

IDPH FY 08-10-026 / Somersworth School District

I Summary of Decision

The school district requested a due process hearing to resolve the parents' request for an independent evaluation. For the reasons set forth in this Decision and Order, I find for the school district.

II Overview of Evidence Presented

The hearing was conducted on December 19, 2007. The school district has the burden of proof in this case and presented its evidence first. The school district presented evidence from two school psychologists employed by the district (school district psychologist #1 and #2 on the index of names). Both presented affidavits that were accepted and are part of the record and evidence in this case. The affidavits detail their certifications and the evaluations they performed on the student. The school psychologists conducted the evaluations at issue in this hearing in September and October 2007. The evaluations administered include the WIAT-II (see School District Exhibit 6), the WISC IV (School District Exhibit 7), and the BASC-II. These evaluations and others noted in their affidavits were conducted to determine if the student was eligible for special education services under the categories of specific learning disability and emotional disturbance.

Their affidavits and testimony on direct and cross examination explained the team meetings that the school held to make decisions about what to assess, which tests to administer, the evaluation process, the information relied upon in the evaluation process, and the meeting held to explain and discuss the evaluation results.

The district also presented evidence from two experts. Expert #1 was qualified as an expert without objection by the parents to address the assessments performed to determine if the student had a specific learning disability. The expert's CV is in the record as School District Exhibit 24. The expert testified that the evaluations used by the district were valid and reliable assessments that were very commonly used to evaluate specific learning disabilities. The expert reviewed the evaluations and rescored them to check for errors and found only two scoring errors on the WISC and one on the WIAT. The expert testified that the scoring errors did not affect the overall score or results of these evaluations. He testified that he had never seen an evaluation that was without any errors.

The expert testified that the district's evaluations met the relevant legal requirements listed in 34 CFR §§ 300.304 and 305.

The school district's other expert witness was qualified as an expert without objection by the parents to address the assessments performed to determine if the student was eligible under the category of emotional disturbance. The expert's CV is in the record as School District Exhibit 25. The expert testified that he reviewed the evaluations performed by the district to

determine if the student was eligible under emotional disturbance and that the evaluations were valid and reliable and commonly used for this purpose.

The expert testified that the district's evaluations met the relevant legal requirements listed in 34 CFR §§ 300.304 and 305.

The parents called the school district's special education director to testify. The parent's asked questions about whether comments in School District Exhibits 4 and 6 at pages SD 16, and 17 regarding the student having difficulty understanding what is happening in class and attention difficulties warrant further testing. The special education director testified that the evaluations the school performed considered those factors and that further testing is not required. There was also discussion about the observation of the student for specific learning disability as required by 34 CFR § 300.10. The student was in the Youth Development Center at the time the parents signed the consent form for the evaluations. The special education director testified that the school did not think it would be appropriate to observe the student there as it was not the regular classroom setting or the student's learning environment, so the school had a special education teacher fill out the observation report based on her observation of the student a week or so prior to the date the parents' provided consent to evaluate. See School District Exhibit 8, SD 27.

The parents also presented exhibits. Parent Exhibits 6, 7 and 8 appear to be relevant to the hearing.

III Discussion

The issue in this hearing is limited to the parents' request for an independent evaluation under 34 CFR § 300.502 and relevant state laws, Ed 1107.03 and Ed 1125.07 which in this case just incorporate the federal requirements. When a parent disagrees with the school district's evaluations and requests an independent evaluation at public expense, these laws require the school district to grant that request or demonstrate that its evaluations were appropriate under the law. To demonstrate appropriateness under the law, the school district must show that its evaluations meet the relevant legal requirements which in this case include 34 CFR § 300.301-305 and § 300.310 and corresponding state regulations. These provisions require the school to conduct a full and individual evaluation to determine if the student is eligible for special education services and to determine the educational needs of the student. 34 CFR § 300.301. The regulations provide specific requirements for the evaluation process and the assessments used in the evaluation process as detailed in 34 CFR § 300.304 and § 300.305.

