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Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Open Hearing

ODR No. 28388-23-24

Child's Name

D.C.

Date of Birth

[redacted]

Parent

[redacted]

Local Educational Agency

Southern Lehigh School District
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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

10/31/2023

Introduction

This special education due process hearing concerns the educational rights of D.C. (“student”), a student who resides in the Southern Lehigh School District (“District”).¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)² as a student with an emotional disturbance and a specific learning disability in mathematics.

The parent feels that the student should be identified as a student with autism. Following a re-evaluation of the student in June 2023, which found that the student should not be identified as a student with autism, the parent requested an independent educational evaluation (“IEE”) at District expense. The District filed the complaint in this matter, seeking to defend its June 2023 re-evaluation process and report in the face of the parent’s request.³

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 In July 2023, parent filed a complaint seeking an IEE. (Hearing Officer Exhibit [“HO”]-1). The District filed a response to that complaint, and styled its defense of its re-evaluation process and report as a counterclaim. (HO-2). Confirming with the parties that the dispute was a straightforward defense of a school district re-evaluation in the face of a parent’s request for an IEE, the parent’s complaint was dismissed and this matter proceeded on the basis of the District’s position that its re-evaluation process and report were appropriate.

For reasons set forth below, I find in favor of the District as to the appropriateness of the June 2023 re-evaluation process and report.

Issue

Must the District provide an IEE at public expense?⁴

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. The student had been previously identified by the District as a student with an emotional disturbance. (School District Exhibit ["S"] – 1).
2. For a number of school years, the student attended a specialized school due to behavior issues. (S-1; Notes of Testimony ["NT"] at 178-217).

⁴ In the District counterclaim, which is the basis for the District's position in defense of its re-evaluation process and report, the District also seeks as a remedy an order, under the authority of the hearing officer, to undertake a psychiatric evaluation of the student. (HO-2 at pages 4-6). The District alleges that it had requested permission for such an evaluation but that the parent had failed to return documentation authorizing such an evaluation. The issue of a psychiatric evaluation of the student was not made a matter of evidence at the hearing. Because it is a formal request for remedy by the moving party, however, that request will be addressed in the order below.

3. The student's mother testified that an administrator at the specialized school mentioned in the past that the student may have autism, but the administrator did not recommend an evaluation or testing for autism. (NT at 178-217).
4. In January 2023, the District issued a re-evaluation report ("RR") for the student. (S-1).
5. The parent did not provide input for the December/January re-evaluation. The District evaluator testified that she did not receive the parental input document. In the course of the hearing, the parental input document surfaced in evidence, provided through document production from parent's counsel to District counsel. While the testimony by the parent was confused about the document, the content of the document matches parental input for a different re-evaluation process in April/May 2023. See Finding of Fact 32. (S-3, S-8; NT at 178-217).
6. The results of cognitive and achievement testing from prior evaluations were included in the January 2023 RR. (S-1).
7. As of January 2023, the student's current grades, progress on individualized education program ("IEP"), and most recent curriculum-based assessments were all included in the January 2023 RR. (S-1).
8. The January 2023 RR included an observation of the student. (S-1).

9. The January 2023 RR included teacher input. Most of the teacher input, in terms of needs in academic environments, centered on attention, task-persistence and the need for redirection with non-preferred tasks, and social skills with peers and staff. Certain teachers reflected input where the student was highly disruptive in class; other teachers reflected that the student's in-class behavior can be managed with certain strategies. Overall, the input reflected that the student's in-class behavior impacted the student's learning. (S-1).
10. As part of the student's programming, the student met weekly with the District school psychologist who conducted the re-evaluation, for sessions on social skills/emotional learning skills. (S-1; NT at 43-91).
11. The January 2023 RR contained an updated cognitive assessment. The student's full-scale IQ was 92, with a general ability index of 98. (S-1).
12. The January 2023 RR contained an updated achievement assessment. The District evaluator identified a "severe deficit in the areas of math calculation and written expression". (S-1 at page 12).
13. The January 2023 RR contained behavior rating scales submitted by the parent, four teachers, and the student's self-report. (S-1).

