

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: D.C.

Date of Birth: [redacted]

Dates of Hearing:

CLOSED HEARING

ODR File No. 14350/1314AS

Parties to the Hearing:

Representative:

Parents

Pro Se

Reading School District
800 Washington Street
Reading, PA 19601-3616

Kathleen M. Metcalfe, Esquire
Sweet, Stevens, Katz & Williams LLC
331 E. Butler Avenue
New Britain, PA 18901

Date Record Closed:

November 8, 2013

Date of Decision:

November 18, 2013

Hearing Officer:

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

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a late-teenaged student in the Reading School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² by reason of Intellectual Disability and Speech/Language Impairment. Following a parental request for an Independent Educational Evaluation at public expense, the District filed a due process complaint on October 4, 2013, seeking an order denying the Parent's request.³

The case proceeded to a due process hearing convening over three sessions, at which the parties presented evidence in support of their respective positions. The District sought to establish that its Reevaluation Report was appropriate under the applicable law, while the Parents challenged that position.

For the reasons set forth below, and following careful review of the Reevaluation Report at issue, as well as consideration of the testimony and exhibits, I find in favor of the District.

ISSUES

1. Whether the District's Reevaluation Report of September 9, 2013, was appropriate; and
2. If it was not appropriate, are the Parents and Student entitled to an Independent Educational Evaluation at public expense?

¹ In the interest of confidentiality and privacy, Student's name and gender as well as any other potentially identifying information are not included in the body of this decision.

² 20 U.S.C. §§ 1400 *et seq.*

³ Both Parents participated in the hearing, although Student's mother played a more active role both in the hearing and in meetings with the District during the relevant time period. When the word Parent is used in the singular in this decision, it refers to Student's mother.

PRELIMINARY CONSIDERATIONS

Before setting forth the factual findings, it is necessary to address concerns raised by the Parents with respect to the accuracy of the hearing transcripts, since that record is essential to the majority of the factual findings. For the parties' reference, all of the correspondence related to this concern was assembled into a single document marked as Hearing Officer Exhibit (HO)-2, which was provided to the parties and is hereby made a part of this official record.

Following the first hearing session, the Parent expressed concerns that the transcripts did not accurately reflect the following: (a) proper identification of the role of an observer listed on the first page of the first hearing session transcript; (b) a portion, including a few specific words, of her opening statement, including the Student's date of birth, which did not match her recollection or the writing which she used to make her opening statement; and (3) a portion, including a few specific words, of her closing statement which did not match her recollection and the writing which she used to make her closing statement. (*See* HO-2)

Although it does appear that the role of one individual who observed the first hearing session was misidentified on the first page of the transcript, the record does otherwise clarify what her position was (Notes of Testimony (N.T.) 9-10). This hearing officer has reviewed the transcript and carefully considered each of the Parent's concerns, and finds that these minor instances do not substantively affect the content of the transcribed record. Both parties made their positions on the issue quite clear from the very beginning of, and throughout, this hearing, and their opening and closing statements merely summarized those positions. Moreover, as was explained on the record (N.T. 18, 508), opening and closing statements are not evidence, so any discrepancy over a fact such as the Student's date of birth was determined by the record evidence, not by the opening or closing statements. Finally, because the thrust of Parent's

concerns involved the accuracy of her opening and closing statement, this hearing officer did accept, over objection of the District, written submissions of the party's closing statements after the final hearing session. (HO-3) As was clarified to the parties, however, consideration of those written submissions did not extend to continued arguments over the admission of exhibits or factual matters not otherwise contained in the record. (HO-3 p. 52)⁴

FINDINGS OF FACT

1. Student is a late-teenaged student who is a resident of the District. Student is eligible for special education under the IDEA with the disability categories of Intellectual Disability and Speech/Language Impairment. (N.T. 24-25)
2. Student currently attends an Approved Private School (APS) where Student was placed by the District in the summer of 2010. (N.T. 25; Parent Exhibit (P)-11 p. 3; School District Exhibit (S)-7 p. 3⁵)

Educational Background⁶

3. Student entered the District in first grade having received early intervention services in another state. Student was evaluated by the District at that time (spring 2002). (P-11 p. 2; S-7 p. 2)
4. The spring 2002 evaluation including cognitive assessment and Student scores ranged from low average to deficient. Student was determined to be eligible for special education on the basis of Other Health Impairment and Speech/Language Impairment. (P-11 p. 2; S-7 p. 2)
5. In a subsequent reevaluation in 2005, Student was exhibiting difficulty with emotional- and self-regulation. Student's Full Scale IQ was assessed to be 67 using the Stanford-Binet Intelligence Scales – Fifth Edition (mildly impaired or delayed) with significant

⁴ The Parent also expressed a concern with the delivery of the second hearing session transcript to her. Although the parties were invited to summarize the evidence in their closing statements, this did not require prior review of the transcripts. This hearing officer has reviewed and considered the entire transcript to issue this decision.

