

*This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.*

Pennsylvania

## Special Education Hearing Officer

### DECISION

Student's Name: B.F.

Date of Birth: [redacted]

ODR No. 15089-13-14-AS

### CLOSED HEARING

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Central Bucks School District  
16 Welden Drive  
Doylestown, PA 18901

Scott H. Wolpert, Esquire  
Timoney Knox  
400 Maryland Drive  
P.O. Box 7544  
Fort Washington, PA19034

Date of Hearing:

July 28, 2014

Record Closed:

July 28, 2014

Date of Decision:

September 9, 2014

Hearing Officer:

William F. Culleton, Jr., Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student in this matter (Student)<sup>1</sup> is a child living within the respondent District who completed sixth grade in a District elementary school and is scheduled to attend a private school in the coming school year. (NT 12-13; S 18.) Student is identified as a child with a disability of Other Health Impairment and Specific Learning Disability pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 12.) [Redacted.]

In response to a request for an independent educational evaluation (IEE) by Student's Parents, the District filed a request for due process, seeking an order establishing that its Evaluation Report dated January 10, 2014, as amended on or about July 1, 2014, is appropriate. (NT 20-21.) The hearing was completed in one session.

I conclude that the District's Evaluation Report was appropriate, and I decline to order an IEE at public expense.

## **ISSUES**

1. Was the District's Evaluation Report dated January 10, 2014, as amended on or about July 1, 2014, appropriate under the IDEA?<sup>2</sup>
2. Are Parents entitled to an IEE at public expense?

## **FINDINGS OF FACT**

1. The evaluation was conducted and written by a District school psychologist with fourteen years' experience in the District, and over 15 years' experience as a school psychologist. The psychologist has obtained both masters and doctoral degrees. The psychologist is

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<sup>1</sup> Student, Parents and the respondent School are named in the title page of this decision; personal references to the parties are omitted in order to guard Student's confidentiality. Because the Student's mother engaged in many transactions with the School, she is referred to below as "Parent" in the singular.

<sup>2</sup> This will be referred to as the January 2014 Evaluation Report, with the understanding that the later revisions were part of that Evaluation and are reviewed for compliance with the IDEA as part of the overall evaluation of Student at issue in this matter.

certified by both Pennsylvania and the school psychology national professional organization. The school psychologist has taught at a graduate level, made presentations on school psychology and co-authored articles in her field. (NT 41-49; S 40.)

2. The District school psychologist had conducted several previous evaluations of Student. In 2007, the psychologist conducted a preschool transition evaluation. In 2010, when Student was in second grade, the psychologist conducted a full evaluation. In 2011, the psychologist conducted another evaluation. (NT 50.)
3. The District school psychologist conducted a behavior assessment of Student in 2009, addressing attention symptoms in the classroom. (NT 51.)
4. The District school psychologist participated in the District Instructional Support Team (IST), and this team monitored Student's performance from second grade through sixth grade. (NT 51.)
5. The District school psychologist was part of the team that provided a social skills friendship group for Student. (NT 52.)
6. A multidisciplinary team collaborated in evaluating Student. This included Student's classroom teacher, school-based and private occupational therapists, guidance counselor, school psychologist, and other educational staff. (NT 61.)
7. The areas of suspected disability that were referred to the psychologist for re-evaluation were written expression; spelling; social, emotional and behavioral development; fine motor integration and visual motor integration. (NT 57-58; S 13.)
8. The multidisciplinary team also decided to assess Student's executive functions with regard to organizing written work, organizing materials and spaces, and completion of assignments. (NT 57-58; S 13, 18.)
9. The multidisciplinary team assessed Student in the areas requested by Parent. (NT 75-77, 81-82.)
10. The multidisciplinary team reviewed extensive educational records, including several previous evaluations of Student, some of which were full psychological evaluations. They relied upon standardized cognitive and achievement scores obtained in previous evaluations. These showed that Student was functioning cognitively in the Very Superior range, although there was a significant discrepancy between Student's overall performance and Student's processing speed and working memory abilities. (NT 61-62; S 2, 4, 5, 12, 13.)
11. The school psychologist conducted a classroom observation to address Student's behavior, attention to task, sensory regulation, and self-organization in the areas of writing, note-taking, transition and organization of materials. (NT 114-115, 165-172.)
12. The school psychologist preferred clinical observation to specific standardized testing of executive functioning capacity, because direct observation (along with the executive function-focused behavior inventory responses provided by teachers) would disclose

Student's utilization of executive functioning ability in the academic setting. Observation disclosed inconsistent application of executive functioning ability; this was sufficient to identify the educational needs and provide a basis for recommendations to the IEP team. (NT 114-115, 165-172.)

