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DECISION

COVER SHEET

This cover sheet contains personally identifiable information and should be removed before any dissemination of the decision to the public.

DUE PROCESS SPECIAL EDUCATION HEARING

FILE NUMBER:	14020/12-13AS
PETITIONER/SCHOOL DISTRICT (LEA):	Warrior Run School District
SCHOOL DISTRICT COUNSEL:	Christina Stephanos, Esquire
STUDENT:	J.P.
RESPONDENT/PARENT:	[Redacted]
COUNSEL FOR STUDENT/PARENT	Phillip Drumheiser, Esquire
INITIATING PARTY:	School District
DATE OF DUE PROCESS COMPLAINT:	June 13, 2013
DATE OF HEARING:	July 25, 2013
PLACE OF HEARING:	Warrior Run School District
OPEN vs. CLOSED HEARING:	Closed
STUDENT PRESENT:	Yes
RECORD:	Verbatim-Court Reporter
DECISION TYPE:	Electronic
DUE DATE FOR DECISION:	September 10, 2013
HEARING OFFICER:	James Gerl, Certified Hearing Official

DECISION

DUE PROCESS HEARING

File No.: 14020/12-13AS

PRELIMINARY MATTERS

A prehearing conference by telephone conference call was convened in this case on June 28, 2013. As a result of said conference, a Prehearing Conference Order was entered herein. Said Order is incorporated by reference herein.

Prior to the hearing, counsel for the School District filed a motion to extend the hearing officer's decision deadline. The motion was unopposed. The motion was granted, and the hearing officer's decision deadline was extended to September 10, 2013.

Prior to the hearing, counsel for the parties filed a joint prehearing memorandum. Said memorandum contains numerous stipulations of fact, and it defines the issue presented for purposes of this due process hearing. Said memorandum also contains information concerning exhibits and witnesses. The parties' joint prehearing memorandum is incorporated by reference herein.

At the outset of the hearing, a number of preliminary matters were addressed at the beginning of the hearing. A subpoena was issued at the request of the parent. The witness who was subpoenaed did not testify at the due process hearing.

During a telephone conference prior to the hearing, counsel for the parent alleged that there were certain documents used in preparing the school district's evaluation that the parent had not yet seen. Counsel for respondent contended that counsel for the parent had in fact seen the documents, however, the hearing officer ordered at said telephone conference that any documents used in the evaluation process but not currently listed by the parties as exhibits be provided at the hearing. Certain additional documents were produced and provided by the school district and were entered into evidenced as Hearing Officer Exhibits 1, 2 and 3 (hereafter referred to as HO -1 to HO-3) at the hearing.

Also near the beginning of the due process hearing, counsel for the parent raised a motion to recuse the hearing officer. The basis of the motion is that the full-time Pennsylvania hearing officers are not assigned to hearings in the area covered by the Central Susquehanna Intermediate Unit because they are employed by that entity. The hearing officer denied said motion because it was not timely filed. In addition, the motion was denied on the merits because the parent failed to show actual bias. The discussion on the record concerning said motion is incorporated by reference herein.

