

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: D.T.
ODR # 7671/06-07 AS

Date of Birth: [redacted]

Dates of Hearing: 7/23/07; 9/18/07; 9/20/07; 9/24/07

CLOSED HEARING

Parties to the Hearing:
Parent[s]

Unionville-Chadds Ford School District
740 Unionville Road
Kennett Square, PA 19348-1531

Representative:
Mark Voigt, Esquire
Plymouth Meeting Executive Campus
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Plymouth Meeting, PA 1946

Anne Hendricks, Esquire
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Huntington Valley, PA 19006

Date Transcript Received:

October 1, 2007

Date of Decision:

October 16, 2007

Hearing Officer:

Marcie Romberger, Esquire

BACKGROUND

Student is currently in the third grade in the Unionville-Chadds Ford School District. Student is currently not identified as an exceptional child. Student believes [Student] should be identified as a child with a disability under Chapter 14 of the Pennsylvania Regulations and the Individuals with Disabilities Education Act [redacted]. The District does not agree that Student is exceptional.

FINDINGS OF FACT

1. Student is enrolled in the School District. [Student] is currently in third grade.
2. Student's first grade teacher believed Student functioned as a typical first grader. N.T. 461. Student was a part of the second highest reading group in [Student's] class. N.T. 462. [Student's] writing was consistent with that of a first grade student. N.T. 463. [Student] was a little stronger in math than other subjects. N.T. 464.
3. Student's first grade teacher testified Student was demonstrating skills at grade level, not a year above grade level. N.T. 467. [Student's] mastery of skills and rate of retention and acquisition were similar to other first graders. N.T. 467. Student also did not exhibit expertise in any area of the curriculum or higher level thinking skills above the first grade level. N.T. 468.
4. Student's first grade teacher did not see Student having difficulties with the curriculum nor did not believe Student was in need of special education services [redacted]. S-23; N.T. 464, 465, 469, 471, 472. She did not find Student to have a complex pattern of learning strengths and weaknesses. N.T. 475-476. She also did not see Student exhibiting visual processing weaknesses. N.T. 476.
5. In the beginning of second grade, Student would cry and complain to [Student's] mother that [Student] was bored in school and hated writing. N.T. 31, 39.
6. Student's mother discussed these issues with the District [redacted]. N.T. 255-256.
7. In second grade, Student was functioning on grade level for reading comprehension, sight word vocabulary, and spelling. N.T. 489, 490. In the beginning of [Student's] second grade school year, Student's reading level was at the end of second grade. S-14. Student was placed in the second highest reading group. S-14. At the end of the school year, Student was reading on a third grade level. N.T. 389, 452.

8. In April, 2007, Student's second grade teacher attempted to have Student and [Student's] reading group read an advanced 3rd grade/easy 4th grade book, but Student was unable to comprehend what [Student] read. N.T. 387-388, 419.
9. Student did not have difficulty with language arts, science, social studies, or math in second grade. S-14, 23; N.T. 392, 393, 394, 400, 492-493. In math, Student would initially struggle with new information, but through guided practice and one on one with the teacher, [Student] did well. S-14.
10. Student's handwriting, when [Student] took [Student's] time, was fine. S-14; N.T. 391, 492. Student did not have more difficulty than a typical second grade student with capitals and punctuation. N.T. 499.
11. Student did not demonstrate problems copying from the board. N.T. 498.
12. To second grade teachers, Student did not demonstrate academic skills a year or more above grade level. N.T. 396, 494-495, 496-497, 508. [Student's] mastery of skills and rate of retention and acquisition were similar to other second graders. P-26; N.T. 391, 397, 495, 496-497, 508. Student also did not exhibit expertise in any area of the curriculum, academic creativity, or higher level thinking skills above the second grade level. N.T. 399, 495, 496-497, 508.
13. [Redacted.]
14. Student's second grade teacher did not find teaching Student a challenge. N.T. 513. Nor did she believe Student needed special education services. N.T. 419.
15. The District does not level children for math in second grade. N.T. 451, 547. Student's teachers believed Student was functioning in the middle of the class in math ability. N.T. 452, 547.
16. – 19. [Redacted]
20. [A private evaluator, Mr. M.,] conducted the WISC-IV on Student. S-4. Student scored a 136 on the Verbal Comprehension Index 1; 96 on the Perceptual Reasoning Index; 107 on the Working Memory Index; and 85 on the processing Speed Index. S-4. Student's full scale I.Q. was determined to be 110. S-4.
21. Student had a statistically significant difference between Student's Verbal Comprehension Index and the Perceptual Reasoning Index. S-4; N.T. 147, 184. Because of such, Mr. M determined Student's full scale I.Q. was "very misleading" and Student's Verbal Comprehension Index of 136 was the most accurate and optimistic estimate of Student's cognitive functioning. S-4; N.T.

