

This is a redacted version of the original hearing officer decision. Select details may 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

DUE PROCESS HEARING

Name of Child: R.B.
ODR #6099/05-06 LS

Date of Birth: xx/xx/xxxx
Date of Hearing: February 1, 2006

CLOSED HEARING

Parties to the Hearing:
Parent

Chichester School District
401 Cherry Tree Road
Aston, Pennsylvania 19014

Representative:
Pro Se

Sharon Montanye, Esquire
Sweet, Stevens, Tucker & Katz
PO Box 5069, 331 Butler Avenue
New Britain, Pennsylvania 18901

Date Transcript Received:

February 6, 2006

Date of Decision:

February 14, 2006

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

Student is a [late teenaged] 12th grade student in regular education attending high school in the Chichester School District (hereinafter District). Pursuant to disciplinary violations during 11th grade the District sought to evaluate Student to determine whether he is eligible for special education services. Student's mother (hereinafter Parent) withheld her consent for an evaluation. The District, pursuant to its childfind obligations, requested this hearing to seek a hearing officer's order to conduct an evaluation of Student without parental consent.

Issue

Should the District be permitted to conduct a multidisciplinary evaluation, including a psychiatric evaluation, of Student over the objection of the Parent?

Findings of Fact

1. Student is a [late teenaged] 12th grade student enrolled in regular education in the District at [a] High School. (NT 26, 52)
2. [Two of Student's relatives died in 2004 and 2005.] (NT 65, 96-97)
3. On May 20, 2005 at the end of Student's 11th grade year the District sent the Parent a Permission to Evaluate, following an in-house referral for an evaluation made on May 11, 2005 and completed on May 18, 2005. (NT 26, 45; S-2, S-3)
4. As explained by the director of pupil services, when the District has more than one or two teachers who are saying there are anger issues with a student the District considers it cause for concern and that it has a duty to perform an evaluation to assess eligibility for services¹. (NT 29-30)
5. Although the Parent gave her consent for an evaluation initially, by her signature on the Permission to Evaluate dated May 16, 2005, she did not take Student for the psychiatric evaluation, expecting it to be done at the school, and then changed her mind about allowing an evaluation. (NT 98, 100; S-3)

¹Although the record is not crystal clear, in this case it seemed that some teachers reported anger issues when polled for purposes of completing the referral for evaluation rather than the reports of anger issues triggering the referral for evaluation. It seemed that the referral for evaluation was triggered by an incident for which Student received a ten-day suspension with consideration for expulsion.

6. The District did not follow up with the other portions of the evaluation as listed on the Permission to Evaluate (WISC-IV, WIAT-II, classroom observation², BASC) between May 16, 2005 and the beginning of the next school year. The director of pupil services did not recall why the evaluation was not done in the spring and ended up going over the summer. (NT 30-31; S-3)
7. In the last marking period of 11th grade Student obtained an F in Academic English, a C in French I, a C in Academic Math, a B in Physical Education, a C in Reading Standards, a B- in Math SAT Prep, a C- in Academic Chemistry, and a B- in Academic Government Studies. (S-4)
8. In the first marking period of 12th grade Student obtained a B- in Business Law, a D in Accounting I, a D- in Desktop Publishing, a B+ in Academic English, a C in Trigonometry, an A+ in Physical Education, a C in Academic Physics and passed senior seminar. (S-5)
9. In Student's latest Terra Nova testing (10th grade) he was at the 49th percentile for Reading, the 29th percentile for Language, and the 55th percentile for Math. (S-4)
10. In the PSSA Grade 9 Writing test Student received a score placing him in the Proficient Performance Level at the 58th percentile. (S-4)
11. Specific behaviors or difficulties in the classroom that interfere with learning included on the referral for evaluation were: inability to accept correction/redirection, takes things personally when in a bad mood, use of foul language to students, daydreams. (S-2)
12. Strengths listed on the referral for evaluation included does well in academics, works well in class, can be very polite and appropriate one-on-one. (S-2)
13. Weaknesses listed on the referral for evaluation included staying focused, difficult to redirect, has short fuse, disruptive, trouble staying awake. (S-2)
14. A classroom observation of Student on May 18, 2005 resulted in the conclusion that overall he was on task and followed all teacher directions. Although he joked with students around him he was not disruptive and got back to work with redirection. (S-2)
15. Teachers' comments on Student's weaknesses were: sometimes lack focus and it is difficult to redirect him to be on task; his short fuse is difficult to handle; in a small class his rantings can be so disruptive; has a temper but it is usually under control; anger management; easily distracted by talking in class; trouble staying awake and engaged; staying focused; N/A. (S-2)

² The classroom observation referenced in the findings of fact and contained at S-2 was for the purpose of preparing the evaluation referral and done prior to the Parent's signing the Permission to Evaluate.

