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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

6223/05-06 LS

File Number

Student

Child's Name

Xx/xx/xx

Date of Birth

April 18, 2006

Dates of Hearing

Open

Type of Hearing

For the Student:

Mr. and Mrs. Parent

For the Williamsport Area School District:

Dr. Gina McFalls
Director of Special Education
Williamsport Area School District
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Dates of Hearing:

April 18, 2006

Date Record Closed:

April 22, 2006

Date of Decision:

May 7, 2006

Hearing Officer:

Daniel J. Myers

BACKGROUND

Student is a [pre-teenaged] resident of the Williamsport Area School District (School District) with permanent and progressive hearing loss. Her parents seek deaf/hard of hearing counseling for Student, as well as an independent educational evaluation. For the reasons described below, I will not order either counseling or an independent psychoeducational evaluation, but I will order that the School District obtain a limited independent evaluation of any deaf/hard of hearing identity-related concerns.

ISSUES

Whether or not Student's IEP should include counseling?

Whether or not Student is entitled to an independent educational evaluation?

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a [pre-teenaged] 3rd grade resident of the School District with permanent and progressive sensorineural hearing loss. (N.T. 12, 15-16, 41)¹ She uses a total communication approach, which includes the use of bilateral hearing aids, sign language, an FM system in class, and an interpreter. (N.T. 15-19, 27, 41, 97; P 2)
2. Until this school year, Student and [a sibling] were in the same "inclusion classroom," receiving similar services to address their relatively similar disabilities. This school year, the [siblings] were placed into different classrooms at parental request and consistent with School District policy regarding typically developing [siblings]. Student is now in a "typical classroom," meaning that she is one of only a few children in her classroom who receives special education services. Student's parent testified that Student feels conspicuous in her classroom and, therefore, attempts to compensate in some way by trying blend in with her non-hearing impaired classmates. (N.T. 14-15, 32)
3. Student engages in [extra-curricular activities]. (N.T. 28, 38) Her grades are average, and she demonstrates good reading comprehension although she is not a fluent reader. (N.T. 20, 41)
4. Student's parent is concerned that Student may need counseling in deaf identity issues. Until this school year, Student attended class in the same classroom as her [sibling]. Student's parent alleges that Student has no close friends, is not allowed to play [sports]

¹ References to "N.T." are to the transcript of the April 18, 2006 hearing session. References to "H.O." and "P" are to the exhibits of the Hearing Officer and Parent, respectively. References to "SD-Mo #" are to School District exhibits related specifically to this Student, while references in this decision to "SD-Ma #," if any, are to School District exhibits related to Student's [sibling].

- by her peers, and does not participate in sleepovers with peers unless the sleepovers are facilitated by her parents. (N.T. 17, 28, 38)
5. On or about May 28, 2004, Student's parents privately secured a psychoeducational evaluation. (N.T. 22-23, 134; P 3)
 - a. The evaluator has substantial experience with children who are deaf and hard of hearing, including three years graduate training at Gallaudet University, and four years experience prior to that in a childrens hospital that specialized in hearing loss and communication. (N.T. 129, 139)
 - b. Student's Wechsler Intelligence Scale for Children, 4th Ed. (WISC-IV) standard scores were 73 in perceptual reasoning, 83 in working memory, 83 in processing speed, and 91 in verbal comprehension,. (P 3) No full scale IQ score was reported due to the significant discrepancy between the perceptual reasoning score and the other scores. (P 3)
 - c. Student's Wechsler Individual Achievement Test, 2nd ed. (WIAT-II) scores were average to above average in all academic areas. (P 3)
 - d. Student demonstrated some performance anxiety, was quick to give up and was easily frustrated. (N.T. 128) She also appeared to feel academically inferior to her [sibling]. (P 3)
 - e. The evaluator diagnosed a nonverbal learning disorder, based upon the discrepancy between Student's verbal and nonverbal processes, as well as her history of graphomotor difficulties. (N.T. 30; P 3)
 - f. The evaluator also noted difficulties with social awareness and mathematical reasoning. (P 3)
 - g. The evaluator testified at the hearing that the disability of deafness/hard of hearing involves not only a functional component, but also cultural and strong social and emotional components. (N.T. 133) At the time of the 2004 evaluation, however, there was no indication of emotional or adjustment difficulties related to hearing loss. (N.T. 127)
 - h. The evaluator testified at the hearing that children who are deaf/hard of hearing have a need to understand their strengths and differences. (N.T. 131, 136)
 - i. The May 2004 evaluation report recommended a reevaluation in 1-2 years. (P 3)
 6. At an April 21, 2005, IEP team meeting, as well as during a Fall 2005 follow up IEP team meeting, Student's parent requested counseling for Student to assist her in dealing with her hearing loss. (SD-Mo #1; N.T. 13, 43, 48) Student's Parent has observed frustrations at home in Student with respect to Student's Deafness Identity. (N.T. 120)
 7. On September 7, 2005, in response the parental request for counseling, the School District requested, and received, permission to evaluate Student. (N.T. 50; SD-Mo #3; SD-Mo #4)
 8. On or about October 25, 2005, Student's parents privately secured a neurodevelopmental pediatric evaluation to review Student's interim medical, developmental and behavioral history. (P 5; N.T. 24) The evaluation report notes some parental concerns about Student's attention, impulsivity, occasional temper control, and quick mood changes, but