1 Mr. M incorrectly identifies the Verbal Comprehension Index as Verbal I.Q. and the perceptual reasoning score as the Performance I.Q. S-4.

- 147, 184. Mr. M also believed the difference between the indexes was the first evidence that Student had a learning disability. S-4.
22. The District's psychologist also agrees the 40 point discrepancy between Student's Verbal Comprehension Index and Perceptual Reasoning Index is unusual, but is not evident of a learning disability as it has not impacted Student's learning. N.T. 279-280, 366. She also questioned the validity of the reasoning subtest score, a part of the perceptual reasoning index since the score was a borderline mentally retarded score. N.T. 280, 367.
 23. The District's psychologist does not agree that the verbal comprehension index should be used in lieu of the full scale I.Q. [redacted]. N.T. 281.
 24. Mr. M also found Student's composite scores for Working Memory and Processing Speed were less than expected, consistent with students who have problems with attention. S-4. He also determined Student's variability in the Perceptual Reasoning subtests is evident of difficulty with visual processing. S-4.
 25. Mr. M determined, based upon a statistical difference using the Verbal Comprehension Index, that Student was functioning lower than expected in every area of achievement on the Woodcock Johnson III. S-4.
 26. Mr. M also suggested Student may have difficulty with attention since working memory and processing speed scores were less than expected. S-4; N.T. 148. However, Student was very attentive during all testing sessions and no attention related concerns were raised by Student's mother or teachers. S-4; N.T. 281-282, 305.
 27. Mr. M also found Student had significant problems with spatial skills, vision analysis and perception, and visual processing. N.T. 165, 178, 241.
 28. Mr. M recommended Student receive weekly occupational therapy. N.T. 175.
 29. Mr. M indicated Student's performance declined as abstract demands increased. S-4. According to the District's psychologist, this is contradictory [redacted]. N.T. 282.
 30. As a result of academic achievement which was "far less than expected given the student's ability level," Mr. M diagnosed Student as having a specific learning disability in written expression, basic reading, reading comprehension, math calculation, and math reasoning. S-4; N.T. 159. His determination was a result of the discrepancy between Student's verbal comprehension index score and [the] scores on the Woodcock Johnson using the simple difference method for determining a learning disability. N.T. 224. He does not agree that a predicted achievement method should be used. N.T. 224.

31. The District's psychologist disagrees with the finding that Student is learning disabled based upon the discrepancy between Woodcock Johnson scores and Student's verbal comprehension index on the WISC-IV. N.T. 283. She believes a predicted achievement method is more valid. N.T. 355. She also disagrees Student is learning disabled because Student's achievement scores on the Woodcock Johnson were all above average and consistent with [Student's] full scale I.Q. score. N.T. 284.
32. [Redacted.]
33. Mr. M concluded Student's educational placement was inappropriate without observing Student in class, speaking to Student's teachers, or reviewing Student's curriculum based assessments. N.T. 203, 205-206, 236.
34. [Redacted.]
35. After Mr. M completed his evaluation, the District requested permission to evaluate Student because it felt it needed further information [redacted]. S-5, 7; N.T. 559-560. The District also believed Student's identification [redacted] was contradictory to the information it gathered on Student and Student's achievement scores on the Woodcock Johnson. N.T. 263, 264.
36. Student's mother did not believe additional testing was necessary. N.T. 49.
37. Student's mother was unwilling to have Student evaluated by any District psychologist. N.T. 554, 560. The District offered to have Student evaluated by an outside evaluator instead of a District psychologist. P-15; N.T. 62, 554-555.
38. Student's mother offered Dr. S as a candidate to complete Student's evaluation and the District agreed. S-5; N.T. 63, 276, 555.
39. – 40. [Redacted.]
41. Student's mother requested a change in teachers for Student since Student was unhappy and did not want to go to school. N.T. 80. The school complied with the request. N.T. 80.
42. On February 6, 2007, the District commenced an instructional support team meeting to discuss any issues with which Student was having difficulty. S-10. At the time, Student was "right where [Student] needs to be" with respect to math facts, reading, and content writing. P-25. It was determined that the only goal needed for Student was for [Student] to increase use of capitalizations and sentence end marks from 55% to 80%. S-10. Although Student's baseline was not low for a student in second grade, it was "an area of growth" for Student. N.T. 506, 518.