14. The parent rated the student as clinically significant in the attention sub-test and average in every other sub-test and indices. (S-1).
15. The teacher's ratings varied, although three of the four teachers rated the student as clinically significant in the externalizing problems composite (and every sub-test therein) and the behavioral symptoms index. Two of the teachers rated the student as clinically significant in the school problems composite and a third rated the student as at-risk. Almost every sub-test within the composite was rated by teachers as clinically significant or at-risk. (S-1).
16. Most of the teacher's ratings on the atypicality and withdrawal sub-tests were in the average range. (S-1).
17. Most of the teacher's ratings on the adaptive skills composite (and the sub-tests therein) were in the at-risk range. (S-1).
18. One of the teacher's ratings were clinically significant in almost all sub-tests, and consequently composites and indices. No note was made of the validity or reliability of those ratings, but those results added clinically significant ratings where the other three teachers would often rate the student's behaviors at a lower level of concern (either at-risk or average). (S-1).
19. On the student's self-report, most sub-tests were in the low or average range, except for relations with parents, interpersonal

relations, and self-esteem sub-tests, which were in the high range. Those sub-tests resulted in a high rating on the personal adjustment composite. (S-1).

20. The January 2023 RR contained the results of a functional behavior assessment ("FBA"). The FBA was performed by a board-certified behavior analyst who was not the District evaluator who issued the report. (S-1).
21. The FBA in the January 2023 RR indicated that as of January 2023 in the 2022-2023 school year, the student had 24 discipline referrals, including incidents of insubordination, minor school misbehavior, significant school misbehavior (one incident), violation of technology use policy, reckless endangerment, threats, bullying, and unauthorized absence. Various consequences, including one out-of-school suspension and one referral to law enforcement, were levied as a result of the discipline referrals. (S-1).
22. The FBA identified three behaviors of concern: non-compliance with a requested task, off-task behavior, and disrespectful interactions with staff. (S-1).
23. The FBA collected data and analyzed antecedents, behaviors of concern, and consequences, and made recommendations for the IEP team to address the student's behavior in the educational environment. (S-1).

24. The January 2023 RR contained information from an interview of the student by the District evaluator. (S-1).
25. The January 2023 RR identified the student as a student with an emotional disturbance and specific learning disabilities in mathematics calculation and written expression. (S-1).
26. The District evaluator, who as noted worked with the student on a daily basis, did not note any behavior that she considered as aligned with autism, and no one who participated in the re-evaluation (the evaluator, the parent, the teachers, or the student) made any observation or voiced any concern that the student exhibited behaviors as aligned with autism (restrictive/repetitive behaviors, difficulty with pragmatic communication and socialization, perseveration). (S-1).
27. After issuance of the January 2023 RR, the parent did not object to its conclusions, and the RR was used to design educational programming.
28. In March 2023, the parent requested further re-evaluation to rule in/out an identification of autism, as well as to assess the student's reading, executive functioning, and potential attention deficit hyperactivity disorder ("ADHD"). (S-2).
29. In April 2023, the parent provided permission for the District to undertake a further re-evaluation. (S-2).

30. Over April and May 2023, the District undertook the further re-evaluation.
31. In June 2023, the District issued a RR. (S-3).
32. The June 2023 RR contained parent input. (S-3, S-8).
33. As of June 2023, the student's current grades, progress on IEP goals, and most recent curriculum-based assessments were all included in the June 2023 RR. (S-3).
34. The June 2023 RR contained updated observations, including time-on-task data-gathering. (S-3).
35. The June 2023 RR included teacher input, including some teachers who began working with the student after the January 2023 RR was issued. The input of these teachers was similar to the input of teachers who provided input in the January 2023 RR, and teachers who continued to work with the student throughout the school year. (S-3).
36. The June 2023 RR included updated achievement assessments in reading and written expression. The student indicated that the effort put forth during the December/January assessments was not diligent, and the student attended more diligently to testing in April. (S-3).
37. The student's scores in the reading and written expression sub-tests, and composites, were not significantly discrepant from the student cognitive testing in January 2023. (S-3).

38. The June 2023 RR included an attention assessment with parent, three teachers, and a student self-report. The student's mother rated the student as elevated or very elevated in multiple sub-tests. The student's teachers rated the student as elevated or very elevated in multiple sub-tests, although the raters did not consistently rate the student with these markers across all sub-tests. The student's mother's ADHD index score was 'very high', and two of the teachers' index score were 'high'; the third teacher's index score was 'borderline'. (S-3).
39. The June 2023 RR included an executive functioning assessment completed by the student's mother and four teachers. The student's mother's scores were clinically significant in multiple sub-tests and indices, as well as the global composite score. Two teachers did not register any clinically significant scores. One teacher registered two sub-test scores, and one index score, that were clinically significant. The fourth teacher registered multiple clinically-significant sub-test scores, including two indices and the global composite score. (S-3).
40. The District utilized a separate evaluator to administer a standardized, semi-structured autism assessment. The student would not engage in the assessment, so the assessment did not yield valid results. (S-3; NT at 145-172).