13. In addition, the multidisciplinary team conducted standardized testing of Student to address written expression and spelling. One test addressed Student's written expression, including conventions, story composition and receptive coding. Selected subtests of a second standardized test addressed orthographic processing (how quickly the student registers the visual forms of letters and words), receptive coding (memory of written words and parts of words), expressive coding (production by hand of remembered words and parts of words) and word choice, which measures memory for correct spellings of words. (NT 85-92, 179; S 18, 38, 41.)
14. The multidisciplinary team considered Student's grades in previous school years, performance on the Pennsylvania System of School Assessment (PSSA) tests in previous years, curriculum based tests of written expression, Instructional Support Team interventions and teacher input. (NT 65-67, 92-94, 172-178; S 18, 38.)
15. Regarding Student's emotional and behavioral functioning, the team considered Student's developmental and medical history, including medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). The team also reviewed written reports of classroom observations performed when Student was in third grade, as well as teacher reports from Student's fourth grade year, and reports from interventions by the Instructional Support Team. The psychologist administered a standardized behavior inventory designed to focus upon a student's executive functioning. (NT 101-107; S 18.)
16. The Evaluation Report included an occupational therapy evaluation. This included a classroom observation of Student's sensory seeking behaviors, and administration of a standardized developmental test of visual-motor integration. This test addressed visual perception and motor coordination. (S 18.)
17. The multidisciplinary team reviewed prior assessments, tests and evaluations, including some performed by the school psychologist conducting the January 2014 evaluation, as well as Student's current performance in school, parental input and teacher reports. (NT 61, 65-71; S 18.)
18. The multidisciplinary team found that Student demonstrated age-appropriate visual motor skills and fine motor skills. The team found that Student struggles with overall self-regulation, sensory processing, and self-organization of materials within the classroom. The team found that Student's performance in written expression, including conventions, content, planning and organization was inconsistent relative to grade level standards and significantly discrepant from Student's cognitive reasoning abilities. The team found that Student was manifesting significant difficulties in inhibiting impulses, independently initiating and self-managing tasks, planning, organizing and monitoring Student's performance. (NT 100-102; S18.)

19. The occupational therapist considered Student's motor planning when observing Student and when reviewing documentation as part of the occupational therapist's report for the January 2014 evaluation report. (NT 142.)
20. The occupational therapist considered Student's sensory-seeking behaviors; in addition, the school psychologist observed such behaviors during the classroom observation and in testing. Student's sensory-seeking behaviors were addressed in the evaluation report. (NT 143, 149-151.)
21. The school psychologist considered Student's achievement in all academic areas; this information was part of the documentation that the psychologist reviewed. (NT 144; S 18.)
22. The evaluation report also addressed Student's executive functions as they impacted upon Student's ability to organize time, materials and written product. (NT 147.)
23. The Evaluation Report classified Student as a child with the disabilities of Other Health Impairment and Specific Learning Disability. (S 18.)
24. The Evaluation Report recommended that Student receive direct, systematic instruction in written expression; supports and accommodations in the general education setting for difficulties with written expression; and teaching of applied spelling skills. It also recommended addressing attention and executive function deficits. (S18.)
25. The report recommended ongoing implementation of strategies regarding self-regulation and self-monitoring. It recommended provision of a sensory diet, structured movement breaks, hand fidgets at the desk, heavy work activities as needed, a flexible band on the chair for sensory feedback, trial of a seat cushion, trial of a desk organizer, other tools for organization and a self checklist for material organization. It noted that Student had benefited previously from small group instruction and frequent check-ins to ensure follow through with assigned tasks. (S 18.)
26. The District psychologist discussed the results of the evaluation with Parents. (NT 85, 107-108, 116-119, 278.)
27. The recommendations in the Evaluation Report were utilized by the IEP team to develop the IEP. (NT 108-110; 290-293, 339, 365-366.)
28. All assessments were conducted in compliance with publisher instructions and appropriate psychological, occupational therapy and educational practice. (NT 111-112.)
29. Parent discovered and reported an error in the scoring of the standardized, norm referenced cognitive assessment that had been performed prior to the January 10, 2014 evaluation report. The error had been made in the calculation of a verbal comprehension index, a component index of the general intelligence score reported in a prior evaluation dated November 2011. The erroneous scores were relied upon and reported in the January 10, 2014 evaluation report. (NT 119-121, 136-138, 190.)

