

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	LOCAL DUE PROCESS HEARING
	)	OFFICER BRUCE J. SMITH
In the Matter of:	)	
	)	
C.W. on behalf of C.H.,	)	
Petitioner,	)	
v.	)	FINAL ORDER
	)	
Richland School District Two	)	
<u>Respondent.</u>	)	

PROCEDURAL HISTORY

This Due Process Hearing is before me pursuant to a due process complaint (DPR) initially received on October 31, 2024, that I serve as the Local Due Process Hearing Officer (LHO). As a result of the parties' failure to fully resolve this dispute during the resolution period, a pre-hearing conference call was conducted on November 12, 2024, with two follow-up calls to address legal representation at the hearing, the role of an advocate during a hearing, and the Respondent's objection to requiring testimony from the District Superintendent. Both parties participated in the conference calls at the request of the hearing officer to verify the exchange of documentation and logistics for the hearing. The time and date for the hearing was set for December 18 and 19, 2024, at 9:00 a.m. at a Richland School District Two (District) meeting room.

SUMMARY

The Petitioner/Parent filed this action on the basis that the District violated the Individuals with Disabilities Education Act (IDEA) with the improper classification of the Student's disability and the evaluation process used to determine the Student's eligibility for special education and related services. In a December 15, 2024, (HO-3) "Order on

Respondent's Response to Petitioner's Due Process Hearing Request and Partial Motion to Dismiss" the issues of discrimination (racism), bias, and other allegations (some that fall outside of the two-year statute of limitations) were dismissed. In a December 17, 2024 (HO-4) "Order on Respondent's Objection to Petitioner's Witness List" the request for the District's Superintendent to testify was denied.

PROCESS

This hearing was conducted according to a preset format that was presented to both parties and reviewed at the outset of the hearing. The hearing began at approximately 9:00 a.m. and proceeded until approximately 4:00 p.m. on December 18, and from 9:00 a.m. until 2:00 on December 19, 2024.

Both parties were offered the opportunity to begin with an opening statement and both parties declined to give opening statements. This was followed by the presentation of the Petitioner's case and the calling of fourteen witnesses. Both parties had an opportunity to cross-examine the witnesses and offer rebuttal witnesses. Neither the Parent nor the Student's grandmother testified at the hearing, although they could have done so.

Afterwards, each party offered and presented the hearing officer with written closing statements which are now part of the record.

ISSUES

The Petitioner contends the District failed to provide a Free Appropriate Public Education (FAPE) to the Student under the IDEA by:

1. Failure to identify the proper disability classification/category.
2. Not using the proper evaluation process to make the determination of

classification/category of disability.

Note: Regarding the Petitioner's Claims, on one hand, the Petitioner seems to claim the District has not provided sufficient supports to address the Student's deficits, and on the other, seems to claim the District has done too much and should not have provided the Student specialized instruction in the area of reading.

FINDINGS

Testimony, supporting evidence, and arguments presented at the hearing were all considered in my findings as they related to the issues set forth above.

1. The Student is a 7 year, 11-month-old male student who qualifies for special education and related services under the category of Special Learning Disability.
2. The Student is a first-grade student at an accelerated school in the District.
3. As a brief summary of the Student's history, (found to be creditable after hearing testimony in the hearing), was offered by the Respondent in their Partial Motion to Dismiss, "*[Student's] IEP team met on May 10, 2022, to review [Student's] current present levels of performance, conduct an annual review, and a reevaluation review. Based on a review of existing information, it was determined that additional assessments did not need to be administered to determine whether [Student] continues to have a disability and his educational needs. As a result of [Student's] current progress at the time, the IEP team determined that [student] was no longer eligible as a student with a Developmental Delay and no longer required specialized instruction under this disability category. However, [Student] continued to remain eligible for Speech therapy services as a student with a Speech/Language Delay at that time. Therefore, [Student's] primary disability was changed from Developmental Delay to Speech/Language Impairment based on current and*

previous evaluations, progress on IEP goals, teacher and therapist data logs. curriculum-based assessments, and observations. By way of further background, [Student], who is currently a first-grade student at the [School] in the District, was originally evaluated on January 29, 2021, and classified as a student Developmentally Delayed (DD) in the areas of adaptive, communication, and 4 social/emotional development. [Student] received services on an IEP for Speech/Language, Pre Academic Readiness Skills, Functional Communication, and Social/Emotional. On May 22, 2022, [Student's] IEP team determined [Student] no longer qualified as a student Developmentally Delayed as [Student's] delays were specific to speech and language (Speech language Impairment - SLI). Fairl yearly into [Student's] kindergarten year, at an IEP meeting on September 27, 2023, [Student's] IEP team determined a reevaluation was necessary to gain current levels of speech and language. Later in the year, on November 28, 2023, the IEP team agreed to provide the Student with resource services to address concerns with letter recognition and phoneme segmentation as the reevaluation process continued. The reevaluation was ultimately concluded and discussed at the March 19, 2024, IEP meeting where the team determined that, in addition to speech/language, the student also met eligibility as a student with an SLD. [Student] is currently receiving speech services as well as Resource services for Reading."

