspected disability.” 20 U.S.C. §1414(b)(3)(B). The regulation implementing this statutory requirement adds that this includes “social and emotional status” 34 C.F.R. §300.304(c)(4). The evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs” 34 C.F.R. §300.304(c)(6).

Regarding parental consent, the IDEA provides that, if a parent refuses consent to an evaluation sought by the local educational agency, then the agency may seek authorization by way of a request for due process. 20 U.S.C. §1414(a)(1)(D)(ii)(I). See also, 20 U.S.C. §1415(b)(6)(A) (permitting due process complaint by any party “with respect to any matter relating to the identification, evaluation [or placement] of the child”) Thus, due process is available to the local educational agency in order to “override” parental refusal to consent to a re-evaluation. 34 C.F.R. §300.300(c)(1)(ii); §300.300(a)(3). The School was within its rights to seek the order of this hearing officer that it proceed with an evaluation of Student.

The United States Supreme Court has held that the IDEA does not alter the traditional rule that allocates the burden of persuasion to the party that requests relief from the tribunal. Thus, the moving party must produce a preponderance of evidence.¹ Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). See also L.E. v. Ramsey

¹ A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810.

Board of Education, 435 F.3d 384, 392 (3d Cir. 2006). Having requested this hearing, the School had the obligation to present a preponderance of evidence in support of its position. As the Parent failed to appear at the hearing, no counter evidence was presented, and thus the School would prevail. However, I find that the School prevails not only because there was no evidence from the Parent, but also because its evidence was compelling. Student's behavior warrants a full and complete evaluation and I will so order.

Order

It is hereby ordered that:

1. The Charter School is ordered to provide or procure an evaluation of Student, including psychological and psychiatric components. This evaluation is to be conducted despite the objections of the Parent.
2. If Student should disenroll from the School prior to the evaluation's being completed, this Order shall stand if and when Student returns to the School.

August 2, 2011

Date

Linda M. Valentini, Psy.D., CHO

Linda M. Valentini, Psy.D., CHO
PA Special Education Hearing Officer
NAHO Certified Hearing Official