30. The error resulted in a significant under-estimate of Student's verbal comprehension and general cognitive ability. The error also resulted in under-reporting of the size of the discrepancy between Student's overall performance and Student's processing speed and working memory abilities. (NT 119-121, 136-138, 192-194, 196, 207-210.)
31. The error did not impact the Student's classification in either the prior report or the January 10, 2014 report, and did not impact the January 2014 evaluation report's recognition of educational needs or its recommendations to address those needs. (NT 119-121, 136-138, 192-194, 196, 207-210.)
32. On April 22, 2014, Parents requested an independent educational evaluation, to include a comprehensive psychoeducational and neuropsychological evaluation. Parents indicated that the purpose of such evaluation would be to determine the "etiology" of Student's discrepancies between strengths and needs. Parents indicated a desire for independent evaluation in the areas of reading, mathematics, written language, attention, planning and organization, executive control, verbal learning and recall, visual learning and recall, information processing, and fine motor functioning. (NT 228-231; S 23.)
33. On April 28, 2014, the District denied the Parents' request for an IEE because the District did not view Parents' concern with "etiology" to be germane to the purpose of an educational evaluation. (NT 128-129; S 23, 24.)
34. On May 15, 2014, Parents gave notice that they would proceed with the private evaluation that they had requested the District to fund. (S 39<sup>3</sup> p. 19-20.)
35. On May 21, 2014, the Parents presented their concerns about the evaluation to the IEP team. (S 26.)
36. In May 2014, the District revised the January 2014 Evaluation Report, to correct the scoring error; it also revised the November 2011 report, in which the scoring error was first made. (NT 122-126, 140; S 38.)
37. In addition, the multidisciplinary team also amended a score for Student's working memory, which was reported erroneously due to a typographical error. The change in scores was within the average range, and it did not significantly affect the conclusions of the evaluation report. (NT 197-203, 207-210.)
38. At a May 2014 meeting, the District agreed to do an assistive technology assessment; the Evaluation Report identified educational needs that could be addressed by assistive technology but did not assess Student for specific assistive technology devices. After the January 10, 2014 evaluation report was issued, the Student's teacher had trialed speech-

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<sup>3</sup> I admitted the first five pages of this document over Parents' objection. (NT 371.) Subsequently, the parties stipulated to the admission of two additional pages, but I excluded the remainder of the documents. (NT 380-382.) In reviewing the transcript in preparation for writing this decision, I note that additional pages were referenced in the record: pages 19 and 33; moreover, page 20 is the remainder of the email referenced at page 19, and is needed to complete the record. I am admitting these pages of the record on my own motion. I do so only to complete the record, and because these pages were referenced explicitly or implicitly in the transcript. (NT 301-304.) I note that neither party objected to the referencing of these documents, during the testimony about them, or afterwards, and their exclusion appears to have been an oversight.

to-text software for Student, and based on the results of the trial, implemented that assistive technology in Student's instruction in writing. (NT 130-132, 154-155, 254-255, 330-335, 361-363, 372-375; S 26.)

39. On May 30, 2014, the District filed a Complaint Notice requesting due process to declare its January 2014 evaluation appropriate under the IDEA. (S 1.)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### BURDEN OF PROOF

The burden of proof is composed of two considerations: the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact (which in this matter is the hearing officer).<sup>4</sup> In Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence<sup>5</sup> that the other party failed to fulfill its legal obligations as alleged in the due process complaint. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in Schaffer called “equipoise”. On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See Schaffer, above.

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<sup>4</sup> The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact.

