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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION
DUE PROCESS HEARING

Name of Child: NS
ODR #6506/05-06 AS

Date of Birth: xx/xx/xx

Date of Hearing: June 17, 2006

CLOSED HEARING

Parties to the Hearing:

Parents

Souderton Area School District
760 Lower Road
Souderton, Pennsylvania 18964

Transcript Received:

Date of Decision:

Hearing Officer:

Representative:

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June 26, 2006

July 10, 2006

Linda M. Valentini, Psy.D.

Background

Student is a xx-year-old eligible student residing in the Souderton Area School District (hereinafter District). Following a re-evaluation by the District and an IEP meeting a dispute arose between the parties, and the District proposed conducting further assessments using an outside evaluator of its choosing. Mr. and Mrs. [redacted] (hereinafter Parents) initially declined the District's request for permission to reevaluate, but later agreed, contingent on the use of an outside evaluator whom they had selected. The District maintained its right to use its own evaluator. The Parents then asserted that the District's reevaluation was inappropriate, and that they therefore were entitled to an IEE at public expense by an evaluator of their own choosing. Although the issue was framed differently by each party, the bottom line issue of this case involved the identity of the professional who would be conducting an outside assessment of Student.

The hearing officer and the attorneys met at considerable length before the hearing started, and discussed readily evident and fairly obvious solutions to this matter, but neither party was able to move from its fixed position. Hence the matter went to hearing.

Issues

1. Should the School District be granted permission to evaluate Student using an outside evaluator of its own choosing?
2. Are Parents entitled to an independent educational evaluation of their son Student at public expense with an evaluator of their choosing?

Findings of Fact

1. Student is a xx-year-old resident of the School District.
2. In the beginning of the 2005-2006 school year the Parents wrote a letter to the principal asking that Student be reevaluated. (NT 192-195)
3. On 2-8-06 in correspondence on a matter involving a homework assignment, the Parents wrote that Student has a learning disability and noted, "This is why we have requested that he be retested". (S-15)
4. The director of special education was never made aware of the Parents' request for an evaluation. (NT 62)
5. The District issued a Permission to Reevaluate on 1-27-06. The Parents signed it on 2-3-06 and the District received the signed form back on 2-9-06. (S-14)

6. The Permission to Reevaluate form notes both an IEP team recommendation that additional data was needed and “parent request for reevaluation”. (NT 180; S-14)
7. On 3-27-06, in a letter preparatory to an upcoming 3-30-06 meeting the Parents asked that certain questions/issues be discussed and solutions generated. The questions/issues included Student’ inability to read at a first grade level after over three years of special education, the specific nature of Student’ learning disability, review of social and emotional issues that impede school work, impact of his learning disability on his self esteem and emotional stability, and (needed) linguistic and communication skills. (NT 185-186; S-20)
8. The district school psychologist who was conducting the evaluation had an opportunity to review the Parents’ 3-27-06 letter prior to the 3-30-06 meeting and prior to completing his reevaluation. (NT 191)
9. The Parents expected that the reevaluation that was in the process of being conducted at that time would address all the issues they listed in the letter dated 3-27-06. (NT 65-66, 190)
10. On February 20, 2006 Ms. G, an educator in private practice, administered the Processing and Cognitive Enhancement (PACE) pre-test at the request of the Parents. Deficits were identified in word attack, auditory analysis, and selective attention. The Parents presented Ms. G’s testing results to the District at the 3-30-06 meeting. (NT 186-187; S-17, S-22)
11. On 3-27-06 Dr. F., a private psychologist, administered the Wechsler Intelligence Scale for Children Fourth Edition (WISC-IV) to Student at the request of the Parents. He achieved a Verbal Comprehension Index of 93, a Perceptual Reasoning Index of 115, a Working Memory Index of 91, a Processing Speed Index of 115 and a Full Scale IQ of 104. The Parents presented Dr. F’s testing results to the District at the 3-30-06 meeting. (NT 187-188, 223-224; S-21, S-22)
12. At the 3-30-06 meeting the Parents discussed with the District the concerns they had addressed in their 3-27-06 letter. (NT 195-196)
13. The District psychologist who was responsible for conducting the reevaluation was present at the 3-30-06 meeting. (NT 100, 114, 195)
14. The district psychologist testified that if additional information comes in while an evaluation is being completed it is added into the evaluation, and that if there were unanswered questions with reference to a reevaluation further steps would be taken to reassess. (NT 139)
15. At the 3-30-06 meeting the team agreed that the reading specialist would administer “some specific reading assessments in the areas of phonological awareness, sight words and comprehension”. It is not clear why such assessments

