

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

IN RE:

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

PETITIONER

VS.

CASE NO. H-16-28

XXXXXXXXXX

Parent on behalf of XXXXXX, Student

RESPONDENT

HEARING OFFICER’S FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Pulaski County Special School District (hereinafter “District” or “Petitioner”) conducted an appropriate speech/language evaluation of Student, XXXXXX (hereinafter “Student”) in the fall of 2015, therefore satisfying its burden pursuant to 34 C.F.R. § 300.502.

PROCEDURAL HISTORY:

On December 14, 2015, the Arkansas Department of Education (hereinafter referred to as “Department”) received a written request from District to initiate due process hearing procedures.¹ District requested a due process hearing because Parent alleged that the speech/language evaluation conducted by District in fall 2015 was biased and, as such, requested that Student be provided an independent speech/language evaluation at District’s

¹ See Hearing Officer file containing pleadings and orders.

expense. District alleged that its speech/language evaluation was appropriate, and requested a due process hearing seeking a decision regarding this issue.

In response to the District's request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of January 18, 2016 was set as the date on which a hearing would commence if the District and Parent failed to reach resolution prior to that time. A prehearing conference was scheduled for January 14, 2016. An order setting preliminary timelines and instructions for compliance with the order was issued on December 29, 2015.²

On January 8, 2016, Parent sent an email to this Hearing Officer with an attached letter. In the letter, Parent requested a continuance of the due process hearing of this matter so as to allow time for Parent to seek an outside evaluation, as well as find legal representation. This Hearing Officer continued the due process hearing of this matter to February 15, 2016, and simultaneously continued the prehearing conference of this matter to February 12, 2016.³

On February 12, 2016, the date of the scheduled prehearing conference, neither the District nor the Parent appeared for the conference. The conference lasted approximately forty-five minutes, during which time this Hearing Officer had a court reporter on standby, while repeatedly attempting to reach both parties via telephone to inquire as to their failure to appear. After receiving no response, the prehearing conference was terminated and both parties were sent written correspondence inquiring as to the reason for failing to appear at the hearing, as well as the status of the case.

² See Hearing Officer file containing pleadings and orders.

³ See Hearing Officer file containing pleadings and orders.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Danna J. Young, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing on February 15, 2016. District, represented by Sharon Streett (Little Rock) appeared for the hearing; however, Parent, acting *pro se*, failed to appear despite numerous attempts by this Hearing Officer and District to contact Parent by telephone and email to determine Parent's intent regarding participation. In addition, the hearing was postponed thirty minutes so as to allow additional time to reach Parent before commencing proceedings.⁴ During the due process hearing, there were two witnesses for District, specifically XXXXXXXXX (hereinafter "XXXXX") and XXXXXXXX (hereinafter "XXXXXX"). District had the burden of proof regarding the issues raised in this case.

FINDINGS OF FACT:

Student is a twelve-year-old male and is currently attending school in the District at Sylvan Hills Middle School.⁵ Prior to August 2015, Student attended school in the Little Rock School District (hereinafter "LRSD"). At the end of the 2014-2015 school year, specifically on May 28, 2015, LRSD held a referral conference with Parent based on her concern and report that Student was stuttering.⁶ Pursuant to that conference, LRSD decided to conduct a speech/language evaluation to determine if Student was disfluent and needed speech services pursuant to the Individuals with Disabilities in Education Act (hereinafter "IDEA").

⁴ Transcript, pp. 4-5.

⁵ Transcript, pp. 6-7.

⁶ Transcript, p. 12; District Binder, Supplemental Exhibits, pp. 1-3.

