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## **Pennsylvania Special Education Hearing Officer**

### **Final Decision and Order**

#### **CLOSED HEARING**

ODR File Number 20840-17-18

**Child's Name:** J. Q.

**Date of Birth:** [redacted]

**Date of Hearing:**

07/24/2018

**Parents:**

[redacted]

*Pro Se*

[redacted]

*Pro Se*

**School District:**

Stroudsburg Area School District, 123 Linden Street  
Stroudsburg, PA 18360

Kristine Roddick, Esquire, One West Broad Street – Suite 700  
Bethlehem, PA 18018  
*Counsel for the LEA*

**Hearing Officer:** Michael J. McElligott **Date of Decision:** 08/07/2018

## **INTRODUCTION**

Student (“student”)<sup>1</sup> is an elementary school age student who resides in the Stroudsburg Area School District (“District”). With parents holding differing views on whether the District can proceed with a comprehensive psycho-educational evaluation of the student to see whether the student qualifies as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>2</sup>, the District seeks through special education due process a hearing officer’s order as to whether it may proceed with the evaluation.

The student’s father has provided consent for the District to proceed with an evaluation of the student. The student’s mother has withheld consent for an evaluation and vigorously voiced disagreement with the notion of an evaluation. The relationship between the parents is contentious. On June 18, 2018, the District filed the complaint at this file number, seeking an order from a special education hearing officer before it might undertake the evaluation.

As set forth below, the undersigned hearing officer finds in favor of the District. This final decision and order makes concrete an oral order, issued on the record at the conclusion of the hearing session on July 24, 2018.

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<sup>1</sup> The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

<sup>2</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

## **ISSUES**

Can the District proceed  
with a comprehensive evaluation of the student?

## **FINDINGS OF FACT**

### Kindergarten

1. In the past, the student's family situation has been unstable. The student currently resides with father, who has physical custody of the student. (School District ["S"]-2; Notes of Testimony ["NT"] at 54).
2. In the fall of 2013, at the outset of the student's kindergarten year, the student had only recently been removed from the physical custody of the mother and placed in foster care. (S-2 at page 1).
3. In the fall of 2013, the student was 5 ½ years old. The student exhibited significant delays. The student was very quiet, spoke only one word, and did not socialize. The student was underweight, was not eating solid food, and was not potty-trained. The student could not communicate regarding wants and needs. (S-2).
4. In October 2013, the student underwent a psychiatric evaluation by the local intermediate unit ("IU"). By that time, the student had been in foster care and saw marked developmental improvement across all domains. (S-2).
5. In November 2013, the District conducted a comprehensive psychoeducational evaluation of the student and issued an evaluation report ("ER"). (S-3).
6. The November 2013 ER indicated that the student exhibited extensive needs in the educational environment. Given the severe speech and language deficits of the student, however, the evaluator noted that results of assessments in the ER were not necessarily reliable and should be viewed with extreme caution. (S-3; NT at 15-16).
7. The November 2013 ER identified the student as a student with speech and language impairment, with recommendations to address the student's significant language deficits. (S-3).

### 1<sup>st</sup> and 2<sup>nd</sup> Grades

8. The student continued to receive speech and language services, as well as academic support, over the remainder of kindergarten, 1<sup>st</sup> grade, and 2<sup>nd</sup> grade. The student was placed in the District's response-to-intervention program ("RTI") for academic support and behavioral support. (S-4, S-6 at page 7; NT at 17-22).

### 3<sup>rd</sup> Grade

9. In November 2016, in the student's 3<sup>rd</sup> grade year, the District issued a re-evaluation report ("RR"), updating its assessments in speech and language. The November 2016 RR recommended that the student continue to be identified as a student with a speech and language impairment and continue to receive response-to-intervention support. (S-4).
10. Due to inattention and perceived difficulty with directions, the District engaged with the IU to perform a screening in central auditory processing. (S-4, S-5).
11. In December 2016, the IU issued the central auditory processing screener, recommending that the student undergo a comprehensive central auditory processing evaluation to see if the student might have a central auditory processing disorder ("CAPD"). (S-5).
12. The District decided to keep the student in RTI and to monitor the student's academic and behavioral needs. (S-6, S-7; NT at 20-27).
13. In 3<sup>rd</sup> grade, the student continued to respond to the RTI supports, although the student was below grade level in reading and mathematics. (S-6, S-7; NT at 20-22).

