

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: G. D.

Date of Birth: [redacted]

Dates of Hearing:

May 17, 2016

June 3, 2016

CLOSED HEARING

ODR Case #17510-1516AS

Parties to the Hearing:

Parent[s]

West Chester Area School District
829 Paoli Pike
West Chester, PA 19380-4551

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

David Arnold, Esquire
920 Matsonford Road
Suite 106
West Conshohocken, PA 19428

David Painter, Esquire
331 East Butler Avenue
New Britain, PA 18901

June 3, 2016

June 14, 2016

Jake McElligott, Esquire

INTRODUCTION

Student)¹ is a 9-year old student residing in the West Chester Area School District (“District”). The parties dispute whether or not the student should be identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA)², particularly as a student with a specific learning disability.

[Redacted] After the student’s family shared concerns about the student’s achievement in reading, in January 2016 the District issued an evaluation report, finding that the student did not qualify as an eligible student under IDEIA. In March 2016, the student’s parents requested an independent educational evaluation (“IEE”), in the form of an independent reading evaluation, at public expense. Pursuant to 34 C.F.R. §§300.502(b)(1),(2) and 22 PA Code §14.102(a)(2)(xxix), in defense of its evaluation process/report, the District filed the special education due process complaint which led to these proceedings.

For the reasons set forth below, I find in favor of the parents.

ISSUE

Are parents entitled to an IEE,
in the form of an independent reading evaluation,
in light of the District’s evaluation process and evaluation report
of January 2016?

¹ The generic “student”, and gender-neutral pronouns will be utilized throughout the decision to protect the student’s confidentiality.

² It is this hearing officer’s preference to cite to the implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162.

FINDINGS OF FACT

1st Grade

1. [redacted]
2. At the end of the prior school year, a comprehensive psycho-educational evaluation was agreed to by parents given a medical diagnosis of anxiety and parents' request for accommodations. (P-6).
3. In October 2013, the neighboring school district issued an evaluation report ("ER"). (P-6).
4. The student's full-scale IQ was 130, in the "very superior" range. (P-6).
5. On achievement testing at that time, the student showed above average achievement testing in all areas, with average achievement in early reading skills (113), numerical operations (112), oral reading accuracy (110), and sentence building (108). (P-6).
6. The neighboring school district identified certain manifestations of a diagnosed anxiety disorder but did not identify the child as needing special education for any academic or social/emotional concerns. (P-6).
7. The student continued in the neighboring school district [redacted].

8. In August 2013, the student's instructional reading level on the Fountas & Pinnell reading assessment was in the N/O band (on an alphabetical scale A-Z for reading levels kindergarten through secondary). (P-7 at page 3, P-25).
9. In March 2014, the student's Fountas & Pinnell reading level was "approximately N". (P-8 at page 3).

2nd Grade

10. The student began to attend school in the District in the 2014-2015 school year (2nd grade).
11. In July 2014, a Qualitative Reading Inventory found the student to be instructional at the 2-1 level, with an 82% average for comprehension (100% for narrative, 63% for expository). (P-9, P-13).
12. In September 2014, a Critical Reading Inventory found the student to have 73% comprehension on a 4th grade level and instructional at the "weak 4th" grade level. The evaluator noted that the student struggled with text-based questions and critical response questions, again showing full comprehension of narrative but lack of comprehension of "more complex ideas in the expository passage". (P-9 at page 3, P-14).
13. The evaluator noted on the Critical Reading Inventory that the student was proficient in all nine areas of reading assessment,

although “not as strong” was noted for comprehension/test-based, comprehension/critical response, and expository text. (P-14).

14. [redacted]).

15. Through the first two marking periods of 2nd grade, the 2014-2015 school year, the student achieved at the “basic” level in all areas of reading assessment (both informational text and literature). In the third marking period, the student was “basic” in three of five areas and “proficient” in two areas of information text assessment, “basic” in two of five areas and “proficient” in three areas of literature assessment. In the fourth marking period, the student was “proficient” in all ten areas for both informational text and literature. (P-16 at page 1).

3rd Grade

16. In September 2015, a Critical Reading Inventory found the student comprehended 3rd grade text at the 70% level and 4th grade test at the 60% level (with significant splits between oral and silent reading, oral reading being markedly higher). The student was gauged as instructional at the 3.1 grade level. P-15 at page 1).

17. The evaluator on the Critical Reading Inventory noted that “recalling details in expository text was especially difficult” for the student and the student “was not able to give personal responses. The third grade narrative was the exception.” The evaluator noted that the student “had trouble elaborating...answers and supporting

- the critical thinking questions” recommending that the student “will need to use comprehension strategies this year to monitor...comprehension.” (P-15 at page 1).
18. The evaluator noted on the Critical Reading Inventory that the student was proficient in only three areas of reading assessment (sight vocabulary, decoding, and narrative text), noting that six areas needed improvement: retelling, comprehension/test-based, comprehension/inference, comprehension/critical response, expository text and fluency. (P-15 at page 1).
19. [In] 3rd grade [redacted] student read independently at the late 3rd grade level and was instructional at the 4th grade level, scoring at the 62nd percentile for 4th grade readers. (P-11 at page 3).
20. [redacted]
21. The student’s grades for the first marking period in 3rd grade were: social studies A+, science A, math A, reading A-, writing B+. (School District Exhibit [“S”]-5).
22. In an undated progress update sometime in the second marking period of 3rd grade, the student’s recorded grades were: reading A-, writing A-, social studies B. (P-32).

