

This is a redacted version of the original hearing officer decision. Select details may have been removed to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA SPECIAL EDUCATION HEARING OFFICER DECISION AND ORDER

File Number: 6923/06-07 KE
Child's Name: K.M.
Date of Birth: xx/xx/xx
School District: Pottstown
Type of Hearing: Closed

For the Student:

For the Pottstown School District:

Pam Bateson, Supervisor of Special Education
Pottstown School District
940 North Franklin Street
Pottstown, PA 19464-5591

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331 Butler Avenue
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Hearing Request Date:	September 7, 2006
Unsuccessful Resolution Meeting Date:	October 23, 2006
Hearing Date:	November 3, 2006
Transcript Receipt Date:	November 8, 2006
Decision Date:	November 23, 2006
Hearing Officer:	Daniel J. Myers

BACKGROUND

Student is a xx year old, 4th grade resident of the Pottstown School District (School District) who has been diagnosed with attention deficit disorder-hyperactive (ADHD), Oppositional Defiant Disorder (ODD), Early Onset Bipolar Disorder Not Otherwise Specified, and a Learning Disorder Not Otherwise Specified. Student's parents reject the Section 504 Plan proposed by the School District, contending that it lacks some necessary accommodations, and further contending that Student requires an IEP. In addition, Student's parents seek reimbursement for a privately-secured educational evaluation. For the reasons described below, I find for the School District.

ISSUES

1. Whether or not the School District's most recent evaluation report is appropriate?
2. Whether or not Student's parents are entitled to reimbursement of the costs of a privately secured evaluation?
3. Whether or not Student is entitled to services/accommodations pursuant to either Chapter 14 (IDEIA) or Chapter 15 (Section 504)?

FINDINGS OF FACT

1. Student is a xx year old, 4th grade student of the School District who moved with her family into the School District from [State redacted] in Summer 2005. Since she was 4 years old, Student has been diagnosed with attention deficit disorder-hyperactive (ADHD), and she consistently has been observed at school to be impulsive and in a hurry to complete work. (N.T. 24-25; S1; S14, p.1) ¹
 - a. She takes Adderal to treat her ADHD symptoms. (N.T. 63-64)
 - b. Since kindergarten, she has had a Section 504 plan to address her school-based impulse and attention needs. (N.T. 24, 67; S1)
2. While in [State redacted], Student had a Section 504 plan that provided the following accommodations to assist Student in staying on task:
 - a. Sitting near positive role model;
 - b. Preferential seating away from distraction;
 - c. Additional time for testing;
 - d. Small group testing; and
 - e. Breaks during testing.
 - f. Although it was not in her Section 504 plan, the School District also escorted Student from the car to her classroom before school. (N.T. 73)

¹ References to "P," "S," and "HO" refer to Parent, School District and Hearing Officer exhibits, respectively. References to "N.T." refer to the transcript of the November 3, 2006 hearing session in this matter.

3. Student's cognitive abilities are in the average range, with superior range processing speed, and memory scores in the low average range. (S1, pp.6-7; S6, pp.5-6; P3, p.15; N.T. 136, 138, 140-141)
 - a. Student's academic achievement is commensurate with her abilities. (S3; S6; S10; P3, p.17) Her December 2005 Wechsler Individual Achievement Test, 2nd Edition (WIAT-II) scores were solidly within the average to above average range. (S6, p.6) [Redacted] State testing in 3rd grade (Spring 2005) indicates that Student's reading and math performances were on grade level and in the average range. (S3) PSSA testing in 2006 indicates that Student's reading and math performances are Proficient. (S10; N.T. 201)
 - b. Student's [redacted State] report cards indicated average achievement that was on grade level and at, or above, expectations. (S2; P3, pp.4-5) Student's academic achievement in her Pennsylvania classrooms has been similarly within expectations. (S9; S6, pp.3, 7, 8; P3, p17)
 - c. Student does not meet the learning disability criteria to qualify for special education services, and she does not require specially designed instruction. (N.T. 138, 149-150)

