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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

6430/05-06 KE

File Number

D. J.

Child's Name

Xx/xx/xx

Date of Birth

April 25, 2006

Date of Hearing

Closed

Type of Hearing

For the Student:

Parents

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**For the Minersville Area School
District:**

Mr. M. Joseph Brady
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Date of Hearing:	April 25, 2006
Receipt of Transcript:	May 1, 2006
Date of Decision:	May 16, 2006
Hearing Officer:	Daniel J. Myers

BACKGROUND

Student is a [teenaged], 8th grade child with Aspergers Syndrome whose parents request an independent educational evaluation. For the reasons described below, I find for the School District.

ISSUE

Whether or not Student is entitled to an independent educational evaluation?

FINDINGS OF FACT

1. Student is a [teenaged], 8th grade student of the School District whose eligibility for special education programming is not disputed. (N.T. 24)¹ Her history includes a variety of disability diagnoses, including oppositional defiant disorder, pervasive developmental disorder, disruptive behavior disorder, bipolar disorder, attention deficit hyperactivity disorder, and Aspergers Syndrome. (N.T. 25, 88, 176, 188-189, 222; P 3; P 5) Cognitively, Student is in the average range, with average achievement in reading and written language, and low average achievement in math. (P 3, p.7; P 10) Student takes Concerta to address her attention deficit disorder, Geodone to address aggression and impulse control, and Zoloft for anxiety. (N.T. 170-171)
2. Over the years, speech and language evaluations have been mixed in assessing Student's needs in pragmatic language skills. In 2002, Student presented with a moderate disorder in pragmatic language skills. (P 3, p.2; P 9) A 2003 Test of Pragmatic Language scored within the average range. (P 8, p.5) A December 2004 speech and language evaluation recommended that Student's IEP team consider consultative, rather than direct, speech and language services, noting that Student exhibited appropriate social skills at school, but not at home. (P 11, p. 19) Student currently receives no speech and language services at school. (N.T. 226)
3. Student receives behavioral health services from a community agency, including therapeutic support staff (TSS) services, behavior specialist consultation, and mobile therapy. (P 5, p.15-16; N.T. 227, 269, 272-273) Student's TSS assists Student at the end of the school day in organization and packing her backpack. (N.T. 82, 88)
4. Currently, Student's grades range from As to Cs, with an 84% overall grade point average. (N.T. 26, 68-69; SD 3) Student occasionally forgets to hand in homework that is in her bookbag. (N.T. 76) She has been tardy three times this year. (N.T. 27, 53; SD 2) Neither party has any truancy concerns, and Student's overall attendance rate is 93%. (N.T. 62, 65)

¹ References to N.T. are to the transcript of the April 25, 2006 hearing session. References to SD, P and HO are to School District, Parent and Hearing Officer exhibits, respectively.

5. Student receives itinerant, pull-out learning support services in academic subjects twice weekly for a total of 40 minutes/week. (N.T. 24, 30, 72-74) The learning support services provide assistance in coursework, test-taking, and homework completion, but not social skills. (N.T. 73, 74) Student's learning support teacher surveys Student's other teachers about Student's performance, behavior, homework, and social issues. (N.T. 75-79, 92)
6. Student also receives "social work" services once weekly for 25-30 minutes/week. (N.T. 29-30) Either one-to-one or in small groups, the social worker provides instruction and counseling in social skills, coping skills, problem solving, peer interactions, and peer conflict resolution. This is done through role-playing, worksheets and/or discussion. (N.T. 109-113, 123-125) Student's parent is satisfied with the social worker's services. (N.T. 262)
7. Student manifests no depression at school or any anxiety relating to academics. She does exhibit occasional anxiety regarding upcoming social events. (N.T. 77, 139-140) Student does not report any peer problems, but her parent and the School District's junior/senior high school assistant principal report that Student was the victim of one bullying incident at school this year. Student's parent reports another bullying incident on the school bus, which the assistant principal could neither confirm nor deny. (N.T. 28, 279)
8. Last year, i.e., 7th Grade, was Student's first year of junior/senior high school. During this school year, Student called out frequently in class, dressed in a manner that appeared younger than her years, and visited her guidance counselor frequently to discuss very small problems that Student appeared to have blown out of proportion. (N.T. 100, 106-107, 114) Because Student did not appear to be using her locker, her parents asked Student's wrap-around TSS to arrive at school at the end of the day to assist Student in organizing her locker and book bag. (N.T. 206-207) This school year, i.e., 8th Grade, Student calls out less frequently in class, dresses more maturely, and seems to have a more realistic perspective overall. (N.T. 40, 76, 99-100, 106-107, 114)
9. A School District guidance counselor surveys Student's teachers every two weeks regarding homework, quizzes, tests, behaviors, and attendance, and sends that information home. Student also stops by the guidance counselor's office informally to discuss social issues several times per week for 5-20 minutes at a time. The guidance counselor reports that Student still has a tendency to blow minor events, such as jostling in the hallway, out of proportion. (N.T. 95-99, 105)
10. The School District does not have any specific social skills program, either as a regular education option or as specially designed instruction. (N.T. 59-60, 86-87)
11. During the first half of this school year, Student served as a manager for the school band and she was involved in an after school "All Stars" program that engages children in interesting extracurricular socialization activities with peers. (N.T. 27-28, 220, 267-268, 276-277) By all accounts, Student benefited from and enjoyed the program. No one

