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Pennsylvania

## Special Education Hearing Officer

### DECISION

Child's Name: S.M.

Date of Birth: [redacted]

Date of Hearing:

April 30, 2014

CLOSED HEARING

ODR Case # 14661-1314AS

Parties to the Hearing:

Parent[s]

Wissahickon School District  
601 Knight Road  
Ambler, PA 19002

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

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April 30, 2014

May 14, 2014

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student is an early teen-aged student residing in the Wissahickon School District (“District”). The District seeks to perform an initial comprehensive evaluation to see if the student should be identified as a student with a disability under both the federal Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”) and Pennsylvania special education regulations (“Chapter 14”)<sup>1</sup>. Parents are resistant to the District’s requests seeking permission to evaluate the student. Consequently, the District sought special education due process for authority to proceed with the evaluation process.

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

### **ISSUE**

Should the District be authorized to proceed with an evaluation process involving the student?

### **FINDINGS OF FACT**

1. Except for a brief period of disenrollment (see Finding of Fact 12), the student has attended District schools since kindergarten. (School District Exhibit [“S”]- 34).

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<sup>1</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162.

2. The District has had concerns about the student's academic performance and has sought to evaluate the student at various points over the course of the student's education. Parents have resisted any evaluation of the student. (S-29).<sup>2</sup>
3. In the 2011-2012 school year, the student's 6<sup>th</sup> grade year, the student made the natural transition from a District elementary school to the District's middle school. (S-31).
4. By November 2011, the student had exhibited failing grades and was considered for academic supports by the regular education child support team (CST). (S-24; Notes of Testimony ["NT"] at 68-69, 228-229).
5. The student's academic progress over the course of 6<sup>th</sup> grade was noted by the CST as inconsistent, although achievement in mathematics was consistently noted as low or underperforming. (S-24 at page 2).
6. The student's formalized academic tracking in 6<sup>th</sup> grade was in the basic range at the outset of the school year but consistently below basic by the end of the school year, although in October 2011, the student scored in the advanced range in reading performance. (S-33 at page 3).

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<sup>2</sup> By hearing officer directive, the evidence was limited to considerations of the student's middle school years. (Notes of Testimony at pages 50-57).

7. In late April 2012, near the end of 6<sup>th</sup> grade, the CST was recommending an evaluation for special education. (S-24 at page 2).
8. The student ended 6<sup>th</sup> grade with three Cs in language arts, social studies, and science, and a D in mathematics. The student showed academic strength, however in a suite of foreign language studies, with As in French and Japanese, and Bs in German and Spanish. (S-31 at page 3).
9. In the 2012-2013 school year, the student's 7<sup>th</sup> grade year, the District was still seeking an evaluation of the student. (S-24 at page 2).
10. By October 2012, the CST noted that the student was struggling academically and was failing all classes except language arts. By November 2012, in a new marking period, the student was again failing all classes except language arts. (S-24 at page 2; NT at 233-235).
11. The District continued to request permission to evaluate the student but parents were resistant. (S-24 at page 2).
12. In December 2012, the student withdrew from the District and began to attend a private school. (S-24 at page 2; NT at 236-237).
13. In April 2013, the student was re-enrolled in the District. In May 2013, the CST reported that the student was not completing

- school work and the student, who attended the CST meeting, shared that the student did not understand some school work. (S-24 at page 2).
14. Although the student's final grades in 7<sup>th</sup> grade, albeit in a school year where the student did not attend at the District for the entire school year, reflected failing grades in mathematics, social studies, and science. The student received a D in language arts, and a C in Japanese. (S-31 at page 3).
  15. In June 2013, near the conclusion of the student's 7<sup>th</sup> grade year, the CST issued a formal referral that the student be evaluated for special education. (S-24; NT at 85-88, 233-235).
  16. The CST referral contained the CST notes from 6<sup>th</sup> and 7<sup>th</sup> grade. The explicit reason for referral was: "Academic plans have been put into place and (the student) is continuing to struggle in all...classes." (S-24 at page 3).
  17. The CST contained reading screening information indicating that the student may have reading needs in word identification, vocabulary, and reading comprehension. (S-24 at page 4).
  18. The CST referral included input from the student's teachers. (S-24 at pages 8-11).
  19. The student's teachers characterized the student as friendly, polite, and respectful, generally happy, upbeat, and positive. (S-24 at pages 8, 10; NT at 89-92).

