

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.

IN THE PENNSYLVANIA OFFICE FOR DISPUTE RESOLUTION

FINAL DECISION AND ORDER

ODR File No. 3231-1112KE

CLOSED HEARING

Child's Name: C.P.¹
Date of Birth: [redacted]

Hearing Date(s):
July 3, 2012

Parties to the Hearing	Representative
Parent(s)	<i>Pro se</i>

Central Bucks School District
20 Welden Drive
Doylestown, PA 18901

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Fort Washington, PA 19034

Record Closed:
July 22, 2012

Date of Decision:
July 25, 2012

Hearing Officer: Brian Jason Ford

¹ Other than this cover page, the child and parent(s) names are not used to protect their privacy - even if the parent(s) requested an open hearing. "Parent(s)" and "Student" is used instead. Other identifying information, such as the Student's gender, is omitted to the extent possible. Citation to the notes of testimony (transcript) are to "NT." Citations to exhibits, as applicable, are "P-#" for Parents' exhibits, "S-#" for the school's exhibits, and "J-#" for joint exhibits.

Introduction and Procedural History

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, as amended (IDEA). The Central Bucks School District (District) initiated this hearing upon rejecting the Parents' request for an independent educational evaluation (IEE) at public expense. The hearing convened in a single session on July 3, 2012. Both parties presented evidence and testimony. During the hearing, the parties agreed to a schedule for written closing statements and, per that agreement, I ordered that closing statements were due on or before July 16, 2012. NT at 367-370. The District submitted a written closing on July 16, 2012. The Parents² did not submit a written closing statement by the deadline. After the deadline, the Parents requested an extension and the District agreed. The decision due date was extended by eight days to July 27, 2012. The Parents submitted a written closing statement on July 21, 2012.

Issue

Is the Student entitled to an IEE at public expense?

Findings of Fact³

1. A school psychologist administered portions of the Wechsler Intelligence Scale for Children, Third Edition (WISC-III) to the Student on June 26, 2002. P-6.⁴ The report of the WISC-III explicitly notes that only portions of the instrument were administered. The school psychologist's interpretations of those reports is cursory, relative to the analysis of such assessments typically provided for the development of special education programming.
2. The summary of the report, in its entirety, reads as follows: "[Student] is [an elementary school-aged] child who completed parts of the WISC-III. [Student's] nonverbal reasoning abilities are in the average range." *Id.* The report also concludes that the Student's "Performance IQ" score is a 93 - which is classified as "average." *Id.* at 2. The report does not include a full scale IQ score, but the other reported sub-tests and indices fall far below the Performance IQ score. *Id.* at 3-5.

² Although the Complaint was filed by [one of the Student's parents who] appeared at the hearing, both parents are parties to this matter and I refer to Parents in the plural for that reason.

³ During the hearing, I pledged to carefully review all of the documents that the Parents offered as evidence. The findings of fact in this Decision describe the evidence and, together with the discussion, provide my analysis of that evidence. Not all of the Parents' evidence is probative, and not all of it stands for the propositions that the Parents claimed during the hearing. All of it, however, was carefully considered. Exhibit P-10 was, technically, made part of the record. P-10 is a document drafted by the Parents providing a history of the Student's various assessments. This was introduced through a witness with no familiarity with the document and who could not verify its contents. For these reasons, I will not consider P-10 in this decision. However, it is important to note that the outcome of this case would be the same if I had found the information in P-10 to be reliable.

⁴ P-6 was admitted in deference to the Parents' *pro se* status over well-placed objections by the District.

