



The University of the State of New York
The State Education Department
State Review Officer

No. 07-056

**Application of the BOARD OF EDUCATION OF THE ELLENVILLE
CENTRAL SCHOOL DISTRICT for review of a determination of a
hearing officer relating to the provision of educational services to a child
suspected of having a disability**

Appearances:

Donoghue, Thomas, Auslander & Drohan, LLP, attorney for petitioner, Vincent P. D'Andrea, Esq., of counsel

Lovett & Gould, attorney for respondents, Jonathan Lovett, Esq., of counsel

DECISION

Petitioner, the Board of Education of the Ellenville Central School District, appeals from the decision of an impartial hearing officer which denied its request to override respondents' withdrawal of consent for an independent psychiatric evaluation to be conducted as part of its Committee on Special Education's (CSE's) initial evaluation of respondents' daughter. The appeal must be dismissed.

At the commencement of the impartial hearing on February 27, 2007, respondents' daughter was nine years old and was attending petitioner's elementary school (Tr. p. 310). Respondents' daughter is described as anxious and impulsive (Dist. Ex. 4 at p. 1). She has met the criteria for diagnoses of impulse control disorder not otherwise specified (NOS) and post traumatic stress disorder (PTSD), for which medication has been prescribed (*id.* at pp. 1, 3, 10). At the time of the impartial hearing, the child was not classified as eligible for special education services and her classification remains a matter in dispute.

Respondents' daughter attended the Wawarsing Christian Academy preschool program for the 2002-03 school year (Tr. p. 319). During that time, respondents referred their daughter to the Committee on Preschool Special Education (CPSE) (*id.*). The CPSE evaluated the child and determined that she was ineligible to receive special education services as a preschool student with a disability (Tr. p. 319; see 8 NYCRR 200.1[mm]).

Respondents' daughter has attended petitioner's elementary school since kindergarten. In November 2005, when the child was in the second grade, respondents found her in the foyer of their home after she had hurt herself with self-mutilating behavior (Tr. p. 244). After this incident, the child was admitted to the New York Presbyterian Hospital for approximately four weeks (Tr. p. 245). Respondents sought an accommodation plan pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701-796[1][1998]) (section 504) because they were trying to obtain tutoring while their daughter was in the hospital (Tr. pp. 249, 251). Respondents' daughter returned to petitioner's elementary school in January 2006 (Tr. pp. 245, 283). Respondents met with petitioner's section 504 committee in January 2006 to discuss the child's emotional needs upon returning to petitioner's elementary school (Tr. pp. 283-85, 287).

In May 2006, respondents' daughter was hospitalized a second time for two weeks (Tr. p. 299). A private psychological evaluation of the child was performed at New York Presbyterian Hospital during June 2006, when the child was eight years old and at the end of her second-grade year (Dist. Ex. 4). The evaluators administered the Woodcock-Johnson III Tests of Cognitive Abilities (WJ-III COG), the Woodcock-Johnson III Tests of Achievement (WJ-III ACH), the Berry-Buktenica Test of Visual Motor Integration-Fifth Edition, the Rorschach Inkblot Test and the Thematic Apperception Test, as well as other projective testing (*id.* at p. 1). Administration of the WJ-III COG yielded standard (and percentile) scores of 107 (68) on the phonemic awareness cluster, 102 (56) on the working memory cluster, 99 (49) on the verbal ability cluster, 113 (80) on the thinking ability cluster and 97 (42) on the cognitive efficiency cluster (*id.* at p. 5). The evaluators indicated that the child was performing in the average to superior range of cognitive abilities (*id.* at p. 4). The child achieved standard (and percentile) scores of 101 (53) in reading fluency, 110 (74) in writing fluency, and 95 (36) in math fluency on the WJ-III ACH, which indicated average academic performance across tests of academic achievement with a relative strength in language memory and a relative weakness in math calculation skills (*id.* at pp. 6, 10). The evaluators reported that the child's responses to projective testing revealed that she had difficulty managing her feelings of anxiety and insecurity and had low self-esteem with a fragmented sense of self (*id.* at p. 8). The evaluators recommended that an occupational therapy evaluation of the child be conducted to assess her visual-motor integration difficulties in detail (*id.*).

Petitioner's section 504 committee met on October 10, 2006 and determined that respondents' daughter was ineligible to receive services pursuant to section 504 (Dist. Ex. 1 at p. 2). A referral to petitioner's CSE was reportedly suggested at that time (*id.*). By letter dated October 13, 2006, respondents referred their daughter to petitioner's CSE seeking to have their daughter classified as a student with an emotional disturbance¹ (*id.*).

¹ The regulations of the Commissioner of Education define "emotional disturbance" as:
a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:
(i) an inability to learn that cannot be explained by intellectual, sensory, or health factors;
(ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
(iii) inappropriate types of behavior or feelings under normal circumstances;
(iv) a generally pervasive mood of unhappiness or depression; or
(v) a tendency to develop physical symptoms or fears associated with personal or school problems.
The term includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.
(8 NYCRR 200.1[zz][4]; *see* 34 C.F.R. § 300.8[c][4]).

Petitioner's director of pupil personnel services indicated that she received respondents' letter of referral to the CSE on October 16, 2006 and sent a CSE "referral packet" to respondents by letter dated October 20, 2006 (Dist. Ex. 2; see Dist. Ex. 3). Respondents provided written parental consent for an initial evaluation of their daughter on November 3, 2006 (Dist. Ex. 5 at p. 3). Respondents also provided consent for petitioner to obtain written information and records from their daughter's health care providers on November 3, 2006 (id. at p. 5). However, respondents specifically refused consent for petitioner's personnel to communicate verbally with the child's health care providers and evaluators (id.). By letter dated November 13, 2006, petitioner's director of pupil personnel services acknowledged that she received respondents' written consent to obtain information and noted that "in light of [respondents] denying permission for the CSE chairperson to have verbal exchanges with previous evaluators" petitioner sought an independent psychiatric evaluation and an independent occupational therapy evaluation (Dist. Ex. 9 at p. 1). On November 20, 2006, respondents provided consent to conduct the independent psychiatric evaluation and an independent occupational therapy evaluation (Dist. Ex. 10).

The independent occupational therapy evaluation was conducted on or about December 6, 2006 (Tr. p. 402). Respondents were not notified that the occupational therapy evaluation was being conducted (Tr. pp. 168-69, 170). The occupational therapy evaluation was not made a part of the impartial hearing record. The child's mother testified that she was "extremely angry" that the independent occupational therapy evaluation was conducted without parental notification, reporting that her daughter's anxiety increases when she is taken out of the classroom by unfamiliar people (Tr. pp. 395-96). The child's mother testified that the child began to "decompensate" after the independent occupational therapy evaluation was conducted (Tr. pp. 396-97).

An independent psychiatric evaluation of the child was scheduled for January 11, 2007 (Dist. Ex. 16 at p. 1). However, respondents cancelled their daughter's appointment, alleging that she "had been re-traumatized" by the independent occupational therapy evaluation conducted "at the hand of the school" (Dist. Ex. 17 at p. 4).

By letter dated January 18, 2007, petitioner's director of pupil personnel services indicated that she considered respondents' cancellation of the appointment for the independent psychiatric evaluation a withdrawal of parental consent for the CSE to conduct the independent psychiatric evaluation (Dist. Ex. 19 at p. 1). In addition, the director of pupil personnel services noted that she was requesting an impartial hearing to override respondents' withdrawal of consent and to allow district personnel to communicate verbally with the child's health care providers and evaluators (id.). Petitioner sought an impartial hearing by due process complaint notice dated January 18, 2007 and requested an order directing an independent psychiatric evaluation of the child and allowing its personnel to verbally communicate with the child's health care providers (IHO Ex. 1 at pp. 4-5). Respondents' daughter was hospitalized for psychiatric reasons for a third time on February 16, 2007 (Tr. pp. 299, 373-74).

The impartial hearing commenced on February 27, 2007 and concluded on March 8, 2007, after two days of testimony. At the impartial hearing, petitioner additionally requested an extension of time for evaluating the child (Tr. pp. 32-34). The impartial hearing officer rendered a decision dated April 23, 2007. He found that respondents' daughter had undergone three

psychiatric hospitalizations between November 2005 and February 2007 related to self-mutilation (IHO Decision at p. 2); that there appeared to have been significant psychiatric evaluations from prior and current hospitalizations (*id.* at p. 5); that the child's mother repeatedly requested that petitioner's district officials obtain hospital records as background information for the CSE (*id.*); that respondents withdrew their consent for the independent psychiatric evaluation after learning that the independent occupational therapy evaluation of the child had been conducted without parental notification (*id.*); and that respondents had only withheld their consent for an independent psychiatric evaluation (*id.* at p. 7).

