

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 Hearing Officer

DECISION

ODR No. 00979-0910AS

Child's Name: C.F.

Date of Birth: [redacted]

Date of Hearing: 6/15/10

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent Attorney

Parent[s]

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School District

School District Attorney

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Date Record Closed:

July 10, 2010

Date of Decision:

July 23, 2010

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student, a pre-teen-aged resident of the Pine Grove Area School District, recently completed 5th grade in a regular education classroom in the neighborhood school. After a March 2010 initial evaluation was completed, Student began receiving itinerant visually impaired and learning support services and related services.

Student's Mother first requested an educational evaluation to determine Student's eligibility for IDEA services at the end of the 2008/2009 school year. After learning that Student was expected to have eye surgery in the fall of 2009, the District postponed the evaluation until Student's doctor notified Parent that Student had sufficiently healed from the surgery and Parent renewed her evaluation request.

The psycho-educational evaluation conducted included standardized cognitive and achievement tests, a behavior rating scale completed by Parent, two teachers and Student, along with vision, mobility and occupational therapy assessments, Student was identified as IDEA eligible due to vision impairment. Although Parent agreed with that determination, she disagreed with the District's conclusion that Student is not also eligible for special education under the category of specific learning disability.

The District denied Parent's request to fund an Independent Educational Evaluation (IEE) to explore other potential disabilities and filed a due process complaint to support the appropriateness of its evaluation. The record compiled at a brief hearing session, including the testimony of school psychologists called by each of the parties, the District's evaluation report and the written comments of Parent's expert witness, supports the conclusion that Student is not entitled to an IEE at public expense because the District's evaluation meets IDEA statutory/regulatory standards, appropriately and accurately identified Student's disability, and Student's special education and related services needs.

ISSUES

Did the School District conduct an evaluation of Student in March 2010 that accurately identified Student's disability and described all of Student's special education and related services needs, and, therefore, is appropriate?

FINDINGS OF FACT

1. Student is a pre-teen-aged child, born [redacted]. Student is a resident of the School District and is eligible for special education services. (Stipulation, N.T. p. 11)
2. Student has a current diagnosis of visual impairment in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(13); 22 Pa. Code §14.102 (2)(ii). (Stipulation, N.T. pp. 11, 12)
3. During the 2009/2010 school year, Student was enrolled in a 5th grade regular education classroom in the District elementary school Student would attend if not disabled. (Stipulation, N.T. p. 12)
4. The District first issued a Permission to Evaluate (PTE) in response to Parent's request for a multi-disciplinary evaluation of Student in the spring of 2009, near the end of 4th grade. (N.T. pp. 21—23; P-3, P-4)
5. When Parent told the District school psychologist that Student has a visual impairment and was expected to have surgery in the early fall of 2009, the school psychologist suggested that the evaluation be deferred until Student recovered from the surgery to assure that Student's long-term needs related to the vision impairment could be fully assessed. (N.T. pp. 23, 24)
6. With Parent's agreement, the District did not proceed with the evaluation until Parent notified the District that Student's doctor indicated that Student had sufficiently recovered from the surgery. (N.T. pp. 24, 25)
7. After discussing the parameters of the evaluation with Parent, the District issued a second PTE in January 2010 for ability and academic achievement testing, social/emotional assessment(s) and an occupational therapy assessment. (N.T. p. 25; S-1¹)
8. After further discussion with Parent, the District issued an additional PTE on February 8, 2010 to add visual support, orientation and mobility assessments. (N.T. pp. 26, 29, 30; S-2)
9. A written evaluation report was issued on March 29, 2010. The evaluation and report included written input from three of Student's teachers; observations of Student by

¹ P-6, P-7 and P-9 are duplicates of S-1, S-2 and S-3. For simplicity of reference, only the School District's versions of those exhibits are cited. All exhibits for both parties, however, are admitted into the record of this case.

