

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: P.S.

Date of Birth: [redacted]

Dates of Hearing:

October 20, 2010

December 1, 2010

December 21, 2010

CLOSED HEARING

ODR No. **01421-1011 JS**

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Dr. Lois Robinson
Director of Pupil Services
Methacton School District
1001 Kriebel Mill Road
Eagleville, PA 19403

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Date Record Closed:

December 29, 2010

Date of Decision:

January 11, 2011

Hearing Officer:

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is an early teen-aged student enrolled in the Methacton School District (District) and is eligible for special education. In the spring of 2010, the District, at the request of the Parents, conducted an educational evaluation of Student upon Student's return to the District. The parents disagreed with the District's evaluation and requested an independent educational evaluation (IEE). The District filed a complaint for a due process hearing asserting that its evaluation of Student was appropriate and that the parents were not entitled to an IEE at public expense.

This hearing was conducted in three sessions at which the parties presented evidence in support of their respective positions. For the reasons which follow, I find in favor of the District.

ISSUES

Whether or not the District's evaluation of Student was sufficiently comprehensive and complete, and therefore appropriate in assessing all areas of suspected disability; and

If it was not, are the parents entitled to an IEE at public expense?

FINDINGS OF FACT

1. Student is middle teen-aged and resides in the District with Student's family. (Notes of Testimony (N.T.) 404; Parent Exhibit (P) 1; School District Exhibit (S) 3, S 5)
2. In the fall of 2001, Student began attending kindergarten in the District and went on to first grade where Student began receiving reading support. Student also was provided with private vision therapy during the spring of the 2002-03 school year. (P 7)
3. The Parents obtained an IEE of Student in early 2004 (during second grade) when Student was seven years old because they were concerned about Student's struggles with mathematics, written expression, and reading. The private evaluator obtained input from Student's parents and teacher and conducted a number of assessments. (N.T. 275; P 7)
4. The private evaluator obtained average range scores from the administration of the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), although Student demonstrated relative weaknesses in several areas including higher-level comprehension, processing of complex information, and non-verbal reasoning.

¹ The name and gender of the child are not used in this decision in order to preserve Student's privacy.

- Receptive and expressive language testing revealed average to above-average ability in this area, which contrasted with Student's below average performance on a measure of phonological awareness and phonological memory. (P 7)
5. Student's academic achievement was assessed by the private evaluator using the Wechsler Individual Achievement Test – Second Edition (WIAT-II). Student's scores revealed achievement in the below average range on the Reading Composite, with scores in the average range on the Mathematics Composite, Written Language Composite, and the Oral Language Composite, and a Total Composite score in the average range. (P 7)
 6. In other testing, the private evaluator determined that Student demonstrated difficulty with orthographic processing as well as with organizing written work. (N.T. 275, 280-81; P 7)
 7. The private evaluator recommended that Student be considered for special education on the basis of a learning disability in reading. She concluded that Student had dyslexia which required interventions through a structured, explicit, and systematic phonological reading/language program, and made several other recommendations for meeting Student's needs at school. Additionally, this evaluator diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD), Not Otherwise Specified. (N.T. 282-83; P 7)
 8. Student was first evaluated by the District in the spring of 2004 when Student was in second grade. At that time, Student was exhibiting difficulty with reading comprehension, following directions, written expression, and spelling. The teacher reported that Student was "fidgety and easily distracted" and lacked self confidence. (P 29 at 1-2)
 9. The District's Evaluation Report (ER) summarized information from the recent IEE, including cognitive and achievement testing, and also described several classroom observations in both classroom and informal settings. The ER noted that while Student had had mathematics support in the fall of 2003, that support had been discontinued due to Student's success in that subject. Student's report card grades and curriculum-based assessments indicated needs for improvement in the areas of written expression, reading decoding, and reading comprehension. (P 29)
 10. The District's school psychologist conducted additional cognitive assessment of Student in the areas of reading and written expression. She also assessed Student's auditory and visual memory, revealing deficits in both. (P 29)
 11. Student's social and emotional development were also assessed, using the Behavior Assessment System for Children (BASC) (Teacher Rating Scale and Student Self-Report) and the Behavior Rating Inventory of Executive Functioning (BRIEF) (Teacher and Parent Questionnaires). The BASC Teacher Rating Scale reflected clinically significant scores on the Anxiety, Learning Problems, and Withdrawal Scales as well as at-risk scores in the areas of Hyperactivity and Attention. Student's

- BASC Self-Report reflected clinically significant scores on the Social Maladjustment Personal Adjustment Composites as well as on the overall composite, the Emotional Symptoms Index. The BRIEF revealed few significant scores in the areas of function which it assesses, but did reflect some concerns on the Initiate and Organization of Materials Scales. (P 29)
12. The 2004 ER concluded that Student met the criteria for special education eligibility on the basis of Other Health Impairment (OHI) due to Student's ADHD² and a skin condition, and recommended that Student receive specially designed instruction in Reading. Other suggestions for Student's educational program were also included in the ER. (P 29)
 13. Student attended a private school beginning in third grade and remained there until the end of the 2009-10 school year. (N.T. 33-34; P 1 at 1; S 3 at 1)
 14. Student's Parents³ asked the District to evaluate Student again in January 2010, and returned a signed Permission to Evaluate form on January 31, 2010. Student was planning to return to the District for ninth grade in the fall of 2010. (N.T. 34; P 1 at 1, P 13, P 16; S 3 at 1)
 15. The Parents completed a Parental Input Form into the evaluation on January 31, 2010, and indicated their concerns with "reading fluency, handwriting and written expression issues." (P 6 at 2; S 1 at 2) The Parents also requested an occupational therapy (OT) evaluation because Student had been using a computer for written work at the private school and the Parents wanted to be sure Student could continue to do that at the District. (N.T. 37-38, 205, 212-13, 413-14; P 6; S 1)
 16. Also on January 31, 2010, the Parents requested that the District conduct its testing of Student on specific dates in late March or early April when Student would not be in school. The parents expressly agreed, in writing, to extend the 60-day timeline within which evaluations are required to be completed. (N.T. 144-45, 370; S 2)
 17. On March 21, 2010, the Parents contacted the District school psychologist to confirm test dates in late March/early April while Student was not in school. They also requested that Student's reading fluency be assessed. The District school psychologist agreed to the proposed test dates and to administer a Qualitative Reading Inventory (QRI). (N.T. 39, 41, 386; P 2)
 18. The school psychologist met with Student's mother in early April after conducting the assessments, and she clarified some of the background information from around 2004 for the RR. Having observed Student's handwriting, the school psychologist discussed with the mother whether an OT evaluation was necessary. The Parents continued to request the OT evaluation. (N.T. 39, 365-66, 387-91; P 3)

² The ER erroneously stated on one page that Student had "AHDH." (P 29 at 15)

³ Reference is made throughout this opinion to the "Parents" in the plural where it appears both parents were acting together or one was acting on behalf of both.

19. On April 11, 2010, the Parents sent an email message to the District's school psychologist asking if he needed information from Student's teachers at the private school. The school psychologist had understood that the Parents would provide him with all information from the private school, including current assessments and observations of Student, and he responded that, "[A]ny information that [the Parents] have from [the private school] would be helpful." (N.T. 44, 48, 63-64, 368-69, 379-80, 391-93; P 3 at 2-3)
20. On April 27, 2010, the Parents advised the school psychologist by email that they hoped to have information from the private school "soon." (P 3 at 2) Later that day, the Parents informed the school psychologist that the learning specialist at the private school wanted to "touch base" with him, and they gave him permission to speak with the learning specialist or another representative at the private school. (P 3 at 1)
21. On May 5, 2010, the Parents advised the District that the private school would provide its information to the District by the following Monday (May 10, 2010) and that there had been some confusion on the part of the private school on whether the District would be contacting its representatives. On May 7, 2010, the Parents advised the school psychologist that the private school would not release information to the District until he called either the learning specialist or the director. (N.T. 369-70, 392-94; P 5)
22. On May 25, 2010, the Parents forwarded a message from the private school learning specialist to the District school psychologist which set forth a detailed list of many of the learning accommodations which Student had been provided that school year. (N.T. 369-70; P 5)
23. Also on May 25, 2010, the District sent a form requesting the Parents' permission to conduct an OT evaluation. The Parents signed the form on May 28, 2010 and returned it to the District. (N.T. 72-73, 365-66; P 14)
24. The District completed its Reevaluation Report (RR) on June 2, 2010. (P 1 at 1; S 3 at 1)
25. The RR included general information from the Parents regarding Student's medical and educational history and input from the learning specialist at the private school. It also contained a summary of the individual assessments of Student from prior evaluations. (N.T. 35-37, 57-58; P 1; S 3)
26. The school psychologist administered the WISC-IV to assess Student's cognitive ability, the Third Edition of the WIAT (WIAT-III) to assess academic achievement, a QRI, and obtained behavioral information through the Achenbach System of Empirically Based Assessment (ASEBA). (N.T. 38-39; P 1; S 3)
27. On the WISC-IV, Student attained a Full Scale Intelligence Quotient of 100, within the average range and consistent with the 2004 administration of the same instrument. Student scored in the high average range on the Verbal Comprehension Index, in the

average range on the Perceptual Reasoning Index, in the low average range on the Working Memory Index and Processing Speed Index. (P 1; S 3)

28. Student's performance on the WIAT-III reflected scores in the average to superior range on the subtests in the Oral Language Composite; in the average range on all subtests in the Reading and Oral Reading Fluency Composites; generally in the average range on the subtests in the Written Expression Composite with the exception of a noted weakness in spelling (below average); and in the low average⁴ to average range on the Mathematics Composite. The school psychologist provided a detailed summary of Student's performance on the individual subtests of the WIAT-III. (P1; S 3)
29. The QRI administration involved graded word lists and passages. The school psychologist detailed Student's performance on both aspects of the QRI which estimated Student's reading level to be instructional on middle school word lists and independent to instructional on middle school reading passages. Student showed frustration with a high school reading passage. (P 1; S 3)
30. Results of the ASEBA as reflected by the Parents' respective Child Behavior Checklists (CBCL) revealed scores in the borderline clinical range on the Total Competence Scale (both parents) and within the normal range on all of the Problem Scales (both parents). The Parents' scores on the DSM-oriented scales were all in the normal range. The Parents' CBCL results did not indicate any mental health disorder including ADHD. (N.T. 325-26, 331-32, 337-40; P 1; S 3)
31. Student's Youth Self Report portion of the ASEBA revealed scores in the normal range on the Total Competence Scale. Scores on the Problem Scales were all within the normal range with the exception of borderline clinical range scores on the Internalizing Problems Scale because of reported Somatic Complaints. On the DSM-oriented scales, Student's scores were all in the normal range with the exceptions of the Anxiety Problems Scale (with a score in the clinical range) and the Somatic Problems Scale (with a score in the borderline clinical range). (N.T. 341-43; P 1; S 3)
32. Student and the District school psychologist discussed Student's concerns with changing schools, as well as Student's tendency to worry about relationships with friends and family and with being successful at school. Student admitted to not working to full potential to the school psychologist. The school psychologist did not observe Student to display any ADHD symptoms during the evaluation, nor did he believe Student was experiencing anxiety to a significant level that warranted further exploration, or diagnosis and possible treatment. The school psychologist also did not discern any difficulties with auditory processing, executive functioning, or

⁴ The RR provides a qualitative description of Student's scores in Math Fluency – Addition and Math Fluency – Multiplication as low average, not below average, using grade-based norms. (P 1 at 8-9; S 3 at 8-9) Both the District school psychologist and the Parents' expert characterized Student's performance on the math fluency subtests as a demonstrated "weakness." (N.T. 323-24; P 34 at 3)

- receptive or expressive language. (N.T. 85, 88-90, 327-28, 333-34, 343-48, 353-54, 374-75, 378; P 1; S 3)
33. The RR concluded that Student was eligible for special education on the basis of a Specific Learning Disability in the areas of written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving. The school psychologist conducted an analysis of the discrepancies between Student's ability and achievement in reaching the conclusions on eligibility based upon a Specific Learning Disability. (N.T. 376-78; P 1; S 3)
34. Recommendations in the RR included co-teaching; direct instruction in a systematic, phonics-based program in spelling and reading;⁵ direct instruction in study skills and organizational strategies; repetition when giving directions and instruction; chunking of larger assignments; extended time for tests; and access to an extra set of books at home or to books on tape/CD. (P 1; S 3)
35. The District school psychologist did call Student's private school sometime in late May but never spoke with anyone from there. He also did not observe Student at the private school. While the school psychologist would have liked to have had more information for the evaluation, Student's Parents asked in mid- to late May that the RR be completed by early June. (N.T. 44-47, 51, 55-56, 59, 65-67, 88, 108-09, 379-81; P 5)
36. On June 14, 2010, the Parents advised the District that they did not agree with the RR because it was not sufficient and did not include sensory information. They requested a meeting with the District. (N.T. 399-400, 414-15; P 15; S 4)
37. After receiving no response to the June 14, 2010 request, the Parents again requested a meeting to discuss the RR on June 25, 2010. (N.T. 400; P 16)
38. The Parents' concerns with the RR were that it did not include sufficient information from the private school, and that the District failed to assess Student for difficulties revealed in the 2004 IEE. (N.T. 396-99, 405-06)
39. An OT evaluation was conducted in early June 2010 and the report of that evaluation was provided to the Parents on June 15, 2010. The occupational therapist administered the Developmental Test of Visual Perception, the Bruininks-Oseretsky Test of Motor Proficiency, and the Wold Sentence Copying Test, as well as observing Student's fine motor abilities. Student demonstrated overall average visual perceptual skill with below average visual motor integration skills, and exhibited low average fine motor control with "[m]inimally decreased handwriting quality, especially on longer assignments." (P 22 at 4; S 23 at 23) The occupational therapist did not recommend OT services for Student and opined that needs could be addressed through modifications/specially designed instruction, such as access to a computer or

⁵ The RR itself omitted Reading from this recommendation, but the school psychologist clarified, both at the meeting to discuss the evaluation and the due process hearing, that this form of instruction should also be considered for Student's Reading program. (N.T. 309-11, 317-18, 373-74)

- portable writing device as needed for lengthy writing tasks. (N.T. 175-78, 180, 186, 194-98, 204-05, 211 220-22; P 22; S 3 at 21-23, S 8)
40. The OT evaluation was made part of the District's RR. (N.T. 40-41; S 3)
 41. The District convened a meeting with the Parents on July 14, 2010 to discuss the RR and the OT evaluation. After the Parents expressed their reasons for disagreement with the RR, the District suggested some additional testing to address those concerns. The Parents requested an IEE at public expense. (N.T. 94-98, 125-28, 141-43, 401-03, 415-16)
 42. The District did not agree to an IEE and filed its Due Process Complaint on August 3, 2010. (N.T. 101-03, 126; S 5)
 43. The parents did verbally consent to the additional testing discussed at the July 14, 2010 meeting, and in August 2010 the District administered the Wilson Assessment for Decoding and Encoding (WADE) and the Woodcock-Johnson - Third Edition (WJ-III) battery (which assesses cognitive ability and achievement). (N.T. 98-99, 115-16, 118-19, 136-37)
 44. A meeting to develop Student's Individualized Education Program (IEP) for the 2010-11 school year convened on August 16, 2010. (P 21, P 22)
 45. The District issued a Notice of Recommended Educational Placement/Prior Written Notice (NOREP) dated August 26, 2010 denying the Parents' request for an IEE. The Parents returned the NOREP on September 1, 2010 as not approved, but stated their agreement to permit the District to conduct further assessments of Student: the WADE; the Comprehensive Test of Phonological Processing (CTOPP); memory testing; executive functioning testing; a speech/language evaluation; assessment for Central Auditory Processing Disorder (CAPD); and the WJ-III. (P 28; S 6)
 46. By the time the District attempted to conduct the additional testing referenced in the NOREP at the start of the 2010-11 school year (other than the WADE and WJ-III), the Parents had rescinded their permission for it to do so and had instructed Student not to permit further assessments. (N.T. 84, 99-101, 116-17, 417-23)

DISCUSSION AND CONCLUSIONS OF LAW

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 in an administrative hearing such as this lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005);⁶ *L.E. v. Ramsey Board of Education*, 435 F.3d 384,

⁶ The burden of production, "i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding," *Schaffer*, 546 U.S. at 56, relates to the order of presentation of the evidence.

392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the District which requested the hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). This hearing officer found each of the witnesses to be generally credible, and the testimony as a whole was more consistent than not. Credibility of specific witnesses is discussed further in this decision as necessary.

The Individuals with Disabilities Education Act (IDEA)⁷ ensures, *inter alia*, that all children with disabilities are provided with a free, appropriate public education (FAPE) to meet their individual needs. Local education agencies, including school districts, are required under the IDEA to conduct a “full and initial individual evaluation” of a student before it provides special education and related services to that child. 20 U.S.C. § 1414(a)(1)(A); *see also* 34 C.F.R. § 300.301(a). In conducting an evaluation, a local education agency must ensure that it uses procedures to determine whether the child has a disability and to determine the child’s educational needs. 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c)(2). Re-evaluations are also subject to specific requirements and limitations. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303. Evaluation and re-evaluation procedures include adherence to time limitations which, in Pennsylvania, mandate that evaluations and re-evaluations be completed within 60 calendar days following receipt of parental consent. 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); 22 Pa. Code §§ 14.123(b) and 14.124(b).

The child must be assessed “in all areas of suspected disability.” 20 U.S.C. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4). The IDEA regulations provide further guidance for conducting the evaluation or re-evaluation.

(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

⁷ 20 U.S.C. §§ 1401 *et seq.*

(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. § 304(b); *see also* 20 U.S.C. § 1414(b)(2). The evaluation must assess 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). Assessments must be administered in a manner which is nondiscriminatory, in a form designed to yield accurate information, and for the purpose for which the assessments were designed, by a trained professional, and in accordance with the test maker’s instructions. 20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(1). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services 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); *see also* 20 U.S.C. § 1414(b)(3). Further, the team must ensure that it considers existing information about the child through the following.

(a) *Review of existing evaluation data.*

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

- (i) Evaluations and information provided by the Parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child’s Parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable

annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

34 C.F.R. § 305(a); *see also* 20 U.S.C. § 1414(c)(1).

The IEP team, which includes qualified professionals and the child's parent(s), makes the determination of, *inter alia*, whether the student is a child with a disability and in need of special education. 20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.306(a)(1). In making these determinations, the local education agency must "[d]raw 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 further "[e]nsure that information obtained from all of these sources is documented and carefully considered." 34 C.F.R. § 300.306(c).

When parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 34 C.F.R. § 300.502(b); *see also* 20 U.S.C. § 1415(b)(1). When a parent requests an IEE, the local education agency must either file a request for a due process hearing to establish that its evaluation was appropriate, or ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). In this case, the Parents requested an IEE, and District filed a request for due process seeking a determination that its evaluation was appropriate. (Finding of Fact (FF) 42)

After careful review, this hearing officer concludes that the District's educational evaluation of Student was appropriate according to the applicable law. The evaluation included functional, developmental, and academic information from a variety of sources about Student. Specifically, the evaluation included a review of prior records and evaluations, as well as information from the Parents drawn from a parental input form, a meeting with Student's mother, and completed CBCLs. (FF 15, 18, 25, 26, 30) The CBCLs were part of the assessment of the District's assessment of Student's behavioral functioning.⁸ (FF 26, 30, 31, 32) Input from Student's private school, which is further discussed below, was also made a part of the RR. (FF 22) The school psychologist administered both cognitive and achievement testing using appropriate norm-referenced, technically sound instruments. (FF 26, 27, 28) Additionally, a QRI was administered to ascertain Student's reading levels. (FF 29) All of this information was summarized in detail in the RR and, taken together, comprised a thorough assessment of Student's present levels of academic achievement and functional performance.

While it is clear that the RR did not contain an actual observation of Student at the private school, which is a requirement for a student with a suspected learning disability,⁹ it is also apparent that there was some miscommunication between the Parents and the school psychologist near the end of the 2009-10 school year on who would obtain information from that placement. (FF 19, 20, 21, 22, 35) Even at the beginning of May, however, the private school advised that it would not release information to the District until the school psychologist contacted one of two specific representatives. (FF 20, 21) The school psychologist made an

⁸ The parents' expert testified that she thought the school psychologist's use of the ASEBA was appropriate in assessing Student's anxiety and somatic complaints. (N.T. 290-91)

⁹ *See* 34 C.F.R. §§ 300.510.

effort to comply with that request but was not successful. (FF 35) It is also noteworthy that the RR did contain input from the private school's learning specialist on supports provided to Student as part of the educational program. (FF 22) While the inclusion of a classroom observation would certainly have been helpful and informative to the RR, I cannot conclude that its absence, in and of itself, renders the RR inappropriate, particularly since there has been no indication that such an observation (in an instructional setting different from that where Student would be placed in the fall of 2010) would have yielded particularly crucial information not already contained therein.

It is prudent to address the specific concerns raised by the Parents and their expert which, they believe, have resulted in an inappropriate evaluation.¹⁰ First, the fact that the RR was not completed within 60 calendar days of the District's receipt of the Parents' consent is not fatal. Even if the Parents had not waived the required time period within which an evaluation must be completed (FF 16, 17), the entire evaluation including that by the occupational therapist was concluded prior to the end of the 2009-10 school year¹¹ and well before Student was preparing to return to the District. (FF 24, 39) While the District certainly could have issued the completed RR more quickly than was done here, its timeliness had little impact on the substance of the evaluation itself (with the possible exception of additional input from the private school, discussed above), or on the development of an educational program for Student for the 2010-11 school year.

Next, the criticism of the District's discrepancy analysis is belied by the record, as the school psychologist credibly testified to the process he used to determine whether Student demonstrated achievement below what was expected, which went beyond a comparison of composite scores. (N.T. 376-78; FF 33) Furthermore, the District concluded that Student had a specific learning disability in the areas of written expression basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem-solving. (FF 33) The two remaining areas which the IDEA and its implementing regulations recognize as categories of specific learning disability,¹² oral expression and listening comprehension, were areas in which the school psychologist determined that Student exhibited no weaknesses. (FF 28, 32) For this reason, the failure to administer the oral expression subtests of the WIAT-III also does not render the evaluation inappropriate.

The related contentions that the District should have assessed Student in the areas of orthographic and phonological processing, auditory working memory, attention, executive functioning, and auditory processing are not supported by Student's performance in the spring of

¹⁰ It should be noted that, while the Parents' expert is certainly knowledgeable in the field of psychology including school psychology and further testified credibly, she has not seen or evaluated Student since 2004 and, outside of the RR, did not seek more recent information from anyone, including the Parents and the District, prior to her testimony at the due process hearing. (N.T. 292-93) Consequently, her testimony was accorded less weight than it might have been had she evaluated Student more recently or obtained information about Student's then-current functioning.

¹¹ According to the District's website, the last day of school for students was June 17, 2010. See <http://www.methacton.org/methacton/icalsw/Calendar.asp?StartDate=6/1/2010&PlotDate=6/17/2010&CalendarID=0> (last visited January 10, 2011)

¹² 20 U.S.C. § 1414(b)(6)(a); 34 C.F.R. § 300.309(a)(1)

