

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

CHRISTOPHER J.,)
Student,)
)
) CASE NO. 4948
)
)
CITY OF CHICAGO SCHOOL)
DISTRICT 299,)
Local School District.)

MARY SCHWARTZ
Due Process Hearing Officer

**INTERIM ORDER:
PARENT’S MOTION FOR AN INDIVIDUAL EDUCATIONAL EVALUATION AT
PUBLIC EXPENSE**

This matter is before the undersigned-hearing officer on the parent’s Motion for an Individual Educational Evaluation (“IEE”) at public expense. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA 2004”), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.*

Background

A. Procedural Background

The parent, through her attorney, filed a due process request on March 17, 2006, alleging in part that the district had failed to conduct adequate assessments of the student in all areas of potential disability. The district received the parent’s request the same day it was filed. The Illinois State Board of Education (“ISBE”) appointed this hearing officer via letter on March 23, 2006. This hearing officer received her appointment letter on March 24th.

On March 27, 2006, this hearing officer sent a preliminary scheduling order to the parties. The district also filed its response to the parent’s request on March 27th. The parties then agreed that the district would conduct a full individual evaluation (“FIE”). The district found the student eligible for services and, on May 15, 2006, held an IEP meeting on the student.

The parent filed the motion herein on June 15, 2005. The following exhibits were attached to her motion: the draft Psychological Report by the

district psychologist for testing done on April 28, 2006; the district speech pathologist's speech and language assessment summary, dated February 6, 2006; the initial speech and language assessment by the district speech pathologist dated February 11, 2000; the district's social assessment, dated April 28, 2006; the school nurse report, dated April 27, 2006; and the district's occupational therapy assessment for testing done on May 10, 2006; the IEP, completed on May 15, 2006; and a technical assistance paper entitled "Nonverbal Tests of Intelligence"

The district filed its response on June 23rd. Attached to the district's response were the following exhibits: Consent for Evaluation forms, dated February 1, 2006 and February 7, 2006; Assessment Planning forms, dated February 7, 2006 and April 25, 2006; letters from district's counsel to parent's attorney, dated March 27, 2006, and April 17, 2006; and, a WISC-IV product information sheet.

The parent filed a reply to the district's response on June 23rd. This hearing officer held a conference call with the parties on June 26th to discuss their positions on this matter.

B. Parent's Motion and Reply

The parent maintains that the district's FIE failed to meet the statutory requirements. Specifically, the parent alleges that the district's FIE was deficient in the following respects: 1) although the district was aware that the student had impaired expressive and receptive language skills, it gave him an intellectual assessment that does not fairly and adequately assess students with communication disorders; 2) the district's academic assessment of the student was not sufficiently comprehensive, in that it was the "brief" version of the test and therefore did not assess all relevant areas of disability; 3) the student was not given an assistive technology ("AT") evaluation and was determined not to need AT services despite the fact that the district's occupational therapist found that the student has problems in letter formation, cursive writing and in spacing, sizing and legibility; and, 4) the district's speech and language evaluation was flawed in that the examiner herself noted that that the student was "extremely reluctant" to respond during testing sessions and appeared angry at being retested.

Because of the these deficiencies, the parent requests this hearing officer to order an IEE at public expense. The parent asks that the IEE include a nonverbal intelligence test such as the Leiter, a re-assessment of the student's expressive and receptive language skills, a comprehensive assessment of the student's academic skills, and an AT evaluation. The parent makes her request pursuant to 23 Il. Adm. Code § 226.660(c), which she maintains authorizes a hearing officer to issue such an order.

C. District's Response

The district asserts that it provided a FIE in that it assessed the student's non-verbal cognitive functioning, basic academic skills, and communication skills. Moreover, the district argues that the parent was represented throughout the process and has not objected to the district's findings.

The district contends that a parent must notify the district if she wants an IEE at public expense. If the district refuses the IEE upon such a request, it must immediately initiate a hearing to show that its evaluation was appropriate. The district does not address the Illinois regulations cited by parent's counsel and relies only on federal law.

Discussion

The parties' disagreement centers on a hearing officer's authority to order an IEE at public expense prior to the requested due process hearing and without the district having a hearing on the appropriateness of its evaluation. The parent focuses on language in the Illinois administrative regulations, which the parent maintains gives a hearing officer such authority prior to a due process hearing. The district, citing only to the federal regulations, takes the position that the parent must make her request to the district, which must then agree or initiate a hearing on the matter.