⁵ Several exhibits appear in both parties' exhibit books and, thus, are duplicative. Despite the preference for joint exhibits (*see, e.g.*, the Generally Applicable Prehearing Directions, available on the Office for Dispute Resolution (ODR) website at <http://odr-pa.org/due-process/hearing-procedures>), in an abundance of caution this hearing officer accepted both parties' versions of the same documents throughout the hearing. Any document which included the name of another student (*e.g.*, S-3 p. 8) was redacted appropriately.

⁶ The majority of the information in this section is derived from the parties' respective exhibits and is provided here for background and context. The findings in this section are essentially undisputed as well as largely corroborated by the record as a whole. This background information is also necessary to understand some of the Parents' concerns with the 2013 reevaluation at issue.

weaknesses noted in Student's working memory abilities. Scores on the Childhood Autism Rating Scales were in the moderate range, and Student was given the classification of Autism following that reevaluation. (P-11 p. 2; S-7 p. 2)

6. Student was again reevaluated in 2007. Cognitive testing reflected a Full Scale IQ score of 52 (Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV)), in the extremely low range, with a relative strength on the Processing Speed Index. Academic achievement was assessed by the Wechsler Individual Achievement Test – Second Edition (WIAT-II) with results severely below grade level but commensurate with Student's intellectual functioning. Overall adaptive behavior was moderately delayed, and Student was determined to be eligible for special education on the bases of Mental Retardation,⁷ Autism, and Speech/Language Impairment. (P-11 pp. 2-3; S-7 pp. 2-3)
7. Prior to placement at the APS, the District sought Parent's consent to a reevaluation with additional information for determining placement. The Parent requested a "full psychological evaluation". (P-7)
8. The District conducted a reevaluation and issued a Reevaluation Report (RR) dated January 8, 2010. This RR noted Student's scores on the most recent Pennsylvania System of School Assessment (PSSA), which were below basic in reading and mathematics. The RR further included input from Student's teachers and speech/language therapist as well as the then-current Individualized Education Program (IEP). Classroom observations were also conducted. (P-9)
9. The school psychologist administered the Woodcock-Johnson Tests of Cognitive Abilities, Third Edition (WJ-III-COG), and the Woodcock-Johnson Tests of Academic Achievement, Third Edition (WJ-III-ACH) for the 2010 RR. Student's General Intellectual Ability score on the WJ-III-COG was determined to be 55, described as in the very low range of standard scores, although somewhat variable performance was noted. Student's scores on the WJ-III-ACH were similarly described as within the very low range, with achievement significantly lower than expected in the area of brief mathematics. (P-9 pp. 8-15)
10. Occupational Therapy assessments for the 2010 RR included the Functional Assessments for School Therapists, the Wide Range Assessment of Visual-Motor Abilities, handwriting evaluation, and a classroom observation. The results of these assessments did not suggest a need for Occupational Therapy intervention. (P-9 pp. 19-21)
11. Speech/Language assessments for the 2010 RR included the Comprehensive Assessment of Spoken Language (CASL) and the Arizona Articulation Proficiency Scale, Third Edition. Articulation assessment did not reveal any skill deficits. The CASL, however, reflected overall standard scores in the below average range and needs for skill development in the areas of social language and other expressive verbal language. (P-9 pp. 21-26)

⁷ References to mental retardation in the record, rather than the term intellectual disability, precede Rosa's Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010); *see* 20 U.S.C. § 1401(3)(A)(i).

12. With respect to adaptive behavior and social-emotional and behavioral functioning, those familiar with Student including the Parent and aide completed the Scales of Independent Behavior – Revised, the Gilliam Autism Rating Scale – Second Edition, and the Devereux Scales of Mental Disorders for the 2010 RR. Those scales and other input reflected limitations in many areas of adaptive behavior and concerns with some behaviors at school, but this RR did not conclude that Student was eligible under the category of Autism and rather retained the classification of Intellectual Disability. (P-9 pp. 15-19)
13. The 2010 RR concluded that Student was eligible for special education on the basis of Mental Retardation and Speech/Language Impairment. This RR included Student's strengths and needs, as well as recommendations for Student's educational program. (P-9 p. 26-32)