- teachers and related service providers; a functional vision evaluation; an orientation and mobility assessment; an occupational therapy assessment; standardized, norm-referenced ability and achievement tests (Woodcock-Johnson III Tests of Cognitive Abilities-Third Edition and Woodcock-Johnson III Tests of Achievement-Third Edition); curriculum-based assessments, and completion of the Behavior Assessment Scales for Children, 2nd Edition (BASC II) by two teachers, Parent and Student. (N.T. pp. 28, 30; S-3, pp. 1—8)
10. Because Parent did not return the form provided with the PTE, Parent’s input was based upon conversations with the school psychologist regarding Parent’s concerns related to Student’s academic performance, anxiety and peer relationships, as well as Student’s responses on the BASC II rating scale. (N.T. pp. 29, 30; S-3, p. 1)
 11. Parent’s responses on the BASC rating scale placed Student in the “average” range of functioning in all categories, including anxiety and social skills. Student’s self-report indicated functioning in the “average range” in all categories except the emotional symptom index, atypicality, locus of control and anxiety, all of which were self-rated as “low”, indicating that Student perceives []self to be functioning in a range relatively higher, or more positive, than average. (N.T. p. 45; S-3, pp. 7, 8)
 12. Several ratings by both of Student’s teachers fell into the “at-risk” range of the BASC II, specifically, the behavioral symptom index and the categories of attention, leadership, study skills, anger control, and negative emotionality. In addition, one of the teacher’s ratings placed Student in the “clinically significant” range for adaptability and resiliency, while the other teacher’s ratings were in the “at risk” range with respect to the externalizing problems composite, hyperactivity, aggression, internalizing problems composite, school problems composite, bullying, executive functioning and resiliency. The same teacher’s ratings were “clinically significant” for depression. (N.T. pp. 45, 46; S-3, pp. 7, 8)
 13. Student’s cognitive ability was measured in the average range. Standardized achievement test results ranged from low average to high average. Curriculum-based and state assessments placed Student at grade level in reading fluency, with divergent comprehension scores—100% for realistic fiction and fantasy and 0 for an informational article, all at the 5th grade level. (N.T. pp. 35—41; S-3, p. 6)
 14. Student was working at a mid-4th grade level for writing on curriculum-based probes at the time of the evaluation. Student had scored proficient in reading, science and writing on the 4th grade PSSA. The PSSA Math score dropped from proficient in 3rd grade to basic in 4th grade. (N.T. pp. 35—37; S-3, p.)
 15. Student’s final 5th grade reading and English grades were 85 and 75, respectively. Computers and Math were Student’s lowest grades at 62 and 72. Student’s remaining final grades for academic subjects (Spanish, Social Studies, Science) ranged from 85 to 92. Student’s report card grades showed improvement in all academic subject areas except English during the 4th marking period. (S-6)

16. The objective assessments confirmed Student's teachers' input indicating that Student was functioning at or just below grade level overall, with areas of difficulty noted in math and writing, as well as focus/attention. The teachers also noted that Student's ability to function effectively in group work and in peer interactions generally depend upon whether Student is with friends. (N.T. pp. 31, 32; S-3, pp. 3, 4)
17. The mobility/orientation assessment revealed no need for direct intervention, but the orientation and mobility specialist who conducted the evaluation recommended consultative services to assure that Student would receive assistance, if needed, in dealing with functional limitations associated with the vision impairment. (S-3, pp. 3, 4)
18. After observation and administration of several OT assessments, which placed Student within functional limits on all measures but identified difficulties related to Student's vision, the occupational therapist recommended OT services to increase manual dexterity and eye-hand coordination as both issues affect classroom participation. The therapist also recommended classroom modifications and adaptations to address vision issues, such as increasing font size and using yellow paper to reduce glare. (S-3, pp. 4, 5)
19. Upon consideration of all of the evaluation data, including the functional vision assessment, the multi-disciplinary team (MDT) concluded that Student is IDEA eligible in the category of visual impairment. The ER included several recommendations for specially designed instruction to minimize the effects of the vision impairment, such as preferential seating, note taking and magnification, as well as consultation with a teacher of the visually impaired. (N.T. p. 49; S-3, pp. 3, 4, 10)
20. On April 26, 2010 the District proposed an IEP with goals in the areas of disability awareness and self-advocacy, math application and computation, and OT. The IEP included all of the recommendations for specially designed instruction and related services included in the evaluation report. (S-4, pp. 20—27)
21. The placement recommended by the District for Student was Blind/Visually Impaired Support and Learning Support on an itinerant basis, with services delivered outside of the regular classroom for less than 20% of the school day. (S-4, p. 31, S-5, pp. 1,2)
22. Although Parent approved the NOREP that accompanied the IEP, thereby permitting services to begin, Parent noted that she did not believe the goals and supplementary aides and services were appropriate and that both OT and learning support for math should be delivered to Student in the regular education classroom. (S-5, p. 3)

