

RHODE ISLAND DEPARTMENT OF EDUCATION
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

IN RE:

Coventry School Department

v.

Case No. 10-22

PARENT,
on behalf of her son, Student

DECISION

HELD: For the Parent. The District's evaluations are not appropriate and the Parent's request for independent educational and occupational therapy evaluations at public expense is granted.

Dated: December 27, 2010

LEXICON

For the purposes of the Decision in the within hearing and to ensure confidentiality of the Student, the following Lexicon shall be used in this Decision:

Petitioners: Coventry Public Schools

Student: Student

Mother: Parent

Special Education Director: Susan Lyons

Hearing Officer: Carol J. King

LEA's Attorneys: Matthew Plain and Steven Adams

Student's Attorney: Mother, pro se

Witnesses: Susan Lyons, Special Education Director
Keith Kline, Occupational Therapist
Jeannine Nestor, Special Educator
Donna DellaPorta, Special Educator
Mother
The Father attended the hearing but did not testify

Exhibits: 1- Evaluation Team Report
2- Occupational Therapy Evaluation and Observations
3-Educational Evaluation
A- Psychological Evaluation (introduced for limited purpose)

ISSUES

1. Are the educational and occupational therapy evaluations conducted by the Coventry Public Schools appropriate?
2. Should the parent's requests for independent educational and occupational therapy evaluations at district expense be granted?

POSITIONS OF THE PARTIES

THE SCHOOL DISTRICT

The Petitioner maintains that the educational and occupational therapy evaluations conducted by District employees are adequate and appropriate for the purpose of assisting the eligibility Team in determining the Student's eligibility for special education services, for developing his Individualized Education Plan, and for determining the nature and extent of the educational and related services and placement he may need (Tr. pp. 4-8).

THE PARENT

The parents maintain that the educational and occupational therapy evaluations are not appropriate. More specifically, they claim that there are few recommendations in the evaluations, that the conclusions reached are not well-supported by the data collected, and that they do not feel comfortable relying on the evaluations in making the placement change proposed by the District (Tr. pp. 11, 14, 252-254, 266, 276, 278).

TRAVEL OF THE CASE

The Parent filed a Request for an Impartial Due Process hearing on October 19, 2010, contesting the School District's proposed placement for the Student, and questioning the District's classification of his disability. This Hearing Officer was appointed that same day in a letter from Andrea Castañeda, Chief of Accelerating School Performance at the Rhode Island Department of Education. On October 29, 2010, through counsel, the Coventry Public Schools filed its Answer to the Request for Due Process Hearing, which contained a challenge to the sufficiency of the hearing request. The Hearing Officer ruled that the Request for Hearing was sufficient to provide adequate notice of the Parent's claims.

On November 12, 2010, the Coventry Public Schools filed a Request for Due Process Hearing to show that its evaluation of the Student was appropriate. The Parent had indicated her disagreement with the school district's educational and occupational therapy evaluations. The District filed a Motion to Consolidate the two hearing requests, which was granted over the Parent's Objection. The Parent also filed a Motion for Continuance. The ruling on this Motion was deferred.

The Pre-Hearing Conference, initially scheduled for November 22, was held on November 23 by agreement of the parties. The parties had not met for a resolution session, but the District did not press a Motion to Dismiss the case at that point. The parties agreed to meet prior to the scheduled first day of hearing on December 3, 2010. However, the meeting did not resolve the issues. On December 1, the Parent filed a Motion for Recusal of the Hearing Officer. The Motion was orally denied prior to the start of hearing and memorialized in a written decision on December 22.

The hearing on December 3 was limited to the issues concerning the Parent's requests for independent educational and occupational therapy evaluations. Following the formal close of the hearing, the parties discussed a procedure to hopefully assist them in reaching an agreement regarding the remaining issues in the case. Based upon this discussion, the Parent filed an additional continuance request on December 6. The District did not oppose the request. The Motion was granted and the remaining scheduled hearing dates were therefore vacated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Student is 17 years old and is currently a residential student at the May Center for Child Development in Randolph, Massachusetts. He is diagnosed with Autism Spectrum Disorder. His family recently moved to the Coventry School District from Massachusetts. The school district conducted a re-evaluation during the summer of 2010, which included the contested educational and occupational therapy evaluations. The available evidence indicates that the Student is severely handicapped.