2011-12 and 2012-13 School Years

14. Student had an IEP developed in December 2011 for implementation at the APS. (P-1)
15. On or about January 4, 2012, the APS requested permission to reevaluate Student. The proposed reevaluation consisted of "Observation, review of records, teacher/parent input and academic testing." (N.T. 234-235; S-2 p. 1) The Parent gave consent to the reevaluation on January 10, 2012. (S-2)
16. The APS issued a new RR dated February 12, 2012. This RR included a summary of Student's transition to the APS, input from the Parent, and a summary of the WJ-III-COG and WJ-III-ACH from the 2010 reevaluation. Other reported academic information included an administration of the Burns-Roe Informal Reading Inventory, Seventh Edition (Burns-Roe IRI) in October 2011, Student's progress on IEP goals, and assessment of mathematics skills. (S-3 pp. 1-6)
17. The 2012 RR provided information from Student's teachers and related service providers as well as a classroom observation by the APS school psychologist. Teachers also provided recommendations for Student's educational program and the Student's strengths and needs were noted. The 2012 RR concluded that no additional data was needed, and that Student was eligible for special education on the basis of an Intellectual Disability. (N.T. 305-308, 456-457; S-3 pp. 6-10)
18. A new IEP was developed for Student in early March 2012 following the 2012 RR. This IEP provided updated information about Student's Present Levels of Academic Achievement and Functional Performance section as compared to the December 2011 IEP. (P-1, P-2)
19. A new IEP was developed for Student on February 27, 2013. (P-3, P-4)⁸

⁸ P-3 and P-4 are virtually identical versions of this IEP, with two apparent exceptions. The first exception is that the hearing officer's copy of P-3 contained 40 of the 47 numbered pages, compared to the 47 of 47 numbered pages contained in P-4; pages 41 through 47 are linkages to IU resources. The second exception is that P-4 included

20. By letters dated February 27, 2013 and March 2, 2013, the Parent requested an Independent Educational Evaluation (IEE) to include assessments of Auditory Processing, Executive Functioning, Occupational Therapy, Speech and Language, and Reading. The March 2, 2013 document was given to the District's Director of Special Education, and the District noted receipt of this request on April 4, 2013. (N.T. 235-237; S-4)
21. The Parent in early March 2013 also spoke with counsel, who communicated with District counsel about the IEE request. The District took no action on the IEE request because the Parent, through counsel, agreed to a new reevaluation of Student rather than an IEE. (N.T. 237, 473-474; P-15; S-5)
22. On or about March 25, 2013, the District sent a Permission to Reevaluate – Consent Form (PTRC) to the Parent to include “Academic Achievement, Executive Functioning Scales, Occupational Therapy, Behavior Rating Scales and a Comprehensive Speech and Language Evaluation to include Language Processing Testing.” (S-6 p. 1) The Parent signed the form on or about April 17, 2013, giving consent and adding the words “Also include Intell[i]gence, social & emotional assessment & assistive technology.” (S-6 p. 2)
23. The District school psychologist intended to conduct the assessments that were originally included on the PTRC form, and considered the additional language written by the Parent to be open for discussion. (N.T. 30-31)
24. Student's scores on the Pennsylvania Alternate System of Assessment (PASA) in the spring of 2013 were proficient in Reading and Mathematics. Although Student's teacher recalled administering the Science portion of the PASA, that score was not provided to the Parent by the Pennsylvania Bureau of Special Education. (N.T. 388, 394; P-12)
25. On June 3, 2013, the District issued a Notice of Recommended Educational Placement (NOREP) for Student to remain in the then-current placement at the APS. The Parent did not want the Student's placement changed, and the District agreed to maintain the placement pending completion of the reevaluation and obtained age-range restriction waivers from the parents of the other children in the class. The Parent approved this NOREP on that same date. (N.T. 280-281, 303-305, 310-315; P-20)
26. Student achieved letter grades ranging from C+ to B+ and passing grades in all classes for the 2012-13 school year. (P-26)
27. In the summer of 2013, a local hospital conducted a Speech/Language evaluation of Student. This facility recommended “direct speech-language therapy services within a one-on-one setting” (P-8 p. 3) at least one time per week, although it did not specify whether this recommendation was for a clinical or educational setting. (P-8)

additional input from the Parent from a February 26, 2013 IEP meeting on page 11, wherein she requested an Assistive Technology evaluation. (P-3, P-4)