could explain why Student did not continue in the All Stars program for the second semester of this school year. (N.T. 28, 267-268)

12. Approximately two years ago, in April 2004, the School District conducted a “social work assessment” of Student, based upon concerns regarding Student’s difficulty with age appropriate social interactions and with her upcoming 2004-2005 transition from elementary school to the junior/senior high school. (P 4, p.4) The assessment recommended 1 hour per month social work services to assist student’s transition to the junior/senior high school, to enhance positive social interactions and coping skills, and to coordinate community services. (P 4, p.4)
13. Student’s parents believed that Student needed more than one hour per month of social work services. (P 12; N.T. 31, 35, 128) On July 30, 2004, the parties resolved their dispute through mediation, agreeing that the School District would conduct a psychological evaluation, to be administered by an Intermediate Unit (IU) certified school psychologist, which evaluation would include input from Student’s private psychologist Dr. R. (N.T. 31, 35; P 3; SD 1)
14. The parties agreed that IU school psychologist Dr. F would perform the evaluation. (N.T. 36, 50, 142; P 3; P 6) The November 30, 2004 evaluation report (ER) stated that its purpose was to determine whether Student needed more social work services. (P 3, p.1) It confirmed Student’s average intellectual ability and low average to average range achievement, with achievement commensurate with ability. (P 3, p.7) The ER further observed that Student demonstrated appropriate social skills at school but not at home, and that the parties “did not share the same perspective” and had “different levels of expectation” regarding Student’s need for social work services at school. The ER also stated that “there is room to further facilitate [Student’s] social skills training...” (P 3, p.7) The parties then developed a December 2004 IEP with goals in homework and test completion, reading comprehension, self-esteem, and social interaction. Related services included social work services and speech and language services until a speech and language evaluation could be completed. (P 11)
15. Five months later, in April 2005, an interagency team met to consider the recommendations of Student’s private psychologist Dr. R, as well as Student’s psychiatrist Dr. A, for a residential placement in response to dangerously aggressive behaviors at home. Student was not placed in a residential facility, based upon a mental health agency determination that less restrictive measures should be considered before residential placement. (N.T. 41, 155, 207-208)
16. Student had been treated by Dr. R between 2000 and 2003. (N.T. 186-187, 257) He has been a licensed psychologist since 1982. (N.T. 184, 201) He is not a school psychologist. (N.T. 184) Dr. R reports that Student’s difficulties have been primarily behavioral, and that Student’s behaviors are different at home and at school. (N.T. 186, 196) He believes that Student needs to increase her independence, pay more attention to her surroundings, and become “more appreciative of the reciprocal process.” (N.T. 189, 191-192)