<sup>5</sup> A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. See, Comm. v. Williams, 532 Pa. 265, 284-286 (1992). Weight is based upon the persuasiveness of the evidence, not simply quantity. Comm. v. Walsh, 2013 Pa. Commw. Unpub. LEXIS 164.

In this matter, the District requested due process and the burden of proof is allocated to the District. The District bears the burden of persuasion that its Evaluation Report was appropriate and that Parents are not entitled to an IEE. If the District fails to produce a preponderance of evidence in support of its claim, or if the evidence is in “equipoise”, then the District cannot prevail under the IDEA.

## APPROPRIATENESS OF EVALUATION

### Comprehensive

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 District has shown by more than a preponderance of the evidence that its evaluation report was comprehensive enough to determine Student’s eligibility and to determine Student’s educational needs. It addressed all “areas of suspected disability”, 20 U.S.C. §1414(b)(3)(B), because it addressed all educational needs disclosed to the District at the time of the evaluation. These included the concerns expressed by Parents at the time, including written expression; spelling; social, emotional and behavioral development; fine motor integration and visual motor integration. In addition, the evaluation was expanded from these areas of concern to include additional concerns about executive functions and Student’s sensory integration needs that were brought to the multidisciplinary team’s attention by Student’s teachers.

Parents argued that the evaluation was deficient because it failed to include contemporaneous cognitive and achievement testing by means of norm-referenced, standardized tests. I conclude that this was not a procedural deficiency. The District did review such testing as



it was reported in previous full psychological evaluations. Thus, the District had data showing Student's cognitive ability and achievement in comparison to national norms. The IDEA does not demand that local educational agencies conduct fresh standardized testing for cognitive ability and achievement in every evaluation. On the contrary, the IDEA provides that an IEP team is authorized to review existing evaluation data "if appropriate". 20 U.S.C. §1414(c)(1). Thus, it is within the discretion of the multidisciplinary team to determine whether or not fresh or additional data are needed in order to determine eligibility or educational needs. In this matter, there was uncontradicted expert opinion testimony from a credible and reliable school psychologist that there was no professional reason to conduct fresh cognitive and achievement testing for Student. Thus, the evidence is preponderant that the District's choice not to conduct such testing was appropriate.

Parents also argued that the evaluation was deficient because it failed to provide a detailed assessment of Student's need for specific assistive technology devices. The IDEA does not require a local educational agency to conduct such testing as part of an initial evaluation or re-evaluation; assistive technology is not explicitly mentioned in the sections setting forth substantive and procedural requirements for evaluations and re-evaluations. Rather, the IDEA requires IEP teams to consider appropriate assistive technology when determining the specially designed instruction and accommodations to be delivered through the IEP. 20 U.S.C. §1414(d)(3)(B)(v)<sup>6</sup>.

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<sup>6</sup> Parent relies upon the definitions of Assistive Technology Device and Assistive Technology Service in arguing that the District's evaluation should have done more. 20 U.S.C. §1401(1), (2). Nowhere do these definitions require more than what the District did in recommending that the IEP team consider providing assistive technology to assist in sensory regulation; on the contrary, the definitions recognize evaluation for assistive technology as an "assistive technology service", and the IDEA requires such services to be addressed by the IEP team. 20 U.S.C. §1414(d)(3)(B)(v).

Parents argue that the evaluation insufficiently addressed Student's sensory, motor and executive functioning needs. On the contrary, I conclude that the evaluation addressed all of these needs. The evidence is preponderant that the evaluation addressed them appropriately.

Parents argue that the evaluation failed to address Student's academic needs in areas other than written expression. However, the record is preponderant that the other academic areas, such as reading and mathematics, were not brought to the attention of the District as areas of suspected disability. Therefore, I conclude that the evaluation was not inappropriate on this ground.

#### Procedural Requirements

The IDEA regulations prescribe in detail the procedures to be used in evaluations. 34 C.F.R. §300.301 to 300.311. Courts have approved evaluations based upon compliance with these procedures alone. See, e.g., Eric H. v. Judson Independent School District, 2002 U.S. Dist. Lexis 20646 (W.D. Texas 2002). The record shows by a preponderance of the evidence that the January 2014 evaluation complied with the IDEA procedures.