2013-14 School Year

28. The District issued its RR dated September 9, 2013 to the Parent on or about September 10, 2013. (N.T. 33)
29. The 2013 RR contained current classroom-based assessments. Those included a new administration of the Burns-Roe IRI in January 2013 and an administration of the Group Mathematics Assessment and Diagnostic Evaluation in May 2013, as well as other classroom-based information from Student's teachers and Speech/Language Therapist. The Burns-Roe IRI, a criterion-referenced instrument, was used to determine Student's instructional level in reading (modified second-grade level) taking into consideration Student's reading fluency and comprehension.⁹ (N.T. 243-250, 264; P-11 pp. 5-8, P-31; S-7 pp. 5-8)
30. The 2013 RR included a summary of Student's educational records after the District school psychologist reviewed them. This 2013 RR contains an error in identifying which prior RR contained only one eligibility category, Intellectual Disability; the Speech/Language Impairment category was omitted in the 2012 RR, not the 2010 RR. (N.T. 36-37, 73-74; P-9 p. 26, P-11 p. 3, P-24 p. 10; S-3 p. 10, S-7 p. 3)
31. The 2013 RR also included an erroneous statement that the 2012 RR contained "additional data." The District school psychologist conceded that the "additional data" reference relates to the 2010 RR, not to the 2012 RR; this is also evident since summarized just below this statement are the results of the WJ-III-COG and WJ-III-ACH from 2010. (N.T. 36-38; P-11 p. 3; S-7 p. 3)
32. The Parent provided general input into the 2013 RR through a conversation with the school psychologist. (N.T. 35-36)
33. The District school psychologist administered the cognitive and achievement assessments to Student over two different days so that the process would not be too difficult for Student. The first day included cognitive assessment and some achievement testing, and the second day concluded the achievement testing. (N.T. 34, 39-41, 46, 48, 70-71)
34. The District school psychologist chose to administer the Kaufman Assessment Battery for Children – Second Edition (KABC-II) for two reasons: Student's age, and the recommendation for its use with children who have verbal language difficulties and/or have bilingual backgrounds. She understands that the KABC-II places less emphasis on verbal abilities. (N.T. 40-41, 71-72, 104-105)

⁹ Student was also given the Burns-Roe IRI in September 2013, less than a year after the January 2013 administration. (P-5 p. 2) Although the Student's October 2013 IEP states that this IRI "is administered on a yearly basis to determine an instructional reading level and to monitor progress" (P-5 p. 2), the District administered the instrument again September 2013 to assess Student's progress. (N.T. 254-255) This hearing officer need not determine whether it was appropriate to administer the Burns-Roe IRI after an eight-month period because a subsequent administration does not affect the results of that assessment as reported in the RR at issue from January 2013.

35. The District school psychologist administered the KABC-II to Student in a standardized manner in accordance with the test-maker's instructions. She is trained and experienced in administering the KABC-II, and administered all of the standard subtests of this instrument. (N.T. 41, 43-44)
36. Student's overall scores on the KABC-II were within the range for a person with an Intellectual Disability, with Student exhibiting a relative strength on subtests within the Planning Index. (N.T. 42, 45-46; P-11 pp. 18-19; S-7 pp. 18-19)
37. The District school psychologist chose to administer the Kaufman Test of Educational Achievement – Second Edition (KTEA-II) for several reasons: Student's age, the fact that this assessment was developed by the same test-maker as the KABC-II and coincides with it, and her belief that the KTEA-II is a good generalized academic achievement instrument. (N.T. 46-47)
38. The District school psychologist administered the KTEA-II to Student in a standardized manner in accordance with the test-maker's instructions. She is trained and experienced in administering the KTEA-II and administered all of the standard subtests of this instrument with the exception of Oral Expression. The reason for omitting the Oral Expression subtest was that a complete Speech/Language evaluation would assess that area. (N.T. 47-48)
39. Student's overall achievement scores were considered to be commensurate with Student's cognitive functioning. (N.T. 49)
40. The District school psychologist utilized the Behavior Assessment System for Children, Second Edition (BASC-2) through rating scales completed by Student's special education teacher and the Parent. The rating scale completed by Student's teacher reflected scores in the clinically significant range for Atypicality and in the at-risk range for Hyperactivity, Anxiety, Depression, Attention Problems, Learning Problems, Withdrawal, Functional Communication, Anger Control, Executive Functioning, Developmental Social Disorders and Resiliency; the Behavioral Symptom Index was in the at-risk range. The rating scale completed by the Parent yielded scores in the at-risk range for Somatization, Atypicality, Withdrawal, Social Skills, Leadership, Functional Communication, and Developmental Social Disorders, and none in the clinically significant range; the Behavioral Symptom Index was in the typical range. (N.T. 51-52; P-11 pp. 20-21; S-7 pp. 20-21)
41. The BASC-2, a standardized instrument, was administered in accordance with the test-maker's instructions. The District school psychologist has extensive experience with administering the BASC-2. (N.T. 49-50)
42. Student's adaptive behavior was assessed using the Adaptive Behavior Assessment System – Second Edition (ABAS-II) rating scales completed by Student's special education teacher and the Parent. Student's teacher's rating scales reflected scores within the extremely low range for the Communication, Community Use, Functional Academics, and Health and Safety skill areas, and in the borderline range for the Social

skill area; the Global Adaptive Composite score was in the borderline range. The Parent's rating scales revealed scores in the extremely low range in the Functional Academics and Home Living skill areas in the borderline range for the borderline range for the Community Use and Leisure skill areas; the Global Adaptive Composite score was in the extremely low range. (N.T. 52-54; P-11 pp. 21-22; S-7 pp. 21-22)