However, before the speech/language evaluation could be conducted, Student moved out of the LRSD and into District.⁷

At the beginning of the 2015-2016 school year, District learned that Student had been going through the referral evaluation process with his previous school district, but that an evaluation had not yet been completed. As such, District met with Parent, obtained consent⁸ to conduct speech/language evaluation, and conducted the evaluation over several days, specifically September 23, 2015, September 29, 2015, October 1, 2015, and October 20, 2015.⁹

Thereafter, on December 2, 2015, District held a Special Education Evaluation Conference for the purpose of determining Student's eligibility for special education under the IDEA category of speech impaired.¹⁰ During this conference, District communicated to Parent that, based on data obtained during its speech/language evaluation, as well as information obtained from a variety of other sources, District's multidisciplinary committee had determined that Student did not exhibit speech impairment and, therefore, was not eligible for services pursuant to the IDEA.¹¹ Parent disagreed with this decision and requested, in writing, that Student be provided an independent education evaluation at District's expense. District, believing that its speech language evaluation was appropriate, provided Parent with information regarding how to obtain an independent education evaluation, but denied Parent's request that District pay for such evaluation. District then

⁷ Transcript, p. 7

⁸ Transcript, p. 12.

⁹ District Binder, pp. 11-16.

¹⁰ See Due Process Complaint, in Hearing Officer file containing pleadings and orders; see also District Binder, p. 17.

¹¹ See Due Process Complaint, in Hearing Officer file containing pleadings and orders.

filed a complaint for due process hearing seeking adjudication as to the appropriateness of the speech/language evaluation that it conducted.¹²

The speech/language evaluation that occurred in late September and early October 2015 was conducted by XXXXXXX, a speech/language pathologist with 19 years of experience, all at District. He has a Certificate of Clinical Competence from the American Speech/Language Hearing Association, as well as state licensure through the Arkansas Board of Examiners in Speech/Language Pathology and Audiology.¹³ XXXXXXX is currently employed by the District at Sylvan Hills Elementary, Middle, and High School.¹⁴

XXXXXX first reviewed Student's academic history, noting that Student had attended school at LRSD, specifically Brady Elementary School, prior to coming to District. Prior to attending LRSD, Student had attended school in the El Dorado School District. Student was receiving passing grades in all academic subjects. In addition, XXXXXXX reviewed Student's most recent standard test scores, which were scores from the 2014-2015 school year (Student's fourth grade) and noted that Student was performing below basic in math, and basic in literacy.¹⁵

XXXXXX also reviewed a school psychology specialist evaluation that had been conducted in 2012 while Student was in the El Dorado School District, a speech/language evaluation that had been previously completed by a private practitioner, Student's Section 504 plan, and a legal opinion from a prior due process hearing that also dealt with speech

¹² See Due Process Complaint, in Hearing Officer file containing pleadings and orders.

¹³ Transcript, p. 10.

¹⁴ Transcript, p. 10.

¹⁵ Transcript, pp. 12-13; District Binder, pp. 74-76.

issues when Student attended school in the El Dorado School District.¹⁶ The purpose of reviewing these sources of data was to obtain relevant history, specifically family history, birth history, developmental history, and medical history regarding Student.¹⁷ XXXXXX was unable to obtain a social history form from Parent because Parent declined to complete the form and provide information.¹⁸

No behavioral observations were made on account of the fact that Student had not exhibited behavioral issues in school. In addition, Student was pleasant and cooperative throughout the duration of the speech/language evaluation process.

After reviewing relevant history, XXXXXX administered a series of tests to determine whether Student had speech/language deficits. First, Student was administered the Arizona Articulation Proficiency Scale, Third Edition to measure his ability to correctly articulate the sounds of the English language.¹⁹ This test, which is often referred to as the AAPS-3, has the purpose of determining whether a student has articulation issues and is commonly used as part of a comprehensive speech/language evaluation. Student made no errors in his articulation on the Arizona Articulation Proficiency Scale and, thus, he scored the highest standard score possible for his age.²⁰

Second, Student was administered the Clinical Evaluation of Language Fundamentals, Fourth Edition, which is often referred to as the CELF-4.²¹ The CELF-4 is a comprehensive language test that measures receptive, expressive, and total language abilities based on a

¹⁶ Transcript, pp. 13-14; Defendant Binder, pp. 20, 77-79, 81-86.

¹⁷ Transcript, pp. 13, 15.

¹⁸ Transcript, p. 16.

¹⁹ District Binder, pp. 12, 63-73.

²⁰ District Binder, p. 12.

