

Case Number: 2011-0104

[REDACTED] vs. [REDACTED]

Hearing Officer: [REDACTED]

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

MAR 09 2011

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [REDACTED] Phone: 773-553-1000
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by Pro Se

Date and Timelines

Date of Written Request: 09/27/2010
Date of Pre-hearing Conf: 02/04/2011

Date of Hearing: 03/04/2011 to 3/4/2011
09:00:00 AM
Date of Decision: March 8, 2011

Summary of Decision

The Parent prevails in a due process complaint notice (DPCN) brought by the Parent. The Parent sought to have the Student have an initial evaluation and eligibility determination within the requirements of the State of Illinois and the IDEA. The Parent met the required burden of proof related to the one issue charged in the DPCN, including: the District's failure to meet its child find responsibilities under the IDEA and the rules and regulations of the State of Illinois. The District is ordered to complete an initial evaluation and determine eligibility no later than 45 days from receipt of this ruling or April 25, 2011, whichever comes first.

██████████ Current 8th grade teacher and summer school teacher, ██████████ Specialized Services Administrator, ██████████ School Psychologist, and ██████████ School Nurse. Closing briefs were neither requested by the hearing officer nor submitted by the parties. The record was closed and the matter taken under submission.

ISSUE PRESENTED

Did the District violate its child find obligation by failing to conduct an evaluation and complete an IEP meeting within 60 school days?

FINDINGS OF FACT

- 1) On March 31, 2009, the Parent requested a full case study evaluation of the Student for the purpose of receiving special education services (SD 71).²
- 2) On April 21, 2009, the District conducted a domain meeting. Testimony and documents reflect that the District indicated that the Student had failed a vision screening and the District would require either the results from a vision exam or glasses in order for the assessments to be completed (SD 77). This was further confirmed during the testimony of school nurse, ██████████ and also reflected in her "School Nurse Report" found on SD 80-83.
- 3) On or about June of 2009, the Student was retained in the 8th grade at ██████████
- 4) On June 9, 2009 an eligibility meeting was conducted by the District. Attending the meeting were the case manager, special education teacher, regular education and social studies teacher, school psychologist, special services administrator, the social worker and the Parent (SD 84).³
- 5) The outcome of the eligibility meeting was an indication by the school psychologist and the school nurse that the assessments would not differentiate between a potential disabling condition or the need for glasses as a cause for the student's poor performance. The team indicated that the Student would need to have glasses prior to the District completing the evaluation process.⁴

² Note, the comment: "Previous requests for evaluation ignored" appears on this document along with the statement "(The Student) is not progressing academically."

³ During Parent's testimony, Parent acknowledged that Parent's signature appeared on the referenced document but Parent testified Parent did not remember attending the meeting.

⁴ See testimony of school nurse, ██████████ and psychologist ██████████

- 6) Student documents submitted by the District reflect that the District did not revisit the incomplete evaluation or the outstanding issue regarding the failed vision screening until November 6, 2010.⁵
- 7) At the end of the first semester in 2009, the Student's report card reflected failing grades in pre-algebra a, language skills a, world history a, life science, and physical education. The report card also reflected an "exceeds" in literature a and world art a (SD 56).
- 8) On January 21, 2010, district personnel met with the Parent to discuss concerns that the Student may not pass the second year of 8th grade. Nothing in this record reflects that the District addressed the outstanding evaluation or failed vision screening from June of 2009 (SD 99).
- 9) On April 22, 2010, district personnel met with the Parent to again discuss concerns about the Student's lack of progress during her second year in the 8th grade. The Parent reported concerns about the lack of progress with the special education referral and the District's response was to refer the Parent to the case manager who offered to help via an email on April 27, 2010.
- 10) On May 20, 2010, the Parent sent a letter to the head of the [REDACTED] and the case manager requesting a meeting regarding the delayed process for evaluation for special education and requesting a copy of two reports that had been discontinued the previous year. Additionally, the Parent requested that the process begin again and noted that the District failed to complete the evaluation requested within the required 60 day time limit (SD 96 and SD 99).
- 11) On May 24, 2010, the case manager acknowledged the Parent's request to restart the "60 day clock again" (SD 102). Additionally, the case manager indicated she mailed the requested reports and reminded the Parent the school had not yet received a vision report. The case manager also offered to provide the Parent with a gift certificate to secure a free vision exam (SD 103).
- 12) On May 26, 2010, the Parent responded via email her concerns about the delay in the evaluation process. The Parent stated, "I requested a meeting regarding this serious issue, now at your convenience and my inconvenience you have chosen to restart the clock. My child is another year older, and she has been constantly

