

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

FINAL DECISION AND ORDER

Student's Name: B.L.

Date of Birth: [redacted]

ODR No. 17625-1516KE

CLOSED HEARING

Parties to the Hearing:

Pleasant Valley School District
2233 Route 115
Suite 100
Brodheads ville, PA 18322-2002

Representative:

Glenna Hazeltine, Esq.
King, Spry, Herman, Freund, & Faul
One West Broad Street, Suite 700
Bethlehem, PA 18018

Parent[s]

Heather Hulse, Esq.
McAndrews Law Office
30 Cassatt Avenue
Berwyn, PA 19312

Dates of Hearing: 06/01/2016

Record Closed: 06/20/2016

Date of Decision: 07/01/2016

Hearing Officer: Brian Jason Ford, JD, CHO

Introduction

This matter concerns the appropriateness of a special education evaluation of a student (Student), conducted by the Pleasant Valley School District (District).¹ The Student's parent (Parent) disagreed with the evaluation, and asked the District to pay for an independent educational evaluation (IEE). The District, as required by the IDEA, then requested this due process hearing to defend the appropriateness of the evaluation.

Issue

A single issue was presented in this due process hearing: Was the District's reevaluation appropriate and, if not, are the Parents entitled to an IEE at public expense?²

Findings of Fact

1. It is not disputed that the Student first enrolled in the District for the 2011-12 school year.
2. In August 2014, the Student's other parent unexpectedly passed away. S-7.
3. The 2014-15 school year was the Student's 3rd grade year. See S-7.
4. Throughout the 3rd grade year, the Parent was called on a weekly basis regarding the Student's oppositional, defiant behaviors. Those behaviors included incidents of running through the halls and throwing a chair. There was also one particularly severe incident during which the Student had to be removed and security was involved. S-7.
5. At the start of the 2015-16 school year, the Student's negative behaviors in school became severe, requiring frequent removal from the classroom. District personnel were concerned that these "new" behaviors were negatively impacting upon the Student's academic performance. NT 25-27.
6. On September 16, 2015, the District sought the Parent's consent to evaluate the Student. To start the process, the District sent a Prior Written Notice (PWN) for an initial evaluation, a Request for Consent form, and a Parent Questionnaire. S-6.
7. On September 21, 2015, the Parent signed the PWN, giving the District consent to conduct the evaluation. The District received the signed PWN the next day.
8. Also on September 21, 2015, the Parent signed a Consent to Release Information form, allowing a private psychological counseling center to share information with the District. The same day, the center sent a psychological evaluation (Private Evaluation) dated August 2, 2015, to the District. S-7.
9. The Private Evaluation reports that the Student was referred for an evaluation to address oppositional and defiant behaviors, and difficulty adjusting to the death of the Student's other parent. S-7.

¹ Except for the cover page, identifying information is omitted to the extent possible.

² The parties parse this somewhat differently, breaking the appropriateness of the evaluation and entitlement to an IEE into separate issues. This is a distinction without a difference.

10. The Private Evaluation reports that the Student was diagnosed with Impulse Control Disorder in February 2015. At that time, a “Family Based Program” was recommended, but denied by the Parent’s insurance. The Private Evaluation also notes that the Student received “in-school therapy provided by [a contracted provider] from March 2015 through July 2015 which was discontinued as the therapist recommended a higher level of care such as BHRS”. S-7 at 4.³
11. The Private Evaluation reports that the Student has tantrums at home, but that the Parent was primarily concerned about the Student’s behavior at school. S-7.
12. Based on a clinical assessment and an assessment tool called the CANS-MH, the Private Evaluation concluded that the Student met diagnostic criteria for Adjustment Disorder with Mixed Disturbances of Emotions and Conduct, provisionally met diagnostic criteria for Oppositional Defiant Disorder and Intermittent Explosive Disorder. S-7.
13. Also on September 21, 2015, the Parent completed the Parent Input Form. There, the Parent raised no academic concerns, but described the Student’s oppositional and defiant behaviors, which could come on quickly even when the Student appears happy. S-8.
14. On October 9, 2015, the Student’s teacher completed a Classroom Teacher Input Form as part of the evaluation. The form provides a number of checkboxes for the teacher to report academic and behavioral concerns, and places for the teacher to provide narrative information. S-8.
15. On the Teacher Input Form, a few of the checkbox sections were not completed – especially concerning Math. But these sections generally concerned academic problems, which were not of concern. The only academic concerns noted were inconsistent homework completion, a reluctance to write, and avoidance of optional, more difficult assignments.⁴ S-8.
16. Behaviorally, on the Teacher Input Form, many negative behaviors were endorsed by checkbox and narrative. This included aggressive behaviors throughout the day (yelling at adults and peers using inappropriate language, slamming and throwing books, papers, and water bottles), refusal to follow directions, refusal to comply with redirection, off-topic comments, refusal to cooperate during group work, and the need for behavioral assistance during individual work. S-8.
17. Socially, on the Teacher Input Form, the teacher’s narrative responses were in line with the Parent’s input. The teacher wrote that the Student actively plays with other children, but that the Student’s attitude was “unpredictable” and could “become angry very quickly without provocation”. At the same time, however, the teacher wrote that the Student was motivated by a school-wide behavioral system, and was able to move away from peers when upset. At those times, the Student would either return to the Student’s seat, or ask to go to the guidance counselor. S-8.
18. On October 7, 2015, the District notified the Parent that it would conduct a psychiatric evaluation of the Student as part of the evaluation on October 9, 2015. S-9.

³ BHRS, or Behavioral Health Rehabilitation Services, sometimes called “wraparound” service is usually a short-term, intensive, 1:1 service to help students with behavioral needs.

⁴ While the Student was reluctant to write, no writing issues were reported. S-8.

19. The psychiatric evaluation went forward as scheduled on October 9, 2015. The Student was seen by a psychiatrist in the school building, and the psychiatrist wrote a report of the evaluation on October 9, 2015 (Psychiatric Evaluation).⁵ S-10.
20. The Psychiatric Evaluation notes that the Student exhibited negative behaviors throughout 3rd grade, but that the behaviors have become angrier and physically aggressive (towards property, not people) since the start of 4th grade (2015-16 school year). The Psychiatric Evaluation specifically notes that the current behaviors include frequent screaming, and seven office discipline referrals since the start of the school year. S-10.
21. The Student was oppositional and defiant during the Psychiatric Evaluation, both refusing to answer some questions and name calling. During the Psychiatric Evaluation, the Student's mood was "irritable and disruptive," and the Student's affect "evidences anger and irritability". S-10 at 2.
22. While the Student showed "no psychotic symptoms" and was "alert and oriented", the psychiatrist reported, "Executive and distress tolerance skills base are poor. Judgments are poor. Insights are poor". S-10 at 2. The Student also refused to speak about the death of the Student's other parent.⁶ S-10 at 3.
23. The Psychiatric Evaluation offered the following diagnoses: Disruptive Mood Disorder – Moderate, Oppositional Defiant Disorder, Grief and Bereavement. S-10.
24. The Psychiatric Evaluation recommended completion of a Functional Behavioral Assessment (FBA) and "as much of the psychoeducational assessment as possible", given the Student's noncompliance. S-10 at 3.
25. On October 9, 2015, the team (including the Parent, Student's classroom teacher, instructional support personnel, school counselor, school psychologist, building principal and assistant principal, and school police) met to develop a Line of Inquiry, which is part of an FBA. During the Line of Inquiry meeting, the team hypothesized the Student's slow triggers and fast triggers, listed the Student's behaviors of concern, and the perceived function of those behaviors, and listed the actual consequences of the behaviors. S-11.
26. Between October 13 and 15, 2015, the District observed the Student in homeroom. The behaviors noted on the Line of Inquiry were tallied, as were predictors. The perceived functions from the Line of Inquiry were also tallied (meaning that if the observer perceived the function of the behavior was something hypothesized in the Line of Inquiry, that was noted and tallied). S-11.
27. In October 2015, two of the Student's teachers and the Parent completed a behavior rating scale called the Behavior Rating Assessment System for Children, 2nd Edition (BASC-2).⁷ S-15. While there was some variation between raters, all reported statistically significant problems with Externalizing Problems (hyperactivity, aggression, and conduct). Problems

⁵ The psychiatrist is an employee of the Intermediate Unit servicing the District.

⁶ I note, again, the intentional omission of identifying information, including the Student's gender and the gender of the deceased parent – even when that makes for awkward phrasing.

⁷ The exact date that the Parent and teachers completed the BASC-2 is not reported.

with depression, social skills, and school problems were also endorsed by all raters, but not at the same level by all raters. S-15.