3. On December 20, 2007, [name redacted], the Director of Special Education for BCIU wrote to [name redacted], the District's Director of Special Education. P-9. The letter concerns a referral packet that the District sent to BCIU on the Student's behalf.⁵ See *id.* The letter indicates that [name redacted], BCIU's Lead Behavior Analyst, observed the Student and came to the conclusion that a BCIU placement under consideration would not be appropriate for the Student.
4. The Student took a CareerScope⁶ test on September 18, 2009. P-11. The results of that test are reported in a Summary Report. *Id.* The Summary Report contains the numeric results of the CareerScope test - which consists of an interest survey and an aptitude assessment. *Id.*
5. In preparation for this hearing, the Parents were able to locate a "CareerScope Assessment Profile" online. P-5. The Parents believe that data obtained through CareerScope testing should be provided in the same format that appears on the document that they found on the internet. See, e.g. NT at 111.
6. The Student received an independent educational evaluation (IEE), consisting of a Psychoeducational Evaluation, in March of 2010. H-1. The IEE included a review of existing data, parental input, and eight separate assessments including a *complete* Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) and a Wechsler Individual Achievement Test, Second Edition (WIAT-II). *Id.* The IEE report provides detailed, numerical scores for the tests administered, a comprehensive analysis of all information considered, and recommendations to the IEP Team. *Id.*
7. Regarding the WISC-IV reported as part of H-1, the Student received a standard score of 94 in the Perceptual Reasoning composite, which is in the average range and in line with the "Performance IQ" at P-6. The Student also scored below the first percentile in the Verbal Comprehension composite, which is also in line with reported sub-tests and indices obtained through the partial WISC-II at P-6. The Student's reported Full Scale IQ was 66, which corresponds to the first percentile and the "extremely low" range.
8. A Reevaluation Report (RR) was created by the District for the Student on June 10, 2010. S-2. The RR contains an accurate and comprehensive assessment of the IEE. The RR also includes a narrative summary of CareerScope testing conducted by BCIU. *Id.* at 18. The CareerScope testing described at S-2 page 18 is **not** the CareerScope testing entered into the record as P-11. See NT at 337-338. However, the narrative summary of CareerScope testing at S-2 page 18 is detailed and consistent with the type of information that is provided numerically at P-5 and P-11.

⁵ It is common practice in Pennsylvania and elsewhere for school district to send referral packets to third parties when considering third party placements for students. The term "referral packet" is not quite synonymous with "application," but the concepts are similar.

⁶ CareerScope®, without a space, is the name of the test, which is published by the Vocational Research Institute.

9. On June 22, 2010, the Parents sent an email to [name redacted], the Transition Coordinator for BCIU. See P-1. In that email, the Parents state that an evaluation report did not “provide scoring from the aptitude portion” of the evaluation. *Id.* The Parents requested the information that they felt was missing. *Id.* That email ultimately reached [name redacted], the District’s Supervisor of Special Education. [name redacted] asked [name redacted] to forward testing protocols to the Parents. *Id.*
10. The Parents do not indicate that they disagree with any evaluation in the emails at Exhibit P-1. Rather, they express their belief that the [evaluation] does not contain all of the data obtained through testing and make a request for that data. No portion of the evaluation, including its conclusions or recommendations are disputed in the emails at Exhibit P-1.
11. The Student’s IEP Team, which included the Parents, developed an IEP dated October 17, 2010. S-17. The 2010 IEP was based on the 2010 RR at S-2.
12. The Parents approved the 2010 IEP via a NOREP (notice of recommended educational placement) on October 26, 2010. S-18.
13. The Bucks County Intermediate Unit #22 (BCIU) “sent two certified behavior analysts to observe [the Student] ... on 4/24/12.” S-20, page 5. That observation occurred in the context of the District’s effort to investigate the appropriateness of various placement options. “The purpose of the observation was to determine if the BCIU could offer a program for [the Student]” in either of two particular programs operated by BCIU. *Id.*
14. Nearly two years after the email at P-1, the Parents sent another email to [name redacted] on April 26, 2012. In that email, the Parents again ask for “a copy of the report,” which, in context, refers to the CareerScope data that the Parents felt was missing from the June 2010 RR. See P-2. The Parents sent a similar email to [name redacted] on April 26, 2012, asking for a copy of the “Career Scope Report.” P-4.
15. [Name redacted] responded to the Parents later in the day on April 26, 2012 to say that he would investigate the matter. P-2. [Name redacted] also responded to the Parents on April 26, 2012, saying among other things: “I will most likely need to contact the BCIU for the CareerScope Report - I do not believe that we [the District] have a copy in [the Student’s] file.” P-4.⁷
16. [Name redacted] responded to the Parents again on April 27, 2012, saying that copies were already provided to the District and to the Parents, and that he no longer had the demanded information. *Id.*
17. [Name redacted] also sent an email to the Parents on April 27, 2012. See P-3. In that email, among other things, [name redacted] invited the Parents to review the

⁷ [Name redacted] did follow-up with [name redacted] at BCIU. P-2.

