

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

ODR No. 01125-0910AS

Child's Name: M.Z.

Date of Birth: [redacted]

Dates of Hearing: 8/24/10, 9/13/10

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent Attorney

Parent(s)

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School District

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Date of Reinstatement/Decision:

January 1, 2011

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

[Student, a teenaged] (Student), entered 9th grade in a Bethlehem Area School District high school at the beginning of the 2010/2011 school year. Student receives special education speech/language services to address pragmatic language and social skills deficits arising from diagnoses of Pervasive Developmental Disorder-Not Otherwise Specified (PDD/NOS) and Central Auditory Processing Disorder (CAPD). Student also receives gifted education services in accordance with Pennsylvania law.

After a comprehensive reevaluation in the middle of 8th grade, including cognitive and achievement testing, curriculum-based assessments, classroom observations, input from Parent and Student's 8th grade teachers, the District concluded that Student no longer needs specially designed instruction and proposes to terminate IDEA eligibility. The District further proposes a §504 plan for continuing classroom accommodations to address the effects of Student's CAPD. Parent requested an IEE due to alleged inadequacies in the District's evaluation that led to the non-eligibility determination, and the District filed a due process complaint to support its denial of Parent's IEE request. Although Parent was willing to withdraw the IEE request, the District wanted to proceed with its complaint because Parent still expressed disagreement with the reevaluation results.

Since the family spent the summer out of the country, the due process hearing was conducted in two sessions in late August and mid-September. After the evidentiary record was completed, the case was provisionally closed and the decision held in abeyance at the joint request of the parties while they attempted to reach a global settlement of several ongoing disputes. When that was unsuccessful, the parties requested reinstatement by submitting written

closing arguments to summarize their respective positions, as directed in the provisional closing order.

ISSUES

1. Is the reevaluation of [Student] that was completed by the School District in 2010 an appropriate basis for determining whether [Student] is currently eligible for IDEA special education services?
2. If not, should the School District be required to fund an independent educational evaluation to supplement and appropriately complete the School District's evaluation?

FINDINGS OF FACT

1. [Student] (Student) is a [teenaged] child, born [redacted]. [Student] is a resident of the School District and at all times relevant to the issues in dispute, has been eligible for special education services. (Stipulation, N.T. pp. 22—24)
2. Student has a current diagnosis of PDD-NOS, an autism spectrum disorder, in accordance with Federal and State Standards, as well as Central Auditory Processing Disorder (CAPD). Student is also identified as a Gifted Student in accordance with Pennsylvania standards. 34 C.F.R. §300.8(a)(1), (c)(1)(i); 22 Pa. Code §14.102 (2)(ii), §16.1. (Stipulation, N.T. p. 23)
3. Student's special education services are directed toward improving pragmatic language skills and monitoring the CAPD. Academic instruction is delivered entirely in regular education classes, but Student receives itinerant speech/language services, specifically, 30 minutes/week of pull-out speech therapy to work on the pragmatic language goals in Student's IEP. (Stipulation, N.T. p. 23, 377; S-3, p. 8)
4. Student was first diagnosed with CAPD and a speech/language impairment in pre-school, and has received speech/language and occupational therapy services, since that time. Student's difficulties with social behaviors were attributed to the effects of the CAPD and pragmatic language deficits. (N.T. p. 435; S-3, p. 1)
5. As required by the IDEA statute, a triennial reevaluation was conducted of Student early in 2010, approximately mid-way through Student's 8th grade year. The school psychologist contracted by the District to conduct the evaluation issued a reevaluation report (RR) on March 21, 2010 concluding that Student no longer has an educational need for specially designed instruction to overcome the effects of [Student's] disabilities. (N.T. pp. 69, 70, 150, 151, 220; S-3, pp. 21, 23)
6. Based upon the evaluation results, the District's evaluator recommended terminating Student's IDEA eligibility, but continuing to provide the same instructional strategies in