- were not included in the original permission to evaluate of 1-27-06 or included under achievement testing which *was* in the Permission form. These assessments were done on 3-31-06. (NT 83, 196; S-22, S-23)
16. The instrument used for the reading assessment was not normed for students Student' age. (NT 83; S-23)
 17. The District completed its reevaluation report on 4-3-06. It included a records review by the school psychologist, an appended classroom observation by the school counselor done the day after the reevaluation report date, and the reading specialist's assessment agreed upon at the 3-30-06 meeting. It reported results of the F and G testings provided by the Parents. (NT 109-111, 119, 149-152; S-25)
 18. The district school psychologist merely compiled information given to him by others. He did not lay eyes on Student for this reevaluation, and he did no individual assessments on his own. (NT 152)
 19. The District psychologist, who holds a degree in reading, testified that exploring the Parents' concerns about determining the nature of Student' reading disability, information that could help Student' teachers work with him, could be accomplished through administration of the Gray Oral Reading Test, the Woodcock Johnson Achievement Test, and the Wechsler Individual Achievement Test. None of these instruments was used for the 4-3-06 reevaluation. (NT 108, 121-125)
 20. The proposed reevaluation as described in the Permission to Evaluate form consisted of "Teacher/Parent Questionnaire, Observation, Achievement testing, Behavior checklists". (S-14)
 21. The reevaluation did not include any teacher-parent questionnaires. (NT 152)
 22. The reevaluation simply appended an observation of Student done by the school counselor after the date the evaluation report was completed. The district school psychologist was "not sure" whether or not the counselor's observation was meant to be part of the reevaluation. (NT 152, 164; S-25)
 23. The reevaluation did not include any standardized achievement testing. It included information relative to curriculum-based guided reading levels. The information yielded by the curriculum-based material did not indicate specific reading strengths and weaknesses, although the district school psychologist thought that reading was the "major focus" of the reevaluation. (NT 153-156)
 24. The reevaluation did not include behavior checklists of the standardized variety (e.g. Achenbach Child Behavior Checklist, Connors, Behavioral Assessment Scales for Children (BASC)). The only "checklist" was the one the guidance

- counselor used that was appended to the reevaluation report as the “observation”. (NT 153)
25. Student’ current teacher provided information to the district school psychologist, included in the reevaluation report, that Student, “is retaining some information, but most is lost by the next lesson, which possibly could be a memory function”. (S-25)
 26. The reevaluation included no assessment of Student’ memory functioning. (NT 165; S-25)
 27. On 2-28-06 the Parents informed Student’ teachers that he was starting new medications. Student has been on medication, with the District’s knowledge, since first grade. (NT 184; S-18)
 28. The district psychologist who did the reevaluation of Student was not given, or did not review, this letter. He had heard from the IEP team that Student was receiving medication, but did not know what that medication was. He was unsure about whether he learned about Student’ being medicated before or after completing his reevaluation, although he testified that he believed that this type of information would be relevant and that, had he known it, it would have been included in the reevaluation report. (NT 130-133, 157)
 29. Currently Student receives Adderall, Ritalin and Tenex and is being weaned from Paxil. Zoloft is being considered as an alternative antidepressant. The medications are prescribed by a neurologist specializing in pediatrics. The District had had knowledge all along since first grade that Student was being medicated. (NT 63, 183, 220)
 30. The school counselor did not inform the school district psychologist performing the reevaluation that Student was receiving psychotropic medication. (NT 250)
 31. Purportedly school records were reviewed as part of the reevaluation. School records include a Cumulative Record of Parent-Teacher Conferences. An entry from 11-20-01 notes, “cries very easily” and [has behaviors with peers]. The report also notes, “We also agreed that [some] problems could possibly be from nervousness in school”. (S-46)
 32. School records include a teacher-completed Referral for Multidisciplinary Evaluation form dated 10-28-02. Student’ teacher noted, “Student does not interact appropriately with his peers. He cries very easily and appears to be developmentally much younger although he is not”. The teacher also wrote, “Student is unable to do any work independently and if I do not help him immediately he usually cries. I continue to tell him he does not need to worry that I will help him as soon as I can, but this still is not reassuring”. (S-5)

