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Pennsylvania Special Education Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR File Number 22018-18-19

Child's Name: I.P. **Date of Birth:** [redacted]

Date of Hearing:

05/03/2019

Parents:

[Parents]

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School District:

Wallingford-Swarthmore School District
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Hearing Officer: Michael J. McElligott **Date of Decision:** 05/18/2019

INTRODUCTION

[The student] (“student”)¹ is a student of middle school age who resides in the District (“District”).² In spring of 2019, the District performed an evaluation of the student, issuing a re-evaluation report (“RR”) in March 2019. The parents disagreed with the results and recommendation of the ER and requested an independent education evaluation (“IEE”) at District expense. The District declined to fund the IEE and, as required under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)³, filed a special education due process complaint to defend the appropriateness of its evaluation process and RR.

As set forth below, the undersigned hearing officer finds in favor of the District.

ISSUES

Were the District’s evaluation process and RR
in the spring of 2019 appropriate?

If not, are the parents entitled to an IEE at public expense?

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

² The student is regularly know by a nickname. As such, readers of the full record will see reference to the student by that nickname in the school records and transcript.

³ 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”).

FINDINGS OF FACT

1. The student has been long-identified as a student with a disability requiring special education. (School District Exhibit ["S"]-1, S-2, S-3).
2. Prior to the spring of 2019, the student was most recently re-evaluated by the District in May 2017. (S-3).
3. On this record, the student had received private therapeutic and private psychiatric services since June 2017. (P-14).
4. In September 2018, at the outset of the current school year, the parents provided consent and a release to the District to allow the private therapist who had been seeing the child to consult with a District school counselor. (S-4).
5. Over the course of the 2018-2019 school year, through December 2018, the District performed a functional behavior assessment and formulated a positive behavior support plan. The student's individualized education program was subsequently revised. (S-5, S-6, S-7, S-8, S-9; Parents Exhibit ["P"]-3).⁴
6. In December 2018, the District requested permission to re-evaluate the student. (S-10).
7. In early January 2019, the parents provided consent for the re-evaluation. (S-10, S-11).
8. In February 2019, the parents provided consent and a release to the District to allow the private psychiatrist who had been seeing the child to consult with a District. (P-8).
9. In March 2019, the District issued its RR. (S-17).⁵

⁴ These instructional documents were reviewed in a cursory way by the undersigned hearing officer. As the parties were instructed at the hearing, the sole issue in this hearing is the appropriateness of the District's re-evaluation process and report in the spring of 2019. Because the dispute between the parties may continue, including claims about the provision of a free appropriate public education through questions related to educational programming for the student, this fact-finding and decision take no position on the substance of these exhibits—those documents are noted here solely because the parties stipulated to their admission and merely for a complete chronology of the student's 2018-2019 school year. (Notes of Testimony ["NT"] at 39-40). Similarly, *see also* S-14, S-15, S-16, S-18, P-9.

⁵ The parties stipulated that parents do not dispute the speech and language ("S&L") content of the March 2019 RR. Therefore, S&L content and assessments in the March 2019 RR is not referenced below. (S-17 at pages 20-22).

10. The March 2019 RR included an extensive educational history of the student's time at the District. (S-17 at pages 2-4).
11. The March 2019 RR included information and input from the student's parents. (S-17 at pages 4-5).
12. The March 2019 RR included an extensive summary of testing/assessment results from prior evaluations. (S-17 at pages 5-9).
13. The March 2019 RR included recent state testing and report card information. (S-17 at pages 9-10).
14. The March 2019 RR included a classroom observation. (S-17 at page 10).
15. The March 2019 RR included the District school psychologist's observations of the student over the evaluation testing sessions. (S-17 at pages 10-11).
16. The March 2019 RR included input from five teachers of the student. This input included substantive insights from each teacher. (S-17 at pages 11-14).
17. The March 2019 RR included an updated cognitive assessment. (S-17 at pages 15-18).
18. The March 2019 RR included an updated achievement assessment. (S-17 at pages 18-20).
19. The March 2019 RR included a visual-motor assessment. (S-17 at pages 22-23).
20. The March 2019 RR included updated occupational therapy input. (S-17 at page 23).
21. The March 2019 RR included two distinct social/emotional/behavioral assessments, completed by parents and four teachers. (S-17 at pages 23-26).
22. The March 2019 RR included a childhood depression inventory, completed by parents and four teachers. (S-17 at pages 24-25).
23. The March 2019 RR included a self-report by the student of a social/emotional/behavioral assessment. (S-17 at page 25).