- Student's current IEP via a §504 service plan to accommodate Student's CAPD. (N.T. pp. 105, 150; S-3, p. 23)
7. In reaching his conclusions that Student is no longer IDEA eligible, the evaluator relied heavily on Student's successful social functioning in the classroom and in other school settings, including Student's participation in several extracurricular activities,. (N.T. pp. 139—142, 146, 216, 275, 276—281)
 8. The speech/language portion of the reevaluation was based upon data compiled by Student's speech therapist from curriculum based assessments, progress monitoring on Student's IEP goals, her observations of Student in various school settings and comments provided by Student's teachers based upon their observations of Student in their classes. (N.T. pp. 346, 374, 378, 380, 382, 383; S-3, pp. 8, 9)
 9. Student was able to perform well on curriculum based assessments conducted during speech therapy. Within the speech therapy setting, Student achieved all speech/language goals with 90—95% accuracy. (N.T. pp. 137, 345—377, 380; S-3, pp. 8—10)
 10. The most important factor in assessing Student's acquisition of pragmatic language skills is how well Student is able to apply those skills with peers on a daily basis. Determining whether Student is able to generalize and apply the pragmatic language skills learned and practiced in therapy to real life situations requires input from teachers and others with the opportunity to observe Student in various settings that require using appropriate language and social skills. (N.T. p. 137; S-3, pp. 8—10)
 11. According to the informal data the speech therapist collected from teachers, which was anecdotal and not specifically directed toward reporting on Student's IEP goals, Student continued to have difficulty demonstrating appropriate social response skills in peer interactions, in monitoring and adjusting to a conversational partner's level of interest, and in identifying [Student's] feelings and using appropriate words to express them to self-advocate and minimize peer conflicts. (N.T. pp. 382—386; S-3, p. 9)
 12. The only classroom setting in which Student demonstrated some difficulty with regulating [Student's] attention and focusing on completing [Student's] own work was the gifted seminar, where students worked on a variety of projects at the same time, either individually or in groups, including small group instruction. (N.T. pp. 98—100, 371; S-3, p. 10)
 13. Although Student was very successful academically in 8th grade, and was noted to have improved dramatically between 6th and 8th grades in awareness of appropriate social behavior, Student was described by some teachers as exhibiting immature behavior, and annoying peers with comments on others' wrong answers and with unsuccessful attempts at humor. (N.T. pp. 61, 62, 304, 347; S-3, pp. 9, 10)

DISCUSSION AND CONCLUSIONS OF LAW

The District contends that Student is so extraordinarily successful, academically, that there is no longer a need for specially designed instruction and that additional testing will not provide information necessary to assure Student's continuing educational progress. (N.T. p. 31) Because the District's argument concerning Student's success is based upon Student's functioning in middle school, however, there is an open question concerning how much, if at all, Student's CAPD and pragmatic language deficits affect Student's academic success and general school performance now that [Student] has entered a new educational level. According to the March 2010 RR, Student was very successful in classes where students were working together on the same single topic and in a whole group instructional setting. (*See* S-3, pp. 10, 11) Student exhibited more difficulties with attention and focus in the gifted seminar class, where students worked individually or in small groups on one of several projects or participated in small group instruction. (FF 12) The District acknowledged that Student's issues in the gifted seminar could be related to CAPD, but added that even if that is the case, it still doesn't mean Student needs special education. (N.T. p. 100) Although that is certainly true as far as it goes, the question at this point is whether the RR sufficiently takes into account the possibility that Student's CAPD and continuing pragmatic language skill deficits are likely to interfere with [Student's] ability to achieve academic success commensurate with [Student's] high cognitive ability. Moreover, whether the effects of a disability are addressed via an IEP or a §504 service plan, the underlying evaluation must provide an appropriate basis to determine the type and level of service an eligible or protected student needs. Here, the evaluation is not so much flawed as incomplete and partially outdated as a basis for determining Student's needs as [Student] transitions to the next educational level in terms of how previously identified areas of concern may affect Student to a greater degree in high school than at the end of middle school. Despite

Student's high level of success in middle school, [Student] still manifested skill deficits in pragmatic language/social skills in the "real time" setting the District's evaluator rightfully considers most important. (N.T. p.137) The first question is whether those deficits will remain minor issues or will become magnified in the different and larger social milieu of high school, where the age and maturity range of students is wider than in middle school. One of the middle school teachers who provided input into the evaluation noted that Student "acts like a typical 'middle school' child." (S-3, p. 11) At this point, however, Student needs to act like a typical high school freshman. To determine whether [Student] does—and what should be done if [Student] doesn't—the RR needs to be updated with current classroom observations and input from teachers.

