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Student

Child's Name

Xx/xx/xx

Date of Birth

6591/05-06 LS

ODR File Number

June 23, 2006 and June 30, 2006

Dates of Hearing

Closed Hearing

Parties to Hearing

Parent

Mr. and Mrs. Parent

Dates Transcripts Received:

July 3, 2006 and July 8, 2006

Parent Representative

John Wiese, Esq.

1604 Tuckerstown Road

Dresher, PA 19025

Date of Decision:

July 12, 2006

School District

Dr. Richard Balukas

Director of Special Education

Abington School District

970 Highland Avenue

Abington, PA 19001-4535

Kenneth Rose

Hearing Officer

District Representative

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Background

The student is a [teenaged] student in the school district. He is an eligible student identified as having a specific learning disability. The student has Ideopathic Thrombocyloopenic Purpura (ITP). This disease causes low platelet count, frequent bruising, fatigue and lethargy. He has also recently been diagnosed with Hashimotos Disorder, a thyroid condition that affects his auditory processing.

The student attended the school district through first grade. At the end of first grade the parents started home schooling and continued until the start of sixth grade. In grade three he started receiving itinerant learning support. For sixth grade the student was returned to the school district.

Stipulations

1. The student's date of birth is xx/xx/xx (Age 16).
2. He is identified as a child in need of special education and as having a specific learning disability (LD) and other health impairment (OHI).
3. The parents withdraw any request related to a central auditory processing evaluation for determination of a central auditory processing disorder at this time.
4. School district exhibits 17, 21, 24, 25, 26, 27 are entered into the record.

Findings of Fact

1. At the end of first grade the parents started to home school the student because he was struggling in school. (NT 249)
2. On reentering the school district the parents had a concern about the student's math. He was reevaluated and was found to need improvement in math skills. (NT 252; S-1)
3. From the third grade until the student entered the school district he received itinerant learning support from the school district for written language. (NT 250; S-1)
4. On November 14, 2005 the parents requested a reevaluation of the student due to lack of educational progress, the student being engaged in school and lack of services. The parents requested the reevaluation because they felt the student was going downhill academically. They saw needs in expressive language, executive functioning and auditory processing. (NT 259, 260; S-6; P-5)

5. It is the practice of the school district to meet with parents who request an evaluation to discuss it. Then a Permission to Evaluate is issued. This was done in this instance. (NT 225)

6. On November 18, 2005 a Permission to Evaluate was issued by the school district. It was signed on November 21, 2005 and returned to the school district.

The reevaluation report (RR) was to include cognitive, perceptual-motor achievements and social-emotional assessments. Review of records and rating scales was to be used.

The district received it November 25 or 28, 2006. (NT 62, 63, 157; S-6, S-10)

7. At parents' request the school district conducted a speech and language (S/L) evaluation on January 24, 2006. The evaluation consisted of the Clinical Evaluation of Language Fundamentals (CLEF) and the Test of Auditory Perceptual Skills (TAPS). The evaluation is in the March 6, 2006 RR. His S/L skills and auditory processing skills were found to be in the average range and no other testing was needed. (NT 165, 166, 170, 173; S-11, S-12, S-18)

8. During the time line for conducting the RR there were two snow days when school was closed. (NT 190)

9. The school psychologist met with the student six times during the evaluation process for periods of thirty minutes to an hour. This was done because of student lethargy. These sessions were in the morning to get him at his best. (NT 59-60, 86, 137)

10. The RR of March 6, 2006 used existing evaluations, cognitive ability tests, school records, verbal comprehension tests, perceptual reasoning tests, working memory tests, processing speed tests, social-emotional assessments, information from the parents, teacher reports, behavior rating scales completed by teachers, and report from the SL therapist.

He was found to have average ability. Strengths were found in areas of reading fluency, writing, reading vocabulary, spelling, reading comprehension, math calculation, sight word development, word attack skills, word problems and writing fluency. Weaknesses were found in math fluency and automaticity with basic math calculations.

The RR found the student to be unmotivated, depressed to some extent, and oppositional. He is distractable and unfocused in class. It was noted he was at some risk for substance and/or alcohol abuse. A possibility for self-medication was noted.

Needs listed were to remain on task and engaged with academic program; to complete assignments; to develop and display positive and practical strategies to counter lack of motivation surrounding school.

He was found to have a specific learning disability.