Concerning the merits of the motion, the legal standard is that an IDEA hearing officer enjoys a presumption of honesty, integrity and freedom from bias that may be overcome only by proving a substantial countervailing reason to conclude that the hearing officer was actually biased with respect to the party. See, L.C. & K.C. on behalf of N.C. v. Utah State Board of Educ., et al 43 IDELR 29 (10th Cir. 3/21/2005). In order to prevail on a motion for recusal of an IDEA hearing officer, a party must rebut the presumption of honesty, integrity and freedom from bias by a showing of conflict of interest or some other specific reason indicating actual bias. Dell ex rel Dell v. Township High Sch Dist 113 32 F.3d 1053, 21 IDELR 563 (7th Cir. 8/9/1994); Roland M v. Concord Sch Comm 910 F.2d 983, 16 IDELR 1129 (1st Cir. 8/3/1990); MN v Rolla Public Sch Dist # 31 59 IDELR 44 (WD Missouri 6/6/12); GM by Marchese v Drycreek Joint Elementary Sch Dist 59 IDELR 223 (ED Calif 9/7/12); Nickerson-Reti v Lexington Public Schs 59 IDELR 282 (D Mass 9/27/12); ES & MS ex rel BS v. Katonah-Lewisboro Sch Dist 742 F.Supp.2d, 55 IDELR 130 (SD NY 9/30/2010) WT & KT ex rel JT v. Bd of Educ Sch Dist of NY City 716 F.Supp.2d 270, 54 IDELR 192 (SD NY 4/15/2010); LF by Ruffin v. Houston Indep Sch Dist 53 IDELR 116 (S.D. Tex 9/21/2009); HH by Hough v. Indiana Bd of Special Educ Appeals 47 IDELR 250 (N.D. Ind. 4/12/2007); McComish v. Underwood Public Schs 49 IDELR 215 (D. ND 3/6/2008); Thomas ex rel A.J. v. District of Columbia 44 IDELR 246 (D.D.C. 7/29/2005). In this case, the

parent failed to allege or show any actual bias. Accordingly, the motion was also denied on the merits as well as on the basis of untimeliness.

Three exhibits offered by the parent were not admitted into evidence because relevance objections by the school district were sustained. Accordingly, Parent's Exhibits 28, 29 and 31 were not considered in preparing this decision. In the event that a reviewing court might disagree with this evidentiary ruling, however, Parent's Exhibits 28, 29 and 31 were placed in a sealed manila envelope and will be transmitted to the Office of Dispute Resolution with the rest of the exhibits in the hearing record, although they were not considered in the preparation of this decision.

Subsequent to the hearing, both parties filed written briefs and proposed findings of fact. All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Personally identifiable information, including the names of parties and similar information, is provided on the cover sheet hereto which should be removed prior to distribution of this decision to the public. FERPA, 20 U.S.C. § 1232(g) and IDEA § 617(c).

ISSUE PRESENTED

The issue presented at the due process hearing, as identified by the parties in the prehearing conference and confirmed in their joint prehearing memorandum, is as follows:

1. Was the March 4, 2013 evaluation of the student by the school district legally appropriate and, if not, should the parent's request for an independent educational evaluation at public expense be approved?

FINDINGS OF FACT

Based upon the parties' stipulations of fact as contained in their joint prehearing memorandum or on the record during the hearing, the hearing officer makes the following findings of fact:

1. The student was born on [redacted] and is a 10th grade student in the school district. (Stip-1) (References to stipulations of fact in the parties' joint prehearing memorandum are hereby referenced as "Stip-1," etc.).

2. On or about September 13, 2012, the student suffered an injury [and] with a concussion [redacted]. The student was permitted to return to school on September 18, 2012. (Stip-2)

3. On or about December 14, 2012, the parent reported to the district that the student had sustained a concussion on December 13, 2012 [redacted]. The student was permitted to return to school but was not permitted to perform any mental activity. (Stip-3)

4. On December 20, 2012, the parent sent a written request to the school district requesting an educational evaluation of the student. (Stip-4)

5. The district issued a Permission to Evaluate and the parent signed the Permission to Evaluate on January 7, 2013 indicating that her concerns were "concussion issues" and to see "neuro report." (Stip-5)

6. On January 3 and 7, 2013, a neuropsychological assessment of the student was completed by a clinical neuropsychologist. (Stip-6)

7. The school district completed an initial evaluation of the student on March 4, 2013. A meeting was held on March 19, 2013 with the parent to review the results of the evaluation. (Stip-7)

8. The school district's March 4, 2013 evaluation did not find that the student was eligible for services in special education. (Stip-8)

9. The school district's March 4, 2013 evaluation did not find that the student was qualified for a service agreement. (Stip-9)

10. The parent hand delivered to the school district on June 7, 2013 a typewritten request dated May 28, 2013 for an independent educational evaluation. (Stip-10)

11. In response to the parent's request for an independent educational evaluation, the school district filed a due process complaint on June 13, 2013. (Stip-11)

12. Present at the March 19, 2013 meeting to review the school district's evaluation of the student were the school district's special education director, the school district's school psychologist, the student's mother, the student, counsel for the student, and counsel for the school district. (Stipulation by counsel on the record at the outset of the due process hearing.)

