

**STATE OF RHODE ISLAND DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SPECIAL EDUCATION HEARING**

IN THE MATTER OF:	:	
	:	
Smithfield Public Schools	:	Complaint No. LL-22-10
	:	
v.	:	
	:	
In Re-J.L.	:	
	:	

DECISION

This decision is issued pursuant to the Individual with Disabilities Act (“IDEA”) (20 U.S.C. § 1400 *et seq.*), state special education law (R.I. Gen. § 16-24-1 *et seq.*) and the regulations promulgated under these enabling statutes.

Complainant Smithfield Public Schools (“SPS”) filed a due process complaint against JL on or around July 5, 2022 in response to Respondent JL’s request for SPS to complete and pay for an independent educational evaluation (“IEE”). Thereafter the undersigned hearing officer was assigned to this matter by the State of Rhode Island Department of Education (“RIDE”) on July 6, 2022. According to RIDE, a decision is due “No later than August 20, 2022.” Shortly thereafter Complainant SPS requested that the undersigned hearing officer recusal himself from this matter. Because this hearing officer allowed Complainant time to file evidence and an argument for the basis of its recusal request, a hearing on the substantive issue was delayed. Complainant submitted its argument and evidence on July 29, 2022. Shortly thereafter on August 4, 2022 an Order was issued that denied Complaint’s recusal motion. As a consequence of this delay, the parties mutually agreed to multiple hearing and decision extensions dates that ultimately required this decision to be issued no later than Friday, September 2, 2022.

A procedural hearing was held on August 5, 2022 and a substantive hearing thereafter on August 16, 2022.

Those present through the course of the hearing were:

For Smithfield Public Schools

Director of Special Education, [REDACTED]
[REDACTED]. Attorney

For JL

The Parent of JL (hereinafter “Parent”)
or Respondent

Position of the Parties:

Complainant: SPS’s position is that Respondent has not identified any reason that justifies an IEE under 34 C.F.R. § 300.502 and therefore is not entitled to an IEE at SPS’s expense.

Respondent: Respondent sent a letter to SPS dated June 22, 2022 requesting SPS conduct an IEE at public expense “for the following reasons: 1) An IEE would confirm or add concerns regarding [JL’s] ADHD, Anxiety, and Dysgraphia or any new diagnoses. 2) There would be more information for a bench mark regarding JL by having an outside test that can be used on his IEP to ensure that JL receives all the supports he needs to become successful.”

Factual Findings

1. At the commencement of a pre-hearing conference on August 5, 2022 to discuss scheduling and procedural the Parent of JL confirmed she will be *pro se*. Tr. 4.
2. The undersigned hearing officer informed her that SPS is being “represented by able legal counsel” and adviser her to consider getting her own legal counsel. *Id.*
3. The parties held a hearing on the substantive issue in dispute on August 16, 2022.
4. At that hearing Respondent once again confirmed she would be *pro se*. Tr. 5. This undersigned hearing officer informed the Respondent that “*pro se* litigants in our state are often granted a little greater latitude by the court, but they are not entitled to greater rights than those represented by counsel.” *Id.*

5. Complainant's first witness and only witness was [REDACTED] special education director for the district. After providing her credentials on the record, this hearing officer determined that Ms. [REDACTED] is a qualified expert witness in the area of special education. Tr. 10-11.

6. Ms. [REDACTED] testified that she was familiar with Respondent's child ("JL") and that she reviewed his educational records in preparation for this hearing. Tr. 10-12.

7. On May 16, 2022 the Parent requested that her child be formally evaluated by SPS. Exhibit A, Tr.12.

8. The parties participated in a special education referral meeting on May 27, 2022. Exhibit C.

9. According to meeting notes, the Parent was to "share" an outside evaluation from 2020 with the IEP team. Exhibit C. It was not on file with the school. Tr. 16.

10. Also at the meeting, recommended evaluations were psychological, social history update, education evaluation for math only, occupational therapy, and speech/language. Exhibit C. There was no discussion about completing a neuropsychological evaluation by SPS. Tr. 16.

11. The Parent thereafter granted SPS the authority to conduct an initial evaluation of her child. Exhibit D.

12. SPS also honored the Parent's request to complete a functional behavioral assessment ("FBA") for JL. Tr. 20, Exhibit H.

13. The parties met on June 22, 2022 to review and discuss evaluations that were completed and determine whether JL is eligible for special education services. Tr. 22.

14. These evaluations included and discussed were an FBA, speech/language, occupational therapy, education, and the Parent's neuropsychological, Tr. 23-24, Exhibits G-M.

15. At the meeting, the Parent asked if a neuropsychological evaluation was recommended and according to Ms. [REDACTED] “an updated Neuropsychological Evaluation was not being requested at this time.” Tr. 35.

