

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 No. 27530-22-23

Child's Name

K.F.

Date of Birth

[redacted]

Parents

[redacted]

Local Educational Agency

Wallingford-Swarthmore School District
200 S. Providence Road
Wallingford, PA 1908

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

05/09/2023

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who resides in the Wallingford-Swarthmore School District ("District").¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student with an intellectual disability, a health impairment, and speech and language ("S&L") impairment.

The District filed the complaint in this matter, seeking to defend its October 2022 re-evaluation process and report in the face of the request of the parents for an independent educational evaluation ("IEE") at District expense.³

For reasons set forth below, I find in favor of the District.

Issue

Must the District provide an IEE at public expense?

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² 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 §§14.101-14.162 ("Chapter 14").

³ [redacted]

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. In November 2017, after transitioning to the District as a [redacted] student, the student was evaluated by the District. (School District Exhibit ["S"]-2).
2. The student has been diagnosed with a medical condition that impacts the student in educational environments. (S-2).
3. The student's parents declined to consent to cognitive or achievement assessment, but a 2015 evaluation from early intervention indicated that the student exhibited developmental delays in cognitive functioning. (S-2).
4. The student was found to have needs in reading readiness, mathematics readiness, S&L (expressive language, receptive language, articulation), occupational therapy ("OT") (fine motor and motor integration skills), and physical therapy ("PT") (gross motor skills). (S-2).

5. As a result of the medical diagnosis, the student was identified as a student with a health impairment. The student was also identified as a student with S&L impairment. (S-2).
6. In October 2019, in the fall of the student's [redacted] year, the student was re-evaluated by the District. (S-5).
7. Parents declined to provide formal input for the October 2019 re-evaluation report ("RR"), although the student's mother provided informal input. (S-5).
8. The October 2019 RR included cognitive assessment, although given the student's S&L needs and affect during testing, the evaluator could not obtain valid composite scores or a full-scale IQ. (S-5).
9. The October 2019 RR included achievement, adaptive behavior, and social/emotional/behavioral assessments, as well as evaluations in S&L, OT, and PT. (S-5).
10. The student was found to have needs in S&L (expressive language, receptive language, articulation, social skills), OT (fine motor, visual motor, visual perceptual skills), attention/distractibility, PT (posture, spatial awareness), and academic level/pacing. (S-5).
11. As a result of a mosaic of needs and medical diagnosis, the student was identified as a student with multiple disabilities. The student was also formally identified as a student with a health impairment and S&L impairment. (S-5).

12. Over the period June – September 2022, the District sought permission to re-evaluate the student. (S-6, S-8, S-10; Notes of Testimony [“NT”] at 16-97).
13. Parents dispute that the documentation requesting permission to re-evaluate the student was ever delivered to them. (Parents Exhibit [“P”]-4, P-5, P-7; S-6, S-8, S-10; NT at 16-97, 102-110, 112-162).
14. The email addresses used to communicate with the parents are accurate. Two mailing addresses were utilized for the parents, one for the student’s mother and one for the student’s father. The address utilized for the student’s mother is accurate, and the parents receive mail there. The address used for the student’s father is a property owned by the father, a property which he “frequents” but which is not his residence. (NT at 102-110, 112-162).
15. The means the District used to communicate with the parents were accurate and, to the extent that documents were not received by the parents, such circumstances are not the fault of, or imputed to, the District. (NT at 16-97, 102, 110, 112-162).
16. In the fall of 2022, the District re-evaluated the student. (S-11).
17. The October 2022 RR included the results of the prior evaluations. (S-11 at pages 2-3).
18. The parents did not provide input for the October 2022 RR. Parents testified that they never received the documentation to

provide input. To the extent that parental input forms were not delivered to parents, the finding at #15 applies here. (S-11 at page 3; NT at 102-110, 112-162).

19. The October 2022 RR included the results of the cognitive and achievement assessments from the October 2019 RR. (S-5, S-11 at page 4).
20. The October 2022 RR included the results of curriculum-based assessments, as well as goal progress-monitoring data from the student's individualized education program ("IEP"). (S-11 at 4-6).
21. The October 2022 RR included input and recommendations from the student's regular education and special education teachers. (S-11 at pages 6-7).
22. The October 2022 RR included cognitive assessment. The student's needs and engagement in the cognitive assessment did not interfere with the evaluator's ability to obtain valid scores. The student's cognitive assessment yielded "extremely low" scores across all indices, with a full-scale IQ of 44. (S-11 at pages 10-12).
23. The October 2022 RR included an achievement assessment. The student mastered "rote reading skills" in decoding and sight-word recognition but exhibited deficits in reading fluency and comprehension. Similarly, the student exhibited basic writing skills but exhibited deficits with more complex writing (sentence writing,

spelling, and punctuation/capitalization). In mathematics, the student could complete single-digit addition and subtraction problems but could not complete more advance calculations or engage in problem-solving. (S-11 at pages 11-14).

