

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: L.S.

Date of Birth: [redacted]

Dates of Hearing:

July 16, 2012

August 7, 2012

CLOSED HEARING

ODR Case #3219-1112AS

Parties to the Hearing:

Parents

Ambridge Area School District
901 Duss Avenue
Ambridge, PA 15003

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Aimee Zundel, Esq.
445 Fort Pitt Boulevard
Suite 503
Pittsburgh, PA 15219

August 7, 2012

August 21, 2012

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Name redacted] (“student”) is [an elementary school-aged] student residing in the Ambridge Area School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)¹ for specially designed instruction/related services for a speech and language impairment. After evaluating the student to determine the student’s eligibility for additional special education services, the District determined that the student did not qualify as a student with a disability. Parents disputed this filing and requested an independent educational evaluation (“IEE”) at public expense. The District requested a special education due process hearing to defend the results of its evaluation.

[Redacted.]

ISSUES

Must the District provide an IEE at public expense?

FINDINGS OF FACT

1. In the 2009-2010 school year, the student attended a pre-kindergarten program at the District. (School District Exhibit [“S”]-1; Notes of Testimony [“NT”] at 33, 49-53).

¹ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163.

2. In the 2010-2011 school year, the student's kindergarten year, the student was identified as a student with a speech/language impairment and began to receive support through an individualized education plan ("IEP") for issues related to articulation and verb tense errors. (S-1, S-2; NT at 34-35).
3. At the end of the kindergarten year, the student scored well below average on curriculum-based reading assessments. By the spring of the kindergarten year, the student scored 21 in letter naming fluency (average was expected to be 37-60), 11 in letter sound fluency (26-47), 9 in nonsense word fluency (24-48), and 16 in number identification (49-56). (S-8 at page 10).
4. In the 2011-2012 school year, the student's 1st grade year, the student continued to receive speech and language services through an IEP. (S-3, S-4).
5. In 1st grade, the student received Title I reading services. (NT at 67-68, 107, 134-135).
6. In October 2011, the student also began to receive services under a Chapter 15 service agreement² for students with disabilities who do not require an IEP. (S-6; NT at 70-71).
7. In November 2011, a District child study team, consisting of various teachers including the student's classroom teacher, the building principal, the District's director of special education, and the student's mother, convened to discuss issues related to the student's reading ability and classroom attention issues. The child study team took no action regarding referral for a re-evaluation process. (NT at 38-41).
8. In January 2012, the student's Chapter 15 service agreement was revised. At that time, the parents formally requested a re-evaluation of the student, specifically as a student with a reading disability. (S-6; NT at 42, 70-71).
9. On April 15, 2012, the re-evaluation report ("RR") was issued by the District, and, on April 16, 2012, the RR was sent to the parents. (S-7, S-8).
10. In the RR, the student's mother reported difficulty with recall of sight words, difficulty with decoding, difficulty with number and letter recognition, and difficulty with phonics. (S-8 at page 5).

² 22 PA Code §§15.1-15.8.

11. On the Wechsler Intelligence Scale for Children (4th edition), the student's full-scale IQ scored at 96, within the average range. (S-8 at page 6).
12. On the Wechsler Individual Achievement Test (3rd edition) ("WIAT-III"), the student's scores were within the expected range, except for the following sub-tests: pseudoword decoding (79), oral reading fluency (82), and alphabet writing fluency (83). (S-8 at page 7).
13. On the Test of Word Reading Efficiency, the student scored at 87. (S-8 at page 9).
14. On the Gray Oral Reading Test (4th edition) ("GORT-4"), the student's oral reading quotient was 76. All sub-tests (fluency, rate, accuracy, and comprehension) scored in the below average or poor ranges. (S-8 at pages 9-10).
15. At the time the RR was completed, the student had scored well below average on a curriculum-based reading assessment and a missing number/sequencing assessment. By the winter of 1st grade, the student scored 4 in nonsense word fluency (average was expected to be 40-73) and 13 in missing number/sequencing (14-22). (S-8 at page 10; S-10).
16. The curriculum-based reading assessment had also included an oral reading component. In the fall administration, in the words of the RR, "(the student) was not able to read any of the words successfully in one minute". By the winter of 1st grade, the student scored zero in oral reading fluency (average was expected to be 19-68). (S-8 at page 10; S-10).
17. The RR found that the student continued to qualify for specially designed instruction and related services as a student with a speech/language impairment. The RR concluded that the student did not qualify as a student with a specific learning disability in reading. The RR recommended that the student continue to receive support for classroom attention issues through the student's Chapter 15 service agreement. (S-8, S-12).
18. The student's parents and classroom teacher disagreed with the conclusion regarding specific learning disabilities. (S-8).
19. At some point after the RR was completed, the District administered its curriculum-based assessment for the spring of 1st

