

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 Final Decision and Order

Closed Hearing

ODR File Number:

26604-21-22

Child's Name:

L.G.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent

Pro Se

Local Education Agency:

North Penn School District
Educational Services Center
401 E. Hancock Street
Lansdale, PA 19446-3961

Counsel for LEA

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

August 18, 2022

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is [mid-teen] years of age and recently completed the [redacted] grade in a private school through a settlement agreement with the District. In April 2022, the District completed a special education evaluation of Student pursuant to the Individuals with Disabilities Education Act (IDEA).² The Parent disagreed with the resulting report and requested an independent educational evaluation at public expense. In response, the District filed a Due Process Complaint to defend its evaluation.

After this matter was scheduled, the Parent objected to the District's request for a continuance. Both parties then agreed to commence the hearing record with only opening statements, with disclosure of evidence due five days before the first of two scheduled evidentiary hearing sessions. Before the first evidentiary hearing session, the Parent expressed difficulty in uploading proffered exhibits to the file sharing program.³ To alleviate concerns, the Hearing Officer directed the parties to exchange their exhibits via email.⁴ The District's counsel complied, but the Parent failed to share any

¹ 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. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified 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) References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) are followed by the exhibit number. Hearing Officer exhibits are noted as(HO-) followed by the exhibit number. The Parent did not disclose proposed exhibits before the hearing session and was prohibited from introducing exhibits after the hearing concluded.

³ (HO-1)

⁴ (HO-1)

exhibits.⁵ Hours before the first evidentiary hearing session, the Parent requested a continuance of the scheduled hearing session, which was denied.⁶ The Parent did not participate in the first evidentiary hearing session. At the second and final evidentiary hearing session, the Parent participated, cross-examined the remaining District witnesses, and testified but did not present additional witnesses. At the conclusion of the hearing, the Parent requested permission to submit exhibits, which was denied. School district exhibits 1, 4-7, 10-11, 16-17 were admitted into evidence.

After the hearing, both parties presented written closing arguments.⁷ For the reasons below, the District's Complaint is sustained.

ISSUES

- 1) Whether the District's April 2022 reevaluation of Student was appropriate and compliant with the requirements of the IDEA and Chapter 14?

- 2) If the District's reevaluation was not appropriate, should the District be ordered to provide an Independent Educational Evaluation at public expense?

FINDINGS OF FACTS

⁵ (HO-1)

⁶ (HO-2)

⁷ The District requested an extension of the decision due date (DDD). Over the objection of the Parent, the Hearing Officer granted the extension, in part to permit the Parent to review the evidence of record and submit a comprehensive written closing statement.

1. The Student is [mid-teen] years of age and recently completed the [redacted] grade in a Private School placement funded by the District. (S-6)
2. On January 11, 2022, under a 2019 agreement in lieu of FAPE, the District proposed an initial evaluation of the Student to determine an appropriate placement for the 2022-2023 school year. (S-1; N.T.54-56)
3. The evaluation was proposed to determine if Student was eligible and in need of services in accordance with the Individuals with Disabilities Education Act ("IDEA")/Chapter 14 of the Pennsylvania School Code and/or the Americans with Disabilities Act/Chapter 15 of the Pennsylvania School Code, as well as determine an appropriate placement for the 2022-2023 school year. (S-1; N.T. 54-55)
4. To complete the evaluation, the District proposed a review of educational records, a classroom observation, a review of current assessments, Parent and teacher input, tests of cognitive processing abilities and achievement, behavioral rating scales/assessments of social-emotional functioning, and speech/language and occupational therapy evaluations. (S-1)
5. On February 11, 2022, the Parent gave consent to the initial evaluation, but hand wrote on the PWN, " I do not give consent for an IQ test to be done." (S-1)
6. The District conducted the evaluation of the Student and issued its report in April 2022. (S-6)

7. The District's certified school psychologist who conducted the evaluation holds a PA Instructional II certification in elementary education K-6, mentally physically handicapped K-12, an educational specialist II and school psychologist certification pre-kindergarten through 12th grade. (N.T. 50-51)