41. The June 2023 RR contained autism rating scales completed by the student's mother and three teachers. The student's mother rated the student as 'very elevated' across all measures. Two teachers did not rate that student as 'elevated' or 'very elevated' in any measure. One teacher rated the student as 'elevated' in peer socialization. (S-3).
42. The June 2023 RR included an updated FBA, performed by the same analyst who performed the FBA in the January 2023 RR. (S-3).
43. By June 2023, the student had 80 documented disciplinary incidents, again in multiple areas involving various insubordination, levels of misconduct, harassment, simple assault, and other violations of the code of student conduct. Various consequences, including the involvement of law enforcement, were levied against the student. (S-3).
44. The FBA in the June 2023 RR included an indication that the student's most recent IEP (February 2023) included multiple elements to address the student's behavior, including a positive behavior support plan. (S-3).
45. The FBA in the June 2023 RR included significant revisions, based on behaviors of concern, data-gathering, and revised analysis of behavior. (S-3).
46. The June 2023 RR identified continued to identify the student as a student with an emotional disturbance and a specific learning

disability in mathematics calculation. The student's identification as a student with a specific learning disability in written expression was removed as a result of the updated achievement assessment. (S-3).

47. The June 2023 RR found that the results of the evaluation did not support a finding that the student should be identified as a student with autism. (S-3).

48. The June 2023 RR included recommendations for consideration of the IEP team. (S-3).

49. At the hearing, parent presented an expert witness who testified that the difficulty with the administration of the standardized autism assessment should not have prevented the District from working to complete it, even in the face of the student's refusal to participate, or to utilize other assessment instruments. (NT at 145-172).

Discussion

Under the terms of the IDEA, "(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 IDEA 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 individualized education program. (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 June 2023 RR is appropriate under the terms of the IDEA. The evidence shows that it is an appropriate re-evaluation.

The June 2023 RR contains all the elements of an appropriate re-evaluation, including the context of past evaluations, parent input, teacher input, the results of prior assessments and testing, curriculum-based results and student grades, updated assessments and testing (including

achievement, attention, executive functioning, and autism assessments). Indeed, the June 2023 RR is comprehensive and clearly identifies that the student's most significant needs are related to affect, interactions, and behavior in the educational environment. The input, assessments, and analysis all fully support a finding that the student has an emotional disturbance and, secondarily, a specific learning disability in mathematics.

As to the potential identification of the student as a student with autism, the June 2023 RR is also appropriate in its conclusion that, on this record, the student should not be so identified. The parent's position that the District relied only upon a sole instrument (or, more accurately, the inability of the District to complete one instrument in assessing the student for potential identification as a student with autism) is not supported by this record. The District utilized various components to understand the student's behavior. Most critically, the two District evaluators, both with extensive experience evaluating students with autism, did not observe any behavior that led them to believe that autism was within the constellation of the student's behaviors or disability profile. The primary evaluator even worked with the student directly on a weekly basis and thus was in an excellent position to gauge any such affect or behavior.

The only indication in all of the input and assessment from parent, teachers, and the student is the autism rating scale submitted by the

student's mother, which showed outsized results in every measure of that instrument; three teachers, across every measure, noted only one score of concern. Thus, while the parent's scores are not an unimportant data point, the entirety of how this student's strengths and needs in the educational environment should be understood (across two evaluation processes within six months) strongly supports a conclusion that, at this time and on this record, the student is not a student who should be identified with autism.

In sum, then, the June 20223 RR meets the requirements of IDEA, 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 processes undertaken in the spring of 2023 and the June 2023 re-evaluation report issued by the Southern Lehigh School District are appropriate. The parent is not entitled to an independent educational evaluation at school district expense.

The school district's request for a psychiatric evaluation under the authority of a hearing officer's order was not made a matter of evidence in this matter. Therefore, that claim for remedy is dismissed without prejudice.

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

10/31/2023