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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

6735/06-07
File Number

A.P.
Child's Name

Xx/xx/xx
Date of Birth

10/9/06; 10/23/06; 11/8/06; 11/20/06
Date(s) of Hearing

For the Parents:

For the Montgomery County Intermediate Unit:

Caryl Oberman, Esq.
Grove Summit Office Park
607 A North Easton Road
Willow Grove, Pa. 19090

MCIU
1605 West Main Street
Norristown, Pa. 19403-3290

A. Kyle Berman, Esq.
Fox, Rothschild, O'Brien & Frankel
1250 S. Broad Street, P.O. Box 431
Lansdale, Pa. 19446-0431

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Hearing Office: Vicki A. McGinley

Background Information

Student is a xx year old boy (D.O.B. xx/xx/xx) who resides in Montgomery County and presently attends preschool at the Private School. He has been diagnosed, as of January 2006, by the [redacted] Center as a child with PDD-NOS. When Student was approximately two and a half years old, Parents became concerned about his speech, language, and social skills, and began private evaluations which included audiological, speech and language, and occupational therapy. These evaluations occurred locally at the [redacted] Hospital and [redacted agency] in February 2005 (audiological and speech and language) and October 2005 (speech and language and OT). As a result of the evaluations in October 2005, Parents began private speech and language services for Student in October 2005, as well as Occupational Therapy Services in December 2005. There was also a recommendation at that time from the professionals working with Student that the Parents contact the Montgomery County Intermediate Unit (MCIU). Parents followed this advice with telephone contact to the MCIU in November 2005. In December 2005, MCIU sent Parents a *Permission to Screen*. Over two and a half months lapsed prior to any screening and/or evaluations being performed by the MCIU, and in the interim Parents sought, with recommendation from the professionals with whom they were working, an evaluation through the Center. In January 2006, The Center performed a comprehensive evaluation which resulted in a number of recommendations for services and a diagnosis of PDD-NOS. As a result of this evaluation Parents sought additional services in the form of behavioral consultation and shadow supports in the home and school settings in April 2006. Physical therapy services began in August 2006. All evaluations sought by Parents were forwarded to the MCIU; the Center's, with the

diagnosis of PDD-NOS being forwarded on March 20, 2006. The MCIU completed evaluations; finishing evaluations (speech and language (2/23/06); psychological (3/7/06)) and observations (3/17/06 & 4/19/06) by April. An Evaluation Report (ER) was issued by the MCIU on April 21, 2006 indicating that Student was a child without a diagnosis and thus, ineligible for services. Parents requested a follow up meeting to contest the findings of the MCIU, which was held on May 24, 2006, at which time the MCIU recommended a psychiatric evaluation for Student. A due process hearing was requested on June 30, 2006 following an unsuccessful July 24, 2006 resolution meeting. The issues to be addressed were whether or not Student is an eligible child, compensatory education, and reimbursement for services.

Statements of Fact

1. Student is a xx year old boy (D.O.B.xx/xx/xx) who resides in [redacted town] within the area of the Montgomery County Intermediate Unit (MCIU).
2. On February 28, 2005 when Student was xx old his Parents requested an audiological evaluation (D.1), which indicated hearing within normal limits in at least one ear, and a speech and language evaluation at Hospital due to concerns about expressive language skills (P. 2). Student's receptive and expressive language skills were deemed grossly acceptable. It was recommended that a reevaluation take place in 4-6 months. A follow up speech-language evaluation occurred on October 21, 2005 when Student was 3 years, 4 months old which indicated a mild developmental language disorder (P. 3, D. 2). (N.T. 27)
3. In October 2005 (specifically beginning 10/27/05), Student began speech-language pathology services with [redacted] Speech and Language Associates once weekly following the 10/21/05, evaluation (P. 4, D. 3). (N.T. 30). Student continued once weekly speech-language pathology services with Ms. C. (N.T.32).
4. On November 23, 2005, at 3.4 years of age, Student underwent an occupational therapy evaluation at the [redacted] Center which recommended that he receive weekly occupational therapy (P.5, D4) through Ms. S. (N.T. 36) from December 2005 to present.