24. The October 2022 RR included an updated S&L evaluation. The S&L evaluator recommended that the student continue to receive S&L services, identifying expressive language as a particular area of need. (S-11 at pages 14-19).

25. The October 2022 RR included an updated OT evaluation. The OT evaluator recommended that the student continue OT services, identifying visual-perceptive, fine-motor, attention, and executive functioning as particular areas of need. (S-11 at pages 19-22).

26. The October 2022 RR included an updated PT assessment. The PT evaluator did not note any particular needs but the RR's overall recommendations included a recommendation for PT services to work on motor planning skills. (S-11 at 22-24, 28).

27. The October 2022 RR included assessments in adaptive functioning and attention. The student exhibited needs in both areas. (S-11 at pages 24-25).

28. The October 2022 RR identified the student with a health impairment (as a result of the student's medical diagnosis and behavior profile consistent with attention deficit hyperactivity

disorder), an intellectual disability (which is often associated with the medical diagnosis), and S&L impairment. (S-11 at page 27).

29. The October 2022 RR included educational recommendations for the student's IEP team to consider. (S-11 at pages 27-28).

30. In the follow-up to the issuance of the October 2022 RR, over November and December 2022, the student's multi-disciplinary team and IEP team met to consider the RR in light of the student's educational programming. (P-1, P-2, P-8; S-13; NT at 16-97, 102-110, 112-162).

31. In January 2023, in light of the parents' request for an IEE, the District filed a complaint to defend its re-evaluation process and report.

Discussion

Under the terms of the IDEIA, "(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..." (34 C.F.R. §300.502(b)(1); 22 PA Code §14.102(a)(2)(xxix)). Upon requesting an IEE at public expense, a school district has one of two choices: the school district must provide the evaluation at public expense, or it must file a special education due process complaint to defend its re-evaluation process and/or report. (34 C.F.R. §300.502(b)(2)(i)-(ii); 22 PA Code §14.102(a)(2)(xxix)).

An evaluation (or re-evaluation, as the evaluation provisions of IDEIA apply equally to re-evaluations as well [34 C.F.R. §§300.15, 300.304-311; 22 PA Code §14.102(a)(2)(iii),(xxv),(xxvi)]), 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” an understanding of the student’s disability and the content of the student’s IEP. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)). Furthermore, the school district may not use “any single measure or assessment as the sole criterion for...determining an appropriate educational program for the child”. (34 C.F.R. 300.304(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Here, the only question presented is whether the District’s October 2022 re-evaluation report, is appropriate under the terms of the IDEIA. The evidence shows that it is appropriate.

The October 2022 RR contains all the elements of an appropriate re-evaluation, including the context of past evaluations, teacher input, the results of prior assessments and testing, curriculum-based results and IEP progress, teacher recommendations, updated assessments and testing (including cognitive, achievement, social/emotional/behavioral assessments, as well as in S&L, OT, and PT). The October 2022 RR is comprehensive and

appropriately identified the student's strengths and needs, allowing the student's IEP team to design educational programming around those strengths and needs.

The October 2022 RR did not contain parental input. The parents dispute that they received parental input forms prior to the issuance of the October 2022 RR. The testimony of the District evaluator is credited that she utilized standard communication protocols for providing those forms (and the consent documents as well) to the parents. Parents confirmed that the email addresses and one of the regular mail addresses—that utilized by the student's mother—were accurate. This decision takes no position on whether or not those documents were delivered to the parents, but to the extent that those documents were not, the fault lies outside the District or its the actions of its employees/agents. The evidence supports a finding that the District process in communicating with the parent was appropriate.

In sum, then, the October 2022 RR meets the requirements of IDEIA and the District does not need to provide an IEE at public expense.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the re-evaluation process undertaken by the Wallingford-Swarthmore

School District in the fall of 2022 and the October 2022 re-evaluation report issued by the school district are both appropriate. The parents are not entitled to an independent educational evaluation at school district expense.

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

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

05/09/2023