

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH-FY-11-02-034 /Hudson School District

Decision and Order

Background

February 11, 2011, the Hudson School District (District) requested a hearing in the above named matter. On February 23, 2011, a Pre- Hearing Conference was conducted and an Order issued on March 6, 2011. A one day hearing was held on March 14, 2011 at which the District presented its witnesses and rested, following which the Parent moved for Summary Judgment. The motion was denied. Closings were received on March 18, 2011.

Hearing

The sole issue in contention is the appropriateness of the triennial evaluations, (34 CFR 300.303(b)(2)), and follow-up testing for possible social/emotional disability conducted by the District in May and June of 2010. Student has long been coded for speech and language impairment but, since transferring to --- High School, there had been behaviors, absences and suspensions that led the Parent to believe coding for emotional disturbance was necessary. Following its evaluation, the District did not amend Student's coding (SD Ex. 9, p68,69). On January 28, 2011, the School District received Parent's requested for an independent educational evaluation to be conducted at public expense by an evaluator having expertise with children who have experienced "chronic and significant trauma." (SD Ex. 10, p78). This was denied by the School District and a hearing was then requested as required by IDEIA. 34CFR 300.502(b)(2). As the hearing began, the District's Exhibits Nos. 1 through 12 were accepted. The Parent's

Exhibits Nos. 1 through 17 were offered. Exhibits No. 1 and 2, and 4 through 7 were excluded as not relevant to the question before the hearing officer. Exhibits Nos. 3 and 8 through 17 were accepted into evidence. After which, the District proceeded with its case .

Marc LaQuerre, Ph.D. was the School District's first witness. He was sworn and testified that he is the Chief School Psychologist for the Nashua School District and is in private practice as well (SD Ex. 12, p89). He has much experience administering tests. He had examined the Student over three sessions at the end of 2009 (SD Ex. 3) at the behest of the Nashua District Court. He had been asked to provide a "snapshot" of the Student for the juvenile court.

This assessment for the juvenile court was not an examination for educational evaluation purposes and had he been so hired, he would have used the same basic evaluation tools but probably would have utilized some additional diagnostic tests. The assessment tools chosen are listed at SD Ex. 3, page 16. His referral question was not, did Student have an emotional disability. When questioned about the requirements of CFR 300.304 (SD Ex.11), he stated that his testing instruments met the letter of the regulation. He testified that the measures he used would provide information useful in determining the presence of emotional disturbance.

He was asked to review the evaluation tools used by the Hudson School District in testing Student and he stated that he believed that, together with his results, they could provide the kind of information leading to a coding of emotional disturbance if an IEP team so determined. On cross examination, he noted that he had made multiple diagnoses but that post traumatic stress disorder was most explanatory of the Student's functioning. He believes it would be helpful to administer two depression inventories in such a case and he would consider utilizing the Revised Children's Manifest Anxiety Scale. He stated that he'd have performed other tests if

he'd been asked to identify an educational disability and that the tests given would have been more comprehensive. When constructing a battery of tests, he uses a variety of different perspectives. The referral question determines the tests chosen.

Virginia Reeve, case manager for special needs students, testified that she had served on Student's IEP team since November 2009, shortly after he arrived at Alvirne High School. Student's prior coding was speech and language and so evaluation tools were chosen for assessment of speech and language deficits. When the parent brought in Dr. LaQuerre's examination report, the IEP team considered it and the District agreed to do testing for social emotional evaluation at a later time. Rever recalled that Parent had expressed concern about how Student was doing. He'd been out of school for fifteen of the first forty-five days of school with illness, a death and a one week vacation. He had been given make-up assignments but he didn't do the work so he was failing.

