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**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: MS  
ODR #8632/07-08 KE

Date of Birth: xx.xx.xx

Date of Hearing: May 13, 2008

CLOSED HEARING

Parties to the Hearing:

Ms.

East Stroudsburg Area School District  
321 North Courtland Street  
East Stroudsburg, Pennsylvania 18301

Representative:

Pro Se (did not appear)

Anne Hendricks, Esquire  
Levin Legal Offices  
1402 Masons Mill Business Park  
1800 Byberry Road  
Huntington Valley, Pennsylvania 19006

Date Transcript Received:

May 19, 2008

Date of Decision:

May 23, 2008

Hearing Officer:

Linda M. Valentini, Psy.D.

## Background

Student is a xx-year-old student enrolled in the East Stroudsburg Area School District (hereinafter District). He is a tenth grade student during this (2007-2008) school year. Student is enrolled in regular education classes and has never been evaluated to determine whether he is eligible for special education services. The district has sought permission to evaluate Student to determine if he is eligible for special education services under the Federal IDEIA and Pennsylvania Chapter 14 and/or Section 504 and Pennsylvania Chapter 15. As Student's mother, Ms. (hereinafter Parent) refused to give her permission for an evaluation to be performed, the District requested this due process hearing.

On Tuesday May 13<sup>th</sup>, the day of the hearing, the Parent failed to appear. The hearing officer had called her home and left a message with a male the previous week but received no return call. The hearing officer also attempted to reach her on the Saturday before the hearing, but the telephone rang with no answer or answering machine. The morning of the hearing several attempts were made by the District to reach the Parent to no avail, and the hearing officer also called the home; there was no answer and no answering machine. Finally the hearing officer called the Office for Dispute Resolution to see if the Parent had made contact regarding an inability to attend the hearing, and the case manager reported no contact from the Parent had been received.

In accord with established due process procedures as put forth in the Pennsylvania Special Education Dispute Resolution Manual Section 802 A to F the hearing officer proceeded with the hearing in the absence of the Parent. The hearing officer received no further contact from the Parent as of the writing of this decision.

## Issue

Should the East Stroudsburg Area School District's request for an Order to perform a multidisciplinary evaluation of Student to determine his eligibility for special education services under the IDEIA and Pennsylvania Chapter 14 and/or Section 504 and Pennsylvania Chapter 15 over the objections of his Parent be granted?

## Findings of Fact

Student is a xx-year-old student residing in the East Stroudsburg Area School District. He is in tenth grade during the current 2007-2008 school year.

The District issued a Permission to Evaluate on June 5, 2007. On August 24, 2007 the Parent returned the form noting her objection to an evaluation with a request to schedule an informal meeting with school personnel. (NT 13-14, S-2, S-4)

Attempts to set up a meeting with the parent failed for various reasons, but in a September 2007 telephone conversation the District agreed to monitor Student for the first quarter of the 2007-2008 school year. (NT 15-16, S-4)

Student did not do well during the agreed-upon monitoring period, and the District issued another Permission to Evaluate on December 11, 2007. The Parent again objected to an evaluation and requested a prehearing conference. (NT 16-17, S-2, S-5)

Meetings were scheduled and rescheduled; parent did not appear for a meeting and was not able to be contacted for several weeks. The District issued a letter informing the Parent that if there could not be a resolution meeting, or if a meeting was held without a resolution being reached, the District would file for due process. There was no response from the Parent, so the District filed for a hearing on March 17, 2008. (NT 17-20, S-1, S-2, S-3, S-4)

During the current school year Student has had 14 excused absences and 4 unexcused absences through March 12, 2008; no further data was introduced covering the two months prior to the hearing. (NT 21-22, S-11)

Student's English teacher described Student as "not focused, everywhere at once", but if he wears headphones to tune out distractions or if she sits right next to him he can stay on task. She also described him as "struggling in writing", and as having reading comprehension issues demonstrated by his "not being able to explain what he is reading". (NT 38-39)

Student's Reading Edge teacher said he seems largely "unmotivated", "lacks focus", "puts his head down and once fell asleep in class. He testified that Student struggled to write complete sentences, and struggled with the material. He believed however that Student became "motivated to pass the class" and "adamant about wanting to pass" as he was being "pushed by the basketball coaches". (NT 52-53, 56)

