

**COMMONWEALTH OF MASSACHUSETTS**  
**Division of Administrative Law Appeals**  
**Bureau of Special Education Appeals**

**In Re:** Malden Public Schools  
**BSEA#:** 15-01215

**RULING**

On August 12, 2014, Malden Public Schools ("Malden") filed a Hearing Request to contest the parents' request for an independent evaluation. Malden alleges that the parents are not entitled to an independent evaluation because the observation conducted by Dr. Quill does not constitute an evaluation as defined in the special education regulations, therefore, the right to an independent evaluation does not come into play.

On August 25, 2014, the parents filed a response to Malden's Hearing Request. It is the parents' position that the observation by Dr. Quill did constitute an evaluation and therefore the parents are entitled to an independent evaluation pursuant to the special education regulations.

**Facts**

Dr. Quill is an independent contractor who consults with the Malden Public Schools and performs observations, evaluations and other psychological services to the school. Dr. Quill conducted a thirty minute observation of the student during his summer program at the Linden School in Malden. As a result of her observation Dr. Quill generated a written report. Dr. Quill stated, in her report, "Ms. Betsy Hanifan, Malden Public School's Special Education Program Manager, requested an independent review of [the student's] current IEP and an observation of his skill presentation in summer school." Dr. Quill further stated, "The purpose of the consultation is to recommend services for [the student] that will maximize his academic and social development."

**Law**

Section 34 CFR 500.602(b)(2) of the Federal special education regulations and section 603 CMR 28.04(5)(d) of the state special education regulations, governs a parent's right to an independent evaluation. Specifically, the federal regulations state, "a parent has a 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. The state regulations state, "upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation

completed by the school district, then the parent may request an independent education evaluation."

The evaluation procedures outlined in the federal regulations prohibit a school district from relying on any single measure or assessment as the sole criterion for determining eligibility or determining an appropriate educational program for the student <sup>1</sup>

### **Discussion**

The question of whether the parent in this matter is entitled to an independent evaluation, turns on whether the observation by Dr. Quill can be characterized as an "evaluation" or "reevaluation" pursuant to special education law and regulations. After a careful review of the applicable law and the parties' position on this issue, I find that the observation conducted by Dr. Quill does not fit the definition of an evaluation pursuant to special education law. Accordingly, since there was effectively no evaluation by the school district, the parents are not entitled to an independent evaluation.

The parents argue that based on Dr. Quill's statement in her report that the purpose of her observation was "to recommend services for [the student] that will maximum his academic and social development", Dr. Quill's observation should be considered an evaluation for purposes of triggering the parents' right to an independent evaluation. I do not agree. Dr. Quill's actions do not reviewed the student's IEP and observed him for 30 minutes in his summer program. Dr. Quill's limited actions do not constitute an "evaluation" or "reevaluation" as contemplated by the law. In addition, there is no indication that the school district relied solely on Dr. Quill's observation to develop an IEP for the student or to determine his eligibility for special education services

Pursuant to the federal regulations, an evaluation means, "procedures used in accordance with sections 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs."<sup>2</sup> Section 300.304(b) sets forth that the school district **must** use a variety of assessment tools and strategies to gather relevant information and cannot use any single measure or assessment as the sole criterion.

A 30 minute observation of a student and a review of his IEP by school personnel (whether an employee of the school district or a consultant that works with the school district) cannot be considered an evaluation or reevaluation of a student to determine his or her eligibility or appropriate educational program. It is one type of assessment tool and would not provide the appropriate information required to make an eligibility determination or to develop an appropriate educational program. Furthermore, a school district's reliance on such an observation to make those determinations is a violation of

---

<sup>1</sup> 34 CFR section 300.304(b)(2)

<sup>2</sup> 34 CFR section 300.15

the special education regulations that specifically preclude a school district from doing so.

Moreover, a ruling that would allow parents to obtain a publicly funded independent evaluation anytime a school district conducted an observation of a student would severely limit a school district's ability to monitor a student's progress and the effectiveness of the student's educational program.

For all of the foregoing reasons, I find that the parents are not entitled to an independent evaluation. Since the only issue in the school district's Hearing Request is whether the parents are entitled to an independent evaluation, and having found that they are not, there are no issues remaining. Accordingly, this matter is now moot.

### **ORDER**

The parents are not entitled to an independent evaluation. As a result of this ruling, this matter is **DISMISSED**.

So Ordered by the Hearing Officer,

---

Ann F. Scannell  
Dated: September 10, 2014