Evaluations are governed by 20 U.S.C. § 1414 and the regulations promulgated pursuant to the statute, 34 C.F.R. §§ 300.301-305. The school district is required to provide notice to the parents describing its proposed evaluation procedures. The educational agency is required to "...use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information" to help determine whether the child has a disability and the content of the child's individualized education program. Use of a single measure or assessment is not permitted. Evaluation tools are required to be technically sound, valid and reliable. Evaluation materials must not be racially or culturally discriminatory, must be conducted in the student's primary language, and administered by qualified personnel. Information from the parent is to be considered. The child must be assessed in all areas of suspected disability. The assessment tools and strategies must provide relevant information that directly assists the IEP Team members in determining the child's educational needs. They must be comprehensive enough to identify all the child's educational and related services needs. 34 C.F.R. § 300.304.

During reevaluations, the Team is required to review existing evaluation data on the child, including current classroom-based, local or State assessments and observations, and observations by teachers and related service providers. On the basis of the review, the Team will determine what additional information is needed, if any, and will

determine the child's current academic achievement levels and related developmental needs. The IEP can be modified to meet the child's needs. 20 U.S.C. § 1414(a)-(c). The Rhode Island Regulations closely track the language of the Federal statute and regulations; see sections 300.301 to 300.305 of the State regulations.

If a parent disagrees with an evaluation obtained by the school, the parent has a right to an independent educational evaluation at public expense unless the school district files a due process complaint to show that its evaluation is appropriate and prevails at the subsequent hearing. A parent has the right to an independent evaluation at his or her own expense at any time. 20 U.S.C. §1415; 34 C.F.R. § 300.502; Rhode Island Regulation 300.502.

The object of the parent's obtaining an independent educational evaluation is to determine whether grounds exist to challenge the school district's evaluations. Lauren W. ex rel. Jean W. v. Deflaminis, 480 F.3d 259, 274 (3d Cir. 2007). The I.D.E.A. provides for a number of procedural protections for parents intended to help parents to participate intelligently in the special education process. With respect to independent evaluations, the Supreme Court has noted that the parent's right to independent evaluation at public expense in the event of disagreement with the school's evaluation "...ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition." Schaffer v. Weast, 546 U.S. 49, 60-61 (2005).

The burden of proof at hearing lies on the party seeking relief. Id. at 49. Since the District is the party seeking relief at this stage of the proceedings, it bears the burden of persuasion to show that its evaluations are sufficient.

The purpose of conducting comprehensive evaluations is to determine a child's eligibility for special education and to develop an IEP with goals and objectives based upon the child's present levels of performance and needs. 20 U.S.C. 1414(b). Evaluations are critical to the formulation of a meaningful educational plan. The data obtained during the evaluation must be interpreted to determine the child's educational needs.

At the hearing, Ms. Susan Lyons, the Director of Special Education for the town of Coventry, testified about the contents of a comprehensive evaluation and explained that competent individuals in all the areas of suspected disability would conduct evaluations of the student's needs. When the evaluations are completed, the Team meets to decide whether or not the student qualifies for special education services. If the student is found eligible, the data obtained from the evaluation team is used to create an individual education plan. A Team summary is written to encapsulate and coordinate the findings of the separate evaluations. The document includes the eligibility determination and recommendations for programming for the individual student. The recommendations from the Team summary would be incorporated into the IEP (Tr., pp. 29-35).

Mr. Keith Kline, the occupational therapist assigned to evaluate the Student, testified that he is appropriately certified as an occupational therapist in the State of Rhode Island. He has been working in schools since his graduation from college in 2000. He participates in ongoing professional development. He has conducted a number of evaluations during his career, recently three to four per month (Tr. Pp.72-90). He testified candidly and credibly.