43. The District also requested an occupational therapy consultation based upon Mr. M's recommendation that Student receive weekly occupational therapy. S-17. The consultant concluded Student was not in need of occupational therapy. S-18.
44. The instructional support team met for a follow up on February, 28, 2007. The team determined Student was using capitals and ending punctuation with 97% accuracy. P-32, S-11. Student's mother did not agree with this finding as she was not seeing that amount of accuracy at home. N.T. 72.
45. In March, 2007, Dr. S tested Student. S-13. Student's attention span and motivation remained excellent throughout the testing. S-13.
46. Student obtained a verbal I.Q. of 126, a nonverbal I.Q. of 110, and a full scale I.Q. of 119. S-13. The difference between [Student's] verbal and nonverbal I.Q. scores is statistically significant and suggests Student's verbal reasoning skills are much stronger in development than nonverbal reasoning skills, specifically in the areas of general knowledge skills and fluid reasoning. S-13.
47. Dr. S discussed the differences between the scores she obtained on the Stanford-Binet test and the results obtained by Mr. M. S-13. She states the results are relatively consistent, but Student's slightly lower score on the Stanford-Binet in the verbal area is "attributable to the fact that the current test instrument incorporates forms of both quantitative and visual spatial reasoning in the scoring of both the verbal and nonverbal areas. The quantitative and visual spatial reasoning areas represent definite relative (not normative) weaknesses for [Student] and impact [Student's] overall score in the verbal area." S-13.
48. Student's nonverbal score on the Stanford-Binet was higher than that found on the WISC-IV, also attributable to test design. S-13.
49. Dr. S suggested Student may have underlying visual, spatial, and perceptual motor delays. S-13. She also identified Student as having difficulty copying information although [Student] can process the information appropriately. S-13.
50. Student's achievement scores on the WIAT-II were above average. S-13; N.T. 304. Dr. S concluded Student's achievement scores are consistent with Student's overall cognitive predictions. S-13. She determined there was no severe discrepancy between ability and achievement coupled with below average performance based on the test results. S-13.
51. Dr. S summarized her testing by suggesting Student had a complex and complicated pattern of learning strengths and weaknesses "that may be somewhat challenging to address in school." S-13.

52. She determined that Student presents with “clear relative weaknesses in the areas of visuospatial processing, visual-motor copying skills, visual scanning, and visual processing speed.” S-13.
53. She stated that Student may have difficulty with timed math tests although it does not appear that Student has had difficulty. S-13, 14; N.T. 312.
54. Dr. S concluded by finding Student’s current test results do not make Student eligible for identification as a child with a “formal learning disability coupled with a need for specially designed instruction.” S-13.
55. She recommended an occupational therapy evaluation and accommodations for Student’s strengths and weaknesses. S-13.
56. Student’s second grade teacher did not read Dr. S’s report even though Student was still in her class when the report was issued. N.T. 421, 422. Student was not being provided some of Dr. S’s recommendations. N.T. 430, 432.
57. Upon considering the evaluations and Student’s school performance, the District determined Student did not meet eligibility criteria for special education services as a child with a specific learning disability because Student’s cognitive weaknesses were not impacting [Student’s] learning. S-14; N.T. 301. [Redacted.]
58. On May 25, 2007, the District [redacted and] issued a Notice of Recommended Educational Placement deciding Student was also not in need of special education services. S-16. Student’s mother did not sign this document agreeing or disagreeing with the District’s finding. S-16.
59. On June 24, 2007, in response to Dr. S’s recommendation, an occupational therapy evaluation was conducted. S-19. It determined Student had a slight difficulty with gross and fine motor skills and with visual motor skills. S-19. The therapist also had concerns with Student’s handwriting legibility. S-19. It was recommended Student receive two 30 minutes occupational therapy sessions per month plus up to 30 minutes consult per month as needed. S-19.
60. On June 29, 2007, Student’s vision was evaluated by Dr. B. 2 N.T. 584. Dr. B did not review any of Student’s school work as part of the evaluation. N.T. 635.
61. Dr. B diagnosed Student with convergence insufficiency (eyes having the inability to draw near), accommodative excess (overfocusing), deficiency of pursuits (ability to follow a moving target smoothly and accurately), deficiency of saccades (ability to focus on one object with both eyes), and visual motor integration dysfunction. S-20; N.T. 679-682. Student also has deficiencies in eye