### 4<sup>th</sup> Grade

14. Given the student's academic performance in 3<sup>rd</sup> grade and the outcomes from RTI in the early part of 4<sup>th</sup> grade, the District requested permission to evaluate the student. (S-7, S-8, S-9, S-18, S-19; NT at 27-30, 32).
15. In November 2017, the District sought permission from each parent to perform the CAPD evaluation recommended in the prior school

year. Father provided consent to evaluate the student. Mother did not consent. (S-8).

16. At the same time, in November 2017, due to the student's continuing academic struggles, the District sought permission from each parent to perform a comprehensive psychoeducational evaluation. Father provided consent to evaluate the student. Mother did not consent. (S-9).
17. In refusing to consent to the District's request for both evaluations, the student's mother responded with copious handwritten and typed information as to her disagreement. (S-8, S-9).
18. After receiving the various consent documents from each parent, the District's director of special education contacted both parents by letter reiterating the District's position that it saw the need for the evaluations but that, in light of the shared custody agreement in place regarding educational decision-making, the District would not proceed in light of mother's refusal of consent. The letter indicated that the District would continue to monitor the student's needs and provide the RTI supports. (S-10).
19. In February 2018, after the student's second quarter grades and feedback were recorded, the District again requested permission to perform CAPD and comprehensive psychoeducational evaluations. (S-11, S-12).
20. In February 2018, the District sought permission from each parent to perform the CAPD and comprehensive psychoeducational evaluations. Father provided consent to evaluate the student. Mother did not consent. (S-11, S-12).
21. In refusing to consent to the District's request for both evaluations, the student's mother responded with various handwritten information as to her disagreement. (S-11, S-12).
22. Again, the District's director of special education contacted the parents by letter, indicating that it felt the evaluations were necessary but would not proceed with those evaluations in light of the custody agreement. (S-13).
23. In April 2018, the cycle repeated itself: The District again requested permission to conduct CAPD and comprehensive psychoeducational evaluations, the student's father consented, and the student's mother refused consent. (S14, S-15).

24. In the view of the District, the student's academic, social, and behavioral needs require CAPD and comprehensive psychoeducational evaluations, especially in light of the student's apparently intensifying behavior in the educational setting and the upcoming transition to a larger school in the 2018-2019 school year. (NT at 16-17, 18-19, 20, 30-31, 33-34, 40-42).
25. On June 18, 2018, the District filed the complaint which led to these proceedings, seeking a hearing officer's order for authority to proceed with the evaluations in light of the parents' disagreement on the issue.
26. In the days after the filing of the complaint and communicating by email with the parents and counsel for the District about the hearing, and instructing everyone that communication with the hearing officer should take place by email only, [o]n June 21, 2018, the student's mother left with the hearing officer multiple minutes-long voicemail messages. Given the directive to communicate with him by email only, the hearing officer did not access or listen to the mother's voicemail messages and informed everyone of this fact.<sup>3</sup>
27. As the hearing approached, the student's mother indicated that she considered the proceedings to be illegitimate and would not attend.
28. On July 24, 2018, a one-session hearing was held, with the District director of special education, District counsel, and the student's father in attendance. The student's mother did not attend the hearing. The student's father also brought as a supporter a representative from [the local] County Office of Children & Youth ("Children & Youth") who supervises the student's case with that agency. The Children & Youth attendee did not testify. (NT at 6-62).
29. The student's father testified that his concern was that the student be evaluated, an evaluation which he felt was long overdue. This was especially a concern for him in light of the upcoming transition for the student in the 2018-2019 school year. (NT at 48-54).
30. Based on the evidence provided at the July 24<sup>th</sup> hearing, the undersigned hearing officer issued an oral order at the conclusion of the session, finding that the District should proceed, forthwith, with the requested evaluations, an oral order which is made concrete below. (NT at 55-60).

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<sup>3</sup> Prior to the hearing, the student's mother also sent multiple, extensive emails. These emails were reviewed by the hearing officer but did not, in his view, require any response.

31. The District's director of special education indicated that she understood the terms of the oral order and had no questions regarding what was being ordered. (NT at 54-60).
32. District counsel, the student's father, and the student's mother were all provided with both a hard copy and electronic copy of the transcript in the days after the July 24<sup>th</sup> hearing session. Having received the transcript and ostensibly reviewing it, the student's mother sent multiple emails to the undersigned hearing officer, indicating her continuing view that these proceedings were illegitimate and disagreeing with the result. (NT at 60).