The evidence presented at the hearing demonstrates that the school district met the legal requirements and their evaluations are appropriate under the law. The parents did raise some legitimate points regarding the observation. The regulations require the observation to include an observation of routine classroom instruction and monitoring of the student's performance before the student is referred for an evaluation and an observation conducted by a team member in the regular classroom after the referral for evaluation and parental consent was

obtained. In this case, the school district used an observation by a team member in a setting that does not appear to be a regular classroom setting and it was done a week or so prior to parental consent.

However, given the circumstances, I cannot say that this renders the school district's evaluations inappropriate under the law. The school district's psychologists' affidavits and testimony and the special education director's testimony included the information that the school district relied upon in the evaluation process and that included among other things information from the parents, an interview with the student's classroom teacher and with an assistant principal that had instructed the student. See also School District Exhibit 6. Additionally, the team including the parents actually met back in June of 2007 and agreed to evaluate the student at that time. Since there were only 4 days left in the school year, the team agreed to wait until the fall of 2007 to perform the evaluations. The parent signed the consent form in September 2007, but the team and the parents were aware in June 2007 that the school would be evaluating the student. See School District Exhibits 4 and 5.

Further, the regulations state that when a student is out of school, the team should observe the student in an environment appropriate for the student of that age. 34 CFR § 300.310(c). Here, the observation took place in an organizational study course/special education class at the High School that the student attended for the first two periods of school for a period of time. The setting had 12 other students and helped the student with organization and math (one of the areas of suspected disability). The alternative would have been for the school to observe the student at the Youth Detention Center which also would not appear to be a regular classroom environment. Given the choices available, the observation that the school chose seems a more appropriate environment for the student and to assess potential disabilities.

Given the evidence presented, including the testimony by the school district's experts on the subject, I find that the observation and the other aspects of the school's evaluations meet the legal requirements and are appropriate under the law.

IV Requested Findings of Fact and Rulings of Law

The school district submitted 31 proposed findings of fact and I address them as follows:

- Requests # 1-9 are granted.
- Request # 10 is neither granted nor denied as it deals with eligibility for special education and is beyond the scope of this decision.
- Request # 11 is granted in the context of the information being considered as part of the evaluation process.
- Request # 12 is neither granted nor denied as it deals with eligibility for special education and is beyond the scope of this decision and there wasn't sufficient evidence

regarding the instruction at Sylvan to make a determination of whether or not it is specially designed instruction.

- Request # 13 is neither granted nor denied as it deals with eligibility for special education and is beyond the scope of this decision.
- Request # 14 and # 15 are granted in the context of the evaluation process.
- Request # 16 is granted
- Request # 17 is neither granted nor denied as it deals with eligibility for special education and is beyond the scope of this decision.
- Requests # 18 – # 31 are granted.

The school district also submitted three proposed rulings of law and these proposed rulings of law are granted.

The parents did not submit requested findings of fact or rulings of law

V Decision and Order

For the reasons noted in this decision and order, I find that the school district's evaluations are appropriate under the law and that the school district is not obligated to fund an independent evaluation at public expense. While the parents' raised some legitimate concerns for their child at the hearing, the weight of the evidence supports the school district in this case.

As mentioned previously in this Order and in the Pre-Hearing Order, the scope of this hearing and of my decision is limited to whether the evaluations conducted meet the relevant legal requirements to resolve parents' request for an independent evaluation at public expense. This decision does not address the issue of the student's eligibility for special education services. If there is a dispute regarding that issue, the parties may seek to resolve that dispute through the dispute resolution methods offered by the New Hampshire Department of Education.

Additionally, nothing in this decision should be interpreted as preventing the parents from seeking an independent evaluation at their own expense which they are entitled to do under the law. 34 CFR § 300.502(b)(3). The results of such an evaluation must be considered by the student's team under 34 CFR § 300.502(c). This decision also does not prevent the parents from exercising any rights they may have under the law to request evaluations or reevaluations in the future.

So Ordered.

Date

Scott F. Johnson
Hearing officer

Appeal Rights under Rule 1128.20 and RSA 186-C:16-b

If either party is aggrieved by the Decision of the Hearing Officer set forth above, that party may appeal this decision to a court of competent jurisdiction. The Parents have the right to a transcription of the proceedings. The District shall notify the Commissioner of Education should either party seek judicial review of this decision.