2 Dr. B has not received any education or training concerning the treatment or remediation of vision problems in the school setting. N.T. 582-583. The tests that Dr. B performs cannot be performed by a school psychologist or teacher. N.T. 641-643.

- focusing (ability to keep print clear), eye teaming (ability to keep the print single), and ocular motor skills (tracking words across the page). S-20; N.T. 590-591. Student also had a prolonged duration of fixation when reading. N.T. 607.
62. Student's difficulty with eye teaming and eye focusing can explain any difficulty Student may be having with copying from a board and slow reading speed. N.T. 604-605.
 63. Dr. B testified that it is not typically until fourth or fifth grade that you see symptoms associated with visual demands, such as working for extended periods of time and copying from a board. N.T. 656, 672-673.
 64. Although Dr. B did find Student had a prolonged duration of fixation while reading, Dr. B also determined that Student read very efficiently - above average in fluency with good comprehension. N.T. 639, 648, 649-650.
 65. Dr. B does not have any firsthand knowledge that Student's vision issues have adversely affected [Student's] educational performance. N.T. 662.
 66. Dr. B determined it was medically necessary for Student to receive vision therapy to correct those deficiencies which could be a "roadblock to [] potential" and "could affect []performance in the higher grades." S-20; N.T. 615, 617, 621, 623, 648, 674. With the vision therapy, Student's prognosis is good to excellent. N.T. 615-616, 644.
 67. After Dr. B's evaluation, the District and Student met at a resolution meeting. N.T. 130. The District raised the lack of Dr. B's evaluation to conclude vision therapy was educationally necessary. N.T. 130-131.
 68. After the meeting, Student's mother contacted Dr. B and requested he clarify whether vision therapy was also educationally necessary for Student. N.T. 130-131. In a supplemental report, Dr. B stated vision therapy was also educationally necessary. P-48.
 69. Dr. B provided "classroom suggestions" or accommodations to assist Student. 3 P-48. Some of the accommodations recommended by Dr. B were using a finger as a pointer while reading, oral tests, no penalty for poor penmanship, reduction in the amount of seatwork and copying from a blackboard, assistance to ensure [Student] copied work correctly, breaking up long assignments into smaller chunks, and extra time for written work and timed tests. P-48; N.T. 629, 631, 632.

3 When asked if Student needed special education and/or related services in school to meet unique vision needs, Dr. B replied, "I gave a list of some of the accommodations to help [Student] at school." N.T. 627-628. At no time did Dr. B testify that Student needed anything more than accommodations to assist [Student].

70. In neither report does Dr. B state Student has a visual impairment that, even with correction, will adversely affect educational performance. S-20, P-48; N.T. 323.
71. Student has completed nine sessions of vision therapy. N.T. 618. [Student] is doing well and on schedule to complete the program as recommended. N.T. 618.
72. The District does not agree vision therapy is educationally necessary since Student's vision issues are not impacting Student significantly in the classroom. N.T. 374-375.
73. In response to Dr. B's evaluation, the District requested permission to conduct a functional vision evaluation. S-30; N.T. 556. To date, Student has not consented to this evaluation. N.T. 556-557.
74. The District has not reimbursed Student for Mr. M's or Dr. B's evaluations. P-20, 21; N.T. 77, 99.
75. Student performed above the benchmark for reading fluency on the DIBELS and other assessments completed in first and second grade, but not to a large degree. P-28, S-22, 25, 26, 27, 28; N.T. 286, 287.