33. The classroom observation section of the reevaluation report notes that Student “often has his hands in his mouth or around his face. He exhibits signs of anxiety when working with others in the classroom.” (NT 79; S-25)
34. Dr. F has been treating Student for symptoms of anxiety and depression once or twice a week for about two years. Dr. F has been in touch with the school counselor around Student’ emotional and social issues. (NT 187-188, 225, 240-241)
35. The District was aware of Student’ having anxiety issues in school prior to the family issues that came up in the spring and summer of 2005. The district school psychologist noted, “Well, anxiety has been a part of the picture for a long time”. (NT 37-38, 51, 136)
36. The reevaluation does not include any specific analysis or assessment of anxiety in Student and how it may be impacting him educationally. (NT 137; S-25)
37. The district school psychologist testified that information he received prior to completing his reevaluation regarding “crying and those kinds of things could indicate there was a potential for depression, I guess”. (NT 136)
38. The reevaluation does not contain any specific information regarding depression and how it may be affecting him educationally. (NT 137; S-25)
39. The district school psychologist noted that information conveyed to him during the course of his initial evaluation of Student suggested “that there are some things going on with him emotionally that were troubling to him. Yes, there was an emotional component.” The evaluator also testified that at the time he “couldn’t tell how much of it was related to specific learning issues and how much of it was other issues”. (NT 126-127)
40. The reevaluation included no assessments directed towards signs of anxiety in the classroom observed in the past by school staff or towards the social, emotional and self-esteem issues possibly impacting school performance raised by the Parents in their 3-27-06 correspondence. (NT 61, 79-80; S-25)
41. The 4-3-06 reevaluation did not recommend any further testing, although it included information from the Parents that they observed an increase in depression and frustration in Student. (NT 76-78; S-25)
42. The district school psychologist testified that, “certainly if I knew then what I know now, I would do additional assessment of the emotional area”. (NT 162)
43. The initial evaluation by the District in February 2003 recommended the use of the “Connors Rating Scales to determine whether Student meets screening criteria for attention deficit disorder”. (S-6)

44. A follow-up review of the Connors results after the initial evaluation suggested that “there were significant indications of attention deficit-hyperactivity disorder as reflected in both Parent and teacher assessments”. (NT 128)
45. In the 2005-2006 school year Student had begun acting out. He was attention-seeking, lying and stealing, and late in the year he bit another student. (NT 32, 79, 198-199)
46. The district school psychologist testified that the only way one could really know the impact attention and hyperactivity difficulties have on a student’s performance would be to observe the student’s behavior. The guidance counselor did a classroom observation on 4-4-06, the day after the District’s reevaluation was completed. The observation provided relevant information about Student’ lack of participation, attention, independence, focus, and task comprehension. This observation was not included in the reevaluation report; the form was merely appended to the reevaluation report and not integrated into the report or interpreted by the district school psychologist. The district school psychologist did not talk to the school counselor about her observations until after he had finished his report. (NT 145-146, 160-161; S-26)
47. The reevaluation contains no follow-up information about Student’ attention or hyperactivity difficulties, about the medications he was receiving that commonly address these issues, or how his difficulties in this area impact him educationally. This area would have a legitimate place in a reevaluation report and the district school psychologist noted that this difficulty is a “potential problem” for Student educationally. (NT 144, 146-148, 158-160; S-25)
48. On the reevaluation report, under the heading “Determination of Need for Additional Data” the District checked the box indicating “The IEP team determined that additional data are not required” noting “Additional data have been reported by a private psychologist and education consultant which have been summarized in this reevaluation document. There is considerable assessment information available from curriculum measures which his also presented in this report”. (S-25)
49. The District’s position, in the opinions of the director of special education and the district school psychologist, is that the reevaluation completed on 4-3-06 was appropriate, as it addresses whether Student continued to be eligible for special education. (NT 76, 116, 124-125)
50. When it was pointed out to the district psychologist that “boilerplate language” in the reevaluation report notes that the reevaluation should explore “whether any additions or modifications to the special education or related services are needed”, he acknowledged that a reevaluation should go beyond just whether or not a child remains eligible. (NT 162-164)

51. The district school psychologist noted that he could “certainly see the need for additional evaluation”. (NT 148)
52. The Parents were “completely discouraged” when they saw the report, noting that the school district psychologist had taken all the “footwork” they had obtained from outside assessments included some information provided by the teachers, and summarized it. They did not believe that the reevaluation encompassed everything that was required to provide the answers they were seeking about Student. (NT 198-199, 201)
53. The Parents’ signatures indicated their agreement that this was the report the District was issuing. Their checking “agree” at the 4-11-06 IEP meeting did not mean that they agreed that the reevaluation was proper. (NT 199-200)
54. On 4-19-06 the Parents’ counsel, through written correspondence to the District, requested a due process hearing, alleging among other things that the District failed to provide Student with a free appropriate public education (FAPE) for preceding school years and that the proposed IEP was not appropriate. (S-30)
55. On 4-21-06 the District, through counsel, noted that statements with respect to “alleged social-emotional problems” as well as “the criticism of the current proposed IEP” were the first the District received such information. (S-31)
56. In the 4-21-06 correspondence the District noted, “the District must be permitted the opportunity to evaluate Student...(and) will send “permission to evaluation (sic)”. (NT 41, 43; S-31)
57. The District issued a Permission to Reevaluate on 4-27-06 but Parents, through counsel by letter dated 5-4-06 questioned the need for another evaluation. The Parents did not sign the Permission to Evaluate. (NT 39-40; S-34, S-35)
58. The District’s response through counsel reiterated that the Parents had identified “for the first time issues and concerns that can be construed as a reason ‘to suspect’ a need to evaluate.” (S-35)
59. On 5-26-06 the Parents through counsel asserted that the reason that further evaluation was needed was because the District had failed to properly evaluate Student. The Parents proposed an IEE with Dr. L because among other reasons, they believed that Dr. L specializes in pediatrics. (NT 44, 202; S-40)
60. The Parents made an appointment with, and intend to pursue, an evaluation with Dr. L. (NT 203)
61. On 5-31-06 the District through counsel responded, asserting its right to conduct its proposed evaluation with an evaluator of its own choosing, Dr. S. The District

proposed Dr. S because among other reasons the District has found her reports to be impartial and thorough and because the District believes that she has expertise in the area of social and emotional issues. (NT 45, 47; S-41)

