

*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

### FINAL DECISION AND ORDER

Student's Name: O.K.

Date of Birth: [redacted]

ODR No. 14916-1314AS

### CLOSED HEARING

Parties to the Hearing:

Parent[s]

Representative:

*Pro se*

Council Rock School District  
The Chancellor Center  
30 North Chancellor Street  
Newtown, PA 18940

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Dates of Hearing: 06/18/2014

Record Closed: 06/18/2014

Date of Decision: 07/18/2014

Hearing Officer: Brian Jason Ford

## Introduction

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* This matter concerns the educational rights of Student and the Student's parent[s], Parents. The Council Rock School District (District) requested this hearing after denying a parental request to fund an independent educational evaluation (IEE) for the Student. As discussed below, IDEA regulations required the District to request this hearing and prove the appropriateness of its own evaluation under these circumstances. See 34 C.F.R. § 300.502(b)(2)(1).

On June 16, 2014, the Student's Parent[s] called the undersigned Hearing Officer *ex parte* to announce that the Parent[s] would not participate in these proceedings. H-1. The Parent[s] sent an email the same date, also *ex parte*, stating their position that a reevaluation report (RR), described below, is inappropriate. H-2. These *ex parte* communications were disclosed to the District.

On June 18, 2014, this hearing convened without the Parent[s] in attendance.

For reasons discussed below, I find that the District's own evaluation was appropriate, and that the Parent[s] are not entitled to an IEE at the District's expense.

## Issues

1. Was the District's last reevaluation of the Student appropriate?
2. Is the Student entitled to an IEE at public expense?

## Findings of Fact

### Background Facts

1. The Student is [late teen-aged] at the time of this decision.
2. The 2011-12 school year was the Student's 11th grade year. During this school year, the Student began to participate in a vocational education program at a public, multi-district, vocational-technical school.
3. The vocational education program in question typically takes three school years to complete.
4. The 2012-13 school year was the Student's 12th grade year.
5. During the 2012-13 school year, the Student continued to participate in the vocational education program.
6. During both the 2011-12 and 2012-13 school year, the Student attended part of the school day at one of the District's high schools, and another part of the day at [the vocational education program].

7. During the 2012-13 school year, in addition to the vocational education program and instruction in one of the District's high schools, the Student also participated in an employment readiness program that featured supervision and assessment by vocational education employees at a job site. See S-8.
8. During the 2012-13 school year, the Student satisfied all of the District's graduation requirements, but did not complete the vocational education program (having completed only two of the expected three school years necessary to finish). See, e.g. S-12.
9. At the conclusion of the 2012-13 school year, the Student participated in the District's graduation ceremony, but did not graduate at that time. Instead, the District and Parents agreed that the Student would continue in the vocational education program during the 2013-14 school year and receive job coaching at a supervised worksite. This agreement is evidenced by a Notice of Recommended Educational Placement (NOREP) dated June 11, 2013. S-4.
10. During the 2013-14 school year, the Student attends a half-day program, continuing the vocational education program.
11. The vocational education program culminates with students taking a test to obtain industry-recognized certification from a private company. At the time of this decision, the Student has taken the necessary tests and has received the industry certifications. S-5.<sup>1</sup>
12. The Student applied for admission to a community college and, on March 27, 2014, was offered admission there, pending submission of a portfolio. S-7. Other documents strongly suggest that the Student has a portfolio to submit. See S-6.

### **The District's Last Evaluation**

13. The District's last RR is dated December 5, 2013. S-1.
14. Despite the date printed on the RR, the date of that document is not entirely clear. The RR includes parental input dated February 18, 2014. S-1 at 3. In context, I find that the RR was drafted on December 5, 2013 and subsequently revised to include additional parental input.
15. The RR includes a history of prior evaluations and the Student's placements. S-1 at 1-2.
16. The RR includes significant parental input, including a copy of an email dated November 11, 2013, that the Parents sent to the District for the purpose of providing

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<sup>1</sup> Specifically, on November 19, 2013, the Student obtained certification as [redacted]. On November 20, 2013 the Student obtained certification as [redacted]. S-5.

input for the RR. The RR also contains the subsequently provided parental input described above. S-1 at 2-3.