DISCUSSION AND CONCLUSIONS OF LAW

I. Legal Standards

A. Initial Evaluations

Under the IDEA statutory/regulatory scheme, the necessary first step in determining whether a student is eligible for services and in providing special education services is an initial evaluation conducted in conformity with detailed guidelines. *See* 20 U.S.C. §1414; 34 C.F.R. §300.8(a). The primary purpose of the initial evaluation is, of course, to determine whether the child meets any of the criteria for identification as a “child with a disability” in accordance with 20 U.S.C. §1401 and 34 C.F.R. §300.8, as well as to provide a basis for the contents of an eligible child’s IEP, including a determination of the extent to which the child can make appropriate progress “in the general education curriculum.” 34 C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

The general standards for an appropriate evaluation are found at 34 C.F.R. §§300.304—300.306, which require a school district to: 1) “use a variety of assessment tools;” 2) “gather relevant functional, developmental and academic information about the child, including information from the parent;” 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that

directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

If appropriate, initial evaluations must also include: 1) a review of existing evaluation data, including a) local, state and current classroom-based assessments; b) classroom-based observations by teachers and related service providers; 2) a determination of additional data, if any, necessary to determine a) whether the child has an IDEA-defined disability (in the case of an initial evaluation); b) the child’s educational needs, present levels of academic achievement and related developmental needs; c) whether the child needs/continues to need specially-designed instruction and related services. 20 U.S.C. §1414(c); 34 C.F.R. 300.305(a)(1), (2). It is the District’s responsibility to administer all assessments and other measures needed to compile the required evaluation data. 34 C.F.R. 300.305(c).

Once the assessments are completed, a group of qualified school district professionals and the child’s parents determine whether he/she is a “child with a disability” and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, the district is required to: 1) “Draw upon information from a variety of sources,” including those required to be part of the assessments, assure that all such information is “documented and carefully considered.” 34 C.F.R. §300.306 (c)(1). School districts must also provide a copy of the evaluation report and documentation of the eligibility determination to the child’s Parents at no cost. 34 C.F.R. §300.306(a)(2). If it is determined that the child meets the criteria for IDEA eligibility *i.e.*, is a child with a disability and is in need of specially designed instruction, an IEP must be developed. 34 C.F.R. §§300.306(c)(2).

B. Independent Educational Evaluations

The IDEA statute and regulations provide that a parent who is dissatisfied with the evaluation conducted by the child's school district may obtain an additional, independent evaluation, which the district will be required to fund under certain circumstances:

Parent right to evaluation at public expense

(1) 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, **subject to the conditions in paragraphs (b)(2) through (4) of this section.**

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either

(i) **File a due process complaint** to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing pursuant to 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency **files a due process complaint notice** to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for a parent's reason why he or she objects to the public evaluation.

However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or **filing a due process complaint** to request a due process hearing to defend the public evaluation.

(5) **A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which parent disagrees.**

34 C.F.R. §502 (b)(Emphasis in original)

II. [The] School District's Evaluation and Parent's Disagreement

The issues in this case do not center on the District' choice of tests and assessments or on whether the assessments were properly administered by adequately trained professionals. The school psychologist who testified for Parent did not take issue with the tests selected or the scores obtained by the District's school psychologist and other evaluators. (N.T. p. 141)

Nevertheless, there is a real disagreement between the parties with respect to the District's evaluation and results. Through the testimony of her school psychologist witness, Parent questioned whether the District's evaluation was sufficiently comprehensive, whether the District had sufficient information from Parent, and whether the District sufficiently and appropriately analyzed the information it gathered during the evaluation process. Parent's dissatisfaction with the District's evaluation arises primarily from her disagreement with the District's conclusion that Student does not meet eligibility criteria for any disability category other than visual impairment, and further, that no additional assessments are needed to explore the possibility that Student has more than one disability.

A. Visual Impairment Eligibility Determination/OT Evaluation

There is no real dispute in this case that the District conducted an initial evaluation that meets basic IDEA standards as described above with respect to the District's determination that Student meets IDEA eligibility standards under the category of vision impairment. Neither the testimony of the witness who appeared on behalf of Parent, nor the written report he submitted, suggested any deficiency or inaccuracy in the functional vision evaluation or mobility and orientation evaluation upon which the District primarily relied to determine that Student is IDEA eligible in the category of visual impairment. (N.T. pp. 99—156; P-13)

Parent's school psychologist did question the District OT evaluator's decision not to include certain parts of the Beery-Butenica Developmental Test of Visual-Motor Integration (Beery VMI). *See* N.T. pp. 111—113; P-13, p. 2). Such questions, however, represent no more than a minor difference of professional opinion or judgment and the witness's personal views on the purpose and scope of an IDEA evaluation, and provide no basis for concluding that the District's OT assessment was inadequate, inaccurate or otherwise inappropriate. *See* N.T. p.

