

**BEFORE A SPECIAL EDUCATION DUE PROCESS PANEL
OF THE DELAWARE DEPARTMENT OF EDUCATION**

In the Matter of	:	
	:	
Colonial School District,	:	
	:	
Petitioner,	:	
	:	DE DP 16-19
v.	:	
	:	
	:	
	:	
Respondent.	:	

ORDER

A request for a due process hearing was filed on February 5, 2016 on behalf of the Colonial School District, hereinafter the "District". A response was filed on behalf of the student dated February 10, 2016.

A Due Process Hearing consisting of Dr. Vicki McGinley, Mr. Jon Fletcher, and Norman E. Levine was convened, and a hearing was held on April 19, 2016 and April 22, 2016.

The District is responsible for identifying all of the child's special needs, whether or not linked to the category of the disability. See 34 CFR § 300.304(c)(4) and (6). A copy of informal guidance representing an interpretation by the United States Department of Education, Office of Special Education and Rehabilitative Services is enclosed herewith.

On November 24, 2015 a request for an independent educational evaluation (IEE) at public expense was forwarded to the student's parent's counsel. The request was made over one year after the District's Evaluation Summary Report and IEP which was dated September 17, 2014. The District denied the request and a due process hearing request was filed in accord with 14 DE Administrative Code § 926.2.4.1.1.

The District had completed an Occupational Therapy evaluation on September 17, 2014 which included testing of visual perception, handwriting skills, clinical and classroom observations, consultation with teachers and professionals by Occupational Therapist. Occupational Therapist found that the student was eligible for occupational therapy services, and a schedule of occupational therapy services four times per month for fifteen minutes each.

School Psychologist, a Nationally Certified School Psychologist performed psychoeducational testing on May 28, 2014 and May 29, 2014. School Psychologist also conducted a Functional Behavioral Analysis (FBA) in February 2014, and developed a comprehensive Behavior Intervention Plan. School Psychologist's September 17, 2014 evaluation included numerous standardized tests including Stanford – Binet Intelligence Scales (SBI), Kaufman test of Educational Achievement (KTEA-II) Behavior Assessment 5th Edition (SB-V), Kaufman Test of Educational Achievement 2nd Edition (KTEA-II), Behavior Assessment Scale for Children – 2nd Edition (BASC-2), and Gillam Asperger's Disorder Scale (GADS). Additionally, School Psychologist conducted student, parent and teacher interviews, behavioral observation, and reviewed records.

School Psychologist found the student's IQ score to be 95 which is in the average range. Based on Mother's request, and identified deficits in standardized tests and class performance, School Psychologist recommended that visual cues be included in the student's IEP. School Psychologist was part of the IEP team which included Math and Writing goals.

School Psychologist could not rule out emotional disturbance. Based on School Psychologist's participation at the IEP team meeting, the team found the student qualified to receive special education services under the Emotional Disturbance Classification.

The student's Mother, implied that the student should have been classified as autistic instead of a child with emotional disturbance. This position of the student's Mother is a difference without meaning. The student was qualified to receive special education services under the Emotionally Disturbed classification. The IEP included all of the student needs, without a classification of autism.

A Functional Behavior Assessment (FBA) was also developed which was successfully implemented at the school. Mother signed off on the September 17, 2014 IEP. The IDEA does not require the IEP team to conduct a written FBA, but the IEP team did meet its requirements, and considered behavior interventions and strategies.

IDEA does not require a written FBA. Board of Education of the Akron Cent. Sch. District, 28 IDELR 909 (SEA NY 1998); Issquah Sch. Dist. 107 LRP 63423 (SEA WA 6/22/07).

Further School Psychologist used the Prevent Teach Reinforce method which had been approved by the Delaware Department of Education.

During the 2014-2015 school year, the student responded to the education program, which negated any reason to complete additional assessments and evaluations at that time. The student also made meaningful educational progress.

The testimony of the student's mother's expert, was not persuasive as student's mother's expert had never met or observed the student, was not aware of the student's program in Student's current placement, and had not reviewed the most recent data collected by the student's teachers regarding behavior.

With the beginning of the 2015-2016 school year, the student demonstrated behaviors that caused the school to review the IEP for modification. The school and the mother collaboratively worked together.

The student's placement in the 2015-2016 school year was at School. After the student became acquainted and familiar with Student's new teacher and surroundings, the student began, and continues to make meaningful educational progress in Student's current placement.

The September 17, 2014 IEP, which as stated above was signed by the student's mother, and the modifications that were made in the beginning of the 2015-2016 school year, met the student's evolving needs, and continues to meet Student's needs at this time with positive results.