62. Dr. L received her doctorate in [redacted] Medical School/Children's Hospital in [city redacted]. She is currently an adjunct assistant professor at [redacted] University in the school psychology and neuropsychology tracks. She is a licensed psychologist in Pennsylvania and a certified school psychologist in Pennsylvania. Her curriculum vitae lists nine publications, dealing with neuropsychological functioning of children and adolescents with learning disabilities, an annotated index of selected assessment procedures for developmental disabilities, cognitive and behavioral adjustment in children following traumatic brain injury, traumatic brain injury vis a vis children with disabilities (two separate editions), rehabilitation of children with brain tumors, the relationship between neuropsychological deficits, executive functions and social perception in non-verbal learning disabilities, neuropsychological assessment and behavioral profiles in learning disorders and the relationship between neuropsychological variables and social competence in a learning disabled population. Her twelve listed presentations address learning disabilities, children with traumatic brain injuries, neuropsychological evaluation of learning disabilities, educational and vocational planning, neuropsychological assessment of traumatic brain injury, rehabilitative intervention in pediatric brain injury, traumatic brain injury in children, assessment in pediatric rehabilitation, purposes processes and pitfalls in child evaluation, nonverbal learning disability issues and controversies and neurocognitive correlates of social deficits in nonverbal learning disabilities. She is currently the Director of the Neuropsychology Assessment Center of [redacted] University and has a private practice. (NT 204-205; P-1)
63. Dr. S received her doctorate in educational psychology and statistics in 1977. She is a licensed psychologist in Pennsylvania and a certified school psychologist in Pennsylvania. Her curriculum vitae lists five publications¹, dealing with reflections on various types of patients, the matching figures test, nonstandard neuropsychological assessment in rehabilitation, neuropsychological assessment of injured workers, and denial and depression in disabling illness. Her twelve presentations include sexual fantasy neuropsychological basis, denial depression in disability, neuropsychological substrate of sexual fantasy, impulsivity following lateralized lesions, impulsivity following unilateral brain damage, critical distinction awake vs alert, denial of disability, chronic patients, teaching psychology, crisis intervention in a partial hospitalization setting, constructive processes in children's memory and validating reading management systems. She is currently in private practice and holds an appointment to the allied medical staff at [redacted] Hospital. (S-42)

¹ The document appears to be out of order; this is the hearing officer's best estimate.

Discussion and Conclusions of Law

This matter concerns the adequacy of a reevaluation performed by the District. The Parents characterize the reevaluation as having been done at their request, (FF 2, FF 3) whereas the District bills it as a three-year reevaluation. (FF 6) This hearing officer found the mother's testimony on this point credible. Furthermore, she was highly credible throughout her testimony, appearing forthright, open to answering personal questions and displaying excellent memory skills.

The District viewed the reevaluation as only needing to address whether Student remained eligible for special education services. (FF 49) Accepting this premise for purposes of discussion, even for a reevaluation with this narrow focus, the actual procedures employed were remarkably skimpy. Had the reevaluation consisted only of actually *utilizing* the procedures listed on the Permission to Evaluate, the assessment had the potential to be thorough and useful in programming for Student. However, none of the listed procedures were appropriately employed.

The reevaluation, according to the Permission to Evaluate was to include parent-teacher questionnaires, observation, achievement testing and behavior checklists. (FF 20) The psychologist who authored the report did not observe or work individually with the child. The observation by the school counselor was done a day after the report was finalized, was merely appended to the end of the reevaluation report, and the counselor and the psychologist did not discuss the observation in particular or the evaluation generally until after the report was completed. (FF 46) Neither the psychologist nor anyone else administered and collated information from parent-teacher questionnaires as listed on the Permission to Evaluate. (FF 21) Neither the psychologist nor anyone else administered structured behavior checklists or any type of behavior checklists to those who could validly rate Student' behavior. (FF 24) The psychologist did not administer achievement testing; he graphed curriculum-based assessment of reading data gathered by the teacher but this graphing exercise did not reveal any useful information about Student' weaknesses in the reading process or about the type of reading disability the child might have. Were it not for the 3-30-06 meeting and the Parents' grave concerns about reading, there would not have been even the reading specialist's evaluation, albeit an evaluation that utilized an assessment tool not normed for Student' age group and therefore not capable of yielding a standardized score. (FF 23) The District failed to follow its own stated intents when it issued the permission form required to conduct Student' reevaluation.

