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## DECISION

Due Process Hearing for Q.G.

ODR File No. 6106/05-06 LS

Date of Birth:           xx/xx/xxxx

Dates of Hearing:       January 24, 2006 – Open Hearing

Parties to the Hearing:

Parent

Representative:

None

Philadelphia City School District  
Parkway at 21<sup>st</sup> Street  
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Hearing Officer:       Debra K. Wallet, Esq.

Date of Decision:       February 14, 2006

## BACKGROUND:

Student [hereinafter Student] is currently attending [a] Charter School [hereinafter Charter School], but previously attended second through fourth grades at the [redacted] School within the Philadelphia School District [hereinafter School District].

Parent filed a due process request on November 28, 2005 stating that the School District “had an IEP meeting without my knowledge.” Parent alleged that she was not asked to attend this IEP meeting, that the School District had “labeled” her child, and that the School District had “fake” records.

## ISSUES:

1. Did the School District hold an IEP meeting without the Parent being present?
2. Did the School District label Student in some way which affected the provision of a free appropriate public education (FAPE)?
3. Did the School District fail to identify Student as one in need of special education?

## FINDINGS OF FACT:

### Background

1. Student is a [pre-teenaged] (date of birth xx/xx/xx) student currently enrolled in Charter School since the beginning of the 2005-2006 school year. (N.T. 123).
2. On November 28, 2005, Parent gave notice that she was requesting a due process hearing.
3. Within the initial thirty-day period, no resolution had been reached and the due process hearing was scheduled for January 24, 2006.

4. Both parties participated in a pre-hearing telephone conference before the undersigned Hearing Officer on January 11, 2006.

5. An open hearing was held on January 24, 2006, at which time the record was closed for the submission of evidence.

6. The Hearing Officer heard testimony from four School District witnesses: School Principal, School Psychologist, Counselor, and the Special Education Manager. Also testifying were Parent and Parent's friend who participates in the parenting of Student.

7. The Hearing Officer admitted Exhibits Hearing Officer 1 through 3; S-1 through S-11; P-1 through P-5, P-8, P-14, P-18, and P-20 through P-22. The other exhibits offered by Parent were duplicates of the School District's exhibits. (*See* N.T. 157-167).

#### Student's Academic History

8. Student transferred into the [redacted] School for repeat second grade in 2001-2002. She spent the third and fourth grades at the School. (N.T. 122-123).

9. The School District initiated the Comprehensive Student Assistance Process (CSAP) in early 2004 because Student was in danger of being retained in the fourth grade. This program has three tiers designed to assist students with academic or behavioral problems. At Tier 1, the child is identified with a problem and supports or interventions are prescribed. At Tier 2, the review is whether or not the supports have been successful. At Tier 3, possible testing is discussed. (N.T. 32-34; S-6).

10. The CSAP Checklist (S-6), dated March 26, 2004, set forth initial interventions tried, such as modified instruction, performance based assessments, and a daily homework sheet. These were not deemed successful. CSAP goals were set in reading and math to be met by April 24, 2004. These goals were not met. (N.T. 35-37).

11. At the end of 2004, Parent was asked to attend a meeting with the School Psychologist at Tier 3 of CSAP. She did not attend and no permission to evaluate was sent to Parent at that time. (N.T. 37-38).

12. Student repeated the fourth grade beginning in September 2004. (N.T. 63, 123).

13. On October 19, 2004, Parent refused to give permission for a comprehensive evaluation or agree to another CSAP described in the October 19, 2004 letter to Parent. (S-7; N.T. 51, 85-86). Parent acknowledges having been in attendance at a meeting in October 2004. (N.T. 44-45).

## Psychoeducational Evaluation

14. Parent signed a Permission to Evaluate for cognitive, perceptual-motor, social-emotional, and academic screening on January 31, 2005. (N.T. 86, S-8).

15. Ms. G is a certified, licensed school psychologist with 15 years of experience and prior work as an elementary school teacher, counselor, and psychologist. She evaluated Student in February 2005. (N.T. 84-85, 91; S-9).

16. Ms. G testified that she had asked that Student be evaluated in October 2004 but Parent refused and walked out of the meeting stating that she did not want special education for her child. She stated that Parent became hostile at the Tier 3 CSAP meeting when she was asked to sign papers allowing Student to be evaluated. (N.T. 85-86, 96-97). The Hearing Officer accepts this testimony as credible and consistent with the written records.

17. Parent gave information to the evaluator during a meeting on January 31, 2005. (S-10; N.T. 88-89).

18. The School Psychologist administered the Wechsler Intelligence Scales for Children (WISC-IV), the Beery Developmental Test of Visual-Motor Integration (VMI), the Wide-Range Achievement Test (WRAT-3), and the Silvaroli Individual Reading Inventory. Based on this testing, Ms. G determined Student to have a full scale IQ of 83, skills at the third grade level in reading with difficulty in decoding words and skills at the fourth grade level in spelling and arithmetic, but no evidence of emotional disturbance. (S-9, pp. 2-3; N.T. 90).

