

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 Due Process Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number

22847-1920

Child's Name

I.D.

Date of Birth

[redacted]

Parent

[redacted]

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

11/27/2019

INTRODUCTION

This special education due process hearing concerns the educational rights of Student ("student"), a student who resides in the School District ("District").¹ At this juncture, the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student with a health impairment, learning needs, and articulation needs in speech and language ("S&L").

The student currently receives S&L services, in addition to other services, through an individualized education program ("IEP"). In August 2019, the District requested permission to perform a S&L re-evaluation. The student's parent declined to provide permission. Thereafter, the parent filed a special education due process complaint seeking to have the student exited from S&L services (while maintaining other services delivered through the IEP).³ In light of the parent declining to provide permission to re-evaluate the student and the parent's complaint regarding a potential exit-from-certain-services, the District filed a complaint, which is the basis of these proceedings, seeking authority through a hearing officer's order to conduct the S&L re-evaluation.

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

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 Parent's complaint is at issue in a separate process at ODR file number 22758-1920.

ISSUE

1. Should the District be authorized to perform a S&L re-evaluation?

FINDINGS OF FACT

1. The student has attended the District since 1st grade. (School District Exhibit ["S"]-2).
2. [Redacted.] In January 2015, in the student's 3rd grade year, the student was found eligible for special education as a student with a health impairment (attention-deficit hyperactivity disorder) and S&L articulation needs. (S-2).
3. In January 2018, in the student's 6th grade year, the student was re-evaluated. (S-2).
4. The January 2018 re-evaluation included the assessment data, observations, and recommendations related to S&L from the January 2015 evaluation. (S-2 at pages 6-8).
5. The January 2018 included comprehensive progress monitoring data from the student's IEPs, including S&L progress monitoring, over the spring of 2015, the 2015-2016/2016-2017 school years, and the fall of 2017. (S-2 at pages 12-19).
6. In the January 2018 re-evaluation report, the S&L evaluator opined: "Based on review of current speech and language data with no additional assessments (the student) continues to demonstrate needs in the area of articulation. The IEP team recommends that (the student) continue to receive speech/language support services." (S-2 at pages 19, 33).
7. Neither the January 2015 evaluation nor the January 2018 re-evaluation found any S&L need outside of articulation—the student's

pragmatic language, oral fluency, and voice were found to be within the normal range. (S-2 at pages 7-8, 19).

8. In April 2019, the student's IEP was revised and is the operative IEP as of the date of the hearing. (S-4).⁴
9. The April 2019 IEP contains one S&L articulation goal. The student receives one 30-minute session of direct group S&L therapy every instructional cycle (every six school days). (S-4 at pages 25, 35; Notes of Testimony ["NT"] at 26-64).
10. Progress monitoring in the April 2019 IEP, for the third and fourth quarters of the 2018-2019 school year, indicated that the student was progressing on the S&L goal. The fourth quarter progress monitoring indicated: "Independent mastery....(the student) has met criterion for this goal." (S-5 at page 1).
11. In late August 2019, the District sought permission to perform a S&L re-evaluation. (S-6).
12. In early September 2019, the parent communicated with the District that she did not want the re-evaluation to take place and that she wanted the student to be exited from S&L services while continuing the provision of special education services as outlined in the IEP. (S-7; NT at 67-85).
13. In late September 2019, the parent filed a special education due process complaint seeking to have the student exited from S&L services.

⁴ The April 2019 IEP was revised in May 2019, but those revisions did not impact the student's S&L goal or instruction.

14. In mid-October 2019, the District filed the special education due process complaint in this matter, seeking authority to perform the S&L re-evaluation.
15. The parent is concerned that a S&L re-evaluation is unnecessary and fears that such a re-evaluation will be overbroad. (NT at 67-85).

DISCUSSION

Where a parent declines to provide permission for a re-evaluation for a student who is already receiving special education, a school district may utilize special education due process to seek authorization from a hearing officer to allow the re-evaluation to move forward. (34 C.F.R. §§300.15, 300.300(c); 22 PA Code §§14.102(a)(2)(iii), (xxiv) 14.162(c)).

Here, the District's request for a S&L re-evaluation has a nexus with the parent's request that the student be exited from S&L services. That question is still at issue between the parties and, as a precursor to that decision, the District wishes to collect data, through assessment and observation, as to whether or not the student continues to require such services.

Based on the record as a whole, the District's request is not unreasonable and is well-grounded. First, in the most recent re-evaluation, in January 2018, the S&L evaluator opined definitively that the student demonstrated a need in S&L articulation and should continue to receive services to address this need. Second, at this point, this data-based position is nearly two years old. Before moving away from providing such services, a re-evaluation of the student's potential continued need for, or lack of need for, S&L articulation services can be, and should be, supported.

Clearly, though, the progress monitoring on the student's S&L articulation goal shows that the student has made steady progress. Indeed,

it may be that the student's IEP team decides that the student should be exited from S&L services. That decision could be made in the absence of updated S&L re-evaluation assessment and observation. But it is not required that such a decision be made in the absence of updated data, and this hearing officer sees no compelling reason not to obtain that data for consideration by the student's multi-disciplinary/IEP teams.

This is not to minimize the parent's concern that she feels that any such re-evaluation may be overbroad. The student's need for S&L services has always been solely identified as an articulation need. Mindful of that, the order below will be crafted, as it should be, solely to authorize assessment and observation of the student's potential need for continued services for S&L articulation.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District may undertake a re-evaluation of the student's speech and language articulation needs.

The re-evaluation may be conducted by a school district speech and language therapist, although it is within the discretion of the school district to retain an independent speech and language evaluator if it wishes to. The speech and language re-evaluation shall include one or more assessments to gauge the student's articulation and one or more observations of the student's articulation. The choice of the articulation assessment(s) is left to the sole discretion of the speech and language evaluator but the assessment(s) shall be limited only to articulation and shall not include any more broad-based or multi-faceted speech and language assessment. The number and nature of the observation(s) is left to the sole discretion of the speech and language evaluator.

The speech and language re-evaluation report shall be issued no later than 30 calendar days after the date of this order. Should the school district choose to retain an independent speech and language evaluator, that evaluator must be retained with the understanding that the evaluator's re-evaluation process and report must comply with the terms of this order.

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

11/27/2019