

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: M.Q.

Date of Birth: [redacted]

Dates of Hearing: February 12, 2014; February 21, 2014; April 2, 2014

CLOSED HEARING

ODR File No. 14579-1314KE

Parties to the Hearing:

Parents

Pro Se

Parent[s]

School District

Bensalem Township School District

3000 Donallen Drive

Bensalem, PA 19020

Representative

David T. Painter, Esquire

Sweet, Stevens, Katz & Williams LLP

331 East Butler Avenue

New Britain, PA 18901

Date Record Closed:

April 17, 2014

Date of Decision:

April 30, 2014

Hearing Officer:

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

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a teenaged student residing in the Bensalem Township School District (hereafter District). The District filed a due process complaint under the Individuals with Disabilities Education Act (IDEA)² after Student's Parents requested an independent educational evaluation (IEE) at public expense.

The case proceeded to a due process hearing,³ at which the parties presented evidence in support of their respective positions. The District sought to establish that its evaluation of Student was appropriate, while the Parents⁴ challenged that position and requested an award of an IEE of Student at public expense.

For the reasons set forth below, I find in favor of the District.

ISSUES

Whether the District's January 2013 evaluation of Student was appropriate; and, if it was not, are the Student and Parents entitled to an IEE at public expense?

FINDINGS OF FACT

1. Student is teenaged and is a resident of the District. (NT-III pp.34-35)

¹ In the interest of confidentiality and privacy, Student's name and gender are not used in the body of this decision.

² 20 U.S.C. §§ 1401 *et seq.*

³ This matter proceeded at the same time as related hearings for Student's siblings. The parties and hearing officer agreed that the transcript from each proceeding would be incorporated into the record for the siblings. The transcripts will be referenced through the Notes of Testimony (NT) as follows: NT- I for ODR File No. 14540-1314KE; NT-II for ODR File No. 14578-1314KE; and N.T-III for ODR No. 14579-1314KE. The transcripts from each hearing session for all of the children are hereby incorporated into the record as transcripts with these designations, and are not marked as exhibits. (*See* NT- I pp. 57-58, which followed and effectively retracted previous references to transcripts as exhibits (*e.g.*, NT-III pp. 39, 117)) With respect to the parties' exhibits, the District moved for the admission of School District Exhibits (S-) 1 through 11, inclusive, and all are hereby admitted without objection. (NT-I 230) The Parents moved for the admission of Parent Exhibits (P-) A through P-N over the District's objection, and additional time was granted to the Parents to assemble some of their exhibits. (NT-I pp. 230-31; NT-II pp. 658-62) By email messages of April 8, 2014, the Parents advised that P-I, P-J, P-K, P-L, P-M, and P-N were collectively remarked as P-J and P-M; the District responded on April 11, 2014 renewing its objections; all of those April 8 and 11 email messages are marked collectively as Hearing Officer Exhibit (HO-) 6. It should be noted that there was a delay in providing educational records to the Parents, as explained in HO-3. Given that delay which added to the unusual posture of this case, as well as the stated need for contextual and background information (*see, e.g.*, NT-I pp. 51-52, 57-61), and further because this hearing officer had to review all of the Parents' proffered evidence in its entirety after the conclusion of the hearing, P-A through P-M are hereby admitted in their entirety, although some of that documentary evidence was accorded limited weight in this decision due to the specific issue presented in this hearing. To the extent that they have not been admitted previously, HO-1 through 6 are also hereby admitted into the record.

⁴ Student's mother was the active participant at the hearing; however, the plural Parents is used throughout this decision where it appears that one or the other parent was acting on behalf of both.