Student's educational file. *Id.* In response to [name redacted], the Parents explained their belief in the importance of knowing the numeric test results for the CareerScope assessment. *Id.* The Parents asked for the Student to retake that test if the results cannot be found. *Id.*

18. On April 30, 2012, [name redacted] responded to the Parents' email by providing an additional copy of the June 2010 RR. P-3. The email directs the Parents to pages 17 and 18 of the RR and notes that "information from the results of the vocational assessments completed by the Berks County Intermediate Unit" are located on page 18. *Id.* The Parents responded to [name redacted] later the same day, stating their belief that "something has been lost" but telling the District to take no further action regarding the CareerScope test. *Id.*
19. Via letter dated June 1, 2012 (S-26), the Parent requested in writing that the District fund a new IEE of the Student. S-26. The request letter at S-26 does not reference any reevaluation. *Id.* The most recent evaluations of the Student at the time of the Parents' request are described in the June 2010 RR at S-2.
20. The District requested the instant hearing on June 4, 2012. *Complaint* at 1. The District also sought the Parents' permission to reevaluate the Student around the same time that the Complaint was filed. See S-25 at pp. 105-111.

Credibility Determinations

I find that all witnesses testified credibly. This is not to say that all testimony was given equal weight. Rather, I find that all witnesses candidly testified to the best of their abilities even though not all witnesses perceive the facts of this case the same way. Regardless, there are virtually no factual disputes in this case. The disputes concern how the parties interpret the facts.

Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *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). In this particular case, the District is the party seeking relief and must bear the burden of persuasion.

The Right to an IEE at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. § 300.502(b)(1). "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense..." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

The term "public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent..." 34 C.F.R. § 300.502(a)(3)(ii). As applied, the "public agency" is the Student's LEA – the District in this case.

It should be noted that parents always have the right to obtain an IEE at their own expense. See 34 C.F.R. § 300.502(b)(3).

Discussion

I note again that the District bears the burden of persuasion in this case. The District that must prove that the Parents are not entitled to an IEE at public expense either because the provisions at 34 C.F.R. § 300.502(b)(1) have not been triggered, or because its own evaluation is appropriate. In this case, the District argues the former and posits that the Parents do not seek an IEE because they dispute the District's RR. Rather, the District argues, the Parents demand a new evaluation and are seeking an IEE at public expense before the District can complete its own evaluation.

The District is correct that actual disagreement with an ER or RR is a prerequisite condition to the Parents' right to an IEE at public expense. As a threshold matter, the Parents actually disagree with an evaluation or reevaluation conducted by the District. This threshold condition flows directly from the regulations at 34 C.F.R. § 300.502(b)(1) and has been recognized in Pennsylvania special education due process hearings and by the Pennsylvania Commonwealth Court. See *A.G. v. Lower Merion Sch. Dist.*, ODR No. 1143-1011AS; *D. Z. v Bethlehem Area Sch. Dist.*, 2 A.3d 712, 729-730 (Pa. Cmwlth. 2010).⁸

In this case, all of the evidence suggests that the Parents were in agreement with the 2010 RR when it was drafted. The RR was drafted on June 10, 2010. Twelve days later, the Parents sent emails asking for numeric CareerScope data. Those emails do not indicate any dispute with the narrative CareerScope data included in the RR, or with any

⁸ Similar, if not identical principles, have been recognized in other jurisdictions as well. See *G.J. v. Muscogee County Sch. Dist.*, Case No. 10-12556 (11th Cir. January 31, 2012); *Sheboygan Area Sch. Dist.*, 46 IDELR 204 (WI. 2006); *College Elementary Sch. Dist.*, 43 IDELR 103 (CA. 2005); *Lincoln Unified Sch. Dist.*, 42 IDELR 278 (CA 2004); *Northview Pub. Sch.*, 21 IDELR 694 (MI. 1994).

other portion or aspect of the RR. After those emails were sent, the Parents participated in IEP development that was guided by the RR, and approved an IEP based on the RR. Nearly two years later, the Parents again requested numeric CareerScope data but did not dispute any part of the RR (or IEP).⁹ No evidence suggest that the Parents disputed the RR at any time prior to this due process hearing.