17. The parental input in the RR includes general information about the Student's various medical diagnoses, as well as concerns about the Student's ability to perform well in a work setting. *Id.*
18. The RR summarizes prior aptitude and achievement testing; specifically a Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) and a Woodcock-Johnson Test of Achievement, Third Edition (WJ-III ACH) from October of 2007, and a Woodcock Reading Mastery Test from October of 2010. S-1 at 4-5. These tests are standardized and normative. A report from 2007 and another RR from 2010 indicate that these tests were conducted under standard conditions. S-10, S-11.
19. The RR summarizes an Employment Readiness Questionnaire that the Student completed on November 14, 2013. S-1 at 5.
20. The RR reports the Student's grades, which were all passing. Nearly all grades were in the B range with occasional Cs and one D in one marking period in English (the Student received Bs and an A in English that same year). Comments from teachers that originally appeared on the Student's report card were also reported. S-1 at 5.
21. The RR reports the Student's most current PSSA scores. S-1 at 5.
22. The RR includes information provided by the Student's supervisor at the supervised worksite. S-1 at 5-6.
23. The RR includes observations by teachers from the District and the vocational education program. S-1 at 6-7.
24. The RR concludes that the Student has a disability, but no longer needs specially designed instruction. S-1 at 9.
25. The reported testing, grades, teacher input, teacher comments, and (especially) information from the supervised worksite, when taken together, and in the context of the Student's satisfaction of the District's standard graduation criteria, support the RR's ultimate conclusion. S-1.
26. After the RR was drafted, the District issued a NOREP to exit the Student from special education. S-2. The exact date of the NOREP is not apparent from the document itself. The NOREP, like the RR, is dated December 5, 2013, but was signed electronically by the District on June 5, 2013. In context, I find that the date on the electronic signature reflects only the District's mistake in not updating the prior NOREP. I find that the NOREP was drafted on December 5, 2013.
27. If the Parents' request for an IEE was made in writing, that writing was not entered as evidence. The District avers that the request was made in late February of 2014.

28. The District denied the Parents' request for an IEE and requested this hearing on April 16, 2014.

## **LEGAL PRINCIPLES**

### ***The Burden of Proof***

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the District the party seeking relief and must bear the burden of persuasion.

### ***IEE at Public Expense***

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. § 300.502(b)(1). "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that it's evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

"If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation." 34 C.F.R. § 300.502(b)(4).

## **DISCUSSION**

It is important to recognize that parental disagreement with an evaluation's conclusions is not evidence that an evaluation is inappropriate. An evaluation may be inappropriate if its conclusions are not supported, but parental disagreement with supported conclusions is irrelevant to the inquiry (otherwise parents could defeat any LEA's defense of its own evaluation by simply disagreeing with the ultimate result).

The District's last evaluation, S-1, was appropriate. As with initial evaluations, reevaluations must substantively comply with 20 U.S.C. § 1414(b) and (c). See 20 U.S.C. § 1414(a)(2). These requirements are numerous, but all have been satisfied. The RR relied upon multiple, technically sound instruments, and no one instrument was

used as the sole criterion for the eligibility determination. New standardized, normative testing was not completed, but, as evidenced by the extensive commentary from teachers and supervisors from multiple settings (the District, the vocational education program, and the supervised worksite), the RR painted an accurate, compressive picture of the Student's strengths, needs, and abilities. All areas of suspected disability were assessed by trained, knowledgeable personnel. The RR also includes parental input and input from the Student.

The parental input in the RR is difficult to assess, given the Parent[s]' refusal to participate in these proceedings. Some of that input is descriptions of the Student's medical (DSM) diagnoses. It is not clear if those descriptions are specific to the Student. Moreover, to the extent that the Parent[s] express concerns about the Student's performance in work settings, it is not clear how that information is derived. The information from the vocational education program and the supervised worksite is far more detailed and persuasive – especially in the absence of any testimony or evidence from the Parent[s] to the contrary. Said simply, whatever concerns were raised by the Parent[s] about the Student's transition needs, those concerns are outweighed and mitigated by the remainder of the RR. Consequently, the RR's ultimate conclusions are well-supported.

The RR is appropriate because it meets IDEA criteria. The Parents, therefore, are not entitled to an IEE at public expense.

### **ORDER**

Now, July 18, 2014, it is hereby **ORDERED** as follows:

1. The Reevaluation Report dated December 5, 2013 is appropriate.
2. The Parent[s] are not entitled to an independent educational evaluation at public expense.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER