

**ILLINOIS STATE BOARD OF EDUCATION1
IMPARTIAL DUE PROCESS HEARING**

FRANK H.,)	
Student,)	
)	
vs.)	CASE NO. 2007 - 0182
)	
CITY OF CHICAGO SCHOOL)	Mary Schwartz
DISTRICT 299,)	Due Process Hearing Officer
Local School District.)	

PRELIMINARY ORDER

Jurisdiction

This matter is before the undersigned hearing officer on the parents' request for a due process hearing. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act (AIDEA@), 20 U.S.C. ' 1400 *et. seq.* (2004), 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code ' 226.600 *et. seq.*

Procedural Information

The parents filed a due process request on February 26, 2007, which the district received on March 1, 2007. The district filed its response on March 26, 2007. A pre-hearing conference was held in this matter, and a due process hearing was held on May 14 and 15, 2007. One of the remedies requested by the parents was an Independent Educational Evaluation ("IEE") to assess the student's cognitive and academic skills and social/emotional status. (O'Connor letter dated April 16, 2007, to IHO and district).

During the due process hearing, district witnesses testified regarding the student's problems in the school setting, and documents were entered into evidence by both parties on the student's behavioral problems, academic issues and the district's initial Case Study Evaluation. Evidence relevant to the question of whether an IEE is necessary includes the following:

1. The student, who is currently 10 years old, is a fourth grade student at New Sullivan School in Chicago. (PD3). He began attending New Sullivan in kindergarten and has a record of behavioral problems since that time. His behavioral problems are documented in Misconduct Reports, IEPs, teacher anecdotes, and other school documents submitted by both parties. See, exhibit books entered into evidence by each party. Additionally, numerous witnesses testified at the hearing regarding the student's behavioral problems.

2. The student has had several psychiatric hospitalizations at Hartgrove Hospital and has been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) and prescribed medication for the ADHD. (PD65). He receives psychiatric and counseling services from Metropolitan Family Services (“MFS”). (PD 57-66).

3. Toward the end of the student’s second grade year, on May 4, 2004, his mother requested a Case Study Evaluation “CSE” due to the student’s academic and behavioral problems, including ADHD. (PD 253).

4. The district conducted a CSE the following academic year (PD210 , SD66). Per request of the district’s case manager, the student’s therapist at MFS a therapy report and psychiatric history on the student. (PD56).

5. The CSE evaluation included assessments by the school nurse, social worker and psychologist. Reports by both the school nurse and social worker mention the student’s 2004 psychiatric hospitalization, ADHD diagnosis, and psychotropic medication. (PD 104, 115). The social worker’s report states that the referral is for “academic and behavioral concerns,” noting that the student’s teacher reported that he was below grade level in reading. (PD 104, 105). The nurse’s report states that the student’s school performance and attendance are impacted by his behavior. (PD 117).

6. In contrast, the school psychologist’s report states that the student is being evaluated for “behavioral concerns.” The school psychologist determined that the student performs in the low range in reading and writing and the average range in mathematics and factual knowledge. The student’s basic skills are in the low range. Based on this assessment, the school psychologist determined that the student’s overall intellectual abilities are in the borderline/low average range. (PD 67-70, SD 62-65). To assess behavior, the school psychologist had the student’s second grade teacher complete the Burk’s Behavior Rating Scales. (PD 77). Based on this test, the psychologist determined that the student showed very significant finding in three areas: poor impulse control, excessive sense of persecution, and excessive resistance. The evaluator’s overall conclusion was that the student did not need special education for academic reasons. He recommended a small, highly structured classroom with behavior modification techniques to address that student’s behavior. (PD 70, SD 65).

7. The school psychologist testified that his decision on which tests to administer in an evaluation is driven by the reason for the evaluation. In this instance, the school psychologist testified that the student was referred for behavioral reasons and thus the primary focus of the psychological evaluation was on behavior. He further testified that he gave the student a full IQ battery and an achievement test, which he stated showed no unusual disparity in WISC scores and a processing speed consistent with the student’s other scores. He

stated that the scatter in the student's WISC scores was not significant.

8. The district held an initial IEP meeting on February 11, 2005, and determined that the student's primary disability was EBD2 . (PD 40, SD 38). The student's present level of performance ("PLOP") in Language Arts reports that he has "problems with reading comprehension." (PD 45, SD 43). In math, the student's PLOP indicates that he has difficulty memorizing basic math facts and "struggles with solving problems with missing numbers and reverse operations." (SD 44).

9. The first annual IEP review was held on December 5, 2005. (PD 23, SD 24). The student's PLOP in Language Arts reports that he is working below grade level and has difficulty in word knowledge, fluency and comprehension. (PD 29).

10. While he was in third grade, the student was again psychiatrically hospitalized at Hartgrove Hospital. He received educational services in the hospital's school program during the hospitalization. The discharge report by the hospital's school states that the student was unable to read at grade level. (SD 140-142).

11. On November 21, 2006, an annual review was held to update the student's IEP. (PD 3, SD2) . The IEP notes that the student's fall Learning First scores were below level. (PD 4, SD 3). On the Learning First assessment, the student received a score of 1 out of 4 in vocabulary development, 0 out of 7 in reading strategies, 6 out of 14 in reading comprehension, and 3 out of 9 in literature. (PD 297). Each of these scores is below the average items correct for all students in the district. In Language Arts, the student's PLOP indicates that he is reading below grade level and has difficulty in fluency and work knowledge. (PD 10, SD 9). His PLOP for both biological/ physical sciences and social sciences indicates that he is reading below grade level. (PD 11,12; SD 10, 11). The social/emotional PLOP also notes that the student becomes upset when he is unable to finish an assignment. (PD 9).

12. The student's current math teacher testified that that the student's academic weaknesses in math are analyzing word problems and interpreting story problems.

13. The student's treating psychiatrist testified regarding the student's current emotional state, stating that the student's current behavioral problems may be co-morbid with a learning disability. In her opinion, research shows that externalizing disorders such as the student's are often co-morbid with a learning disability.

The district has argued that the parents are not entitled to an IEE because they have not disagreed with the district's evaluation. See, 34 C.F.R.

§ 300.502(b). While it is true that the IDEA and its implementing regulations require that a parent disagree with a district evaluation in order to secure an IEE, Illinois law provides that parents may ask the hearing officer to determine whether an IEE is necessary. 23 Ill. Adm. Code § 226.625(a)(2). Here, the parents have made such a request to the hearing officer. If the hearing officer determines that an IEE is “necessary to inform the hearing officer concerning the services to which the student may be entitled, it shall be so ordered and provided at the district’s expense.” (emphasis added). *Id.*

Educational placement and services are central issues in this case. The record is replete with information regarding the student’s behavioral issues and psychiatric history. No further evaluation is necessary regarding the student’s social/emotional issues. Such is not the case, however, regarding academic issues. Although all the student’s IEPs have consistently noted reading problems and consistently indicate that the student is reading below grade level, the district has never provided a learning disability or reading evaluation for the student. There has been no investigation as to whether the student’s documented reading deficiencies or a learning disability have an impact on his behavioral problems. This hearing officer cannot determine whether there are services to which the student may be entitled without such an assessment. Therefore, the hearing officer orders the following:

1. The parents’ request for an IEE at district expense is granted. This IEE is to assess the student for learning disabilities, particularly in regard to reading, which has been consistently reported as his academic weakness. The parents are to secure the IEE as soon as possible. If more than 45 days is required to complete the IEE and provide a report to the district and this hearing officer, the parents must so inform the hearing officer and the district immediately, providing a date certain by which the evaluation will be complete and the report delivered to the hearing officer and district.

2. The district must have a reasonable amount of time to consider the IEE. If more than two weeks is required for such consideration after the district receives the IEE final report, the district must notify the hearing officer and the parents of a date certain by which it will have completed its consideration of the IEE.

3. The district will have the opportunity to rebut the IEE if it so requests. Upon such request by the district, the due process hearing will reconvene, and each party may call witnesses to testify regarding the information in the IEE. The district must notify the hearing officer and the parents of a request to so rebut within two weeks of the date on which it concludes its consideration of the IEE.

4. The record in this matter is held open until: a) the district has had the opportunity to rebut the IEE via further testimony and evidence presented at another hearing date; or, b) the district provides the hearing officer and parents

with a written statement that it does not request such rebuttal time. If the district foregoes the opportunity to rebut the IEE, the hearing officer will issue a final decision in this matter based on the evidence and testimony presented at the May 14th and 15th hearing dates and the IEE report submitted by the parents.

5. A status conference call is set for May 29, 2007, at 3:00 p.m. to discuss this Preliminary Order.

ISSUED: May 23, 2007

Mary Schwartz
Due Process Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Preliminary Order was sent by email and placed in the U.S. Mail at Olympia Fields, Illinois, with first class postage prepaid and directed to:

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Before 5:00 p.m. on May 23, 2007.

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