

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 File Number

24709-20-21

Child's Name

J.K.

Date of Birth

[redacted]

Parents

[redacted]

Local Educational Agency

Great Valley School District

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

05/07/2021

Introduction

This special education due process hearing concerns the educational rights of J.K. ("student"), a student who resides in the Great Valley 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 a specific learning disability and a health impairment. The student has also been identified by the District as a student with autism. The parents disagree with this particular identification.

The District filed the complaint in this matter, seeking to defend its November 2019 re-evaluation process and report in the face of the request of the parent for an independent educational evaluation ("IEE") at District expense.

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").

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 January 2011, in the student's [redacted] grade year, the District evaluated the student. (Parents' Exhibit ["P"]-7).
2. The January 2011 evaluation report ("ER") included parental input and teacher input, as well as the input of other educators. (P-7).
3. The January 2011 ER included curriculum-based assessments in reading, writing, and mathematics. (P-7).
4. The January 2011 ER included a cognitive assessment and achievement testing. (P-7).
5. The January 2011 ER included a speech and language evaluation, and an occupational therapy evaluation. (P-7).
6. The January 2011 ER included assessments in attention and behavior, including a functional behavior assessment. (P-7).
7. The District identified the student in the January 2011 ER as a student with specific learning disabilities in reading fluency and reading comprehension, speech and language impairment, and the health impairment of attention deficit hyperactivity disorder ("ADHD"). (P-7).
8. In December 2013, in the student's [redacted] grade year, the District re-evaluated the student. (P-5).

9. The December 2013 re-evaluation report ("RR") included a records review, parental input and teacher input, as well as the input of other educators, and interview data from the school psychologist who conducted the re-evaluation. (P-5).
10. The December 2013 RR included current academic performance and curriculum-based assessments in reading, writing, and mathematics. (P-5).
11. The December 2013 RR included state standardized testing results and goal-progress data from the student's individualized education program ("IEP"). (P-5).
12. The December 2013 RR included a cognitive assessment and achievement testing. (P-5).
13. The December 2013 RR included a speech and language evaluation, an occupational therapy evaluation, and a physical therapy evaluation. (P-5).
14. The December 2013 RR included assessments in attention, behavior, and executive functioning. (P-5).
15. The District identified the student in the December 2013 RR as a student with the health impairments of ADHD and social (pragmatic) communication disorder, and a specific learning disability in reading. The evaluator opined that the social (pragmatic) communication disorder subsumed the speech and language impairment, although the student remained eligible for services in speech and language. (P-5).
16. Parents had long held views that the student should not be identified with autism. (P-4, P-5, P-7; Notes of Testimony ["NT"] at 54-70).

17. In September 2019, in the student's [redacted] grade year, the District undertook a re-evaluation of the student. (School District Exhibit ["S"]-1).³
18. In November 2019, the District issued its RR. (S-4).
19. The November 2019 RR included a records review, summaries of prior evaluations, parental input, teacher input, as well as the input of other educators. (S-4).
20. The November 2019 RR included transition data for the student's post-secondary goals and planning. (S-4).
21. The November 2019 RR included current academic performance and extensive classroom-based and instruction-based data on accommodations and progress. (S-4).
22. The November 2019 RR included state standardized testing results and goal-progress data from the student's IEP, as well as input from related services providers (speech and language, occupational therapy, social worker). (S-4).
23. The November 2019 RR included a cognitive assessment and achievement testing. (S-4).
24. The November 2019 RR included a speech and language evaluation, and an occupational therapy evaluation. (S-4).
25. The November 2019 RR included assessments in behavior, social responsiveness, and executive functioning. (S-4).

³ The District re-evaluated the student in November 2016, but this RR was not made part of the record. S-4 at page 1.