Mr. Kline stated that he reviewed the Student's IEP from the May Center and some type of annual report, plus some documents he did not recall, in preparation for his evaluation of the Student. He went to the May Center on April 16 and August 9, 2010 to observe and evaluate the Student (Tr. Pp. 90-92; 112-113). He did not examine the Student's file at the May Center (Tr.140). He apparently did not speak with the parents during his evaluation process (Tr. p. 133).

Mr. Kline reported that the Student is currently working on vocational skills, self-help skills, meal preparation, and fine motor skills. His report does not state how or with whom the Student is working on those skills. The Student has a history of self-injurious and self-stimulatory behaviors but Mr. Kline stated these were not noted during his observations (Exhibit 2).

Mr. Kline's findings are based primarily upon observation and informal testing, rather than standardized evaluation instruments. The Student is non-verbal and apparently too impaired to complete any formal evaluation tools. Mr. Kline reports that the Student was able to match unspecified pictures with objects and vice versa. He matched five letters to the same letters in different fonts. He could do some sorting of pictures and objects, although the objects were not identified in the report and the test was not described. He could put together a puzzle of some type and do some other unspecified "fine motor activities". Mr. Kline reports Student can follow one-step directions "independently with minimal verbal cues." He also states Student could put flashlights together "independently with minimal verbal cues" (Exhibit 2). These statements are internally contradictory. If an individual needs verbal cues to complete a task, this indicates he is not able to complete the task independently.

With respect to activities of daily living, Mr. Kline stated that May Center staff indicates the Student usually needs prompting and assistance. He does not hang up his coat or backpack, but usually just throws them on the floor. He does not go to the toilet or wash his hands independently. He cannot move around the building without assistance. Mr. Kline reports that Student is able to independently feed himself with his fingers and a fork, but then states he needs prompts to use utensils. If the Student needs prompts, he is not able to use utensils independently. The Student is just beginning to use a plastic knife to cut his food. Student was able to touch "various body parts when asked by his teachers." The body parts he could touch are not identified (Exhibit 2).

Mr. Kline attempted to administer a Sensory Profile Adolescent/Adult Self Questionnaire. This 60-question assessment used to measure an individual's sensory processing in six areas: Taste and smell, visual processing, activity level, movement,

touch, and hearing. The Student was unable to complete the questionnaire, as he does not speak, and for some unknown reason the May Center staff was unable to adequately answer all the questions. Therefore no standardized scores could be obtained. Even so, the Student seems to manifest some sensory processing problems in the visual, movement, auditory, and activity level areas. For example, he stays away from crowds, makes noises, doesn't notice when his name is called, and seeks movement. During the first observation, Mr. Kline noted the Student did some minimal biting of his own hand and wrist. The observation of biting himself contradicts with the first paragraph of the report in which Mr. Kline indicates this behavior was not observed (Exhibit 2).

The report concludes with four sentences of summary and recommendations. Mr. Kline concludes that the Student has "many wonderful life skills" and "did a great job on all tasks given to him." He believes he would do well with peer models and opportunities to generalize skills in less restrictive environments, but fails to explain his reasoning. He recommends "that an OT be on his IEP as a consult as needed to continue to help him demonstrate these independent life skills" (Exhibit 2).

The summary overstates this student's skills and downplays his many weaknesses. The few skills the Student does possess are described only in generalities. The significance of Student's identified sensory processing problems is not discussed. His lack of basic daily living skills is not addressed. Mr. Kline recommends occupational therapy consultation. To the Hearing Officer, this indicates that he does not recommend direct occupational therapy services be provided to Student, although he testified and reported that eating with utensils and toileting are skills needed in the school environment and that the Student is unable to independently go to the toilet or use a knife (Tr. p 141, exhibit 2).

The Evaluation Team Report was introduced into evidence as Exhibit 1. This document recommends the Student receive occupational therapy as a related service. This indicates, although it is not clear, that the District plans to provide direct OT services to the Student, not just consultation services (Exhibit 1). The vagueness of the OT evaluation report provides the Team with little guidance in developing goals and services to meet the Student's needs. The evaluation is the linchpin in the development of the IEP. The evaluation results must be more fully explained in order to be of help to the full Team in preparing the IEP.

