DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

Petitioner,

v

[STUDENT],[1]
through the Parent/Guardian,*

Respondent.

Date Issued: 4/22/11

Hearing Officer: Seymour DuBow

Case No:

Hearing Date: 4/11/11 Room: 2003

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

filed a due process complaint on March 14, 2011 requesting a hearing officer to deny counsel for the respondent's request of payment by for an independent psychological evaluation. Counsel for petitioner asserts that the psychological evaluation is appropriate. Counsel for the respondent filed her response on March 15, 2011 denying the allegations in the due process complaint. A pre-hearing conference was held on March 23, 2011 by telephone with counsel for petitioner Ellen Dalton and counsel for respondent Kiran Hassan. Because the petitioner is a charter school the resolution process is not applicable. The HOD is due April 28, 2011. The Pre-hearing Order was issued on March 23, 2011. The only issue to be decided at the due process hearing is whether

[1] Personal identification information is provided in Appendix A.

psychological evaluation is appropriate. The relief requested is to deny counsel for respondent's request for payment by of an independent psychological evaluation.

The due process hearing convened at 9:30 a.m. on April 11, 2011 in Room 2003 of the Student Hearing Office at 810 First Street, N.E. Washington, D.C. 20002. Ellen Dalton represented the petitioner and Kiran Hassan represented the respondent. The hearing was closed. Counsel for petitioner, who is usually a respondent on behalf of an LEA, labeled her documents with an R and counsel for respondent, who is usually counsel for parents, labeled her documents with a P. Those letters should be reversed because initiated this due process hearing and is the petitioner. In order to avoid confusion in reviewing the documents, this hearing officer shall refer to counsel for petitioner's documents with an R as currently labeled and counsel for respondent's documents with a P as currently labeled. At the outset of the hearing, petitioner's documents R-1-R-5 were entered into the record without objection. Counsel for petitioner objected to most of respondent's documents on the grounds of relevance except for P-12, P-21, P-22 and P-25. This hearing officer admitted those documents into the record and reserved ruling on the remaining documents until the time they were relied on during the hearing. All witnesses were sworn under oath prior to testifying. Counsel for petitioner called as her witness Dr. Heather Loffredo, the clinical psychologist who conducted the psychological evaluation. Dr.Loffredo appeared in person. She was qualified as an expert witness in clinical psychology without objection. Counsel for respondent called as witnesses Dr. Nathasha Nelson, a clinical psychologist who testified by telephone. Because Dr. Nelson relied on respondent's documents P-13 through P-19 as part of her assessment of Dr. Loffredo's psychological evaluation, counsel for petitioner's objection to those documents was overruled and those documents were admitted into evidence. Counsel for respondent also called as

witnesses in person Ms.Chithalina Khanchalern, educational advocate, who testified about MDT Meetings and the mother who testified about her concerns about the evaluation. Counsel for petitioner's objection to documents P-1-P-8 was overruled on the basis that they are relevant to the educational advocate's testimony on the need for an independent evaluation. At the close of the hearing, this hearing officer ruled that the objections to documents P-9-P-11 are sustained on the grounds of those documents not being relevant to the issue to be decided.

JURISDICTION

The hearing was convened on April 11, 2011 pursuant to jurisdiction under *Public Law 108-446, The Individuals with Disabilities Improvement Act of 2004 (hereinafter referred to as IDEA), Title 34 of the Code of Federal Regulations, Part 300 (2006) and Title V-E of the District of Columbia Municipal Regulations.*

BACKGROUND

Counsel for has brought a due process complaint to deny payment for a request by the respondent for an independent evaluation at the LEA's expense. Counsel for petitioner maintains that the psychological evaluation is appropriate. Counsel for respondent is arguing that the evaluation is not valid. Counsel for presented at the hearing the evaluator to defend the validity and appropriateness of her evaluation. Counsel for the respondent presented a clinical psychologist to challenge the appropriateness of the evaluation.