Based upon the evidence in the record, the hearing officer makes the following findings of fact:

13. On September 18, 2012, a doctor issued a note concerning the student asking that [the student] be excused from work or school but may return to work or

school on September 18, 2012. Under restrictions, the word "none" is crossed out and the words "not cleared" were placed therein. (P-4) (References to exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district exhibits and "HO-1," etc. for the hearing officer exhibits; references to testimony at the hearing is hereafter designated as "T".)

14. On September 19, 2012, a medical doctor issued a letter stating that the student was being treated for an acute concussion and that [the student] is not to participate in any contact sports until released. It further stated that the student might need some accommodations regarding completion of [the student's] homework and test taking over the short term. (P-5)

15. On September 27, 2012, a doctor issued a note for the student stating that [the student] could return to school on September 27 with no academic restrictions, physical restrictions per orthopedics. (P-6)

16. On December 13, 2012, a doctor produced a certificate for the student excusing [the student] from gym until further notice. (P-9)

17. On December 17, 2012, a medical doctor issued a return to work or school form for the student. Said doctor stated that the student would need a "504/IEP" evaluation and that the student should have no mental activities at school including tests. (P-11)

18. The school district sent the parent a Permission to Evaluate form on December 21, 2012. The school district sent a second request for the Permission to Evaluate form on January 7, 2013. The parent returned the signed permission form on February 4, 2013. On February 19, 2013, the parent completed the background questionnaire for the evaluation. (S-1; T of school psychologist.)

19. On January 8, 2013, an MRI of the student's brain was conducted. The doctor who reviewed the MRI concluded that it was a normal MRI. The radiologist found no clear evidence to suggest prior trauma or anatomic etiology to suggest a cause of clinically reported headaches. There was no hemorrhage, mass or edema. The brain was within normal limits in size and configuration. There was no midline shift. The MRI did reveal that the student had mild non-obstructive paranasal sinus mucosal disease. (P-15)

20. The parent did not provide a copy of the report of the MRI conducted on the student to the school district until after the March 4, 2013 evaluation report had been prepared. (T of school psychologist; S-3; T of mother)

21. On January 3, 7, and 9, 2013, the student was evaluated by a clinical neuropsychologist. The student and [the student's] mother reported to the neuropsychologist that the student had suffered three previous concussions: one in 2009; one in September 2012; and one on December 13, 2012 [details redacted]. The family history section of the report notes that there is a history of aggression, learning

disability, depression, anxiety or adjustment problems, alcohol abuse, substance abuse, antisocial behavior, arrest/incarceration, physical abuse (victim) and physical abuse (perpetrator). The evaluator administered a number of tests, including the Wechsler Intelligence Scale. The evaluator found a full scale IQ for the student of 91 which is in the average range and determined that the student's profile is consistent with normal neuro-cognitive development with no evidence of attention deficit disorder, learning disability, developmental language delay or other cognitive processing disorder. In addition, the test findings did not indicate features of classic post-concussion syndrome, which almost universally reveals deficits in both lower level executive functions and learning of new information. The primary diagnostic impression of the evaluator was that the student had an adjustment reaction with mixed emotional features. The evaluator also found that the student had resolving post-concussional syndrome. The report made no specific ability recommendations in light of the neuropsychological test findings showing no evidence of deficits across measures of verbal, perceptual motor, lower level executive, higher level reasoning and learning/memory. The report made no specific academic skill recommendations in view of the neuropsychological test findings showing no evidence of risk factors for a learning disability in reading, spelling or math. The evaluator did recommend the use of a cognitive-behavioral approach in view of the problems the student was having at home. Child-family counseling was also recommended. (P-16; S-3)

