

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION GROUP**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 05-10
(August 12, 2005)**

On May 27, 2005, Parent filed a complaint with the Delaware Department of Education on behalf of her son (“Student”).¹ The complaint alleges that the Indian River School District has violated state and federal laws relating to children with disabilities. Parents are concerned that the District violated the “Childfind” and evaluation requirements of the Individuals with Disabilities Education Act and implementing state and federal regulations in the way it evaluated Student’s eligibility for special education and related services during the 2004-2005 school year. Parent is also concerned that District personnel may have interfered with an evaluation Parent scheduled with a private psychologist.

The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.660 to 300.662 and according to the Department of Education’s regulations and procedures, including Sections 15.12 to 15.14 of the *Administrative Manual for Special Education Services* (“AMSES”). Specifically, the investigation included a written interview with Parent and interviews with Darlene St. Peter, the District’s Supervisor of Special Education Services. Documents reviewed included correspondence between Parents and District, Conference Notes, permissions to evaluate and Evaluative Summary Reports.

FINDINGS OF FACT

1. Student attended the first grade in an elementary school within the District during the 2004-2005 school year.

¹ The Final Report identifies some people and places generically, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index is designed to be removed before the Final Report is released as a public record.

2. On December 3, 2004, Parents asked the District to evaluate Student to determine whether Student needed special education and related services. Parents specifically requested that the District evaluate Student's educational, psychological, neurological, occupational therapy, physical therapy and speech and language needs.
3. On December 15, 2004, District sent Parent a form seeking her permission to evaluate Student using a variety of tests and procedures. Parent agreed to the proposed evaluation, signed the written consent and returned it to the District by certified mail. The District received this consent ("Consent 1") early in January, 2005.
4. In the interim, District's school psychologist began to schedule dates to administer testing to Student. The psychologist requested that Parent come to school to sign another consent ("Consent 2"). Mother signed Consent 2 at the school on January 6, 2005.
5. After Parent signed Consent 2 at the school, the District assessed Student in several ways, including achievement and intelligence testing, a speech and language evaluation, an occupational therapy evaluation and classroom observations.
6. The District convened a meeting to consider Student's eligibility for special education services on March 3, 2005. District presented the results of its assessments. Psychological testing showed that Student has a discrepancy between his ability and his achievement in written language indicative of a specific learning disability in that area. The team was unable to decide whether Student needed special education and related services by reason of his disability, given his above average academic performance in first grade.
7. On March 23, 2005, Parents wrote to the Principal of Student's school. Parents disagreed with the recommendations of the District's psychologist and requested "further evaluations" by a neuropsychologist. Parents also believed the District's occupational therapy evaluation was inconclusive and requested an independent occupational therapy evaluation by a therapist trained in sensory processing disorder.
8. In the interim, Student began using eyeglasses in school. On April 5, 2005, District convened a second meeting to further consider Student's eligibility. The group, including Parent, agreed that additional psychological testing should be performed with Student using his eyeglasses.
9. The group determining eligibility met for the third time on May 6, 2005. At that time, Parents notified the District that Student's psychiatrist had diagnosed him with dyslexia on the basis of "psychological testing performed" by the District. Doctor's prescription note confirms his diagnosis is based on the District's original psychological testing, conducted before Student began wearing eyeglasses.
10. The District also presented the results of its additional psychological testing (conducted with eyeglasses) at the May 6, 2005 eligibility meeting. The additional testing revealed higher achievement levels than the testing completed in January 2005, and no significant discrepancy between ability and achievement in written language. The group, with Parents disagreeing,

concluded that Student was not eligible for special education and related services.

11. After Student was determined ineligible for special education and related services on May 6, 2005, Parents repeated their request for a neuropsychological evaluation and an occupational therapy evaluation by a sensory integration certified therapist. Parent requested specific private providers for these additional evaluations and scheduled appointments with those providers.
12. On May 18, 2005, the District declined Parents' request for a neuropsychological evaluation and for an occupational therapy evaluation by a sensory integration certified therapist.
13. Student had an appointment on June 11, 2005 with the private psychologist whom Parent arranged to perform a neuropsychological evaluation. The psychologist cancelled that appointment after speaking with Darlene St. Peter, the District's Supervisor of Special Education Services. Ms. St. Peter stated she contacted the psychologist, on May 25, 2005, to discuss another child; the psychologist asked spontaneously whether the District had agreed to pay for an evaluation of Student; St. Peter replied that the District had declined. According to Ms. St. Peter, the conversation ended shortly afterwards.

CONCLUSIONS

Parent raises three concerns: (1) that the District failed to assess student in all areas of suspected disability; (2) that it failed to timely provide her the independent evaluations she requested; and (3) that District staff inappropriately contacted private psychologist, interfering with Parents' right to an independent evaluation.

1. Timely, full and individual evaluation.

Parent believes that District's evaluation of Student was incomplete because it did not include a neuropsychological assessment or an occupational therapy assessment by a therapist certified to perform sensory evaluations. Federal regulations contain a number of requirements related to evaluations.

Agencies must "conduct a full and individual initial evaluation in accordance with [34 CFR] §§300.532 and 300.533" before providing federally-funded special education services to a student. (See 34 CFR § 300.531). Districts are required to use a "variety of assessment tools and strategies" to gather information about a child to help determine whether the child is eligible for special services. (See 34 CFR §300.532(b)(1)). For initial eligibility determinations, the child must be "assessed in all areas related to the suspected disability...."(34 CFR §300.532). A group of individuals similar to an IEP team must review existing evaluation data and identify any additional data needed to determine whether a child has a particular category of disability and needs special education services. (34 CFR §300.533(a)). The school district must then administer tests and other evaluation materials to produce the needed data. (34 CFR §300.533(c)).

Parent agreed to the District's plan to evaluate Student by using a variety of tests, and procedures, including achievement and intelligence tests, and speech/language and occupational therapy evaluations. (See December 20, 2004 "Request for Permission to Evaluate," including Parent's agreement to the evaluation outlined by District). The District then administered the tests and assessments as outlined in the evaluation plan (and as required by 34 CFR 300.533(c)).

Parent specifically suggests the District violated federal regulation §300.532(a) by failing to assess Student's suspected dyslexia through a neuropsychological evaluation. However, Student's psychiatrist based his own dyslexia diagnosis *on the District's first psychological assessment*. Psychiatrist's reliance on the District's psychological testing clearly suggests that the District's evaluation was sufficiently comprehensive to determine Student's eligibility. Also, once Student's vision was corrected, the District's second psychological assessment showed no remaining significant discrepancy between Student's ability and achievement, eliminating the primary reason Student was suspected of having a specific learning disability in the first instance. In short, the District's evaluation was adequate to assess Student's suspected disability category (specific learning disability) and his need for services, as required by 34 CFR §533(a). The District was thus not required to provide an additional neuropsychological assessment.

The District was also not required to provide an occupational therapy evaluation by a sensory integration-certified therapist. The individual who performed District's occupational therapy assessment was an OTR, a registered occupational therapist, a DOE-recognized license credential. (34 CFR §§300.23 and 300.532(c)(1)). As such she was qualified to conduct Student's occupational therapy evaluation; there is no educational requirement that a therapist or other evaluator be specifically certified to assess specific disorders.

Parent also believes District failed to comply with State timelines for assessing Student's eligibility for services. AMSES Regulation 3.1 requires that "[i]nformed parental consent shall be obtained before conducting an initial evaluation and the meeting to determine eligibility shall occur within 45 school days, or 90 calendar days, whichever is shorter, of the receipt of consent for the initial evaluation, unless additional time is agreed upon."

The timeline in Regulation 3.1 begins when the District receives written consent, not when the consent is signed. Here, District's records indicate it received Parent's December 20, 2004 written consent early in January. In any event, the District convened an eligibility meeting on March 3, 2005. This was 44 school days, or 73 calendar days, after December 20. (The District's schools were closed from December 23 to January 3 and on January 17 and February 21). Thus, the District complied with the timeline in Regulation 3.1 even based on the date the consent was signed instead of the date the District actually received it.

District complied with state and federal requirements in conducting its initial evaluation of Student's eligibility for special education and related services.

2. Request for independent evaluations at public expense.

Parent indicates District violated Student's right to an independent educational evaluation ("IEE") at public expense when it refused to provide the requested neuropsychological evaluation by a private psychologist and the requested occupational therapy assessment by a private therapist certified in sensory integration disorder.

An IEE is "an evaluation" conducted by a qualified examiner not employed by the school district. (34 CFR §300.02(3)(i)). Parents have the right to an IEE at public expense when the parents disagree with an evaluation obtained by a district. (34 CFR §300.502(b)). An "evaluation" means "procedures used in accordance with [34 CFR] §§300.53-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." (34 CFR §300.500).

As discussed above, the District's evaluation of Student consisted of various tests and assessments. The group of individuals that determined which assessments would be used also determined that neuropsychological testing and a sensory-based occupational therapy assessment were not necessary components of Student's initial evaluation. Parent believes that those additional assessments should have been included as part of the initial evaluation; her disagreement is with the group's decision not to include those assessments in Student's evaluation, not with the evaluation as a whole.

Put another way, the "independent evaluations" parent requested are actually tests or assessments; they are not "evaluations" (independent or not) as that term is defined and used in the IDEA regulations. Accordingly, the District was not required to fund the assessments Parent requested, or to initiate a due process hearing to establish the sufficiency of its evaluation.

District has completed its initial evaluation of Student and Parent may certainly request the District fund a "full" IEE if Parent disagrees with the District's evaluation, i.e., with the comprehensive constellation of tests, assessments and other data considered under §300.533. In her correspondence to investigator as part of this appeal, Parent does now seem to seek a comprehensive independent evaluation. If Parent requests an IEE from the District, the District should promptly ensure the independent evaluation is provided at public expense or should initiate a due process hearing to establish the appropriateness of its own evaluation. To date, however, District did not violate state or federal requirements regarding independent evaluations.

3. Cancellation of appointment.

Parent requested investigation of Ms. St. Peter's role leading to the cancellation of an appointment Parent had scheduled for Student with a private neuropsychologist ("Psychologist"). In an interview, Ms. St. Peter explained she had regular professional

contact with Psychologist; that she called Psychologist on May 25, 2005 about another child; Psychologist questioned her about the District's intention to pay Psychologist for upcoming services to Student; and that she (St. Peter) informed Psychologist that the District had declined Parent's request for a publicly-funded neuropsychological evaluation of Student by Psychologist.

According to Parent, Psychologist cancelled Student's appointment shortly after the conversation with St. Peter for fear that she would not be paid for her services. Investigator requested Parent's authorization to interview Psychologist about her contact with Ms. St. Peter. Parent declined to permit the interview.

Ms. St. Peter's explanation of her contact with Psychologist is credible. No reason to doubt it has arisen in this investigation. There is no basis to conclude that Ms. St. Peter inappropriately contacted Psychologist, attempted to interfere in the relationship between Student and Psychologist, or otherwise violated any special education rule or requirement.

Having found no violation of state or federal laws concerning children with disabilities, no corrective action is required.

By: _____
Louann Vari
Education Associate, ECECE Branch
Assigned Investigator

Date Issued: August 12, 2005²

² The timeline for the investigation and resolution of Parent's complaint was extended to August 12, 2005, to permit additional consideration of the relevant regulatory requirements.