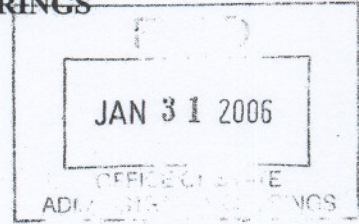


DL-005739

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FULTON COUNTY)
SCHOOL DISTRICT,)
)
Petitioner,)
)
v.)
)
)
Respondent.)

Case No:
OSAH-DOE-SE-0603839-60-Crawford

FINAL DECISION

I. FINDINGS OF FACT

Introduction and Procedural History

1. Respondent [redacted] is currently a [redacted] year old student in grade twelve at [redacted] School in the Fulton County School District (FCSD). In August 2004, FCSD provided [redacted] with a comprehensive psycho-educational evaluation after [redacted] passed a vision and hearing screening. (Exhibit J-4) Subsequently, an eligibility meeting was held on August 16th and an eligibility report dated September 1, 2004 was produced. (Exhibit P-9) [redacted] was identified as a student eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.*¹ Mrs. [redacted], the parent of [redacted], participated in an IEP meeting held on September 1st wherein the IEP was agreed upon and signed. (Exhibit P-10, page 7).

2. The next IEP meeting, held on January 7, 2005, related to the transfer of [redacted] from Roswell High School to Milton High School and an increase in services. (Exhibit P-12, page 7)

3. The next IEP meeting was held on April 14, 2005. Mr. and Mrs. [redacted], parents of [redacted], participated. (Exhibit P-13, pages 7-8) Mrs. L. disagreed with the IEP and stated to Kim Wright, FCSD instructional support teacher, on April 19th that she would provide written

¹ IDEA 1997 was reauthorized in 2004, with its reauthorized portions to become effective in July 2005. FCSD's evaluation of [redacted], its development of IEPs for her, and [redacted]'s demand for an independent educational evaluation at public expense all occurred while the provisions of IDEA 1997 governed this matter. The only relevant event occurring after IDEA's reauthorization, effective July 2005, was the filing of the School District's due process hearing request and events occurring thereafter.

concerns to the IEP committee. (T. Vol. II, p. 16; Exhibit P-14) In response to written requests from FCSD to be provided with Mrs. [REDACTED]'s concerns, Mrs. [REDACTED], by an e-mail dated May 23, 2005, rejected the placement of [REDACTED], requested an IEP meeting, and requested an Independent Educational Evaluation (IEE) at public expense. (Exhibits P-22, 23 and 24) The parties immediately began trying to schedule an IEP meeting but due to Mrs. [REDACTED]'s work schedule and the summer break for teachers, as well as other scheduling conflicts, the IEP meeting was not held. (Exhibits P-24; P-25; P-27 through P-31; P-37 through P-41; P-47)

4. FCSD agreed to an IEE at public expense if a mutually agreed upon evaluator was identified. (Exhibit J-1) In their letter of May 23, 2005, the parents requested a specific evaluator (Dr. M.). (Exhibit P-24) FCSD did not agree to Dr. M. and on May 26, 2005, provided the names of evaluators that FCSD would approve, while also advising the parents to provide additional names of evaluators for consideration. (Exhibit J-1) Mr. and Mrs. [REDACTED] did not agree to the evaluators identified by FCSD, did not provide the names of any other evaluators acceptable to them, and went forward with the scheduled evaluation by Dr. M. even though FCSD had not agreed to pay Dr. M. (Exhibit J-2)

5. On August 19, 2005, FCSD filed a request for a hearing to be given an opportunity to demonstrate that its evaluation was appropriate so that an independent evaluation, if desired by the parents, should be at the parents' expense. A hearing was held on October 25 and November 4, 2005.² At the time of the hearing, this administrative court ("Court") reserved ruling on the admissibility of the following of Petitioner's exhibits: P-33, P-34, P-36, P-38 through P-42, P-45, and P-48. Some of these exhibits are letters sent by the School District's attorney to [REDACTED]'s attorney on behalf of the School District, as verified by Dr. Wadel, Executive Director of Special Education for the School District. (T., Vol. I, p. 55.)³ The remaining exhibits are business records created and maintained in the ordinary course of business in [REDACTED]'s education file as verified by Dr. Wadel, who also served as the custodian of special education records for the School District. (T., Vol. I, p. 53.) These two types of documents, excluding any opinion or conclusion stated within such a document, are properly admissible into evidence, notwithstanding the general hearsay rule. O.C.G.A. § 24-3-14; *Everitt v. Harris*, 67 Ga. App. 64 (1942); *Knudsen v. Duffee-Freeman*, 95 Ga. App. 872 (1957). Accordingly, Exhibits P-33, P-34, P-36, P-38 through P-42, P-45, and P-48 are herewith admitted into evidence.

