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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

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6477/05-06 KE

File Number

K.S.

Child's Name

Xx/xx/xx

Date of Birth

August 29, 2006

Date of Hearing

Closed

Type of Hearing

**For the Student:**

Parents

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Date of Hearing:

August 29, 2006

Date of Receipt of Transcript:

September 5, 2006

Date of Decision:

September 20, 2006

Hearing Officer:

Daniel J. Myers

## **BACKGROUND**

Student is a xx year old, 11<sup>th</sup> grade resident of the School District whose alleged anxiety, depression and/or school-related panic attacks prompted his psychiatrist to recommend four months of homebound instruction. After placing Student on homebound instruction, the School District then pressed truancy charges. Eventually, the School District issued an evaluation report concluding that Student does not have a disability and is not in need of either specially designed instruction or accommodations. Student contests the School District's evaluation report and seeks an independent educational evaluation. For the reasons described below, I conclude that the School District's evaluation report is not sufficiently thorough and, therefore, is not appropriate. Accordingly, I will order that the School District provide Student with an independent educational evaluation at public expense.

## **ISSUE**

Whether Student is entitled to an independent educational evaluation?

## **FINDINGS OF FACT**

1. Student, whose date of birth is xx/xx/xx is an xx year old, 11<sup>th</sup> grade resident of the School District. (N.T. 25)<sup>1</sup>
2. Student is personable, respectful, has no problems interacting with peers or siblings, and he usually does his homework. He has worked part-time jobs during school, including two-part time jobs throughout this school year. He and his brothers have developed a belief over the years that they are entitled to, and indeed will, take up to 20-25 sick days from school each year. (N.T. 62-63, 65, 68, 122-123)
3. In November 2005, Student's parents informed the high school assistant principal that Student was throwing up, not sleeping, did not want to go to school, and had threatened suicide. (N.T. 26, 32, 61) The School nurse called Student's parents once or twice per week to pick up Student because he was sick at school. (N.T. 45)
4. In a February 10, 2006, discussion with the high school nurse, Student's mother stated that Student was having problems with anxiety/depression and would be seeing a psychiatrist, Dr. P. (P 8; N.T. 44-45)
5. On February 13, 2006, the high school assistant principal informed Student's parents that Student had already missed 20 days of school and that no credit can be awarded when a student exceeds 25 days of absence without extenuating circumstances. The high school principal asked for a conference to review Student's attendance record. (N.T. 28, 78; P 1)

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<sup>1</sup> References to "N.T." are to the transcript of the August 29, 2006 hearing session. References to "H.O.," "P," and "SD" are to the exhibits of the Hearing Officer, Parent, and School District, respectively.

6. At their conference, the high school principal informed Student's parents of the procedures for homebound instruction, and he also informed Student's parents that they could enroll Student in a charter school. (N.T. 29; P2)
7. On February 15, 2006, Student saw a psychiatrist, Dr. P, who then recommended homebound tutoring for one month. Student also began receiving monthly treatment with a therapist associated with the psychiatrist. (P3; SD 5; N.T. 31, 59, 65-67, 72)
8. Sometime in March 2006, the School District initiated truancy proceedings for reasons that were not explained at the special education due process hearing. (N.T. 35, 53-55)
9. On March 8, 2006, Student's therapist wrote to the magistrate in the truancy proceedings, stating that Student's symptoms included nervousness, tenseness, nausea and some heart palpitations. Student's treatment plan was to provide individual therapy, teach some relaxation techniques, and consider medication if psychological intervention did not work in a timely manner. (P 4)
10. On March 29, 2006, Student's psychiatrist sent another letter to the School District, recommending continued homebound instruction for the next three months, with continued individual and family therapy. (P 6; SD 6)
11. On April 9, 2006, Student's parents requested a due process hearing. I scheduled a due process hearing for June 1, 2006. (HO 2)
12. On April 21, 2006, the School District requested parental permission to evaluate Student because "Child on home bound instruction for emotional reasons, need to determine need for specially designed instruction." Student's parents did not sign the request for permission. (P 7; N.T. 40)
13. In May 2006, Student stopped seeing his therapist. (N.T. 68) Student continued to receive homebound instruction from February 2006 through the end of the school year. (N.T. 37) On May 24, 2006, I granted Student's request for a continuance of the June 1 hearing to accommodate the schedules of Student's parents and lawyer. (HO 2)
14. On May 29, 2006 the School District again requested parental permission to evaluate Student. (N.T. 44; SD 13) Student's parents responded by stating that any evaluation must go through their attorney. (SD 14)
15. On July 5, 2006, the School District issued its third request for permission to evaluate Student. (P 9; SD 15) On July 17, 2006, Student's parents signed the request for permission to evaluate. (SD 15; N.T. 57-58)
16. On July 10, 2006, I granted the parties' joint request for continuance to permit evaluation of Student. I rescheduled the hearing for August 28 and 29, 2006. (HO 2)

