STATE OF MAINE
DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

July 25, 2012

Case No. 12.082H
Regional School Unit #38 v. Parent & Parent

FOR THE SCHOOL: Eric R. Herlan, Esq.

FOR THE FAMILY: Student's Father
Student's Mother

HEARING OFFICER: Peter H. Stewart, Esq.

INTRODUCTION

This hearing was conducted, and this decision written, pursuant to 20-A M.R.S.A. 7202 *et seq.,* 20 U.S.C. 1415 *et seq.* and the regulations accompanying each.

The student involved in this matter, student (d.o.b. xx/xx/xxxx), was first enrolled in the Maranacook school system, Regional School Unit # 38 ("school" or "Maranacook"), for the 2010-2011 school year, entering the xx grade. In his prior school he had been identified as having multiple disabilities, Other Health Impaired and a specific learning disability, and had, therefore, been determined eligible for special education services. At a "transfer" Individualized Educational Plan team meeting held at Maranacook shortly after his enrollment, the school noticed certain inconsistencies in the "learning disabilities evaluation report" prepared by his prior school in 2009 and ordered an evaluation to explore and resolve those inconsistencies. That evaluation was done in September and October and the evaluation report was dated October 29, 2010. At a November 2010 IEP team meeting, during which the IEP team reviewed all the available material in the student's file including the 10/29/2010 report, the student was found eligible for special education as Other Health Impaired but was found not to have a specific learning disability.

The student's family did not agree with the IEP team's conclusion (that he did not meet the standards for a specific learning disability) when it was reached in November of 2010 and, since, has remained in disagreement the Maranacook evaluation that lead to that conclusion. In March of 2012, the student's mother requested that the school obtain and fund an independent neuropsychological evaluation of the student, to be done by an evaluator selected by the family, to challenge the October 29, 2010 evaluation. By letter dated April 13, 2012, the school refused the family's request for such an evaluation and then, as required by current Maine special education regulations[1], filed a request for a due process hearing with the Special Education Due Process Office of the Maine Department of Education.

The pre-hearing conference in this matter was held on June 4. Lewis Collins, special education director, and Sara Hellstedt, Esq., appeared on behalf of the school. The student's mother appeared at the conference in person while his father participated via telephone. There was another pre-hearing conference held on June 12 to resolve pending issues.

The hearing was held on June 25. Eric Herlan, Esq., appeared on behalf of the school while both parents appeared *pro se*. The school presented two witnesses: Lewis Collins, the school's special education director and Susan Holinger, M.S., CSPSP, NCSP[2], the school's psychological examiner. The school also presented documentary evidence marked as SE 1 through SE 224, which was admitted into the record except, by mutual stipulation, for any documents produced after October 29, 2010, the date of the evaluation at issue. Both the student's mother and father testified on behalf of their son. The parents presented evidence marked as T-1 through T-73, and admitted into the record with the exception of T-62 which was excluded at the hearing. All witnesses were sworn prior to testifying and the entire proceeding was recorded by a court reporter. The parties requested and were given an opportunity to submit written closing arguments, the second of which was received by the hearing officer on July 10.

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[1] **See**, Maine Unified Special Education Regulations, 05-071, Ch 101, Section V(6). [MUSER V(6) pps. 50-52]

[2]Master of Science, Certified School Psychological Service Provider, Nationally Certified Psychological Service Provider.

ISSUE

The single issue in this case is whether the evaluation of the student administered by Susan Hollinger in October of 2010 was appropriate under the IDEA and Maine special education law and regulations.

FACTUAL FINDINGS

1) The student involved in this matter, the student (d.o.b. xx/xx/xxxx), was first enrolled in the Maranacook school system, Relgional School Unit #38, for school year 2010-2011 when he entered the xx grade. In his prior school he had been found eligible for special education services as having multiple disabilities, Other Health Impaired as well as a specific learning disability. The student had a triennial evaluation during school year 2009-2010. The reports from that evaluation traveled with him to Maranacook and were available to his Maranacook IEP team, which met early in the school year 2010-2011. At that meeting, Lewis Collins, the school's special education director, noticed an inconsistency on the student's "learning disabilities evaluation report" leading him to question whether the student did, in fact, qualify as having a specific learning disability. In the LDER, found at SE 201 in the record, paragraph 1 states that the student's "psychological processing speed" is 1.5 standard deviations below the mean while paragraph 2 states that the student "composite processing score" is in the average range. Since both remarks cannot be true, Mr. Collins requested that another evaluation be done to clarify the matter. The evaluation was performed by Susan Holinger, the school's psychological examiner, who also attended the IEP team meeting. Ms. Holinger performed her evaluation of the student and submitted her report, which found that the student did not have a specific learning disability, to the IEP team on 10/29/10. The team met again on 11/18/10 and concluded, in part, that the student was eligible for special education services as Other Health Impaired but did not qualify as having a specific learning disability. The student's mother disagreed with both Ms. Holinger's report and the team's conclusion that the student did not have a specific learning disability. (Testimony of Mother and Father, Susan Holinger, Lewis Collins; Hearing Request Form; SE 170-224)