2. Student was adopted from an Eastern European country in the spring of 2012, arriving in the United States with Student's siblings. (S-2 p. 1)
3. Student's Parents completed a Student Registration Form for Student in May 2012. The Parents provided information to the District about Student's native language, as well as information about Student's previous history in an orphanage in the other country and limited available medical history. (S-12 pp. 1-15)
4. Student began the 2012-13 school year at a beginning level 1.0 of English Language Proficiency, and was provided with English as a Second Language (ESL) instruction beginning shortly after the school year began. Student's ESL instruction included 20 minute pullout sessions 4 or 5 times per week as well as push-in services in the classroom. In addition, accommodations and supports were provided for Student to access content materials and assessments. (NT-III pp. 297-98, 304-06, 310-11, 325-26, 329-31, 381-82, 395-96)
5. By letter of September 24, 2012, the Parents requested a multidisciplinary evaluation to determine Student's eligibility for special education, granting permission to conduct all appropriate tests and assessments. On or about October 1, 2012, following a parental request for an evaluation, the District sent a Permission to Evaluate form to Student's Parents, which was signed that same date but not returned until November 2012. (NT-II pp. 333-34, 429-30; NT-III pp. 45-46, 182-83; S-1)
6. Beginning in October 2012, the Parents were represented by an attorney who communicated with counsel for the District about the Parents' concerns with various aspects of Student's education. (S-10)
7. Student's evaluation was completed with the issuance of an Evaluation Report (ER) dated January 4, 2013. The District's school psychologist who conducted Student's special education evaluation has degrees in the field of psychology, including a doctorate in clinical psychology as well as post-doctoral education and training in the field. She is a licensed psychologist and a Certified School Psychologist, with fifteen years' experience in school psychology. (NT-II p. 45; S-2, S-9)
8. In conducting the evaluation, the District school psychologist sought information from Student's Parents, Student's teachers, and all background information available to the District. She also conducted a classroom observation. (NT-III pp.42-43; S-2)
9. The Parents reported problems with home including Student's history of neglect in the other country; Student's anger, emotions, frustration, and motivations; difficulties with adjusting to the move to the United States; limited ability to communicate and understand; and difficulty forming attachments. (S-2 pp. 1-2)
10. Information obtained from Student's Parents for the evaluation included a diagnosis of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct from a facility where Student received mental health counseling. The District school

- psychologist was not able to speak with anyone from that facility, however. (NT-III pp. 43-45, 59-60; S-14)
11. Input from Student's teachers reflected limited English language proficiency; use of some words as well as pantomime and gestures when necessary; engaging peers in conversations; imitation of peer modeling; and participation in classroom activities, particularly in smaller groups. (S-2 pp. 4-5)
 12. The District school psychologist observed Student in an English as a Second Language class. Student worked one-on-one with a teacher's assistant, requiring prompting to complete tasks and exhibiting difficulty understanding directions. Student also participated in a group activity involving letter-naming, engaging in some interaction with peers and the teacher. (S-2 p. 3)
 13. The District school psychologist selected assessments for Student which gave appropriate consideration to language and culture, minimizing those factors to prevent cultural bias. (NT-III pp. 46-50, 120-21, 130-32)
 14. The District school psychologist administered all assessments in accordance with the publisher's instructions. Each of the instruments are technically sound. (NT-III pp. 49-50)
 15. Student was cooperative with the District school psychologist in completing assessments. (S-2 p. 5)
 16. The District school psychologist arranged to include a District social worker who was fluent in Student's native language to assist with the evaluation. The school psychologist's interview of Student was conducted through the interpreter. (NT-I pp. 65-66; NT-II pp. 55, 89-91, 122-23, 136-37, 160-61, 185-86; NT-III pp. 118, 413, 418-19)
 17. The District social worker had grown up in another Eastern European country where the people spoke Student's native language, and is fluent in that language. She also studied English before immigrating to the United States. This social worker has experience translating in various situations in the District. (NT-II pp. 162-63, 218-19, 221-27; NT-III pp. 426; S-8)
 18. The District school psychologist utilized the Cattell-Horn-Carroll Culture-Language Matrix to determine the validity of the instruments used, accounting for both cultural and linguistic demands. Higher scores on assessments with lower cultural and linguistic demands, and lower scores on assessments with higher cultural and linguistic demands, are indicative that a student is an English Language Learner. (NT-II pp. 57-61; NT-III pp. 46-49)
 19. Assessments administered to Student which were included in the Matrix were the Universal Nonverbal Intelligence Test (UNIT), select subtests of the Woodcock-Johnson Tests of Cognitive Abilities – Third Edition (WJ-III-COG), the Bilingual

Verbal Abilities Test (BVAT), and the Comprehensive Test of Nonverbal Intelligence – Second Edition (CTONI-2). (S-2 pp. 6-11)

