

*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

Child's Name: I.H.

Date of Birth: [redacted]

Date of Hearing:

June 24, 2010

### **CLOSED HEARING**

ODR Case # 00908-0910KE

Parties to the Hearing:

Parent[s]

Ms. Mary Anne King  
Cumberland Valley School District  
6746 Carlisle Pike  
Mechanicsburg, PA 17050

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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July 16, 2010

July 31, 2010

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student) is a pre-teen-aged student residing in the Cumberland Valley School District (“District”). The parties do not dispute whether the student is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>1</sup>. The student’s grandmother, who acts as the student’s guardian, has requested an independent education evaluation (“IEE”) at public expense. The District defended the appropriateness of its evaluation and denied that the student is entitled to an IEE at public expense. For the reasons set forth below, the student’s guardian will prevail, and the District will be ordered to provide an IEE at public expense.

## **ISSUE**

Must the District fund an IEE?

## **FINDINGS OF FACT**

1. In a May 2007 evaluation report (“ER”), the student was initially identified as a student requiring emotional support with a secondary identification of another health impairment. Deficits

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<sup>1</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818.

described as a learning disability in written expression were also noted, although the student was not formally identified as having a specific learning disability in written expression. (Parent's Exhibit<sup>2</sup> ["P"]-2; School District Exhibit ["S"]-1).

2. The May 2007 ER included classroom observation, cognitive testing, achievement testing, visual-motor integration assessment, and behavior and emotional disturbance assessments. (P-2; S-1).
3. After a doctor's diagnosis of Asperger's Syndrome, the student's guardian requested a re-evaluation in March 2008. A re-evaluation report ("RR") was issued by the District in December 2008. (P-3, P-4, P-7; S-3; Notes of Testimony ["NT"] at 166-167).
4. The December 2008 RR includes information that post-dates the report. For example, the December 2008 RR includes information from a private psychological evaluation report dated December 29, 2008, although the December 2008 RR is dated December 5, 2008. Similarly, the December 2008 RR includes information from the student's emotional support teacher which is dated January 13, 2009. No exhibit and no testimony was presented by either party to clarify the anomalies in the December 2008 RR. (P-7 at pages 1, 3, 5; S-3 at pages 1-3).

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<sup>2</sup> As indicated, the student's interest is represented by the student's guardian. In keeping with the custom of identifying exhibits in special education due process, the guardian's exhibits will be referred to as "parent's exhibit".

5. The RR continued to identify the student as having an emotional disturbance and another health impairment, as well as a learning disability in written expression. (P-7; S-3).
6. From the outset of the 2009-2010 school year, the student experienced difficulties in school. (NT at 160-165).
7. The student experienced academic difficulties, difficulties with peers, and physical symptoms, including vomiting blood. (NT at 160-177).
8. In August and November 2009, the student was evaluated by a private psychologist who diagnosed the student with Asperger's Syndrome. (P-11, P-12).
9. After requesting a re-evaluation, the District issued a December 2009 RR dated December 1, 2009. (S-5).
10. The District sought permission to assess the student using instrumentation to confirm or rule out an identification of the student on the autism spectrum, but the guardian did not provide permission for such an assessment. (NT at 50-51).
11. The information in the December 2009 RR is identical to the December 2008 RR in every regard except for: (1) an update of the guardian/grandmother's input, (2) a functional behavior assessment summary dated December 2009, (3) an update of "teacher's recommendations", noting changes to the student's schedule and other accommodations in the fall 2009, and (4) data

- regarding a child behavior checklist to gather data from the student's teachers and grandmother. (P-7, S-3, S-5 generally and at pages 2, 10, 15-17).
12. The District school psychologist indicated that she did not see the need to re-administer assessments because results are not likely to change over a one year period. (NT at 55, 128-129).
  13. Although almost the entire December 2009 RR is a duplicate of the December 2008 RR, the December 2009 RR does not indicate that the data contained in the RR is actually data obtained from the prior year. In effect, someone reading the December 2009 RR would have no way of knowing that the assessment results were gathered in December 2008 or even in May 2007. (P-2, P-7; S-1, S-3, S-5; NT at 128-132).
  14. The December 2009 RR indicates that the individualized education plan ("IEP") team met to consider the RR on December 2, 2009. But individuals did not discuss the report until December 11, 2009. (S-5; NT at 44).
  15. The individuals who consulted on December 11, 2009 were not an appropriately constituted IEP team. On December 11, 2009, the consulting psychiatrist spoke with the student alone for approximately half an hour and then with the student's grandmother alone for approximately half an hour. Thereafter, the student and the student's grandmother left the school building and

the school-based members of the IEP team met to discuss the student's needs. The December 2009 RR was mailed to the student's guardian's review and signature. (S-5 at page 19; NT at 177-180).