These procedures must include the use of “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information ... .” 20 U.S.C. §1414(b)(2)(A), 34 C.F.R. §300.304(b). The evidence is preponderant that this standard has been met. The January 2014 evaluation report documents the team's consideration of extensive educational records, including previous evaluations of Student, some of which entailed full psychological evaluation. These previous evaluations included cognitive and achievement testing and utilized a variety of assessment tools and strategies to assess the Student's cognitive ability and achievement. The multidisciplinary team considered Student's

medical, developmental and educational history; parental input including responses to questionnaires and to standardized behavior inventories; and teacher input including discussions of Student with teachers and teacher responses to standardized behavior inventories. The team also considered the results of standardized testing, including norm-referenced and curriculum-based tests. The evaluation included review of curriculum-based assessments and classroom based assessments, as well as Student's test scores and grades. It included the results of statewide testing and previous District Instructional Support Team interventions. The evaluation also included classroom observation by the school psychologist and clinical observation during testing, as well as clinical observations by an occupational therapist.

The agency may not use “any single measure or assessment” as a basis for determining eligibility and the appropriate educational program for the child. 20 U.S.C. §1414(b)(2)(B), 34 C.F.R. §300.304(b)(2). The evidence shows that with regard to Student's writing and spelling, the evaluation team delved into that area of concern in great detail, utilizing data on previous school performance, and norm-referenced testing. The school psychologist utilized a variety of norm-referenced measures that addressed the Student's performance in writing and certain cognitive abilities involved in the process of writing, such as orthographic processing, receptive coding and expressive coding. I conclude that the evaluation meets this procedural requirement, because of the variety of strategies utilized in assessing Student's overall ability and achievement, as well as the multiple strategies utilized in assessing Student's written expression.

The agency must utilize information provided by the parent that may assist in the evaluation. 20 U.S.C. §1414(b)(2)(A). This must include evaluations or other information provided by the parents. 20 U.S.C. §1414(c)(1)(A)(i), 34 C.F.R. §300.305(a)(1)(i). Part of any

evaluation must be a review of relevant records provided by the parents. 34 C.F.R. §300.305(a)(1)(i). The parent must participate in the determination as to whether or not the child is a child with a disability. 34 C.F.R. §300.306(a)(1).

The record is preponderant that the District's evaluator solicited and obtained parental input through review of previous parental input, solicitation of Student's history, and a behavior inventory addressed to the Student's executive functions. The evaluator was familiar with Parents, because the evaluator had communicated with them in numerous previous evaluations of Student, as well as through her participation in Student's IEP team and in interventions through the District's IST process. After the District conveyed the evaluation report to Parents, there was a full opportunity for Parents to discuss it with District personnel and the District responded to Parents' concerns with the report, including making substantial revisions to it.

The evaluator must be trained and knowledgeable. 20 U.S.C. §1414(b)(3)(A)(iv), 34 C.F.R. §300.304(c)(1)(iv). This procedural requirement was more than fulfilled in the present matter. The school psychologist was exceptionally qualified, both academically and professionally. The psychologist has a doctoral degree, Pennsylvania certification, and over 14 years of experience as a school psychologist in public school districts. In addition, the psychologist's resume included teaching, making presentations and professional publications.

The evaluation must utilize testing instruments that are valid and reliable for the purposes for which they are utilized. 20 U.S.C. §1414(b)(3)(A)(iii), 34 C.F.R. §300.304(c)(1)(iii), and all tests must be administered in accordance with the applicable instructions of the publisher, 20 U.S.C. §1414(b)(3)(A)(v), 34 C.F.R. §300.304(c)(1)(v). The District has met its burden to show that these requirements were met; indeed, with one exception, the Parents did not challenge the evaluation on such grounds.

Parents, however, did raise substantial concern regarding the accuracy of two test scores reported with regard to cognitive ability. First, there was an error in the Student's verbal ability test scores that also affected the Student's general intelligence score. Second, there was an error in the reported score for working memory.