43. The District school psychologist administered the ABAS-II in a standardized manner according to the test-maker's instructions. (N.T. 53-54)
44. The District school psychologist administered the Behavior Rating Inventory of Executive Functioning (BRIEF) through rating scales completed by one of Student's teachers and the Parent. The teacher's rating scales reflected areas of concern with the Global Executive Composite and the Metacognition Index, as well as the following individual scales: Shift, Initiate, Working Memory, Plan/Organize, and Monitor. The Parent's rating scales reflected areas of concern with the Metacognition Index as well as the following individual scales: Initiate, Working Memory, Plan/Organize, and Monitor. (P-11 pp. 23-25; S-7 pp. 23-25)
45. The District school psychologist administered the BRIEF in a standardized manner according to the test-maker's instructions. Although the Parent's rating scale was missing responses to three items, the omission of those few responses was not likely to compromise the validity of this instrument. (N.T. 56-58)
46. The District school psychologist also conducted an observation of Student in a classroom at the APS, lasting approximately an entire school day. (N.T. 55-56, 75-79, 101-102; P-11 p. 25; S-7 p. 25)
47. The District school psychologist did not conduct any auditory processing assessments. She did not discern any difficulties Student was having which would suggest such an assessment, and believed that a speech/language evaluator would be better qualified to assess auditory processing skills. (N.T. 59-62)
48. Student was assessed in the area of Speech/Language for the 2013 RR, which included input from the Parent and the APS teachers and speech/language therapist, as well as specific testing. The following assessments were administered: the Goldman-Fristoe Test of Articulation – 2 (Goldman-Fristoe); the Listening Comprehension Test Adolescent, the Oral and Written Language Scales – Second Edition (OWLS-II); the Social Language Development Test Adolescent; the Expressive One Word Picture Vocabulary Test, Fourth Edition (EOWPV-4); the Receptive One Word Picture Vocabulary Test, Fourth Edition (ROWPV-4), and a Language Processing questionnaire. (N.T. 132-34, 208-210; S-7 pp. 12-14)
49. The Goldman-Fristoe was administered in a standardized manner according to the test-maker's instructions. Although Student did make substitutions for two consonants, Student did not make these same errors consistently. The overall assessment revealed scores within the average range, indicating no need for intervention in the area of articulation. (N.T. 134-36; P-11 pp. 10-11; S-7 pp. 10-11)

50. The Listening Comprehension Test was administered in a standardized manner according to the test-maker's instructions. It assesses strengths and weaknesses in specific listening comprehension skills in academics. Student demonstrated relative strengths in Telling Main Ideas, Provide Details, Reasoning, and Understanding Messages, and relative weaknesses in Vocabulary and Semantics. (N.T. 201-205; P-11 pp. 11-12; S-7 pp. 11-12)
51. The OWLS-II was administered in a standardized manner in accordance with the test-maker's instructions, and the evaluator who conducted this assessment is experienced with this instrument. The OWLS-II scores were commensurate with Student's abilities. (N.T. 136-37; P-11 pp. 11, 14; S-7 pp. 11, 14)
52. The Social Language Development Test Adolescent was administered in a standardized manner according to the test-maker's instructions. It focuses on the social aspects of language both inside and outside the school environment. Student demonstrated a relative strength in Making Inferences and relative weaknesses in Interpreting Social Language, Problem Solving, Social Interaction, and Interpreting Ironic Statements. (N.T. 205-207; P-11 pp. 11-12; S-7 pp. 11-12)
53. The EOWPV-4 and ROWPV-4 were administered in a standardized manner in accordance with the test-maker's instructions, and the evaluator who conducted these assessments is experienced with these instruments. Student's receptive language scores were commensurate with Student's abilities, while Student's scores in expressive language were somewhat better than expected, reflecting a relative strength in expressive language over receptive language. (N.T. 137-140; P-11 p. 12; S-7 p. 12)
54. The Language Processing questionnaire is not a standardized instrument, but was used to gauge Student's ability to process language. The evaluator who administered this questionnaire did not conclude that Student had difficulty processing language; and, based on her information from other sources and testing, did not discern a need to evaluate Student for a Central Auditory Processing Disorder. The other speech/language evaluator concurred, based on her assessment of Student, that Student did not need an evaluation for Central Auditory Processing Disorder. (N.T. 140-143, 210-211, 213-215; P-11 pp. 13-14; S-7 pp. 13-14)
55. The Speech/Language evaluators did not see a need to formally evaluate Student for fluency or for voice (vocal register, voice production). (N.T. 155-156)
56. The Speech/Language evaluators who participated in the 2013 RR concluded that Student remained eligible as a student with a Speech/Language Impairment. Student's needs in this area include using language to self-advocate, using correct wording, asking questions, requesting information, and other functional and social communication skills that will help Student outside of the school environment. (N.T. 153-154; P-11 p. 25; S-7 p. 25)
57. Student was also evaluated for Occupational Therapy services as part of the 2013 reevaluation. Student had previously received Occupational Therapy services which were discontinued several years earlier. The 2013 RR reported results of the Functional