The seminal case of Board of Educ. of Hendrick Hudson Cent. School District., Westchester County v. Rowley, 458 U.S. 176, 188-89 (1982), is the U.S. Supreme Court

case that holds that for a child with a qualifying disability, “a ‘free appropriate public education’ consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child, ‘to benefit’ from the instruction.”

In this case, Rowley, supra requirements have been met as meaningful benefit has been provided to the student. In addition, the least restrictive environment (LRE) has been achieved as the needs of the student have evolved over time for the September, 2014 IEP and Notice of Recommended Education Placement (NOREP) to the November, 2015 IEP and NOREP which also was approved by the student’s mother.

Further IDEA and Delaware law require that students with disabilities be evaluated at least once every three years. 20 U.S.C. § 1414(a)(2)(B)(ii); 14 Del. Admin. C. § 925-3.2. A school district is required to evaluate a student more frequently than three years, if the student’s educational and related services warrant it. 20 U.S.C. § 1414 (a)(2)(A)(i); 14 Del. Admin. C. § 925-3.1. The District complied with the law subsequently to the September 17, 2014 IEP. The District evaluated and updated the student’s IEP in October, 2015, complying with the above cited laws.

Regarding a request for IEE, as stated in Great Valley School District, Pennsylvania State Educational Agency, 114 LRP 49527 (October 16, 2014) Parental disagreement with an evaluation’s methodology and/or conclusions is not evidence that an evaluation is inappropriate. The IDEA provision that opens the door to parents obtaining an IEE at public expense does not confer the right to a “second opinion.” Except in limited circumstances, only when an evaluation conducted by an LEA does not conform to the specific requirements of the IDEA may a hearing officer order an independent evaluation. Even if a hearing officer would have a professional disagreement with the conclusions of the evaluation, the evaluation must be deemed appropriate if it conformed in all respects with the requirements of the IDEA No matter if an evaluation is completed by a school district or a private practitioner, there are always additional tests that could have been chosen, and if the parents wish to seek additional information privately they are free to do so, but not at public expense.

The opinion stated above is even more valid when the IEP was approved and signed off by the student's mother in September, 2014, and multiple IEE were not requested until November, 2015. It is further noted that the student was placed at the Psychiatric Center from October 12, 2015 to October 19, 2015, and the child's mother did not request multiple IEE until November, 2015, which request was made after the psychiatric evaluation of the student at the Psychiatric Center in October, 2015.

The Hearing Panel finds that the evaluations were appropriate and thus, Parent is not entitled to public funding of additional evaluations, and an award of attorney's fees and costs is denied.

Dr. Vicki McGinley,
Panel Member

Mr. Jon Fletcher,
Panel Member

Norman E. Levine,
Panel Chair

May 23, 2016



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

February 23, 2015

Debbie Baus

Dear Ms. Baus:

This is in response to your June 27, 2014 electronic correspondence requesting guidance from the Office of Special Education Programs (OSEP) regarding an independent educational evaluation (IEE) under 34 CFR §300.502 of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether a parent can request an IEE in an area that was not previously assessed by the school district's evaluation.

Under 34 CFR §300.502(b)(1) of the IDEA, a parent of a child with a disability is entitled to an **IEE at public expense** if the parent disagrees with an evaluation obtained by the public agency. Evaluation is defined at 34 CFR §300.15 as procedures used in accordance with 34 CFR §§300.304 through 300.311 to determine whether a child has a disability and the nature and **extent of the special education and related services that the child needs. An initial evaluation** of the child is the first completed assessment of a child to determine if he or she has a disability under IDEA, and the nature **and extent** of special education and related services provided. 34 CFR §300.301. Once a child has been fully evaluated for the first time in a State, a decision has been rendered that a child is eligible under the **IDEA, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. See the Analysis of Comments and Changes published as Attachment 1 to the March 12, 1999 final regulations at 64 Fed. Reg. at 12606. Evaluation procedures at 34 CFR §300.304(b)(1) require** that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum. Furthermore, the State must ensure that in evaluating each child with a **disability under 34 CFR §§300.304 through 300.306, the evaluation is sufficiently comprehensive to assess the child in all** areas related to the suspected disability, and must identify all of the child's special needs, **whether or not commonly linked to the disability category in which the child** has been classified. 34 CFR §300.304(c)(4) and (6).

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When an evaluation is conducted in accordance with 34 CFR §§300.304 through 300.311 and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs. Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either: (i) initiate a hearing under 34 CFR §300.507 to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 CFR §300.507 that the evaluation obtained by the parent did not meet agency criteria.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions, please do not hesitate to contact Jennifer Wolfsheimer at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/ Melody Musgrove

Melody Musgrove, **Ed.D.**
Director
Office of Special Education Programs