17. On August 17, 2006, the School District issued an evaluation report (ER.) (P 11; SD 17) The school psychologist has been a certified school psychologist for four years and she has worked for the school district for two months. (N.T. 76)
- a. A Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) indicated that Student's nonverbal reasoning abilities are much better developed than his verbal reasoning. (P11, p.1; SD 17, p.1) His perceptual reasoning index standard score is 117, in the high average range; while his verbal comprehension index is 91, in the average range.; working memory index is 94, average range; and processing speed index is 85, in the low average range. Student's full scale IQ standard score of 97 is in the average range. (P11, p.3; SD 17, p.3)
  - b. Wechsler Individual Achievement Test, Second Edition (WIAT-II) results were high average for math, and average to high average in reading and writing. (N.T. 112)
18. The ER included interviews with teacher, including homebound instructors, indicating that Student is an average student, quiet, personable, respectful, and he usually did his homework. No teacher reports suggested anxiety or depression in Student. (N.T. 108-110)
- a. Parent interviews indicated that Student had developed anxiety about coming to school and that his academic performance had been affected. (SD 17; N.T. 108) Parental hypotheses regarding Student's reluctance to attend school included reactions to a recent break-up with his girlfriend and/or [a family member's] recent death. (N.T. 61, 69, 114) Student's parents never told the school psychologist about Student's suicidal ideations. (N.T. 121)
  - b. Student told the school psychologist that he didn't want to go to school, that he was having panic attacks, and that he preferred one-on-one instruction. (N.T. 110) Student reported to the school psychologist that he would usually make up his mind in two weeks about whether or not he liked a teacher and that determined whether or not he would do his schoolwork for that teacher's subject. (N.T. 116)
  - c. The school psychologist did not attempt to call Student's psychiatrist, although she was aware of the psychiatrist's recommendation for homebound instruction. The school psychologist tried unsuccessfully to speak to Student's psychologist twice. (N.T. 79, 81-82, 85, 95, 114) The school psychologist was unaware of psychiatric diagnoses of anxiety and depression. (N.T. 79, 92)
19. The ER also included Behavior Assessment System for Children (BASC) rating forms from Student's teachers, parents and himself.
- a. The BASC is always the school psychologist's first behavioral assessment, and with follow-up assessments if they appear necessary. (N.T. 119) While there are assessments to rule out school phobia, they were not used in this ER, apparently because the school psychologist did not consider them necessary. (N.T. 91)
  - b. Teacher and parent responses to the BASC did not indicate significant concerns.
  - c. Student's responses indicated concerns in the areas of sensation seeking, anxiety, attitude towards school, and school problems.