Assessment for School Therapists, the Test of Handwriting Skills – Revised, the Quick Neurological Screening Test, and the Adolescent/Adult Sensory Profile. The Occupational Therapist also spoke with Student to get input. (N.T. 109-116; P-11 pp. 15-18; S-7 pp. 15-18)

58. Each of the Occupational Therapy assessments was administered in accordance with the test-maker's instructions. The District Occupational Therapist has extensive experience with administering each of these assessments. (N.T. 111-116)
59. The results of the Occupational Therapy assessments revealed no concerns in any of the areas assessed, including visual motor integration, legibility of handwriting, neurological functioning, and Student's sensory processing on functional performance in the school environment. (N.T. 111-116, 117; P-11 pp. 15-18; S-7 pp. 15-18)
60. To determine Student's need for Assistive Technology, the District initiated the SETT process, which examines the Student's strengths and needs, the Environment, the Tasks which Assistive Technology can help accomplish, and the appropriate Tools that could be used as Assistive Technology. The SETT process does not involve administration of standardized tests. The first SETT meeting occurred on September 16, 2013 at the APS and involved a consultant from the local Intermediate Unit. (N.T. 144-148, 180-181; S-9).
61. The SETT process included a classroom observation, incorporation of information contained in the RR related to Assistive Technology needs, incorporation of information obtained by the APS during the spring of 2013 compiled using the Wisconsin Assistive Technology Initiative (WATI), and a discussion by the SETT team on how Assistive Technology might benefit Student. The team identified tasks for Assistive Technology support as well as conducting trials of various tools on which data would be collected. The SETT process was ongoing at the time this due process hearing concluded. (N.T. 148-153, 181-182, 190, 289-302; P-17, P-23; S-9)
62. The 2013 RR included a number of strengths and needs for Student's educational program, in addition to recommendations to the IEP team related to, among others, academic skills and needs (including reading/language arts and mathematics), transition skills and needs, attention and focus skills and needs, speech/language/communication skills and needs, social skills and needs, and program modifications/items of specially designed instruction. (P-11 pp. 25-28; S-7 pp. 25-28)
63. By letter dated September 25, 2013, the Parent requested an independent educational evaluation at public expense, expressing her disagreement with the 2013 RR. She set forth in detail a number of concerns with this reevaluation. (P-10; S-8)
64. The District filed its Due Process Complaint on October 4, 2013. (P-6; S-10)
65. A meeting convened to discuss the results of the RR on October 7, 2013 at the APS. Student attended this meeting and provided input to the team. (N.T. 63-67, 120-123)

66. The October 7, 2013 meeting continued on to develop a new IEP for Student. By a NOREP also dated October 7, 2013, the District proposed to continue Student's placement at the APS but in a different program. The Parent did not approve the NOREP and checked the boxes requesting mediation and a due process hearing. (P-5, P-18)
67. Because the Parent did not also file a request for mediation or due process with the Office for Dispute Resolution within ten days of the October 7, 2013 NOREP, Student's placement was changed. (N.T. 491; P-19)
68. The following exhibits were admitted at the due process hearing:

P-1 through P-6, P-8 through P-13, P-15 through P-20, P-23 through P-26, P-28, P-31
S-1 through S-4, S-6 through S-10

This hearing officer reserved ruling on the following exhibits: P-7, P-14, P-21, P-22, P-27, P-29, P-30, S-5. (N.T. 246-248, 499-508)¹⁰

Each of the exhibits to which an objection was raised and ruling was reserved are hereby admitted. The basis for the District's objection to P-27 is that it was not disclosed in accordance with the IDEA requirements. Nevertheless, this hearing officer is reasonably certain based on the District's lack of objection to their exhibits at the first hearing session¹¹ that there was, at best, confusion about the disclosure requirement, and further finds no prejudice to the District. The basis for the District's objection to P-7, P-14, P-21, P-22, P-29, and P-30 is that there was no testimony about them. While this hearing officer gave little if any weight to these exhibits for that very reason, even assuming these documents are what they purport to be, they have limited probative value on the issue presented in this hearing about Student. The basis for the Parent's objection to S-5, an email communication between two attorneys, is that Parents did not retain counsel. Even assuming that fact to be true, the email communication helps to explain the background of this matter as events occurred in the spring of 2013.