4. After Student and her family moved to Pennsylvania in Summer 2005, Student repeated 3rd grade at her parents' request for the 2005-2006 school year. (N.T. 25-26) At the same time, the parties agreed to a psychoeducational evaluation of Student. (S3, p.5; S5; N.T. 77) In the meantime, the School District implemented Student's [redacted State] Section 504 plan. Student's parents, however, do not believe that the School District actually did implement that Section 504 plan. (N.T. 26, 82-83, 155, 160)

5. I find, as a matter of fact, that the School District did implement Student's [redacted State] Section 504 plan, although Student's teachers credibly reported that they only found it necessary to provide minimal supports. (N.T. 155, 160)

6. I find, as a matter of fact, that Student's behaviors at home and school are consistently and dramatically different. The evidence presented by the parties indicates that, at home, Student exhibits extreme defiance, hostility, non-compliance, and emotional lability. (N.T. 68, 70; S1,p.4) She has difficulty transitioning from routines, she rages at home at least once per week, she beats walls, beats and bites her mother, and she has threatened to kill her parents. (N.T. 40-41, 44, 79-80) She pitches fits when she doesn't get what she wants, she hugs strange adults indiscriminately, and in conversation she switches topics without warning. (N.T. 37-38, 46) Based upon her home-based behaviors, Student has been diagnosed with Oppositional Defiant Disorder (ODD) and Early Onset Bipolar Disorder Not Otherwise Specified.
 - a. Based upon her home-based behaviors, Student received partial hospitalization treatment at the [redacted] Clinic for 4-6 days in February 2006, and full-time, residential hospitalization treatment for 5-7 days in April or May 2006. (N.T. 45, 62-63, 87, 268)

- b. Student also takes the prescription medication Abilify, and Student's family receives some behavioral counseling. (N.T. 63-65)
7. Student also has food sensitivities to pork products and to sugar. (N.T. 38, 76-77) Student goes into rages when she eats pork and candy. (N.T. 40) Student's parents have consistently requested her schools to not permit Student to eat anything that is not sent from home. (N.T. 40; S4, p.1)
 8. The parties in this case disagree over whether or not Student's behavioral and emotional issues at home impact her education. (N.T. 84-85, 131, 139, 142, 144, 150, 156) I find, as a matter of fact, that Student's behavioral and emotional issues at home do not impact her education.
 9. Student's parents agree that the Student does not exhibit at school the rages that she engages in at home. (N.T. 107) Student's parents erroneously contend, however, that Student: 1) loves reading but does not comprehend what she reads; 2) receives very poor grades; 3) still writes like a 1st or 2nd grader; and 4) demonstrates her behavioral/emotional issues on the playground and in specials when the principal and classroom teachers are not around. (N.T. 41, 55, 59-60, 96, 118-119, 121)
 10. The evidence presented at the hearing demonstrates that, at school, Student has always been polite and well-mannered, a leader and positive role model in her classes, eager to please her teachers, and able to adjust very quickly to new situations. (N.T. 198-199, 202, 229) She has received only one negative conduct report from a teacher since moving into the School District. (N.T. 220, 222)
 - a. In 3rd grade, she received As and Bs, and was on the honor roll for 3 out of 4 marking periods. (N.T. 203) Her grades dropped from Bs to Cs in language arts, reading and mathematics for her last quarter. (S9, p.1; N.T. 84, 131) Her teacher credibly testified that this was not a remarkable drop suggesting any academic problem. (N.T. 193)
 - b. In 4th grade school year, Student is on grade level in all subjects, with As, Bs and Cs in science, Bs and Cs in reading, writing, and social studies, and straight Cs in math. (S2, p.1; N.T. 229)
 - c. Her teachers report that Student is impulsive and is sometimes in a hurry to complete her work, which can lead to mistakes. (S14, p.1) For this Student receives accommodations when test taking to help her focus and she must reread some problems in math in order to understand the problems. (N.T. 229, 236, 246)
 11. Student has had no remarkable peer conflicts. She makes friends quickly and interacted appropriately with 3rd and 4th graders on the playground, although she can be overbearing with her peers at times. (N.T. 207, 235, 249-251) She was suspended once last year for biting another child during a disagreement, but the School District's experienced principal credibly testified that this single biting incident was uncharacteristic and due more to Student's impulsivity than to