⁵ See SD 99 (District generated report of a timeline and incident report of the Student's history with [REDACTED] and the special education department).

discouraged that she is on the brink of failing, again. Not only that, summer school or an alternative school was implied, rather than to address her needs as I requested, early in the year” (SD 102).

- 13) Also on May 26, 2010, the case manager, via email, responded with a second offer to provide the Parent with the free vision exam certificate.
- 14) On June 1, 2010, the Parent sent an email to the case manager expressing her frustration with the District and alleging that a vision test was previously provided to the District (SD 101). This assertion in this email that the vision test had been given to the District earlier than 2010 was also made during the Parent’s testimony.⁶ Finally, the Parent informed the District that she would schedule another vision exam for the Student.
- 15) On June 8, 2010, the case manager acknowledged receipt of the vision exam and asked when the Student might receive her glasses (SD 101).
- 16) On the same date, the Parent responded via email that the Student should receive her glasses in 10 days.
- 17) On June 10, 2010, the Parent reported via email to the case manager that the Student “picked” up her glasses on 6/9/10 (SD 100).
- 18) On June 18, 2010, the case manager met with the Parent to review the Student’s file, again acknowledged the receipt of the required vision exam, and then raised an issue that the District now needed a hearing exam.⁷ Further, the District reported they would not reconvene until September of 2010 (SD 99).⁸ At this time, the District also reviewed with the Parent the expectations for summer school because the Student had failed the 8th grade for a second time.
- 19) On August 22, 2010, the Parent submitted a written request to the Director of the Office of Specialized Services for the Chicago Public Schools for a due process hearing to address the District’s failure to complete her requested evaluation for the Student (HO AG 5).
- 20) On October 1, 2010, 39 days after the Parent filed her written request for a due process hearing, the District filed with the ISBE the District’s request for an

⁶ Neither party submitted evidence to either support or refute this testimony or referenced document.

⁷ Note, nothing submitted in the record or in testimony suggested the need for a hearing exam. The Student’s physical exam (SD 141-142) reflected normal hearing and the nurse’s report reflected the Student passed the most recent hearing screening (SD 82).

⁸ Waiting to reconvene on the initial evaluation until September 2010 would be 16 months after the initial request for an evaluation for special education.

impartial due process hearing officer. The State form was signed by then superintendent of schools Ron Huberman (HO AG 4)

DISCUSSION AND CONCLUSIONS OF LAW

Contentions of the Parties

The Parent's position, as stated during the opening statements, is that the Student is a student eligible for special education. The Parent asserts the District failed to identify the student within the 60 school day time period and failed to complete an IEP for the Student. The Parent provided a history indicating she adopted the child at age three months because the biological mother had been an active drug user during the pregnancy. As a result, the Student was born with drugs present in her system. The Parent is asking that the hearing officer order the District to complete the full case study evaluation that will result in the development of an IEP for the Student that provides for a placement where the Student will be successful.

The District's position is that the professional staff did not have a basis for suspecting a disability but proceeded with the evaluation anyway. District contends that the testing and assessment portion of the evaluation could not be completed as observations of the Student suggested the Student needed vision correction. District asserts that while it was prepared to complete the evaluation, Parent withdrew Student from school preventing District from completing the evaluation or obtaining consent for a new evaluation.