HO-1, HO-2, and HO-3 are hereby admitted and made a part of this record.

¹⁰ This hearing officer misspoke at the November 5, 2013 hearing session and indicated that P-27 was admitted. (N.T. 508) I actually reserved ruling on that document (N.T. 504-505) ; it has, however, been admitted by this decision.

¹¹ This hearing officer appreciates efforts of both parties to work cooperatively throughout this hearing, despite their differing positions on the issue.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Broadly stated, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief.¹² Accordingly, the burden of persuasion in this case rests with the District which requested this hearing. Courts in this jurisdiction have generally required that the filing party meet their burden of persuasion by a preponderance of the evidence.¹³ Nevertheless, application of these principles determines which party prevails only in cases where the evidence is evenly balanced or in “equipose.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify.¹⁴ This hearing officer found each of the witnesses to be generally credible and the testimony as a whole on matters important to deciding the issues in this case was essentially consistent. Credibility of particular witnesses is discussed further as necessary.

IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all children who qualify for special education services. 20 U.S.C. §1412. The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §

¹² *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

¹³ *See Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

¹⁴ *See generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009).

300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. The IDEA sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i).

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

In conducting the evaluation, the law imposes certain requirements on local education agencies to ensure that 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). 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).

With respect to reevaluations, a school district must also review and use existing evaluation data, including evaluations and information provided by the parents as well as current assessments and observations, to determine, among other things, present levels of academic achievement and functional performance; and, whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate, as appropriate, in the general curriculum. 34 C.F.R. §§300.305(a).

Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1). In interpreting evaluation data and making these determinations on eligibility and educational needs, the team must:

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

34 CFR 300.306(c). School districts are responsible for conducting the required assessments, and also must provide a copy of the evaluation report and documentation of the eligibility determination to parents at no cost. 34 C.F.R. §§ 300.305(c) and 300.306(a)(2).

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); 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 District filed a request for due process seeking a determination that its reevaluation was appropriate. (Finding of Fact (FF) 64)

The District's 2013 Reevaluation

The record establishes that the District utilized a variety of assessment instruments in gathering information about Student's functional, developmental, and academic abilities and in making the determination of Student's continued eligibility for special education. (FF 29, 33, 34, 37, 40, 42, 44, 48, 57, 60) Each instrument was administered in a standardized fashion and according to the test-maker's instructions, and by District personnel responsible who were trained and knowledgeable. (FF 35, 38, 41, 43, 45, 47, 49, 50, 51, 52, 53, 58) The reevaluation included assessments designed to determine specific areas of educational need rather than simply cognitive ability, and there is no evidence suggesting that the results, either separately or together, were not accurate reflections of Student's aptitude and achievement levels. Finally, this hearing officer finds that the record supports a conclusion that the District assessed Student in all areas of suspected disability, including the ongoing SETT process to determine assistive technology needs.

The Parents raise a number of concerns with the District's evaluation. First, they provided copies of parent rating scales purporting to be the BRIEF and the BASC-2 (P-21 and P-22), but contend that these exhibits do not match their understanding of what types of information those instruments and the ABAS-II assess. However, there is no suggestion on the

record that the District school psychologist failed to administer each of these instruments in accordance with the test-makers' instructions, or that she reviewed and interpreted any of this information improperly. The RR contains the results of each of these assessments in addition to all of the other instruments used. Once again, there is no evidence that the assessments conducted as part of the RR yielded inaccurate results. For all of these reasons, I cannot agree with this contention.

Next, the Parents challenge the District's decision to perform a Language Assessment rather than the Central Auditory Processing assessment which they requested. It is unclear on this record why the Parents sought such an evaluation as part of the 2013 RR process, but there is no requirement in the law for school districts to administer every assessment that a parent requests; rather, the law requires an evaluation of all areas of suspected disability. The District school psychologist and both Speech/Language Therapists testified, quite credibly, that they did not perceive a need to assess Student for an auditory processing disorder (FF 47, 54). There is no evidence to refute this conclusion and, thus, I am unable to conclude that the reevaluation was inappropriate on this basis.

The Parents also challenge the testimony of the Speech/Language Therapists to the extent that they disagreed with the independent speech/language evaluation. The report of this evaluation reveals that the two standardized assessments (the Goldman-Fristoe and OWLS-II) performed in July and August 2013 had been administered by the District just two months earlier. It is significant to note that the results of those assessments are not inconsistent with the results obtained by the District. More importantly, however, this independent evaluation did not include any input from the District or the APS, or indicate any relation to Student's educational

needs. Accordingly, its recommendation for weekly individual speech/language therapy cannot serve to invalidate the District's own reevaluation including its recommendations.