The next and most important question is whether the still unresolved effects of Student's disabilities will interfere with opportunities for Student to continue to achieve at the high level that should reasonably be expected based upon [Student's] ability and past academic success. For example, the evaluator suggested that Student be given the opportunity to test out of Algebra II. (S-3, p. 23) If given that opportunity, and if the test results suggest that Student is academically ready for a higher level math class, will Student's pragmatic language issues create problems with respect to Student's participation in a class likely consisting of much older students? The District's evaluator admitted that predicting whether Student would need additional support under such circumstances was impossible based on Student's classroom functioning in the middle of 8th grade. (N.T. pp. 141, 142) That sensible testimony supports the conclusion that in order to confidently use the evaluation for current programming, it must be updated with current classroom observations and input from high school teachers. Similarly, the effects, if any, of Student's CAPD on [Student's] ability to attend to instruction and converse with peers in such venues as the high school cafeteria, between classes or in other areas of the

school that may be noisier than Student experienced in middle school requires additional observation and assessment.

Just as it is imprudent to rely on the 2010 evaluation as a basis for conclusively determining that Student no longer needs special education services without updated classroom observations and teacher input, there is no basis for determining that additional testing, such as an audiology assessment or additional formal behavior assessments are presently necessary. If Student is adjusting well to the high school setting as reflected by academic success at the same level as at the end of middle school, and if an updated formal observation and input from teachers raise no concerns about Student's functioning in [Student's] current educational setting, there will be no reason to conduct additional formal assessments. Moreover, if new data suggests the need for additional assessments, there is no reason that the District cannot complete them. Parent's challenge to the evaluation centered on completeness of the evaluative measures, and whether the conclusion that Student is no longer IDEA eligible is valid in light of the absence of additional data that Parent contends the evaluator should have compiled. Since Parent did not really take issue with the accuracy of the test results that the District obtained, there would be no reasonable basis for requiring the District to fund an entirely new independent evaluation if further testing is indicated based on Student's current school performance and adjustment.

The purpose of an evaluation is to assure that there is sufficient information to determine whether Student's disabilities interfere with [Student's] ability to participate and advance in the regular education curriculum at a level commensurate with [Student's] high cognitive potential. If Student's social adjustment and academic achievement continue at the same level as a year ago, when the full reevaluation was conducted, then it is an appropriate basis for exiting Student from IDEA eligibility. On the other hand, if Student is struggling with social interactions or

appears to be having difficulty following instruction or has experienced a drop in academic achievement, then additional formal assessments may be warranted to determine both continued IDEA eligibility and whether adjustments need to be made to either IEP goals and SDI or to accommodations in a §504 plan, if Student is no longer IDEA eligible. Because it is impossible to reach a reasonable conclusion with respect to Student's social and academic functioning and success in high school, as well as whether [Student's] CAPD has a greater adverse effect on Student in the high school setting, the essential classroom observation and teacher input sections of the evaluation must be updated. Parent is also free to submit additional input, including information from her private evaluator. After the additional data is compiled and the March 2010 RR updated, the parties will be directed to meet to consider the evaluation results again.

CONCLUSION

Because the teacher observations of Student's classroom functioning were essential to the IDEA non-eligibility conclusion reached in the District's reevaluation report and because those observations were conducted during Student' final year in middle school, the District's evaluation must be updated with observations concerning Student's current functioning in high school. Until that occurs, the evaluation cannot be used as an appropriate basis for determining whether Student is currently IDEA eligible or should be exited from special education.

Similarly, until there is sufficient current information concerning Student's classroom functioning, it is impossible to determine whether additional assessments are required to further supplement the 2010 evaluation. Regardless, the nature of Parent's challenges to the appropriateness of the District's evaluation does not presently support an order requiring the District to fund an IEE if additional testing/assessments are required. Any additional testing that may be required can be conducted by the District.

ORDER

In accordance with the order entered on October 7, 2010, is hereby **ORDERED** that the dismissal of the above case is rescinded and the due process complaint is **REINSTATED** as of the date of this decision and order.

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to update the March 21, 2010 reevaluation report with formal classroom observations and input from Student's current teachers, as well as input from Parent, including a report and classroom observation of a private evaluator, should Parent wish to provide such information.

It is **FURTHER ORDERED** that Student's current IEP team shall meet to consider the updated evaluation report when completed in order to determine whether Student remains eligible for special education services under the IDEA statute.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

January 1, 2011