

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

Pennsylvania Special Education Hearing Officer

DECISION

Child's Name: MZ

Date of Birth: xx/xx/xxxx

Dates of Hearing:

February 24, 2009, March 5, 2009, April 1, 2009 & April 2, 2009

CLOSED HEARING

ODR Case # 9532-08-09-AS

Parties to the Hearing:

Mr. Richard Agretto
Bethlehem Area School District
1815 Main Street
Bethlehem, PA 18017

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Ms. Glenna Hazeltine
King, Spry, et. al.
One West Broad Street
Suite 700
Bethlehem, PA 18018

May 12, 2009

May 14, 2009

Jake McElligott, Esquire

INTRODUCTION

Student is a 13-year old student in 7th grade residing in the Bethlehem Area School District (“District”) who has been identified as a child with a disability under the federal¹ and Pennsylvania² special education laws. He is diagnosed with pervasive developmental delay-not otherwise specified and central auditory processing disorder (“CAPD”). Student also qualifies as [Redacted].

The District perceives the need to comprehensively re-evaluate Student . Parent has been unwilling to provide permission for such a re-evaluation. The District has filed for this due process hearing to seek permission to re-evaluate the student in terms of both special education and [Redacted] education.

For the reasons set forth below, I find in favor of the District.

PROCEDURAL HISTORY

This case has a complicated procedural history.

Shortly after the District filed its complaint at this file number seeking permission to re-evaluate, the parent filed a complaint under a

¹ Individuals with Disabilities in Education Improvement Act of 2004(“IDEIA”), implemented at 34 C.F.R. §§300.1-300.818. (It is the preference of this hearing officer to cite to the implementing federal regulations.)

² 22 PA Code §§14.101-14.163.

separate file number seeking compensatory education as the result of alleged deprivations of a free appropriate public education (“FAPE”) by the District involving the student’s 2006-2007 and 2007-2008 school years. The District filed a motion to consolidate the two cases, a motion which was granted by this hearing officer.

Testimony in this case is quite protracted. The parent is a non-native speaker of English. While somewhat proficient in English, she requested the services of an interpreter at the hearing, a request that the District honored. Parent had requested only partial interpretation of the proceedings, asking for clarifications or interpretation on an as-needed basis. This hearing officer determined that this would be ineffective, primarily because this hearing officer could not guess at when the parent might require interpretation or not, and circling back to words, phrases or testimony that was not understood would be confusing and problematic. Therefore, this hearing officer required that the parent speak in her native language, which was interpreted into English. All spoken English, whether by this hearing officer, any witness, or District counsel, was interpreted into the parent’s native language.

This interpretation arrangement, although ensuring parent’s understanding of the proceedings, extended the time for each witness’s testimony. As such, after four sessions, testimony had been taken only on the re-evaluation issue filed by the District at this file number.

It was the intention of the parties and this hearing officer to render an interim decision on the re-evaluation issue. Because this complaint requires a final decision and this case had been consolidated with parent's case at a separate complaint number, however, a final decision could not be rendered; in effect, the "interim" decision would have been a final decision in this matter, and the consolidation of the cases would not allow for that.

On May 12, 2009, the District filed a motion to "de-consolidate" the two cases. Parent, wishing to receive a final decision on the re-evaluation, did not object.

Thus, this final decision could be issued at 9532-08-09-AS.

ISSUES

Should the student be re-evaluated in terms of special education and [Redacted] programs?

FINDINGS OF FACT

1. The student's initial evaluation for special education services was completed in November 2001 while the student was in 1st grade. The student was found eligible for special education and related services as a student with pervasive developmental delay-not

2. [Redacted] (S-2; NT at 54, 81).
3. In March 2007, at the request of parent, Student was evaluated in the specific areas of comprehension of oral instructions; ability to stay on task; skills in handling emotional and relationship issues; progress toward speech and language goals; planning and organization skills; and the potential impact from ambient noise from the air conditioning/heating system in the classroom. (S-4; NT at 86-87).
4. In May 2007, the District proposed an individualized education plan ("IEP") that was rejected by parent. In August 2007, a due process decision found the IEP to be appropriate and ordered its implementation. Except for one minor change that resulted from the student moving to the middle school in the 2007-2008 school year, this IEP remains in effect. (S-5, S-6, S-7; NT at 93-98, 129).
5. [Redacted] (S-11, S-12).
6. [Redacted] (S-15).
7. [Redacted] (S-16; NT at 57).
8. In December 2008, via email, parent rescinded permission to re-evaluate to do most of the District's requested testing and further requested an independent educational evaluation ("IEE"). (S-17, S-18; NT at 59-62).

9. [Redacted] (S-17, S-18, S-19, S-20; NT at 59-62, 65-66).
10. Over the course of the spring, summer, and fall 2008, the parties had been discussing the Student's special education needs and his IEP. The parties were unable to make progress on agreeing to an IEP for Student , and parent raised concerns over PLEPs in the IEP. (NT at 139-141).
11. On December 16, 2008, the District issued a PTRE to address parent's concerns in terms of an evaluation related to Student's special education program. The District incorporated parent's requests into the PTRE. Parental permission was withheld for the re-evaluation. (S-23; NT at 68-72, 181-182).
12. On December 19, 2008, given the ongoing questions of parent, the disagreements over the PLEPs, and the parent's request for an IEE and/or specific testing of the student, the District amended its complaint to seek PTRE for both [Redacted] education and special education. (NT at 68-69).
13. On January 7, 2009, Student underwent an audiological consultation. An annual audiological consultation is required under the terms of his pendant IEP. (S-5, S-7, S-26; NT at 123-128).
14. The student has not been tested for cognitive ability for over seven years, since the November 2001 comprehensive evaluation in 1st grade. (NT at 143-144).

15. The District's school psychologist testified that the testing and assessments on the two PTREs are appropriate and necessary given the dispute between the parties and the length of time that has passed since Student's last comprehensive evaluation. (NT at 179-182).

DISCUSSION AND CONCLUSIONS OF LAW

When a parent withholds permission to re-evaluate a child with a disability under federal and Pennsylvania special education laws, a school district may seek an order through due process to conduct the re-evaluation.³ When a parent does not respond to a school district request for a re-evaluation, a school district may seek an order through due process to conduct the re-evaluation.⁴

The student—currently ending his 7th grade year—has not been comprehensively evaluated since 1st grade. (FF 1, 2, 14). Underlying much of the parent's disagreement with the District is a disagreement with the student's PLEPs in the student's IEP and [Redacted]. (FF 7, 8, 10, 11). The parties, long engaged in a contentious relationship over the student's IEP and [REDACTED] , are unable to reach a resolution on

³ 34 C.F.R. §300.300(c); 22 PA Code §14.102(a)(2)(xxiv).

⁴ 22 PA Code §§16.63(b).

these issues such that parent will provide permission to allow the District to perform its proposed re-evaluation. (FF 4, 5, 6, 7, 8, 9, 10, 11).

It is the opinion of this hearing officer that the student needs to be comprehensively re-evaluated and that, short of a due process order, the parties will be unable and/or unwilling to come to an accord as to the nature and scope of the re-evaluation.

Accordingly, an order will be issued to allow the District to perform a comprehensive re-evaluation.

CONCLUSION

The parties have not been able to come to a meeting of the minds over the need for, nature and scope of a re-evaluation of the student. Since the student, now in 7th grade, was last comprehensively evaluated in 1st grade, in November 2001, the student should undergo a comprehensive re-evaluation in order to update and inform his IEP and [REDACTED] planning.

•

ORDER

In accordance with the findings of fact and conclusions of law above, the Bethlehem Area School District may engage in comprehensive special education and [Redacted] re-evaluation processes under the

terms of the notices of permission to re-evaluate issued by the District on
October 28, 2008 and December 16, 2008.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

May 14, 2009