- deficits in peer relationship skills. The School District was aware of Student's [redacted] Clinic hospitalizations last year, and teachers and principal saw nothing at school that would suggest any behavioral or emotional concerns. (N.T. 214-215, 255, 264-268)
12. Student does not present behavior problems in class, nor does she lie, steal or exhibit oppositional behavior. (N.T. 235, 249-251.) Although Student's teacher once found some items in Student's desk that belonged to other children, this experienced teacher credibly testified that this single incident was developmentally typical when compared with Student's typical peers. (S14, p.1; N.T. 206, 214-215, 220, 220, 248)
 13. On December 16, 2005 the School District issued a psychoeducational evaluation, concluding that Student is not in need of special education. (S6) The School District issued a Notice of Recommended Educational Placement (NOREP) recommending that Student remain in regular education and is neither eligible nor in need of special education. (S7) Five months later, on May 15, 2006, Student's parent disapproved the NOREP, requesting mediation and a due process hearing. (N.T. 161; S7, pp.1-2)
 14. In response to the May 2006 NOREP disapproval, the parties met on or about June 5, 2006. (N.T. 86) They discussed their different observations at home and at school, as well as Student's hospitalizations and her bipolar disorder diagnosis. (N.T. 161, 166-167, 212) The parties agreed to the School District's NOREP recommending that Student remain in regular education, with Student's parent handwriting the words "for academics" behind her approval. (S8, p.2) They also agreed to meet again at the beginning of the 2006-2007 school year to revise Student's Section 504 plan which, up to that time, had continued to be just the [State redacted] Section 504 plan. (N.T. 166-167)
 15. At the June 2006 meeting, Student's parents asked for an occupational therapy (OT) evaluation. (N.T. 26-27, 86-87, 183) Apparently in conformance with their agreement to wait until the beginning of the 2006-2007 school year to revise Student's Section 504 plan, Student's parent followed up on the first day of the 2006-2007 school year with a request for OT testing. (N.T. 27) Someone from the School District then called Student's parent and verbally refused the request, stating that Student's last testing had been in December 2005 and that Student was not entitled to further testing for a year, i.e., until December 2006. (N.T. 27)
 16. The parties met, as previously intended, on September 6, 2006, to revise Student's Section 504 plan. Student's parents again requested an OT evaluation as well as an IEP. (N.T. 91-93; SD 11) Feeling belittled and accused, Student's parents report that the School District's position at the September meeting was to blame all of Student's problems upon her home life. (S16, p.1; N.T. 30-31) On September 7, 2006, Student's parents had a lawyer send a letter to the School

District stating that Student is entitled to an independent educational evaluation (IEE). (S12; N.T. 29, 93, 98)

17. Apparently, the School District decided to perform an OT “screen” as opposed to an OT evaluation. (N.T. 181) School District officials state that they would bypass the OT screen and go immediately to an OT evaluation if they have a signed permission to evaluate for an OT evaluation. (N.T. 183) It does not appear that the School District informed Student’s parents of this procedural distinction. (N.T. 181) In any event, the School District’s OT has been on medical leave since September 2006 and has not been able to get around to performing any OT screens. (N.T 181-183)

18. On September 25 and October 6, 2006, the School District wrote to Student’s parents explaining why they refused to agree to parental requests for an IEE and an IEP. (N.T. 101-103, 173-174;SD13; SD 15) The School District did offer to conduct a reevaluation itself, which offer was refused by Student’s parents, who preferred an IEE. (SD 15; SD 16, p.12)