Well within the sixty school day period for completing the reevaluation, the District received a list of the concerns the Parents had hoped would be addressed in the reevaluation. (FF 7, FF 9) Providing WISC-IV and PACE results they had obtained themselves, the Parents sought the District's expertise regarding the specific nature of Student' reading disability and regarding social/emotional factors that could be impeding Student' educational progress. The district psychologist saw the Parents' letter either just before, or certainly during, the 3-30-06 meeting (FF 8), yet he issued his report on 4-3-06 without having done one additional thing to adequately assess achievement, or assess the

extent of and the contributory effects of Student' long-standing anxiety or his emerging depression. (FF 35 to FF 39) Nevertheless, this hearing officer found the district school psychologist to be a credible witness. He was honest and forthright and considering that his evaluation was the subject of controversy, not notably defensive. He was not too entrenched in his position to make honest admissions that in certain respects he could have done things differently. (FF 42) The psychologist should not bear the responsibility of having produced an inadequate evaluation alone; it became evident that there was not sufficient communication between the psychologist and the guidance counselor, who knew, for example, that Student was receiving psychotropic medication but who did not share this information with the psychologist. (FF 28, FF 30) In Student' case the District team produced a reevaluation that was inadequate, inappropriate, disjointed, and indicated little communication/collaboration among team members.

The District's opinion that it produced an appropriate evaluation because it confirmed Student' continuing eligibility was weakened by its own words in the reevaluation report that presented the query "whether any additions or modifications to the special education or related services are needed". The reevaluation clearly was not adequately structured to address this question. The opinion of the director of special education regarding the appropriateness of the reevaluation was given little weight. Throughout her testimony she appeared evasive, and to be carefully picking her words to be exact but not forthcoming (NT 70-71, 75), for example, with a master's degree in special education and experience in special education since 1971, she testified that she did not know if certain descriptions gave reason to suspect that Student was experiencing anxiety at that time (NT 23-24, 55-56, 58-59, 80-81).

The District's attempt to recast this dispute into a permission to evaluate to obtain additional information case/selection of evaluator case was done after the fact and is not persuasive. When it produced its reevaluation report the District already had knowledge of other issues that it simply chose not to address, namely the Parents' request that Student' reading disability be further delineated, the potential educational impact of long-standing anxiety issues well-known to the District (FF 55, FF 48) and the impact Student' attention and hyperactivity difficulties had on his functioning in school (FF 45, FF 46, FF 47). The District in fact indicated on the reevaluation that no other information was needed. (FF 48) It was not until the Parents challenged the reevaluation and the subsequent IEP that the District decided that it needed more information. The District's reevaluation was inappropriate for all the reasons described above.

The IDEA's most recent implementing regulations at 34 CFR §300.502(b)(1)(2)(3) provide that "a parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must either initiate a hearing and at that hearing show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense".

This hearing officer has determined that the District's reevaluation was inappropriate, hence the Parents are entitled to an independent evaluation at public expense using an evaluator of their choosing.

By way of dicta, this hearing officer has examined the credentials of both evaluators and concludes that although both are well-qualified and either could likely perform an appropriate IEE, Dr. L's professional direction has been focused on pediatric assessment and treatment and her publications reflect this concentration, whereas Dr. S's career has taken a more general focus as reflected in her publications. Were this hearing officer charged with choosing the evaluator, she would choose Dr. L.

Additionally, by way of dicta, having already agreed to fund an outside evaluation, the District would have better conserved its resources had it reviewed Dr. L's curriculum vitae and agreed to allow her to conduct an IEE with specific focus toward classification, assessment of needs and strengths and recommendations for programming to be carried out in a public school setting.

ORDER

It is hereby ORDERED that:

1. The School District is not granted permission to evaluate Student using an outside evaluator of its own choosing.
2. Parents are entitled to an independent educational evaluation of [redacted] Student at public expense with an evaluator of their choosing.

July 10, 2006

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer