

State of Maine
Special Education Due Process Hearing Decision
Westbrook v. Parent, Case No. 03.089H

REPRESENTING THE SCHOOL: Deborah Peck
Director, Special Services
Westbrook School Department

REPRESENTING THE PARENT: Parent did not attend

HEARING OFFICER: Carol B. Lenna

This hearing was held and the decision written pursuant to Title 20-A, MRSA, §7207-B et seq., and 20 USC §1415 et seq., and accompanying regulations.

The due process hearing was held on behalf of the Student whose date of birth is xx/xx/xxxx. He resides with his mother in Westbrook, Maine. The student is currently not identified as a student eligible for special education services.

In January 2003, the student transferred from out of state to the Westbrook Schools. It had been concluded by his previous school that he met eligibility criteria for special education services under the category of Emotional Disability. In April 2003 Westbrook re-evaluated the student. Test results from this evaluation led the Pupil Evaluation Team (PET) to conclude he did not meet criteria as a student eligible for special education services. On June 9, 2003 the parent requested an independent educational evaluation at public expense. The school denied the request and filed for this due process hearing as required under Chapter 101, §9.19 and §12.5.

The Pre-hearing Conference in this matter was held in Portland, Maine at 10:00 a.m. on Thursday, July 24, 2003. Ms. Peck, Director of Special Services for the Westbrook School Department was in attendance. The school submitted 23 documents into the record. The parent did not attend. By follow-up memorandum the Hearing Officer notified the parties that the hearing date, scheduled for July 31, 2003, would be cancelled, and a decision would be made on the written record. The school was instructed to submit credentials of the witnesses who had conducted the school's evaluations. The parent was instructed she could object to this directive, and request that a live hearing be held for the collection of evidence, or submit written evidence.

Receiving no word from the parent, the issue in this hearing is decided on the written record submitted by the school. That decision follows.

I. Preliminary Statement

The student transferred to the district in January 2003. He had been in several school districts in several states prior to his transfer. Previous districts had found the student eligible for special education services under the categories of "Multiple Disabilities" and "Emotional Disability".

In April 2003 the district re-evaluated the student, conducting psycho-educational and academic assessments, performing several classroom observations and having his teacher complete behavioral checklists. Upon considering this information the PET determined that the student did not have a condition that met criteria as a student with a disability. The parent disagreed and requested an independent evaluation at public expense. The Westbrook School Department filed for a due process hearing in accordance with their obligations under Chapter 101, §9.19 and §12.5 when districts deny such requests.

II. Issue

Was the evaluation of the student, conducted by the Westbrook School Department in April 2003, appropriate as defined in Chapter 101, §9? If not, is the parent entitled to an independent educational evaluation at public expense.[sic]

III. Findings of Fact

1. The student transferred to the Westbrook Schools in January 2003. He had been identified in his previous districts as a student with Multiple Disabilities and an Emotional Disturbance [sic], respectively. His then-current IEP called for 1 hour per day of special education assistance and 40 minutes a week of social work services. The district provided those services, but ordered updated evaluations in preparation for his transfer to junior high school. (Exhibit 4-6,13-20)
2. On April 24, 25 and 28, 2003 the student was evaluated using the Wechsler Individual Achievement Test – Second Edition (WIAT). Test results showed that the student achieved a Standard Score of 89 (below average) on the Reading Composite, a 77 (borderline range) on the Math Composite, and a 92 (average) on the Written Language Composite. The evaluator noted that the student had difficulty focusing on tasks that were challenging. She noted that he had some solid reading and writing skills, but was less proficient in mathematics with particular difficulty in conceptually understanding division. A classroom

- observation was completed on May 6, 2003. The student's performance was observed to be commensurate with his classroom peers. (Exhibit 12, 21-23)
3. The teacher conducting the WIAT evaluation and classroom observation, Guinevere Gridley (now Guinevere G. Williams), holds valid Maine professional certification, Endorsements 020 and 282. (Exhibit 24)
 4. A psycho-educational evaluation was conducted on April 7, 14, and 30, 2003. The evaluator administered the Wechsler Intelligence Scale for Children – Third Edition (WISC III). The evaluation also consisted of a Teachers' Report Form, a parent interview, a child interview [sic], classroom observations and a file review. Standard Scores obtained on the WISC-III were: Verbal 75, Performance 82, Verbal Comprehension 75, Perceptual Organization 87, with a Full Scale Score of 77 indicating the student's cognitive abilities are in the "well below average" to "below average" range when compared with his peers. Results from the Teacher's Report Form, completed by the student's special education teacher, indicated no clinically significant concerns for withdrawn behaviors, somatic complaints, anxious/depressed behaviors, social problems, thought problems, or attention problems. Clinically significant difficulties were noted with delinquent and aggressive behaviors. The parent was given a Child Behavior Checklist to complete as part of the evaluation, but she did not return it to the evaluator. Classroom observations of the student were done by the evaluator in both his regular and special education classes. While the student's language and comments were noted to be inappropriate at times, in both settings he complied with classroom structure and completed assigned tasks. (Exhibit 13-20)
 5. The individual conducting the psycho-educational evaluation, Kimberly A [sic] Shur, holds a valid Maine professional certification, Endorsement 093, "School Psychological Services Provider". (Exhibit 26)
 6. The PET met to review the results of the April testing on May 12, 2003. Evaluators, special and regular class teachers, and the school social worker discussed evaluation results and the student's observed behaviors across several settings in the school. During the meeting the PET determined that the student did not meet criteria as a student with an Emotional Disability. The parent disagreed with this determination and requested that the district review additional evaluation data, which she would provide. (Exhibit 7-11)
 7. The district's Psychological Services Provider reviewed all material provided by the parent, and provided a summary of that data to the Director of Special Services. A psycho-educational assessment completed in February 2000 revealed a Verbal IQ of 91, a Performance IQ of 71 for a Full Scale IQ of 79 on the WISC-III. Woodcock-Johnson Revised: Tests of Achievement showed scores of Reading - 94, Math - 88, Written Language - 96 and Knowledge - 103. Results of data compiled from the Behavior Assessment System for Children completed by the student's teacher and his father showed elevated concerns in the area of hyperactivity from his teacher.

