

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

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 30553-24-25

Child's Name:

A.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Education Agency:

Lower Merion School District
301 E. Montgomery Avenue
Ardmore, PA 19003

Counsel for the LEA

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Hearing Officer:

James Gerl, CHO

Date of Decision:

March 27, 2025

BACKGROUND

The school district filed a due process complaint seeking to override the parents' failure to provide consent for testing and reevaluation of the student. The parents contend that the testing and reevaluation are not necessary. I find that the school district has proven that the proposed reevaluation, including assessments, of the student is necessary to determine the current student needs in order to inform the student's educational programming. The failure to consent to the reevaluation, including assessments, is overridden.

PROCEDURAL HISTORY

It must be noted at the outset that the parties to this matter have a highly toxic relationship. The toxic relationship spilled over into the due process proceedings in this case. The parties ignored a requirement that they file a written status report. A prehearing conference for this matter was convened before the hearing, during which the participants were very contentious. The parties were warned after the prehearing conference that such contentious or inappropriate behavior would not be permitted at the due process hearing.

The parties agreed to only three stipulations of fact. The failure to agree to a larger number of stipulations unduly lengthened the hearing and elongated the decisional process in this case.

The hearing was conducted in one virtual session. Two witnesses testified at the hearing. School district Exhibits S-1 through S-16 were admitted into evidence. The unrepresented parents did not offer any exhibits into evidence at the due process hearing.

After the hearing, counsel for the school district and the unrepresented parents each submitted written closing arguments/post-hearing briefs. All arguments and proposed findings submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUE PRESENTED

1. Has the school district proven that it should be permitted to reevaluate the student, including assessments, despite the refusal of the parents to consent to the reevaluation?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact.

1. The student is [redacted] years old and resides in the school district.
2. The student has diagnoses of [redacted]insomnia, [redacted].

3. The student is eligible for services under IDEA under the classifications of Intellectual Disability, Other Health Impairment, Speech Language Impairment and Autism.

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact:¹

4. The student [redacted]and frequently exceeds expectations. (NT 172 – 178)

5. During the early part of the student's life, the student was a [redacted]student. At age [redacted], the student suffered an illness and as a result began to experience [redacted]. The student received intensive medical treatment, including being placed in an [redacted] for several months. The student suffered acquired brain injury due to the [redacted]and received months of medical treatment and rehabilitation. (S-15; NT 162, 172 – 174)

6. As a result of the student's medical condition, [redacted], the student suffers repeated [redacted]which have not significantly diminished. The student has been treated with medication and other interventions. (S-15; NT 114 – 118, 134, 153-154)

7. The student's disability has had a significant negative effect upon the student's ability to make progress in the student's educational program.

¹ (Exhibits shall hereafter be referred to as "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

The parents agree with the school district that the student's educational programming needs to be adjusted. (S-15; NT 168)

8. The student has received very low scores on past standardized tests because of the student's disabilities. (NT 166-167, 122-123)

9. Because of the parents' refusal to consent to testing, the school district has not been able to conduct standardized tests or other assessments as a part of its reevaluations of the student since 2019 for cognitive testing and since 2021 for additional functional assessments. (S-15; NT 38, 60 – 61)

10. The student's IEP team meets, or offers to meet, every six weeks depending on whether the parents agree to a meeting. (S-5; NT 146, 156)

11. The student is currently a [redacted]-grade student at a high school in the school district receiving special education and related services in a full-time life skills autistic support program. The student's IEP provides for direct instruction in functional academics with a 2:1 instructional aide throughout the school day. The student receives integrated direct speech-language therapy, occupational therapy and physical therapy. The IEP also provides for transportation to and from school daily with a bus aide and daily nursing care when nursing needs arise. Consultative support in behavior and vision are also provided. (S-5, S-15; NT 57-58)

12. Since approximately 2021, the school district members of the student's IEP team have recommended that the student be placed in an alternative educational placement that would provide more intensive services in a smaller, less stimulating setting than the current placement, with a reduced number of students and fewer transitions. The parents have not agreed to the recommendation for an alternative placement. (S-4; NT 110 – 112)

13. The student's IEP team met on October 15, 2024 to discuss the student's progress and to determine a plan for the student's biennial reevaluation. The parents were invited to the meeting but did not attend. At the October 15, 2024 IEP team meeting, team members, including the school psychologist, agreed that additional testing of the student was needed as a part of the student's biennial reevaluation which was due in 2025. (S-15; NT 37 – 40)

14. A Permission to Reevaluate form was issued to the parents on November 12, 2024. The Permission to Reevaluate proposed the following tests and assessments: formal assessments of cognitive and developmental functioning; assessment of adaptive functioning; formal standardized functional (criterion-based) assessment of skills for the following related services: occupational therapy, physical therapy, speech language therapy; functional vision assessment; functional behavioral assessment; updated medical information; parent and teacher information; review of records and classroom observation. (S-6, S-7)