## **DISCUSSION AND CONCLUSIONS OF LAW**

To determine if a student qualifies as a child with a disability under IDEIA, the student must be undergo an appropriate evaluation process to determine if the student has a disability and, as a result, requires special education. (34 C.F.R. §300.8, 300.301; 22 PA Code §§14.102(a)(2)(xxiv), 14.123). A school district proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must obtain informed consent from the parent of the child before conducting the evaluation. (34 C.F.R. §300.8, 300.301; 22 PA Code §§14.102(a)(2)(xxiv)).

Where a school district seeks consent from a parent to conduct an initial evaluation, and a parent does not provide such consent, the school district may utilize special education due process to pursue the evaluation process. (34 C.F.R. §300.300(a)(3); 22 PA Code §§14.102(a)(2)(xxiv)). Specifically, "a school district...may request a hearing to proceed with an initial evaluation or a

reevaluation when.... a parent rejects the (school district's)...proposed evaluation.” (22 PA Code §§14.162(c)).

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, generally, 300.304-300.311; 22 PA Code §§14.102(a)(2)(xxv, xxvi)).

Additionally, where a hearing officer orders an independent evaluation, and any expense is involved, that expense is borne by the school district. (34 C.F.R. §300.502(d); 22 PA Code §§14.102(a)(2)(xxix)).

Here, the student requires a broad array of evaluations. While the student made great strides, overcoming tremendous childhood adversity, in kindergarten and the early elementary school years, as the academic and behavioral demands of the mid-elementary school years has increased, the need for further evaluations is clear. Those needs will only continue to intensify, even in the upcoming school year as the student transitions to a larger school environment. Therefore, an evaluation process was ordered to begin, forthwith, so that the District could determine what, if any, special education programming for the student might be required.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, and as issued through an oral order at the conclusion of the July 24, 2018 hearing session, the School District is ordered to undertake, as of July 25, 2018, a comprehensive psychoeducational evaluation process, including specific specialized evaluation processes, as follows:

The comprehensive psychoeducational evaluation shall be conducted by a District school psychologist and shall include IQ testing, achievement testing, social/emotional/behavioral assessment, and an autism assessment. The exact tests, instruments, and scales to be used by the evaluator shall be selected by the evaluator. To the extent that any assessment involves parent rating scales, those scales shall be provided to each parent. Should the parent rating scales come back from either parent, the evaluator shall pay particular attention to rater reliability in gauging the results of the parents' scales.

A comprehensive speech and language evaluation shall be conducted by a District speech and language therapist and shall include any test, instrument, and scale that the evaluator feels is appropriate in light of the student's suspected areas of need. Again, to the extent that any speech and language assessment involves parent rating scales, those scales shall be provided to each parent. Should the parent rating scales come back from either parent, the speech and language evaluator shall pay particular attention to rater reliability in gauging the results of the parents' scales.

A comprehensive CAPD evaluation shall be conducted by an independent audiological evaluator and shall include any test, instrument, and scale that the evaluator feels is appropriate in light of the student's suspected areas of need. Again, to the extent that any CAPD assessment involves parent rating scales, those scales shall be provided to each parent. Should the parent rating scales come back from either parent, the CAPD evaluator shall pay particular attention to rater reliability in gauging the results of the parents' scales. Any payment or fee required for the independent CAPD evaluation shall be borne by the District.

A comprehensive occupational therapy ("OT") evaluation shall be conducted by an independent OT evaluator and shall include any test, instrument, and scale that the evaluator feels is appropriate in light of the student's suspected areas of need. Again, to the extent that any OT assessment involves parent rating scales, those scales shall be provided to each parent. Should the parent rating scales come back from either parent, the OT evaluator shall pay particular attention to rater reliability in gauging the results of the parents' scales. Any payment or fee required for the independent OT evaluation shall be borne by the District.

A comprehensive functional behavior assessment ("FBA") shall be conducted in the educational environment after the school year begins on August 27, 2018. The FBA may be conducted by a District school psychologist or behaviorist, or by an independent behaviorist, as the District may arrange.

Should the FBA be conducted by an independent behaviorist, any payment or fee required by the independent behaviorist shall be borne by the District.

To the extent that any observation, instrument, or assessment (including the FBA) take place in the educational environment, that observation, instrument, or assessment shall take place in the educational environment after the school year commences on August 27, 2018.

The evaluation report(s) ordered herein shall be issued by September 11, 2018. All evaluators, when directed or retained under the terms of this order, shall be informed of this deadline for issuance of the report(s).

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

*Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire  
Special Education Hearing Officer

August 7, 2018