17. Dr. A is Board certified in both adult and child psychiatry, she is Medical Director of the Childrens Home of Reading, and she has been practicing child psychiatry for 12 years. (P 1; N.T. 147-149)
 - a. She reports that, one year ago in April 2005, Student's behavior at home had deteriorated to complete defiance, with punching and kicking of her father, tantruming and refusing to do any homework, participate in daily home activities, or even to bathe, and desiring only to suck her thumb, watch television, and pet her guinea pig. Believing that outpatient psychotherapy was not addressing Student's problem, Dr. A recommended residential treatment in order to obtain 24 hour supervision and work on Student's negative behaviors, and then to transition back to home. (N.T. 154-155, 163)
 - b. One year later, in April 2006, Dr. A no longer recommends a residential facility. (N.T. 170) She reports that Student is less physically aggressive at home than one year ago, but she remains very defiant, has trouble with abstract ideas, has terrible judgment with a child-like view of the world similar to that of a four year old, and tends to be a bit disheveled. (N.T. 155, 172-173)
 - c. Dr. A is aware that Student is not a disciplinary problem and is succeeding academically at school. (N.T. 161-164) Based upon parental reports, however, Dr. A believes that Student engages in no socialization and is not academically challenged at school. Dr. A believes that Student engages in more negative behavior at home because Student's parents place greater demands upon Student than the School District does. (N.T. 164-166, 169)
18. Student's parent attributes any reduction in Student's negative behaviors since the April 2005 residential treatment facility denial to a change in medication. (N.T. 207-208)
19. On February 1, 2006, Student's parents requested a comprehensive, independent educational evaluation (IEE), including personality testing, rating scales for autism, depression and disruptive behavior, and evaluation of Student's emotional, sensory integration, pragmatic language and social and life skills needs, by someone with experience in evaluating individuals with aspergers syndrome and adjustment disorders. (P 15; N.T. 12, 158, 178, 247-248)
 - a. They contend that the 2004 mediation agreement called for a comprehensive IEE, not just a social work evaluation. (P 15; N.T. 245)
 - b. Their goal is to secure for Student assistance in daily living skills, social skills, and skills for coping with the greater demands that she experiences at home than she encounters at school. (N.T. 167-169)
20. I was assigned as hearing officer to this matter on March 28, 2006, and I conducted an evidentiary hearing on April 25, 2006. School District exhibits SD 1 and SD 2 were admitted into the record over Student's objection relating to untimely disclosure, and SD 3 was admitted without objection. (N.T. 286) Student's exhibits P 1 through P 16 were admitted without objection. (N.T. 286-287)
21. This decision is issued:

- a. 104 days after the due process hearing request; and
- b. 15 days after my receipt of the transcript.

DISCUSSION

When a parent requests an IEE, he or she must disagree with the School District's evaluation and then the School District must either initiate a due process hearing to show that its evaluation is appropriate, or acquiesce to the parental request. 34 CFR §300.502(b)(2) I believe that the burden of proof in such an administrative due process hearing is upon the School District, i.e., the party seeking to establish that its evaluation is appropriate. Schaffer v. Weast, ___U.S. ___, Dkt. No. 04-698 (Nov. 14, 2005) In this case, I conclude that the School District's November 2004 ER was appropriate.

For an evaluation to be appropriate, the School District must use a variety of assessment tools and strategies to gather information about the student, including information from the student's parent, and information about the student's progress in the general education curriculum. The School District must use tests under standardized conditions that are validated for the specific purpose for which they are used, and have a trained and knowledgeable person administer them. The evaluation must be sufficiently comprehensive to identify the student's needs and related services. Further, the District must review any existing evaluation data including information provided by the parents, curriculum-based assessments and observations of the student in the classroom, and observations by teachers and other persons. 34 CFR §§300.531, 300.532, 300.533

The ER defended by the School District in this case is Dr. F's November 2004 ER. (P 3) I find that it is sufficiently comprehensive because it includes curriculum based assessments, a review of private medical, psychological (including Dr. R), psychiatric and speech/language reports, teacher and service provider observations, and parental input. It also includes standardized cognitive and achievement testing. (P 3)

Student contends that the November 2004 ER was not sufficiently comprehensive and also that the School District's November 2004 ER was not conducted in accordance with the parties' July 2004 mediation agreement. I have already found that the ER was sufficiently comprehensive. As described below, I further find that it complied with the mediation agreement.

On July 30, 2004, the parties resolved their dispute regarding a proposed IEP through mediation, agreeing that the School District would conduct a psychological evaluation, to be administered by an Intermediate Unit (IU) certified school psychologist, which evaluation would include input from Student's private psychologist Dr. R. (N.T. 31, 35; P 3; SD 1) Student notes that the November 30, 2004 evaluation report (ER) stated that its purpose was to determine whether Student needed more social work services – which is much more limited than a comprehensive ER. (P 3, p.1) Student also suggests that, because the School District does not employ any of its own school psychologists, but rather contracts with the IU for all school psychology services, the November 2004 ER either is not credible or fails to comply with the parties' mediation agreement. (N.T. 143-146) I reject these arguments.