15. The student's father responded to the Permission to Reevaluate on November 12, 2024 stating, "I am not agreeing to any testing." The school district followed up with the parents, and the parents indicated that there would be no more responses and that the parents' previous e-mail should be considered their "formal" response. (S-6, S-15; NT 58 – 59)

16. The purpose of the assessments and testing recommended by the school district in the Permission to Reevaluate was to fully assess the student's current educational strengths and needs in order to inform the development of an appropriate educational program, including post-secondary transition to adult services. (S-7, S-15, S-2; NT 38-40, 48-58)

17. The recommended cognitive tests and standardized assessments are valid and reliable, and they would be used for the purposes for which they are intended. (NT 40 – 41; S-7)

18. Cognitive assessments are important for this student because given the student's acquired brain injury, the school district's school psychologist would be able to analyze changes in how the student performs specific skills and whether there is scatter or splinter in the assessment results. (NT 40 – 42)

19. Following the recent implantation of a [redacted] in the student, the school district's school psychologist has noticed a change in the student's reaction when the school psychologist greets the student. Now the student turns and looks at the school psychologist when greeted, which is unlike past reactions by the student. Other school district staff have also noticed a difference since the [redacted]. The student seems a little bit more aware, a little bit more alert, a little bit more purposeful in what the student is doing since the student had the [redacted]. (NT 42 – 44, 116-117, 152-155)

20. The agencies that provide services for disabled adults have historically required updated standardized assessments to help them understand the student's needs and eligibility for services. (NT 57 – 64)

21. At past meetings, the parents have objected to standardized testing because the normative sample for such testing does not include individual with [redacted]. More recently, the parents have refused to consent to testing of the student without providing a reason. (NT 119 – 122)

22. Because of the low incidence of [redacted], which occurs in less than one percent of the population, individuals with [redacted] may not be represented in the normative standardization sample of the cognitive assessments proposed. This fact does not affect the validity or reliability of

the cognitive assessments. Cognitive assessments would provide useful information to the IEP team. In reporting the results of the standardized assessments, the school district's school psychologist would note in the evaluation report that people with [redacted] were not represented in the normative sample. The school psychologist would look at the longitudinal picture of the student over time to see if the student's functioning has changed in specific areas to determine the student's educational needs. (NT 40 – 42; 121 – 126)

23. The school psychologist who would conduct the proposed assessments of the student is trained and qualified to administer the proposed assessments. (S-12; NT 32 – 33)

24. The parties to this proceeding have had at least two due process hearings regarding this student prior to this hearing. (S-16; NT 169 – 170)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own independent legal research, I have made the following conclusions of law:

1. A public agency must reevaluate each child with a disability at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary. Individuals With Disabilities Education Act (hereafter sometimes referred to as "IDEA") 20 U.S.C. § 1400, *et seq.* § 614(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2). Under Pennsylvania law, students who are identified as having an intellectual disability must be reevaluated at least once every two years. 22 Pa. Code § 14.124(c).

2. If a parent refuses to consent to a reevaluation, a public agency may, but is not required to, pursue the reevaluation by using the consent

override procedures, including the filing of a due process complaint. IDEA § 614(c)(3); 34 C.F.R. § 300.300(c)(ii); Questions and Answers on IEPs, Evaluations and Reevaluations, 111 LRP 63322 (OSERS 2011) (Question D-4).

3. In conducting an evaluation, a local education agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or a related service provider, and on that basis determine whether any additional data are needed to determine whether the student is eligible, as well as to identify the child's special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist, 66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

4. A local education agency that files a due process complaint to override consent will be permitted to conduct the reevaluation where it proves that the reevaluation is necessary to determine the student's needs and weaknesses in order to design an appropriate program or to determine continuing eligibility. See, Downingtown Area Sch Dist, 79 IDELR 149 (SEA Penna. 2021); Plum Borough Sch Dist, 111 LRP 56978 (SEA Penna. 2011); Cumberland Valley Sch Dist, 117 LRP 39108 (SEA Penna. 2017); GB by TB v. San Ramon Area Valley Unified School District, 51 IDELR 35 (N.D. Calif. 2008); Spring Branch Independent School District, 76 IDELR 59 (SEA Tex. 2019).

5. IDEA requires that, beginning with the IEP in effect when the student turns 16 years old, the IEP must include appropriate transition services. IDEA, § 614 (d)(1)(A)(i)(VIII); Perkiomen Valley Sch Dist v RB, 78 IDELR 222 (E.D. Penna. 2021). "Transition services" means "a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation." IDEA, § 602 (34).

6. In the instant case, the school district has proven that the reevaluation, including the proposed testing, is necessary to determine the student's current educational needs in order to develop an appropriate program and to develop appropriate post-secondary transition planning and services.