19. Meanwhile, on September 21, 2006, Student’s parents privately secured a neuropsychological evaluation from Mr. N, a licensed psychologist associated with the [redacted] Hospital. (P3)
 - a. Mr. N thoroughly reviewed Student’s educational records, and conducted an IQ test and selected achievement tests. He found no specific learning disability, but gave a “provisional” diagnosis of Learning Disorder, Not Otherwise Specified, based on a concern with Student’s executive functioning skills. (P3, p.17)
 - b. He recommended a class on basic study skills, class notes, and close monitoring of academic performance. (P3, pp.17, 20)
 - c. Mr. N erroneously reports that Student barely passed 3rd grade in [redacted State] and that her academic performance dramatically dropped during 4th quarter last year in the School District. (P3, p.2) Mr. N more accurately notes later in his report, however, that Student actually does fairly well academically with all scores average or above, and with occasional concerns about work completion. (P3, p.5)
 - d. Mr. N’s report cost \$1,200, of which approximately ½ will be covered by Student’s parents’ insurance. (N.T. 49, 132)

20. On October 14, 2006 Student’s parents privately secured a psychiatric evaluation from Dr. M. (P2; 126-127)
 - a. He diagnosed Bipolar Disorder, Impulse Control Disorder, ODD, and ADHD. (P2, p.4)
 - b. He recommended psychiatric outpatient treatment with medication management, family based services, and individual educational programming in school to address emotional and behavioral difficulties. (P2, p.4)

- c. Dr. M erroneously believed that Student exhibits intense angry outbursts, oppositional behavior, stealing and lying, at school. (P2, p.2) Student's Parents do not know why Dr. M reported that Student was exhibiting intense and angry outbursts and oppositional behavior in school. (N.T. 127; P2, p.2)
21. On October 23, 2006, the parties conducted a resolution meeting. In response to concerns discussed at that meeting, the School District amended its request for permission to evaluate Student, adding personality and OT testing to its request. (S19, pp.1-5; N.T. 32) The School District also proposed a Section 504 plan for parental approval. (S19, pp.6-19)
22. The School District's proposed Section 504 plan contains the following accommodations: (S19)
- a. Preferential seating
 - b. Prompts for attention
 - c. Checks for understanding
 - d. Extra time to complete tasks and to copy notes and assignments
 - e. Untimed tests and tests in a separate environment
 - f. Guidance counselor or other adult staff to assist in calming down and handling social interactions
 - g. Allow typewritten or computer work
 - h. Homework book
 - i. Study guides
 - j. Food restrictions
23. Student's Parents believe that a School District is required to be more accountable when a child has an IEP as opposed to a Section 504 plan. (N.T. 94-95, 176) The additional accommodations that Student's Parents want in an IEP that are not contained in the School District's proposed Section 504 plan are:
- a. To give Student a secluded area where she cannot see others during testing;
 - b. To permit standardized testing in a small group;
 - c. To require Student to rewrite all illegible homework;
 - d. To require Student's teacher to immediately investigate any instances of student's tattling;
 - e. To give Student a voluntary time out room for self-calming;
 - f. To provide no food or drinks other than those sent from home. (S11, p.3; N.T. 107-107, 116, 281)
24. Student's parents do not want Student to use a computer to compensate for poor handwriting. (N.T. 280) They also do not equate the School District's offer to have a counselor or other adult staff to assist Student in calming down with a voluntary safe haven, or time-out room. (N.T. 116)

