

This is a redacted version of the original hearing officer decision. Select details may 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

DECISION

DUE PROCESS HEARING

Name of Child: WW

ODR #6887/06-07 LS

Date of Birth: xx/xx/xx

Date of Hearing: November 13, 2006

OPEN HEARING

Parties to the Hearing:

Mr.

Lee Carr
Scranton City School District
425 N. Washington Ave
Scranton, Pennsylvania 18503

Representative:

John Bogdanovicz, Esquire
507 Linden Street, Suite 300
Scranton, PA 18503

Harold McGrath, Esquire
McGrath Law Offices
3215 Spruce Street, Suite 600
Scranton, PA 18503

Date Transcript Received:

November 18, 2006

Date of Decision:

November 27, 2006

Hearing Officer:

Marcie Romberger, Esquire

BACKGROUND

Student is xx years old and currently in his second year of 10th grade in the Scranton City School District. He has been diagnosed with autism. In May, 2006, the District and Student reached an agreement for the District to fund an independent educational evaluation for Student. As a result of some issues, Student did not have the independent evaluation conducted. Student's behaviors have declined within the past few weeks. His aggression has increased and his time in academic instruction has decreased due to other behaviors. Both sides have requested independent educational and psychological evaluations at public expense to be ordered for Student.

FINDINGS OF FACT

1. Student is xx years old. N.T. 34. He is currently in his second year of 10th grade in the Scranton City School District (hereinafter, "District"). N.T. 34.
2. During the 2005-2006 school year, Student was instructed part of the day at a vo-tech school and part of the day at High School. N.T. 34.
3. Student began exhibiting behavior problems in the vo-tech program which caused concern Student was a danger to himself or others in that program. N.T. 34-35, 36. As a result, he was removed from the vo-tech program. N.T. 35.
4. The District completed an educational re-evaluation of Student on March 30, 2006. S-11. A mental health agency conducted a psychological evaluation of Student. N.T. 80. Student did not agree with the results of either evaluation and requested a due process hearing. N.T. 80. An independent educational evaluation was at issue at the hearings. N.T. 36, 80.
5. To settle the independent evaluation issue, the District offered to provide Student three names of psychologists from which Student could choose to conduct an independent educational evaluation of Student at District expense. N.T. 37; S-1. Unfortunately, one of the evaluators became ill and was not available to conduct an evaluation. N.T. 37.
6. Student was never evaluated by an independent evaluator because the District did not provide three names from which Student could choose. N.T. 38-39.
7. On August 24, 2006, the District requested consent to complete a re-evaluation since Student had not submit to an educational evaluation. N.T. 39.
8. Student's father objected to the proposed evaluation. N.T. 40. Instead, Student's father wrote on the Permission to Evaluate that he wanted an independent

evaluation completed by [redacted] University. N.T. 40; S-4. Student's father also requested a due process hearing. Id.

9. In order to settle the matter, the District agreed to fund one half of the cost of the educational and the psychological evaluations at University. N.T. 42; S-7. The rest of the money was to be paid from funds held for Student through terms of a former settlement agreement between the parties. N.T. 43; S-8, 9.
10. Student agreed to this settlement. N.T. 44.
11. However, to date, Student has not undergone an independent educational or psychological evaluation. N.T. 46.
12. Student's behavior has declined over the past few weeks. Student has refused to go to his classes and has asked to be left alone. N.T. 54, 73. Student is angry when he comes to school in the morning, runs past the aides, and says that his father told him he does not have to go to class. N.T. 54-55, 62. Student has also become aggressive to himself and his teachers. N.T. 55, 71-72.
13. The District has taken Student to a mental health agency twice in the past few weeks because of the level of aggression Student has exhibited. N.T. 55, 63, 70.
14. Student's teacher believes Student is in need of a psychological evaluation as a result of the anger and frustration he has been exhibiting. N.T. 57.
15. Although the District believes it can provide appropriate educational and psychological evaluations of Student, the District is willing to fund independent educational and psychological evaluations within a reasonable distance -- in excess of 150 miles -- from the District. N.T. 46, 47, 50.
16. Student's father agrees that independent educational and psychological evaluations would be helpful to identify Student's needs and to appropriately program for Student. N.T. 86.
17. Student's father would like University to conduct the evaluations and would consent to Student being evaluated by them. N.T. 88. He would like to schedule the appointment with the assistance of his counsel. N.T. 90-91.
18. Student is in agreement to provide the evaluations to District. N.T. 94.