22. On January 23, 2013, the school district's special education director wrote a letter to the student's mother requesting a copy of the report of the neuropsychological evaluation of the student. (P-21)

23. On January 31, 2013, a medical doctor issued a note stating that the student was under his care for neurology. The note stated, "I think ...(the student) ... will need to be evaluated for IEP or 504 plan." (P-22)

24. On February 1, 2013, a medical doctor issued a note stating that the student was under his care for neurology, and that the student would need to be evaluated for an IEP or 504 plan and that the student has medical clearance to be evaluated psychologically within the school setting. (P-23)

25. The school district received the report of the neuropsychological evaluation the student on February 1, 2013. (T of special education director; S-3)

26. On March 14, 2013, a medical doctor issued a note stating that the student had been seen by the doctor and that [the student] is under neurology care. The note stated that the student will need to do no contact sports but can do some school work with accommodation and as tolerated according to IEP or 504 plan. (P-26)

27. The school district's special education director oversees the collection of data and development of a draft evaluation report once a request for evaluation is received. The special education director begins by opening a secure network drive

with a template created based on a form provided by the State Department of Education. The special education director provided the members of the student's Multi-Disciplinary Team with a sentence starter written in third person in the required section so that the team members can locate and fill in the responses to the required information. The members of the student's Multi-Disciplinary Team recorded their own information on the template provided by the special education director with two exceptions: one teacher was having difficulty with her own computer, so she used the special education director's computer to input the data. In addition, the student's physical education teacher was not comfortable using computers, so [the teacher] dictated the information aloud to the special education director, who typed the information on her computer as [the teacher] was standing over her shoulder. The teachers and other staff reviewed the final evaluation report and none of them raised any objections to the report's statement of their input. The input of the teachers and other staff on the student's team was accurately reported in the evaluation report. (T of special education director; S-7A through S-7N; T of counsellor; HO-3)

28. The school district's school psychologist, who was the primary evaluator of the student in this case, has a master's degree in school psychology and she has 24 years of experience as a school psychologist. The school psychologist was well trained and knowledgeable about the assessments used, and she was well qualified to administer the assessments she gave to the student. (T of school psychologist; S-3)

29. The evaluation report prepared by the school district on March 4, 2013 begins with a detailed history of the student's recent concussions and doctors' notes prohibiting academic activity. The evaluation report analyzes in detail the neuropsychological assessment of the student conducted on January 3 and 7, 2013. The detailed discussion of the neuropsychological assessment covers two and half pages of the 48-page report. Next, the evaluation report catalogues the observations and input contributed by the student's teachers, [the student's] counselor, the school nurse and the school psychologist. With the aforesaid two exceptions, their input was provided directly into the evaluation form by the teachers and other staff and in all cases they reviewed their input before the report was finalized. Their input is accurately recorded in the evaluation report. The evaluation report develops a detailed analysis of the student's grades and test scores. In addition, the evaluation report states that two formal assessments were conducted by the school psychologist as a part of the evaluation: The Woodcock-Johnson Cognitive and Achievement Tests, Third Edition and the Behavior Assessment System for Children, Second Edition (BASC-2). The student's achievement levels on the Woodcock-Johnson tests were all in the average range; this result is consistent with the testing done by the neuropsychologist. The BASC assessment provides information about social and emotional issues as well as adaptive behavior. The student's ratings on the BASC were all in the average range with the exception of the ratings of one teacher. The school

psychologist inquired of that teacher concerning this matter and the teacher said that the student was not paying attention because [the student] did not have to do anything because of the medical restriction on [the student's] ability to do school work. The formal assessment measures employed by the school district in evaluating the student were reliable and valid and were applied according to their directions. The comments and input provided by the parent on her background questionnaire are discussed and considered. The school psychologist also conducted a formal interview with the student as a part of the evaluation process. During the student interview, the student told the school psychologist that the previous 12 months had been the worst period in [the student's] life. The student brought up alcohol related issues, both with [family members or family friends]. The student also told the evaluator that [the student] injured [the student's] thumb [redacted]. The evaluation process included two formal classroom observations by the school psychologist and two formal classroom observations by the school counselor. The evaluation report concludes that the student has a disability given his two concussions. Despite the disability, however, the evaluation report accurately concludes that the student is not in need of specially designed instruction and that the disability does not substantially limit the basic life function of learning. (T of school psychologist; S-3)

30. During the process of the evaluation of the student, the school psychologist asked a question of the student's world cultures teachers because his

previous response had been ambiguous. At the time of this discussion, the world cultures teacher had to leave to attend an athletic event, so he and the school psychologist agreed that she would write down what he had said to clarify his response and she would provide it to him to sign indicating that she had correctly stated his input. The school psychologist wrote down the information and provided it to the world cultures teacher, who signed it indicating that he agreed with the statement. The school psychologist then shredded the previous statement. The school psychologist did not alter the input provided by the world cultures teacher or change the meaning of said input. (T of school psychologist)

31. The school district made attempts to include the student in the Brain STEPS program, a brain injury school reentry program. In preparing the evaluation report, the school psychologist talked to the staff at the intermediate unit who operate the Brain STEPS program locally. Said staff informed the school psychologist that the student's mother refused to share medical records with them preventing their involvement. In addition, the order of the student's doctor that [the student] should not be able to participate in academic activity prevented the Brain STEPS team from helping [the student]. After the evaluation report was completed, the student was able to participate in the Brain STEPS program. (T of school psychologist; S-3; P-33; P-25)

32. The student's academic performance did not vary before and after [the student's] two concussions during the relevant timeframe. Consistently throughout the entire period, the student put forth effort and did well in courses that [the student] enjoyed and [the student] did not put forth effort and did not do well in courses that [the student] did not enjoy. (T of counselor; T of school psychologist; S-3; HO-1, HO-2, HO-3)

33. On May 23, 2013, the assistant principal of the student's school sent the student's mother a letter noting that [the student] had been suspended for two days, as well as a partial day, for possession of tobacco on school property. (P-32)

34. On June 7, 2013 the student's mother hand delivered to the school district a letter dated May 28, 2013, requesting an independent educational evaluation. In said letter, the student's mother states that the evaluation report by the school district concluded that the student does not have a disability and is not eligible for special education or a Section 504 plan. In said letter, the student's mother claims that the school district did not provide access for the student to the Brain STEPS program. (P-33)

35. The school district permitted the student to occasionally rest in a dark and quiet place during the school day in the nurse's office beginning in January 2013. This was an accommodation of the student's concussions. (P-19; T of nurse)

36. The evaluation of the student conducted by the school district on March 4, 2013 included a variety of assessment tools and strategies, including formal assessments (the Woodcock-Johnson Cognitive and Achievement Tests and the BASC-2); a student interview; review of existing data, including the neuropsychological evaluation report; review of the parent's questionnaire; questionnaires to teachers and four classroom observations of the student. The evaluation did not use any single measure to reach its conclusions. The instruments used to conduct the evaluation were technically sound and the formal assessments were reliable and valid. The assessment tools used in the evaluation were for the purpose for which they were designed. The assessments were conducted by trained and knowledgeable personnel. The student was evaluated in all areas of suspected disability. The evaluation was comprehensive and individualized to determine whether the student was eligible for special education or a service plan. The evaluation of the student included a review of existing data, including grades and academic performance, both before and after the various concussions during the relevant timeframe, and the report of the neuropsychological evaluation that had been previously conducted. The evaluation process included the use of current assessments, as well as previous assessments, and the results of the various assessments were consistent. The evaluation report included observations by teachers, as well as formal classroom observations of the student on four occasions,

two by the school psychologist and two by the school counselor. The evaluation of the student conducted by the school district, as reflected by the evaluation report prepared on March 4, 2013, was appropriate. (Record evidence as a whole).