20. According to the publisher's instructions for the BVAT, that assessment is given in English but permits some answers in the native language. Some portions of the assessment are administered through pantomime and modeling, which do not require language. The interpreter, who was trained for the BVAT by the school psychologist, asked some questions of Student in the native language and interpreted Student's answers given in the native language. This instrument is normed and standardized in English. (NT-I p. 66, 71-73; NT-II pp. 55-57, 60-61, 137-38, 140, 165, 184, 297; NT-III pp. 50, 123-24)
21. For Student, the Culture-Language Matrix revealed strengths and higher scores on assessments with lower degrees of cultural and linguistic demands, and weaknesses and lower scores on assessments with higher degrees of cultural and linguistic demands. The completed matrix provides support for the conclusion that Student's weaknesses are related to early stages of English language acquisition. (NT-III pp. 47-49, 81, 159-60; S-2 pp. 6-11)
22. Student's Present Levels of Academic Achievement were summarized in the ER, reflecting performance in the ESL program as well as curriculum-based measurements in mathematics, sight word reading, and a Qualitative reading Inventory (QRI). Student's ESL teacher provided input that Student was making the progress in that program as would be expected of a child with Student's background and time spent in the United States. (S-2 pp. 12-14, 16)
23. A District speech/language pathologist conducted a speech/language assessment of Student. She has ten years' experience as a speech/language pathologist, with the requisite education and certification as a speech/language pathologist. (NT-III pp. 205-08)
24. The District speech/language pathologist arranged to use the same interpreter used by the school psychologist and explained the role of the interpreter in the speech/language assessment, which was to translate spoken words without prompting or outside conversation during the assessments. (NT-III pp. 211-12, 251-53, 253, 413, 421-22, 428)
25. The District speech/language pathologist performed an oral-motor examination of Student, and did not detect any problems with Student's speech production or difficulty following oral-motor commands. In the evaluation, the interpreter did convey to the speech/language pathologist whether Student was sounding out the letters of the alphabet of the native language clearly or not. (NT-III pp. 213, 230-32, 290-91, 436-37, 442-43; S-2 pp. 14, 16)
26. Receptive and Expressive Language assessed by the District speech/language pathologist revealed stronger receptive language than expressive language. Cultural

differences were noted to be a factor, requiring cautious interpretation of the results. (S-2 p. 14)

27. The District speech/language pathologist obtained a language sample from Student, using the interpreter who translated Student's spoken words. Student was able to engage in a conversation using some complete sentences and some phrases. Student was also able to successfully put a set of picture cards together to form a sequence, then tell a short story from those cards. (NT-III pp. 215-19, 416-18, 422-24; S-2 pp. 15-16)
28. Student did not demonstrate difficulty with or abnormality in Student's vocal quality to the District speech/language pathologist, who also did not detect concerns with voice fluency such as stuttering. She also observed Student to use appropriate social and pragmatic language skills in conversing with peers. (NT-III pp. 218-20, 237-38, 258, 386-87; S-2 p. 16)
29. The District speech/language pathologist concluded that Student did not demonstrate a need for speech/language services. (S-2 pp. 16-17)
30. Student's social, emotional, and behavioral functioning were assessed using the Conners' Rating Scales, the Attention Deficit-Hyperactivity Disorder Rating Scale – Fourth Edition (ADHD-IV), and the Behavioral Assessment Scale for Children – Second Edition (BASC-2). Overall, teacher scales did not reflect concerns with Student's social, emotional, and behavioral functioning. (S-2 pp. 21-27)
31. The Parents noted more significant behavioral concerns at home than District personnel reported in the school environment. The Parents' Conners' Rating Scales reflected clinically significant or at-risk concerns on all scales, compared to teacher ratings in the average range. On the ADHD-IV, the Parents noted some areas of concern but nothing clinically significant, and the teacher reported no concerns. On the BASC-2, the Parents' responses indicated clinically significant scores in the areas of Atypicality and Withdrawal, and on the Developmental Social Disorders, and Resiliency Clinical Scales; on the Adaptive Scales, the Parents' scores were in the at-risk range in the areas of Adaptability and in the clinically significant range in the areas of Social Skills, Leadership, Activities of Daily Living, and Functional Communication. By comparison, the results of the scales completed by Student's teacher were at-risk on the Leadership and Functional Communication Adaptive Scales with no other areas of concern noted. (NT-III pp. 51-52; S-2 pp. 21-27)
32. The District school psychologist did consider Student's mental health diagnoses, but because Student was not manifesting an inability to learn that could not be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory relationships with peers and teachers; inappropriate behavior or feelings; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The ER thus concluded that Student did not meet the criteria as a student with an emotional disturbance. (S-2 p. 20)