ISSUES

1. [Redacted.]
2. Does Student qualify for special education services under the Individuals with Disabilities Education Act? If so, does Student require specially designed instruction in the form of vision therapy, occupational therapy, and assistive technology?
3. Should Student be reimbursed for the cost of the independent educational evaluations and related expenses paid to Mr. M, and Dr. B?
4. Is Student entitled to 720 hours of compensatory education?
5. Is Student entitled to attorney's fees?

DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof

Following *Schaffer v. Weast*, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (Nov. 14, 2005), and *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384 (3d Cir. 2006), the burden of

persuasion in IDEA cases, as one element of the burden of proof, is now borne by the party bringing the challenge. As it was Student who filed this due process request, [Student] has the burden of persuasion. Pursuant to Schaffer, though, it only comes into play when neither party introduces preponderant evidence and, as a result, that evidence is fairly evenly balanced.

[Redacted.]

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (hereinafter, “IDEA”) entitles each child with a disability a free appropriate public education (hereinafter, “FAPE”). The IDEA defines FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge to the child’s family. 34 C.F.R. § 300.17. Special education for a student with disabilities can include instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. 34 C.F.R. § 300.39. Although the IDEA mandates that all children with disabilities are educated with children who are not disabled to the maximum extent appropriate, it does provide for children with disabilities to be educated in special classes or separate schools, including residential facilities, if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(2).

In order to be entitled to FAPE, a child must have a disability established under the IDEA. In order to determine if a child is eligible as a child with a disability under IDEA, a comprehensive evaluation must be completed. 34 C.F.R. §300.301(a).

A. Initial Evaluations

In conducting an initial evaluation, a school district must 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, that may assist in determining whether the child is a child with a disability.” 34 C.F.R. § 300.304. Although every initial evaluation should include classroom-based observations and input from the student’s teacher, it is required in every area of difficulty for a child evaluated for a potential learning disability. 34 C.F.R. §§ 300.305, 300.310. The child must be assessed in all areas related to the suspected disability, including, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304. The evaluation must be sufficiently comprehensive to identify all of the child’s special education and related services needs. 34 C.F.R. § 300.304.

B. Eligibility

There are thirteen categories in which a child can be eligible for special education services under the IDEA. One such category is visual impairment, defined as an

impairment in vision that, even with correction, adversely affects a child's educational performance. 34 C.F.R. 300.8 (13).

At one point in the hearing, Student argued [Student] was eligible under the IDEA as a child with a vision impairment. However, at no time did Student provide information that [Student's] vision, even with correction, adversely affects educational performance. Dr. B testified that he did not have firsthand knowledge that Student's vision issues had adversely affected educational performance. Finding of Fact 70; S-23; N.T. 662. Student's report cards and teacher comments suggest Student's educational progress in school is above average. Findings of Fact 2, 4, 7, 9. Dr. B also testified that Student's prognosis was good to excellent after completion of vision therapy. S-20; N.T. 615-616, 644. Therefore, it does not appear Student's vision issues are affecting educational performance at this time, and with correction, Student should see no complications with school work as a result of [Student's] vision in the future.

A second category in which a child can be eligible under the IDEA is as a child with a specific learning disability. Specific learning disability is defined as

a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 C.F.R. § 300.8 (10). To determine if a child has a specific learning disability, either a severe discrepancy between intellectual ability and achievement or a review of the child's response to scientific, research-based intervention can be used. 34 C.F.R. §300.307. The multidisciplinary evaluation team may determine that a child has a specific learning disability if the child does not achieve adequately for the child's age or meet State-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and/or mathematics problem solving. 34 C.F.R. § 300.309. A child can also be eligible for services as a child with a specific learning disability if the child does not make sufficient progress to meet age or State Approved grade-level standards in the above areas of the curriculum when using a process based on the child's response to scientific, research-based intervention or if the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability. 34 C.F.R. § 300.309. The lack of sufficient progress or discrepancy between ability and achievement cannot be the result of a visual, hearing, or motor disability among other things. 34 C.F.R. § 300.309.

