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Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 27652-22-23

Child's Name:

J.A.

Date of Birth:

[redacted]

Guardian:

[redacted]

Local Educational Agency:

Philadelphia School District
440 North Broad Street
Philadelphia, PA 19130

Counsel for LEA:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

04/03/2023

Introduction

This special education due process hearing concerns the educational rights of J.A. (“student”), a student who resides in the Philadelphia School District (“District”).¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with emotional disturbance and a health impairment.

The District filed the complaint in this matter, seeking to defend its December 2022 re-evaluation process and report in the face of the request of the guardian for an independent educational evaluation (“IEE”) at District expense.

For reasons set forth below, I find in favor of the District.

Issue

Must the District provide an IEE at public expense?

Findings of Fact

¹ The generic use of “student”, and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² 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 §§14.101-14.162 (“Chapter 14”).

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. The student was identified by the District and found eligible for special education in January 2015 (School District Exhibit ["S"]-11).
2. The student has attended District schools at various times, and attended other schools at other times, over the period 2015 through 2022. The student attended District schools in the 2014-2015, 2015-2016, and 2016-2017 school years. The student attended other schools in the 2017-2018 and 2018-2019 school years. (S-11; Notes of Testimony ["NT"] at 205-244).
3. Upon re-enrolling in District schools in the 2019-2020 school year, the District sought to re-evaluate the student. The student's guardian did not provide consent for the re-evaluation and revoked consent for the provision of special education services. (S-11).
4. In November 2020, as the result of a special education due process hearing, the District was provided with consent via hearing officer order to conduct a re-evaluation of the student. The student would not engage in the testing and assessment for the re-evaluation. (S-11).
5. In September 2022, the District sought permission to re-evaluate the student. The guardian provided consent for the re-evaluation. (S-5).

6. In November 2022, with the 60-day re-evaluation timeline nearing its end, the guardian requested that the District hold off on the issuance of the re-evaluation report ("RR") until information could be included from a community mental health agency. The District complied with the request and the guardian consented to extending the re-evaluation timeline. (S-7, S-9; NT at 21-152).
7. In December 2022, the District issued the RR. (S-10).
8. The December 2022 RR contained background information and an explanation of the consent/communications between the evaluator and the District over the period September – December 2022. (S-10 at pages 1-2).
9. The December 2022 RR contained information related to the student's physical & developmental history, and educational history. (S-10 at pages 2-6).
10. The December 2022 RR contained the guardian's input, both as narrative and a social/emotional/behavioral assessment. (S-10 at pages 6-8).
11. The December 2022 RR contained the result of the previous cognitive assessment in 2015. The student's full-scale IQ was measured at 103. (S-10 at pages 8-9).
12. The December 2022 RR contained curriculum-based assessments and PSSA state assessment data. (S-10 at pages 9-10).

13. The December 2022 RR contained observations of the student completed by the evaluator both in class and during testing. (S-10 at pages 10-12).
14. The December 2022 RR contained teacher input and recommendations. (S-10 at pages 12-13).
15. The December 2022 RR contained updated cognitive testing, yielding a full-scale IQ score of 83. The evaluator opined that the cognitive testing likely underestimated the student's cognitive abilities due to task-refusal during the administration. (S-10 at pages 16, 19-22).
16. The December 2022 RR contained achievement testing broadly in the average range. Some scores fell in below-average range, but the evaluator noted that on those that testing the student "was especially resistant to completing (those) tasks". (S-10 at page 16, 22-24).
17. The December 2022 RR contained social/emotional/behavioral rating scales, completed by three teachers, the guardian, and the student. (S-10 at pages 16-17, 24-30).
18. The teachers' rating scales showed a split, with two teachers rating the student with clinically-significant or at-risk ratings across most areas. The third teacher rated the student as uniformly average across all areas. (S-10 at pages 16-17, 24-30).

