

*This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.*

Pennsylvania

## Special Education Hearing Officer

### DECISION

Child's Name: D.G.

Date of Birth: [redacted]

**Dates of Hearing: 2/15/2017, 2/22/2017, 2/23/2017, 4/10/2017, 5/1/2017,  
5/2/2017 and 5/8/2017**

Closed HEARING

ODR File No. 18542-16-17

Parties to the Hearing:

Representative:

Parents  
Parent[s]

Parent Attorney  
Pro Se

Local Education Agency  
Great Valley School District  
47 Church Road  
Malvern, PA 19355

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Date of Decision:  
Hearing Officer:

June 16, 2017  
Charles W. Jelley, Esquire LL.M.

## INTRODUCTION

### THE DETERMINATION OF THE SCOPE OF THE CLAIMS AND SCHOOL YEARS AT ISSUE

The Student (hereafter Student)<sup>1</sup> is an early elementary school-aged student residing in the Great Valley School District (hereafter District).<sup>2</sup> The Parties agree the Student is eligible for special education, pursuant to the Individuals with Disabilities Education Act (IDEA), as a person with a Speech and Language Impairment. Initially, the Parents contended the District failed to provide specially-designed instruction to meet the Student's Speech and Language needs. Just before calling their last witness, at the Sixth session, the Parents withdrew their claim for compensatory education for any alleged violations surrounding the Student's IDEA Speech and Language specially-designed instruction.

The Parties currently disagree on whether the Student is IDEA eligible as a person with an Other Health Impairment. Shortly after enrolling in the District, the Student was diagnosed, by a physician, as a person with Attention Deficit Hyperactivity Disorder (ADHD).

[Redacted.]

The Parents are seeking compensatory education to remedy the alleged ... IDEA IEP violations.

The initial hearing session was delayed to allow the Parties time to sort through the multiple sufficiency challenges to the Parents' IDEA Due Process Complaint, First Amended Complaint, and Second Amended Complaint. The District also filed a Motion to Limit the Scope of the Claims contending that certain IDEA and [redacted] claims were time barred. First, the District contends the Parent's IDEA child find claims are time-barred under the IDEA's two-year statute of limitations.<sup>3</sup> Second, [redacted].

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

<sup>2</sup>20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are set forth in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015)(statute of limitations for IDEA claims is 2 years)

## **STATUTE OF LIMITATIONS RULINGS**

After hearing argument on the record, this hearing officer found the Parents either knew or should have known about the alleged violation that formed the basis of the IDEA complaint within two years of the alleged violation in Kindergarten.

Therefore, the Parents' IDEA claims were appropriately limited to two years before filing the complaint (i.e. all of the Second and Third grade at issue). The hearing officer also found the Parents' [redacted] claims [redacted].

## **THE STUDENT'S IDEA AND [REDACTED] EDUCATION CLAIMS**

The Parents contend the District's failure to identify the Student as a person with an Other Health Impairment denied the Student the benefits of an IDEA Individualized Education Program (IEP) and specially-designed instruction targeted to address the Student's medical diagnosis of ADHD. The District contends the Student's medical diagnosis of ADHD is not a disability such that the Student's education is adversely affected to the point that the Student requires specially-designed instruction and requires a classification of an Other Health Impairment.

[Redacted.]

After hearing all of the evidence, spanning seven hearing sessions, and after carefully reviewing all of the exhibits, and reading the closing arguments, the matter is ready for final disposition. For the reasons set forth below, I find for the District on all claims. The Parents' request for compensatory education is denied. An appropriate Order is attached along with the applicable notice of the aggrieved Party's right to seek further review in state and federal court.

## **FINDINGS OF FACT**

**[REDACTED]**

1. In May 2014, when the Student was in Kindergarten, the Student was evaluated [redacted] (S-13).<sup>4</sup> [Redacted.] (S-13; S-14)

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<sup>4</sup> References to events and documents more than one year and in some instance two years prior to the filing of the complaint are for historical purposes only. The referenced documents were not considered in reaching the ultimate decision on the issues in dispute.