DISCUSSION

The hearing officer began the hearing with a summary of pre-hearing due process

activity prior to the hearing. He also introduced into the record the hearing officers' exhibits:

HO-1 Follow-up report on the pre-hearing conference calls (3)

HO-2 Emails responding to the delay in scheduling the due process hearing until the Petitioner obtained legal counsel.

HO-3 Order on Respondent's response to Petitioner' Due Process Hearing Request and Partial Motion to Dismiss.

HO-4 Order on Respondent's Objection to Petitioner's Witness List.

Neither the summary nor the introduction of the Hearing Officer's exhibits were challenged or expanded upon by either party. During the two-day due process hearing, the LHO heard testimony from fourteen witnesses, the Parent (Petitioner) introduced 3 exhibits and the District (Respondent) introduced 21.

Both parties were offered the opportunity to make opening statements, both declined.

The Parent called a number of District employees as witnesses for her case, and all of the witnesses who worked directly with Student agreed that, early in Student's kindergarten year, Student demonstrated below-grade-level expectations in reading and writing and specifically in Student's pre-reading skills of letter identification, letter sounds and phoneme segmenting, or the ability to break words down into individual sounds.

The 2023-2024 school year was Student's first year at the current School, which is a unique and accelerated school program. The District employees testified, and the educational records reflect, the IEP team held a special review meeting on September 21.

2023, at Student's grandmother's request because the family had concerns about Student's academic performance and struggles they were seeing, but also because Student's teacher and speech pathologist had concerns as well. Student's grandmother attended in-person and Student's mother attended virtually. Student was previously served early on as a student with both Developmental Delays and a Speech Language Impairment prior to attending this school, but was served as a student with only a Speech Language Impairment since May 2022, because Student's IEP team at that time believed it may be the Student's significant speech impairment that was Student's primary concern and caused the greatest difficulty. However, the team at School decided to conduct a re-evaluation review to gather more data in the area of communication to see if additional services were necessary for Student. Student's struggles were more readily discernable given the accelerated nature of the School's programming. Student's family and the school team members shared concerns about Student's reading readiness, and Student's mother and grandmother were in agreement with the team's decision to continue the reevaluation review.

Student's kindergarten teacher, Student's speech language pathologist, and Principal, all testified as to the Parents' consent and agreement, and the Parent did not testify or provide any evidence to dispute that she agreed and consented.

Student's kindergarten teacher testified that she had concerns about Student's pre-reading and reading skills early in the school year, using teacher checklists and other assessments benchmarks. She testified that Student scored an "A" on the diagnostic reading assessment, which is the lowest score. She had Student sitting close to her or her teaching assistant during instruction so that he could better focus on the lessons provided during Tier 1 instruction provided as part of a Multi-Tiered System of Supports (MTSS). She also

provided Tier 2 instruction to Student in a small group setting to help Student with letter identification, letter sounds, and blending. She provided Tier 3, or more intensive instruction to him by working one on one with him using a variety of instructional techniques including tactile, auditory, and visual techniques.

Student's speech language pathologist spoke with the school psychologist about reading performance concerns. They discussed that Student, as a student with an IDEA-eligible disability, could receive specialized instruction if the IEP team determined it was appropriate, and Student was not limited to only speech goals simply because Student was a student with Speech Language Impairment. Moreover, the team was not required to wait until Student went through the MTSS process to receive assistance academically through the IEP.

After the September 21, 2023, IEP meeting, Student's special education teacher, who is National Board Certified and trained in the Orton-Gillingham approach to reading instruction, assessed Student's reading skills using three Easy CBM assessments. In all three, Student scored significantly below grade-level expectations.