19. Ms. G found Student to be in need of specialized services as a student with a mild learning disability, particularly in reading. She recommended that she be assigned to a resource room for reading and possibly math. (N.T. 90-92; S-9).

20. Based upon this testimony and the testing evidence offered, the Hearing Officer finds that Student has a mild learning disability, particularly in reading.

21. An Evaluation Report dated February 25, 2005 shows Parent's signature as agreeing with the Report. (S-11, p. 5). An IEP meeting was held on April 27, 2005, but the School District document does not confirm this date. The School District produced no sign-in sheet for this date, but Parent acknowledges that she was in attendance on this date. Her own paperwork shows a signature and date of April 27, 2005. (N.T. 54, S-11, P-8, reverse of page 1 also numbered page 1).

22. Although the School District did not provide specific information about the number of school days between January 31 and April 27, 2005, the 60<sup>th</sup> "Monday through Friday" date is April 21, 2005. It is likely that the intervening Presidents' Day and Easter holidays made the presentation to the Parent "no later than 60 school days after the agency receives written parental consent." 14 Pa. Code §14.123(b). Had it been one or two days late,

this procedural violation in itself would not warrant any relief, particularly in view of the Parent's initial resistance to the evaluation.

#### Other School District Witnesses

23. Ms. R, the special education manager, testified that Parent filed an October 17, 2005 complaint with the Bureau of Special Education alleging that the School District failed to initiate an evaluation when Student failed to make academic progress. (N.T. 17-19; S-1).

24. On November 3, 2005, the Bureau of Special Education issued a Complaint Investigation Report concluding that no corrective action was required because no screening or evaluation violation occurred. (N.T. 19-20, S-1). The Hearing Officer is in no way bound by these findings or conclusions.

25. Ms. R testified that at the beginning of the school year in October 2005, Parent wanted Student, who was then in the fourth grade, to be moved to the seventh grade. (N.T. 22).

26. A Pre-Hearing Conference Report dated September 21, 2005 states that "the Team convened and IEP Team proposed" that Student attend the sixth grade effective September 26 and if that worked out, then she could be placed in the seventh grade in January 2006. Ms. R testified that Parent walked out of the meeting and this information is repeated in the Report. Parent acknowledges that she attended a meeting in September, 2005. (N.T. 27-28, 52; S-3).

27. The Hearing Officer finds that the September 21, 2005 gathering was a pre-hearing conference held at the specific request of Parent. This coincides with Parent's documents dated September 15, 2005 requesting a pre-hearing conference. (See P-2, p. 4). Parent was in attendance for some portion of this meeting.

28. Principal Ms. M has been at the elementary school for six years. The school has approximately 428 students in kindergarten through fifth grade with 13% in special education. She was a special education teacher for ten years and an assistant principal for two years. Her previous experience was as a pre-school teacher. (N.T. 61-62).

29. Student started in second grade at Principal M's school with Ms. B as the teacher. This was a repeat second grade. (N.T. 69, 70).

30. Principal M's first contact with Parent was at the beginning of Student's repeat fourth grade year. She understood that Parent did not want Student to be labeled as a special education student. (N.T. 63, 66-67).

31. Ms. V has been the school guidance counselor at [redacted] since the 2003-2004 school year. She described her involvement with Student's mother in CSAP. Ms. V testified that Parent did not attend meetings. In October 2004, Parent told Ms. V that she did not want Student in special education. (N.T. 32-37, 41).

### Parent Concerns and Testimony

32. Parent was aware that Student's grades were falling from what Parent described as A's and B's to C's, D's, and failures in the middle of third grade. (N.T. 124).

33. Parent admits to knowledge of CSAP in October, 2004. She testified that she wanted an evaluation of Student at that time. However, she claims not to have gotten the October 2004 Permission to Evaluate until April 2005, at which time she refused to sign it. Someone later put the 3/26/04 date on the document, according to Parent. (N.T. 125, 128, 130-131, 133).

34. The Hearing Officer finds that Parent must be confused on the dates and declines to accept her testimony on this issue because it is inconsistent with that of more than one School District witness whose testimony under oath appears to be consistent with the School District documentation.

35. In her request for due process, Parent complains of "fake" documents and she presented at hearing Exhibit P-1, an undated version of some of the pages of S-6. She claims that someone tried to make her sign these in April 2005. However, even P-1 contains a page dated April 1, 2004. (P-1, p. 2). There is no page in either S-6 or P-1 which would require a signature. (*Compare P-1 to S-1*).

36. The Hearing Officer finds that no IEP meeting was held without Parent's attendance.

37. Parent stated that the School District did not test Student "at an appropriate time" which she identified as 2001. (N.T. 9).

38. Parent submitted paperwork that she attempted to transfer Student in August 2005. This paperwork was signed by the Principal on September 12, 2005. (P-4).

39. Parent presented three different versions of a letter to the Principal, all dated September 15, 2005, stating that her child "is not making progress in her special education program," "requesting a re-evaluation," requesting "a formal Due Process Hearing" and requesting "a Pre-Hearing Conference." The Principal signed a separate statement that she met with Parent on September 19 to discuss a September 21, 2005 Due Process meeting. (P-2).