² During the hearing, the following individuals testified on behalf of the School District: Nancy Wadel, Mary Thompson, Chris Matthews, Pamela Harrison, Kimberly Wright, and Donna Faulkner. The following individuals testified on behalf of [REDACTED]: [REDACTED], [REDACTED]'s mother, and [REDACTED]'s father. The following documents were entered into evidence as Petitioner's Exhibits: P-1 through P-4, P-6, P-8 through P-14, P-18 through P-25, P-27 through P-32, P-37, P-44, P-46, P-47, P-49, and P-51 through P-65. The following documents were entered into evidence as Respondent's exhibits: R-1 and R-3. The following documents were entered into evidence as Joint exhibits: J-1 through J-4. Because of unforeseeable problems with court reporters, the complete transcript was not filed until January 5, 2006. The record closed with the filing of the parties' Proposed Findings of Fact and Conclusions of Law on January 19, 2006.

³ References to "T. Vol. I, [page number]" refer to the transcript generated on October 25, 2005 of this hearing. References to "T. Vol. II [page number]" refer to the transcript generated on November 4, 2005 of this hearing.

Pertinent Facts About Petitioner's Evaluation of [REDACTED].

6. In conjunction with the August 2004 psycho-educational report, the following initial referral achievement assessments were administered to [REDACTED]. by Mary Thompson, an instructional support teacher with expertise in the area of achievement testing of children with disabilities, employed by FCSD:

CELF-3, a language assessment of listening comprehension and oral expression, which C.L. passed. (T. Vol. I, pp 91-92)

Kaufman Test of Educational Achievement (K-TEA) specifically to measure math computation. [REDACTED].'s score was in the average range. (T. Vol. I, pp 94-95; 145)

Peabody Individual Achievement Test Revised (PIAT-R) is a test of academic achievement. The specific portions assessing basic reading, reading comprehension, math reasoning and written expression were administered. (T. Vol. I, pp 93-94, 98) [REDACTED]. scored well on the Basic Reading and Reading Comprehension portions, scoring at the 91st and 53rd percentile, respectively. She scored at the 16th percentile on Math Reasoning and at the 5th percentile on Written Expression. (J-4.)

Test of Written Language, 3rd Edition (TOWL-3) is a test of written expression. [REDACTED].'s score was average. (T. Vol. I, pp 91-92; 98) Ms. Thompson administered this second measure of written expression because the writing process includes drafting, editing, and revising, so that a student's first written product may not be reflective of her actual abilities. In Ms. Thompson's opinion, the second measure for written expression was needed for a fair assessment and accurate measure of [REDACTED].'s abilities. [REDACTED]. scored at the 61st percentile on the TOWL-3, much higher than she had on the PIAT-R. (Exhibit J-4; T. Vol. I, p.94.) The tests are similar in that the students are asked to look at a picture and then write a story about it. Both tests are timed. (T. Vol. I, pp.98-99.) In Ms. Thompson's opinion, the TOWL-3 provides a more objective and concrete measurement rubric for scoring. (T. Vol. I, p. 110.)

7. Ms. Thompson was qualified to administer these tests and administered each test in conformance with the instructions of its producer. (T. Vol. I, pp 79-84; p. 98; Exhibit P-63) Ms. Thompson chose the specific tests based on her expertise in the area and because the chosen tests were appropriate based upon the referral information provided to her. (T., Vol. 1, p. 111.) All of the tests administered by Ms. Thompson are validated to measure academic achievement, as intended by FCSD. (T. Vol. I, p. 151.) Ms. Thompson believes the evaluation provided to [REDACTED]. by the School District to be appropriate. (T. Vol., p. 158.)