19. The guardian's rating scales rated the student as clinically-significant in hyperactivity, aggression, and conduct problems (and the externalizing behavior composite). The guardian's rating scales rated the student as at-risk in the behavioral symptoms composite, and adaptability, social skills, leadership, and activities of daily living (and the adaptive skills composite). (S-10 at pages 16-17, 24-30).
20. The student's self-report rated the student as clinically-significant in attitude toward school and self-reliance. The student's self-report rated the student as at-risk in attention problems and relations with parents, and the school problems composite and the personal adjustment composite. (S-10 at pages 16-17, 24-30).
21. The December 2022 RR recommended that the student be identified as a student with an emotional disturbance. The RR included a summary of the student's strengths and needs, and included programming recommendations. (S-10 at pages 17-18, 31-32).
22. The District issued the December 2022 RR to the guardian. (Parent Exhibit ["P"]-1³, P-2, P-3; NT at 21-152, 205-244).
23. Upon reviewing the December 2022 RR, in January 2023, the guardian requested that certain information in the RR, from the information provided by the community mental health agency, be

³ The guardian marked her exhibits with "P" for parent, so that is noted for stylistic consistency across the record.

removed. The District acquiesced in the request. (S-11; NT at 21-152).

24. In early January 2023, the guardian also provided the District with a psychiatric diagnosis of attention deficit hyperactivity disorder ("ADHD")/combined type. The District included this information in the RR and 'other health impairment' was added as a secondary disability category. (S-11 at page 22).

25. The December 2022 RR listed the "date of report" as December 12, 2023, although the "date provided to guardian" was January 13, 2023 to reflect that January 2023 revisions. Therefore, the final RR is the December RR with the provision date of January 2023. (S-11).

26. The guardian requested an IEE at public expense. The District denied the request and filed the special education due process request, seeking to defend its evaluation process and report, the request which led to these proceedings. (P-1; Hearing Officer Exhibit ["HO"]-1, HO-2, HO-3).

27. The guardian feels the emotional disturbance identification is not accurate and that, from a combination of past history at the District, the guardian's view that the student has been poorly served in District schools, and generalized acting-out behavior which is developmentally understandable for adolescents and teenagers, the student's behaviors in school settings is explainable. (NT at 205-244).

28. The District evaluator recognizes that the student is relatively strong in academics but that the student's behaviors in school indicated the need for an identification and programming. (NT at 21-152).

Discussion

Under the terms of the IDEIA, "(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); 22 PA Code §14.102(a)(2)(xxix)). Upon requesting an IEE at public expense, a school district has one of two choices: the school district must provide the evaluation at public expense, or it must file a special education due process complaint to defend its re-evaluation process and/or report. (34 C.F.R. §300.502(b)(2)(i)-(ii); 22 PA Code §14.102(a)(2)(xxix)).

An evaluation (or re-evaluation, as the evaluation provisions of IDEIA apply equally to re-evaluations as well [34 C.F.R. §§300.15, 300.304-311; 22 PA Code §14.102(a)(2)(iii),(xxv),(xxvi)]), must "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, that may assist in determining" an understanding of the student's disability and the content of the student's

IEP. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)).

Furthermore, the school district may not use “any single measure or assessment as the sole criterion for...determining an appropriate educational program for the child”. (34 C.F.R. 300.304(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Here, the only question presented is whether the District’s December 2022 re-evaluation report, as revised in January 2023, is appropriate under the terms of the IDEIA. The evidence shows that it is appropriate.

The December 2022 RR contains all the elements of an appropriate re-evaluation, including the context of past evaluations, parent and teacher input, the results of prior assessments and testing, curriculum-based results and student grades, observations of the student, updated assessments and testing (including cognitive, achievement, and social/emotional/behavioral assessments). The December 2022 RR also contains the fine-tuning of revision/editing and an updated diagnosis when the guardian presented those issues in January 2023.

In sum, the December 2022 RR meets the requirements of IDEIA and the District does not need to provide an IEE at public expense.

Having said that, it is clear that the guardian feels that the student has been mis-served by the District and, as a result, there is a deep mistrust by the guardian for the District. It is hoped that the parties can move past this

dissension and focus on the emotional support, behavioral, and attention needs of the student.



ORDER

In accord with the findings of fact and conclusions of law as set forth above, the re-evaluation process undertaken in the fall of 2022 and the December 2022 re-evaluation report issued by the Philadelphia School District, as revised in January 2023, are all appropriate. The guardian is not entitled to an independent educational evaluation at school district expense.

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

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

04/03/2023