In sum, Mr. Kline is certified to conduct occupational therapy evaluations. He testified without contradiction that the Student is too impaired to engage in standardized testing; therefore informal testing was required (Tr. pp. 106-107). He interacted with the Student in English, his native language, all as required by the law (Tr. p. 95). However, the inquiry does not end there. The District argues that the evaluation results are sufficient to determine the Student's needs and develop an IEP to meet his needs. In fact, the report contains no clear itemization of the Student's occupational therapy needs and no solid recommendations for services to address the Student's needs. It is not appropriate for its intended purpose. The Parent is therefore entitled to an independent occupational therapy evaluation at public expense.

The Parent also disputes the adequacy of the District's educational evaluation. Two special educators from the Coventry School District, Donna DellaPorta and Jeanine Nester, conducted the evaluation. The teachers met with the Student at the May Institute and worked with him for approximately an hour and one half (Tr. pp. 157).

The parties agreed that the teachers are qualified and competent to conduct educational evaluations (Tr. p.145). They tested the Student in his native language. Both teachers testified candidly and credibly.

The Student communicates with picture graphics. He was unable to be tested using standardized test instruments. It was necessary to use informal procedures to measure his academic achievement (Tr. pp.163-166).

The teachers tested Student's math skills by giving him two large single digit wooden numbers at a time, then asking him to give the examiners a stated number. He chose the correct number 7 out of 12 times. When given three numbers, he selected the correct one two times out of four attempts. He was not able to differentiate between a penny and a nickel. He was not able to consistently identify colors when given two blocks from which to choose, nor could he respond correctly when asked to give the examiners a stated number of blocks. He was also unable to understand the concepts of more or less (Exhibit 3).

The Student was asked to select a certain picture when presented with two picture cards. He responded correctly five times out of eleven attempts, slightly worse than chance. The teachers refer to presenting the Student with "various sight vocabulary words." From the description, it seems that he was shown a card with a picture of an object, then asked to match the picture to a second card containing a picture of the object along with the word symbolizing the object. He matched all these cards correctly (Exhibit 3).

The Student had difficulty pointing to his body parts. However, he was able to put puzzles together and thread beads, then put the objects away. He was not able to write his name (Exhibit 3).

The evaluation summary correctly notes that the Student has relative strengths in visual matching and assembling puzzles. However, the summary also states he "...was able to perform basic math and reading skills" (Exhibit 3). This conclusion is contradicted by the test results. The Student had a 50% chance of choosing the correct number when handed two numbers, and performed only slightly better than chance in only one trial of 12 attempts. This shows he cannot even identify numbers, much less understand what the numbers represent. He lacks basic math skills. The test identified as a sight word task appears to be a primarily a picture-matching task. There is no evidence that the Student can read any words.

If data is misinterpreted, it hinders the development of appropriate goals and objectives on a student's IEP. The recommendations for programming will not accurately reflect the child's levels of academic achievement or correspond with the student's needs.

The parents object to the lack of specificity in the recommendations made in the educational evaluation. The report sets out four recommendations for the Student's program-that he continue to use a communication book, that he continue to develop vocational skills, continue to work on functional math, reading, and writing skills, and continue to work on social and communication skills (Exhibit 3). The parent correctly notes that these general statements give little concrete guidance to the Team members in formulating goals and objectives in the IEP.

As with the occupational therapy evaluation discussed above, the evaluators are competent to conduct educational evaluations and tested the Student with informal measures, as he did not respond to standardized test instruments. However, the evaluation findings are at odds with the test results in some important ways with respect to the Student's academic achievement, as his skills are overstated. The recommendations for the Student's educational program are also stated in such general terms as to be of limited assistance in formulating his goals and objectives. Therefore, the School District has failed to meet its burden of persuasion. The Parent's request for an independent educational evaluation at public expense is granted.

WHEREFORE, I direct the Coventry Public Schools to provide the parents with information as to where the independent evaluations may be obtained and inform them as to the agency criteria applicable for independent educational evaluations.

December 27, 2010

By the Hearing Officer

Carol J. King