There is a history of acrimony between the parties. See, e.g. *Student v. Central Bucks Sch. Dist.*, ODR No. 00016-0910AS (DeLauro, 2009). Yet a preponderance of evidence in this case demonstrates that the Parents were in agreement with the July 2010 RR. That RR was based in large part on IEEs conducted around the same time. The Student's father testified that the Parents are of the opinion that, although the District's evaluators are qualified, the District's evaluators do not have enough experience to evaluate the Student. Moreover, the Parents' overarching concern is the placement that the district is proposing for the 2012-13 school year, and seek an evaluation that will support their placement preference.¹⁰ These circumstances indicate that the Parents' current concern centers on the Student's placement, and they seek an evaluation that will support their position regarding the Student's placement. A disagreement about the Student's current or proposed placement does not indicate any disagreement over a two-year-old evaluation. Rather, the circumstances clearly indicate that the Parents are seeking new evaluation via IEE at public expense before the District has an opportunity to conduct its own evaluation.

In light of all of the foregoing, I find that the prerequisite disagreement contemplated at 34 C.F.R. § 300.502(b)(1) is not present. As a result, the Parents' right to an IEE at public expense has not been triggered, and I will not order the District to fund an IEE.

Dicta¹¹

Although I find in favor of the District for the reasons detailed above, I feel compelled to review the Parents' arguments in favor of an IEE at public expense. I note that the Parents are *pro se*. I also note that an effort was made to ensure that I understood the Parents' arguments. See e.g. NT at 145-148. Extra time was given so that the Parents could present a written closing statement. I believe it serves both the parties and the due process system to acknowledge the Parents' arguments, even though I must ultimately reject them, and even though I have found for the District on a threshold question.

⁹ Portions of the record suggest that the Parents' renewed concern in 2012 is related to a change in placement proposed by the District. See, e.g. NT at 163. The proposed change in placement and any disagreement about it go well beyond the scope of this hearing.

¹⁰ See footnote 9, herein.

¹¹ This section addresses positions that are directly involved, briefed, and argued by the parties (and especially by the Parents), but that are not essential to the decision. *Dicta* is generally not included in special education decisions. The reason for including a section of *dicta* in this decision is explained in the section itself.

The Parents argue that the Student was evaluated twice: once as indicated in the June 10, 2010 RR (S-2); and once on April 24, 2012 (the observation described above at FF # 4, 5). I will address the observation first.

The Parents cite to 34 C.F.R. §§ 300.15 and 300.310 to argue that the observation is an evaluation. The Parents argue that the conclusions of the observation reported at S-20, page 5 conflict with the conclusions reported at P-9. In light of this contradiction, the Parents argue that I should give no weight to the observation and should award an IEE at public expense because the observation was inappropriate.

Taken together, the regulations cited by the Parents indicate that all evaluations must include an observation. The regulations do not say (or even suggest) that all observations are evaluations. The particular observation in question was not an evaluation. The only purpose for the observation was to screen the Student for admission eligibility in particular BCIU programs. The Parents disagree with the observations' conclusions and the way in which the District is currently using the observation.¹² But the observation itself is not an evaluation, and so any disagreement with the observation does not trigger the right to an IEE at public expense. Additionally, all evidence points to the appropriateness of the observation itself.

The most current evaluation that could trigger the Parents' right to an IEE at public expense is the Student's last reevaluation, described in the June 10, 2010 RR (S-2). The June 2010 RR is the only other evaluation that the Parents claim to dispute. Although I have found that the Parents did not dispute the RR and are seeking a new evaluation, I will review the Parents' claims concerning the RR.

First, the Parents argue that the District's evaluators lack the expertise to properly evaluate the Student. They point to what they perceive as discrepancies between the partial WISC-III of June 2002 and the IEE of March 2010 as evidence that the District's evaluators lack expertise.¹³ See NT at 129-130, 146-148. However, the Parents do not question the qualifications of the District's evaluators. See *id*, see also NT at 120, 252-253. Although the term "qualified examiner" is not defined in the IDEA, no evidence or testimony suggests that the evaluators (District-employed and independent) who developed the RR at S-2 were unqualified in any way. Similarly, no evidence or testimony suggests that the District will use unqualified evaluators in future testing.