Legal Conclusions

The Parent, through the single issue identified in the DPCN, alleged that the District violated the procedures of the IDEA. The Parent alleged that the District failed to identify the Student within the required 60 days as required by the IDEA [34 CFR § 300.301 (c)(1)(i)] and within 60 school days as required in the State of Illinois [23 IL Admin Code §226.110 (d)]. The IDEA provides for an exception to this timeline when the Parent "repeatedly fails or refuses to produce the child for the evaluation," [34 CFR §300.301 (d)(1)]. The District has never alleged, nor do the facts support, such an exception.⁹

⁹ Although District argued that it is now prevented from completing an assessment due to Student's withdrawal from school sometime in the fall of 2010. No facts support a conclusion that Parent was

The District reported during the IEP meeting held in June of 2009 that the school psychologist and school nurse believed the evaluation could not be completed without the Student completing a vision exam from a physician. However, the evidence indicates that the District did not follow up on its requirement to have the Student complete a vision exam until the Student failed a school vision screening in November 2009.¹⁰ This follow-up occurred four months after the evaluation process was suspended by the District due to the lack of a vision exam for the Student.¹¹

Following receipt of the results of the vision exam, the District then required the Parent to provide a hearing exam and to inform the Parent the process would be delayed at least another three months since the District's only offer to the Parent was to reconvene a meeting in September of 2010.

The IDEA per 34 CFR § 300.111 provides all districts with the affirmative responsibility known as Child Find. This provision requires the timely evaluation of all students with a disability and states in part: "All children with disabilities residing in the State, ...regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated..." Further, the 6th Circuit Appellate Court recently found [*Compton USD v. Addison & Allen*, 598 F.3d 1181(2010)] that the Compton School District failed to meet their child find responsibilities under the IDEA by delaying beyond the 60 day rule its evaluation of the Student. The Court noted in its finding: "The School District's willful inaction in the face of numerous "red flags" is more than sufficient to demonstrate its unwillingness and refusal to evaluate...." Here, the Parent sought an evaluation on 3/31/10 following several "red flags" after transferring the Student due to poor performance and the Student failing the 8th grade in 2008-2009. Subsequently, the Student failed the 8th grade a second time, and then failed summer school.

responsible for any delays between 3/31/09 when Parent first requested an evaluation and 8/22/10 when Parent requested a hearing.

¹⁰ See the testimony of the case manager.

¹¹ The District did not submit any statutory or case law authority for suspending the timeline for the purpose of pursuing a vision exam for the Student.

23 Illinois Admin Code § 226.110 (d) requires the completion of an initial full case study evaluation and the determination of eligibility must be completed within 60 school days of the Parental request. IDEA regulations 34 CFR 300.301 (c)(1)(ii) authorizes the State to establish this timeline for initial evaluation completion. The Parental request was submitted on 3/31/09. The 60 school day requirement expired on June 29, 2009. The District failed to provide any evidence of authority granting the District the right to extend this timeline at all, let alone to extend it indefinitely or to add additional criteria for the Parent to meet before completing the requested evaluation

It is the conclusion of this hearing officer that, by a preponderance of the evidence, Parent has met her burden of proof [*Schaffer v. Weast*, 546 U.S. 49, 62 (2005)]. District failed to conduct an evaluation with the required time period of 60 school days.

ORDER:

District shall evaluate Student within 45 calendar days of receipt of this decision or April 25, 2011, whichever comes first, to determine her eligibility for special education and related services, consistent with 34 CFR §§300.304 and 300.306.¹²


RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(s) and to the Illinois State Board of Education. After a decision is issued, a hearing officer may not make substantive changes to the decision. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

¹² In the event that Student is found eligible for special education and related services, the District is reminded that Student could be found entitled to compensatory education services as a result of this decision in a subsequent hearing.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.



D. MICHAEL RISEN
HEARING OFFICER

ENTERED: March 8, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Decision and Order** was sent via first class USPS, certified mail, return receipt and electronic mail, return receipt, and directed to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

and

[REDACTED]

Mr. Andrew Eulass
Illinois State Board Of Education
100 N. First St.
Springfield, IL 62777-0001
(USPS 1st class only)

before Noon on March 8, 2011

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