²¹ District Binder, pp. 12, 34-46; Transcript, p. 18.

series of subtests in various areas of language. Essentially, this assessment measured how Student received information and expressed his ideas toward others.²² Student scored within normal limits regarding ability to use concepts and follow directions, recall sentences, formulate sentences, understand and express word classes, receptive word classes, expressive word classes, overall word classes, define words and use word definitions.²³ Student scored below normal limits on understanding spoken paragraphs. Student's core language index based on all subtests was 98, his receptive language index was 105, his expressive language index was 96, his language content index was 92, and his language memory index was 96.²⁴ Even considering the below-normal score in understanding spoken paragraphs, Student's index scores were all well within normal limits.²⁵

Third, because Student scored below normal limits on the understanding spoken paragraphs portion of the CEFL04, XXXXXX administered an additional test called the Listening Comprehension Test, Second Edition. The Listening Comprehension Test measures ability to understand spoken paragraphs and has a mean of 100 with a standard deviation of 15. As such, any score above 85 is considered within normal limits. Student's standard scores on the Listening Comprehension Test were 108 for main ideas, 109 for details, 90 on reasoning, 106 on vocabulary, 107 on understanding messages. Student's standard score overall was 105.²⁶ XXXXXX concluded, based on Student's scores on the

²² Transcript, p. 19.

²³ Transcript, pp. 19-20; District Binder, p. 12.

²⁴ Transcript, p. 21; District Binder, pp. 12-13.

²⁵ Transcript, p. 22; District Binder, pp. 12-13.

²⁶ Transcript, pp. 20-21; District Binder, p. 14.

Listening Comprehension Test, that Student's low test score on the CELF-4 regarding spoken paragraphs was an outlier.

Fourth, Student was administered the Test of Language Development-Intermediate, Fourth Edition.²⁷ This test, also referred to as the TOLD-I:4, is a comprehensive test of language. The mean of the subtest is 10, with a standard deviation of 3, meaning that any score of 7 or above is considered to be in the normal range.²⁸ Student scored a 7 on sentence combining, 8 on picture vocabulary, 7 on word ordering, 8 on relational vocabulary, 8 on morphological comprehension, and 9 on multiple meanings.²⁹ Student's subtest scores were, therefore, within normal limits indicating that Student does not have language deficiencies.

Fifth, XXXXXX administered an Oral Peripheral Examination to Student.³⁰ Pursuant to this test, the structure and function of Student's lips, teeth, tongue, hard palate, and soft palate were examined to determine whether there was any physical reason that Student would have abnormal speech.³¹ There was nothing to indicate from this examination that Student would have hindered speech. XXXXXX also performed an informal assessment of Student's voice, testing pitch, resonance, intensity, and vocal quality, all which were within normal limits for Student's age group.³²

Sixth, XXXXXX evaluated Student's fluency, specifically his ability to produce speech, the rate and rhythm of words, and whether student repeats words or blocks sounds.³³ To

²⁷ Transcript, p. 22; District Binder, p. 12, 47-62.

²⁸ Transcript, p. 23.

²⁹ Transcript, p. 23.

³⁰ Transcript, p. 23.

³¹ Transcript, p. 24.

³² Transcript, p. 24.

³³ Transcript, p. 24; District Binder, p. 12.

evaluate fluency, XXXXXX administered the Test of Childhood Stuttering,³⁴ also referred to as TOCS, as well as the Stuttering Severity Instrument for Children and Adults, Third Edition, which is also referred to as the SSI-3.³⁵

Regarding the TOCS, Student had no repetitions, prolongations, or blocks on the rapid picture naming and modeled sentences tasks. With regard to the structured conversation task, Student had 3 total word repetitions, and with regard to the speech fluency task, Student had 2 prolongations and 1 repetition.³⁶ Student's total raw score, considering all tasks, was 6, which gave Student an index of 97. Pursuant to the scoring guidelines for the TOCS, Student's scores indicated that he had typical fluency, meaning that Student had some disfluency in his speech, but that the disfluency that he exhibited was not atypical compared to the general population of students in the same age range.³⁷ As part of the TOCS, XXXXXX also gave a TOCS observation rating scale to three of his teachers. Each of the teachers that were provided with the observation rating scale had Student in class at least two periods per day.³⁸ On the speech fluency rating scale, which has a mean of 100 and standard deviation of 15, Student received indexes of 99, 107, and 107 from the three teachers, placing students in the score range of typical fluency. On the disfluency related consequences scale, Student's teachers gave him indexes of 95, 99, and 110, also scores falling in the category of typical fluency.³⁹

³⁴ District Binder, pp. 18-28.