The July 2004 mediation agreement was the direct result of a dispute between the parties regarding the School District's proposal to provide Student with one hour per month of social worker services. (P 4, p.4; P 12; N.T. 31, 35, 128) The mediation agreement itself simply refers to "a psychological evaluation" and "input from the parents' psychologist Dr. R." (SD 1) The mediation agreement does not refer specifically to either a "comprehensive" evaluation or to a "social work" evaluation. (SD 1) Dr. F's November 2004 ER states that its purpose is to determine whether Student needs more social work services. (P 3) This was a reasonable statement that recognized and addressed the specific issue that gave rise to the mediation agreement in the first place, i.e., social worker services. In fact, Dr. F's November 2004 ER is substantially more comprehensive than just a social-worker-service evaluation, as is clear when it is compared to the IU's Social Work Assessment that gave rise to the original social worker dispute in the first place. (P 4)

In addition, the July 2004 mediation agreement specifically provides that the evaluation will be conducted by an IU school psychologist, and the parties jointly agreed upon Dr. F as the particular school psychologist who would perform the evaluation. (N.T. 36, 50, 142; SD 1) There is no basis for rejecting Dr. F's ER on the bases either that his appointment violates the mediation agreement or is not sufficiently independent of the School District.

Thus, because I find that the School District's November 2004 ER is appropriate, I will deny the Student's request for an IEE. I will, however, include some dictum below that might assist the parties in resolving future disputes. Because the issue in this case was quite limited, however, to the IEE request, I consider the discussion below to be dictum only, and it should not be considered to be either finding of fact or conclusion of law.

Frankly, I believe that the parental request for additional evaluation is, in fact, dissatisfaction with programming decisions both at school and through wrap-around services. As Dr. F notes in his report, Student's parents and the School District have widely divergent perspectives regarding the severity and impact of Student's disability, and neither party appears interested in understanding the other party's perspective. I would not be surprised if a similar disparity of perspectives exists between home and the wrap-around services. This is not to say that the misunderstanding is completely that of the parents, however, because I share what I perceive to be parental unease with School District programming.

Generally speaking, Student's Aspergers Syndrome involves an unintentional, relatively naïve, narrow and overly concrete understanding of social situations that requires explicit and fairly structured pragmatics and social skills training. I suspect that there are very structured school-based programs (possibly available through PATTaN) that are designed to teach, very explicitly, children with Aspergers Syndrome the various nuances of social interactions that their disability prevents them from grasping intuitively. I also suspect that wrap-around behavioral services have the resources with which to teach Student and her family how to structure their home lives more effectively as well as to understand what are reasonable behavioral expectations. (Few parents are innately born with all of the skills required to deal with any child's disabilities – we can all use help.)

Although I perceive that many people genuinely care for Student, I did not observe either the concrete, structured home and school-based plans for explicitly teaching pragmatics and social skills to Student that I expected to see, nor did I observe any true coordination of the many teaching opportunities that arise in Student's daily life. School District officials appeared to wonder what I was talking about when I asked about their social skills programming (N.T. 59-60, 86-87), no one could explain why Student was no longer enrolled in the All Stars program (N.T. 28, 267-268), and I wonder whether Student's private psychiatrist and psychologist rely too heavily upon parental reports of Student's circumstances without sufficient corroboration from Student, school, and/or TSS (N.T. 41, 155, 164-165, 169, 207-208). Ultimately, I believe there should be more explicit, concrete, goal-based programming and more coordinated planning among the various service providers that includes corroboration of anecdotal information.

As I mentioned above, however, any programming questions are far beyond the specific issue raised in this due process hearing. Student has requested an IEE, and I have found that the School District's ER is appropriate. Thus, the IEE request is denied.

ORDER

For the reasons described above, I ORDER that:

- The request for an independent educational evaluation is DENIED;
- No further action is required of the School District at this time.

Daniel J. Myers

Hearing Officer

May 16, 2006

Re: Due Process Hearing
File Number 6430/05-06 KE