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as legal research by the hearing officer, the hearing officer makes the following conclusions of law:

1. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b); PP by Michael P & Rita P v. Westchester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, a school district must either pay for the evaluation or else request a due process hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2). If the final decision after a school district files a request for due process is that the school district's evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense. 34 C.F.R. §

300.300.502(b)(3); Warren G. by Tom G. v. Cumberland County School District, 190 F.3d 80, 31 IDELR 27 (3d Cir. 1999).

2. In conducting an evaluation, a school district 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 on an initial evaluation. 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 related service providers, 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. IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code §§ 14.123.
3. An IDEA hearing officer enjoys a presumption of honesty, integrity and freedom from bias that may be overcome only by proving a substantial countervailing reason to conclude that the hearing officer was actually biased with respect to the party. See, L.C. & K.C. on behalf of N.C. v. Utah State

Board of Educ., et al 43 IDELR 29 (10th Cir. 3/21/2005). In order to prevail on a motion for recusal of an IDEA hearing officer, a party must rebut the presumption of honesty, integrity and freedom from bias by a showing of conflict of interest or some other specific reason indicating actual bias. Dell ex rel Dell v. Township High Sch Dist 113 32 F.3d 1053, 21 IDELR 563 (7th Cir. 8/9/1994); Roland M v. Concord Sch Comm 910 F.2d 983, 16 IDELR 1129 (1st Cir. 8/3/1990); MN v Rolla Public Sch Dist # 31 59 IDELR 44 (WD Missouri 6/6/2012); GM by Marchese v Drycreek Joint Elementary Sch Dist 59 IDELR 223 (ED Calif 9/7/2012); Nickerson-Reti v Lexington Public Schs 59 IDELR 282 (D Mass 9/27/2012); ES & MS ex rel BS v. Katonah-Lewisboro Sch Dist 742 F.Supp.2d, 55 IDELR 130 (SD NY 9/30/2010) WT & KT ex rel JT v. Bd of Educ Sch Dist of NY City 716 F.Supp.2d 270, 54 IDELR 192 (SD NY 4/15/2010); LF by Ruffin v. Houston Indep Sch Dist 53 IDELR 116 (S.D. Tex 9/21/2009); HH by Hough v. Indiana Bd of Special Educ Appeals 47 IDELR 250 (N.D. Ind. 4/12/2007); McComish v. Underwood Public Schs 49 IDELR 215 (D. ND 3/6/2008); Thomas ex rel A.J. v. District of Columbia 44 IDELR 246 (D.D.C. 7/29/2005). In the instant case, there has been no allegation or showing of actual bias.

4. The school district's evaluation of the student on March 4, 2013 was appropriate. The parent is not entitled to an independent educational evaluation at public expense.

DISCUSSION

Issue No. 1: Was the March 4, 2013 evaluation of the student by the school district legally appropriate and, if not, should the parent's request for an independent educational evaluation at public expense be approved?

In this case, the parent requested an independent educational evaluation. In response, the school district filed this due process complaint alleging that its evaluation of the student is appropriate. The parent contends that the school district reevaluation is not appropriate and requests an order requiring the school district to pay for an independent educational evaluation.

If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b); PP by Michael P & Rita P v. Westchester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, the school district must either pay for the

evaluation or else request a due process hearing to prove that its evaluation was appropriate. 34 C.F.R. § 300.502(b)(2). If the final decision after a school district files a request for due process is that the school district's evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense. 34 C.F.R. § 300.502(b)(3); Warren G. by Tom G. v. Cumberland County School District, 190 F.3d 80, 31 IDELR 27 (3d Cir. 1999).

In the instant case, the school district has met its burden of proving that its evaluation of the student was appropriate. The school district submitted the credible and persuasive testimony of its school psychologist and special education director to the effect that the school district conducted a comprehensive, individualized and appropriate evaluation of the student. The testimony of the school district witnesses is corroborated by the documentary evidence.

The school district's evaluation of the student began when the school district's special education director opened a secure network drive with a template for evaluations created by the State Department of Education. The special education director then typed for each member of a student's Multi-Disciplinary Team a sentence starter written in third person in the required sections. Team members then were notified and provided their own input into the document. For two staff members who were either uncomfortable inputting the information on a computer or

who were having difficulties with their own computer, the special education director offered her computer or else typed the information that they dictated to her. The school district's school psychologist then reviewed the data provided, as well as the parent input questionnaire and the neuropsychological evaluation report submitted by the parent. The school psychologist also interviewed the student and gave the student formal assessments, including the Woodcock-Johnson Cognitive and Achievement Tests, as well as the Behavior Assessment System for Children, Second Edition (BASC-2). The formal assessments utilized by the school psychologist were reliable and valid and provided in accordance with their instructions. The school psychologist was well qualified to administer the assessments. Among the informal assessment methods used in the evaluation of the student were an interview with the student, two formal classroom observations by the school psychologist, two formal classroom observations by the school district's counselor and a detailed analysis by the school psychologist of the student's academic performance before and after the two concussions. The student was assessed in all areas of suspected disability. The evaluation of the student was comprehensive and individualized. The evaluation complies with all legal requirements. IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code §§ 14.123.

The 48-page evaluation report compiled by the school district accurately concludes that the student has a disability but that the disability does not require that

[the student] receive specially designed instruction and that the disability does not substantially limit the basic life function of learning. The conclusion of the school district's evaluation is that the student is able to and does in fact do well in classes that [the student] enjoys and that the student does not put forth effort or do well in the classes that [the student] does not enjoy and that [the student's] failure to perform well is not related to [the student's] disability. The conclusions of the evaluation report are consistent with the record evidence.

To the extent that the testimony of the parent conflicts with the testimony of the school district personnel called as witnesses, the testimony of the parent is less credible and persuasive than the testimony of school district staff called by both parties. This conclusion is based upon the demeanor of the witnesses, as well as the following factors: There were some serious inconsistencies in the testimony of the student's mother as well as the documents she prepared. She testified on direct that the student had suffered "a lot" of concussions throughout the years. The report of the neuropsychologist, however, reflects that when giving the student's medical history, she informed the neuropsychologist of only three concussions that the student had suffered, including the two concussions during 2012.

In addition, the parent testified that she was shocked to learn at the March 19, 2013 meeting concerning the evaluation report that the school district had concluded

its evaluation report by finding that the student was not eligible for special education or a service plan. On cross-examination, however, she changed this testimony admitting that she had received the evaluation report by mail prior to the meeting and that [the student] had used the mailed report to prepare certain specific responses for the meeting.

In addition, the student's mother's written request for an independent educational evaluation states that the evaluation report found the student to not have a disability. The school district evaluation report clearly finds that the student does in fact have a disability, but it concludes that he does not need special education or a 504 plan because of the disability.

It is concluded based upon the record evidence that the March 4, 2013 evaluation of the student by the school district was comprehensive and individualized, and that it was appropriate and complied with all legal requirements.

The parents' post hearing brief raises certain additional arguments that need to be addressed. Other arguments that appeared to be being raised by questions posed by counsel at the due process hearing do not appear in the parents' post hearing brief, and therefore, are abandoned and waived.

One argument raised in the parent's brief is that the school district's school psychologist altered input from a particular teacher. This is part of a larger argument stated by the parent in her testimony that the input from teachers and related service providers reflected in the evaluation report appears to be dishonest or not accurately recorded. It was the credible and persuasive testimony of the school psychologist, however, that she wanted some clarification about the input submitted by the student's world cultures teacher. So, she went back to him and asked some questions but because he was leaving for an athletic event at that time, he asked the school psychologist to write down what he had said and send it back to him. The school psychologist then reduced the teacher's statement to writing and sent it back to him and asked him to sign it if he agreed with it, and he did so. The parent provided no evidence to support the claim that input had been altered other than the testimony of the mother that she felt that it had been. The evidence in the record does not support the parent's position that the input of teachers or other staff was altered or dishonestly reported.