³⁵ Transcript, pp. 22-29; District Binder, pp. 12, 31-33.

³⁶ Transcript, pp. 25-27.

³⁷ Transcript, pp. 27-28; District Binder, p. 18.

³⁸ Transcript, p. 28.

³⁹ Transcript, pp. 28-29.

Regarding the SSI-3, Student was asked to talk about things in general, and XXXXXX marked any disfluency based on the number of syllables that Student uttered during the conversation. Student was also asked to read a series of paragraphs so that any disfluencies in reading could be recorded.⁴⁰ On the speaking task, Student had 10 stuttering events out of 340 syllables, with the majority of these being prolongations (i.e. saying “um” and “and”). This resulted in the percentage of 3%. On the reading task, Student had 2 stuttering events, both of which were prolongations, out of 360 syllables, resulting in a percentage of 0.5%. Student made no distracting sounds, did not have any facial grimaces, abnormal head movements, abnormal movement of extremities. As such, Student’s overall score on the SSI-3 indicated that the severity of Student’s stuttering was mild. On this test, however, mild severity is the lowest level represented and, as such, indicates lack of disfluency.⁴¹

XXXXXX also administered to Student the A-19 Scale for Children Who Stutter.⁴² On this test, which measures children’s attitudes about communication, the mean for children who stutter is 9, with a standard deviation of 2.4. Student’s score was 7.⁴³

Finally, XXXXXX did a curriculum-based assessment which consisted of observation of Student during his regularly-scheduled science class. XXXXXX observed Student verbally request clarification of assignment instructions without any disfluency. Student also asked a question about a book definition without disfluency, and read a definition aloud from a

⁴⁰ Transcript, p. 30.

⁴¹ Transcript, pp. 30-32.

⁴² Transcript, p. 32; District Binder, pp. 29-30.

⁴³ Transcript, pp. 33-37; District Binder, p. 30.

book without disfluency. There was no noticeable anxiety, secondary behavior, or disfluency observed.⁴⁴

XXXXXX concluded, based on the results of all testing, that Student presented with adequate communication skills and, as such, direct speech therapy services were not warranted at that time.⁴⁵ Although it is possible that Student is disfluent at home, none of the tests administered indicated that there was any disfluency at school.

CONCLUSIONS OF LAW AND DISCUSSION:

Pursuant to 34 C.F.R. § 300.502, the “parents of a child with a disability have the right . . . to obtain an independent evaluation of the child,” and “[e]ach public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations”⁴⁶ An independent educational evaluation is defined by regulation as an evaluation that is conducted by a “qualified examiner” who is not an employee of the public agency that is responsible for the education of the student in question. In some circumstances, a parent has a right to an independent evaluation at public expense, or, essentially, at no cost to parent. The applicable regulations states as follows:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

⁴⁴ Transcript, pp. 37-38.

⁴⁵ Transcript, p. 39.

⁴⁶ 34 C.F.R. § 300.502(a)(1)-(2).

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.⁴⁷

In the present case, it is the opinion of this Hearing Officer that District has complied with 34 C.F.R. § 300.502(b). District, at the beginning of the 2015-2016 school year, learned of Student's referral evaluation process at a previous district and, without delay, took measures to continue the process. District met with Parent and obtained consent to conduct a speech/language evaluation, and between September 23, 2015 and October 20, 2015, conducted such evaluation. On December 2, 2015, District held a special education conference and, therein, communicated to Parent that, based on data obtained during its speech/language evaluation, Student did not exhibit speech impairment and was not eligible for services under the IDEA. Parent disagreed and, at this same meeting, requested an independent education evaluation at District's expense.