2. [Redacted.]
3. [Redacted] (NT p.389-394).
4. [Redacted] (S-25).

## **THE SECOND GRADE AND THE THIRD GRADE**

5. [Redacted] (N.T. pp.392-396; N.T. pp.337-340).
6. [Redacted] (N.T. pp.444-449).
7. [Redacted] (N.T. pp.397-398; N.T. pp.337-340).
8. [Redacted] (N.T. p.464).
9. [Redacted] (S-46 p.12).
- 10.[Redacted] (S-61).
- 11.As a result of the Parent's complaint to the Pennsylvania Department of Education (PDE) Bureau of Compliance, the District identified the Student as a person with a Speech and Language Disability. Shortly after the filing of the PDE Complaint, on October 27, 2016, during the fall of Third grade, the parties held an IDEA IEP meeting to address the Student's Speech and Language needs. (S-69; S-79; S-81). The IEP team, including the Parents, agreed on the Student's Speech and Language goals and services. [Redacted] (S-81; N.T. 267-270).
- 12.[Redacted] (S-81; N.T. 267-270).
- 13.At the October 27, 2016 meeting, the Parents rejected [a certain option], citing concerns over the Student's socialization skills, and requested an additional IDEA evaluation about the Student's medical diagnosis of ADHD (S-90, p.1; NT pp.270-71).
- 14.[Redacted] (S-85).

- 15.[Redacted] (S-24; S-46, p.12). [(NT p.627).
- 16.[Redacted] (NT p.333-337; NT pp.440-444).
17. [Redacted] (NT pp. 339-340; NT pp.471-472).
18. [Redacted] (NT pp.343-344).
19. [Redacted] (NT p.637).
20. When the Student was with [one specific] teacher, the Student did not have difficulty staying on task, focusing or organizing work (NT pp.387-390).
- 21.[Redacted] (S-25, p.7; N.T. pp.397-98).
22. [Redacted] (S-25 p.5; S-41, p.2 N.T. pp.437-39). [Redacted] (N.T. 459-60).
- 23.[Redacted] (S-32; N.T. 397-98, 441).
- 24.[Redacted] (S-123; N.T. 415-16).
- 25.[Redacted] (S-47, p.2; N.T. 420-22).
- 26.[Redacted] (S-55; N.T. 422, 502-504).
- 27.[Redacted] (N.T. pp.166-67, 238).
- 28.[Redacted] (S-114; N.T. pp.1121, 1128).
- 29.[Redacted] (S-76; N.T. p.1126).
- 30.[Redacted]. (S-110; N.T. pp.426, 429-30).
- 31.[Redacted] (S-73; N.T. pp.157-58, 239-41, 248; S-96; N.T. pp.277-79).
- 32.[Redacted] (S-47; 22 Pa. Code §16.62).

- 33.[Redacted] (S-81, p.21; N.T. p.272).
34. [Redacted].
- 35.[Redacted] (S-24; S-46, p.12).
- 36.[Redacted] (NT p.637; N.T. p.335).
- 37.[Redacted] (N.T. pp.148-1051).
- 38.[Redacted] (N.T. pp.1049-1053).
- 39.[Redacted] (N.T.1083-1090).
- 40.[Redacted] (N.T p.705).
- 41.[Redacted] (S-94; N.T. pp.271-72).

### **THE STUDENT’S KINDERGARTEN IDEA EVALUATION**

42. On June 12, 2013, the District completed a comprehensive evaluation to determine if the Student’s medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) adversely affected the Student’s education. After completing an evaluation, in all areas of suspected disability, the District concluded that the Student was not a person with a disability in need of specially-designed instruction (S-7). The District provided the Parents with the required procedural safeguards and a Notice of Recommended Educational Placement (NOREP)<sup>5</sup> describing the proposed action (S-8). The Parents executed the NOREP agreeing with the District’s proposed action (S-8 p.3).