40. The School District sent a notice of truancy to Parent dated October 21, 2005 for Student's absences in September and October, 2005. (P-18).

41. Student earned D grades in science and English but is failing every other subject in the first quarter in 7<sup>th</sup> grade at the Charter School. (P-20).

42. When asked what relief she would like, Parent stated that she wanted a laptop computer and tutoring for her child, an apology for falsifying papers, and a college fund for her daughter. (N.T. 184-186).

### CONCLUSIONS OF LAW

1. This case is governed by The Individuals With Disabilities Education Improvement Act of 2004 [hereinafter IDEA 2004], 20 U.S.C. §1415 *et seq.*
2. The School District complied with its statutory obligations under IDEA 2004 to identify Student as one in need of special education services.
3. The School District committed no procedural violations of IDEA 2004, particularly when it declined to request due process to override parental objection to a comprehensive evaluation.
4. Student was not denied FAPE during the fourth grade or repeat fourth grade year.

### DISCUSSION OF ISSUES

#### **1. Did the School District hold an IEP meeting without the Parent being present?**

Parent stated specifically that she believed an IEP meeting occurred on September 21, 2005 without her presence. (N.T. 10). The only possible reference in this record to an IEP Team meeting on September 21 is contained in the Pre-Hearing Conference Report. (S-3). However, the overwhelming evidence establishes that this gathering was a Pre-Hearing Conference, that Parent was present for at least part of this meeting before she walked out, and the Hearing Officer has so found. The September 19, 2005 Invitation to Participate invited Parent to a “Pre-hearing meeting” on September 21 at 1:30. Parent’s document signed by Principal M references

a meeting on September 21 at 1:30. (P-2, p. 5; N.T. 152). Parent presented notes from a meeting on September 21, 2005 and evidence of her presence at the school on that date as well. (P-22, P-4; N.T. 154). Frankly, the Hearing Officer is unable to accept Parent's allegation that an IEP meeting was held without Parent's attendance.

**2. Did the School District label Student in some way which affects the provision of FAPE?**

Parent was unrepresented at this due process hearing and it was at times difficult to understand the nature of her complaints. The School District believed that Parent objected to labeling Student as a "special education" student. After hearing all of the testimony, this Hearing Officer concludes that the crux of Parent's "labeling" issue involved not the label of "special education" but rather a remark made by a teacher to Student her child "was labeled from the way she dressed to the way she wear her hair to the way she walked and talked." (N.T. 197). Parent apparently believed the references to "fashion" suggested that Student was only interested in clothing and appearance rather than academic studies. (N.T. 118-119).

The Hearing Officer finds credible Parent's testimony that some statement about fashion was made by a teacher to Student. The School Psychologist noted in her report that Student "was absorbed with her ... hair, which she tossed about incessantly, as well as with her clothes. . . [Student] gives the impression of pseudo-sophistication." (S-9, p. 2). The teacher's reference was probably an innocent observation rather than any suggestion that Student was not academically inclined. Certainly this "label" did not disrupt the School District's efforts to intervene in Student's academic difficulties. Based upon the testimony and other documentation in this record, the Hearing Officer cannot find that there was any denial of FAPE related in some



way to references to “fashion.”

Turning to the labeling of Student as one in need of special education services, the record as a whole does suggest that initially Parent was unwilling to agree to Student’s inclusion in the CSAP program or to formal evaluation of Student’s needs. Whether or not this unwillingness was because of some perceived fear of the special education label is unclear. The School Psychologist did testify quite credibly that when a formal evaluation was recommended in 2004, Parent refused and walked out of the meeting stating that she did not want special education for her child. (N.T. 85-86). In contrast, Parent testified about attempts to convince the principal that her child needed assistance and should be evaluated. (N.T. 114-115). This testimony is nearly irreconcilable with the testimony of the School District witnesses.

What emerges from this record is that Parent made it very difficult for the School District to do its job of identification or evaluation so that it could design a proper program for Student. No labels associated with Student appeared to play any role in the evaluation process.

### **3. Did the School District fail to identify Student as one in need of special education?**

Evaluation of a student’s needs is a fundamental element in the provision of FAPE. 34 CFR §§300.320, 300.531. In short, the School District apparently tried the Comprehensive Student Assistance Process (CSAP) when academic difficulties were first recognized. The School Psychologist recommended comprehensive evaluation as early as October 2004, but the mother refused. (S-7). Perhaps the School District should have sought due process at that time to compel an evaluation, but the regulation does not *require* that the School District do so. *See* 34 CFR §300.505(b), which uses the permissive “may” rather than the directory “shall.”

After the mother did consent, a prompt and comprehensive evaluation was performed.

(S-9). The Evaluation Report may not have been shared with Parent as promptly as it should have been, but the Hearing Officer finds no harm which must be remedied. Because of parental resistance, not because of any failure on the part of the School District, it was not until February 2005 that an evaluation determined that Student was eligible for special education and identified Student's needs.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Parent's requests for a laptop computer and tutoring, an apology, and a college fund are all DENIED.

Date: February 14, 2006

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