

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

In the Matter of	:	
	:	
School District,	:	
	:	
Petitioner,	:	
	:	DE DP 17-07
v.	:	
	:	
	:	
Respondent.	:	
	:	

ORDER

A request for a due process hearing was filed on behalf of the School District, hereinafter the "District".

A Due Process Hearing consisting of Dr. Harold Tarriff, Mr. John Werner, and Norman E. Levine was convened, and a hearing was held on March 2, 2017 and March 3, 2017.

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 22, 2016 a request for five independent educational evaluations (IEE) at public expense was forwarded by the student's parent's counsel, to the district. The student's parent's counsel requested the following (IEE), that is neuropsychological testing, psychiatric assessment, speech/language testing, occupational therapy testing, and a functional behavioral assessment, be at the School District expense. 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., dated January 4, 2017.

An hearing was held on March 2 and March 3, 2017. At the completion of the hearing, a transcript was ordered to be provided to counsel for the student and parents, and to the counsel for the district, as well as to the panel members by email. The Closing Arguments were filed on March 17, 2017. Unfortunately due to a communication misunderstanding, copies were not transmitted to the panel members until March 27, 2017.

The student was born on xx/xx/xx. Student had an extremely difficult situation having been residing in the first years of his/her life in a most inappropriate lifestyle. Student was only able to speak x words, at almost x years of age.

Student moved to Delaware on xx/xx/xx and has lived with his/her adoptive parents, and was enrolled in the School District in xx/xx and has attended school in the School District since that date, excluding the Student being enrolled at a day treatment program in Delaware. The Student was removed from the day treatment program in xx/xx, and was admitted to the inpatient program.

Student was a patient at an inpatient program for x days, and was then relocated to the psychiatric center. The Student was released from the psychiatric center in xx/xx, and returned to the School District, and completed the remainder of the x grade at School. Student did not attend the in-district school for a portion of the time, when Student was enrolled in the day treatment program in Delaware, was admitted to the inpatient program, and relocated to the psychiatric center.

Student entered the School in the fall of 2016 and continues to attend the School.

The current IEP was entered on November 4, 2015. Although the full IEP review is not due for three years, the history of Student's placements, and most difficult and life experiences, requires that the triennial full review of Student's IEP is necessary at this time.

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

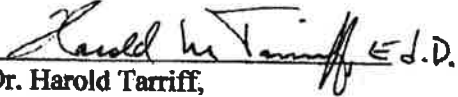
case that holds that for a child with a qualifying disability, “a ‘free appropriate public education’ consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child, ‘to benefit’ from the instruction.” The Rowley standard has been updated, but the U.S. Supreme Court case of Rowley continues as the law of the land.


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.

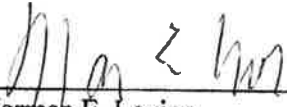
The Hearing Panel finds that the educational evaluations of neuropsychological testing, speech/language testing, and occupational therapy testing shall be repeated by the School District employees.

The Hearing Panel further finds that the School District shall provide to the student’s parent’s counsel a list of Delaware licensed independent psychiatrists, from which the parent’s student’s counsel may select a psychiatrist at the expense of the School District.

Similarly, the School District shall provide to the student’s parent’s counsel a list of Board Certified Behavioral Analysts from which the student’s parent’s counsel may select a Board Certified Behavior Analyst at the expense of the School District.


Dr. Harold Tarriff,
Panel Member


Mr. John Werner,
Panel Member


Norman E. Levine,
Panel Chair

DATED: APR 21 2017



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).

Exhibit A

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Page 2 – Ms. Debbie Baus

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