- d. Believing that Student's self-reports of anxiety fall within the domain of a mental health professional rather than an educator, the school psychologist did not conduct any additional emotional or behavioral assessments. (N.T. 120-121)
20. Although the ER noted that Student's attendance had become a serious issue, the school psychologist did not check the school nurse's records, assuming that Student was simply implementing his perceived "right" to take up to 20-25 sick days from school each year. (N.T. 122-123; P 11, p.5; SD 17, p.5)
21. The ER concludes that Student does not have a disability, or a need for specially designed instruction, or any need for Section 504 accommodations. (N.T. 92-93)
- a. The school psychologist does not believe there was a legitimate basis for homebound instruction. (N.T. 125)
  - b. The school psychologist was unaware of any diagnoses of depression and did not believe that Student had a need for mental health services. (N.T. 92, 10, 128)
  - c. The school psychologist did not believe Student's reports of panic attacks because none of her interviews described symptoms of panic attacks. (N.T. 110, 126)
  - d. On the basis of BASC indicators of anxiety, the ER recommends that Student be encouraged to meet with the school social worker to address concerns that may be hindering his academic progress. (N.T. 101)
22. The school psychologist was unaware that Student's parents had told the high school principal, assistant principal, and school nurse about any suicidal threats or anxiety and depression symptoms. (N.T. 77-78) At the due process hearing, the school psychologist testified that she would strongly encourage further communication with a mental health specialist regarding Student's suicidal ideation. (N.T. 129)
23. Student's parents testified at the due process hearing that they answered the BASC questions on the basis of Student's behaviors in August 2006, six months after he'd last attended school. They testified that their BASC responses would have been drastically different if they had been reporting on Student's behaviors before February 2006. (N.T. 47-48, 117) The school psychologist testified that it did not occur to her to ask Student's parents to report on Student's behaviors before February 2006. (N.T. 90)
24. A due process hearing was conducted in this matter on August 29, 2006.
- a. Parent exhibits P1-3, 5-9, P 11 were admitted without objection; P 4 was admitted over objection; and P 10 was withdrawn. (N.T. 132-133)
  - b. School District exhibits SD 5-6, 13-15 were admitted without objection; SD 17 was admitted into the record over parental objection; and SD 1-4, 7-12, SD 16 were withdrawn. (N.T. 15, 135)

## **DISCUSSION**

Student's parents seek an independent educational evaluation (IEE) at public expense pursuant to the Individual with Disabilities Education Act (IDEA). See 20 U.S.C. §1415(b) (1); 34 C. F. R. §300.502 They have the right to an IEE if they disagree with the School District's

August 17, 2006 ER and if the School District cannot “show that its evaluation is appropriate.” 34 CFR §300.502(b)(1), (b)(2) If I determine that the School District’s August 17, 2006 ER is appropriate, Student’s parents still have the right to an IEE, but not at public expense. 34 CFR §300.502(b)(3)

The burden of persuasion in this case is upon the School District to show that its evaluation is appropriate. In Re the Educational Assignment of D.M. and the St. Clair Area School District, Special Education Opinion No. 1382 (2003) For the School District’s August 17, 2006 ER to be appropriate, it must comply with federal regulations at 34 CFR §§300.532 and 300.533. 34 CFR §§300.531 Under these sections, the School District must “use a variety of assessment tools and strategies” to gather relevant information about the child. It must use technically sound instruments capable of assessing the relative contribution of cognitive, behavioral, and developmental factors. 34 CFR §300.532 This includes instruments sufficient to identify any emotional needs based on observable behavioral characteristics. See, In Re the Educational Assignment of BB and the Council Rock School District, Special Education Opinion No. 1709 (2006); In Re the Educational Assignment of KS and the Abington School District, Special Education Opinion No. 1760 (2006)

In this case, the School District’s ER properly included the BASC rating scales, as well as parent, teacher and student interviews, among its variety of assessment tools and strategies. The School District’s ER, however, is not sufficiently thorough in its investigation of Student’s potential emotional needs as they relate to his education.