2) Susan Holinger performed the evaluation that is challenged here by the parents. Ms. Holinger received a master's degree in school psychology from the University of Southern Maine in 1994 and has completed a variety of courses and seminars related to her work as a school psychological examiner and educational evaluator since. She has worked with the Maranacook schools for the last twelve years during which time she has

performed approximately 60 to 70 educational evaluations yearly, of which about 75% involved students who were being evaluated for questions concerning specific learning disabilities. She has taught graduate level courses in school psychology, assessment and evaluation within the University of Maine system. She is certified in Maine as a school psychologist and a school psychological service provider. She also "Nationally Certified in School Psychology" (NCSP) In unrebutted testimony, Ms. Holinger described the analysis used in Maine to determine the existence of a specific learning disability: the first question is whether a "cognitive deficit" exists; then, if the answer is "yes", the evaluator must ask whether there is any academic deficit caused by the cognitive deficit. A student can be found to have a "specific learning disability" only if both questions are answered in the affirmative. Here, since no cognitive deficit was found, there was no need to for further testing. (Testimony of Susan Holinger; SE 131-137)

3) Lewis Collins has been the special education director in Maranacook since 2004. He has a master's degree in education (1991) and a CAS in Educational Leadership (2009) from the University of Southern Maine. He is certified in Maine as both a special education director and school superintendent. As special education director, he attends all, or nearly all, of the IEP team meetings held within the Maranacook system. Maranacook holds IEP team meetings for students entering kindergarten, for "new" referrals to special education, for triennial evaluations, and when parents request a meeting be held. Meetings are also held for special education students transferring into school with existing IEPs such as the student here; Mr. Collins attended the team meetings involved in this matter. At the initial "transfer" IEP team meeting about this student, Mr. Collins noticed that the student's Learning Disability Evaluation Report, a document required to be completed when evaluating a student for a specific learning disability, cited the student's "processing speed" as both a deficit and a strength. Since both these conclusions cannot be correct, Mr. Collins decided to do another evaluation to clarify the situation. Ms. Holinger was appointed to perform the evaluation into the student's "processing speed". When Mr. Collins received and read Ms. Holinger's report, he was satisfied that she had administered tests appropriate to clarify the issue with which he was concerned and had reviewed the results, along with the other reports in the student's file, in an appropriate manner. Consequently, he and the IEP team accepted her conclusion that the student did not display a cognitive deficit as regards his processing speed. In Maine, absent a finding that a student has a cognitive deficit, a student cannot qualify as having a specific learning disability. (Testimony of Collins)

4) The student's mother and father both testified at the hearing in support of their belief that the evaluation their son received in the fall of 2010 was not appropriate under special education law. The essence of the problem, in their view, was that the challenged evaluation was so narrowly focused upon a

> single aspect of the complex set of educational and psychological conditions that make reading and writing, make much of "school" itself, a difficult and "effortful" experience for their son that it was not – and could not have been – useful in helping this new school understand their son well enough to design appropriate educational programming for him. The parents also questioned the motives of the school by suggesting that the purpose of the specific evaluation was, in fact, to remove the student from eligibility under the specific learning disability category. No objective evidence was introduced to support that claim, (Testimony of Mother and Father.)

DISCUSSION

The school asserts that it is not obligated to provide another publicly funded evaluation of the student as requested by the family because the publicly funded evaluation it provided in 2010 was appropriate under current special education law and regulations. The school states that the specific issue that created the need for an evaluation in the fall of 2010, upon the student's transfer into the Maranacook schools, was an inconsistency in the "learning disability evaluation report" written in 2009 by the student's former school. That form must be filled out by an IEP team whenever it is making a determination as to the existence of a specific learning disability. On the student's form, paragraph 1 finds the student to be at 1.5 standard deviations below the mean in psychological processing speed, thereby qualifying him as having a specific learning disability. Paragraph 2 of the same form reports that the student has a composite processing score in the average range. The school says that this inconsistency was the "red flag" that prompted the IEP team to order and fund an evaluation focused on this issue to resolve the apparent contradiction. Susan Holinger, the school's psychological examiner, administered additional tests, reviewed the results of those tests along with the battery of evaluations done in the prior academic year and concluded that the student did not qualify as having a specific learning disability. The school asserts that that the evaluator was qualified to administer the evaluation, the test administered to the student was appropriate to the question

presented and the evaluation was conducted properly under Maine rules. .[3] Therefore, the school asserts that the evaluation was appropriate under the law.