The Parents further contend that the District school psychologist's decision to use the KABC-II rather than another intelligence test such as the WISC-IV is faulty. This hearing officer found her testimony on the reasons she chose the KABC-II (N.T. 40-41, 71-72) to be both logical and reasonable. The mere fact that this instrument is appropriate for children who have language difficulties does not mean that it is inappropriate for children who are verbal. I also found her explanation of the theoretical model she used for interpreting the results (N.T. 44-45) to be understandable and convincing. In a related concern, the Parents challenge the failure of the District to administer all of the subtests from the KTEA-II. This assessment is one of many which has additional subtests available, but not every student needs to take every subtest. A person trained in the administration of this instrument, such as the District school psychologist, is in a much better position to gauge what subtests to administer, and the fact that she chose not to go beyond the standard battery of subtests is not a fatal flaw.¹⁵ For all of these reasons, I cannot agree with the Parents that the reevaluation is inappropriate due to their concerns with the KABC-II and KTEA-II.

With respect to the RR itself, there are a few minor errors (FF 30, 31), which are unfortunate. However, this hearing officer concludes such errors are not so significant that they ultimately render the reevaluation inappropriate under the law. It merits mention that although the 2010 and 2012 RRs were important to the 2013 RR, which did include a review of all educational records, the appropriateness of those documents were not at issue in this hearing. In

¹⁵ To the extent that the Parents challenge the decision not to administer the Oral Expression subtest (FF 38), the record does not establish what information this subtest would have added to the RR and its comprehensive speech/language assessment, and falls far short of demonstrating that this omission renders the reevaluation inappropriate.

a related contention, the Parents also point out that in the discussion of the KABC-II, the District school psychologist did not provide age- or grade-equivalents. Nevertheless, she testified, again quite credibly, that she does not find this type of information to be valuable or necessary. (N.T. 64, 85-88) This hearing officer does not find that omission to be fatal or even problematic, since those types of developmental scores must be interpreted cautiously and carefully and can be misleading.¹⁶

Lastly, the Parents expressed a concern that some of the witnesses who testified did not have with them any notes and/or test protocols which presumably would have helped refresh their recollections about events that occurred in the past. (N.T. 256-263, 451-454) This hearing officer is unaware of any request for any witness to bring any notes or other documents with them to this hearing. Accordingly, the fact that any particular witness did not do so cannot create any negative inference or provide a method to attack anyone's credibility.

This hearing officer makes the following additional observations. The Parents are clearly very dedicated to, and passionate advocates for, Student. They quite understandably want the very best for their child, and appear to be disappointed with certain aspects of Student's educational program. Although a number of the Parents' questions throughout the hearing related to whether appropriate special education services were provided in the past,¹⁷ the precise issue presented is a narrow one. It appears to this hearing officer that the Parents' challenge to the reevaluation lies less with the assessments used, or the process of the evaluation itself, and more with the recommendation for a life skills placement and subsequent decisions made in

¹⁶ Salvia, J., Ysseldyke, J., & Bolt, S., *Assessment in Special and Inclusive Education* (11th ed. 2010) at 40-41; Sattler, J. M., *Assessment of Children: Cognitive Applications* (5th ed. 2008) at 104-106.

¹⁷ See, e.g., N.T. 91-92, 98-99. As clarification, the checkboxes in section 7 appearing on page 9 of the 2013 RR (P-11 p. 9; S-7 p. 9) relate to whether the "**determining factor** for the student's suspected disability" is a lack of appropriate instruction in reading or mathematics, or limited English proficiency (emphasis added). This hearing officer does not construe this section of the report to go beyond answering this specific question on eligibility.

revising Student's IEP, such as specific speech/language services.¹⁸ Mere disagreement with a recommendation in the report, however, does not render it inappropriate under the law.

Furthermore, reevaluation reports are not the sole source of information for IEP team program and placement decisions. As the IEP team in this case is aware, decisions on Student's program and placement are for that group to make, together, based on all available information including the 2013 RR.

The parties will need to continue to work together to plan and program for Student's special education needs now and into the future. It is my sincere hope that the parties are able to successfully move forward toward effective team-based collaboration now that this hearing has concluded.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District's 2013 RR was appropriate. Accordingly, there will be no award for an IEE at public expense.

¹⁸ See, e.g., N.T. 153-154, 184-185, 188-196, 207-210, 217-221, 279.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's 2013 RR was appropriate.
2. The District need take no further action.

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

Cathy A. Skidmore
Cathy A. Skidmore
HEARING OFFICER

Dated: November 18, 2013