The team met again on November 28, 2023. Student's special education teacher attended and reviewed the results of the Easy CBM assessments with the team. Student's kindergarten teacher also shared with the team the concerns she had about Student's reading performance in the classroom setting. Student's kindergarten teacher, Student's special education teacher, Student's speech language pathologist, and the Assistant Principal who served as the LEA, all testified that both the grandmother and mother attended this meeting either in person or by phone. The team agreed to add an academic goal to his IEP for reading and agreed that Student's special education teacher would work with Student in the special education setting for a total of 90 minutes (30 minutes 3 times) per week. The team also agreed that they would, in addition to the

communication assessments, administer cognitive and achievement testing early the next semester to allow student time to receive instruction from Student's special education teacher, because they suspected a specific learning disability in reading.

Student's special education teacher began working with Student thereafter and provided progress monitoring on a monthly basis. Again, there is no credible evidence that Student's mother and grandmother disagreed with these decisions. Then, the team met again in March of 2024. During this meeting, they reviewed and discussed the reevaluation report completed by the school psychologist and Student's speech language pathologist. The team determined that Student was a student with specific learning disability, and they increased Student's hours of service for specialized instruction with Student's special education teacher. Since that time, Student has made progress on Student's goals. It was an appropriate decision to address Student's strengths and weaknesses.

The Parent makes much of the idea that Response to Intervention would be more important than specialized instruction in reading. However, clearly the instruction from Student's special education teacher is more appropriate for him than the MTSS process, even though he did also participate in tiered interventions.

The Parent had two outside witnesses testify regarding how things are done elsewhere and how the District should have proceeded, but these testimonies are unavailing. Witness One, a witness offered by the Parent, testified by phone. She is an educator working in Fulton County, Georgia. The bulk of her testimony was on the subject of **MTSS** and the specific timelines and process her school district employs for **MTSS**. She did not testify as to any direct information about Student, the tiered instruction provided by the School to Student, or the issues raised by the Parent in this due process hearing. Her testimony did not support any of the claims raised by

the Parent. Similarly, witness two's testimony did not support any of the claims raised by the Parent. Instead, witness two, a school psychologist in private practice in Georgia, testified about what he viewed as general best practice for evaluations to determine whether a student is a student with Developmental Delays. Rather than supporting the Parent's claims, his testimony seemed to support the District had properly evaluated Student. He also offered in testimony that during the COVID years of Student's education the remote learning and wearing of masks made speech/language diagnosis difficult.

There was no evidence presented to support the claim that the District improperly identified Student as a student with specific learning disability, or that it was inappropriate to provide Student specialized instruction with an Orton-Gillingham trained special education teacher.

The Parent did not produce any evidence to support her claim that the District did not afford her or her mother the opportunity to meaningfully participate in any of the IEP meetings. In fact, the Assistant Principal testified that during the November 28, 2023, meeting in which the Parent participated via phone, she would stop and ask the Parent from time to time if she had any questions or any comments for the team to ensure her input was considered. Neither the Parent nor grandmother objected to any of the decisions made by the IEP team prior to filing the due process complaint.

In the Parent's December 24, 2024 written closing statement, the majority of comments were listed under "Procedural Deficiencies in Pre-Hearing Instructions, Submission of Evidence, Apparent Bias, etc., which reflects her misunderstanding of the hearing process. After discussions between the parties relative to the use of legal counsel she was advised in a November 14, 2024 email from the hearing officer: *"Whether or not to seek*

and obtain legal counsel is the individual party's decision, but in some cases, it is advisable to seek legal counsel, especially when a Parent does not believe he or she has a sufficient grasp of the applicable statutes and regulations, or procedural requirements that apply to due process hearing. As the hearing officer, however, I can only advise you of your rights under the IDEA and whether your arguments are sufficient to carry the burden of proof at the conclusion of the hearing. “

The Parent was also informed during the prehearing conference calls and footnoted in the follow-up report of December 11, 2024 (H0-1 Exhibit) about the role of her advocates; *"as discussed in the original pre-hearing conference call was the limited role of an advocate. Advocates are only allowed to accompany and assist. They are not allowed to represent the parent and child. To do so will constitute practicing law without a license."* The hearing officer exercised considerable patience during the hearing by allowing the Parent's advocate to "accompany and assist" her with her questioning, which were spontaneously written by the advocate as the witnesses testified. This became a source of frustration to the point of fending off objections to the process by the District.

At the closing of this hearing, because of the Parent's numerous comments during the hearing and in her closing statement that: *"The pre-hearing notes, particularly item 11, failed to provide clear Guidance on essential procedural matters such as the timeline and process for exchanging witness lists and anticipated testimony. This lack of clarity disproportionately affected me as a non-attorney parent"*, the hearing officer read into the record item 11 from the prehearing conference call letter (HO- I Exhibit).