The family has consistently asserted that the evaluation the student received in October of 2010 was, in essence, the wrong test administered by a person with the wrong training and, therefore, the evaluation was simply inadequate to determine whether the student had a specific learning disability. The parents believe that the student presents a complex set of psycho-educational needs which requires a neuropsychological evaluation performed by a PhD level evaluator to accurately understand, describe or measure his disability. They argue that the testing done to produce the school's evaluation was narrowly focused on a specific cognitive issue – the extent of the student's processing speed deficit - and was therefore insufficient to lead to an appropriate understanding of a very complicated student. The parents also contend that the school should have known of the complexities their son presents because the educational file the student brought to the Maranacook schools in 2010 contained an accurate and wide-ranging set of evaluations obtained by his prior school in 2009. The parents assert that the 2010 evaluation was not appropriate under special education law.

In a situation such as the one in this matter, when parents disagree with an educational evaluation obtained by a school at public expense, the parent may ask the school to do another evaluation, also at public expense. Maine special education regulations, which track the federal regulations on this point, give the school two options in response to such a parental request: either to (1) provide the additional evaluation at public expense or (2) file "a due process hearing complaint to show that its evaluation is appropriate." MUSER V (6)(B)(2). In this case, the school chose the second option and therefore has the burden in this proceeding to show that the challenged educational evaluation is appropriate. In making this analysis, courts and state hearing officers have considered the qualifications of the person performing the evaluation with an eye to his or her education and training, certification and licensing,

[3] The school also notes that there was no need to administer another neuropsychological evaluation in October of 2010 because the student had received one in 2009. The report was in his file. SE 205-223.

and practical work experience. In Maine, educational evaluations must be administered by persons who are "trained and knowledgeable". MUSER V(2)(C)(1)(d). Courts also examine whether the evaluation itself was administered in compliance with the relevant regulations.[4] Those regulations include, *inter alia*, the requirement that the evaluations be "tailored to assess specific areas of educational need…"

The evaluation challenged here by the parents was administered by Susan Holinger., M.S., N.C.S.P. Ms. Holinger received a master's degree in school psychology from the University of Southern Maine in 1994 and since then has attended and completed a variety of courses and seminars related to her work as a school psychologist and school psychological examiner and evaluator.. She has worked full-time since 1994 as a school psychological examiner and educational evaluator in a variety of Maine schools. She has worked with RSU 38 on a contract basis for the past twelve years during which time she has performed approximately 60 to 70 educational evaluations per year. About 75% of those evaluations involved students who were being evaluated for questions regarding the existence of a specific learning disability. In addition to this direct work experience, she has taught graduate level courses in school psychology, assessment and evaluation within the University of Maine system. Upon reviewing Ms. Holinger's education and experience, I find that she is well qualified to perform educational evaluations in Maine. She is appropriately educated and has considerable experience in the general area of educational evaluation; she is particularly familiar in administering tests intended to identify the existence of a specific learning disability. In my view, there is no question that she is a person both "trained and knowledgeable" within the meaning of the Maine regulation on the administration of educational evaluations.[5]

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[4] In Maine, the standards that apply to educational evaluations and procedures are found in MUSER V(2).

[5] At the hearing, the parents argued that their son required an evaluator trained to a Ph.D. level due to the complex nature of his educational and attentional challenges. This argument was not persuasive for two reasons. First, the specific question the IEP team wanted the evaluation to resolve related to the student's eligibility under the "specific learning disability" standard, an issue with which Ms. Holinger had extensive experience and demonstrated competence. Second, the student had been the subject of

The conduct of the evaluation itself and the other procedures relating to it are controlled by the provisions of MUSER V(2)(B) and (C). As required by those regulations, the evaluation performed by Ms. Holinger relied upon a "variety of assessment tools", both those she administered and those administered by other evaluators, rather that any "single measure or assessment." MUSER V(2) (B). She had access to and relied upon the reports on the student prepared in 2009 in the context of his triennial evaluation done by his prior school, which were not challenged by the parents. Ms. Holinger, after reviewing all the existing reports on the student, organized the results via a "cross battery assessment" and based her conclusion that he did not meet the standards for having a specific learning disability upon the full range of results. There was neither evidence nor any assertion that the assessment mechanisms were discriminatory in any way, or were administered in any way that was inconsistent with instructions. Ms. Holinger testified that she administered her tests in accordance with the appropriate instructions applicable for each,[MUSER (2)(C)]. She also testified, without rebuttal, that the tests she administered were appropriate ones given the question she was directed to answer. I find that the evaluation was conducted consistent with the provisions of MUSER V(2).

CONCLUSION

For the reasons discussed above, the hearing officer concludes that the educational evaluation performed by Susan Holinger and dated October 29, 2010 is appropriate under state and federal special education law. Consequently, the school is not obligated to comply with the parental request to fund an additional evaluation.

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Peter H. Stewart, Esq., Date
Hearing Officer

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what the family called a "wonderful" neuropsychological evaluation done in 2009 in connection with the prior academic year. The report of that evaluation was in the student's file, was available to the IEP team and was, in fact, read and reviewed by Ms. Holinger when doing her evaluation. So, even assuming the student required an evaluation performed by someone with a Ph.D., such an evaluation had already been done.