ISSUE AND RELIEF SOUGHT

The issue to be determined is as follows:

1. Is the psychological evaluation appropriate?

The relief requested is to deny counsel for respondent's request for payment by of an independent evaluation.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Dr. Heather Loffredo of conducted a psycho-educational and adaptive evaluation of the student and wrote a seventeen page report on February 6, 2011. (R-2, Testimony of Dr. Loffredo)
2. Dr. Loffredo has a doctorate in clinical psychology from the American School of Professional Psychology at Argosy University in Arlington, Virginia with a final grade point average of 3.99 on a 4 point scale. She received her doctorate in August 2010. (R-3, Testimony of Dr. Loffredo)
3. From August 2010 to the present, Dr. Loffredo has been employed as a psychologist at (R-3, Testimony of Dr.Loffredo) Parts of her duties are to administer and interpret psycho-educational evaluations and clinical batteries. (R-3, Testimony of Dr.Loffredo) Dr. Loffredo has conducted and completed from 150-200 test batteries and she has conducted over 50 psycho-educational evaluations. (Testimony of Dr.Loffredo)
4. Dr. Loffredo was qualified as an expert witness in clinical psychology without objection from counsel for respondent.
5. Dr. Loffredo's 17 page report of February 6, 2011 contains the following sections: Reason for Referral, Background/Developmental Milestones, Medical History,

Academic History, Teacher Comments, Classroom Observations, Behavioral Observations during Testing, Interpretation of WISC-IV Results, Interpretation of WIAT-II Results in Reading, Mathematics, Oral Language, Written Language, Strengths and Weaknesses, Ability-Achievement Discrepancy Analysis Predicted Method, Adaptive Interpretation of Vineland-II Adaptive Behavior Scales Interpretation, Summary of Psycho-educational functioning and Adaptive Summary and Recommendations. (R-2)

6. Dr. Loffredo conducted the evaluation in a quiet room sitting across from the student. She read the instructions to the test verbatim and read the instructions at the beginning of each sub-test. She gave the child an opportunity to respond. Dr. Loffredo administered ten subtests of the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) on one day and took several breaks. Dr. Loffredo administered the WIAT-II Achievement Tests on a separate day with breaks as needed taking 1.5 to 2 hours for each test. (Testimony of Dr. Loffredo) Dr. Loffredo is currently not licensed. Dr. Bronwen Millet, Director of Clinical Services at and a licensed clinical psychologist, was Dr. Loffredo's direct supervisor who reviewed the evaluation and results and signed the evaluation report. (R-2 at p.14, Testimony of Dr.Loffredo)

7. Dr. Loffredo used the WIAT-II Test for Achievement in February 2011. A new WIAT-III Test for Achievement became available in the summer of 2009. The WIAT-II Test was published in 2001 and is based on norms in 1998 and the WIAT-III Test was published in the summer of 2009 and is based on norms in 2005. (Testimony of Dr. Nelson, Dr. Loffredo) It is standard psychological practice that

psychologists have a cushion time of at least a year of continuing to use an older test before using the newer version. (Testimony of Dr. Loffredo and Dr. Nelson) There was approximately one year and half after the new version of the WIAT-WIAT-III- was published that Dr. Loffredo administered the WIAT-II in conducting her evaluation of the student.

8. It was Dr. Loffredo's expert opinion that the WIAT-II test was still valid when she administered it in February 2011 to this student. (Testimony of Dr. Loffredo) Dr. Nelson's expert opinion is that it is invalid because the WIAT-II was based on out-dated norms. Dr. Nelson was unable to explain how the difference in norms between 1998 and 2005 affected the validity of the WIAT-II test. There is no policy from the American Psychological Association that it is unethical to use the WIAT-II test one and a half years after a newer version is published. (Testimony of Dr. Nelson)
9. A clinical evaluation was offered by Dr. Loffredo to the parent and educational advocate, but it was declined at the March 8, 2011 MDT meeting. (P-1 at p.2, Testimony of Dr. Loffredo, Ms.Khanchalern)
10. At a March 8, 2011 MDT meeting, Dr. Loffredo discussed her evaluation with the parent and her educational advocate. The parent and her educational advocate made a request for an independent psycho-educational evaluation at the March 8, 2011 meeting. (P-1 at p.3)

