



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



May 20, 2013

Clare Kennedy
Executive Director of Special Education
Hartford Public Schools
960 Main Street, 8th Floor
Hartford, CT 06103

Diane Willcutts

[REDACTED]

Re: [REDACTED]
C13-0354

Dear Ms. Kennedy and Ms. Willcutts:

This office is responding to the complaint filed by Diane Willcutts against the Hartford Public Schools on behalf of the above referenced student. The complaint was filed on March 21, 2013 with this office. Ms. Willcutts is the student's surrogate parent. In the complaint, Ms. Willcutts claimed the district had violated her right to a publicly funded independent education evaluation. The following was reviewed: complaint; signed consent for evaluation dated November 19, 2012; district developmental assessment report dated December 18, 2012; district speech and language evaluation dated December 18, 2012; paperwork from planning and placement team meetings held on November 19, 2012 and January 15, 2013; February 2, 2013 letter from Ms. Willcutts to Clare Kennedy; emails exchanged between the district and the surrogate parent; OSEP memo dated March 28, 2012; Christina Ciocca, Psy.D. curriculum vitae; and the district's response to the complaint.

Findings of Fact:

1. The student is five years old and attends pre-school in a Hartford public school, Burns Latino Academy. On November 19, 2012 a PPT convened to consider the surrogate parent's referral of the student to special education. The team's concerns centered on the student's communication (articulation and expressive language) and aggressive behavior displayed by the student. The team recommended that an initial evaluation of the student, to include a developmental assessment and speech and language evaluation, be conducted to determine his eligibility for services under the Individuals with Disabilities Education Act (IDEA).
2. The student's special education teacher conducted the developmental assessment which included classroom observations, parent interview and administration of the Battelle Developmental Inventory II. Much of the findings are based on what the student's teacher reported. The student was found to be demonstrating age appropriate skills in the motor, adaptive and personal-social domains. The

student was found to be demonstrating a significant delay in the cognitive domain. The speech and language evaluation was conducted, which included administration of a language scale, Spanish edition, an articulation test in Spanish, and an informal play assessment. The speech evaluation was conducted in Spanish and English because this is how the student communicated, according to the evaluator. The evaluation found the student's expressive language fell far below expected standards. Based on informal assessment, the evaluator concluded the student had adequate receptive language skills. The evaluation reports did not include a summary or discussion of findings.

3. The student's PPT met on January 15, 2013 to review the evaluations and determined the student was eligible for special education and related services under the IDEA eligibility category of Developmental Delay. The team developed an IEP that included 2 hours a week of specialized resource room instruction in developing academic readiness skills and one hour a week of speech and language therapy. Ms. Willcutts questioned whether the student's cognitive issues were impacting his language skills or visa versa and requested a publicly funded independent neuropsychological evaluation by a bilingual evaluator to better understand the nature of the student's disability.

4. Ms. Willcutts repeated her request for an IEE in a letter to Clare Kennedy on February 2, 2013 stating "I am requesting that an independent evaluation be completed without delay with Dr. Cristina Ciocca, who is bilingual in English and Spanish." The district's Assistant Director for Special Education, Julie Morin, had responded to Ms. Willcutts on February 13, 2013 in an email but had used an incorrect email address so Ms. Willcutts did not receive the email from Ms. Morin. On March 11, 2013, Ms. Kennedy forwarded the Morin email to Ms. Willcutts. In the email, Ms. Morin basically says no to the IEE without mentioning an IEE ("...next steps could be that the District conduct a psychological evaluation as Dr. Ripepi recommended."). The district did not request a due process hearing to defend the appropriateness of its evaluation. The district did not follow through on conducting any additional evaluations.

5. Dr. Ciocca holds a doctorate in psychology. Her curriculum vitae indicates she conducts multicultural and multilingual neuropsychological evaluations and education consultations. A standard psychological or psycho-educational evaluation evaluates basic intellectual, academic, and personality functioning. A Neuropsychological assessment goes into greater depth with executive functioning, attention, memory, visual spatial, and language functioning.

Conclusions:

1. According to 34 C.F.R. § 300.502(a)(3)(i), an independent educational evaluation means any evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question..." Districts may determine that an independent educational evaluation is required because they do not have the appropriate examiner on staff or they may agree to do so at parent request. Here however, the issue is whether the surrogate parent's request for an

independent neuropsychological evaluation falls within 34 C.F.R. § 300.502 (b) which states (in part) 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;

(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...

... (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees..."

2. The parent's right to an IEE is subject only to the school district's right to request a hearing under 34 CFR § 300.506 to show that its evaluation is appropriate. It is concluded that the surrogate parent's request for an independent neuropsychological evaluation falls within 34 C.F.R. § 300.502 (b). The district conducted a speech and language evaluation and a developmental evaluation which assessed the student's overall functioning including the areas of social/emotional, adaptive, gross motor, fine motor, communication and cognitive functioning. The district's evaluation did not adequately discuss the assessments' significant findings and how those findings impact the student's learning. The student has been found to demonstrate a significant cognitive and expressive language delay. The district evaluation does not discuss how these deficits impact the student's learning. There is no discussion of the impact of the student's language dominance on his testing. The district, in essence, conceded that its evaluation was inadequate when, in response to the IEE, it proposed that a psychological evaluation be conducted.

3. The surrogate parent disagreed with the evaluations conducted by the district as evidenced by her questioning the interaction of the student's speech deficits and cognitive delays and by her statement that the team needed more information to develop an appropriate plan. The requested IEE, is needed to answer unanswered questions raised by the district evaluation and it is concluded the requested independent education neuropsychological evaluation, while assessing the student in many of these same areas as the district's developmental assessment and speech and language evaluation, will more likely provide a more complete understanding of the nature and scope of the student's and therefore allow for more appropriate programming.

3. The district failed to timely respond to the IEE request and so unnecessarily delayed the process for 2 months. The district did not request a due process hearing to show that its evaluation was appropriate or that the requested evaluation failed to meet district criteria. The district did not provide

this office with a justification for its failure to file for a hearing or timely respond to the IEE request. In whole, the district's response was:

Response: 1. Given the student's young age of five years, the district is maintaining the refusal of an independent neuropsychological evaluation of the complainant's choice. 2. The district maintains the proposal of a psychological evaluation to assess his cognitive functioning.

It is concluded the district failed to adhere to the requirements set forth in 34 CFR § 300.502. Corrective action is required, see below.

Required Corrective Action:

The district is required to ensure the student is provided with the requested IEE at public expense. No later than June 10, 2013, the district must provide either the surrogate parent or the independent evaluator, as determined by the surrogate parent, a document that can be presented to the independent evaluator that obligates the district to pay for the evaluation of the student and otherwise work with the surrogate parent as necessary to obtain the independent evaluation. A copy of this document must be provided to this office at the same time it is presented to the evaluator or surrogate parent.

I will be monitoring the district's compliance with the required corrective action. If you should have any questions, please do not hesitate to contact me at 860-713-6943.

Sincerely,



Mary Jean Schierberl, Bureau of Special Education