8. After Ms. Thompson had administered the initial achievement testing for [REDACTED]'s evaluation, Ms. Pamela Harrison, FCSD school psychologist and expert in the area of evaluation of students for special education purposes, completed the evaluation. As part of her evaluation, Ms. Harrison interviewed [REDACTED]. She spent approximately two hours speaking with her regarding [REDACTED]'s concerns about school and her performance. [REDACTED] stated to Ms. Harrison that she had difficulty with math and had trouble completing tasks on time. (T., Vol. I, pp. 265-267.) These concerns were also noted in the School District's referral packet. (Exhibit P-9)

Ms. Harrison noted that [REDACTED] was referred for academic concerns, specifically regarding her difficulty with making inferences and interpreting reading assignments, problems with math, and problems with recalling information. (T. Vol. I, p. 244.) Ms. Harrison began by reviewing all of the referral information she had received regarding [REDACTED]. (T. Vol. I, p. 244.) Specifically, Ms. Harrison reviewed the Parent Questionnaire completed by C.L.'s parents, as well as extensive checklists of skills completed by [REDACTED]'s teachers. (T. Vol. I, p. 244.) Ms. Harrison finds that review of information from parents and teachers is important in conducting an evaluation, as it provides information regarding observed strengths and weaknesses. (T. Vol. I, p. 245.) In addition, Ms. Harrison reviewed a psychological report for [REDACTED] that her parents had had conducted privately in 2003. Ms. Harrison noted that the 2003 evaluation did not find any social, emotional, or behavioral concerns regarding [REDACTED]. (Exhibit P-3)

Ms. Harrison administered the following assessments to C.L.:

- Differential Ability Scales (DAS), described as "a comprehensive test of cognitive ability, intellectual functioning, looking at how a student processes information." (T. Vol. I p.246) [REDACTED] scored in the 75th percentile in verbal reasoning and the 19th percentile in nonverbal reasoning, scoring in the average cognitive range overall. (T. Vol. I, p.256; Exhibit J-4) [REDACTED]'s scores did not indicate significant cognitive processing deficits or any problems with intellectual functioning and [REDACTED]'s general ability scores were in the average range. (T. Vol. I p. 249; Exhibit J-4). Various subtests on the DAS also measured [REDACTED]'s processing strengths and weaknesses, her working memory and problem solving skills, and her planning and organization skills. (J-4; T. Vol. I, p. 168.)
- Wechsler Individual Achievement Test, Second Edition (WIAT-II), an individual achievement test. The assessments of math reasoning, math calculation and written expression were given. [REDACTED]'s math calculation and written expression scores were in the average range, consistent with the math calculation score on the K-TEA administered by Ms. Thompson and the written expression score on the TOWL-3 administered by Ms. Thompson, indicating no learning disability in these areas. (Exhibit J-4) Math reasoning is more abstract than math calculation. WIAT-II results disclosed a significantly lower math reasoning score and a

significant difference between ability and achievement in the area of math reasoning, indicating a learning disability⁴. (T. Vol. I, pp. 249-252)

- Development Test of Visual-Motor Integration, 5th Edition (VMI), described as testing skills used to process information through the working memory and putting that information back out on paper. (T. Vol. I p255; 259-261) Results of the VMI indicate that ■■■'s visual motor integration and motor coordination skills are underdeveloped for her age and cognitive ability. (Exhibit P-8, page 5)

9. Ms. Harrison was qualified to administer these tests and administered each test in conformance with the instructions of its producer. (T. Vol. I, pp. 238 and 263; Exhibit P-64) She chose the specific tests based on her expertise in the area and because the chosen tests were appropriate based upon the referral information provided to her. (T., Vol. 1, pp. 245-247.)

10. Ms. Harrison used the test results described in paragraph 8 above, as well as the test results provided by Ms. Thompson, the parent questionnaire, student support team comments, 2003 psychological report, teacher skills inventory, teacher observation, and personal observation of ■■■ during the testing session to prepare her August 2004 evaluation. (T. Vol. I, pp. 244-267; Exhibit P-9)

11. Chris Matthews, FCSD Director of Psychological Services and an expert in the area of school psychology, opined that the evaluation conducted by FCSD for ■■■ is a "very comprehensive look at her intellectual abilities, her achievement abilities, and various processing strengths and weaknesses in order to establish the data necessary to determine" special education eligibility and is an appropriate evaluation. (T. Vol. I, pp. 164, 173.)