The federal regulations' statement of IEE procedures is clear. A parent who disagrees with a district's evaluation may request the district for an IEE at public expense. 34 C.F.R. § 300.502(b)(1). Upon receiving such a request, the district must promptly grant the request or initiate a hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(2). Further, a hearing officer may request an IEE *as part of a hearing*, and that IEE must then be at public expense. 34 C.F.R. § 300.502(d). (emphasis added).

The parent's argument, as I understand it, is that the Illinois administrative regulations confer a greater right, which is that a parent may ask the hearing officer to determine whether an independent evaluation is necessary. It is the parent's position that the hearing officer can decide this IEE question based solely on review of documents. While state law can confer greater protections than the federal law, the question here is when that right comes into play: before or during a hearing.

Three provisions in the Illinois special education regulations deal with IEEs at public expense. First is the section entitled "Independent Educational Evaluation," which sets out the basic procedure for obtaining an IEE at public expense. A parent who disagrees with a district's evaluation and who wants an IEE at public expense must submit a written request to the district. 23 Ill. Adm.

Code § 226.180(b). If the district disagrees with the parent's request, it has five days to initiate a due process hearing. 23 Il. Adm. Code § 226.180 (c). This mirrors the federal provision cited by the district, which is the basis for its request that the parent's motion should be denied.

The district, however, neglects to address the parent's argument, which is based on two other sections of the Illinois special education regulations. In a detailed list of a party's rights related to a due process hearing, the regulations state that a parent may ask the hearing officer to determine whether an IEE is needed. 23 Il. Adm. Code § 226.625(c)(1). If, after reviewing available information, the hearing officer determines that an IEE is necessary to inform the hearing officer of services to which the student may be entitled, the hearing officer shall order an IEE at public expense. 23 Il. Adm. Code § 226.625 (c)(2). Finally, in a delineation of a hearing officer's powers, the regulations provide that the hearing officer "shall *conduct the hearing and, with respect to the hearing*, shall have, but is not limited to the following powers: ...to order independent evaluations." 23 Il. Adm. Code § 226.660 (c)(5) (emphasis added).

The parties have offered no case law to support their arguments¹, and my independent research has found none that is on point. Clearly, federal and state regulations provide that a hearing officer may order an IEE as part of a due process hearing. The logic behind this is that the hearing officer must have sufficient information to determine whether a child's placement and services offer a free appropriate public education in the least restrictive environment. Such information comes from testimony at a hearing and exhibits entered into record. Although I have reviewed all exhibits sent by the parties, those exhibits cannot take the place of testimony from, and cross-examination of, the examiners who evaluated this student. To weigh their reports for the purpose of determining the appropriateness of the district's evaluation without hearing testimony would be unfair to the district, as it would put the hearing officer in the position of interpreting evaluations without testimony by the test examiners. This view is supported by the regulations, which locate the provision cited by parent's counsel in the section delineating rights to a due process hearing. Read together, as I believe they must be, Sections 226.625(c) and 226.660 provide that at a hearing, a hearing officer *sua sponte* or upon request by a parent may order an IEE at public expense.

IT IS ORDERED THAT:

1. The parent's motion for an IEE at public expense is denied at this time.

¹ Both parties cite to *Schaffer v. Weast*, 126 S. Ct. 528 (U.S. 2005) for the proposition that a parent has a right to an IEE at public expense if the parent disagrees with the district's evaluation. However, this citation is not particularly helpful as this motion deals with when a parent may make such a request to a hearing officer, not with the right itself.

2. The parent may make a written request to the district for an IEE at public expense. If the district denies her request, it has five days to initiate a due process hearing on this specific issue. Such a hearing will be limited to testimony relating to the appropriateness, or lack thereof, of the district's evaluation. This hearing officer is prepared to conduct such a hearing on the short notice required by the statute.
3. At the due process hearing requested by the parent to address the issues in her March 17th due process request, the parent may renew her request to the hearing officer for an IEE at public expense. Additionally, the hearing officer *sua sponte* may order an IEE at public expense if she believes such is necessary to inform her of services to which the student may be entitled.

ISSUED: June 30, 2006

Mary Schwartz
Due Process Hearing Officer