113. The witness's views on the legal requirements applicable to an IDEA evaluation are far outside the scope of his expertise and the purpose of his testimony, and are entitled to no weight

Moreover, although Parent's witness stated in his report that the additional assessments "could have provided valuable information" concerning Student's visual motor skills, he did not specify how such information might have altered or refined the District evaluator's recommendation for OT services to improve Student's eye-hand coordination. (P-13, p. 2; FF 18) Similarly, the Parent's witness opined that the District's ER did not "adequately address" Student's weaknesses in manual coordination but did not state that the lack of further analysis in the District's ER resulted in an inadequate or inappropriate recommendation for OT services. (P-13, p. 2) Consequently, Parent's witness did nothing more than implicitly state that he would have chosen to conduct the assessments or prepare the report differently.

Contrary to the witness's testimony concerning why he believes the District's evaluation is inappropriate in several respects, including the OT evaluation, the purpose of the District's evaluation was precisely to determine Student's IDEA eligibility, as well as the needs that should be addressed via specially designed instruction and related services in order for Student to progress satisfactorily in the general education curriculum. *See* N.T. p. 127. Just as the District is not required to provide an ideal program and placement for Student, as stated in *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982) and *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3rd Cir. 2009) and many other court decisions, the District is not required to produce the most detailed report possible, using every available measure and sub-test that might provide additional information about Student. The District's OT evaluation amply meets IDEA evaluation standards on its face. Moreover, although Parent contends that the evaluation is not as comprehensive as she believes it should be, Parent at least

tacitly agreed with the District's identification of Student in by signing the NOREP and permitting services, including OT and specially designed instruction related to Student's visual impairment. (FF 22) Parent also acknowledged to the school psychologist who testified on her behalf that Student benefited from the services the District began providing in May 2010. (FF 22; N.T. pp. 142, 143)

B. Cognitive Ability/Academic Achievement, Curriculum Based Assessment Results

The District concluded that Student does not have a learning disability based upon the absence of a severe discrepancy between ability and achievement. (N.T. p. 43) Parent contends that inconsistencies in various measures require further investigation into that question. Both parties, however, fail to take into account all current IDEA standards concerning learning disabilities, including the definition of a learning disability and criteria for identifying learning disabilities.

Contrary to the District's suggestion that it can or must choose either the familiar standard based upon the difference between a cognitive ability and achievement as measured by norm-referenced standardized test scores, or some other measure, the current regulations provide school districts with greater flexibility, providing, *e.g.*, that the team reviewing evaluation data may determine that a child has a specific learning disability if,

The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

34 C.F.R. §300.309(a)(1). Here, in addition to no significant discrepancy between Student's ability and achievement, Student's achievement is commensurate with same age and grade level peers in all areas, except Math and Writing, which were slightly below grade level at the time of the evaluation. Student was, however progressing satisfactorily in the general education setting as confirmed by Student's final 5th grade report card. (FF 15; S-6)

Moreover, regardless of the criteria used for determining whether a child has a learning disability, the disability definition found in §300.8(c)(10)(ii) explicitly excludes learning problems resulting from visual disabilities. In addition, the team reviewing evaluation data may not conclude that a child has a learning disability under §300.309(a)(1) if the failure to meet grade-level standards results primarily from, among other things, a visual impairment. §300.309(c).

In this case, therefore, whether the District's discrepancy analysis or another approved method is used to assess whether Student has a learning disability, no matter which combination of index scores are used to compute Student's cognitive ability level, and regardless of which achievement scores are used, academic difficulties arising from Student's visual impairment must be ruled out before Student could be considered for IDEA eligibility under the category of learning disability. Here, the District identified Student's difficulties with math, but determined that such difficulties are related to the visual impairment. (N.T. pp. 54, 55) More important, the district developed an IEP based upon Student's identified needs rather than a disability category and developed an IEP that includes two goals for math. (FF 20) In addition, the NOREP Parent approved provides for itinerant learning support as well as visually impaired support. (FF 21) The District's evaluation, therefore, was sufficiently comprehensive to identify Student's academic needs through its evaluation, which also provided a basis for addressing those needs

through learning support and visual support services. The ultimate point and purpose of an evaluation is to identify and provide a sufficient basis for addressing an eligible student's needs, not to accumulate disability categories.