16. Teachers' comments on Student's strengths and/or interactions with adults were: polite, respectful, becomes very defensive and outspoken while being corrected, will make a scene with hollering and anger tactics; very polite; responds well to me; very respectful most of the time; I personally have not had any problems with him; polite, always respectful. (S-2)
17. Teachers' comments on Student's interactions with peers were: polite, respectful and accepting of others' opinions; he is always kind; seems pretty typical; ranges from competitive to combative; gets along with peers, however if he gets angry he can intimidate them with words and posturing; gets along well with male students, but seems to treat females differently; appears to get along with students in class. (S-2)
18. Teachers' comments regarding academic progress were: very successful at applying strategies, grades average in the low 90's, progress this semester; usually an okay average but erratic within that; A-, A+, B, B to date 4th marking period; performance has been consistent throughout the year, could apply himself more but manages to obtain a C every marking period; performed well in some areas and not so well in others; works very well. (S-2)
19. In the 2002-2003 school year (freshman) Student had three suspensions for a total of 8 days. (S-5)
20. Student had no suspensions for the 2003-2004 school year (sophomore). However, as a 10th grader Student had some behavioral incidents when he used inappropriate language directed towards both students and staff, and he was occasionally aggressive, agitated towards either students or staff. (NT 55; S-5)
21. As an 11th grade student, the majority, if not all, the interactions Student had with the assistant principal disciplinarian involved dealing with females who made a complaint that he had said something inappropriate to them or perhaps brushed them on the shoulder or touched them in some way inappropriately. For the 2004-2005 school year (junior) he had one suspension for 10 days. (NT 55-56, 66; S-5)
22. During the course of 11th grade there were five female students who told the assistant principal disciplinarian that Student had said something to them that they didn't feel comfortable with. These reports were received in October, December, January, March and May. Student is friends with some of these girls this year. (NT 57, 71-75, 83-84, 90; S-1)
23. The District uses the term "sexual harassment" to denote anything that is sexual in nature that the student who is being harassed perceives as harassment, excluding teenage flirting. (NT 58)

24. The assistant principal disciplinarian believed that it was possible that the October, December and January incidents were “teenage flirting”. The incidents were addressed with Student and they stopped. (NT 58-59)
25. In March, after being counseled by the assistant principal disciplinarian, Student went to the classroom and according to the teacher said that girls were getting him into trouble and told the girl whose mother made the report that he didn’t even like her.³ (NT 61; S-1)
26. When the assistant principal disciplinarian spoke again with Student and told him he would be suspended for what he said in class Student left the office in a rage, and Student was suspended for ten days for this incident. (NT 62-63; S-1)
27. In May there was a final incident at the bus stop [redacted]. Student was not suspended for this incident. (S-1)
28. Student is a student athlete. [Redacted.] (NT 17)
29. At the end of last year’s season Student was involved in two back-to-back incidents that involved an assistant coach. [Redacted]. (NT 17-19, 23, 86)
30. Neither incident involved any physical contact between Student and another individual. Both incidents involved arguing and profanity.⁴ (NT 19)
31. After the second incident the (head) coach asked Student not to be a part of the team anymore and Student agreed. In mid-July Student asked for a conference with the head coach and the assistant coaches to discuss possible readmittance to the team. (NT 20)
32. Student was readmitted to the team and there have been no further incidents and Student’s behavior on the team has been good. He has been appropriate with the assistant coach with whom he had the difficulties the previous year. [Redacted.] (NT 20-23, 99)
33. Student has had no suspensions in the 2005-2006 (senior) year. There have been no behavioral incidents this school year to the director of pupil services’ knowledge. She would have been made aware of significant incidents in school. (NT 43)
34. The assistant principal disciplinarian testified that he has not received a single referral on Student during the current school year; he has received no complaints from either staff or students regarding Student, and has received no reports stating

³ There are two uncorroborated written statements from the female in question in the record. This hearing officer is choosing to rely on the teacher’s account. (S-1)

⁴ Although it is not clear whether the assistant coach engaged in both arguing and profanity, he engaged in at least one as the witnesses testified it was “from both sides”. (NT 19)

that Student seemed sleepy or tired. In fact, during a recent large confrontation within a group of students Student purposely stayed in the classroom and did not involve himself in the incident. The teacher made a positive report on this behavior by Student to the assistant principal disciplinarian. (NT 66-68, 85)

Discussion and Conclusions of Law

Legal Basis - Evaluations

Federal law, namely the Individuals with Disabilities Education Improvement Act (IDEIA), reauthorized in 2004, at Section 612 under CHLD FIND provides that

IN GENERAL – All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

At Section 614 the IDEIA provides that

IN GENERAL -- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

REQUEST FOR INITIAL EVALUATION – Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

PARENTAL CONSENT – The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

ABSENCE OF CONSENT – If the parent of such child does not provide consent for an initial evaluation under clause (i)(1), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

Eligibility Categories

The IDEIA, at Section 602, puts forth definitions. According to this Section,

“Child with a Disability” means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and (ii) who, by reason thereof, needs special education and related services.