Student's math teacher said that Student is frequently off-task, requires a lot of direction, doesn't prepare for tests, gets distracted very easily, seems unmotivated and lazy at times and at other times it seems as if he "just isn't able to ability wise". He can do computations with a calculator, but not without. When he has to read and comprehend word problems there seems to be a definite lack of ability. (NT 30-31)

Student's Math Edge teacher said that Student is inconsistent, hard to get on task, does not take down notes, most of the time is getting up from his seat, and does not take tests and quizzes seriously. (NT 24)

Various strategies and accommodations have been tried with Student, including extra time to complete work, reading with a one-to-one aide, working with a math aide, allowing use of a calculator, and assignment to a small group with an organized interested peer, and use of headphones to listen to music to keep him focused on seat work. (NT 24-25, 31-31, 40, 43, 47)

Student's transcript shows the following major subjects grades thus far: (S-7)

English 10	30	60	67
Reading Edge	60	76	
World Studies	65	47	
General Science	57	58	
Biology			67
Geometry			72
Math Edge			62

Teacher comments are “puts forth little effort”, “inconsistent effort”, “wastes class time”, and “has more ability than performance/grade indicates”. (S-7)

Student's final grades for 9<sup>th</sup> grade, the 2006-2007 school year, were as follows: English 67, World Studies 84, Applied General Science 25, Applied Algebra 71, Math Edge 73, Elem Cryptology 84, History of Math 66, Intro to Business 65 and Spanish I 50. (S-7)

Student's teachers ascribe the following positive attributes to him: polite and friendly, very sociable, honest, helpful, respectful and kind. (S-9)

## Discussion and Conclusions of Law

### Relevant Legal Basis

In deciding this matter, the hearing officer relied on federal and state law governing the issue in this due process hearing as set forth below.

### Child Find

The Individuals with Disabilities Education Improvement Act (IDEIA), reauthorized in 2004, consistent with the previous IDEA, places a mandate for “Child Find” on school districts. The IDEIA's implementing regulations provide that the State must ensure that

“...All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services.” 34 CFR §300.111

The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability, after providing notice, must obtain informed consent from the parent of the child before conducting the evaluation. 34 CFR §300.300(a)(1)(i)

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards or the due process procedures, if appropriate. The public agency does not violate its obligation [for Child Find] if it declines to pursue the evaluation. 34 CFR §300.300(a)(3)(i)(ii)

State Special Education Regulations currently in force provide that the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days<sup>1</sup> after the agency receives written parental consent. 22 PA. Code § 14.123(b)

The above timeline applies equally to evaluations ordered by a hearing officer.

#### Discussion

By law a school district may, but is not required to, request a hearing when a parent withholds permission for an evaluation to determine whether a student is eligible for special education. In this case, it speaks to the District's investment in Student that it chose to incur the expense in staff time and community finances to bring this matter to a hearing. The District's witnesses testified forthrightly and sincerely about their concerns for Student and their unified belief that he requires additional and specialized supports in the school setting in order to receive meaningful benefit from his education. Although they sometimes described Student as unmotivated and lazy, to a person his teachers conveyed their professional impression that there was more to the student's situation than a simple unwillingness to put forth effort. Their descriptions of Student in testimony and the written comments provided in documents lead to the very strong suspicion that Student may be eligible for special education learning support.

Given that the Parent did not choose to appear at the hearing, her reasons for withholding her permission for an evaluation are not in evidence. There was no testimony to contradict the District's evidence. The District has met its burden of proof in this matter and its request for an order for an evaluation for Student is granted.

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<sup>1</sup> As of July 1, 2008 the timeline will be 60 calendar days.

## Order

It is hereby ordered that:

1. The East Stroudsburg Area School District is ordered to conduct a multidisciplinary evaluation of Student to determine his eligibility for special education under the IDEIA and Pennsylvania Chapter 14 and/or for a 504 Service Plan under Pennsylvania Chapter 15 according to the procedures described in the Permission to Evaluate form issued on December 11, 2007. This evaluation is to be conducted despite the objections of the Parent, and is to be completed, including a written report, within 60 school days of the date of this Order.
2. If Student should disenroll from the District prior to the evaluation's being completed, this Order shall stand if and when he returns to the District.

May 23, 2008

Date

*Linda M. Valentini, Psy.D.*

Hearing Officer