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<sup>5</sup> Under 22 Pa. Code Chapter 14, the state’s IDEA regulation, Districts are required to provide Parents with prior written notice in a document called Notice of Recommended Educational Placement (NOREP). [Redacted]. Each prior written notice document provides the Parents with notice of the District’s proposed action or inaction. Each document provides the Parents with a lengthy description of their respective due process rights.

## **THE RESULTS OF THE STUDENT'S SECOND AND THIRD GRADE IDEA REEVALUATION<sup>6</sup> IN 2016**

43. On May 6, 2016, the Parents requested a second IDEA evaluation to determine if the Student's medical diagnosis of ADHD now qualified the Student for an IDEA IEP and specially-designed instruction. Upon receiving the request, the District issued an IDEA Permission to Re-Evaluate (PTRE). Also, included with the PTRE consent form, the District included a Parent input form, a behavioral checklist and a copy of the IDEA procedural safeguards. The second PTRE included a classroom observation, standardized achievement and ability testing, an assessment of social-emotional functioning, a speech and language evaluation, and various rating scales or checklists to measure the Student's organizational, executive functioning, attention and overall behavior (S-39; S-40).
44. On or about May 6, 2016, the Parents returned the IDEA PTE consenting to the IDEA reevaluation. The mother testified that she delayed returning the IDEA PTE fearing [redacted] (NT pp1160-1161).<sup>7</sup>

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<sup>6</sup> The Student was evaluated in Kindergarten for eligibility as a person with a disability in need of specially-designed instruction. The IDEA regulations refer to the first comprehensive assessment as an "evaluation"; thereafter all other assessments are termed a "reevaluation." At times during the hearing, the Parties used the terms "evaluation" and "reevaluation" interchangeably, when referring to the District's second and third 2016 assessment of the Student's IDEA eligibility. For the sake of reading ease the hearing officer will refer to the 2016 assessments in the same manner as the Parties, under this particular set of facts, the label attached to the assessment(s), does not alter the legal examination of the assessment. *See*, 34 CFR 300.303 (a), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 34 CFR §300.311. The Part B regulations contain provisions governing the following for evaluations and reevaluations: 1 Initial evaluations, 34 CFR §300.301; (2) Evaluation procedures; (3) 34 CFR §300.304.; Determination of needed evaluation data; (4) 34 CFR 300.305; Determination of eligibility; 34 CFR §300.306 (a) through 34 CFR §300.306(b); (5) Procedures for determining eligibility and placement. 34 CFR §300.306 (c); and, (6) Reevaluations 34 CFR §300.303.

<sup>7</sup> Although the District issued a Permission to Evaluate, since this was the Student's second evaluation, the IDEA regulations would classify the May 2016 evaluation as a reevaluation. Therefore, going forward, I will refer to the May PTE as a PTRE.

45. On or about October 5, 2016, the District provided the Parents with a draft copy of the reevaluation report (RR) (S-69). The RR included the Parents' input, the input of several classroom teachers, and multiple observations, by different staff members on different days, in different classrooms (S-69 pp.1-6).
46. The evaluator used a variety of valid assessments to evaluate the Student's unique needs and circumstances. For example, the evaluator reviewed and reported the Student's performance on the District's local mathematics assessments. A review of the Student's MAP math scores, over the past three years, showed [redacted]. The Student's MAP Rasch Unit (RIT) standard scores and percentile scores either increased or stayed the same over time.
47. [Redacted] The RR included Speech and Language assessment scores, all of which fell in the average range. The Speech evaluator did, however, note the Student's articulation score was in the below average range (S-69 p.13).
48. The RR included an assessment of the Student's ability and achievement levels. The ability and achievement test score results confirmed earlier testing results [Redacted]. (S-29 p.20).
49. Although the Parent's and the teacher's Conners rating scores were different, the differences were attributed to the Student's performance in structured and unstructured settings. More importantly, the differences were associated with the Student taking medication before school and not taking medication after school hours (S-69). The Parent and the teacher also differed in their rating of the Student's executive functioning skills. The teacher rated the Student in the normal range while the mother rated the Student in the clinically significant range (S-69 p.23). Once again, the Parties agreed that timing of the daily medication was a factor (S-69).
50. After reviewing the RR, the Parents expressed concerns that the Student's ADHD, language and social skills affected the Student's education (S-69). To address the concerns the District on November 4, 2016, provided the Parents with another Permission to Reevaluate (PTRE); this time the reevaluation included an

assessment of the Student's Language Fundamental, Social Language, Pragmatic Language and Social Skills (S-90 pp.24-34).

51. The additional testing revealed that the Student's Social Language scores fell in the average range (S-90 pp.24-30). Three raters placed the Student's Pragmatic Language scores in the below average range while three other raters scored the Student's Pragmatic Language skills as average. While at times, in school the Student interrupts others the teachers did not believe the interruptions were out of the ordinary (S-90 p.30). Once again, the differences between and among the raters focused on the Student's skills in the home, without medication, and in the school, on medication (S-90 p.30).
52. The Student's comprehensive RR included a social skills assessment. Four raters, made up of the Parents and the teachers, scored the Student's Communication Cooperation, Assertion, Responsibility, Empathy, Engagement and Self-Control as average (S-90 p.30). The Fourth-grade math teacher commented that the Student has trouble working in groups (S-90 p.30). To address the concern, the evaluator recommended that the IEP team include specially-designed instruction. (S-90 pp.30-31).
53. On the Social Skills Improvement System (SSIS) scale, the Student's father and Student both rated the Student as average. The mother rated the Student as functioning in the upper end of the Below Average Range. (S-31). While the ratings are divergent, the Parents agree the Student's self-regulating behaviors, emotional responses to everyday situations, rule-following and controlling impulses are need areas in the home (S-90 p.31). All four of the teachers rated the Student's social skills as average (S-90 pp.31-32).
54. The RR notes that the Student was on task 91% of the time, which was greater than peers were. (S-69, p.5; N.T. pp. 944-45).
55. Nothing in any of the objective testing conducted and/or reviewed by the school psychologist, for purposes of the IDEA evaluation (which included a WISC, WIAT, Conner's Ratings, BRIEF, social skills assessment, and Social Pragmatic Language assessment) indicated the Student's medical diagnosis of ADHD adversely

affected the Student's educational performance. (S-69; N.T. pp. 1037-38).

56. None of the Student's teachers observed the Student engage in or display any behaviors related to ADHD that impeded access to or adversely affected the Student's ability to benefit or access the regular education program. (N.T. pp.260-62, 387-88, 456-57).

57. The District members of the reevaluation team concluded that while the Student does have a medical diagnosis of ADHD, the condition does not adversely affect the Student's education such that the Student needs specially-designed instruction (S-90 p.35); NT pp.935-945).

58. The District's October 5, 2016, IDEA evaluation was timely, appropriate and comprehensive in all areas of unique educational need and circumstances (S-69, S-120, S-121).

### **STATEMENT OF THE ISSUES**

1. Did the District's 2016 re-evaluation fail to appropriately address the question of whether Student should be classified as having an Other Health Impairment due to a diagnosis of ADHD?
2. [Redacted.]
3. If the District failed in either of these regards, is Student entitled to compensatory education, and if so what type and in what amount?

### **DISCUSSION AND CONCLUSIONS OF LAW**

#### **GENERAL LEGAL PRINCIPLES**

#### **BURDEN OF PERSUASION AND PRODUCTION**

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion, in this case, rests with the Parents as the party requesting this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is

evenly balanced or in “equipose.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

## **CREDIBILITY**

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be credible, and the testimony overall was rather consistent. It should be noted that the disagreement was not a dispute about the facts, but rather on how the undisputed facts should be construed. In reviewing the record, the testimony of every witness, and the content of each exhibit were thoroughly considered in issuing this decision, as well as the parties’ arguments. All of the witnesses were candid, clear and concise in their recollection of the facts at issue.

## **IDEA PRINCIPLES**

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all children who qualify for special education services. 20 U.S.C. §1412 *et. seq.* The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.111(a); see also 22 Pa. Code §§14.121-14.125. The IDEA sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i).

The IDEA further defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a). “Special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a).

In conducting the evaluation, the law imposes certain requirements on local education agencies to ensure that the evaluation provides sufficient and accurate

information about the child. The evaluation must include:

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) 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—

(i) Whether the child is a child with a disability under § 300.8; and  
(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. §§ 300.304(b).

The IDEA evaluation and reevaluation must evaluate the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c) (6) and (c)(7); 20 U.S.C. §1414(b) (3).

Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1). A certified school psychologist must be part of the team when districts evaluate a student to determine IDEA eligibility as a person with an Other Health Impairment 22 Pa. Code § 14.123(a). In interpreting evaluation data and making these determinations on eligibility and educational needs, the team must:

(i) Draw upon information from a variety of sources, including aptitude and

achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. 34 C.F.R. § 300.306(c). School districts are responsible for conducting the required assessments, and also must provide a copy of the evaluation report and documentation of the eligibility determination to parents at no cost. 34 C.F.R. §§ 300.305(c) and 300.306(a)(2).

**[Redacted]**

## **ANALYSIS**

### **THE DISTRICT'S 2016 IDEA REEVALUATION OF THE STUDENT'S OTHER HEALTH IMPAIRMENT WAS APPROPRIATE**

The record as a whole is preponderant and clearly supports a conclusion that the District's IDEA evaluation of the Student's Other Health Impairment met all of the requisite criteria under the IDEA and the state regulations. The District's IDEA evaluation of Student utilized a variety of informants in gathering functional, developmental, behavior and academic information about Student. A number of assessment tools and instruments were administered to examine cognitive, achievement, behavioral, physical, executive functioning and social skills factors, yielding an RR that reflected careful consideration of Student's strengths, executive functioning, organization skills and needs across all domains. The RR provided the assessment team with a clear, concise and unique profile of the Student's learning style. All assessments were conducted under standardized conditions and in accordance with publisher instructions by trained staff that included a certified school psychologist. Accordingly, I find the RR assessed the Student in all areas of suspected disability associated with the Student's ADHD medical diagnosis, speech/language skills, pragmatic language, executive functioning, organizational skills and social skills.

The RR includes a careful consideration, of all of the Parents' concerns. The normative, formative or summative test results do not suggest that further ADHD academic or social assessments are necessary.

I find the evidence is preponderant that the District's 2016 IDEA evaluation was sufficiently comprehensive to determine whether Student has a disability and if that disability adversely affects the Student's education. Accordingly, I find the evaluation and the reevaluation were comprehensive and appropriate.

**[Redacted].**

Based on the preceding findings of fact and for all of the above reasons, this hearing officer concludes that the District's IDEA evaluation of Student met all legal requirements and that no basis exists for ordering the District to provide compensatory education for failing to identify the Student as a person with a disability. After a careful, comprehensive and thoughtful review of all of the evidence [redacted], therefore, no basis exists for ordering the District to provide compensatory education.

### **ORDER**

AND NOW, this 16<sup>th</sup> day of June 2017, in accordance with the preceding Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the District's evaluation of Student in 2016 met all legal requirements of the IDEA. Further, it is **ORDERED** that [redacted]. Accordingly, the District is not ordered to provide compensatory education for any alleged violations of the IDEA or [redacted].

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and Order are **DENIED** and **DISMISSED**.

June 16, 2017

[Charles W. Jelley, Esq. LL.M.](#)  
Charles W. Jelley, Esq. LL.M.  
HEARING OFFICER  
ODR FILE #18542-1617 KE