

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.

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

6431/05-06 KE
File Number

A.W.
Child's Name

[redacted]
Date of Birth

6/08/06
Date of Hearing
Closed
Type of Hearing

For the Student's Mother:

Parent

For the Student's Father:

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Parent

**For the Upper Merion
Area School District:**

Kathryn Ashbridge,
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Upper Merion Area School
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Date of Hearing: May 26, 2006
Date of Receipt of Transcript: June 1, 2006
Date of Decision: June 8, 2006
Hearing Officer: Daniel J. Myers

Background

Student is a regular education 3rd grade student with average cognitive and achievement abilities and a consistent weakness in the areas of reading decoding and encoding. Concerned that Student's decoding problems will result in difficulties in 4th grade, Student's mother requests a comprehensive multidisciplinary evaluation. [Student's] father disagrees, believing that Student has made tremendous academic strides and that Student will be negatively impacted by an evaluation. The School District does not recommend evaluation because, after closely monitoring Student's progress through various regular education interventions over the last three years, they report steady progress in response to interventions, and they believe that a multidisciplinary evaluation is not warranted at this time. For the reasons described below, I agree with the School District and I deny the request to evaluate Student.

Issue

Whether or not Student should be evaluated?

Findings of Fact

1. [Student] (Student), born [redacted], is [an elementary school-aged], 3rd grade student of the School District (School District). (N.T. 15) ¹
 - a. [Student] demonstrates average cognitive and achievement abilities, with the exception of a consistent weakness in the reading-related areas of decoding and encoding. (N.T. 39-40, 50, 60-61) Simultaneously, Student demonstrates strengths in reading comprehension and in applying compensatory reading strategies. (N.T. 39-40, 54, 61, 107-108)
 - b. Student also experiences a discordant family life with divorced parents who, while diligent in attending to Student's educational needs, disagree with each other about virtually everything. (SD 7; SD 8; N.T. 7-8, 120, 122-123, 134, 140-141, 144, 147) Student meets regularly with the elementary school guidance counselor regarding family-related issues. (N.T. 104-105, 132)

2. In August 2003, just before Student's 1st grade school year, [Student] was evaluated by the [local] Intermediate Unit's (IU) Nonpublic School Services Division. (M-1; N.T. 68-69)
 - a. A Wechsler Intelligence Scale for Children, 3rd Ed. (WISC III) indicated overall cognitive abilities in the average range. (N.T. 97; M-1, p.3) Wechsler Individual Achievement Test, 2d. Ed. (WIAT II) scores were in the low average to average ranges in all areas. (N.T. 98; M-1)
 - b. The IU's report identified weaknesses in reading decoding for which remediation and monitoring would be appropriate. (N.T. 99, 102)

¹ References to "HO," "M," and "SD" are to the Hearing Officer, Mother, and School District exhibits, respectively. References to "N.T." are to the transcript of the hearing session conducted on May 26, 2006.

3. During the second semester of Student's 1st grade school year, a routine reading assessment placed Student in the lowest 20% of 1st grade children, automatically triggering [Student's] enrollment into the School District's Reading Recovery program. (N.T. 64; SD 12) For eleven weeks, Student received ½ hour per week of structured one-on-one assistance from a certified reading specialist in the areas of reading comprehension, fluency and decoding. (N.T. 75-77) During that time, Student progressed from the program's Level 3 to Level 10, on a scale on which the program's top, or exit, level is around Levels 16-18. (N.T. 77)
4. Because Student had not exited the Reading Recovery program during [Student's] first grade year, [Student] received Title I services during [Student's] 2nd grade school year. (N.T. 78) In November 2004, Student was Proficient in math, Proficient or Basic in the various areas of writing, and Below Basic in Independent Reading. (SD 9; N.T. 46) Accordingly, Student was referred to a Student Support Team (SST) that would develop academic intervention goals, monitor Student's progress, and either revise those goals, determine that Student no longer needed interventions, or recommend a multidisciplinary evaluation. (SD 5; N.T. 46-48, 57, 60-61, 64-65)
5. Student responded to [Student's] SST interventions and met progressive goals. (N.T. 57, 64; SD 5) [Student's] high-frequency word reading increased from under 100 to 150 and [Student's] reading-level assessments went from "Pre-Primer Level 10" to "2nd grade Level" over the course of the school year. (SD 5; N.T. 71) At the end of the school year, Student's reading accuracy on the Critical Reading Inventory (CRI) was 95% at the second grade level. (N.T. 80, SD 6; SD 12)