The IDEA requires testing by qualified evaluators but says nothing about the requisite level of an evaluator's expertise. See 34 C.F.R. § 300.502(a)(3)(i); 20 Pa. Code §§ 14.123 and 14.124. Again, the Parents agree that the District's evaluators are *qualified*, but lack the expertise to evaluate the Student. That argument lacks legal merit and is not supported by the record.

¹² In their closing, the Parents say that the District is relying on the observation to support a placement recommendation that the Parents disagree with. As noted above, disagreements about the proposed placement fall well outside the scope of this hearing.

¹³ The IEE is reported in, and forms much of the basis of, the June 2010 RR.

Second, the Parents argue that the RR of June 2010 was deficient because it contained an inaccurate assessment of the Student's intelligence. In general, the Parents believe that the IQ testing in the March 2010 IEE, reported in the June 2010 RR, characterizes the Student as less intelligent than the Student actually is. The Parents argue that the partial WISC-III of June 2002 is a more accurate assessment. I find, however, that [the] partial WISC-III and the IEE are consistent with each other. Comparing the "Performance IQ" in the partial WISC-III and the Full Scale IQ in the IEE is not an apples to apples comparison. On a sub-test by sub-test basis, however, the reports are actually quite similar. I reject the Parent's second argument on this basis, but I also note that the probative value of an explicitly incomplete, ten-year-old assessment is low.

Third, the Parents argue that the RR of June 2010 was deficient because it failed to include a numerical report of the CareerScope assessment conducted by BCIU. The Parents are correct that the RR does not include numerical data for the CareerScope. I am also persuaded that numerical data was generated when the assessment was administered and that data no longer exists. Substantively, the Parents argue that the Student has strong vocational skills, particularly regarding landscaping work. See, e.g. NT at 256. However, the narrative CareerScope information in the RR also suggests that the Student has a strong interest in and aptitude for that type of work. In substance, the narrative CareerScope presentation in the June 2010 RR includes the information that the Parents argue is missing. The Parents do not challenge the substance of the CareerScope information presented in a narrative in the RR. Rather, the Parents challenge the format in which that information is presented.

Although it may have been better to include numerical data – and certainly would have been better to preserve that data – this somewhat sub-optimal sub-part is not fatal to the RR as a whole, or to the section of the RR that addresses the Student's vocational needs and abilities. More importantly, the CareerScope information in the RR is substantively consistent with what the Parents argue should be reported.

Fourth, the Parents argue that the June 2010 RR insufficiently addressed the Student's psychological and emotional needs. Again, I have already determined that the Parents do not dispute the RR for purposes of 34 C.F.R. § 300.502(b)(1). However, even if the Parents had disputed the RR before approving the subsequent IEP and two years of programming, there is preponderant evidence in the record to support the appropriateness of the RR.

No evidence or testimony suggests any procedural defects in the RR.¹⁴ Rather, the Parents say that they dispute the RR's conclusions and analysis. It is difficult to identify what conclusions (other than IQ testing) are disputed, and it is not clear that such a generalized disagreement can give rise to a publicly-funded IEE. Moreover, the RR is thorough, comprehensive, and based in large part on an equally thorough and comprehensive IEE. Further, the Parents argue that the Student's behaviors have dramatically improved over the period of time that the IEP based on the RR was in

¹⁴ The procedural requirements for ERs and RRs is found in the IDEA at 20 U.S.C. § 1414 and in the Pennsylvania Code at 22 Pa. Code §§ 14.124 - 14.125.

place. See, e.g. NT at 352. This argument is inconsistent with the position that the RR did not address the Student's psychological and emotional needs.

Conclusion

I find in favor of the District because the District has proven that the requisite disagreement contemplated at 34 C.F.R. § 300.502 is not present in this case and, consequently, the Parents' right to an IEE at public expense has not been triggered.

ORDER

And now, July 25, 2012, it is hereby ordered as follows:

1. The Parents are not entitled to an IEE at public expense.
2. The District is not required to fund an IEE for the Student.
3. Nothing in this Decision and Order alters the Parents' right to an IEE at their own expense.

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

/s/ Brian Jason Ford
HEARING OFFICER