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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

Hearing Officer Decision

K.H.

Birthdate: xx/xx/xx

Hearing Date: July 19, 2006

File No: 6649/05-06 LS

Closed Hearing

Parties to the Hearing:

Parents

Abington School District
Dr. Richard Balukas,
Director of Special Education
970 Highland Avenue
Abington, PA 19001-4535

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Transcript Received: July 24, 2006
Date of Decision : August 2, 2006
Hearing Officer : Joseph G. Rosenfeld, Ph.D.

I. Background

Student¹ is a student whose birthdate is xx/xx/xx. Her father resides within the boundaries of the Abington School District (SD). At times she has also attended [another] School District, the residence of her mother. Currently, there exists an order from the Court of Common Pleas ordering that the children are to remain in the Abington School District (S-12)². Student has now completed the fifth grade and will be entering the sixth grade. During her time in the SD, Student was struggling academically in reading and mathematics and her teacher believed that she needed additional support that was not available in regular education. The SD conducted an evaluation and a determination was made that the student was eligible for special education services and an IEP team was convened, a NOREP was prepared to which the father approved (S-24, S-25).

The mother believes that the evaluation was inappropriate and has requested an independent evaluation at public expense. The single focus of this hearing is whether the SD is required to provide the independent examination at no cost to the parent.

II. Findings of Fact

1. The student's date of birth is xx/xx/xx. The parents live in separate households. The father resides within the boundaries of the SD and the mother resides within the boundaries of [another] School District.
2. Student attended schools in [the other School District] from kindergarten through second grade. She came to the SD in third grade and remained there until February 14, when she returned to [the other School District]. She then returned to SD in the beginning of fourth grade, returned to [the other School District] for a week or two and then returned to SD. In the fifth grade year she attended a school in [the other School District] for two to three weeks and then completed the year in the SD. In the fourth and fifth grade approximately 95% of her time was spent in the SD (NT 68-69, 74, 86, 97-98).
3. Because of the variable schedule of attendance in [the other School District] and SD, the Common Pleas Court ordered that the student should remain in the SD (NT 21, S-12).
4. Both parents have legal custody. The current arrangement is that one week is spent with the mother and one week with the father (NT 17, 20).
5. The father has been concerned with Student's academic achievement from the time she was a student in [the other School District], but especially during her time in SD in the last two years (NT 21).

¹ Student will be referred to as the student or Student for the balance of the report to assure greater confidentiality and to simplify later redaction of identifying information. The School District will be referred to as SD.

² S-# will refer to school district exhibits, P-# refers to parent exhibits, NT # (note transcript) refers to pages in the transcript., FF-# refers to Findings of Fact.

6. The father wanted Student to be evaluated and believes that the SD did a thorough job and there is no need for a second evaluation (NT 22-23).
7. When Student was in third grade and transferred to the SD there were concerns about her academic progress. She was screened by the SD comprehensive support screening process (CSSP), a regular education program. The team was composed of the principal, the school psychologist, a reading specialist, and a curriculum specialist. Reading and math were the problem areas for the student (NT 28-29).
8. The CSSP team recommended that she participate in remedial supports for both Math and Reading and she has been receiving additional remedial support (NT 29, 87, S-17 pp. 1-2).
9. Students are recommended for the remedial supports when they are not performing at the proficient level of 70. Her 5th grade teacher was concerned with her poor or marginal performance in reading, math and social studies (NT 88-89, S-14).
10. The SD sent a Permission to Evaluate form on January 7, 2005 to both parents. The father consented to the examination and the mother by separate letter refused permission for the examination (NT 30-32, S-6, S-8).
11. At the request of the father, another permission form was prepared and sent to both parents on December 14, 2005. The father granted permission to evaluate Student on December 22, 2005. No response was received from the mother (NT 34-35, S-13).
12. The parents were informed that the examination would include an assessment of cognitive functioning, achievement functioning, visual-motor functioning, social and emotional functioning. Data would be obtained from the school records, various school personnel and the parents. Classroom observations would be made; state assessments would also be reviewed and a report would be written (NT 30-31, 35, S-13).
13. The initial evaluation report was completed on March 28, 2006. Areas listed in FF-12 were examined. The examination concluded stating that the student had a learning disability and was eligible for specially designed instruction in mathematics, (NT 36-48, 51-60, S-17).
14. Environmental and issues of social and emotional functioning were considered in the evaluation and it was concluded that those issues did not interfere with her learning (NT 69-70, 79).
15. The examination was considered comprehensive and sufficient for developing an educational program for the student (NT 105).
16. The instruments used in the evaluation were reliable, valid, and appropriate, as were the student's responses to the tests (NT 38, 130-131).