On cross examination, Rever stated that the Hollis Brookline 2007 evaluations and the March 2009 IEP had been received and agreed that they were reviewed by the IEP team at Hudson. The IEP made mention of withdrawal and anger when --- perceived ---self treated unjustly and commented on social emotional needs, emotional triggers and included an IEP goal related addressing the subject. Student continued with the single coding for speech language deficits. Rever was present and participating at the January 10, 2010 IEP team meeting and the February 19, 2010 meeting where re-evaluations were the agenda. A list of the tests performed in the February three year evaluation is found at School District Exhibit 6, page 46. LaQuerre's report was discussed in which diagnostic impressions of Post Traumatic Stress Disorder (PTSD), Major Depressive Disorder with anxiety and Attention Deficit Hyperactivity Disorder (ADHD) (SD Ex.

3, p24). The IEP team agreed Student would benefit from additional testing "to look at the social emotional pieces" and agreed it would happen the following year as it seemed that Student was beginning to stabilize as is recorded in the minutes of the team meeting of February 19, 2009. (SD Ex. 6, p44). However, the Team went forward with a recommendation for testing at its April meeting. In May and June of 2010, Dr. Jane Coleman performed four days of testing to assess Student's social/emotional status using a variety of assessment techniques (SD 8, p57). On cross examination, Rever recalled that Student's suspensions were discussed at the follow up meeting on June 8, 2010, at which the IEP team considered the testing results and decided that Student did not qualify as emotionally disturbed for special education coding but was "a mildly depressed young --- who lacks confidence" and they noted the diagnostic impressions originally found by Dr. LaQuerre. (P.Ex. 7, p29). Rever agreed that Student continued to have absences throughout the year (P Ex 2-4) and that some of the absences were a result of suspensions (P Ex. 10-15) .

Scott D. Riddell, Assistant Principal for Special Services (SD Ex. 12), testified for the School District saying that he attended all Student's IEP team meetings related to evaluations and that Student was assessed for social/emotional disability by Dr. Coleman. He is aware of the number of suspensions and the reasons for the suspensions over the 2009-10 school year. Though not specifically mentioned in his resume, he averred that he is certified in social/emotional disorders. He believes the testing performed was sufficient for a determination of social emotional disorder. Jane Coleman Williams, school psychologist for the Hudson School District (SD Ex. 12, p87), next testified for the District that she became involved in this matter in May 2010. She performed the evaluations and authored the report at found at School District Exhibit 8. She had reviewed Dr. LaQuerre's report and commented on it in her report. She followed

the procedures for evaluations found at 34 CFR 300.304 and her results, considered with Dr. LaQuerre's results were sufficient to make a determination of social/emotional disability but that was not found by the team. On cross examination, she explained that the training to become be certified as a school psychologist includes training in dealing with children who have experienced trauma. She had not published on the subject but she has attended workshops, courses and has kept abreast of developments in the area of trauma. She responded to questions on Dr. LaQuerre's findings but indicated that she believed the assessments performed could have emotional disturbance for educational coding purposes.

Irene Sousa, Director of Special Education for the Hudson School District (SD Ex.12, p85), was the last witness for the District. Her certification allows her to affirm that the instruments chosen by Dr. Coleman meet the criteria of 34 CFR 300.304 and assessment was done correctly .

Findings of Fact and Rulings of Law

The District submitted requests for findings and rulings as given below:

Findings Nos. 1 through 22, and No. 24 are granted. No. 23 is neither granted nor denied.

Rulings Nos. 1, 2, 3, 4, 5 are granted.

ORDER

The School District has met its burden showing by a preponderance of the evidence that its evaluations of Student were sufficient and appropriate. The conclusions drawn from those evaluations were not satisfactory to Parent and Student but that does not provide reason to require public funding of an independent educational evaluation. The District prevails.

Appeal Rights

This is a final order and may be appealed accordingly. If either party is aggrieved by the decision of the hearing officer as stated above, that party may appeal this decision to a court of competent jurisdiction. The District shall notify the Commissioner of Education when either party, Parent or District, seeks a judicial review of the decision. The Parent may obtain a transcript of the hearing by request to the Department of Education

Signed this 25th day of March, 2011.

Gail C. Morrison, Hearing Officer