

**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.**

DR  
Name of Child

Xx/xx/xx  
Date of Birth

7500/06-07 AS  
ODR File Number

May 16, 2007  
Date of Hearing

Open Hearing

#### Parties to Hearing

Parent  
Ms.

Date Transcript Received:  
May 20, 2007

Parent Representative  
Mark Voigt  
Plymouth Meeting Executive Campus  
600 West Germantown Pike  
Suite 400  
Plymouth Meeting, PA 19462

Date of Decision:  
May 24, 2007

School District  
North Penn School District  
410 Hancock Street  
Lansdale, PA 19448

Kenneth Rose  
Hearing Officer

School District Representative  
Gina DePietro  
Sweet, Stevens, Tucker & Katz  
331 Butler Avenue  
PO Box 5069  
New Britain, PA 18901

## **Background**

The student is a xx year-old eighth grade student and is a resident in the school district. The student has had a long history of excessive school absences. He was evaluated several times at parent's request for giftedness. He was not found to be gifted. The student was on homebound instruction for a substantial part of last year due to allergies and asthma. He has had Section 504 service agreements due to his allergies and asthma.

A due process hearing decision of June 16, 2006 found the student not to be gifted and not to be eligible as a student with Other Health Impairment (OHI). The hearing officer ordered his 504 service agreement modified to change his placement in another school in the school district due to the student's allergy to cockroaches. His health was to be monitored. Also, compensatory education was ordered.

At the start of this school year in the new school, the student's absences started again. The student's physician placed him on homebound instruction again. The school district evaluated the student and found him eligible as a student with emotional disturbance (ED).

The parent contends the school district's evaluation was flawed and is requesting an Independent Educational Evaluation (IEE) at school district expense.

## **Stipulations**

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the school district.

## **Findings of Fact**

1. The school psychologist has evaluated the student twice, once in May 2006 and again in February 2007. (N.T.-32)
2. Last school year the student's school was changed due to his allergy to cockroaches. (N.T.-33)
3. During the 2006-2007 school year the student was on homebound instruction due to allergies and asthma. He has had fears of riding the school bus (N.T.-40, 56, 82)
4. On May 22, 2006 the school district issued an Evaluation Report (ER). An evaluation was requested due to the student's homebound instruction to ascertain if the student was OHI or gifted. It was comprehensive. No academic concerns were found. The student was average in reading, written expressions and math. He was not found to be an eligible student under IDEIA. A 504 Service Plan was recommended. (N.T.-40; S-1)

5. By hearing officer decision of June 16, 2006, the student was found not to be gifted, not eligible under OHI, but in need of a revised 504 service agreement. She ordered his school changed due to his allergy to cockroaches. (N.T.-33, 42; S-2)

6. The student was previously under a 504 Service Plan due to allergy induced asthma. (N.T.-33, 35)

7. This school year the student had trouble breathing at school. Sometimes he was taken to the hospital. (N.T.-99)

8. From the start of this school year to October he was absent sixteen days. On November 3, 2006 the school district issued a Permission to Evaluate due to excessive absences and a doctor's request for one hundred and eighty days of homebound instruction. Evaluation procedures listed were: review of May 24, 2006 ER, current teacher's observations, behavior rating scales, report from a physician specializing in allergies and asthma and a psychiatric evaluation.

No new ability or achievement testing was proposed because these were done six months previous and academics were not a current concern. The area of concern was emotional disturbance.

There was a concern by the parent that homebound instruction was not challenging enough.

The parent consented to the Permission to Evaluate on December 7, 2006 and did not express concerns over the scope of the evaluation. (N.T.-33, 34, 35, 37, 39; S-3)

9. The student's teachers, from before he started homebound instruction this year, provided the academic work for the homebound instructors at [redacted tutoring service]. The teachers review the work done there and assess his progress. He is doing well in his honors courses. (N.T.-67, 68, 89, 90)

10. The ER of February 23, 2007 had input from the parent. The parent expressed no academic concern. Her concerns were social and behavioral. Information from the student's teachers was included. He was in honors classes. He was withdrawn and did not interact with other students. The school psychologist reviewed records from the homebound tutors, but did not interview them. No classroom observation was done because he was at home on one-to-one instruction. Grades were A's.

The medical director for the school district consulted with the student's doctor and doctors at [redacted] Hospital and concluded the student did not fit the medical definition for allergies and asthma.

The school psychologist administered Behavior Assessment System for Children (BASC). The student was found to be at risk for withdrawal and somatization.

Results from the school district's psychiatrist were included in the ER. The diagnostic impression was acute anxiety.

***Diagnostic Impression:***

- Axis I            Separation Anxiety Disorder with School Avoidance  
                      Social Anxiety Disorder  
                      Somatization Disorder  
                      The student's social awareness and reciprocity completely rule out the possibility of Autism or Asperger's Disorder, by my assessment.*
- Axis II            No diagnosis-good intellectual functioning and reasonably good achievement*
- Axis III            Nocturnal Enuresis resolved by age 9  
                      History of earaches and early childhood reflux  
                      Reports of asthma or allergy have been determined to have no medical basis from medical assessment.  
                      Somatic complaints of headache and body pain are frequent.*

The school psychiatrist recommended medication, counseling and therapy.