17. The mother found fault with the SD examination, listing what she believed were errors (S-18). These were appropriately answered by the SD indicating their reasons for rejecting the mother's assertions (S-23).
18. Mother, a teacher, rejects the notion of the student being in a setting where she is considered a special needs child. She believes Student to be strong and gifted. She sees Student as a sensitive, caring child who is basically very happy. She feels that some of her difficulties occurred because of family problems. She perceives Student as a normal child with some challenges in Math. (NT 142-143, 146-148, 155, P-1).
19. While the mother has a serious objection to the student being labeled as special education student, she does not object to remedial help within regular education (NT 170-173).

III. Issues:

1. Was the evaluation performed by the SD appropriate?
2. Is the mother entitled to an independent educational evaluation at public expense?

IV. Discussion and Conclusions of Law:

This case has a narrow focus. The mother would like an independent examination paid by the school district because she disagrees with the findings and believes them to be in error. In a recent decision in *Schaffer v. Weast*, U.S., 126 S. Ct., 528 (2005) the Supreme Court held that the party seeking relief has the burden of persuasion in administrative proceedings in cases under the Individuals with Disabilities Education Act (IDEA). In this case, this decision effectively put the burden on the parents to prove that the SD's evaluation was inappropriate and that she would be entitled to a second examination at public expense.

The SD was concerned about Student's academic progress since third grade. A regular education team screened the student and arranged for remedial instruction in Math and Reading. Since then she has been receiving additional remedial support in the classroom (FF-7). Despite the regular education remedial support, the student was displaying poor or marginal performance in the classroom (FF-9). The SD therefore recommended an evaluation. In January of 2005 the SD sent a permission to evaluate form to both parents. The father agreed that an examination was necessary and consented to it. The mother had serious reservations and did not consent to it (FF-10). At the request of the father another permission to evaluate form was sent and was signed by him on December 22, 2005 (FF-10). The initial evaluation was completed on March, 2006. The examination included an assessment of cognitive, achievement, visual motor, and social and emotional functioning. Environmental issues were considered in the examination. Classroom observations were taken and classroom and school data were considered (FF-12, FF-14). The teacher and parents were interviewed. I find that sufficient tests and data were taken to determine whether the child has a disability under 34 CFR §300.7 and under §300.531-300.536. The evaluation was sufficiently comprehensive to identify the child's needs and related services. The examination meets the legal requirements and is appropriate.

Under §300.502(b) (2), if a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing or show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. In §300.502(b) (3), if the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense.

Although the parent may disagree with the outcome of the examination, that does not necessarily make the examination inappropriate. The parent is free to obtain her own independent educational evaluation and the district must consider it. The hearing officer does recognize the mother's concern about labeling and her confusion about why Student was not in need of specially designed instruction while attending school in [the other School District]³. The mother should note that this hearing was convened for the purpose of determining whether the SD examination was appropriate and is not a decision on program or placement.

From the preponderance of the evidence presented at this hearing, I find the examination to be appropriate and deny the mother's request that an independent educational examination at public expense be ordered.

V.. Accordingly the following is made:

ORDER

1. The request that the School District be required to provide an independent educational examination at public expense is denied.

Joseph G. Rosenfeld

Joseph G. Rosenfeld, Ph.D.
Hearing Officer

³ While P-1 is a class review of Student from [the other School District] teacher, she was in that class for a maximum of three weeks (NT 162-163) in the beginning of fifth grade before fully attending schools in SD. I therefore have given more weight to the testimony of the SD staff that both taught her and were involved in the comprehensive examination.