33. The section of the ER reflecting consideration of Appropriate Instruction in reading and math as well as limited English Proficiency noted that none of these considerations could be answered in the negative. English proficiency is relevant to all of the special considerations. (NT-I pp. 83-85; S-2 pp. 17-18)
34. A multidisciplinary team meeting convened with District representatives, including the school psychologist, and the Parents to discuss the ER which made recommendations for Student's education. The ER, including its conclusion that Student was not eligible for special education, was discussed. At that meeting, the Parents shared information that Student had had a traumatic brain injury at some point in the past. (NT-I pp. 87; NT-III pp. 145-50, 155; S-2 pp. 20-21, 27, 29)
35. A statement by Student's pediatrician dated January 30, 2013 recommended classroom supports for Student. (P-D)
36. On or about January 31, 2013, the District sent to the Parents a Notice of Recommended Educational Placement (NOREP), proposing continuation of a program of special education. The Parents did not sign and return this NOREP. (NT-III pp. 168-69; S-3)
37. On December 13, 2013, the Parents sent an email message to the District advising that they disagreed with the conclusions in the ER and requested an IEE at public expense. (S-4)
38. On or about January 8, 2014, the District sent a letter and NOREP to the Parents denying the request for an IEE. (S-5, S-6)
39. On or about January 8, 2014, the District filed a Due Process Complaint Notice with the Office for Dispute Resolution. (S-7)

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.⁵ 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

⁵ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

evidence.⁶ Nevertheless, application of these principles determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify.⁷ This hearing officer found each of the witnesses⁸ 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. § 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

⁶ *See Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

⁷ *J. P. v. County Sch. Bd.*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009).

⁸ It should be noted that Student’s mother was sworn in at the beginning of the hearing, with the expectation that she would testify. She elected not to testify, however, and her statements on the record that could be considered factual were not subject to cross-examination, limiting the evidentiary value of any such statements.

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). Assessments must be used for the

purposes for which the instruments are valid and reliable, and be administered by trained and knowledgeable personnel in accordance with the test-maker's instruction. 34 C.F.R. § 300.304(c)(1). Critical to this case, the assessments selected must not be discriminatory on a racial or cultural basis, and must be administered "in the child's native language or other mode of communication and in the form most likely to yield accurate information ... unless it is clearly not feasible to so provide or administer." 34 C.F.R. § 300.304(1)(ii).

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). A "child with a disability" is one who has a disability defined in the IDEA "who, by reason thereof, needs special education and related services." 34 C.F.R. § 300.8(a). 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 C.F.R. § 300.306(c). Eligibility for special education cannot be made if the determinant factor is lack of appropriate instruction in reading or mathematics, or limited English proficiency. 34 C.F.R. § 300.306(b). 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.

The District's January 2013 Evaluation

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 eligibility for special education. 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. Further, this hearing officer finds that the record supports a conclusion that the District assessed Student in all areas of suspected disability.

A major contention of the Parents throughout the hearing is that the evaluation was not conducted in Student's native language. This hearing officer finds that the record supports a conclusion that the evaluation did include some assessment in Student's native language. Specifically, the District utilized the BVAT, which permitted assessment in Student's native language; and, the District school psychologist engaged the services of a District employee who was fluent in Student's native language to assist with the interview and spoken portions of the assessments. Both the District school psychologist and the social worker who served as the interpreter testified credibly that this role was limited to language interpretation, and that she did not reach any conclusions or contribute substantively to the ER. Moreover, the District school psychologist provided a credible and logical explanation about the process of standardization of tests normed on an English-speaking population, and why those assessments could not be

administered in another language. (*See, e.g.*, NT-I pp. 72-73; NT-II pp. 121-22; NT-III p. 109)

There is, quite simply, no evidence in this record that would justify a conclusion that the District's evaluation was flawed because parts of the evaluation were not conducted in Student's native language.⁹