16. On June 22, 2022 SPS determined that JL was eligible for special education. Tr. 36, Exhibit P.

17. In making this determination, SPS relied on the Parent’s neuropsychological evaluation. Tr. 27.

18. Thereafter Respondent sent a letter to SPS, dated June 22, 2022 requesting that SPS conduct an IEE at public expense “for the following reasons: 1) An IEE would confirm or add concerns regarding [JL’s] ADHD, Anxiety, and Dysgraphia or any new diagnoses. 2) There would be more information for a benchmark regarding JL by having an outside test that can be used on his IEP to ensure that JL receives all the supports he needs to become successful.” Exhibit Q, U at 5.

19. Complainant timely responded to Respondent’s request by filing a due process complaint on or about July 5, 2022. *Id.*

20. Complainant’s complaint states that “Neither reason advanced by Ms. [REDACTED] justifies an independent educational evaluation at public expense under 34 C.F.R. § 300.502 as incorporated by reference in 200 R.I.C.R. § 20-30-6.8.1 (C). Ms. [REDACTED] has not identified any disagreement with any evaluation as required by 34 C.F.R. § 300.502(b)(1).” Exhibit U at 3.

21. Nowhere in the Parent’s letter, dated June 22, 2022 is there any disagreement with any of the evaluations completed and/or utilized by SPS. Exhibit Q, U at 5.

22. On cross-examination during the hearing the Parent questioned Ms. [REDACTED] on the data points that the district collected with its FBA on JL. Tr. 43.

23. The Parent testified about JL’s personal and educational history. Included in her testimony was information about how JL was bullied in school. Tr. 46-47.

24. She expressed concern that her child is “technically due for a Neuropsych, and in that 3 year window at the district, he has been extremely bullied and his PTSD and his anxiety, his ADHD, his learning ability cannot be tested in that kind of environment. It needs to be done outside and we needs one sooner than 2020, because a lot of incidents have happened in the school within that time, academics and socially, and that is why I’m requesting an IEE. I don’t feel a Neuropsych truly has a picture of what is going on with my son now after dealing with these issues in the public school system.” Tr. 47-48.

25. The Parent thought the 2020 evaluation was outdated. Tr. 48.

26. Nowhere in the record is there any evidence that the Parent disputed any of the findings of any evaluation conducted by SPS.

Issue(s) Presented

The only issue in this matter is whether SPS should be required to pay for the IEE that the Parent requested.

Discussion¹

Under the Individual with Disabilities in Education Act 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. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502; *South Kingstown School Committee v. Joanna S.*, 773 F.3d 344,350-351 (1st Cir. 2014). A school district is required to reimburse a parent for an IEE when a parent “expresses dissatisfaction with the [school] board’s evaluations” and then requests and independent evaluation. *A.S. by Her Parents & Next Friends*

¹ In rendering this decision, I rely on the Statement of Facts above and incorporate them by reference to avoid restating them except when emphasizing a point or clarifying an analysis.

Mr. and Mrs. v. Norwalk Board of Education, 183 F. Supp. 2d 534, 549 (D. Ct. 2002). However, a school district does not have duty to pay the costs of an IEE when a parent does not indicate a disagreement with the district. *Kuszewski ex rel. Kuszewskiv. Chippewa Valley Schools*, 131 F. Supp. 2d 926,931 (E.D.S.D. MI. 2001) *affirmed* 56 Fed. Appx. 655, 2003 WL 124030 (6th Cir. 2003); *Kirsta P. v. Manhattan School Dist.*, 255 F. Supp. 2873 (N.D. E.D. Ill. 2003). A parent's "failure to dispute the results of the district's evaluation rendered moot a due process hearing or an opportunity for [the school district] to pay the costs." *Kuszewski* 131 F. Supp. 2d at 931. A parent is also not entitled to an IEE "merely in order to have additional source of information." *R.L. ex rel. Mr. L. Plainville Board of Education*, 363 F. Supp. 2d 222,234 (D. Ct. 2005). Moreover, a change in a child's condition is not the same as disagreeing with an evaluation. *N.D.S. by and Through de Campos Salles v. Academy for Science and Agriculture Charter School*, 2018 WL 6201725 at 2 (D. Minn. 2018).

In this matter, there is no neuropsychological examination completed by SPS that the Parent can disagree with. The district relied on what the Parent provided to determine that her child was eligible for special education services. Accordingly, the issue is moot. Moreover, nowhere in the record does the Parent disagree with the district's evaluations. Lastly, as counsel for SPS indicated, a parent is not entitled reimbursement when the parent does not disagree with evaluation results or for an "additional source of information" Therefore, the Parent's request to have the district pay for an IEE pursuant to 34 C.F.R. § 300.502 and Rhode Island regulations fails. The Parent may however obtain an evaluation or evaluations at her own expense. *Id.*

Based upon the foregoing decision, this Hearing Officer enters the following Order:

The Smithfield School District shall not be required to pay for the evaluation Respondent requested in her June 22, 2022 letter to the district. Order entered for the district.

Entered this 29th of August 26, 2022

Gregory A. Mancini

Gregory A. Mancini
Independent Judicial Hearing Officer