- it also noted that anxiety and worry were rare. The report recommended on-going counseling regarding self-esteem, social skills and dealing with the Student's growing awareness of her individual differences as part of her overall educational program. (P 4)
9. On or about December 6, 2005, the School District issued its evaluation report (ER). (SD-Mo #5; N.T. 51)
 - a. Although Student's Parent recommended several possible assessment tools, the School District did not administer any of them. (N.T. 78, 85-86)
 - b. The evaluation did utilize a Developmental Teaching Objectives and Ratings Forms (DTORF) that was administered by an employee of the Intermediate Unit (IU). (N.T. 84-85) The School District's psychologist does not know why DTORF was chosen for Student. (N.T. 85) The DTORF is a rating scale that is completed by the consensus of participants, including Student's parent, classroom teacher, and someone else who is knowledgeable about Student. The DTORF examines four social domains: behavior; communication; socialization; and cognition. (N.T. 45, 57, 74-75) The consensus of participants was that Student had mastered 129 DTORF objectives, as compared to the 106 that is expected of children at Student's age. (SD Mo #5, p.2)
 - c. The evaluation also included a functional behavioral assessment by the School District's psychologist, as well as in-class and lunch/recess observations by a School District counselor who is trained in working with children who are deaf or hard of hearing. (N.T. 52, 78, 89-91, 97; SD-Mo #5) At lunch, the counselor observed little peer interaction, with Student generally behaving very quiet, very reserved, and observant of her peers. (N.T. 93) Student did participate in a partner activity in class, without using her interpreter, and demonstrating no communication problem with her partner. (N.T. 93-94, 100) At recess, Student did play [a game] with her peers and she did not use sign language or have difficult communicating. (N.T. 94)
 - d. Although the School District's psychologist did understand that Student's parent was concerned with whether Student needed counseling to better understand her own impairment, the ER was focused upon inquiring into whether Student exhibited any social, behavioral and/or emotional issues at school that would require counseling. (N.T. 82)
 - e. The evaluation recommended no counseling because it concluded that Student was functioning appropriately within the school setting academically, socially and behaviorally. (N.T. 51, 77)

 10. The in-class and lunch/recess observations that were conducted as part of the School District's ER, were performed by Ms. M, who is a School District elementary school guidance counselor. Ms. M was a very credible witness, with excellent qualifications relating to the education of deaf and hard of hearing children.
 - a. She also has a Bachelor's degree in interpreting for deaf and hard of hearing persons, a Master's degree in school counseling and guidance from Gallaudet University in Washington DC, and she is certified on the Register of Interpreters for the Deaf. (N.T. 89-90, 101-102)

- b. Ms. M reported that, if Deafness Identity is an issue, then a completely different type of assessment would be needed, including questions of student regarding her own perceptions of peer relationships, self-esteem, future visions. (N.T. 98-99, 109-110; SD Mo# 5, p.3)
 - c. Ms. M testified that, at the Maryland and Pennsylvania Schools for the Deaf at which she interned, Deafness Identity is embedded in the academic programs. (N.T. 104)
11. On December 6, 2005, the School District issued a Notice of Recommended Educational Placement (NOREP) refusing to provide counseling services to Student. (N.T. 53; SD-Mo #6) Student's parent rejected the NOREP and requested mediation. (N.T. 54)
 12. Mediation was unsuccessful and the School District re-issued its NOREP on or about January 12, 2006. Student's parents rejected the NOREP and requested a due process hearing. (N.T. 54-55; SD-Mo #8)
 13. I conducted a due process hearing on April 18, 2005. Exhibits P 1- P5, and SD-Mo #1 - SD-Mo #8 were admitted into the record without objection. (N.T. 142-143)
 14. This decision is issued:
 - a. 115 days after the due process hearing request; and
 - b. 15 days after the record was closed in this case.