Directly related to this concern is the fact that Student is a very early English Language Learner who had had very limited exposure to English at the time of the evaluation, and whose background and educational history were largely unknown. The District school psychologist explained her use of the Culture-Language Matrix that permitted a determination of Student's abilities and performance with respect to cultural and linguistic demands. That Matrix, and the record as a whole, supports the conclusion that Student's academic weaknesses at the time of the ER were related to Student's very limited English proficiency, and would have been the determining factor for Student's eligibility for special education. At the time of the evaluation, Student was also making progress in the ESL program and continuing to acquire English language. The District school psychologist also provided persuasive testimony that a student who is an English language learner should be provided with time to begin acquisition of the language before an evaluation for special education. (*See, e.g.*, NT-I pp. 149-52)¹⁰

The Parents expressed similar concerns with the speech/language portion of the evaluation. However, the District speech/language pathologist testified, credibly, that she was not able to locate a standardized speech/language assessment in Student's native language. (NT-III pp. 211, 220-21) She also explained that Student demonstrated some cultural and linguistic language differences that were not a language disorder that should be addressed through school-

⁹ It is not insignificant that one of the Parents' personal evaluators similarly recognized the limitations of conducting an evaluation in another language using standardized assessments normed on an English-speaking population. (P-E)

¹⁰ *See also K.A.B. v. Downingtown Area School District*, 2013 U.S. Dist. LEXIS 99321 (E.D. Pa. 2013).

based speech/language therapy. (NT-III pp. 222-26) This latter opinion was supported by the evidence that Student was making progress with English language acquisition. (*Id.*) For the same reasons described above, this hearing officer cannot conclude that the District's evaluation was inappropriate based on the speech/language assessment.

It is also important to note the Parents' apparent belief throughout the hearing that merely because Student was performing academically well below peers, Student was and is eligible for special education. (*See, e.g.*, NT-II pp. 94-95, 279-80) Eligibility for special education, however, requires both a disability, and a need for special education because of that disability. Special education is not automatic merely because a child is not performing where one might hope or expect in comparison to same-age peers. Whether or not Student needed, or might have benefitted from, additional regular education programming is not an issue for this hearing.

The Parents raised a number of additional concerns that relate only tangentially, if at all, to the District's evaluation. First, it is clear that the relationship between the parties is strained. Evidence of the Parents' distrust of certain District employees was very apparent. (*See, e.g.* P-J; Parents' Closing Argument) Contributing to this difficult relationship is the history of involvement of other outside agencies and providers over which this hearing officer has no authority. Whether or not the parties should have been involved with some or all of those outside agencies and providers may be relevant to the history of their relationship, but this hearing officer does not find that the evidence about those agencies and providers caused the evaluation to be inappropriate.

Next, the Parents sought to establish that the District discriminated against Student and Student's family because Student is a U.S. immigrant. Whether or not the District representatives believed that Student should not be evaluated for special education because of

Student's limited English proficiency, the record establishes that it did conduct the requested evaluation. This hearing officer also cannot conclude that the District's position that it required a signed Permission to Evaluate form is unreasonable, since it may not proceed until it has received a parent's "informed consent" based on full information. 34 C.F.R. §§ 300.8, 300.300. Even if the Parents' initial request might arguably have prompted the 60-day timeline for conducting the evaluation pursuant to 22 Pa. Code § 14.123, the delay was minimal and served only to provide Student with additional time to experience the English language before the evaluation.

The Parents also suggested that Student was not provided with sufficient ESL instruction and, accordingly, that determining factor could not be answered in the ER. It must be noted that ESL is not special education. Additionally, the record as a whole established Student's very early English language proficiency as a significant factor in Student's academic weaknesses, despite ESL instruction and support, leading to the determination that Student was not eligible for special education under the IDEA.

The Parents also suggest that Student needs a new evaluation because of a later private evaluation that is inconsistent with the ER results. For the reasons explained above, this hearing officer concludes the District's evaluation in January 2013 was appropriate. Whether and to what extent a later private evaluation may be relevant to educational program decision-making in the future is for the Parents and District to decide.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District's evaluation was appropriate, and Student is not entitled to an IEE at public expense.

ORDER

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

1. The District's 2013 ER 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: April 30, 2014