

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student/ School District
IDPH-FY-19-05-031

DUE PROCESS DECISION

I. INTRODUCTION AND BACKGROUND

This due process proceeding was initiated by the School Department (District) on May 23, 2019, relative to the Parent's request for an Independent Educational Evaluation (IEE) at public expense. A prehearing conference was held on June 25, 2019, and a Prehearing Conference Report and Order was issued on June 26, 2019.

The due process hearing was held on July 22 and 23, 2019, at the hearings office in Concord, New Hampshire. Exhibits were submitted by both parties. The District had the burden of proof¹ as to the issue for due process, which was as follows:

Whether the District's evaluations are appropriate, and whether Parent is entitled to an IEE at public expense.

The following witnesses were called:

- , licensed Occupational Therapist;
- , School Psychologist;
- , special educator;²
- , paraprofessional;³
- , classroom teacher;
- , special education coordinator;
- , Principal⁴
- , Student's developmental pediatrician;
- Parent;
- , Director of Pupil Support and Instruction.

II. FACTS

1. Student is seven years old, and resides in the District with adoptive and siblings. is entering second grade at the Elementary School in , New Hampshire.

¹ Schaffer v. Weast, 546 U.S. 49 (2005)

² testified in person, and completed testimony telephonically.

³ testified telephonically.

⁴ Via offer of proof

2. Student's developmental pediatrician, Dr. _____, has diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD), which manifests in distractibility and impulsive behaviors. Student also has a swallowing/eating disorder and other health issues.
3. Student has a Section 504 Plan which accommodates _____ eating disability and _____ ADHD. A recent amendment to the 504 Plan addresses generalized anxiety. Since January of 2019, Student has also had a behavioral support plan in place.
4. Student's 504 Plan and behavioral plan have allowed _____ to access his educational program.
5. On November 15, 2018, the District received a referral from the Parent, who sought to have Student evaluated to determine _____ eligibility for special education.
6. On or about November 28, 2018, the team convened a meeting to address the Parent's referral. The team proposed to evaluate Student in the areas of academic performance, intelligence, motor ability, social emotional, and to conduct a classroom observation. Specific Learning Disability and Other Health Impaired were identified as possible disabilities. .
7. On November 28, 2019, the Parent signed consent for evaluation. Parent did not request evaluation in any other area(s) of disability.
8. At the time of the referral meeting, the team did not suspect or consider eligibility under the category of "developmental delay".
9. _____, a certified occupational therapist, evaluated Student in the area of fine and gross motor skills. _____, school psychologist, assessed Student's social/emotional skills, and administered intellectual assessments. _____, certified educator, conducted academic assessments. Classroom observations and review of records were conducted as part of the assessments.
10. All professionals are qualified examiners in their respective areas, are trained and knowledgeable in their respective areas, and hold proper credentials.
11. The team utilized assessment measures that were valid and reliable for their purposes, and did not rely on a single measure or assessment. Tests were administered in accordance with any instructions.
12. Student was assessed in all areas of suspected disability, including health, vision, hearing, social and emotional issues, intelligence, academic performance and motor skills.

13. The team reviewed existing data and considered information from a variety of sources, including information provided by the Parent, Dr. _____, classroom observations, Student's functional behavioral assessment, and educational records.
14. The Written Prior Notice included a summary of the evaluation data.
15. The team did not rely solely upon a discrepancy analysis in evaluating for a specific learning disability, but rather, looked to actual classroom performance and other data.
16. Upon completion of the evaluation, the team held the first of two eligibility meetings on January 22, 2019. A second meeting was scheduled for February of 2019, but was rescheduled at Parent's request. The second eligibility meeting was held on March 5, 2019. The meetings included the Parent, as well as a group of qualified professionals.
17. The team determined that Student had a disability (ADHD), but did not require special education and related services in order to make appropriate and meaningful educational progress. The team also determined that the Student was not eligible for special education by virtue of a specific learning disability.
18. With the exception of the Parent, none of the witnesses, including Dr. _____ recommended further evaluations.
19. The evaluation process was effectuated both with and without accommodations.
20. On or about May 7, 2019, The District received Parent's request for an IEE at public expense.
21. On May 17, 2019, in response to follow-up by the District, Parent indicated that wanted the IEE in the areas of cognitive functioning, academic skills, and physical therapy. Parent also stated that "evaluation of sensory processing will be important."
22. On May 23, 2019, the District denied the Parent's request for an IEE at public expense, and issued a Written Prior Notice.

III. RULINGS OF LAW

- A. A parent may obtain an IEE and have it considered by the special education team. However, when a parent requests an IEE at public expense, the District must either pay

for the IEE, or request a due process hearing 34 C.F.R. §300.502(b)(2); Ed 1107.03(b). At the due process hearing, the District must prove that its evaluation was sufficient.

B. The criteria for determining whether the District's evaluation is appropriate is whether assessments were administered in accordance with criteria set forth in applicable state and federal law, including whether qualified personnel and appropriate instruments were used, whether the student was assessed in all suspected areas of disability, and whether methodologies were adequate. *See* 34 C.F.R. §300.310-305. Disagreement with the eligibility determination does not invalidate an otherwise appropriate evaluation.

C. The IDEA provides, in pertinent part:

In conducting the evaluation, the local educational agency shall—

- use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; that may assist in determining...whether the child is a child with a disability;
- not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability;
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- use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- ensure that: assessments and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis, are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; are used for purposes for which the assessments or measures are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of such assessments; the child is assessed in all areas of suspected disability.

20 USC § 1414(b)(2)

D. A discrepancy model between intellectual skills and achievement is only one of several that may be relied upon in evaluating for a specific learning disability. Ed. 1107.02.

E. There is no requirement that accommodations be “withheld” during the evaluation process, nor does the provision of accommodations render an evaluation inappropriate.

- F. The District’s evaluations were valid and reliable, administered by qualified examiners in accordance with criteria set forth in applicable state and federal law; tests were appropriate for assessing all areas of suspected disability.
- G. Parent attended and participated in the referral and eligibility meetings, and indicated agreement with proposed assessments and test results.

IV. PARTIES’ PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

All of the parties’ proposed findings of fact and rulings of law have been reviewed and considered. Many of the proposed findings and rulings either cannot be granted or denied as written; however, a number of the parties’ proposed findings and rulings have instead been incorporated into this Decision in whole or in part. To the extent that a proposed finding of fact or ruling of law is inconsistent with those set forth herein, it is deemed denied.

V. CONCLUSION AND ORDER

1. The District’s evaluation is appropriate;
2. The Parent is not entitled to an IEE at public expense.

Date: August 2, 2019

_____/s/_____
Amy B. Davidson, Hearing Officer

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 competent jurisdiction. The Parents/Student have the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parents/Student or School District, seeks judicial review of the hearing officer's decision.

Cc: Attorneys

Via email and certified mail