As noted above, Parent's witness found fault with the District's evaluation in many respects, but did not convincingly demonstrate that District's evaluation, and/or the District's interpretation of the evaluation results, were inadequate to identify and address Student's needs.

C. Social/Emotional Assessments

Parent suggests that the District evaluation did not adequately address Student's difficulties and needs in the area of social and emotional functioning. Parent's witness suggested that Student's sometimes contentious peer relationships and Parent's concerns over Student's social functioning and anxiety were not sufficiently taken into account in the evaluation. (N.T. pp. 121, 122, 139, 140; P-13, p. 1). Parent, however, had the opportunity to submit as much detailed information in writing as she wished, but chose not to return the parental input form, leaving the District to rely upon conversations in which Parent conveyed her concerns. (FF 10) The District can't be faulted for Parent's decision not to provide more information for the evaluation when it provided sufficient opportunity for her to do so. In addition, conversations with Parent about her concerns guided the District's decisions concerning the nature and extent of the evaluation. (FF 4, 7, 8; NT pp. 29, 30)

Parent also participated in the evaluation by completing the BASC II rating scale for Student. Her responses yielded ratings entirely in the average range. (FF 11) Parent's witness appears to believe the District should have relied more heavily on Parent's reported concerns about Student's anxiety and peer relationships, which were apparently described to him in greater detail than to the District. Putting aside the District's inability to force Parent to return

the written input form, the discrepancy between Parent's report to her school psychologist witness and the BASC results does not automatically suggest that the District relied on the wrong information. At least one reason that the IDEA statute requires a variety of sources for evaluation data is to increase the likelihood that information about potential eligibility and needs is accurate. In this case, the BASC ratings by both Parent and Student appear to contradict Parent's subjective belief that Student is experiencing significant school-related issues with anxiety and peer relationships. Student's self-rating, however, confirmed Student's report to the school psychologist during the evaluation that Student is happy in school. (N.T. pp. 41, 42, 57) Although Parent's witness concluded that such report constituted a denial of problems by Student, (P-13, p. 3) he did not explain how Student might have skewed the BASC assessment to support Student's denial or how the Parent's rating of Student likewise supported Student's purported denial of problems.

The District's school psychologist's explanation that Student's rating was likely to be accurate because Student would not have known what each question is designed to probe is far more plausible than the denial conclusion reached by Parent's witness. (N.T. p, 47)

Finally, the District's evaluation cannot be considered inappropriate for failure to sufficiently take Parent's concerns into account simply because the results of the evaluation did not entirely confirm Parent's pre-evaluation beliefs concerning the nature of the Student's disability and needs. The very purpose of an evaluation is to inquire into and either confirm or dispel suspicions concerning the existence and nature of a disability.

Although there were a few "clinically significant" and a number of "at risk" ratings on the BASC II forms completed by Student's teachers (FF 12), the District's school psychologist adequately explained that the ratings were not widespread enough to indicate a need for further

inquiry or intervention. (N.T. pp. 49, 50) In addition, the recommendations for specially designed instruction included in the ER and incorporated into Student's IEP address many of the areas of concern identified in the teachers' BASC II ratings. (N.T. p. 95; FF 20; S-4

CONCLUSION

Parent's school psychologist witness took a fine comb to the various strands of information encompassed by the District's evaluation report and found it wanting in many respects. Nevertheless, Parent was unable to identify real deficiencies in the District's evaluation to support a reasonable conclusion that either the assessment results, or the District's interpretation of and conclusions drawn from the ability and achievement tests, the OT evaluation, the BASC assessment and the information gathered from teachers, are inaccurate or inappropriate.

The District's evaluation meets the IDEA standards for an appropriately comprehensive evaluation and provided the District with a sufficient basis for identifying Student as IDEA eligible in the category of visual impairment, determining Student's needs and developing an IEP to address those needs. Parent, therefore, is not entitled to an independent educational evaluation at public expense.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the School District is not required to fund an independent educational evaluation of Student.

It is **FURTHER ORDERED** that claims or issues not specifically addressed by this decision and order, if any, are denied and dismissed.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

July 23, 2010