2010. The school psychologist determined, based upon current assessments conducted and a review of all other available information, that further evaluation into these areas was not warranted or necessary. (N.T. 325, 336-37, 347-48, 349-50, 353-56, 374-75; FF 32) This hearing officer cannot find the evaluation flawed simply because Student demonstrated weaknesses in these areas some six years earlier when Student was at quite a different developmental age than Student is at present. Further, the record establishes that the school psychologist did, in fact, consider whether Student was exhibiting symptoms of ADHD in the home, school, and/or evaluation settings, and concluded that Student did not. (FF 32) With respect to the OT evaluation, the record supports the conclusion that Student did not demonstrate a need for OT in 2010 (FF 39), notwithstanding the existence of graphomotor functioning weaknesses in 2004. (P 34 at 4) There was also nothing to support a determination that an assistive technology evaluation was necessary. (FF 18, 39) Viewing the record as a whole, I cannot conclude that the RR failed to adequately assess Student in all areas of suspected disability as Student presented in 2010.

The final criticisms relate to an absence of sufficient information to the IEP team to enable it to develop an appropriate program, namely the failure to perform an error analysis of Student's performance on the WIAT-III and to administer the WADE during the evaluation process. Once again, this hearing officer cannot find the RR deficient on these bases. An evaluation or re-evaluation need only comport with the applicable law, and need not be perfect. *Council Rock School District v. Bolick*, 2010 WL 5186154, *7 (stating that, "[w]hile the District's report could have included more detail with regard to analysis, it was not required by law to do so."). Moreover, while any evaluation could be supplemented with further assessments, merely suggesting that additional testing may have provided expanded information which could have been useful to the IEP team does not equate to insufficiency in the RR. This is not to discount the importance of a comprehensive ER or RR which provides critical information as well as recommendations to the IEP team, but rather to recognize that these reports do not dictate the substance of an educational program to that IEP team.

This last argument ties in to the Parents' belief that because the District agreed in July 2010 to conduct further assessments of Student, it impliedly conceded that its evaluation was insufficient and, therefore, not appropriate. On the contrary, the District's willingness to address parental concerns about the RR in a spirit of cooperation, despite its determination that those assessments were not necessary to develop an IEP (N.T. 125-28, 141-43), merits commendation. That is the very sort of teamwork and collaboration among the parties which not only is inherent in the IDEA but serves to foster positive parent-school relationships.¹³

It warrants mention that Student's Parents are understandably very concerned about Student's education and clearly want the best for their child. Their advocacy reflects their well-intentioned efforts to ensure that all of Student's needs, or possible needs, are thoroughly scrutinized so that an optimal special education program can be developed and provided. The

¹³ It is indeed unfortunate that the parties could not continue to work together to make certain that all assessments which each believed were important to Student's programming could be completed long before this due process hearing first convened. It is the sincere hope of this hearing officer that the parties will set aside their differences and concentrate their efforts on the mutual goal of appropriate special education programming for Student.

law, however, requires only that school districts comply with its dictates which emphasize what is appropriate and not what is best. In this case, the District was obligated to follow the statutory and regulatory provisions set forth above to evaluate Student appropriately in all areas of suspected disability, and the minor deviations from those requirements in this case are not enough to render the evaluation inappropriate.

In conclusion, it is the determination of this hearing officer that the District's re-evaluation of Student assessed all areas of suspected disability as Student presented in the spring of 2010, and that this evaluation was sufficiently comprehensive to determine Student's educational needs and guide the IEP team in developing an appropriate program to meet those needs. Accordingly, I find that the District's evaluation was appropriate. Thus, there are no grounds on which to order an IEE at public expense.¹⁴

CONCLUSION

For all of the foregoing reasons, I conclude that the District's June 2010 evaluation of Student was appropriate, and there is therefore no basis to order an IEE of Student at public expense.

ORDER

1. The evaluation of Student conducted by the District and reflected in June 2010 RR and OT evaluation report was appropriate.
2. The District is not ordered to take any further action.

Any claims or issues not specifically addressed in this decision and order are denied and dismissed.

Cathy A. Skidmore

Cathy A. Skidmore, M.Ed., J.D.
HEARING OFFICER

January 11, 2011
ODR 01421-1011JS

¹⁴ In their closing argument, the Parents also requested reimbursement for their expert's testimony and preparation of her report. (N.T. 432) These claims were not raised until the hearing concluded and, thus, were not properly presented for my resolution.