Third Grade, 2005-2006

6. During Student's 2005-2006, 3rd grade school year, [Student's] regular education grade level reading scores have been average in comparison with [Student's] peers. (N.T. 19-20, 28)
 - a. Student receives 2½ hours per day of reading instruction from [Student's] regular education 3rd grade teacher, using 3rd grade curriculum materials. (N.T. 21-22)
 - b. [Student] is a very slow, choppy reader because [Student's] decoding challenges sometimes interfere with [Student's] fluency, although Student does not exhibit frustration when reading. (N.T. 27-28, 35, 88) Student constantly applies reading strategies, including self-corrections. (N.T. 29, 84) [Student] makes more spelling errors than [Student's] average 3rd grade peers. (N.T. 33) [Student] makes errors in vowel clusters such as O-U, O-W, and A-I. (N.T. 33)
 - c. Organizationally, Student's desk is neat. The quality of [Student's] work product fluctuates. Student completes [Student's] work on time although [Student] can get slightly behind in starting an activity because [Student] tends to exhibit uncertainty regarding what [Student] is supposed to do. (N.T. 25-27, 38) Emotionally, Student seems on the younger side of [Student's] 3rd grade peers and sometimes seems emotionally needy. (N.T. 42-43)

- d. [Student's] regular education teacher makes three accommodations for Student: 1) allowing for some spelling errors in light of Student's weakness in decoding/encoding; 2) having student restate instructions out loud to ensure understanding; and 3) allowing Student to ask a peer when [Student] is unsure of an assignment. (N.T. 23, 27)
7. Student also continues to receive Title I reading services, and an SST again develops reading goals and monitors Student's progress. (N.T. 16, 20, 22, 41, 71; M-8)
 - a. Student receives ½ hour per week additional reading instruction with a certified reading specialist in a small group of 6 students. (N.T. 55, 92)
 - b. On February 27, 2006, Student's SST action plan goal was to increase, in 2 months, from 85.8% accuracy on the regular education late 3rd grade reading level assessment, to 90% accuracy on the same assessment. This goal was met by April 27, 2006. (SD 14; N.T. 58-59, 65-66)
 - c. On April 27, 2006, because Student's SST observed that Student was struggling with the "R controlled vowels," they developed an appropriate goal regarding those vowels. (SD 19; N.T. 59, 67, 87) At the same time, a CRI indicated that Student's reading comprehension was 87% at a 4th grade level, while [Student's] word recognition was 40% at the 4th grade level and 80% at the 3rd grade level. (N.T. 82, 85)
8. On or about January 20, 2006, Student's mother requested a comprehensive multidisciplinary evaluation of Student. (SD 10; SD 11) Any multidisciplinary evaluation would include updated IQ and achievement tests, as well as a review of Student's response to interventions. (N.T. 100) Student's mother is concerned that Student's decoding problems will result in difficulties in 4th grade when the curriculum becomes more difficult. (N.T. 160-161) While reluctant to predict the future in Student's case, School District officials acknowledge generally that children with reading decoding deficits may find themselves spending so much time on decoding that their fluency and, ultimately, their reading comprehension, suffers. (N.T. 83, 91)
9. Student's principal and reading specialist are both certified reading specialists with many years of experience, and both have known Student since 1st grade. They are SST members and aware of Student's decoding and encoding weaknesses, as well as [Student's] strengths in reading comprehension and the use of reading strategies. (N.T. 63-64, 85, 90-92) They have monitored Student's progress through the various regular education interventions, they report steady progress in response to interventions, and they believe that a multidisciplinary evaluation is not warranted at this time. (N.T. 29-30, 54, 63-64, 83, 86-87, 91-92, 102-103)
10. On or about March 7, 2006, Student's Father disagreed with the evaluation request of Student's mother. He feels that any low achievement was the result of Student's difficult home life prior to [Student's] parents' divorce. He believes Student has made tremendous academic strides and he is concerned that Student will be negatively impacted by an evaluation. (SD 15; SD 16; SD 17; N.T. 140, 162)

11. I conducted an evidentiary hearing in this matter on May 26, 2006.
- a. Student's mother introduced exhibits M-1 and M-4 through M-9. She withdrew exhibits M-2, M-3, and M-10. (N.T. 151, 153) I sustained the parties' objections to M-9 because this was a reading assessment that Student's mother administered to Student but about which there was no testimony. (N.T. 157)² Thus, exhibits M-1 and M-4 through M-8 were admitted into the record. (N.T. 157)
 - b. The School District introduced exhibits SD 5 through SD 21. The School District withdrew exhibits SD 1 through SD 4. (157) With no objections, SD 5 through SD 21 were admitted into the record. (N.T. 160)