16. The District school psychologist added information to the December 2009 RR from the consulting psychiatrist after the December 11, 2009 meeting but did not consult with the student's guardian. (S-5 at pages 18; NT at 177-180).
17. In January 2010, based on the December 2009 RR, the student was placed in a more restrictive partial therapeutic program which the student attended for two days. (S-5 at pages 18, 22; NT at 181-182).
18. In March 2010, the parties discussed the possibility of outside evaluations. (NT at 185-187).
19. The District declined to provide an IEE at public expense and filed its due process complaint on April 1, 2010. (P-16).
20. The student's guardian pursued an IEE and the private evaluator issued a private evaluation report on June 9, 2010. The guardian would use this report as the IEE at public expense. (P-18; NT at 209-210).

## **DISCUSSION AND CONCLUSIONS OF LAW**

When parents or guardians disagree with the conclusions of a school district evaluation, they may request an IEE at public expense.<sup>3</sup> After a school district has issued its evaluation report, and the school district may acquiesce in a parent's request for an IEE at public expense or file for due process to defend the appropriateness of the school district's evaluation.<sup>4</sup>

In this case, the District's evaluation is inappropriate. The December 2009 RR is inappropriate on a number of levels. First, it fails markedly to assess the student, or to update data for the student, at a time when everyone involved agrees the student was experiencing significant difficulties in school. (FF 6, 7). Indeed, only a few short weeks after the report was mailed to the guardian, the student was placed in a highly restrictive therapeutic program; yet the December 2009 RR is hardly distinguishable from the December 2008 RR. (FF 11, 17).

Second, the December 2009 RR is prejudicially flawed in its construction. Nothing in the December 2009 RR is dated so as to allow a reader to follow the flow of assessment data over time. (FF 13). This is not harmless error; planning for a student's needs based on evaluation reports requires that the abilities, achievement, ratings, and other assessment data are understood at a point in time so that the data can

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<sup>3</sup> 34 C.F.R. §300.502(b).

<sup>4</sup> 34 C.F.R. §300.502(b)(2).

be read in the context of a student's human and educational development.<sup>5</sup>

Third, there were prejudicial procedural errors committed by the District. The December 2009 RR resulted in significant program and placement changes for the student, yet the IEP team did not consult over the RR. (FF 14, 15, 17). The student's guardian was mailed the December 2009 RR for signature, even though a critical component—the consulting psychiatrist's views and recommendations—were added outside of her consideration. (FF 16).

Additionally, it is clear that various diagnoses of Asperger's Syndrome or other diagnoses related to the autism spectrum are swirling around this student. (FF 3, 8). Yet the parties have been unable to agree on the assessment this potential identification for the purposes of educational programming. (FF 10). Therefore, the order will include a process by which a potential identification of the student as a student with autism is explored.

For the foregoing reasons, the student's guardian is entitled to an IEE at public expense.

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<sup>5</sup> Somewhat related to this point are the anomalies contained in the December 2008 RR. (FF 4). There is apparently information contained in that report that post-dates the report. Is that because the date of the report is inaccurate? Or because the dates attached to the data are inaccurate? Or was the information added at some later point? If so, what does that do to the validity of the report? The record does not answer these questions as to the December 2008 RR, but it reinforces the notion that some, like the student's guardian, may not have confidence in the District's evaluation processes and reports.

## **CONCLUSION**

The District must provide an IEE at public expense. Additionally, the student must be evaluated for potential autism spectrum disorder at public expense.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, pursuant to the pertinent provisions of 34 C.F.R. §300.502(b), the District shall provide an independent education evaluation at public expense.

Additionally, pursuant to the provisions of 34 C.F.R. §300.502(d), the student shall be independently evaluated at public expense for potential identification as a student requiring special education due to autism spectrum disorder (“independent autism evaluation”). Within 10 days of the date of this order, the District shall provide to the student’s guardian a list of 3-5 independent evaluators or evaluating agencies with the knowledge, experience and expertise to conduct a comprehensive, independent autism evaluation. The guardian shall select the evaluator or evaluating agency from the list provided, and the evaluation shall be scheduled as soon as possible thereafter. Within 10 days of the guardian providing a copy of the independent autism evaluation report, the IEP

team shall meet to consider the results and recommendations of the independent autism evaluation report.

Any claim by a party not addressed in this decision and order is dismissed.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

July 31, 2010