The school psychologist, who did the RR of March 6, 2006, sees the student as being LD in the area of math automaticity. (NT 61, 62, 67-72, 80-84; S-1, S-3, S-6, S-9, S-10, S-18, S-28)

11. The school district's RR of March 6, 2006 covered the parents' concerns expressed in their letter of November 14, 2005 and the Permission to Evaluate of November 18, 2005. (NT 84; S-6, S-10)

12. The school district evaluator did not eliminate areas in his evaluation. He views the RR of March 6, 2006 as comprehensive. (NT 114, 115, 116; P-10)

13. At the time of the March 6, 2006 RR, the student had not been identified with Attention Deficit Hyperactive Disorder (ADHD). (NT 153)

14. A math fluency deficit can impact on the ability to do math operations in a timely manner. (NT 128)

15. The slightly lower WISC scores on the March 6, 2006 RR can be attributed to the use of the newest version (WISC-IV) for the evaluation. (NT 76, 77; S-13)

16. The use of a calculator addresses weaknesses the student may have in math calculation. (NT 215)

17. The special education supervisor opines that the RR of March 6, 2006 is sufficient to develop an Individualized Education Program (IEP). IEP meetings have been held. (NT 188, 189, 190; P-25)

18. On March 13, 2006, the parents wrote to the school district raising many concerns about the school district's RR and requesting an Independent Educational Evaluation (IEE) at school district expense. (NT 91; S-20)

19. The school psychologist met with the parents to discuss each of their concerns contained in their letter of March 13, 2006. (NT 91-97, 127, 175-278, 282-288; S-20)

20. The parents have trouble discerning the area of learning disability when they read the RR of March 6, 2006. (NT 266-270)

21. A typographical error on the RR understated the student's grade eight PSSA scores in reading and math. This was corrected in a revised copy of the evaluation report (ER). (NT 65, 66; S-33)

22. The RR of March 6, 2006 was available to the IEP team and the parents. (NT 90)

23. On March 20, 2006 the parents cancelled their meeting of March 23, 2006 to discuss the student's exhaustion and struggles at school. The RR was also to be discussed. They had already contacted Dr. K, the parents' IEE evaluator. (NT 329, 330, 363, 364; S-15; P-14)

24. The parents contacted Dr. K for an IEE between their letter of March 13, 2006 disagreeing with the IEE and the school district's response asking for a meeting with the parents before deciding on the IEE request. (NT 273, 328; S-20, S-21)

25. The Director of Special Education consulted with staff before he rejected the parents' request for an IEE. He thought the staff had resolved the parents' concerns. (NT 228)

26. At the April 10, 2006 IEP meeting the parents were informed their IEE request was denied. (NT 237, 238; P-28)

27. The parents maintain they did not know of the school district's rejection of payment for the IEE until May 3, 2006. (NT 294, 295)

28. The school district never indicated it would pay for the IEE. (NT 356)

29. The parents made it clear that the questionnaires they gave the teachers were for an IEE. (NT 291)

30. The student was with Dr. K for about four hours on the afternoon of the evaluation. (NT 335)

31. Dr. K was aware of the student's fatigue problem. (NT 298)

32. Dr. K stated her diagnosis of the student immediately after testing on the day of the evaluation. The diagnosis was expanded later. (NT 338-341, 356; P-26)

33. Dr. K issued a fifty-six page IEE report dated April 6, 2006. This report included scoring tables and an appendix. It listed fourteen tests administered to the student. There was parent input, a behavior survey and teacher questions from the school. Dr. K found the student to be depressed and withdrawn. His cognitive ability was found to be average or above. Dr. K found his areas of learning disabilities to be reading comprehension, math reasoning and written expression. He was found to be

remote, withdrawn and depressed. Attentional, motivational and endurance problems were found. The student is becoming more socially isolated.

She classifies him as SLD, OHI and S/L impaired.

Dr. K recommends methodologies and research to improve reading comprehension, written expression, typing and keyboarding and math reasoning. Dr. K has a list of 15 accommodations and assistances.

Dr. K saw symptoms of ADHD and gave twenty-three recommendations. She further recommends a Functional Behavior Assessment (FBA) be conducted at school.

Dr. K states that she will talk with the student and his parents about an alternative educational placement. (S-22)

34. Dr K's report used information from the school district's March 6, 2006 ER. The report also used information from the student's teachers. Dr. K did not observe the student at his school. (NT 99, 100)

35. Dr. K's report was shared with the parents April 25, 2006. (S-22)

36. The RR of March 6, 2006 and the Dr. K report are similar in cognitive ability measures. The school district's visual motor integration scores were higher than Dr. K's. The two reports are similar in social-emotional areas. The school district's reading comprehension score was average (70th %ile). Written expression was also found to be average. (NT 103-107, 111, 112, 150, 151; S-18, S-22)

37. The school psychologist does not agree with Dr. K's finding of a SLD in written expression. He expresses great concern about the number of tests done over the period of time the student was with Dr. K. He opines they could not all have been done according to testing standards. He challenges the reliability of the data. Further, he notes the student's fatigue history and lethargy would impact long periods of testing. (NT 107-110, 150, 152)