Testing performed by a different district in January 2001 showed results on the Wechsler Individual Achievement Test were: Basic Reading – 83, Reading Comprehension – 82, Math Reasoning – 82, Numerical Operations – 72, Spelling

– 90, Written Expression – 77, Listening Comprehension – 85, Oral Expression – 109.

Results from testing in yet another district showed that on the WISC-III the student obtained scores of Verbal IQ – 84, Performance IQ – 77 and Full Scale IQ - 78. Scores on the Woodcock-Johnson-III: Tests of Achievement were Reading – 86, Math – 87, Written Language – 83, Listening Comprehension – 88, and Oral Expression – 103. A behavior rating scale (not named) indicated significant scores under the index labeled “Emotional Lability”. (Exhibit 4-6)

8. On June 11, 2003 the Director and the district’s Psychologist met with the parent to discuss all current evaluative data (both previous districts [sic] and Westbrook’s recent testing), in conjunction with the PET’s determination that the student did not qualify as a student with a disability. The parent continued to disagree with the PET determination. At the conclusion of the meeting she hand-delivered a letter requesting an independent evaluation. (Exhibit 4-6, 1, 2, and 3)

IV. Conclusions

Was the evaluation of the student, conducted by the Westbrook School Department in April 2003, appropriate as defined in Chapter 101, §9? If not, is the parent entitled to an independent educational evaluation at public expense.

The parents of a student with a disability have the right to obtain, at public expense, an independent educational evaluation of their child when they disagree with an evaluation obtained by the administrative unit.....

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense...

If the final decision of the hearing is that the school’s evaluation is appropriate, the parents have the right to an independent evaluation, but not at public expense. Whether or not the IEE is obtained at public expense, the PET must consider the results of the evaluation.

Maine Special Education Regulations, § 9.19 and §12.5(C)

In 2003 the student transferred to the district in the latter part of his xx grade year. He transferred with an IEP as a student with an Emotional Disability. Upon

preparation for his transfer to the junior high school, the district's PET ordered a new evaluation. Using the results of individual standardized assessments and classroom observations, the PET determined that the student was no longer in need of special education services, either as a student with an Emotional Disability or a Learning Disability.

The parent disagreed with the conclusions of the district's evaluations and requested that the district provide an independent psychological evaluation at public expense. The school argues that its evaluations meet the criteria set forth in regulations, are therefore appropriate, thus relieving the district of the obligation to provide an independent educational evaluation at public expense.

The Pupil Evaluation Team shall ensure that the student is assessed in all areas related to the suspected disability... Valid and reliable instruments and techniques that yield a description of the student, as a learner shall be used. [Id, § 9.2]

In conducting an evaluation, the school administrative unit shall...use a variety of assessment tools and strategies to gather relevant functional and developmental information...and [u]se technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors... Any standardized tests that are given to the student shall have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel who meet state licensure or certification standards, and are administered in accordance with any instructions provided by the producer of such tests... [Id, §9.5]

Any initial evaluation or reevaluation of a student shall include an observation of the student's educational performance in the regular classroom setting...by an evaluator other than the student's regular teacher. [Id, §9.6]

Based on previous information, parent interview and teacher comments the district selected a variety of assessment tools and strategies to gather information to assist the PET in determining whether the student met criteria as a student with an Emotional Disability or a Learning Disability. Technically sound instruments that were validated for the specific purpose for which they were used provided the basis for assessment. The individual instruments selected are those commonly used to assess cognitive functioning, academic achievement, and behavioral concerns. They are valid and reliable instruments. In addition the evaluators used observation in a variety of educational settings to gather relevant information regarding the student's behavior and academic performance as compared to his peers.

The professionals who administered individualized assessments and performed observations are trained and knowledgeable personnel. Each of the district's evaluators meet state licensure and certification standards, and are qualified to administer and interpret the tests given to the student. Complete and comprehensive reports that summarized the evaluation procedures employed, the results of each evaluation and the results and diagnostic impressions were provided to the PET. Educational recommendations based on evaluation findings were offered. The district's evaluations meet the standards set out in regulation.

The school conducted a set of evaluations that comply with the standards set forth in regulations and presented those reports to the PET for consideration. In the absence of any evidence to the contrary, the school's evaluations are found to be appropriate. The parents are not entitled to reimbursement. *Holmes v Millcreek Township Sch. Dist.*, 32 IDELR 1 (3rd Cir. 2000) (Parents may be reimbursed for IEE only by showing that district's evaluation is inappropriate.)

V. Order

No order is given with this decision.

Carol B. Lenna
Hearing Officer

Date