January 2016 ER

23. In December 2015, due to parents’ concerns over the student’s academic progress and a parental concern that “(the

- student) might [redacted] have a learning disability that has been masked until now”, the District requested, and parents granted, permission to evaluate the student. (P-29).
24. In January 2016, the District issued its ER. (S-7).
 25. In regard to academics, in the January 2016 ER, the student’s mother noted concerns with the student’s progress in reading. (S-7 at page 3).
 26. In regard to reading, in the January 2016 ER, the student’s teacher noted that the student answers “right there questions”, makes connections between text and prior knowledge, and applies reading strategies. The teacher noted that the student does not provide details or evidence to support responses to higher-level questions (such as inferencing, comparison/contrast, application). (S-7 at page 3).
 27. [redacted]
 28. The student’s full-scale IQ was 134, in the “extremely high” range. (P-6).
 29. Based on this IQ score, on standardized achievement testing, the student’s scores in phonological processing (91) and nonsense word decoding (112) were markedly lower (beyond 1.5 standard deviations). (S-7 at pages 13-15).
 30. Given the student’s discrepant scores in phonological processing and nonsense word decoding, the District evaluator

performed a further assessment in phonological processing, finding that the student scored markedly low in two of the three areas of phonological processing, namely the phonological awareness composite (110) and the phonological memory composite (113). (S-7 at page 15).³

31. Overall, the evaluator noted that “(the student’s) basic reading skills fell within the upper limits of the Average range to the High Average range. While this is an area of relative weakness, (the student) has been able to compensate quite well.” The evaluator noted that the student participated in the highest word study group in the student’s 3rd grade classroom. (S-7 at page 16).
32. The District evaluator concluded that the student did not qualify under the terms of the IDEIA as student with a specific learning disability. (S-7 at pages 22-23).
33. In March 2016, the parents requested an IEE at public expense in the form of an independent reading evaluation. The

³ On the third area of phonological processing, rapid symbolic naming composite, the student’s standard score was 119. This falls in the above average range, with the composite score at the 90th percentile. The two sub-tests in this composite, though, reveal interesting data: The student’s rapid digit naming is in the superior range (95th percentile) and the rapid letter naming is the average range (63rd percentile). When working with numbers, the student’s scaled score is in the superior range and, by far, the highest percentile across any of the sub-tests; this is not surprising perhaps, [redacted]. Yet the same type of assessment with letters, instead of digits, is in the average range and, across all the sub-tests, at the student’s lowest percentile (63rd), the same percentile which the student scored on the blending-words and phoneme-isolation sub-tests of the phonological awareness composite.

District denied this request, and the District's complaint in defense of its evaluation process/ER followed. (P-3, P-4).

34. The record consistently shows that the student often rushes through, or quickly reads through, assignments/assessments in a way that may impact the student's recall or comprehension. (P-6 at page 2, P-13 at page 1, P-15 at page 1; Notes of Testimony at 111, 116-117, 142, 234-235).

DISCUSSION AND CONCLUSION OF LAW

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), a student must be undergo an appropriate evaluation process to be identified as an eligible student under IDEIA. (34 C.F.R. §300.303; 22 PA Code §§14.102(a)(2)(xxv), 14.124).

Where the family of a student disagrees with the evaluation process and/or evaluation reports issued by a school district, the family may request an IEE at public expense. (34 C.F.R. §§300.502(a),(b); 22 PA Code §14.102(a)(2)(xxix)). When faced with a request for an IEE at public expense, the school district must either (a) provide the IEE at public expense or (b) file a special education due process complaint in defense of its evaluation. (34 C.F.R. §§300.502(b)(1),(2); 22 PA Code §14.102(a)(2)(xxix)). The District in this matter has chosen the latter option.

For a school district evaluation to be appropriate, the evaluation must, among many more detailed requirements, 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....” (34 C.F.R. §§300.304(b)(1) and *see generally* 34 C.F.R. §§300.304(a),(c), 300.305-300.311; 22 PA Code §§14.102(a)(2)(xxv, xxvi)).

More particularly, in Pennsylvania when a student is suspected of a specific learning disability, one of two methods may be used to ascertain whether the student has a specific learning disability, either a process to document a student’s response to scientific, research-based intervention, or a process that examines whether a student exhibits patterns of strengths and weaknesses, relative to the student’s intellectual ability, as evidenced by a severe discrepancy between intellectual ability and achievement. (22 PA Code §§14.125(2)).

Here, the mosaic of evidence leads to the conclusion that, following the January 2016 ER, too many significant questions hang in the air regarding an understanding of the student’s ability/achievement in reading, questions that ultimately support a conclusion that an independent reading evaluation is necessary. First, there is a consistent pattern across 2nd and 3rd grade that the student comprehends very strongly with works of narrative but markedly less so with works of exposition. Second, on this record, it is unclear exactly where the

student is instructionally in terms of reading; across 2nd and 3rd grade, those levels fluctuate (“weak 4th” in 2nd grade and “3.1” in 3rd grade). Third, the student’s standardized assessments show markedly low scores in specific areas of phonological processing and nonsense word decoding, weaknesses that are confirmed by more in-depth phonological assessment. Fourth, [redacted]). Fifth, there is the truly confounding factor of perceptions by teachers and evaluators that the student rushes through work in such a way that results on assessments may not accurately reflect the student’s ability/achievement.

In the end, all of these factors taken together leave some degree of doubt about the conclusion in the District’s January 2016 ER that the student does not have a specific learning disability in reading. Accordingly, an IEE in the form of an independent reading evaluation is in order.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above:

The January 2016 evaluation report, in terms of its assessment of the student’s reading ability and achievement, leaves in doubt an appropriate understanding of whether or not the student has a specific learning disability in reading. Therefore, the District must provide an IEE, in the form of an independent reading evaluation, at public expense.

Any claim not specifically addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 14, 2016