

STATE OF NEW HAMPSHIRE

STATE DEPARTMENT OF EDUCATION

IDPH FY 05-03-068 /Strafford School District

**INTRODUCTION**

This matter involves two fundamental issues. First, the District takes the position that it should be allowed to conduct a comprehensive evaluation of the student with examiners of its own choice. Secondly, Parents take the position that the Hearing Officer should order an independent evaluation of the student at the expense of the District. The hearing was conducted on April 11, 2005 and April 20, 2005 . A Pre-Hearing Conference was held and Pre-Hearing Order issued.

**PROCEDURAL VIOLATIONS**

No procedural violations were raised by the Parents.

**DISCUSSION**

Judith McGann, Superintendent for the District and prior Special Education Director, testified as the first District witness. Her resume is at SD6003. She had previously proposed that the Crotched Mountain Rehabilitation Center conduct a comprehensive evaluation of the student. She had used Crotched Mountain previously and thought that the results were excellent. The Crotched Mountain brochure at SD7001 describes the services that are available at that facility. As an alternative to Crotched Mountain , in March of 2003 Ms. McGann offered Dr. Olsen conduct the evaluation; however, Dr. Olsen was unwilling to conduct the evaluation because Dr. Olsen was the student's therapist. In January 2004, the student's mother signed a permission for a comprehensive evaluation with certain conditions attached, including that she be provided with a copy of the evaluation and that the evaluation be conducted by Crotched Mountain . SD7003 was a letter written by the District to Crotched Mountain indicating that the District would pay for the evaluation. No one at Crotched Mountain notified the District that Crotched Mountain could not or would not undertake all of the testing. Dr. Von Hahn conducted an evaluation on March 3, 2004 through May 25, 2004 . Dr. Von Hahn was interested in discussing the matter with Dr. Olsen and a school liaison, Sandra Pierce-Jordan. Dr. Von Hahn told Ms. McGann that he would not undertake speech language or occupational therapy evaluations. Ms. McGann indicated to Dr. Von Hahn that she wanted all testing done and expected all evaluations to be conducted. Unfortunately for the District, Crotched Mountain only conducted a medical evaluation. On May 28, 2004 , Crotched Mountain wrote to the District indicating that Crotched Mountain would not undertake the OT/speech language testing. Dr. Von Hahn's report is at SD2221 through 2240. Upon receipt of the Von Hahn report, a team meeting was held. Although that meeting occurred on October 7, 2004 , yet the report was received by the District on May 28, 2004 . There were difficulties in getting the meeting scheduled and Ms. McGann's Affidavit is at SD7017 relative to those issues. At the meeting on October 7, 2004 , Dr. Von Hahn indicated that anxiety was the primary issue with the student with possible ADHD and he suggested that the student be evaluated by a psychiatrist. The team met again on October 19, 2004 and reiterated its desire to conduct a full evaluation since Crotched Mountain had not done so. The mother was unwilling to sign a new Authorization for evaluation by other providers (SD2377 through 81). Another meeting was held on November 18, 2004 and, again, the mother would not sign the permission forms presented to her. On December 29, 2004 , a letter was sent to the mother enclosing the permission forms again and these were not signed. To date, the mother has not signed the permission to evaluate forms. On January 18, 2005 (SD2401) the mother wrote to the District requesting that the District fund an independent evaluation. The District responded (SD2402) and indicated that it would be willing to consider an independent evaluation if the evaluators were neutral parties and further inquired as to what evaluations the mother was looking for and who would be the persons she was looking to have to conduct the evaluations. The mother responded (SD2404) with an e-mail, which

did not answer those two questions. The parties continued to communicate with each other relative to these issues (SD2405 and 2406); however, the matter was not resolved; it went to due process. The student was recently evaluated by Dr. Pinto-Lord, although that report has not been shared with the District. Ms. McGann indicated that the District has never been allowed to undertake IQ testing and that the last full IQ/achievement testing was done in March of 2001, over three years ago. The last OT evaluation was in July 2001. According to Ms. McGann, the mother is looking to have Drs. Weaver and Kemper conduct evaluations. Based on the criteria for special ed evaluations, Ms. McGann indicated that neither of these individuals was qualified.

Under cross-examination, Ms. McGann acknowledged that on January 13, 2004 the mother signed releases for Crotched Mountain to conduct the evaluation. There was a previous due process hearing relative to some of the issues involved in this hearing and in August 2004 the Hearing Officer had agreed with the District's proposal to have Crotched Mountain conduct the evaluations. With respect to a speech language therapy summary from May 2003, the mother attempted to persuade the Hearing Officer that that was, in fact, an evaluation; however, it appears clear that this was not an evaluation, but a therapy summary. Ms. McGann agreed that at the team meeting on August 16, 2004 (Parents 55) she never told the team that the comprehensive evaluation was not completed. Dr. Von Hahn's report was given to the Parents on May 28, 2004 . His report clearly does not have an OT or speech language evaluation contained therein so that the mother certainly should have known by May 28, 2004 that there was not a complete evaluation from Crotched Mountain . The School District stipulated on the record that it did not propose other evaluators until October 19, 2004 even though Dr. Von Hahn's evaluation was not a thorough evaluation and the District knew of this as early as May 28, 2004. Parents 40 contains copies of legal briefs sent to Dr. Von Hahn by the District.