The impartial hearing officer further found that petitioner's CSE had not met to determine whether it lacked adequate information upon which to appropriately assess the child in all areas related to the suspected disabilities and make an eligibility determination (*id.* at p. 8). The impartial hearing officer denied petitioner's request for an independent psychiatric evaluation after concluding: that it was improper for petitioner's director of pupil personnel services to seek an independent psychiatric evaluation when petitioner's CSE had not yet determined that it lacked adequate information to render an eligibility determination; that petitioner had received portions of a psychoeducational evaluation conducted by New York Presbyterian Hospital but had not sought to obtain a "plethora" of psychiatric information pertaining to the child at the same hospital; and that a psychiatric evaluation of the child was unnecessary for petitioner's stated purpose of identifying the child's "current school performance" (*id.* at pp. 7-9). He determined that a CSE meeting is the appropriate forum for petitioner to exchange verbal information regarding the child and therefore, under the circumstances presented, denied petitioner's request for an order allowing its district personnel to verbally communicate with the child's health care providers (*id.* at p. 9). The impartial hearing officer also denied petitioner's request for an order to extend the timeline for it to conduct an initial evaluation of the child and reach an eligibility determination as to whether the child is a student with a disability (*id.* at p. 10). The impartial hearing officer ordered petitioner to "immediately" convene a CSE meeting to review existing evaluation data on the child and any additional information provided by CSE participants, and reach an eligibility determination as to whether the child is a student with a disability (*id.* at p. 10).

This appeal ensued.

Upon review of the hearing record, I find that I need not modify the impartial hearing officer's decision (*see* Educ. Law § 4404[2]). The impartial hearing officer determined that respondents had given consent for an initial evaluation. He also determined that sufficient evaluative data was in possession of the parties and that additional psychiatric data was obtainable where the child had been hospitalized, such that a CSE could convene and determine eligibility. The impartial hearing officer also noted that as part of an initial evaluation the CSE could meet, review the evaluative data, and if appropriate, determine what additional data, if any are needed (*see* 8 NYCRR 200.4[b][5]).

I concur with the impartial hearing officer that under the circumstances of this case, petitioner's CSE should have first convened to review and obtain the existing evaluative data on the child and determine whether it needed additional evaluative information. Based upon my review of the entire hearing record, I find that the hearing was conducted in a manner consistent with the requirements of due process and that there is no need to modify the findings of fact or conclusions of law as determined by the impartial hearing officer (34 C.F.R. § 300.514[b][2];

Educ. Law § 4404[2]; see Application of a Child with a Disability, Appeal No. 05-095; Application of the Bd. of Educ., Appeal No. 03-085; Application of a Child with a Disability, Appeal No. 02-096).² Accordingly, I find no reason to modify the impartial hearing officer's order directing petitioner to convene a CSE to review the existing evaluative data and render an eligibility determination.

I encourage the parties to work cooperatively in determining whether the child is eligible to receive appropriate special education services to meet the needs of the child.

I have considered petitioner's remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

Dated: Albany, New York
July 23, 2007

PAUL F. KELLY
STATE REVIEW OFFICER

² Petitioner has not appealed from the portion of the impartial hearing officer's decision which denied its request to allow petitioner's district personnel to communicate verbally with the child's health care providers. An impartial hearing officer's decision is final and binding upon the parties unless appealed to a State Review Officer (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[k]; Application of the Dept. of Educ., Appeal No. 07-014; Application of a Child Suspected of Having a Disability, Appeal No. 06-092; Application of a Child with a Disability, Appeal No. 04-024; Application of a Child with a Disability, Appeal No. 03-108; Application of a Child with a Disability, Appeal No. 02-100; Application of a Child with a Disability, Appeal No. 02-073). Consequently, this denial has not been reviewed and petitioner is bound by that portion of the decision.