In a review of the Parent's Due Process Complaint, testimony given at the hearing, and in the Parent's closing statement, I found no objection to Student being served with special education (speech/language and resource services for reading) and

related services under the category of Specific Learning Disability. Rather the complaint (DPR) is more about the process and methodology used to make the IEP team's determinations.

As defined in 34 C.F.R. § 300.8(c)(10), An IEP team may determine that a child has a specific learning disability (SLD) if:

1. The child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of the following areas. when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards: oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem-solving.
2. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in 34 C.F.R. § 300.309(a)(1) when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age: state-approved grade-level standards; or intellectual development that is determined by the group to be relevant to the identification of SLD, using appropriate assessments, consistent with 34 C.F.R. §300.304 and 34 C.F.R. § 300.305; and
3. The evaluation team determines that its findings under 34 C.F.R. § 300.309 (a)(1) and 34 C.F.R. § 300.309 (a)(2) of this section are not primarily the result of: a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors: environmental or economic disadvantage; or limited English proficiency.

The general requirements for evaluating students suspected of having a disability, at 34 C.F.R. § 300.301 through 34 C.F.R. § 300.305, also govern the evaluation of students suspected of having SLD. Districts conducting an evaluation for suspected SLD must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 C.F.R. § 300.8. 34 C.F.R. § 300.304.

School districts must use the criteria adopted by the state in determining whether a student has SLD. 34 C.F.R. § 300.307(b). South Carolina's definition and eligibility criteria for the category of SLD included in S.C. Code Ann. Regs. 43-243.1 *Criteria for Entry into Programs of Special Education for Children with Disabilities* mirrors the definition and criteria included in the IDEA at 34 C.F.R. § 300.8(c)(10). South Carolina has also adopted guidelines set forth in the *Standards for Evaluation and Eligibility Determination (SEED)* document which is designed to be a companion to State Regulation 43-243.1.

The record, including 21 District exhibits, and testimony will show that this criteria for making the SLD determination were in good faith complied with and that the Parent was an active member of the IEP teams making Student's determination.

From the Parent's DPR, testimony and closing statement make the assumption that the District failed to meet the Parent's expectations by stating: The District's failure to provide a Prior Written Notice (PWN) that met the standards of 34 C.F.R. § 300.503 for each issue raised was not adequately addressed. This failure included:

Identification, evaluation, placement, and provision of FAPE for Developmental Disability (DD), Resource Services, Specific Learning Disability (LD), and Speech-Language Impairment (SL).

As to this assumption, I agree with District's position that "The IDEA is clear that the IEP meeting process is to be a collaborative process between the District and the parent; however, the District is not required to acquiesce to all parental demands. A student's IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988 (2017). This standard does not require that a school provide every special service necessary to maximize each disabled child's potential. *County Sch. Bd. of Henrico Cnty v. Z.P.*, 399 F.3d 298, 300 (4th Cir. 2005). The District must develop an educational program to enable ... (the student) to be served appropriately and receive meaningful educational benefit. The school must then substantially implement the program in the least restrictive environment along the continuum of placement options that all school districts must offer. 34 C.F.R. § 300.551 (b)(1). "The IDEA does not promise perfect solutions to the vexing problems posed by the existence of ... disabilities in children and adolescents." *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir.

1993)."

CONCLUSION

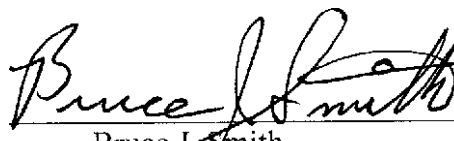
From the evidence and testimony there is no evidence showing that the District (Respondent) failed to make the proper disability classification or failed to use the proper process to make the classification

THEREFORE, IT IS ORDERED, that the Petitioner's contention that the District failed to provide a free appropriate public education under the IDEA are not substantiated through the testimony and evidence presented by the Petitioner.

APPEAL PROCEDURE

Any party may appeal this ruling. A party seeking to appeal this ruling must do so in writing and within ten (10) days of receipt of this Order. The written appeal must be addressed to:

The South Carolina Department of
Education, Office of General Counsel
849 Learning Lane
Columbia, SC 29172


Bruce J. Smith,

Local Due Process Hearing Officer

January 4, 2025

Note: I will not accept, read, or consider any further argument about the merits on this matter unless it is remanded to me by the SRO or the District Court. No email, letter or other written communication will be construed or considered as either a Motion to Reconsider or as a Motion to Alter or amend this Order. Further, no such communications may toll or extend the time limit above for filing an appeal.