

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 Due Process Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number

23249-19-20

Child's Name

D.S.

Date of Birth

[redacted]

Parents

[redacted]

Local Educational Agency

Haverford Township School District
50 East Eagle Road
Havertown, PA 19083

Counsel for LEA

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

05/31/2020

INTRODUCTION

D.S. ("student")¹ is a student of [redacted] school age who resides in the Haverford Township School District ("District").² In the fall of 2019, the District performed an evaluation of the student, issuing a re-evaluation report ("RR") in October 2019. The parents disagreed with the results and recommendation of the ER and requested an independent education evaluation ("IEE") at District expense. The District declined to fund the IEE and, as required under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")³, filed a special education due process complaint to defend the appropriateness of its evaluation process and RR.

As set forth below, the undersigned hearing officer finds in favor of the District as to the appropriateness of its October 2019 RR. Although the District need not provide an IEE at public expense pursuant to 34 C.F.R. §§300.502(b)(1),(2)/22 PA Code §14.102(a)(2)(xxix), there is one element of the student's educational programming where the hearing officer feels the parties may be well-served by an independent evaluator providing a neutral evaluation of the student for consideration by the student's individualized education program ("IEP") team. Therefore, under a hearing officer's

¹ The generic use of "student", rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² At the time of the hearing, the student still resided in the District but, due to the school closures as the result of the COVID-19 pandemic, the student had enrolled in a cyber charter school as the local education agency responsible for the student's contemporary education programming.

³ It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.163 ("Chapter 14").

authority pursuant to 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the District must provide an option to the parents for an independent reading evaluation at public expense.

ISSUES

Were the District's evaluation process and RR in the fall of 2019 appropriate?

If not, are the parents entitled to an IEE at public expense?

FINDINGS OF FACT

December 2017 ER

1. In December 2017, in the midst of the student's [redacted] grade year, the student was evaluated at the request of the parents due to their concerns with the student's reading, writing, and spelling. (School District Exhibit ["S"]-1).
2. The December 2017 evaluation report ("ER") contained parental input and teacher input. (S-1).
3. The student was receiving regular education reading support in reading. The student's classroom teacher reported that the student as below grade-level expectations in word recognition, decoding skills, reading fluency, and inferential comprehension. The student was reported as below grade-level expectations in sentence structure, grammar, capitalization, punctuation, organization, development of ideas, application of spelling, and proofreading. (S-1).
4. The student's teacher reported that the student performed at grade-level expectations in vocabulary and literal comprehension, as well as written vocabulary. (S-1).

5. The teacher reported that the student performed at grade-level in mathematics and that there were no concerns with organization or behavior. (S-1).
6. The December 2017 ER included classroom observations by a District school psychologist. (S-1).
7. The December 2017 ER contained curriculum-based assessment that reflected weaknesses in letter-sound fluency, phoneme segmentation fluency, nonsense word reading, and oral reading skill. (S-1).
8. Other curriculum-based assessments of literacy skills, writing, and spelling did not reflect outsized weaknesses. (S-1).
9. The December 2017 ER contained an occupational therapy ("OT") evaluation, including observation and assessment. The student was not recommended for OT services. (S-1).
10. The December 2017 ER included cognitive testing, yielding a full-scale IQ score (117) in the high-average range. (S-1).
11. The December 2017 ER included achievement testing, with reading scores statistically discrepant from her cognitive ability in the reading composite (94), basic reading composite (96), and reading comprehension/fluency composite (96). (S-1).
12. The achievement testing scores in writing and mathematics did not yield any statistically discrepant scores. (S-1).
13. The evaluator administered additional achievement testing in reading, with the student again scoring in the statistically discrepant range in the oral reading (95) and sentence-reading fluency (89) subtests, and the reading fluency composite (90). (S-1).

14. The December 2017 ER contained behavior ratings scales completed by the student's mother and teacher. Neither rater reported any at-risk or clinically-significant ratings. (S-1).
15. The December 2017 RR recommended that the student be identified as a student with a specific learning disability in reading fluency. (S-1).

December 2018 RR

16. In October 2018, the parents provided the District with copies of a private neuropsychological evaluation report ("neuropsych eval"), completed in July 2018, and a private audiology report, completed in September 2018. (S-2, S-3, S-4).
17. These private reports led the District to issue a RR in December 2018. (S-4).
18. The July 2018 private neuropsych eval was comprehensive and there was less of a discrepancy between the student's cognitive ability and the student's achievement scores in reading. (S-2).
19. The private neuropsych evaluator recommended that the student continue to receive special education services for reading fluency. The evaluator also recommended support for executive functioning, specifically memory retrieval, and consideration of a central auditory processing evaluation (which was not provided as a separate report). (S-2).
20. The July 2018 neuropsych eval opined: "(The student's profile of scores is consistent with that of a remediated dyslexic student; (the student) showed all of the signs of dyslexia as a younger child, but, with intervention in phonological awareness and reading decoding, (the student) has improved...literacy skills to the average range." (S-2 at page 7, S-4 at page 6).