DISCUSSION

1. Has the school district proven that it should be permitted to reevaluate the student, including testing,

despite the refusal of the parents to consent to the reevaluation?

The school district seeks to override the parents' refusal to consent to the reevaluation of the student and contends that a reevaluation is necessary to determine the student's current needs and an appropriate post-secondary transition program. The parents refuse to consent to testing or the reevaluation because they contend that it is not necessary.

Although there is no applicable Supreme Court or Third Circuit precedent, hearing officers generally permit a local education agency to override the lack of consent for a reevaluation where the local education agency proves that the reevaluation is necessary to determine the student's needs in order to design an appropriate educational program for the student or to determine the student's continuing eligibility for special education.

In the instant case, the school district has proven that the proposed reevaluation and the proposed assessments are necessary. The school district has proven that the student's educational program needs to be adjusted. The parents concede this very important point. It is unfortunate that all parties agree that the student's educational program needs to be fixed, yet they cannot agree even on evaluations, the first step in the process. Clearly, the toxic relationship among the parties is adversely affecting the education of the student.

The credible and persuasive testimony of the school district's school psychologist was that the testing and reevaluation are necessary to determine the student's current educational needs and programming. The need for new assessments is particularly important after the student received the implantation of a [redacted]. After the [redacted], the school psychologist and

other school staff have noticed some positive, albeit minor, changes in the student.

In addition, because the student is nearing the age where the student will [redacted] of special education, post-secondary transition planning is extremely important. The parents, at the hearing and in their posthearing brief, contended that they have privately contacted the adult services agencies and that the school district's transition planning and services are "not needed." The parents' argument ignores the fact that the school district is legally required to develop postsecondary transition services for the student. If the school district did not do so, the school district would be in violation of federal law. The parents' argument is rejected.

The school district has proven that the proposed reevaluation of the student, including the proposed assessments, is comprehensive and would evaluate the student in all areas of suspected disability. The student has not been evaluated or assessed for a long time, and the student's educational needs must be updated. The proposed assessments are appropriate and would be administered by evaluators who are qualified to administer the assessments. It is concluded that the reevaluation and assessments proposed by the school district are appropriate and are needed to determine the student's current needs in order to design an appropriate educational program, including post-secondary transition components.

In contrast, the parents' testimony did not provide a reason for refusing to consent to the evaluation and assessments. It was abundantly clear during the father's testimony that the parents have great animosity toward the school district, but no rationale for opposing the assessments or the reevaluation was provided. In recent communications with the school district, the parents have refused to consent to assessments or a reevaluation of the student without

giving a reason or an explanation for their refusal. The school district's school psychologist testified, however, that at previous IEP team meetings in years past, the parents objected to standardized tests for the student because the standardized tests do not include persons with the student's specific disability in their sample. The unrebutted testimony of the school psychologist, however, was that despite the fact that the standardized tests and other assessments do not include persons with the student's disability in their sample, the tests and assessments would nonetheless provide useful information to inform the student's educational programming. To the extent that the sample of the standardized tests is still the problem for the parents, the parents' argument is rejected.

In the parents' post-hearing brief, the parents refer to the assessments proposed by the school district as a "science project" and as "unproven" tests that would cause pain to the parents. The parents do not explain why they believe that the proposed assessments are unproven or a science project. There is no evidence in the record to suggest that the assessments proposed by the school district are unproven or are otherwise suspect. The unrebutted evidence in the record reveals that the assessments are valid and reliable. The parents' argument is rejected.

It should be noted that if the parents disagree with the results of the evaluation when it is completed, they have other options. They may request an independent educational evaluation at public expense. They may also exercise any of the other procedural safeguards provided by IDEA.

The testimony of the school district's school psychologist was more credible and persuasive than the testimony of the student's father concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the testimony of the school psychologist is

given great weight concerning the standardized assessments because of the school psychologist's education, experience and knowledge of standardized assessments. In addition, the parents' credibility was impaired by the fact that the parents did not offer a reason or justification for their objection to the assessments and the reevaluation.

It is concluded that the school district has proven that its proposed evaluation is appropriate and that it should be permitted to conduct the proposed reevaluation of the student, including proposed assessments.

NOTE: As has been noted, the parties to this matter clearly have a toxic relationship. It appears that the parties have lost sight of the fact that we are talking about the education of a young person. As the United States Supreme Court has noted, the special education process is designed to be a collaborative in nature. Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005). The parties should seriously consider taking affirmative steps to improve their relationship, such as mediation, or a facilitated IEP team meeting.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that the relief requested in the due process complaint herein is hereby granted. The school district's request to conduct the proposed reevaluation of the student, including the assessments proposed therein, is granted.

IT IS SO ORDERED.

ENTERED: March 27, 2025

James Gerl

James Gerl, CHO
Hearing Officer