Discussion

The record contains a mélange of written descriptions of Student by his 11th grade teachers, as well as personal testimony from the coach and the assistant principal disciplinarian, both of whom have known Student for three years. The testimony of the coach, of the assistant principal disciplinarian, of Student and of his mother was credible and helped to supplement the documents in painting a full picture of the situations that triggered this matter.

It certainly seems that Student’s 11th grade year was difficult for him [with the deaths of two family members]. Student’s behaviors during 11th grade were nothing to be proud of; his profanity and argumentativeness were prominent and he carried adolescent male sexual posturing too far, receiving a well-earned ten-day suspension. The question in this case is whether there are grounds to suspect that Student is a student with a disability who requires specially designed instruction, the two conditions that would render him eligible for special education.

Although this hearing officer does not find that there is sufficient evidence to compel an order to evaluate Student, she acknowledges and understands the District’s requesting this hearing in accord with its child find obligations. Student came very close to being expelled in the spring of his junior year for behaviors that a female student perceived as sexual harassment, and Student was cut from an athletic team because of inappropriate angry verbalizations. However, looking at these behaviors in the context of what was happening in his life at the time, his conduct is most parsimoniously explained by the probability that he was suffering from a transient situation⁵ triggered by the loss of his [family members]. The suspected reactive situation was superimposed, of course, upon a young male navigating the narcissism and emotional volatility of adolescence in the context of current teenage mores.

Of critical importance in this case, lending support to the belief that Student’s situation was transient and not the result of a disability, is the fact that, despite a very difficult 11th grade year, Student has engaged in no inappropriate behavior from the beginning of his 12th grade school year up to and including the hearing date of February 1st. Of particular

⁵ For example, an Adjustment Disorder with Mixed Disturbance of Emotions and Conduct as described in the DSM-IV, a condition that does not qualify a student for classification for the purposes of providing special education.

import is the fact that he asked for, and the coaches thought well enough of him to grant, reinstatement on the athletic team and he has cooperated fully with his coach and the assistant coaches. Also impressive to this hearing officer, and apparently to one of his teachers, was Student's abstaining from engaging in a group student melee in order to avoid getting into trouble.

Although not determinative, this hearing officer also considered the fact that Student is a student in his senior year of high school, with barely four months of instructional time left before he leaves the District. She has concluded that ordering an evaluation against the Parent's wishes, even if the Parent did not exercise her right to appeal, would, in the unlikely event that Student were found to be eligible for special education, result in an IEP that would be implemented only for a matter of weeks before graduation.

This hearing officer has determined that the preponderance of the evidence does not weigh in favor of granting the District permission to evaluate this student for special education. However, although Student's behavior has been excellent this year, the lack of special education status leaves the District with the right and the duty to impose on Student the normal disciplinary consequences for any proven violations of the student code of conduct that would befall any regular education student.

In order to assist Student to continue his behavioral improvement through the rest of high school, and to shore him up for the challenges he will face in college, by way of dicta, this hearing officer repeats her recommendation to Student's mother on the record that she provide her son with the opportunity to receive counseling to address the loss of his [family members], and to acquire necessary skills for managing anger and for interacting appropriately with female peers.

ORDER

It is hereby ORDERED that:

The School District may not conduct a multidisciplinary evaluation, including a psychiatric evaluation, of Student over the objection of the Parent.

February 14, 2006

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.

Hearing Officer

Special Education Hearing Officer

Linda M. Valentini, Psy.D. 2308 Waverly St. Philadelphia PA 19146 ♦ 215-732-5697 (phone) ♦
215-732-2873 (fax)

February 14, 2006

Chichester School District
401 Cherry Tree Road
Aston, Pennsylvania 19014

Sharon Montanye, Esquire
Sweet, Stevens, Tucker & Katz
PO Box 5069, 331 Butler Avenue
New Britain, Pennsylvania 18901

Dear Parties and Counsel:

Enclosed is my decision for Student. You may appeal this decision as outlined in the Appeal Procedures referenced at the Due Process Hearing. A copy of those procedures is enclosed with this letter.

The local education agency is responsible for implementing this decision. Therefore, any questions regarding implementation should be discussed and resolved between the parties.

Questions concerning this letter may be directed to the assigned Case Manager Lori Shafer or Dispute Resolution Coordinator at the Office for Dispute Resolution, at 1-800-222-3353.

Sincerely,

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer
Encl.: Decision; Appeal Procedure;