8. The extensive input provided by the Parent for inclusion in the RR included concerns related to retell, communication, linguistics, literacy, reading comprehension, writing, analysis, synthesizing, applied learning vs. knowledge, following directions, inferential, abstract reasoning, higher-order reasoning ability, critical thinking, note taking, studying, applied reasoning, time management, organization. The Parent also provided information about previous evaluations, educational and medical history, and outside school activities. (S-4, S-6, p. 3; N.T. 61-63, 85-86, 241-242)

9. For completion of the evaluation, the District school psychologist observed the Student in Math and English classes at the Private School and collected input from the Language Arts, Geometry/Math, Science and History teachers. (S-6, p. 3-9; N.T. 65-67)

10. For inclusion in the RR, the Private School teachers provided the Student's 2021-2022 learning profile and a list of classroom and academic strategies, methods, and accommodations. The private school input indicated that Student had excellent grades, was considered a leader, engaged, and indicated no concerns. (S-6, p. 5-6; N.T. 67-69)

11. For inclusion in the evaluation, the school psychologist reviewed and summarized previous District evaluations from 2016, 2017, and 2019 that included a [redacted], sensory integration, Speech/Language, OT, and behavioral screenings and assessments. Private evaluations summarized for the RR included neuropsychological evaluations from 2017 and 2021 supplied by the Parent. (S-6, p. 12 -19; N.T. 72-74)
12. The 2021 private neuropsychological summarized in the RR concluded that the Student met the diagnostic criteria for ADHD, combined presentation. (S-6, p. 19)
13. The April 2022 RR summarized Student's classroom, and curriculum-based assessments report cards, grades from [redacted] private schools attended over the years, and progress reports from current related service providers. (S-6; N.T. 76-77)
14. To obtain additional information, the school psychologist assessed the Student's verbal learning, executive functioning, and academic achievement in four sessions at the Private School. (S-6, p. 32-39; N.T. 78-79)
15. The District's assessment of the Student's academic proficiency in oral language, reading, written expression and math using the Wechsler Individual Achievement test – 4th Edition (WIAT 4) yielded average scores except for Math which was high average. (S-6, p. 33-34)

16. On the Test of Written Language 4th edition (TOWL-4) to assess essay composition skills, the Student scored in the superior range. (S-6, p. 35)
17. The Student's overall performance was average on the California Verbal Learning Test-Children's Version (CVLT-C) administered to assess verbal learning and recall. (S-6, p. 36-37)
18. On the three subtests of the Delis Kaplan Executive Functioning System (D-KEFS) (trail making, verbal fluency, and design fluency), to assess the Student's cognitive abilities related to executive functioning, the Student's overall performance fell in the "at expected" range. Compared to same-aged peers, the Student demonstrated a weakness in the ability to think flexibly and shift thinking. (S-6, p. 38-39)
19. To assess the Student's speech and language capabilities, an experienced Speech-Language Pathologist (SLP) reviewed prior speech and language evaluations, progress monitoring reports, and input from the current providers. The SLP completed speech and language testing of the Student over two sessions at the Private School. During the testing, the Student was attentive, engaged, and asked for clarification of information when needed. (S-6)
20. On the fourteen stand-alone tests of the Comprehensive Assessment of Spoken Language- Second Edition (CASL-2) administered to assess the Student's oral language skills, the Student received scores in the

average or above average range on all subtests and index measures. (S-6, pg. 40-42; N.T. 139-144)

21. To assess the Student's language-based critical thinking skills, the SLP administered subtests of the Test of Problem Solving Adolescent-Second Edition (TOPS-2). The Student obtained average scores in all areas (making inferences, determining solutions, problem solving, interpreting perspectives, and transferring insights). (S-6, p. 43-44; N.T. 148-151)
22. For inclusion in the RR, the SLP reviewed the Student's second quarter speech therapy progress reports from the Private School. Based on Student's progress, the provider stated a decrease in speech services would be recommended. (S-6, p. 44)
23. To gain additional insight into the Student's speech needs, the SLP administered informal assessments in areas of historical concern that included skills related to articulation, oral motor, voice, and speech fluency skills. After an assessment, the SLP concluded no further testing was needed. (S-6, p. 44-45)
24. Based on overall average abilities in pragmatic/social language skills and expressive and receptive language, the evaluator concluded that the Student did not qualify as a student with Speech or Language Impairment and did not meet the criteria for a diagnosis of a Speech and Language disorder. (S-6, p. 45; N.T. 153)

25. For inclusion in the RR, a trained and experienced occupational therapist (OT) assessed the Student to determine current strengths, needs, and eligibility for services. To complete the evaluation, the OT reviewed records, conducted a teacher interview and administered functional skills probes. (S-6, p. 45-46; N.T.103-106, 112-119)

26. On the WOLD Sentence Copying Test administered to assess writing speed and legibility, the Student copied a paragraph at 108 letters per minute, which was above the average range for writing speed for Student's grade level. On the Motor-Free Visual Perceptual Test (MVPT-4) administered to assess visual perceptual abilities, the Student received a score of 105, considered average, and did not indicate any dysfunction with visual perception. (S-6, p. 47-48)

27. To assess the Student's sensory needs in various areas, including auditory, visual, tactile, proprioceptive, and vestibular input, the OT administered the Adolescent/Adult Sensory Profile. In all four quadrants (registration, seeking, sensitivity, and avoiding), the Student scored "similar to most people, interpreted that no difficulties with sensory processing existed. (S-6, p. 46-48; N.T. 115).

28. The OT evaluation included in the RR determined Student to have strengths in fine motor skills, visual perception, handwriting speed, keyboarding, self-care skills and sensory. After the evaluation, OT services were not recommended. (S-6, p. 49; N.T. 116, 118-121)

29. To assess social-emotional functioning and behavior, the Parent, the Student and three staff members from the Private School were asked to complete behavior rating scales that included the Behavior Assessment for Children-Third Edition (BASC-3), the Conners-3, and the Behavior Rating Inventory of Executive Function -2nd Edition (BRIEF-2). The Parent completed and returned only the BASC-3 rating scales. (S-6, p. 49; N.T. 85-86)
30. On the BASC-3, the Parent rated Student's attention problems in the clinically significant range, although all three teachers' scores were within the average range. Student's scores on the Behavioral Symptoms Index (BSI), a global indicator of behavioral functioning, were also within the average range. Comments from the private school teachers indicated no behavioral or emotional concerns. (S-6, p. 50-51; N.T. 87-90)
31. On the self-report portion of the BASC-3, the Student's ratings were within normal limits for all areas and indicated no concerns with school, internalizing problems, inattention or hyperactivity. The Student perceived adequate relationships with parents and peers, felt a sense of self-acceptance, and had confidence in the ability to solve problems and be dependable and decisive. (S-6, p. 53-54; N.T: 90-91).
32. Based on results from the BRIEF-2, the evaluator concluded all of the individual summary scales were valid, and none of the individual scales

were elevated, suggesting that Student exhibited appropriate ability to self-regulate at a basic level. (S-6, p. 57)

33. To provide data specific to ADHD symptoms, the school psychologist utilized the Conners-3. According to ratings scales and sub-scales on the Conners-3 from three teachers at the Private School, the Student's performance was within normal limits. The Student's Global Index also fell within the average range. Teacher comments referred to the Student's "reliance" and "hard work." (S-6, p. 56)
34. While the evaluation was underway, Parent requested the District to complete an assistive technology assessment and a Functional Behavioral Assessment (FBA) of the Student. The District denied the request because classroom observation, teacher input and review of behavioral information indicated no concerns. The District also determined that an assistive technology assessment was unnecessary because the technology utilized in the Private School was not specific, provided to all students at that school and was equivalent to what would be issued to general education students in the District. The District documented its denial through a NOREP. (S-5; N.T. 64-65)
35. On April 19, 2022, the District issued its RR that concluded the Student did not have a disability as defined by IDEA and Chapter 14 of the Pennsylvania School Code and was ineligible for special education services. The team also concluded that the Student exhibited a physical or mental impairment (ADHD by history) that substantially limited activities related to school access or participation. The team

determined that continued eligibility for a Section 504 Service Agreement to provide classroom accommodations was needed. (S-6, p. 58-65; N.T. 97-98)

36. On April 28, 2022, the Parent, through a NOREP, indicated disagreement with the conclusions reached in the RR. (S-7)
37. On May 27, 2022, after the Parent requested an independent educational evaluation (IEE) at public expense, the District issued a NOREP refusing the IEE. (S-10)
38. On June 3, 2022, the District filed a due process Complaint. (S-11)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. At the outset of the discussion, it should be recognized 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, was borne by the District, the filing party. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer*, supra, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Special education hearing officers, in the role of 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 the District witnesses who testified to be credible. That testimony and the content of each admitted exhibit were thoroughly considered in issuing this decision, as were the written closing statements.

IDEA PRINCIPLES: EVALUATION

When parents disagree with an LEA's educational evaluation, they may request an independent educational evaluation (IEE) at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). When faced with such a request, the school district "must, without unnecessary delay, either— file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense...."20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502(b)(2). Here, the Parent disagreed with the District's reevaluation and sought an IEE at public expense. This is the procedural background for the filing of the District's complaint in this matter

In conducting an evaluation or reevaluation, the law imposes specific requirements on LEAs to ensure that sufficient and accurate information about the child is obtained:

(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); see also 34 C.F.R. § 303(a). 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). 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). Any evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(a)

The District’s Evaluation

It is essential to recognize that parental disagreement with the conclusions reached by a District after an evaluation does not, in and of itself, establish that the evaluation is inappropriate. Moreover, whether or not the hearing officer agrees with the evaluation results is similarly not the dispositive question. The chief issue in this matter is whether the District’s April 2022 reevaluation of Student met all IDEA requirements. Through the evidence presented as outlined in the extensive factual findings, the District has established by a preponderance of the evidence that its reevaluation of the Student was legally compliant with the IDEA. On that basis, the Parent is not entitled to an IEE at public expense.

Contrary to the Parent’s assertions during the hearing and in the closing statement, the District’s April 2022 reevaluation utilized various assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student, all relating to areas of suspected disability. Specifically, the District summarized available data, including previous District and private evaluations, and incorporated and considered all provided parent input and information from teachers at the Private School of attendance.

Although the Parent declined to provide consent for updated cognitive testing of the Student, the RR included achievement testing, evaluation by related service providers (occupational and speech/language therapists), and behavior rating scales to evaluate Student's social/emotional functioning and ADHD characteristics.⁸ In addition to extensive teacher and Parent input, each professional's formal and informal observation during testing was included in the RR. During testimony, each professional provided a cogent and clear rationale for each assessment and instrument selected. The evidence and testimony established that the instruments chosen were technically sound, appropriate for the Student and were administered correctly and produced valid and reliable results.

The District's report summarized and reviewed all data and information gathered and correctly resulted in a conclusion and determination regarding this Student's eligibility for special education. The evidence overwhelmingly supports the conclusion that the District's RR was sufficiently comprehensive to identify Student's special education and related service needs in all areas related to suspected disability. In sum, the District's RR met all IDEA criteria.

For the above reasons, the District shall not be ordered to provide an IEE at public expense. The Parent may obtain an IEE, and the IEP team must consider private evaluations, but the District shall not be ordered at this time to fund one for Student

⁸The Parent completed and returned only one of the three behavioral rating scales.

ORDER

AND NOW, this 17th day of August 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the District's April 2022 reevaluation was appropriate for Student and conducted in accordance with all applicable criteria. The District's claim is hereby GRANTED, and it is not ordered to take any action.

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

Joy Waters Fleming, Esq.

Joy Waters Fleming, Esq.
Special Education Hearing Officer

August 18, 2022