As to the first error, the school psychologist had conducted a full cognitive evaluation in conjunction with an evaluation on Student, delivered in November 2011. This report had contained a mathematical error in the calculation of an index score as part of the testing for cognitive functioning. The January 10, 2014 evaluation report had picked up this error and reported it. The error resulted in an underestimate of Student's cognitive ability, both in the verbal area and in the overall intelligence score. Parents understandably expressed concern about this error, which appeared both in the November 2011 report as well as in the January 10, 2014 evaluation report.

As soon as Parents disclosed this error, the District corrected it, and amended both reports. In response to Parents' request, it also added a statement within both reports, describing the error and its correction. The school psychologist considered whether or not this error could have any impact upon either the District's identification of Student or its depiction of Student's educational needs and recommendations to address those needs. The record is preponderant that this error had no such effect, because both the multidisciplinary team and the IEP team had addressed Student's needs based upon its overall findings. The evidence is preponderant that the team's judgments as to educational needs would not have been different if they had known that the Student's cognitive ability score was higher than reported.

As to the second error, the school psychologist, again reviewing the report found a typographical error that had resulted in an incorrect score for Student's working memory. The

erroneous score and the true score were both within the average range, so neither affected the depiction of Student's abilities substantially. The psychologist corrected the error. The psychologist concluded that the error had no effect upon the substantive conclusions of the evaluation report.

Having reviewed the record on these errors, I conclude that they did not rise to the level that would render the evaluation contrary to the procedural or substantive standards of the IDEA. Both were ministerial in nature – that is, they both were errors in the writing of the report -- not errors in the actual testing of Student or scoring of the tests and subtests. One error was a simple mistake of addition; the other was typographical. Neither had substantive effect on the identification of Student or the depiction of Student's educational needs.

Parents could not point to any substantive effect on Student's classification or on the needs addressed by the IEP team; they could only protest that the errors rendered the other scoring suspect. Nothing in the IDEA suggests that such errors automatically or presumptively render an evaluation inappropriate. On this record, I conclude that the errors did not render this evaluation inappropriate.

Parents argued at the hearing that the errors in scoring interfered with their ability to advocate for Student, because their advocacy had proceeded on the assumption of incorrect scores that underestimated Student's intellectual ability, and minimized the discrepancy between Student's ability and achievement. See 20 U.S.C. §1415(f)(3)(E)(ii)(II)(confining hearing officer decision to substantive grounds including “significantly imped[ing] the parents’ opportunity to participate” in the IEP process). However, they could point to nothing that they would have advocated for – based upon the corrected scores -- that was not already addressed in the IEPs offered to Parents subsequent to the issuance of the January 10, 2014 evaluation report.

I conclude that the two numerical errors in the report did not significantly impede Parents' ability to advocate for Student. Parents had extensive access to District personnel. The District was responsive to Parents' concerns regarding Student. Parents participated actively in various meetings with District personnel, including two IEP meetings, after the issuance of the January 10, 2014 evaluation report. The evidence is preponderant that there was no substantive violation due to the numerical errors in the evaluation report<sup>7</sup>.

#### CREDIBILITY

It is the responsibility of the hearing officer to determine the credibility of witnesses. 22 Pa. Code §14.162 (requiring findings of fact); A.S. v. Office for Dispute Resolution, 88 A.3d 256, 266 (Pa. Commw. 2014)(it is within the province of the hearing officer to make credibility determinations and weigh the evidence in order to make the required findings of fact). I found the Parent and all witnesses to be credible and reliable, based upon their answers to questions, material consistency with other testimony and the written record, and demeanor.

#### CONCLUSION

I conclude that the District's January 2014 evaluation was appropriate, and therefore Parents are not entitled to an independent educational evaluation at public expense.

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<sup>7</sup> Nor is there any evidence to suggest that these errors impeded the provision of or led to any deprivation of educational benefit for the Student. 20 U.S.C. §1415(f)(3)(E)(ii)(alternate grounds for finding substantive violation of IDEA based upon procedural error.)

## **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby

**ORDERED** as follows:

1. The District's Evaluation Report dated January 10, 2014, as amended on or about July 1, 2014, was appropriate under the IDEA.
2. Parents are not entitled to an IEE at public expense.

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

*William F. Culleton, Jr. Esq.*

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WILLIAM F. CULLETON, JR., ESQ.  
HEARING OFFICER

September 9, 2014