5. On November 28, 2005, Parents contacted the Montgomery Intermediate Unit (MCIU) for evaluation and services (P. 6).
6. On December 7, 2005 a packet, including the Child & Family Profile was returned by Parents to the MCIU (P.7, D 6).
7. On January 30 and 31st a transdisciplinary evaluation of Student was performed at the Center (N.T. 46). A developmental assessment (Mullen Scales of Early Learning), a diagnostic play session (The Autism Diagnostic Observation Schedule), a speech and language evaluation (Reynell and Renfrew Bus Story), a Psychological Evaluation, observations and interviews were performed. (P. 15, D. 16). In addition the Vineland Adaptive Behavior Scales-Expanded Form was used to assess adaptive behavior. A tentative diagnosis of PDD-NOS was given. However, due to Student's young age it was considered tentative and further evaluation within a year period was recommended. Numerous recommendations across all domains were given.
8. Parents began a program of Applied Behavioral Analysis for 30 hours per week (D. 30) in April 2006 (N.T. 66-67).
9. Over a 2 month period in February 2006 through March 2006, further screening and testing of Student were performed by the MCIU.
10. On February 9, 2006 a Permission to Screen from the MCIU was signed (P.11, D. 9; N.T. 53), and was signed on February 23, 2006 (D. 10-12).
11. On February 9, 2006, parent interviews were conducted at the MCIU (P.10).
12. On February 13, 2006 Permission to Evaluate was initiated by the MCIU and was signed by Parents on February 23, 2006 (P.12).
13. On February 23, 2006 a speech and language evaluation was performed at the Montgomery County Intermediate Unit which consisted of Observation, the Preschool Language Scale-4, the Clinical Evaluation of Language Fundamentals-Preschool-2nd Edition, the CELF-P-2 Descriptive Pragmatics Profile, the Arizona Articulation Proficiency Scale, Third Edition, an Oral Peripheral Examination, and an Informal Language Sample. Recommendations were for intervention by Parents in the home and by Teachers in the school setting, and a re-evaluation within one year was recommended (P. 3).
14. On March 7, 2006 a Permission to Evaluate was sent/signed (D. 14) and a Psychological Evaluation was performed at the MCIU which consisted of a behavioral observation, the Wechsler Preschool and Primary Scale of Intelligence (3rd Edition), and the Gilliam Autism Rating Scale. Student's Full Scale IQ of 104 placed him within an average range of intelligence. Recommendations included a structured and routinized classroom setting with language incorporated

- into all activities. Transition warnings and activities were should be incorporated. (P. 21).
15. On March 17, 2006 the case manager from the MCIU observed Student at this preschool program, the Private School (P.16, D. 17, N.T. 81-84).
 16. On March 27, 2006 Permission to Evaluate was sent and signed on April 6, 2006 (D. 19).
 17. On April 6, 2006 an occupational therapy evaluation was performed at the MCIU in which the findings of the previous OT evaluation were reported to be confirmed (N.T.78).
 18. On April 19, 2006 the psychologist, Mr. K (N.T. 882) and Dr. F from the MCIU observed Student at his preschool program (D. 22-23; P.21).
 19. On April 21, 2006, correspondence was directed to Parents which included the Evaluation Report for Student indicating that Student did not meet eligibility criteria for services at this time. (P.21, D. 24).
 20. On May 24, 2006, Parents responded to the MCIUs recommendations on the Evaluation Report and NOREP indicating their disagreement with the findings (P. 25).
 21. On May 24, 2006 a meeting was held at the MCIU to discuss the Evaluation Report (D. 28, N.T. 91).
 22. On June 2, 2006 the MCIU in a letter to Parents (P. 26, D. 29), confirmed their findings of ineligibility of services for Student. A psychiatric evaluation was recommended.
 23. On June 30, 2006, Parents notified MCIU counsel with their intent of due process (P.27).
 24. On July 25, 2006 a Resolution Meeting was held (D. 31).
 25. Student began physical therapy services in August 2006 (N.T. 74) to present with Mr. S at [agency].
 26. A Due Process Hearing was requested on June 30, 2006 and sessions were held on October, 9, 2006; October 23, 2006; November 8, 2006 and November 20, 2006.

Issues

1. Is Student eligible for services as a child with PDD-NOS?
2. Was Student eligible to receive services following his diagnosis of PDD-NOS at the end of January 2006?
3. If Student was eligible to receive services, is he entitled to compensatory education and reimbursement for services provided to date by Parents?

Discussion and Conclusions of Law

Is Student eligible for services as a child with PDD-NOS, and if so, is he entitled to receive compensatory education and reimbursement for services (from January 2006 to date) provided by Parents?

Besides having numerous procedural problems from the MCIU, this is a case where professionals disagree on whether or not Student is an eligible child. To answer this question, this hearing officer had to gauge the credibility of witness testimony, as well as the evidence. Parents presented the testimony of seven witnesses, the MCIU presented three, one of whom simultaneously observed Student with the psychologist, but did not assess Student formally. First let me address the witnesses. All witnesses, both from the Parents' side, as well as from the MCIU have extensive expertise in working with children. However, Parents had witnesses who have extensive amount of time working directly with Student (the occupational therapist, speech language pathologist, behavioral consultant, and physical therapist). I give these witnesses the most weight, more than any of the evaluators on either side, as each only saw a snapshot of Student. However, having said that, certainly a center that focuses on the study of the Autism Spectrum Disorder on a daily basis from a research and clinical base was given substantial weight in this Decision.