21. The October 2018 private audiology report indicated that the student demonstrated significant auditory processing weakness in rapid speech and language processing abilities. The audiology report contained recommendations for a follow-up speech and language evaluation and other programming recommendations. (S-3).
22. The December 2018 RR included comprehensive summaries from these private evaluations, including the results of assessments, conclusions, and recommendations. (S-3).
23. The December 2018 RR did not include any updated standardized assessments. The student's updated curriculum-based assessments of literacy skills, writing, and spelling did not reflect outsized weaknesses. (S-4).
24. Teacher input from the student's learning support teacher and English/language arts teacher indicated that the student continued to show marked progress in reading. (S-4).
25. The December 2018 RR recommended that the student continued to be identified as a student with a disability but that the student no longer required special education to address the disability. (S-4).
26. In December 2018, based on the results of the RR, the District issued a notice of recommended educational placement ("NOREP"), recommending that the student be exited from special education services for reading fluency but that the student should continue to receive classroom and testing accommodations in the regular education environment. (S-5).
27. Parents rejected the recommendation outlined in the NOREP. The parties mediated their dispute, and the student was ultimately exited from special education services in the spring of 2019. (S-5; Notes of Testimony ["NT"] at 118-119).

28. For the 2018-2019 school year, the student's [redacted] grade year, the student received proficient scores in English/language arts and mathematics on the Pennsylvania System of School Assessment examinations. (S-6).
29. In June 2019, the student's parents voiced displeasure with the student's reading in the spring of 2019 and requested a re-evaluation for re-engaging special education services. The District eventually requested permission to re-evaluate the student, permission which the parents granted in July 2019. (S-7, S-10, S-11, S-13).

October 2019 RR

30. In October 2019, the District completed and issued its RR. (S-14).
31. The October 2019 RR contained parental input and teacher observations. (S-14).
32. The October 2019 RR included classroom observations by a District school psychologist and school psychology intern. (S-14).
33. The October 2019 RR included updated cognitive ability testing (general ability index 112) and updated achievement testing. (S-14).
34. Utilizing the general ability index score (which the evaluator opined was the more accurate IQ measure), the student's achievement scores were statistically discrepant from the student's cognitive ability in multiple sub-tests—oral reading fluency (94), sentence composition (93), sentence building (93), spelling (93), nonsense word decoding (90), accuracy (84) and decoding fluency (81)—were statistically discrepant from the student's cognitive ability. One composite, reading fluency (90), was also statistically discrepant. (S-14 at pages 8-10, 17).

35. Social/emotional/behavioral assessment in the October 2019 RR did not reveal any at-risk or clinically significant scores by any rater (parent or four teachers). (S-14).
36. The October 2019 RR contained a measure of executive functioning. All scored areas were rated typical by all raters (parent and four teachers) except for the memory composite, where the parent rated the student as moderately atypical. (S-14).
37. The October 2019 RR contained a comprehensive speech and language evaluation. The evaluator found that the student scored average or above average on all assessments and did not qualify for speech and language services. (S-14).
38. In characterizing the student's present levels of academic achievement, the student's [redacted] grade teachers indicated that the student "struggles at times...with decoding and fluency" and is below grade expectations in application of spelling and proofreading. (S-14).
39. The October 2019 RR recommended that the student is a student with a disability but does not require special education to address the disability. (S-14).
40. In October 2019, based on the results of the RR, the District issued a NOREP, recommending that the student should continue to receive accommodations in the regular education environment. (S-5).
41. Parents rejected the recommendation outlined in the NOREP. The parties mediated their dispute, and the student was ultimately exited from special education services in the spring of 2019. (S-15).

42. Ultimately, the parties could not come to a meeting of the minds on the student's need for special education services. In January 2020, the parents requested an IEE at public expense, which led to the complaint that engendered these proceedings. (S-22).

DISCUSSION AND CONCLUSIONS OF LAW

IEE

Where parents disagree with a school district evaluation or re-evaluation report, they may request an IEE at public expense. (34 C.F.R. §300.502(a); 22 PA Code §§14.102(a)(2)(xxix)). When faced with such a request, the school district "must, without unnecessary delay, either— file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense..."(34 C.F.R. §300.502(b)(2); 22 PA Code §§14.102(a)(2)(xxix)). This is the procedural background for the filing of the District's complaint in this matter.

Evaluation

To determine if a student qualifies as a child with a disability under IDEIA, the student must be undergo an appropriate evaluation process to determine if the student has a disability and, as a result, requires special education. (34 C.F.R. §300.8, 300.301; 22 PA Code §§14.102(a)(2)(xxiv), 14.123). For a school district evaluation or re-evaluation to be appropriate, the evaluation must, among many more detailed requirements, "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent...". (34 C.F.R. §§300.304(b)(1) and, generally, 300.304-300.311; 22 PA Code §§14.102(a)(2)(xxv, xxvi)).