25. Student's parents also want the School District to provide a personal care assistant (PCA) to accompany Student throughout the day to keep her focused and on task, as well as to help student with peer relationships and to avoid "bipolar rages." (N.T. 110-111) While the School District will permit a therapeutic support staff (TSS) to accompany Student if authorized by a mental health wrap-around agency, the School District does not believe that Student has an educational need for one-on-one support, and it will not fund a PCA. (N.T. 112)
26. The School District has a tendency not to communicate fully with Student's parents and Student's parents have a tendency to assume the most negative interpretation of events.
- a. Although chorus is apparently a program that all of Student's classmates were expected to participate in, that information was not conveyed to Student's parents when a permission slip was sent home for permission to participate in chorus. Student's parents, in turn, did not inquire of the School District about the chorus permission slip, but rather chose to assume that chorus was an elective extracurricular activity that would take time away from Student's "more important academic" activities. (N.T. 42, 208, 240) When it turned out that Student was the only child not permitted to attend chorus, the School District did not contact Student's parents to discuss this circumstance, but rather placed Student into an alternative leadership reading-buddy activity. Student's parents, in turn, chose not to inquire but rather to assume that the reading-buddy activity was a "demotion" because Student was reading to kindergarten students. (N.T. 42-43, 123-124, 237-238; S14, p.8)
 - b. When Student brought candy home from school during the Halloween week, her parents assumed that School District personnel actively permitted this. Student's teacher credibly testified that she was unaware that Student had any candy in her backpack and she would not have permitted it had she known. (N.T. 38, 40, 65, 241)
 - c. Written communications from Student's parents frequently contain unnecessary expressions of impatience, anger and hostility, such as, "Don't care" in response to a routine homework survey, and "Who do I sue?" and "I will have our attorney force you to abide by these wishes" even before there is any reason to suspect disagreement. (N.T. 256-257; S4, p.1; S21)
 - d. On the other hand, School District officials appear judgmental when relating hearsay descriptions of parental behaviors in [State redacted], and when describing Student's distress over her food restrictions or when she cannot attend functions for which parental approval is denied. I can believe that Student's parent felt belittled and criticized at the parties' September 2006 meeting. (N.T. 190, 204-205, 237, 254; S14, p.1)
 - e. The School District clearly did not adequately explain to Student's parents either the distinction between an OT "screen" and an OT evaluation or their policy to bypass the OT screen and go immediately to an OT evaluation when they have a signed permission to evaluate for an OT

evaluation. (N.T. 181, 183) It is also clear that the School District did not communicate to Student's parents that the OT has been on medical leave since September 2006 and has not been able to get around to performing any OT screens yet. (N.T. 181-183)

27. At the November 3, 2006 due process hearing, Parent exhibits P1-P3 were admitted into the record without objection. (N.T. 271) School District exhibits S1-S21 were admitted into the record without objection. (N.T. 273)

DISCUSSION

Student is not entitled to a Chapter 14 (IDEIA) IEP – the School District's proposed Chapter 15 (Section 504) plan is appropriate.

To be eligible for services under Section 504, Student must have a physical or mental impairment that substantially limits one or more major life activities. 34 CFR § 104.3(j)(1) To be eligible for special education services, Student must have a recognized disability. In both cases, Section 504 and Chapter 14, Student's disability must adversely affect her education. In Re A.H. and the Centennial School District, Special Education Opinion No. 1736 (2006); In Re A.P. and the Oxford Area School District, Special Education Opinion No. 1744 (2006)

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging a special education IEP is upon the party seeking relief, whether that is the disabled child or the school district. Schaffer v. Weast, ___ U.S. ___, 126 S.Ct. 528 (2005); In Re J.L. and the Ambridge Area School District, Special Education Opinion No. 1763 (2006) No similar case law has yet been issued with respect to Section 504 cases.

The United States Court of Appeals for the Third Circuit, however, has held that there is no substantive distinction between Section 504's prohibition against discrimination on the basis of handicap and a School District's affirmative duty under the Individuals with Disabilities Education Improvement Act (IDEIA) to assure that eligible students with disabilities receive a free and appropriate public education (FAPE). Ridgewood Board of Education v N.E., 172 F.3d 238 (3rd Cir. 1999) In fact, when a school district provides services under IDEIA to an eligible student, it fulfills its Section 504 obligation. In Re P.M. and the Bristol Township School District, Special Education Opinion No. 1749 (2006)

I conclude that the general legal principle of Weast, i.e., that the party seeking relief bears the burden of persuasion, should apply in this case. This is because the U.S. Supreme Court applied that general legal principle to IDEIA cases, and the 3rd Circuit finds IDEIA and Section 504 cases to be similar in many respects. Thus, I shall apply to this Section 504/IDEIA case the same burden of persuasion that applies in straight IDEIA cases, and I shall require that Student and her parents bear the burden of persuasion.