20. The student's teachers felt that the student's achievement in their classes was a concern in terms of listening comprehension, reading, writing, and mathematics, as well as the non-completion of homework. (S-24 at page 8; NT at 89-92, 246-249).
21. The CST referral indicated that the student had been accommodated with various instructional strategies in classes, including adjusting the level of the student's reading material, use of summaries, 1:1 teacher assistance, breaking down multi-step mathematics problems, opportunities to make corrections with teacher, extra time, and teacher-provided notes. (S-24 at pages 8-9; NT at 89-92, 240-241)
22. The student's teachers felt that there were multiple concerns with the student's attention and focus, noting areas of concerns such as paying attention, following directions, attention to detail, task organization and completion, and distractibility. (S-24 at pages 9-10; NT at 89-92, 246-249).
23. Over the course of June and July 2013, the District continued to seek permission to evaluate the student. Parents were resistant to any evaluation. (S-29).
24. In the 2013-2014 school year, the student began 8<sup>th</sup> grade.
25. In the fall of 2013, the student continued to be monitored by the CST. Even with accommodations, the student continued to exhibit academic struggles. (S-33; NT at 107-108, 173-186).

26. In the 1<sup>st</sup> marking period of 8<sup>th</sup> grade, the student had Cs in social studies and Japanese, Ds in science and mathematics, and an F in language arts. In the 2<sup>nd</sup> marking period, the student failed all academic subjects. (S-31 at page 1).
27. On January 16, 2014, the District again requested permission to evaluate the student. Parents would not grant permission for an evaluation. (S-29).
28. On January 31, 2014, the District filed a special education due process complaint, the complaint which led to these proceedings, seeking hearing officer authorization to conduct a comprehensive evaluation of the student.
29. At the time of the hearing, in the midst of the 3<sup>rd</sup> marking period, the student had the following interim grades— 78% in Japanese, 76% in science, 66% in mathematics, 58% in social studies, and 37% in language arts. Comments on the 3<sup>rd</sup> marking period progress reports included “poor study habits”, “low test scores”, “incomplete assignments”, “assignments turned in late”, and “poor quality work”. (S-31 at page 2).
30. The District witnesses testified credibly that multiple interventions over a series of school years have been unsuccessful in helping the student to maintain academic achievement. (NT at 89-92, 107-108, 173-186, 240-241, 246-249).

31. The witnesses also testified credibly to an overarching concern that as academic demands have increased into and over the course of middle school, the student's academic performance has consistently declined. The testimony of the witnesses was credible, and was accorded heavy weight, that, as the academic demands of high school loom for the student in 9<sup>th</sup> grade and beyond, an accurate assessment of the student's strengths and needs for support, and potential need for special education in a rigorous educational environment, is necessary. (NT at 77-78, 89-94, 110-111, 179-180, 187-188, 255-258, 263-264).

32. At the hearing, parents testified credibly and passionately about concerns for their child. They feel that the student's achievement is a matter of maturity and time-on-task, that as the student matures and spends more time and attention on learning, academic achievement will follow. They also shared that in light of [redacted], they are concerned about an evaluation process for the student. (Parents' Exhibit ["P"]-4; Hearing Officer Exhibit -1; NT at 37-49, 359-394, 445-458).

### **DISCUSSION AND CONCLUSION OF LAW**

A school district may initiate a request for the initial evaluation of a student.<sup>3</sup> Where a parent does not provide permission to evaluate the

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<sup>3</sup> 34 C.F.R. §300.301(b); 22 PA Code §14.102(a)(2)(xxiv).

student, a school district may file a special education due process complaint to seek authorization to perform the evaluation.<sup>4</sup>

In this case, the record supports the conclusion that a better understanding of the student's cognitive and achievement functioning, as well as school-based behaviors related to task-approach and task-attention, is warranted. The District has employed a number of strategies and interventions throughout middle school. The cumulative effect of the interventions has been unsuccessful; in fact, even with supports in every academic class, the record shows a clear decline in the student's grades from 6<sup>th</sup> through 8<sup>th</sup> grade.

There are also indications that the academic difficulties have led to disengagement, or at least insouciance, on the part of the student. This only deepens the cycle of non-performance or under-performance. And the District's concerns for the student, on the cusp of high school where the accommodating team-approach of middle school learning will be absent, is genuine.

None of this is meant to be dismissive of the parents' concerns. The student may be in a developmental space where middle school learning simply hasn't "clicked". But the evidence reveals that such a view is wearing away; as 8<sup>th</sup> grade comes to its end, the student's academic performance has consistently declined. Likewise, [redacted]. Here, though, the issue presented for consideration is not [redacted]. The

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<sup>4</sup> 34 C.F.R. §300.507; 22 PA Code §14.162(c).

question is whether, when all the evidence related to the student on this record is considered, should the student be evaluated under the terms of IDEA? The weight of the record indicates that the student should be evaluated.

### **CONCLUSION**

The District may proceed with the initial evaluation process involving the student.

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### **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the District is authorized to proceed with the evaluation process of the student as outlined in the permission to evaluate form dated January 16, 2014.

The District shall proceed with the evaluation process utilizing the date of this order as the date on which it received permission to evaluate the student.

If the student should withdraw from the District before the completion of the evaluation process, this decision and order will be operative upon any subsequent re-enrollment of the student in the District.

Finally, it is an explicit finding that the District's handling of the issue of whether or not the student should be evaluated under the terms of IDEA was, on this record, solely based on the educational needs of the student.

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

*s/Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

May 14, 2014