Here, the October 2019 RR is comprehensive and appropriate. The evaluation included input from parents and educators, utilized a variety of assessments in multiple areas, and provided a clear summary and explanation of how the contents of the evaluation informed the conclusions and recommendations. (34 C.F.R. §§300.8, 300.39; 22 PA Code §§14.102(a)(2)(ii, viii)). The District met its obligations to the student in undertaking an appropriate evaluation process and in issuing the October 2019 RR. Accordingly, parents are not entitled to an IEE at public expense under the provisions of 34 C.F.R. §§300.502(b)(1),(2); 22 PA Code §14.102(a)(2)(xxix).

There is, however, an element of the evaluation process and October 2019 RR, with themes that resonate from previous evaluation processes, where this hearing officer feels a more precise examination of the student's reading ability is in order. First, the student has clearly struggled earlier with decoding and overall with reading fluency throughout this record. The student has made progress in overcoming those academic challenges, but whether or not the student requires special education, or not, is a very close question.

Second, the parents' questioning indicated that there may be an administrative error in the reading materials of the curriculum-based assessment utilized in gauging the student's instructional level. In short, the reader may have been mis-labeled such that it places students on a level ahead of the level indicated for that reader in the assessment rubrics. (NT at 115-117).

Third, in the October 2019 RR, in her summary of results, the evaluator indicated “There was some variability in (the student’s) cognitive profile, such that (the student’s) high average range (general ability index) [score of 112] was determined to be a more appropriate measure of (the student’s) overall cognitive ability.” Yet in the statistical-discrepancy analysis applying the cognitive score to the achievement testing, the evaluator used the full-scale IQ cognitive score (105). This diminished the number of clearly discrepant scores. The record in its entirety contains enough data that these scores may be contextualized and, by themselves, may not necessarily support parents’ position. But it adds to the mosaic of fluid understandings of the student’s reading ability. (S-14 at pages 8-10, 17).

Fourth and finally, the record taken as a whole shows that the parents and the District do not see eye-to-eye on the data related to the student’s reading ability. Data point after data point—the same level, or score, or characterization—is literally viewed to support opposite assertions of the parties. Clarity, provided by through an outside voice, is necessary.

Thus, it is the considered opinion of this hearing officer that, even though October 2019 RR is appropriate and the District has met its burden of proof on a claim pursuant to 34 C.F.R. §§300.502(b)(1),(2)/22 PA Code §14.102(a)(2)(xxix), a reading evaluation by an independent evaluator is in order to comprehensively understand the student’s abilities in reading. Accordingly, under the hearing officer’s authority to order an evaluation pursuant to 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the order will structure a process by which an independent reading evaluation can be obtained for consideration by the student’s multi-disciplinary team.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District did not fail in its obligations to the student through its fall 2019 evaluation process, or October 2019 re-evaluation report. That process and that report were both appropriate.

However, to provide necessary clarity to the parties, under the authority granted to a hearing officer by 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the District shall fund a comprehensive independent reading evaluation under the terms that follow.

On or before June 22nd, the District director of pupil services and special education shall provide, through e-mail communication to parents, the names, contact information, and curricula vitae, of at least three (but no maximum number) independent reading specialists experienced in conducting comprehensive reading evaluations for educational programming ("independent reading specialist") who will make themselves available to conduct an independent reading evaluation.

On or before June 29th, the student's parents, to the extent they wish, may select the independent reading specialist from the list identified by the District to conduct the independent reading evaluation ("selected independent reading specialist"), indicating their selection by email communication to the District director of pupil services and special education. As the parents consider which independent reading specialist from the list, they might choose to conduct the independent reading evaluation, there shall be no contact by the parents with the potential evaluators.

If the student's parents select one of the independent reading specialists, the cost of the independent reading evaluation shall be at the selected independent reading specialist's rate or fee and shall be borne by

the District at public expense. As those arrangements are made, the selected independent reading specialist shall be made to understand that it is hoped, but not required or ordered, that an independent reading evaluation report can be issued as soon as practicable, but no later than August 28th, sixty calendar days beyond June 29th, the last day for selection of an evaluator by the parents.

The selected independent reading specialist shall also be made to understand, but not required or ordered, that the findings and recommendations in the independent reading evaluation report shall be made with a view toward the student's potential eligibility for special education services, if any, as a student with a potential learning disability in reading. The record review, input, observations, assessments, testing, consultation, scope, details, findings, recommendations, and any other content in the independent reading evaluation report, shall be determined solely by the selected independent reading specialist.

If by June 29th, the student's parents do not wish to select one of the independent reading specialists identified by the District, or have not indicated by email their selection to the District director of pupil services and special education, the District may consider this lack of choice and/or communication by the parents to be an indication that the parents do not wish to pursue an independent reading evaluation under the terms of this order. At that point, and for that reason, the District is under no further obligation to provide an independent reading evaluation under the terms of this order.

Finally, nothing in this order should be read to interfere with or limit the ability of the parties to agree otherwise, so long as such agreement is in writing and specifically references this order.

Any claim not specifically addressed in this decision and order is denied and dismissed.

With the issuance of this final decision and order, the undersigned hearing officer releases jurisdiction.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

May 31, 2019