ISSUES

Is Student in need of independent educational and psychological evaluations at District expense?

DISCUSSIONS AND CONCLUSIONS OF LAW

It is important to note that the sole issue in this matter is whether Student is entitled to independent educational and psychological evaluations. S-5. What are not an issue are claims Student's father attempted to raise in a letter sent to me as part of his 5 day disclosure. S-6. These issues were not raised in the initial complaint or an amended complaint and not agreed to be heard by the District; therefore, they cannot be addressed in this decision. S-5. 34 C.F.R. § 300.511 (d). Student will have to file a due process complaint if he wishes to have these issues heard at a due process hearing. 1

The law is clear with respect to a student's right to an independent evaluation: parents of a child with a disability have the right to obtain 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). If a parent requests an independent educational evaluation at public expense, the public agency must either file a due process request to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense. *Id.* Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations. 34 C.F.R. § 300.502 (a). If an independent educational evaluation is completed at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. 34 C.F.R. § 300.502 (e).

In this matter, Student's father did not agree with the educational evaluation conducted by the District in March, 2006 or the psychological evaluation conducted by a mental health agency and requested an independent evaluation. N.T. 80. It is unclear whether Student's father or the District requested this current due process hearing. N.T. 16; S-5. Nevertheless, the District agreed to fund independent evaluations via settlement. N.T. 37; S-1. Unfortunately for Student, Student's father has not taken advantage of this agreement to date.

As a result of Student's change in behavior, I agree with the District and with Student's father that psychological and educational evaluations need to be conducted to determine an appropriate placement for Student. Student appears to be shutting down in his current program. Independent evaluations should be conducted as soon as possible in order for the IEP team to assist Student.

1 Student is represented by competent counsel who probably decided not to file a due process hearing to discuss appropriate programming until the independent educational and psychological evaluations were completed since appropriate evaluations determine a child's program and placement.

ORDER

The District is ordered to fund independent educational and psychological evaluations for Student. Student and his family will choose the independent evaluator(s) from evaluators who meet the following criteria: 1) the evaluator(s) must be located within a reasonable distance, approximately 200 miles or less, from Scranton, Pennsylvania; 2) the evaluators' credentials must comply with the Pennsylvania and federal regulations; 3) the evaluator(s) must be able to begin the evaluation process within 40 days from the parties' receipt of this decision. Within 10 days of receipt of this order, Student's family shall notify the District of the identity, including address and credentials, of the independent evaluator(s) chosen to evaluate Student and the date of the evaluation(s). The District is required to promptly send any moneys to the evaluators, including prior to the evaluation if requested by the evaluator(s). Student's family is also required to sign forms to allow the District to obtain copies of the independent evaluation(s).

If Student's family does not inform the District of its choice of evaluator(s) within 10 days of the receipt of this Order, the District is ordered to conduct educational and psychological evaluations within 30 days of Student's failure to inform the District of its choice of evaluators. The District can either decide to conduct the evaluations itself or contract with outside agencies to conduct the evaluations. The District must inform Student's father of the name(s) of the evaluators within 10 days of Student's failure to inform the District of his choice.

If Student does not submit to the independent evaluations, the District is ordered to conduct educational and psychological evaluations. Again, the District can either decide to conduct the evaluations itself or contract with outside agencies to conduct the evaluations. The District must inform Student's father of the name(s) of the evaluators within 10 days of Student's failure to submit to the independent evaluations.

If the District's lack of prompt payment hinders the evaluation process, Student shall still be evaluated by the independent evaluators.

Marcie Romberger, Esquire
Hearing Officer