



The University of the State of New York

The State Education Department

State Review Officer

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No. 09-126

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education.

Appearances:

Michael Best, Special Assistant Corporation Counsel, attorney for respondent, G. Christopher Harriss, Esq., of counsel

DECISION

Petitioner (the parent) appeals from a decision of an impartial hearing officer which determined that the disability classification respondent's (the district's) Committee on Special Education (CSE) had recommended for her son for the 2009-10 school year was appropriate. The appeal must be dismissed.

At the time of the August 2009 impartial hearing, the student was attending an ungraded 12-month 6:1+1 special education class at one of the district's specialized high schools and was receiving related services (Tr. pp. 15, 23-26; Dist. Ex. 20 at p. 1). The student's eligibility for special education programs and services as a student with mental retardation is in dispute in this appeal (Dist. Ex. 17 at p. 1; Parent Ex. L; see Tr. p. 12; IHO Decision at p. 2; see also 34 C.F.R. § 300.8[c][6]; 8 NYCRR 200.1[zz][7]).

As a young child the student received diagnoses of moderate mental retardation and autism (Dist. Ex. 23 at pp. 1, 2; see Dist. Ex. 22). In June 1999, just prior to turning five years old, the student was classified by the CSE as a student with autism and recommended for special education and related services (Dist. Ex. 24).

In April 2008 the student's parents requested a reevaluation of the student because they were not happy with his placement, did not believe that the student was progressing academically, and they felt that the student needed a different program and classification (Dist. Ex. 4 at pp. 1, 2).

In response to the parents' request, in June 2008 the district conducted a psychoeducational evaluation of the student for the stated purpose of determining proper special education services (Dist. Ex. 5 at p. 1). The school psychologist noted that, in addition to the reevaluation, the student's mother was requesting an impartial hearing because she disagreed with the student's individualized education program (IEP) classification, as well as his April 2007 IEP (*id.*). The psychologist found the student to be "untestable" during her assessment and reported that the student's level of cognitive functioning could not be determined at that time (*id.* at p. 2). Scores obtained on the Childhood Autism Rating Scale, completed by the psychologist and the student's teacher, suggested that the student was mildly to moderately autistic (Dist. Ex. 5 at p. 3). In August 2008 the parties signed a resolution agreement in which they agreed that an independent social history, independent psychoeducational evaluation and independent neuropsychological evaluation would be conducted and, subsequently, that an "EPC/CSE" meeting would be held to determine an appropriate placement for the student (Dist. Ex. 1).¹ Between September 2008 and March 2009 the independent evaluations were conducted as agreed upon by the parties (*see* Dist. Exs. 9, 10, 11, 12).

On March 4, 2009, the CSE convened to review the student's eligibility for special education services and to create an IEP for the 2009-10 school year (Dist. Ex. 14). The student's parents and their translator attended the CSE meeting (*id.* at p. 2). Based on the results of the independent evaluations the CSE changed the student's classification from a student with autism (*see* 34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1])² to a student with mental retardation (Dist. Ex. 2 at p. 1; *compare* Dist. Ex. 14 at p. 1, *with* Dist. Ex. 20 at p. 1).³ The CSE also changed the student's recommended program from a 6:1+1 special class in a specialized school to a 12:1+1 special class in a specialized school with "[b]ilingual [i]nstruction (Spanish)" (*id.*). The CSE also recommended that the student receive related services of speech-language therapy three times per week for 30 minutes per session in a 3:1 group setting to be conducted in Spanish and occupational therapy (OT) twice per week for 30 minutes per session in a 1:1 setting to be conducted in English (Dist. Ex. 14 at pp. 13, 15).

The hearing record reflects that on March 4, 2009, the district offered the student a placement in a 12:1+1 special class at the district school he had previously attended (Dist. Ex. 16).

¹ The social history was conducted in Spanish (Dist. Ex. 9 at p. 4). The neuropsychological and psychoeducational evaluations were conducted in both Spanish and English (Dist. Exs. 10 at p. 1, 12 at p. 1).

² A learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. . . . The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage" (8 NYCRR 200.1[zz][6]; 34 C.F.R. §§ 300.8[c][10][i], 300.307, 300.309).

³ Mental retardation is defined as "significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance" (8 NYCRR 200.1[zz][7]; 34 C.F.R. § 300.8[c][6]).