No IEP is Required

The existence of medical diagnoses do not automatically mean that a child is entitled to special education services. See In Re A.P. and the Beaver Area School District, Special Education Opinion No. 1627 (2005) (No need for special education was demonstrated for child with autism who was successful in regular education with Chapter 15 service agreement accommodations, and grades commensurate with tested intellectual ability.) See In Re J.M.H. and the Garnet Valley School District, Special Education Opinion No. 1671 (2005) (Although Post-Traumatic Stress Disorder might qualify as an emotional disturbance or other health impairment, Student was not eligible for special education where she was not exhibiting symptoms at school, was performing quite well academically, and was making above average progress in the classroom.)

In this case, the School District contends that Student's medical conditions do not adversely affect her education such that she requires a special education IEP under Chapter 14. I agree with the School District. Student's grades are As, Bs, and Cs, with an unremarkable drop during the last quarter of last year, but appropriate grades this year. (N.T. 84, 131, 193, 203, 229; S2, p.1; S9, p.1) She is impulsive and is sometimes in a hurry to complete her work, which can lead to mistakes. (S14, p.1) Student needs little accommodation, although she uses accommodations when test taking to help her focus and she must reread some problems in math in order to understand the problems. (N.T. 229, 236, 246)

In addition, the parentally-secured neuropsychological evaluation of Mr. N recommends no new educational programming. Instead, it recommends simply a class on basic study skills, class notes, and close monitoring of academic performance. Even Mr. N does not suggest that student needs an IEP or that anything other than a Section 504 plan is necessary. (P3, pp.17, 20; N.T. 132, 149-150)

In addition, Student's cognitive abilities are in the average range and her academic achievement is commensurate with her abilities. (S1, pp.6-7; S3; S6, pp.5-6; S10; P3, pp.15-17; N.T. 136, 138, 140-141) Her reading and math performances are on grade level and in the average or Proficient range. (S3; S10; N.T. 201) Mr. N's "provisional" diagnosis of Learning Disorder, Not Otherwise Specified, based on a concern with Student's executive functioning skills, is not the equivalent of a finding of a specific learning disability. (P3, p.17; N.T. 138, 149-150)

I do note the recommendation of Student's privately secured psychiatrist, Dr. M, that Student receive individualized educational programming at school. This recommendation, however, is apparently based upon Dr. M's erroneous belief that Student exhibits intense angry outbursts, oppositional behavior, stealing and lying, at school. Even Student's Parents do not know why Dr. M erroneously believed that Student was exhibiting intense and angry outbursts and oppositional behavior in school. (N.T. 127; P2, p.2) Thus, I do not give credence to this particular recommendation that Student receive individualized educational programming at school.

For whatever reason, our culture (including the federal government) creates such a distinction between home and school that two distinctly separate public systems exist for providing services to meet the complex needs of the same child. The bailiwicks of these two systems depend simply upon the location and environment in which those services are provided, i.e., home or school. Each system apparently applies distinctly separate quality, supervisory and due process standards, and they are not required to talk to each other. Consistent with that strong cultural differentiation between home and school, Student's behaviors at home are not the concern of school – unless they impact Student's education.

The evidence presented by the parties demonstrates that Student does not exhibit at school the behaviors that she engages in at home. (N.T. 107) At school, Student is polite and well-mannered, a leader and positive role model in her classes, eager to please her teachers, and able to adjust very quickly to new situations. (N.T. 198-203, 207) Further, although the School District was aware of Student's [redacted] Clinic hospitalizations, teachers and principal saw nothing at school that would suggest any behavioral or emotional concerns. (N.T. 214-215, 255, 264-268) Accordingly, Student does not have a need for special education services and, consequently, she is not entitled to an IEP.

The School District's Proposed Section 504 Plan is Appropriate

The School District's proposed Section 504 plan contains nine accommodations that address Student's impulsivity, inattention, and need for focus. It further respects parental concerns regarding Student's food restrictions by noting them in the proposed Section 504 plan. Although Student has not demonstrated rages at school, the proposed Section 504 plan anticipates this parental concern by providing for a Guidance counselor or other adult staff to assist in calming down and handling social interactions. (S19) This is an appropriate Section 504 plan.