As indicated, assessments give us a snapshot of Student. However, numerous tests were performed by a multitude of professionals over a period of time, a number of which report consistent results that led to the conclusion, and confirm the Parents' witnesses' findings, that Student is a child with a disability. These consistent results were in spite of assessments performed by the MCIU only a couple of months after similar assessments were performed by the Center; leading to questions of reliability and validity of the tests. The Center assessed Student over a two day period, the MCIU assessment of Student was over a number of days, but totaling no more than a day and half in length. However, results from both the MCIU and the Center and testimony that point to Student having a disability are as follows:

- A speech language pathology evaluation was performed by Ms. S of [Hospital], dated 10/21/05 which reports (P. 3) a mild developmental language disorder.
- An occupational therapy evaluation was performed by Ms. S of [agency], dated 11/23/05, which scored Student in the 9th percentile for grasping and visual-motor integration skills, and scored more than two standard deviations below the mean in auditory and sensory processing and in attention/distractibility (P.5).
- Scores on the Vineland Adaptive Behavior Scales-Expanded Form performed by the Center on January 30th and 31st, 2006 indicate that in the communication domain Student scored in the 23rd percentile in Communication (inflated due to

writing, (N.T. 238)), in Socialization in the 1st percentile, in Motor, in the 9th percentile and in Daily Living Skills below the 1st percentile.

- According to the Autism Diagnostic Observation Schedule – Module 2 (ADOS) performed by the Center (N.T. 255) on January 30th and 31st, 2006, Student’s formal language skills are better than conversational language skills, eye contact was not integrated with language, without support and prompts, play was variable, several stereotyped behaviors were noted.
- A speech language pathology evaluation was performed by Ms. P of the MCIU on 2/23/06, which found that Student did “display several atypical features of language development (expressive skills slightly higher than receptive skills, limited pragmatic/functional use of language, limited use of novel/creative language...). The CELF-P-2 Descriptive Pragmatics Profile scored Student at 67, indicating inadequate communication abilities in context.
- An occupational therapy evaluation performed by Ms. M. from the MCIU indicates that a Peabody Developmental Motor Scale-2 was performed, indicating that Student scored within the 2nd percentile for fine motor.

Testimony confirmed the results of the evaluations above. It was noted that pragmatics is the main area of concern (N.T. 94, N.T. 124). Student’s communication is used primarily for interests and to obtain needs, but not used for reciprocation, social skills, joint attention (N.T. 166-167, N.T. 730-732). This was noted in evaluations

initiated by Parents as well as the evaluation performed by the MCIU (N.T. 446). In addition, Student will use eye contact to gain attention, but not consistently for social purposes (N.T. 321) and will not joint reference for demanding tasks (N.T. 327). Ms. C., who has been providing speech language pathology services since May 2006 (N.T. 443), confirmed that Student is not able to use pragmatic language effectively in his day-to-day life. She described his play skills, at age four, as being 1 to 1 ½ years delayed (N.T. 448-449). She described Student as having language skill delays to a clinically significant degree up to and including the end of the summer of 2006 (N.T. 450, 457-459). The MCIU's own evaluation of Student's pragmatic language, using the best available assessment tool for his age, found a deficit.

In school, particularly the Private School, where Student was since age two until approximately age 4, having left in August 2006, teachers, who filled out reports in December 2005 (P.8) noted difficulties with initiating play, self-help skills (N.T. 95), attention span (N.T. 199), transitioning and rigidity (N.T. 122-123), following instructions, and verbalizing feelings. All behaviors were noted to affect Student's education in testimony by Dr. J., Student's behavioral consultant, as Student will not follow through on such tasks as completing a drawing describing a story, following directions, and answering questions. Observed difficulties were specifically in eating, refusal to do tasks, take directives. A Functional Behavioral Assessment (FBA) which was done in July 2006 indicates continued problems with peer interactions, noncompliant behaviors, whining (N.T. 384-387). Behavior issues were noted through observation by MCIU staff (N.T.771)