Ms. McGann's testimony was interrupted so that Dr. Von Hahn could testify on April 20, 2004 . He is the Director of the Outreach Medical Clinic and School Partnership Program at Crotched Mountain . He indicated that he did not agree to conduct a complete evaluation, but only a medical evaluation. He offered to do an independent evaluation from the perspective of a physician. He agreed that there were many items sent to Crotched Mountain by the District (see SD2197). He indicated that Crotched Mountain would never request all of the information contained in the District's Counsel's letter at SD2197. He further acknowledged receiving the legal briefs from Ms. McGann. He felt that the correspondence was an attempt to have him alter his recommendations. He indicated that he did discuss the matter with Ms. McGann before issuing the report and that this is documented in the report.

On cross-examination, Dr. Von Hahn agreed that the information provided to him by Ms. McGann included both Parents and School District documents. He did not look at the volumes of information that were provided to him by the District, with the exception of the clinical evaluations that were in the records. He stayed away from reviewing any legal documents. He indicated that he thought it was very clear that he told Ms. McGann that given the legal nature of the case, he would not offer a team evaluation, but instead an individual evaluation relative to whether the student has Asperger's Syndrome or not. He acknowledged that he has no notes substantiating this. He reiterated that he was aware that the District wanted a comprehensive evaluation and that he indicated that he would not provide that evaluation given the legal nature of the proceedings. He indicated that he did not believe that any more testing was necessary aside from the medical piece that he provided. He further indicated that on March 30, 2004 , he told the mother that he would only be undertaking a physical evaluation to rule out Asperger's.

Subsequent to Dr. Von Hahn's testimony, the cross-examination of Ms. McGann continued. Ms. McGann acknowledged that the mother was not notified until at least August 17, 2004 that Crotched Mountain had not undertaken a full evaluation (although it appears from Dr. Von Hahn's testimony that he told the mother on March 30, 2004 that he would only be doing a medical evaluation to rule out Asperger's). The team was not told that the evaluation had not been fully conducted until the meeting on October 7, 2004 , although the report had previously been issued and anyone reviewing it would clearly have known that it was not a complete report.

On redirect, there was discussion relative to delays in holding the meeting due to unavailability of the Parents' attorney.

At the close of the District's case, the District rested and the Parents provided no testimony.

### **DECISION AND RULING**

The animosity between the parties in this case is both patently obvious and quite disturbing. Unfortunately, it is unlikely to abate as the parties go forward; however, the ultimate issue in this due process hearing is whether or not the delay in completing the complete evaluation based on Crotched Mountain 's failure to do so warrants the Hearing Officer ordering that an independent evaluation at District's expense may be obtained by Parents. There is no justification or basis to do so based on the testimony and exhibits submitted in this case. There was contradictory evidence presented with respect to the discussion between Ms. McGann and Dr. Von Hahn as to the extent of the Crotched Mountain evaluation and when the District was aware that Crotched Mountain would not undertake the thorough evaluation that was requested and authorized. There was also contradictory testimony regarding the delay in holding the team meeting to discuss Dr. Von Hahn's report. It is clear to the Hearing Officer that the animosity between the parties had more to do with the failure to communicate than any other single factor. It is also clear to the Hearing Officer that neither party is particularly interested in working with the other to address the student's needs. However, the issue in this case is decided in favor of the District. The District has the right to examine the student with examiner's of its choice [ Andress v. Cleveland Independent School District 64 F.2d 176 (5 th Cir. 1995)]. The Parents unpersuasively argue that due to the District's alleged unreasonable delay in having the evaluation completed, the District forfeits the right to the complete evaluation and is obligated to allow the Parents to obtain an independent evaluation at District expense. There is no support for that under the facts of this case and the request by Parents is denied. It is regrettable that the parties' unwillingness to work together has caused the extensive delay; however, that does not translate into the Parents' right to obtain an independent evaluation at District expense, particularly where it is clear that the unwillingness to work together was mutual. The District is authorized to conduct the full evaluation and the Parents' request for an independent evaluation at District expense is denied.

### **APPEAL RIGHTS**

If either party is aggrieved by the Decision of the Hearing Officer as stated above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parents have the right to a transcription of the proceedings from the Department of Education. The District shall notify the Commissioner of Education when either party, Parents or District, seeks a judicial review of a Decision.

### **STATEMENT OF COMPLIANCE WITH ED1128.22(b)**

If neither party appeals this Decision to a Court, then the District shall, within 90 days, provide to the Commissioner of Education and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to Parents. If Parents do not concur with the District's report, Parents shall submit their own report to the Commissioner of Education on the implementation of the Decision.

SO ORDERED:        John P. LeBrun

Dated: May 26, 2005