DISCUSSION

The burden of proof in an administrative due process hearing is upon the party seeking relief. Schaffer v. Weast, __U.S. __, Dkt. No. 04-698 (Nov. 14, 2005) Children with disabilities are entitled to counseling, social work services in schools, and even parent counseling and training if they are required to assist a child with a disability to benefit from special education. 34 CFR §300.24(a) Counseling services includes services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. 34 CFR §300.24(b)(2) Social work services in schools can include working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school. 34 CFR §300.24(b)(13) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP. 34 CFR §300.24(b)(7)

Student's parent seeks an order requiring the School District to provide counseling to Student. I believe such an order would be premature. As discussed later in this decision, Student has not yet been evaluated appropriately to determine whether or not she needs such counseling. In this case, Student must be evaluated appropriately first, and then she might be found to be entitled to counseling services.

For an evaluation to be appropriate, a school district must comply with the regulations concerning an appropriate evaluation. It must use a variety of assessment tools and strategies to gather the information about the student, including information from the student's parent, and information about the student's progress in the general education curriculum. 34 CFR § 300.531 (b) Tests must be validated for the specific purposes for which they are used, be administered by a trained and knowledgeable person, and be conducted under standardized conditions. 34 CFR §300.531 (c)(1)(2) Further, the evaluation must review any existing evaluation data including information provided by the parents, curriculum-based assessments and observations of the student in the classroom, and observations by teachers and other persons. 34 CFR § 300 533 (a)(1)(i)(ii)(iii); In Re E.O. and the School District of Philadelphia, Special Education Opinion No. 1679 (2005)

In this case, the School District has known since Student's April 2005 IEP meeting that Student's parent is concerned about Student's potential need for counseling related to her deafness identity. Student's parent has not only requested counseling, but she has recommended specific assessment tools to assist the IEP team in evaluating Student to determine whether there is, in fact, any need for such counseling.

The School District, of course, understands that entitlement to related services is two-pronged, requiring not only the existence of a disability, but also some adverse impact of that disability upon Student's needs at school. The School District, however, has placed the cart before the horse in this case by limiting its evaluation to the second prong, without any real assessment of the first prong. We do not know whether or not Student has any deafness identity issues because the School District, so far, has refused to evaluate appropriately for deafness identity concerns.

The School District's very credible guidance counselor, who is well trained in the education of deaf and hard of hearing children, testified that if Deafness Identity is an issue to be evaluated in Student, then a completely different type of assessment would be needed than the assessment conducted in this case, including questions of student regarding her own perceptions of peer relationships, self-esteem, future visions. (N.T. 98-99, 109-110; SD Mo #5, p.3) Although Student's Parent recommended several possible assessment tools, the School District did not administer any of them. (N.T. 78, 85-86) In addition, the School District was unable to explain why it administered the evaluation instrument (the DTORF) that was ultimately chosen for Student. (N.T. 85) Thus, I conclude that the School District's ER is not an appropriate evaluation of potential deafness identity issues, and I will order that the School District conduct such an evaluation.

The next issue is whether the ordered evaluation shall be conducted by the School District or by an independent examiner. The regulations provide that a parent or guardian has the right to an independent evaluation at public expense if there is disagreement with the evaluation obtained by the school district. 34 C.F.R. § 300.502(b) In this case, the School District had the opportunity to conduct a thorough and complete evaluation of Student's deafness identity issues, if any, and the School District failed in its attempt. Thus, I conclude that an independent evaluation is most appropriate under these circumstances.

Finally, Student's parent requests that the School District be required to provide a complete psychoeducational evaluation. The record does not support such an order. The School District has dragged its feet in responding to the requests of Student's parents for an evaluation of Student's deafness identity concerns, if any. Student needs an appropriate evaluation of the concerns first raised by her parents one year ago. The record does not, however, indicate any parental requests for a comprehensive psychoeducational evaluation, let alone any School District failures to provide an appropriate psychoeducational evaluation. Frankly, this requested relief appears to be based simply upon parental feelings of anger and distrust which, while perhaps understandable, are not a sufficient basis for me to order an independent psychoeducational evaluation.

CONCLUSION

Student's parents seek deaf/hard of hearing counseling for Student, as well as an independent educational evaluation. Because I find that the School District did not appropriately evaluate Student with respect to the issues raised by Student's parents one year ago, I will order that the School District obtain a limited independent evaluation of any deaf/hard of hearing identity-related concerns. I will not, however, order either counseling or an independent, comprehensive psychoeducational evaluation.

ORDER

For the reasons described above, I ORDER that:

- The School District's December 2005 evaluation report is not appropriate;
- The School District shall pay for an independent evaluation of Student's Deafness Identity based upon assessment(s) approved by Student's parents.

Daniel J. Myers

Hearing Officer

May 7, 2006

Re: Due Process Hearing
File Number 6223/05-06 LS