District provided information to Parent regarding how to obtain an independent education evaluation, but declined to pay for such evaluation on the basis that it believed its speech/language evaluation to be appropriate. Subsequently, on December 14, 2015,

⁴⁷ 34 C.F.R. § 300.502(b)(1)-(3).

approximately twelve days following the special education evaluation conference, District filed a request for due process hearing with the Department, seeking adjudication as to whether its speech/language evaluation was appropriate.

Considering that District has complied fully with the procedures set forth in 34 C.F.R. § 300.502(b), the only remaining legal question is that of whether the speech/language evaluation conducted by the District was appropriate, such that District is not financially responsible by law to provide an independent evaluation at public expense.

Pursuant to the Arkansas Eligibility Criteria for the IDEA category of speech or language impairment, the following data is required in order for an evaluation to be appropriate: (1) social history; (2) individual achievement (formal or informal); and (3) communicative abilities.⁴⁸ Regarding communicative abilities, it is specified that a speech-language pathologist is to conduct a thorough and balanced speech, language, or communication assessment. Further, the assessments conducted should “guide the selection of subsequent assessment tools and activities, which should reflect multiple perspectives.” In addition, there are categories of optional evaluation data listed in the eligibility criteria, specifically individual intelligence, portfolios, anecdotal records, and checklists and developmental scales.

In the present case, District conducted a thorough social history by reviewing numerous documents in Student’s file. Specifically, XXXXXX reviewed a previous speech/language evaluation (dated 2012) from one of Student’s previous school districts. In addition, he reviewed a school psychology specialist evaluation (dated 2012), and Student’s

⁴⁸ Arkansas Eligibility Criteria, Speech or Language Impairment, Section IV.

current Section 504 plan. XXXXX attempted to obtain information from Parent as an update to the documents in Student's file; however, Parent failed to provide updated information. As such, this Hearing Officer is satisfied that District met the evaluation requirements pertaining to review of Student's social history.

Regarding Student's individual, or academic, achievement, XXXXXX reviewed Student's academic history at his prior District, specifically LRSD. He also reviewed Student's most recent standardized test scores. XXXXXX noted that Student was receiving passing grades in all academic subjects. As such, this Hearing Officer is satisfied that District met the evaluation requirements pertaining to individual achievement, in that XXXXXX performed a thorough, informal review of Student's academic history going back at least one year.

Regarding Student's communicative abilities, XXXXXX conducted a total of 6 speech/language tests which examined all aspects of Students speech and language abilities. Specifically, XXXXXX administered the AAPS-3, CELF-4, TOLD-I:4, Listening Comprehension Test, SSI-3, and TOCS. Students' performance across all tests fell within normal ranges, indicating no speech deficits or disfluency. As such, this Hearing Officer is satisfied that District met the evaluation requirements pertaining to Student's communicative abilities.

Finally, although not required, District went about and beyond the mandatory evaluation requirements and obtained additional data. Specifically, XXXXXX obtained rating scales from Student's teachers, conducted an oral peripheral examination, and conducted informal fluency and voice evaluations.

In conclusion, it is the opinion of this Hearing Officer that the speech/language evaluation conducted by the District in fall 2015 was appropriate. Pursuant to 34 C.F.R. §

300.502(b)(3), Parent is still entitled to an independent educational evaluation if she so chooses; however, given the appropriateness of District's previous speech/language evaluation, Parent is not entitled to such evaluation at District's expense.

ORDER:

The results of the testimony and evidence warrant a finding for the District. District's speech/language evaluation of Student is hereby deemed appropriate. Although Parent has the right to seek an independent speech/language evaluation for Student, such evaluation will be at her expense as opposed to the District.

FINALITY OF ORDER AND RIGHT TO APPEAL:

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either federal district court or a state court of competent jurisdiction pursuant to the Individual's with Disabilities Education Act within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards (Arkansas Department of Education 2008), the Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED.

/s/ Danna J. Young

HEARING OFFICER

03/25/2016

DATE