38. After the school district received the IEE they reviewed it and decided to deny payment. They then requested a due process hearing on denying the IEE at public expense and issued a Notice of Recommended Educational Placement (NOREP). The parents signed it May 16, 2006 requesting a due process hearing. (NT 230, 231; S-26)

39. The school district's S/L therapist opines that Dr. K's results concur with hers. (NT 172; S-22)

40. The ODR Request Form of May 25, 2006 indicates both the parents and the school district requested the due process hearing. (S-32)

41. The student's fatigue effects his getting homework done and going off to school in the morning. (NT 282)

42. The student has recently (after the March 16, 2006) been diagnosed with a thyroid condition (Hashimotos Disorder) that can affect his auditory processing. Further medical testing is needed. The school district was not aware of this at the time of their RR. (NT 343, 344)

43. The IEP team is waiting for a medical evaluation of the student to proceed with developing a new IEP. (NT 209)

44. On the 10th grade PSAT the student scored in the average range in critical reading, math and writing skills. (NT 181, 182; S-30)

45. On the grade nine Terra Nova Test the student scored average or above in all areas of reading, language and mathematics. (NT 181, 182; S-2)

46. The student's tenth grade final grades are Eng. II CP-C, WC IV II CP-E, Algebra I Pt. 2-D, Biology CP-D, PE 10th-B, Spanish I-E, ACAD ACC Math-B, ACAD ACC Eng-A. (S-28)

Issue

Should the parents be reimbursed for the IEE by Dr. K?

Discussion and Conclusion of Law

In determining whether a free and appropriate public education (FAPE) is provided, first it must be determined if there were procedural errors. The IDEA requires that FAPE be provided to all students qualifying for special education services. The Supreme Court, in Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), held FAPE is met by complying with IDEA's procedural requirements and by providing individualized instruction and support services to permit a child to benefit educationally from the instruction.

The parents sent a request for an RR dated November 14, 2006. (FF 4) After a meeting with the parents, a Permission to Evaluate was issued November 18, 2006. The parents signed it November 21, 2006 and the school district received it between November 23 and 28, 2006. (FF 6) November 25, 2006 was a school holiday. The RR was completed March 6, 2006. (FF 10) This is an elapsed time of sixty-one to sixty-eight days. 22 PA Code §14.124 (b) states the reevaluation report must be issued within sixty school days. The school district missed this by one to eight days. This is a harmless error. It had no effect on the outcome of providing FAPE for the student. (See Appeals Panel Decision 1340)

The parents requested an IEE, at public expense, on March 13, 2006. This was followed by meeting(s) with the school district to discuss concerns. (FF 18, 19) The school district did not officially reject the IEE request until after they received a copy of the IEE. (FF 38) 34 CFR §300.502 (b) (2) requires that if a school district rejects a request for an IEE that they initiate a request for a due process hearing without unnecessary delay. In this instance the school district did not request a due process hearing until the parents, on May 16, 2006, requested a due process hearing. (FF 40) It is important to note that the parents started the IEE process shortly after their request to the school district. (FF 23) Although the school district was remiss in their filing for a due process hearing, the IEE was not delayed and no harm occurred to the student. The error did not change the outcome to the student. (See Appeals Panel Decision 1346)

34 CFR §300.502 (b) (1) states a parent has a right to request an IEE if it disagrees with the school district's evaluation. It then falls on the school district to demonstrate that its evaluation is appropriate.

20 U.S.C. §1414 (b) and (c) establish the criteria for an appropriate evaluation and reevaluation. The school district's RR of March 6, 2006 uses existing data, including medical information; the tests and procedures are sound; parent input is utilized; teacher observations are included; and the findings are based on the data in the report. (FF 10) There is sufficient information to help an IEP team to develop an appropriate IEP. (FF 17) The learning disability is identified as math fluency. (FF 10, 14)

The parents have many disagreements with the RR. (FF 18, 20) The school district has addressed these with the parents. (FF 19, 23) The school district has carefully reviewed the parents' IEE and has serious reservations about it. (FF 36, 37, 39) They opine it does not alter their confidence in their RR. (FF 38)

A parent is entitled to reimbursement for an IEE if the school district's evaluation is inappropriate: *Holmes v. Millcreek Township Sch. Dist.*, 205 F.3d 583 (3d Cir. 2000); *Warren G. v. Cumberland Co. Sch. Dist.*, 190 F.3d 80 (3d Cir. 1999); *Kozak v. Hampton Township Sch. Dist.*, 655 A2d 641 (Pa. Commw. Ct. 1995).

I find by a preponderance of the evidence the school district's RR to be appropriate. Finding the school district's RR to be appropriate and in conformity with IDEIA 2004, the parent is not entitled to reimbursement for Dr. K's IEE. This being so, there is no need to go into Dr. K's evaluation.

The LEA is ordered to take the following action:

1. None

Date

Kenneth Rose
Hearing Officer