The only basis for Student's diagnosis of a learning disability was from the severe discrepancy between Student's Verbal Comprehension Index on the WISC-IV and [Student's] achievement scores on the Woodcock Johnson. There was no discrepancy between Student's full scale I.Q. on the WISC-IV or on the Stanford Binet and achievement scores on the Woodcock Johnson or the WIAT. 4 S-4, 13. Nor is there any indication that Student was struggling at school. Finding of Fact 2, 4, 7, 9. Student was advanced in reading abilities and on grade level of math. Student did have issues with some English rules of grammar, but not to a significant degree to consider Student learning disabled in written expression.

Indeed, a preponderance of evidence confirms that Student has been successful in regular education. Student's grades are above average and commensurate with tested intellectual ability. Therefore, I find Student is not eligible for special education as a student with a specific learning disability.

[Redacted Section]

Reimbursement – Independent Evaluations

If a parent requests an independent educational evaluation at public expense, the public agency must 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). Courts have applied the regulation broadly to permit reimbursement not only when a student expressly disagrees with the evaluation, but also when a student fails to express disagreement with the District's evaluations prior to obtaining his/her evaluation. Lauren W. v. DeFlaminis, 480 F.3d 259 (3d Cir. 2007); Warren G. ex rel. Tom G. v. Cumberland County Sch. Dist., 190 F.3d 80, 87 (3d Cir. 1999).

4 A very similar situation occurred in Special Education Opinion 1808. In its opinion, the Appeal Panel criticized the independent evaluator's findings for the following reasons:

For SLD, she used the Verbal Comprehension Index of 104, which was the highest of the four major sub-scores of the WISC-IV, rather than the full-scale IQ score of 88. None of the WIAT-II subtest Ss was severely discrepant with said full-scale score for the IDEA's enumerated areas of SLD. *Id.* at 5. She ran at least 46 different statistical discrepancy tests for the WISC-WIAT combinations, which is highly suspect in terms of proper professional practice. *Id.* at 56-63. We conclude that the IEE falls below the general professional norms for an appropriate evaluation for several cumulative reasons: 1) Dr. K cherry-picked the highest of the four major components of the WISC-IV, even using this verbal comprehension index for the discrepancy analysis for math calculation, while the norm for this purpose is the full-scale IQ; 2) she ran an excessive number of discrepancy analyses, which further increased the risk of "false positives," whereas the IDEA only provides for eight areas for SLD eligibility.

Special Education Opinion 1808 (2007).

In the case before me, Student refused to consent to District personnel conducting an evaluation of [Student]. Instead, Student was evaluated by an independent evaluator without requesting that it be at public expense. As Student did not permit the District to conduct an evaluation or request the District fund the independent evaluation, Student is not entitled to reimbursement of the evaluation by Mr. M. The same hold true for the evaluation by Dr. B. Student did not request a vision evaluation from the District at District expense prior to the evaluation by Dr. B. Nor did Dr. B's evaluation conclude Student was in need of specially designed instruction under the IDEA. Therefore, Student is not entitled to reimbursement for Dr. B's evaluation.

In addition, [redacted.]

Compensatory Education

As Student is not eligible [redacted], [Student] is not entitled to compensatory education.

Attorney's Fees

As a Hearing Officer, it is out of my jurisdiction to determine attorney's fees.

Section 504 of the Rehabilitation Act

Student attempted to raise a claim under Section 504 during the hearing which I did not permit. Therefore, I will not address whether Student is entitled to receive a Section 504 Service Agreement. In addition, as I concluded Student is not eligible as a child with a disability under IDEA, I will not determine whether Student is entitled to reimbursement for vision therapy or the amount of occupational therapy Student requires.

ORDER

Student is not eligible under the IDEA as a child with a disability. Nor is Student eligible under the Pennsylvania Regulations [redacted]. Therefore, Student is not entitled to compensatory education. Nor is [Student] entitled to reimbursement for the independent educational evaluations conducted by Mr. M or Dr. B.

It is recommended that Student be reevaluated for [redacted].

Marcie Romberger, Esquire