CREDIBILITY FINDINGS

A hearing officer is responsible for assessing the credibility of witnesses. *See Shore Regional High School Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3rd Cir. 2004) Dr. Loffredo testified in person. This hearing officer had an opportunity to observe her demeanor and her answers to questions from both counsel. Dr. Loffredo comprehensively described how she conducted the psycho-educational and adaptive evaluation on the student. Her answers to questions from both counsels were very thoughtful, forthright and knowledgeable. Dr. Loffredo's explanation of why there were discrepancies between the student's cognitive abilities and reading achievement scores is credible. This hearing officer finds her testimony to be very credible and gives great weight to her expert opinion that the evaluation she administered is appropriate. Dr. Nelson testified for the respondent by telephone. Dr. Nelson had difficulty on several occasions to directly answer questions from the hearing officer and counsel for the petitioner. When this hearing officer, for example, asked Dr. Nelson how the difference in norms in the WIAT-II and the WIAT-III affected the validity of still using the WIAT-II test, Dr. Nelson was unable to answer the question and instead talked about the WISC-IV intelligence test. This hearing officer found Dr. Nelson's answers evasive and gives little weight to her expert opinion on the validity and appropriateness of psycho-educational and adaptive evaluation.

DISCUSSION AND CONCLUSIONS OF LAW

Based upon the Above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows on the issue of the appropriateness of the psycho-educational evaluation:

Pursuant to *34 C.F.R. Section 300.502 (b)(2)*, counsel for petitioner has declined to pay for respondent's requested independent psycho-educational evaluation and initiated this due process hearing because it maintains evaluation is appropriate. The parent made her request for an independent psycho-educational at the March 8, 2011 MDT meeting. (R-1) (Findings of Fact #10) Counsel for petitioner filed this due process complaint on March 14, 2011. (P-1) Counsel for petitioner initiated this request for a due process hearing "without unnecessary delay". *Id.*

The above Findings of Fact show that psycho-educational evaluation is appropriate. The evaluator Dr. Loffredo is a qualified examiner with a doctorate in clinical psychology and has an excellent academic record. (See Finding of Fact #2) She has extensive experience in conducting and interpreting psycho-educational evaluations having administered over 50 psycho-educational evaluations and between 150-200 testing batteries. (See Findings of Fact #3) Counsel for respondent did not object to qualifying Dr. Loffredo as an expert in clinical psychology. (See Findings of Fact #4) The evaluator Dr. Loffredo administered the evaluation in a comprehensive way over two days in a quiet room with breaks as needed by the student. (See Findings of Fact #6) Dr. Loffredo followed proper protocols in administering the evaluation and covered all the appropriate areas for such an evaluation. (See Findings of Fact #5) Her evaluation was done under the direct supervision of a licensed clinical psychologist Dr. Millet who reviewed and signed the evaluation report. (See Findings of Fact #6) This hearing officer gives great weight to the expert opinion of Dr. Loffredo that her psycho-educational and adaptive evaluation is appropriate. (See Credibility Finding) Respondent's expert witness Dr. Nelson challenges the evaluation because the evaluator used the WIAT-II Achievement Test instead of the newer version- WIAT-III. The WIAT-III was published in

the summer of 2009. Psychologists are allowed a cushion time to continue to use older versions of a test. In this case, the time was under one and half years. Respondent's expert witness failed to satisfactorily explain how using the WIAT-II based on 1998 norms made it invalid. The American Psychological Association has not stated it is unethical to use an older version of a test within a specific time frame such as occurred in this case. Dr. Loffredo maintained the WIAT-II was still valid when she administered it. This hearing officer has found her testimony very credible. (See Credibility Finding) *See Kirby v. Cabell County Bd. of Educ.* , 46 IDELR 156 (U.S.D. C. W. Va. 2006) where the district court affirmed the IHO's decision that the evaluation performed by the LEA was adequate extinguishing the parents' right to reimbursement for an IEE. This hearing officer concludes that counsel for petitioner has met her burden of proof that the psycho-educational and adaptive evaluation is appropriate.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Counsel for petitioner request for relief is GRANTED and <u>does not</u> have to pay for an independent psycho-educational evaluation requested by respondent because the psycho-educational and adaptive evaluation is appropriate.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: 4/22/11 _____Seymour DuBow /s/_____
Hearing Officer