Student's eligibility for services as a "Child with a Disability" must be determined in accordance with both state and federal law. The term "child with a disability" means a child (i) with ...speech or language impairments...autism...other health impariments...; and (ii) who, by reason thereof, needs special education and related services. The term "child with a disability for a child aged 3through 9 ...may, at the discretion of the State and local educational agency, include a child-(i) experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. According to regulation (IDEA, 34, C.F.R. Section 300.304 through 300.311) a child must be evaluated within 60 days, with a comprehensive evaluation using a variety of tools and strategies, to yield accurate information. Pennsylvania allows eligibility for services to children who meet the definition of "developmental delay" in addition to the definitions in IDEA. Specifically, a child who is less than the age of beginners and at least 3 years of age is considered to have a developmental delay when one of the following exists: (i) the child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas; (ii) the child is delayed in one or more developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

Student qualifies as a child with a disability since the evaluations, both private and MCIU in speech and language, establish a disability, particularly in the area of

pragmatics. MCIU's use of the CELF-P-2 (N.T.462-730) found a pragmatic language disability score of 64, establishing "inadequate communication abilities in context" (P.21, N.T. 445-447). In addition, a number of standardized tests scored Student as having either a 25% deficit using age norms or 1.5 standard deviations below the mean (CELF-P-2; Reynell Expressive Language, the Peabody Test, and the Vineland). Finally, Student scored well below the mean on tests of fine motor.

Conclusion

In conclusion, both the Center team, as well as the MCIU is viewed as having tentative conclusions on diagnosis of Student-the Center team stating it, and MCIU recommending further evaluations, particularly psychiatric. For a child as young as Student this makes sense.

This hearing officer finds that Student is an eligible child. As such, what remains to be answered is what he is entitled to as a result of not receiving services from January 28, 2006 dating back to the time at which the MCIU should have known that Student was entitled to such services.

MCIU presented no witnesses in the area of fine or gross motor functioning. However, its own evaluation and outside evaluations of Student's fine motor functioning shows a delay, as such occupational therapy services are deemed necessary for Student to access his educational environment. In addition, testimony from Mr. S., Student's physical therapist, and testimony and evidence throughout indicate that Student has low muscle tone, poor coordination, and movement pattern; testing indicates a 14 month delay. Mr. S. did not describe Student as having a developmental delay however. As

such, physical therapy services may be necessary to interact in an educational environment. Further evaluation is necessary.

Much of the Center team's recommendations, such as social skills and peer intervention, explicit teaching for new and complex skills, strategies to enhance attention, script learning, etc., would require a one-on-one support staff to be successful. A FBA performed by Dr. J., in July 2006 notes that Student required a moderate to high level of adult supports in play, following directions, and transition. Behaviors include noncompliance and oppositional behaviors. Data from 6/26/06 to 7/13/06 indicated 6 behavioral episodes per day. However, there is no concrete data prior to this point presented in either testimony or evidence, and beyond this one month period reported in the FBA (D. 3). Thus, it is difficult for this hearing officer to gauge the complete effectiveness of the ABA therapies in the home and school over time. There is testimony to the fact that without these services in the school regression occurred. This hearing officer is aware of the recommendations made by the Center team, and testimony points to necessity and need. However, in the absence of quantitative data (i.e., behaviors measured and recorded in home and school over time), the reimbursement award has to be considered in light of lack of complete information.

Student has been offered no program or placement at all and thus it is deemed that he may be entitled to tuition reimbursement. However, a question of placement occurred only in summer 2006 after ABA therapies had become involved. As this hearing officer is awarding reimbursement for some services from January 2006 to present, tuition reimbursement from January 2006 through August 2006 at the previous Private School

will not be awarded. As the new placement is too new and data has not been presented as to effectiveness, no tuition reimbursement will be rewarded for the new Private School.

Order

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED THAT:

1. The Montgomery County Intermediate Unit immediately convene an IEP team to develop and implement an IEP for Student in his present placement in the Least Restrictive Environment, and to avoid another transition. The IEP should offer needed services in the home and school to include:
 - Home and school based ABA program (all services included) up to 15 hours per week;
 - One hour per week of direct, individual occupational therapy;
 - One hour per week of direct, individual speech therapy
2. Reimburse Parents, at the Montgomery County Intermediate Unit rate, for out-of-pocket funds they have expended to provide Student with speech-language pathology services, occupational therapy services and half of all ABA related services to include educational supplies, behavioral consultation and shadowing dating back to the time at which they should have known that Student was entitled to such services (January 28, 2006, 60 days after Parents requested an evaluation).
3. The Montgomery County Intermediate Unit obtain a comprehensive physical therapy evaluation and provide needed services based on outcome of Mr. S's and updated evaluation's recommendations.

Vicki A. McGinley, Ph.D.
Hearing Officer
12/29/06