The ER found the student as an eligible student with ED and needing a school program that lessened his anxiety and provided structure and support. (N.T.-43-54; S-4)

11. The school psychologist reviewed reports from [tutoring service]. She felt that they could not offer input as to how he would behave in a school setting. (N.T.-70, 89)

12. The school district's psychiatrist provides a list of recommendations for the school district and the parent to consider. (N.T.-80; S-4)

13. The ER of February 23, 2007 was reviewed with the parent and she agreed with it. (N.T. 54, 55)

14. During the review of the February 23, 2007 ER, there was a discussion of out of district placements. (N.T. 86)

15. The parent agrees the student has emotional problems. (N.T.-102, 107, 110)

16. The school district is actively seeking an appropriate placement for the student. (N.T. 94)

17. A reason for the parent's desire for an IEE is to seek an opinion on placement. (N.T.-104)

## Issues

1. Is the parent entitled to an IEE by [evaluator redacted] at public expense?

## Discussion and Conclusions of Law

The student has a history of absences from school, social issues and fear of riding the school bus (FF 3). During the 2006-2007 school year the student had excessive absences and was placed on homebound instruction at the request of his doctor for allergies and asthma caused by an allergy to cockroaches (FF 3).

An evaluation was conducted by the school district in May 2006 because of the student's allergies requiring homebound instruction (FF 4). Also, the parent had questions of academic giftedness. The ER of May 22, 2006 found the student not eligible as OHI, nor was he gifted. He was found entitled to a Section 504 Service Plan (FF 4, 5).

By way of a due process hearing the student's school was changed due to his allergies to cockroaches (FF 5). Also his non-IDEIA eligibility was confirmed.

The start of the 2006-2007 school year began with the same attendance issues and another physician request for homebound instruction (FF 8). The school district quickly requested an evaluation of the student to evaluate his social/emotional status (FF 8). They had no academic concerns.

This brings us to the issue in conflict, the parent's request for an IEE at school district expense.

34 CFR §300.502(b)(1) and (2)(i)(ii) states:

*(b) Parent right to evaluation at public expense*

*(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, **subject to the conditions in paragraphs (b)(2) through (4) of this section.***

*(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either-*

*(i) **File a due process complaint to request a hearing to show that its evaluation is appropriate; or***

*(ii) **Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.***

First we will examine the appropriateness of the ER.

34 CFR §300.301(c)(2)(i)(ii) states:

- (c) *Procedures for initial evaluation. The initial evaluation –*
- (1)(i) *Must be conducted within 60 days of receiving parental consent for the evaluation; or*
  - (ii) *If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and*
  - (2) *Must consist of procedures-*
    - (i) *To determine if the child is a child with a disability under 300.8; and*
    - (ii) *To determine the educational needs of the child*

Further, 34CFR §300.305 states:

*300.305 Additional requirements for evaluations and reevaluations*

- (a) *Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP team and other qualified professionals, as appropriate, must-*
- (1) *Review existing evaluation data on the child, including-*
    - (i) *Evaluations and information provided by the parents of the child;*
    - (ii) *Current classroom-based, **local, or State assessments, and classroom-based** observations; and*
    - (iii) *Observations by teachers and related services providers; and*
  - (2) *On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-*
    - (i)(A) *Whether the child is a child with a disability, as defined in 300.8, and the educational needs of the child; or*
    - (B) *In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;*
    - (ii) *The present levels of **academic achievement and related developmental** needs of the child;*
    - (iii)(A) *Whether the child needs special education and related services; or*
    - (B) *In the case of a reevaluation of a child, whether the child continues to need special education and related services; and*
    - (iv) *Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.*
- (b) *Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.*
- (c) *Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.*

*(d) Requirements if additional data are not needed.*

*(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of-*

*(i) That determination and the reasons for the determination; and*

*(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, **and to determine the child's educational needs.***

*(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.*

The ER of February 23, 2007 was conducted to determine the social/emotional status and needs of the student (FF 8, 10). Previous evaluations found no academic/educational needs. He is a student with high average ability successfully doing honors level work (FF 9, 10). The parent expressed no academic concerns (FF 10, 15).

The ER was comprehensive in exploring areas of suspected disabilities. There was information from the parent; an examination of records; reports from the teachers; assessments of suspected areas of needs using appropriate tools; input from the school's physician who specialized in allergies and asthma; and a thorough report from a psychiatrist who evaluated the student (FF 10). The ER is detailed and provides a sound basis on which to develop an appropriate IEP with appropriate goals and related services.

The school psychologist did not do new ability and academic achievement testing. She relied on her testing done several months before (FF 10). Since academic needs were not in question by the school or parent, she did not see a need to update this information. She did have information from the school district teachers overseeing the homebound instruction by LTT (FF 11). A classroom observation by the school psychologist was not performed because there was no classroom.

The results of the ER were reviewed with the parent and she was in agreement with the finding of ED (FF 13).

A preponderance of the evidence supports the appropriateness of the school district's evaluation. Whatever flaws may be found in the ER do not rise to the level of a fatal flaw. The parent's claim for an IEE at school district expense is denied.

**The LEA is ordered to take the following action**

1. None, the parent is denied an IEE at school district expense.

Date:

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Kenneth Rose  
Hearing Officer