Discussion

The Individuals with Disabilities Education Improvement Act (IDEIA) and its implementing federal and state regulations require school districts to assure that all children with disabilities receive a free and appropriate public education (FAPE). 20 U.S.C. §1412; 34 CFR Part 300; 22 Pa. Code Chapter 14 A child with a disability is a student with one of the conditions enumerated in 34 CFR §300.7, all of which are considered "disabilities" for educational purposes if they adversely affect a child's educational performance. 34 CFR §300.7(c)(1)(i), (3), (4)(i), (5), (6), (8), (9)(ii), (11), (12), (13) Evaluation of a student's needs is a fundamental element in the provision of FAPE to a student with a disability. 34 CFR §§300.320, 300.531

A hearing officer has the authority to order override parental and/or School District refusal for evaluation if the record supports a reasonable suspicion that a student might have a disability and be in need of special education services. 22 Pa. Code §14.25(c)(6); In re Paul M., Special Education Opinion No. 964 (1999).; In Re Nisheaba L., Special Education Opinion No. 910 (1999), In Re Willie F., Special Education Opinion No. 707 (1996), and In Re Timothy T., Special Education Opinion No. 668 (1995)

² Student's mother chose not to testify herself and she unsuccessfully sought to introduce the testimony of a colleague to interpret the reading assessment results. (N.T. 125, 148, 151-152) I did not permit that colleague to testify because that witness was not disclosed in accordance with the 5 day disclosure rule. (N.T. 126-129)

In this case, there is no dispute among the parties that Student has decoding and encoding deficits in [Student's] reading skills. The dispute is whether a multidisciplinary evaluation is warranted. While, frankly, there seems to be little harm in conducting a multidisciplinary evaluation, I am mindful that two of the three parties in this matter oppose such an evaluation at this time, and I believe that all parties' positions are entitled to consideration.

While both of Student's parents know [Student] well, the credibility of each parent is diminished by their contentiousness toward each other. They tend to use Student's educational circumstances as opportunities for further disagreement with each other. (SD 7; SD 8; N.T. 7-8, 120, 122-123, 134, 140-141, 144, 147) This causes me to suspect their motives in this case and to look toward the School District for more neutral assessments of Student's abilities and needs.

In this case, the School District witnesses were quite credible. All were highly professional in demeanor, well-qualified, and knowledgeable about their areas of professional expertise as well as about Student. Student's principal and [Student's] reading specialist, both certified reading specialists with many years of experience who have known Student since 1st grade, are SST members and aware of Student's decoding and encoding weaknesses, as well as [Student's] strengths in reading comprehension and the use of reading strategies. (N.T. 63-64, 85, 90-92) They have monitored Student's progress through the various regular education interventions, they report steady progress in response to interventions, and they believe that a multidisciplinary evaluation is not warranted at this time. (N.T. 29-30, 54, 63-64, 83, 86-87, 91-92, 102-103)

Their opinions are supported by the evidence in the record. In 2nd grade, Student responded to [Student's] SST interventions and progressively met goals in high-frequency word reading and curriculum-based reading assessments. (N.T. 57, 64, 71; SD 5) At the end of 2nd

grade, Student's reading accuracy was 95% at the second grade level. (N.T. 80, SD 6; SD 12) Similarly, in 3rd grade, Student increased [Student's] accuracy on the regular education 3rd grade reading level assessment by 4.2% in two months, [Student's] regular education grade level reading scores have been average in comparison with [Student's] peers, and [Student's] SST team is closely monitoring [Student's] word recognition gains. (SD 14; SD 19; N.T. 19-20, 28, 58-59, 65-67, 82, 85, 87)

This is not to say that the School District will never recommend a multidisciplinary evaluation in the future, depending upon Student's future performance. The record establishes, however, that School District officials are keeping a close eye upon Student's achievements. Their professional recommendation that a multidisciplinary evaluation is not warranted at this time convinces me. Accordingly, I agree with the School District, and I deny the request to evaluate Student.

ORDER

- The request of Student's mother for a multidisciplinary evaluation is DENIED.

Daniel J. Myers

Daniel J. Myers
Hearing Officer

June 8, 2006

Re: Due Process Hearing
File Number 6431/05-06 KE