24. The March 2019 RR included extensive review of the social/emotional/behavioral assessment results. (S-17 at pages 26-28).
25. The March 2019 RR included an update of twice-monthly school-based counseling services provided by a District school counselor and weekly by the District school psychologist who authored the RR. (S-17 at page 28).
26. The input of the school counselor included her summary of conversations with the student's private therapist in September 2018 and February 2019, and the student's treating psychiatrist in February 2019. (S-17 at page 28).
27. The March 2019 RR concluded that the student has a disability and requires specially designed instruction as a student with a specific learning disability and emotional disturbance. (S-17 at page 29).
28. The March 2019 RR summarized the student's strengths and needs. (S-17 at page 29).
29. The March 2019 RR contains an extensive summary of the content of the RR as it provides an understanding of the student's present levels of achievement and developmental needs. (S-17 at pages 29-31).
30. The March 2019 RR contains recommendations for considerations by the IEP team. (S-17 at pages 31-33).
31. In April 2019, the parents disagreed with the March 2019 RR and requested an IEE at public expense.
32. The District denied the parents' request for an IEE at public expense and filed the complaint which led to these proceedings. Parents filed a formal response to the District's complaint. (S-20; Hearing Officer Exhibit-1).
33. At the hearing, the District school psychologist and the student's father testified. (NT at 24-79).

DISCUSSION AND CONCLUSIONS OF LAW

IEE

Where parents disagree with a school district evaluation or re-evaluation report, they may request an IEE at public expense. (34 C.F.R. §300.502(a); 22 PA Code §§14.102(a)(2)(xxix)). When faced with such a request, the school district “must, without unnecessary delay, either— file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense....”(34 C.F.R. §300.502(b)(2); 22 PA Code §§14.102(a)(2)(xxix)). This is the procedural background for the filing of the District’s complaint in this matter.

Evaluation

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). 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)).

Here, the March 2019 RR is comprehensive and appropriate. The evaluation included input from parents and educators, utilized a variety of assessments in multiple areas, and provided a clear summary and explanation of how the contents of the evaluation informed the conclusions and recommendations. (34 C.F.R. §§300.8, 300.39; 22 PA Code §§14.102(a)(2)(ii, viii)). The District met its obligations to the student in undertaking an appropriate evaluation process and in issuing the March 2019 RR.

The predominant focus of parents' assertion that the March 2019 RR was inappropriate was the fact that the District's school psychologist did not consult with, or review notes from, the private therapist or private psychiatrist. This particular point does not render the March 2019 RR inappropriate. First, the March 2019 RR contains input from the District school counselor about her conversations with both of the private providers. Second, a detailed review of the notes indicates that, from session to session, the content was largely copied from note to note when each provider worked with the student. While there is updated content in each note, incrementally documenting the services provided by the therapist in a particular session or over a discrete period of time, the notes of the private providers taken as a whole do not materially impact a sense of how the District understands the student and the student's needs in an educational setting. Said the other way around, the fact that the District school psychologist did not review the providers' notes, or speak with them, does not prejudicially impact the overall appropriateness of the March 2019 RR.

Accordingly, parents are not entitled to an IEE at public expense. Parents may, however, obtain an outside evaluation at private expense, an evaluation that, should it meet professional criteria for such an evaluation, must be considered by the student's multi-disciplinary team. (34 C.F.R. §300.502(c)(1); 22 PA Code §§14.102(a)(2)(xxix)).

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District did not fail in its obligations to the student through its spring 2019 evaluation process, or March 2019 re-evaluation report. That process and that report were both appropriate, and parents are not entitled to an independent education evaluation at public expense.

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

May 18, 2019