26. The November 2019 RR continued to identify the student with a specific learning disability in reading and the health impairment ADHD. The RR added an additional identification of the student as a student with autism. (S-4).
27. The District evaluator testified credibly that the student's social-communication and social-interaction needs have deepened over time and, especially into high school, the social demands have increased to the point that the student's socialization needs, when coupled with observed repetitive/restricted patterns of behavior, indicate high-functioning autism (with anxiety) and not social communication disorder. (S-4; NT at 14-47).
28. Parents continued to agree with the District on the identification of the student as a student with a specific learning disability and ADHD but disagreed with the identification of autism. (S-2, S-4; NT at 54-70).
29. The parties sought mediation to address their differing views on whether or not the student should be identified as a student with autism. In January 2021, the parties reached a mediation agreement. (S-6).
30. As part of their mediation agreement, the parties agreed that the District would pursue additional assessments, including cognitive assessment with a specific focus on potential dyslexia, auditory processing, anxiety, executive functioning, and adaptive behavior. (S-6).
31. As part of the mediation agreement, the parties agreed that the District would arrange with the local intermediate unit for an in-depth, comprehensive autism assessment. (S-6).

32. As part of the mediation agreement, the parties agreed that the District would issue, and the parents would provide, consent for the assessments outlined in the agreement. (S-6).
33. On the same day that the mediation agreement was signed, the District issued a Permission to Evaluate form, seeking consent to conduct the assessments. As of the date of the hearing, the parents had not provided consent for the assessments. (S-6, S-7; NT at 14-47).
34. In February 2021, parents requested an IEE at District expense. (S-8).
35. The District denied the parents' request and provided procedural safeguards to the parents. (S-9, S-10, S-11; NT at 14-47).
36. In March 2021, the District filed the complaint to defend its re-evaluation process and November 2019 RR.
37. At the hearing, the student's father testified that the parents have deep concerns about the increase in autism diagnoses over time and, in their view, a potential stigma related to such a diagnosis. (P-1, P-2; NT at 54-70).
38. Parents feel the student's needs are not related to autism but, instead, to a social communication disorder. (P-6; NT at 54-70).

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 evaluation process undertaken in the fall of 2019 and the November 2019 RR that resulted, are both appropriate. The November 2019 RR included and considered data from the classroom, from the student’s IEP goals, from related services providers, and from formal assessments and tests. The November 2019 RR included input from teachers, other educators, and parents. The November 2019 RR included an analysis of all of this information in reaching conclusions regarding the student’s needs and formal identification status. At no point was any one single measure, element of input, assessment, or score used to understand the student’s needs and identification. In sum, the November 2019 RR is appropriate.

Having said this, the conversation on the student's identification status, and the educational programming necessary for the student, continues. The issue in this matter is tightly focused: Are parents entitled to an IEE at District expense? The answer to that question, in light of the evidence and the legal standards involved, is "no". But the ability for parents to solicit a private evaluation for consideration by the student's multi-disciplinary team is not impeded—that voice can, and would, be heard. ("If the (school district) files a due process complaint notice to request a hearing and the final decision is that the (school district's) evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense." 34 C.F.R. §300.502(b)(3); 22 PA Code §14.102(a)(2)(xxix)).

Too, as a result of the parties' January 2020 mediation agreement, the parents have available to them the opportunity to have the local intermediate unit perform an in-depth and comprehensive assessment for potential needs related to autism (or, importantly, ruling-out autism as part of the student's disability profile). The student's father testified that they do not have trust in the intermediate unit's ability to evaluate the student fairly because of prior interactions with the intermediate unit. Parents are certainly welcome to hold whatever views they wish, but it appears to this hearing officer that two points mitigate this concern: (1) the parents' prior interaction with the intermediate unit was in 2008 when the student was in preschool—it seems almost certain that an evaluator from the intermediate unit could be retained who has no prior experience or interaction with the family (see P-5 at page 2), and (2) the January 2020 mediation agreement specifically references the intermediate unit as the organization that would provide this evaluation, such that the parents' concerns are somewhat counter-balanced by a degree of trust.

But these points are provided only as illustrative of how the parties can continue the conversation about understanding the student and the student's needs. In terms of the specific issue presented for determination, the November 2019 RR is appropriate, and parents are not entitled to an IEE at District 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 in the fall of 2019 and the November 2019 re-evaluation report issued by the Great Valley School District are both appropriate. 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

05/07/2021