For example, at the due process hearing, the school psychologist testified that she was unaware of any suicidal threats or anxiety and depression symptoms. (N.T. 77-78) Had the school psychologist checked the school nurse’s records, however, she might have seen P7, which was the school nurse’s note of a February 10, 2006, discussion with Student’s mother in which the mother stated that Student was having problems with anxiety/depression and would be seeing a psychiatrist. (P 8; N.T. 44-45) In addition, Student’s mother testified at the due process hearing that she had informed the high school principal that Student had threatened suicide, (N.T. 26) and the School District offered no contradicting evidence at the hearing. Had the school psychologist spoken to either the high school principal or assistant principal, this alleged suicide threat might have been discovered.

It also appears that the thoroughness of the School District’s evaluation may have been influenced by certain assumptions of the school psychologist. For example, although the ER noted that Student’s attendance had become a serious issue, the school psychologist assumed that Student was simply implementing his perceived “right” to take up to 20-25 sick days from school each year, and she did not check the school nurse’s records. (N.T. 122-123; P 11, p.5; SD 17, p.5) In addition, the school psychologist did not believe Student’s reports of panic attacks because none of her interviews described symptoms of panic attacks. (N.T. 110, 126)

Had the school psychologist not made these assumptions, however, she might have contacted the school nurse and discovered the nurse’s February 10, 2006 discussion with Student’s mother in which the mother stated that Student was having problems with anxiety/depression and would be seeing a psychiatrist. (P8) The school psychologist might also

have discovered that (uncontradicted at hearing) the school nurse had been calling Student's parents once or twice per week to pick up Student because he was sick at school. (P8; N.T. 45) Furthermore, because the School District had already pressed truancy charges at the time of the ER, it would have been reasonable for the school psychologist to have a conversation with the high school principal and/or assistant principal, which would have led to (also uncontradicted) information regarding Student's alleged suicide threat as well as the March 2006 letter from Student's therapist to the magistrate in the truancy proceedings, describing panic attack symptoms such as nervousness, tenseness, nausea and some heart palpitations. (P 4)

There are many questions in this case. I do not understand why the School District initiated truancy charges after placing Student on homebound instruction. (N.T. 35, 53-55) I do not understand why the School District allowed Student to remain on homebound instruction for an entire semester of school without either insisting upon a more immediate ER or interviewing Student's psychiatrist/therapist as part of the ER. I do not know whether to believe allegations of suicidal threats and panic attacks in a case where Student apparently insists upon taking his annual 20-25 sick days from school each year while simultaneously holding down two part-time jobs.

I need not answer these questions, however. I simply must analyze the record created by the parties to determine whether or not the School District has met its burden of persuasion to show that its evaluation is appropriate. In Re the Educational Assignment of D.M. and the St. Clair Area School District, Special Education Opinion No. 1382 (2003) I find that the School District has not met its burden of persuasion in this case.

A failure to evaluate appropriately may, ultimately, be compensable, but only after a student has qualified under the protections of federal and Pennsylvania special education laws by being identified as a child with a disability based on a full evaluation. In Re the Educational Assignment of A.C. and the Lakeland Area School District, Special Education Opinion No. 1622 (2005) Where Student has not been identified this case, no award can be supported for any alleged deprivations related to the student's education. Id. The appropriate remedy in this case is an IEE at public expense.

## CONCLUSION

Student is a xx year old, 11<sup>th</sup> grade resident of the School District whose alleged anxiety, depression and/or school-related panic attacks prompted his psychiatrist to recommend four months of homebound instruction. After placing Student on homebound instruction, the School District then pressed truancy charges. Eventually, the School District issued an evaluation report concluding that Student does not have a disability and is not in need of either specially designed instruction or accommodations. Student contests the School District's evaluation report and seeks an independent educational evaluation. For the reasons described above, I conclude that the School District's evaluation report is not sufficiently thorough and, therefore, is not appropriate. Accordingly, I will order that the School District provide Student with an independent educational evaluation at public expense.

**ORDER**

For the reasons described above, I ORDER that:

- The School District's August 17, 2006 evaluation report is not appropriate;
- The School District shall provide to Student an independent educational evaluation at public expense.

*Daniel J. Myers*

Hearing Officer

September 17, 2006

Re: Due Process Hearing  
6477/05-06 KE.