grade. The student continued to score well below average in reading. By the spring of 1st grade, the student scored 13 in nonsense word fluency (average was expected to be 45-72), 12 in missing number/sequencing (17-25), and 9 in oral reading fluency (30-72). (S-10).

20. In mid-May, 2012, the District issued a notice of recommended educational placement (“NOREP”), reflecting an educational placement in accord with the recommendations of the RR. Parents rejected the NOREP and requested an IEE. (S-12).
21. The District notified parents that it was rejecting the parents’ request and was filing a due process complaint to defend the April 2012 RR. (S-14).
22. On May 31, 2012, the District filed its due process complaint.

DISCUSSION AND CONCLUSIONS OF LAW

Where a parent disagrees with an evaluation by a school district, parents may request an IEE at public expense.³ When that happens the school district must do one of two things, either grant the parents’ request and proceed with an IEE at public expense or file a special education due process complaint to defend the appropriateness of its evaluation.⁴

Here, the District’s April 2012 RR is appropriate to the extent that it was comprehensive, including input from parents and teachers, standardized measures of cognitive ability and achievement, observations of the student, and a review of standardized curriculum-based

³ 34 C.F.R. §300.502.

⁴ 34 C.F.R. §300.502(b)(1-2).

assessments. (FF 9, 10, 11, 12, 13, 14, 15, 16, 17, 18). And the data from the cognitive and achievement testing does not reveal a hugely discrepant variation between the student's IQ and academic achievement. (FF 12).

But the record as a whole, and indeed the contents of the RR itself, point to consistent patterns that reveal that the student has failed to master foundational emerging reading skills. First, the student shows significant weakness in decoding, revealed in the significantly discrepant score on the pseudoword decoding subtest of the WIAT-III. (FF 12). And across kindergarten and 1st grade, the student scored well below average on the District's curriculum-based measure of nonsense word fluency. (FF 3, 15, 19).⁵ Both of these comport with mother's report that the student exhibits difficulty with sight words, decoding, letter recognition, and phonics. (FF 10). Second, the student shows significant weakness in reading fluency, revealed in the significantly discrepant quotient score on the GORT-4. (FF 14). And, again, across two school years, to the extent that the District measured letter-naming, letter-sound, and nonsense-word fluency, the student scored well below average. (FF 3, 15, 19). The student's lack of ability in fluent reading skills, even by the winter of 1st grade, interfered entirely with the student's ability either to engage in the curriculum-based measure of oral reading fluency or register a

⁵ While the curriculum-based measures addressed fluency as well, the "nonsense" component in their construction offers a window into the student's ability to decode, especially in light of the pseudoword decoding [on the] WIAT-III. (FF 12).

meaningful score. (FF 16). Third and finally, no one was in a better position to gauge the student's foundational emerging reading skills by the end of 1st grade than the student's 1st grade teacher. While she did not testify, when the multi-disciplinary team considered the results of the RR, the teacher explicitly disagreed with the conclusion that the student did not have a specific learning disability in reading. (FF 18).

Therefore, the District's report, while it has value and is not entirely flawed, reveals significant internal inconsistencies. These inconsistencies support a finding that reasonably cast into doubt the conclusions of the RR regarding whether the student has one or more specific learning disabilities in reading and support parents' claim for an IEE.⁶

CONCLUSION

The District must provide an IEE of the student at public expense.

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⁶ Nothing in this decision should be read to support the notion that the April 2012 RR is wholly inappropriate such that the multi-disciplinary team could not reconvene to reconsider the entirety of all data presented in that report.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Ambridge Area School District must provide an independent educational evaluation for the student at public expense. The parents may select an independent evaluator of their choosing and are not bound to use an evaluator from a list provided by the school district.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

August 21, 2012