Student's parents also want the School District to provide a personal care assistant (PCA) to accompany Student throughout the day to keep her focused and on task, as well as to help student with peer relationships and to avoid "bipolar rages." (N.T. 110-111) While the School District will permit a therapeutic support staff (TSS) to accompany Student if authorized by a mental health wrap-around agency, the School District does not believe that Student has an educational need for one-on-one support, and it will not fund a PCA. (N.T. 112) I find for the School District on this issue. Student has managed quite well for a year and one half without a PCA, and even the parentally-secured private evaluators, Mr. N and Dr. M, do not recommend one-to-one assistance. (N.T. 132; P2; P3) Similarly, the record lacks any bases upon which I might find that Student needs Section 504 accommodations requiring teachers to investigate tattling immediately or to require Student to rewrite all illegible homework. Absent evidence establishing a general need for these accommodations, these are decisions best left to Student's teachers when particular situations arise.

Accordingly, I conclude that the School District's proposed Section 504 Plan is appropriate to meet Student's needs.

Student's parents are not entitled to reimbursement of the costs of a privately secured evaluation – and the School District's most recent evaluation report is appropriate.

To the extent that an IEE at public expense is available under Section 504, I will assume again that the appropriate analysis is similar to that used in IDEIA Chapter 14 cases. Under that analysis, I must determine whether Student's parents disagreed with the School District's evaluation, whether the School District initiated a due process hearing to show that its evaluation was appropriate, and then whether the School District's own, and the Student's privately secured, evaluations were appropriate. In Re K.S. and the Abington School District, Special Education Opinion No. 1760 (2006); In Re J.T. and the West Shore School District, Special Education Opinion No. 1632 (2005)

In this case, the School District's December 2006 evaluation report was appropriate. A variety of assessment tools and strategies was used to gather relevant functional and developmental information about Student, including information provided by the parents, and information related to enabling the child to be involved in and progress in the general curriculum. No single procedure was used as the sole criterion for determining an appropriate educational program for the child. Student was assessed in all areas related to the suspected disability, including, social and emotional status, general intelligence, and academic performance. The assessment tools used by the School District were technically sound instruments that provided relevant information in determining Student's educational needs. Thus, I find that the School District has shown by a preponderance of evidence that its evaluations were comprehensive, identified Student's needs and were conducted by applicable procedure.

In addition, I note that Mr. N's evaluation report does not differ substantively from the School District's. Mr. N accurately notes that Student does fairly well academically with all scores average or above. (P3, p.5) His "provisional" diagnosis of Learning Disorder, Not Otherwise Specified, based on a concern with Student's executive functioning skills, is not the equivalent of a finding of a specific learning disability. (P3, p.17; N.T. 138, 149-150) This IEE provides no new information that was not otherwise known to the School District. Accordingly, there is no basis for ordering the School District to reimburse Student's parents for the costs of Mr. N's evaluation.

CONCLUSION

Student is a xx year old, 4th grade resident of the Pottstown School District (School District) who has been diagnosed with attention deficit disorder-hyperactive (ADHD), Oppositional Defiant Disorder (ODD), Early Onset Bipolar Disorder Not Otherwise Specified, and a Learning Disorder Not Otherwise Specified. Student's parents reject the Section 504 Plan proposed by the School District, contending that it lacks some necessary accommodations, and further contending that Student requires an IEP. In addition, Student's parents seek reimbursement for a privately-secured educational evaluation. For the reasons described above, I find for the School District.

ORDER

- The School District's Proposed Section 504 Plan is appropriate.
- The School District's December 2005 evaluation report is appropriate.
- Student's parents are not entitled to reimbursement for the costs of an IEE.

Daniel J. Myers

Hearing Officer
November 23, 2006

Re: 6923/06-07 KE
Student
Pottstown School District