12. At ■■■'s most recent IEP meeting, held on April 14, 2005, the IEP team, which included ■■■'s parents, reviewed ■■■'s current levels of functioning. It was noted that ■■■ seemed to be performing well overall. She read and understood her materials, wrote appropriately, had good work and study habits, participated well in class discussions, expressed herself appropriately, and was doing very well socially. Her teachers did note concerns regarding her ability to correctly apply mathematical formulas, her ability to answer inferential questions, concerns regarding turning work in on time, and asking for assistance from teachers. Further, there was a concern that ■■■'s numerous absences had an effect on her academic performance. The IEP team also reviewed ■■■'s progress on her goals and objectives. ■■■ had mastered or made good progress on all of her goals and objectives. (Exhibit P-13.)

13. ■■■ has improved her academic performance since receiving special education services from the School District. (Exhibit P-60) Prior to receiving special education services, ■■■ had failed a total of ten classes during the 2002-2003 and 2003-2004 school years. Since receiving special education services in September 2004, ■■■ has

⁴ A twenty-point discrepancy between ability and achievement, as shown on more than one measure, indicates a specific learning disability. (T. Vol. I, p. 252; p. 254)

passed all of her classes. (Exhibit P-60) At the time of the hearing, [REDACTED] was passing all of her classes⁵, including both math classes in which she was enrolled. (Exhibit P-62; T. Vol. II, pp. 25-26) However, [REDACTED] struggles with Algebra II and her current Algebra II teacher is concerned about [REDACTED]'s poor attendance. (Exhibit P-61; T. Vol. II, pp. 230-231)

14. [REDACTED] has also passed all portions of the Georgia High School Graduation Test (GHS GT). (Exhibit P-1; T. Vol. II, p. 27) The GHS GT is a test composed of five different subtests in Language Arts, Social Studies, Science, Mathematics, and Writing. All high school students in Georgia must pass all portions of this test in order to receive a regular education diploma. [REDACTED] took the Writing portion of the GHS GT in September 2004 and passed it. [REDACTED] took the remaining four subtests of the GHS GT in March 2005 and passed all four subtests. (P-1; T., Vol. II, pp. 27-28.)

15. Respondent contends that there were specific omissions in the evaluation measurements given to [REDACTED] in 2004, *i.e.*, the failure to give certain tests Respondent believes would have identified more detail about Respondent's special needs. Specifically Respondent contends that there was no testing for language processing, anxiety or time management problems. The school psychologist, Ms. Harrison, found that, in her professional judgment, there was no indication of language processing issues identified by parents or teachers or by the CELF-3 screener, and, therefore, no need to specifically test in that area. (T. Vol. I, p. 311) Likewise, no specific assessment for anxiety or inconsistent time management was undertaken as the attention deficit diagnosis from the previous psychoeducational assessment was not contested by FCSD and these areas would be encompassed by that existing diagnosis. (T. Vol. I, pp. 314-323)

II. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, *et seq.*; 34 C.F.R. § 300 *et seq.* and *Ga. Comp. R. & Regs.* at Chapter 160-4-7(DOE Rules). Specifically, this matter is controlled by 34 C.F.R. § 300.320 which requires the following:

- (a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and

⁵While [REDACTED] attributed her improved academic performance in the school year 2004-2005 to dishonesty by her special education teachers who allegedly gave her answers to some test questions (T. Vol II, pp. 207-209), this was denied by the credible testimony of [REDACTED]'s current Algebra II teacher, Caren Hart, special education department chair at [REDACTED] High School. (T. Vol. II, pp.229-232). [REDACTED]'s allegation of cheating was not raised prior to the hearing although [REDACTED] allegedly discussed it with her mother last year, and the Court finds that the allegation of cheating, while disturbing, has not been proved.

related services under Part B of the Act --

(1) To determine if the child is a "child with a disability" under § 300.7;
and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that --

(1) The evaluation is conducted in accordance with the procedures described in §§ 300.530-300.535; and

(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of §§ 300.340-300.350.

The procedures for having a child evaluated for eligibility under IDEA are set out in DOE Rule 160-4-7-.07. It is required that the child be given a thorough psycho-educational assessment by a qualified psychological examiner. The qualifications of the examiner are set forth in DOE Rule 160-4-7-.07(1) (c). The evaluation procedures are set forth in DOE Rule 160-4-7-.07(3).

4.

Pursuant to DOE Rule 160-4-7-.03(2), a parent or guardian has a right to an independent evaluation at public expense if the parent or guardian disagrees with the evaluation obtained by the local school district. However the local school district may initiate a hearing to demonstrate that its evaluation was appropriate. If the school district's evaluation was appropriate, the parent or guardian still has the right to an independent educational evaluation, but not at the expense of the school district.

5.

FCSD has shown that its evaluation of [REDACTED] was appropriate.

- The FCSD's school psychologist possesses the required qualifications to be a "Qualified Psychological Examiner" under GDOE Rule 160-4-7-.07 (1) (c) 1.
- In its testing of C.L., FCSD followed the required procedures outlined in GDOE Rule 160-4-7-.07 (3). The fact that FCSD did not use all possible tests does not in and of itself make the evaluation inappropriate as neither state nor federal law nor regulation require FCSD to use all possible tests but only "to administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section." 34 CFR § 300.533 (c) Further, FCSD was

required to evaluate [REDACTED] in suspected areas of disability, not all areas. 34 C.F.R. § 300.532(g)

- FCSD experts agreed on the appropriateness of the evaluation. Respondent did not impeach the FCSD experts or offer contrary expert opinion.

6.

Respondent alleges omissions in the measurements selected for [REDACTED] and argues that these omissions prevented FCSD from developing an adequate program of special education for [REDACTED]. However, the record does not support this argument.

- The evaluation is not the sole basis of information for developing an IEP. (GDOE Rule 160-4-7-.07(3)(b)(1)(iii); 34 C.F.R. § 300.532(f)) An eligibility team must consider all data and information available, including classroom observations, psychological information, current levels of functioning, work samples, and other sources of information. (T. Vol. 1, p. 270; GDOE Rule 160-4-7-.02, Appendix I.) See *Liberty County Bd. Of Educ.*, 18 IDELR 797 (Ga.SEA 1992) The evaluation conducted by the School District of C.L. in 2004 was helpful in drafting [REDACTED]'s IEPs. (T. Vol. II, p. 29.)
- [REDACTED] had mastered or made good progress on her IEP goals and objectives by April 14, 2005.
- [REDACTED] has improved her academic performance since receiving special education services from the School District.
- [REDACTED] has passed all portions of the Georgia High School Graduation Test (GHS GT).

7.

[REDACTED] contends that FCSD failed to timely request this due process hearing. No state law/regulation or federal law/regulation imposes a specific time limitation on a party's right to request a due process hearing to demonstrate the appropriateness of an evaluation, other than the requirement that a party proceed without unnecessary delay. See 34 C.F.R. § 300.502 (b). In this case, the request for an IEE was made May 23, 2005, and the request for a due process hearing was filed on August 19, 2005. Because the FCSD did not agree to the parents' preferred evaluator, FCSD gave the parents names of evaluators who were acceptable to FCSD and invited the parents to suggest other evaluators. At this point, despite the availability of numerous qualified evaluators in the area, no other evaluators were identified and C.L.'s parents proceeded with an evaluation by Dr. M., apparently in July 2005. (Exhibit J-2) Under the entirety of the circumstances in this case, including the promptness of FCSD's responses to communications from the parents and their counsel, as well as FCSD's significant efforts to stay in contact with the parents between May and August 2005, no unnecessary delay resulted from the filing of the hearing request on August 19, 2005.

IV. DECISION

It is the decision of the undersigned that the evaluation of [REDACTED] performed in August 2004 was appropriate and thus [REDACTED] is not entitled to an independent evaluation at public expense.

This the 31st day of January, 2006

C. Crawford
CATHERINE T. CRAWFORD
ADMINISTRATIVE LAW JUDGE