The next argument in the parents' brief involves a contention that the special education director committed wrongdoing by providing starter sentences to teachers and by personally typing some of their input. It was the credible and persuasive testimony of the school district's special education director, however, that she provided the starter sentences to obtain the appropriate input from the teachers.

Concerning the use of her computer for certain input, it was the credible and persuasive testimony of the special education director that one of the teachers was having issues with her own computer, so she used the computer in the office of the special education director. In addition, the special education director testified credibly and persuasively that the physical education teacher was not comfortable using a computer, so he came to the special education director's office and dictated his answers to her while she typed the information with him looking over her shoulder. The teachers and other staff reviewed the final evaluation report and none raised any objections to the report's statement of their input. There is no argument or legal authority contained in the parents' brief to support the contention that such actions included any dishonesty or any improper intervention by the special education director into the process of the two staff members' provision of their input. The parent's argument in this regard is rejected.

An additional argument made by the parents in their post hearing brief is that the school district did not fully consider information from the Brain STEPS, a brain injury school reentry program, in the evaluation process. The record evidence indicates, however, that the school district attempted to get the Brain STEPS involved with the student. The Brain STEPS team informed the school district that the student's mother had refused to share medical records, which prevented their involvement. Moreover, the parents' written request for an independent educational

evaluation reveals that the student's participation in the Brain STEPS program began only after the conclusion of the school district's evaluation report. There is no basis in the evidentiary record to support the parents' argument that the school district failed to consider information from the Brain STEPS program in the evaluation process.

The parents argue in their post hearing brief that the questionnaires sent to teachers by the school psychologist were not standardized and therefore were inappropriate. It was the un-rebutted testimony of the school psychologist, however, that such informal assessments are perfectly acceptable. Other forms of acceptable informal assessments include interviews of the student, parent questionnaires and observations of the student. It was apparent that the school district's school psychologist was making an effort to determine whether the student's academic performance suffered after either of the two concussions during the relevant timeframe. The parent provides no legal authority for the argument that the use of informal assessments in an evaluation renders the evaluation inappropriate. It is concluded that the use of such informal assessments was proper and does not render the evaluation of the student by the school district to be inappropriate.

In addition, the parent in her post hearing brief argues that the school district provided the student with certain accommodations and modifications related to rest

in January and March of 2013. It is somewhat difficult to understand the legal argument here, but apparently the parents' position is that the school district should not help struggling students unless they are eligible for special education or Section 504. The parent provides no legal authority to support this proposition and the hearing officer's independent legal research has revealed no such authority. The argument appears to have no basis in law, and therefore is rejected.

The parents' post hearing brief also raises certain arguments to the effect that the student should have been found to be eligible under IDEA and Section 504. Eligibility is not an issue in this case which pertains to a request for an independent educational evaluation at public expense and the related question of whether the school district's evaluation was appropriate. Eligibility issues are beyond the scope of the complaint in the instant case, and therefore are not considered herein. IDEA § 615(f)(3)(B); 34 C.F.R. §300.508(d)(3). Even assuming *arguendo* that eligibility issues were properly presented, however, the record evidence does not support the parent's position.

It is concluded that the school district's evaluation of the student was appropriate and complied with all legal requirements. The parent is not entitled to an independent educational evaluation at public expense. The parent may still obtain an independent educational evaluation, although the school district is not required to pay

for it. 34 C.F.R. § 300.502(b)(3). Any evaluation submitted to the school district by the parent must, nonetheless, be duly considered. 34 C.F.R. § 300.502(c).

ORDER

Based upon the foregoing, it is HEREBY ORDERED that the school district is not required to pay for the independent educational evaluation requested by the parent.

ENTERED: September 10, 2013

James Gerl

James Gerl, Certified Hearing Official
Hearing Officer