The parent rejected the recommended program and services in the March 4, 2009 IEP, as well as the bilingual instruction, the change in the student's classification, and the recommended school placement (Tr. p. 16; Dist. Ex. 16 at p. 2). The CSE reconvened on April 20, 2009 (Dist Exs. 17; 28). The student's parents attended the CSE meeting (Dist. Ex. 17 at p. 2). The CSE recommended that the student continue to be classified as a student with mental retardation, and that he be placed in an 12:1+1 special class in one of the district's specialized high schools; receive related services of speech-language therapy, adapted physical education, and OT; and that he receive those services in monolingual form with English as a Second Language (ESL) (*id.* at pp. 1, 2, 5, 11, 16, 18). The IEP also contained a provision to provide the student with special education transportation via a minibus (*id.* at p. 1).

The parent filed a due process complaint notice dated April 21, 2009 with the district and amended her notice on June 8, 2009 (Dist. Ex. 3; Parent Ex. L). In the June 8, 2009 amended due process complaint notice, the parent sought to change her son's classification from a student with mental retardation to a student with a learning disability (IHO Decision at p. 2; *see* Parent Ex. L). The parent also sought a change in the student's program recommendation and school for the 2009-10 school year (*id.*).

A resolution session occurred on May 20, 2009 concerning the claims raised in the parent's due process complaint notice (Dist. Ex. 2; *see* U.S.C. § 1415[f][1][B]; 34 C.F.R. § 300.510; 8 NYCRR 200.5[j][2]). The parties were not able to reach an agreement, and an impartial hearing commenced (Dist. Ex. 2).

On August 27, 2009, an impartial hearing took place, and the impartial hearing officer rendered her decision on October 21, 2009 (IHO Decision at p. 8). The impartial hearing officer determined that the CSE's classification of the student as a student with mental retardation was supported by the independent evaluations that were introduced into the hearing record (*id.* at pp. 5-6). The impartial hearing officer also determined that the district's recommended program and placement were appropriate to meet the student's special education needs (*id.* at pp. 7-8).

The parent appeals and seeks to have her son's classification changed from a student with mental retardation to a student with a learning disability. The district answers, requesting either dismissal of the petition based on procedural grounds, or in the alternative, denying the petition on the merits.

A review of the hearing record shows that the impartial hearing officer's decision that the student was appropriately classified by the CSE as a student with mental retardation, rather than a student with a learning disability, is supported by the evidence (*see* IHO Decision at pp. 5-6). The hearing record contains independent evaluations including a bilingual neuropsychological report dated September 2008, a bilingual psychoeducational report dated January 2009, and a cognitive and educational evaluation that was conducted in September 2008 and January 2009 (Dist. Exs. 10; 11; 12). The neuropsychological report reveals that the student's overall intelligence is "moderately delayed" and that the student demonstrates deficits in adaptive behavior (Dist. Ex. 12

at pp. 4-6, 7-8, 9-10).^{4, 5} Such evidence supports the CSE's and impartial hearing officer's conclusions regarding the student's classification. Furthermore, the results of the neuropsychological evaluation and other evaluations do not support the parent's contention that her son should be classified as a student with a learning disability (Dist. Exs. 10; 11; 12; see 8 NYCRR 200.1[zz][6]; 34 C.F.R. §§ 300.8[c][10][i]).

In light of my determination herein I need not address the district's procedural defenses.

In conclusion, I remind the parties that a student's special education programming, services and placement must be based upon a student's unique special education needs and not upon the student's disability classification. Lastly, I encourage the parties to consider whether the related service of parent counseling and training (see 8 NYCRR 200.1[qq], 200.1[kk]) would be appropriate.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
December 22, 2009**

**PAUL F. KELLY
STATE REVIEW OFFICER**

⁴ Administration of the Stanford-Binet Intelligence Scales, Fifth Edition yielded a full scale IQ score of 43 (<0.1 percentile) (Dist. Ex. 12 at p. 13).

⁵ The student's mother served as informant for the administration of the Vineland Adaptive Behavior Scales, Second Edition (Dist. Ex. 12 at p. 7). Based on her responses the student scored at the "[l]ow" level on the adaptive behavior composite, which is almost 2.5 standard deviations below average (id.).