28. Also in October 2015, the Parent completed the Autism Spectrum Rating Scales (ASRS) as part of the evaluation.⁸ S-15. Domains assessed with the ASRS were rated in varying ranges - "Average" in some aspects to "Very Elevated" in others, with most ratings falling in the "Slightly Elevated" to "Elevated" range. S-15.
29. On October 14, 2015, the District attempted to administer the Wechsler Intelligence Scale for Children, 5th edition (WISC-V), as well as "subtests of a standardized measure of achievement". S-15 at 2. The Student completed some parts of the WISC-V, and refused others. The Student refused to take the achievement testing. S-15. As a result, the evaluator could only score the Visual Spatial Index Score of the WISC-V. The Student received a composite index score of 100, which is the 50th percentile in the Average range. No other standardized intelligence or achievement testing could be reported with any validity. S-15.
30. On October 16, 2015, the Parent had the Student reevaluated at the private psychological counseling center. The evaluator drafted a report the same day. The report repeats much of the first Private Evaluation and reports some of the District's evaluations that were completed at that time. The report also includes information about the Student's behaviors during the 2015-16 school year, which are completely consistent with the District's own reporting. The report concludes that the Student has a diagnosis of Disruptive Mood Disorder. The report includes recommendations for the home and in a daycare setting. P-3.
31. On October 19, 2015, the team met again (albeit without the building principal and school police) to draft a Behavior Intervention Plan (BIP), the culmination of the FBA. S-12, S-13.
32. The BIP included strategies for teachers to implement in an effort to decrease the Student's behaviors, a list of replacement behaviors (things that the Student will be explicitly taught to do instead of the negative behaviors), a list of reinforcements (rewards for doing the replacement behaviors) and consequences (a sequential procedure for teachers when the Student exhibits the problematic behaviors). S-13.
33. On October 28, 2015, the BIP was revised. The Consequences section was altered to make it clear that teachers could immediately escort the Student to the office and contact the Parent if the Student's "behaviors escalate rapidly to the point of verbal and/or physical outbursts". S-14 at 1.
34. On November 13, 2015, the District issued an evaluation report (ER), memorializing the evaluation. S-15. The ER accurately reports or summarizes the evaluation described above.
35. The ER also reports the Student's current academic performance and performance on standardized academic benchmark testing. Academically, the Student was receiving an average classroom score of 84% in reading (with somewhat lower scores in sub-categories), an 80% in language arts, and a 75% in Math. Regarding Math in particular, the teacher noted problems writing in Math, and problems applying previously learned skills to new material. On a STARS reading benchmark assessment, the Student was tested as "proficient" in the beginning 4th grade level, but on a QRI reading test, the Student was found to be "independent" at the 3rd grade level but "frustrational" at the 4th grade level.

⁸ As with the BASC-2, the exact date of the ASRS is not reported.

This suggests that the Student could read and comprehend 3rd grade passages, but was not yet fluent enough at the 4th grade level to assure comprehension. S-15

36. The ER also reports more detailed information about each of the Student's behavioral incidents from the start of the 2015-16 school year through November 3, 2015. S-15.
37. The ER includes a recommendation that the Student qualifies for special education and related services as a student with an Emotional Disturbance. S-15.
38. Based on the evaluation, the District concluded that the Student is eligible for special education under the Emotional Disturbance disability category. S-15.
39. The ER includes recommendations to the Student's team for drafting an Individualized Education Program (IEP). S-15. Recommendations included, *inter alia*: emotional support programming, placement in a partial hospitalization program, measurable behavioral goals, an individualized positive behavior support plan, counseling, various modifications to academic assignments relative to the Student's behavioral needs (to gain compliance without triggering behaviors), several behavioral accommodations (e.g. tangible reinforcements for positive behaviors, a plan to let the Student "check out" of the classroom when frustrated). S-15.
40. On November 24, 2015, the District invited the Parent to an IEP team meeting to develop an IEP for the Student. The District proposed December 2, 2015 for the meeting. S-17. The meeting convened as scheduled, and the District offered an IEP during the meeting.⁹ See, e.g. S-19 at 1.
41. On December 2, 2015, the District issued a Notice of Recommended Educational Placement (NOREP), proposing an initial placement into special education (full-time Emotional Support) under an IEP of the same date. S-17, P-4.
42. From the December 2015 IEP team meeting through February 2016, the parties frequently communicated. The Parent was not in agreement with the District's proposal. S-19.
43. On February 11, 2016, the Student was given a citation for disorderly conduct by School Police. The ultimate disposition of that citation is not clear from the record of this matter, although it appears to be pending as a juvenile summary proceeding in the Commonwealth Court. P-7
44. On February 23, 2016, the IEP team met again. During the meeting, the District presented a form inviting the Parent to the meeting, and stating that the purpose of the meeting was to further develop the Student's IEP, and to discuss possible changes or revisions to the IEP. S-20.
45. At the meeting, the District presented a draft IEP that includes modifications to the November 2015 IEP. The topic of how much time the Student would spend in the regular education classroom was also discussed. See S-20 at 5.
46. The IEP team met again on February 25, 2016. The IEP was revised again during the meeting. At the meeting, the District issued another NOREP, proposing an initial special

⁹ The parties clearly disagree about the appropriateness of the IEP. The issues of whether the District has offered a free appropriate public education (FAPE) was not raised in this hearing.

education placement under the IEP of December 2, 2015, as modified on February 23 and 25, 2016. The Parent approved the placement the same day. S-21.

47. On February 25, 2016, the District offered an IEP that, if approved, offers special education and related services on the basis of the Student's emotional disturbance. S-21.
48. On April 4, 2016, the Parent (via counsel) requested an IEE at the District's expense in writing. Specifically, the Parent sought an IEE including a Neuropsychological Evaluation, Speech/Language Evaluation, Auditory Processing Evaluation, Occupational Therapy Evaluation, and an independent FBA.¹⁰ S-31.
49. On April 12, 2016, the District issued a Notice of Recommended Educational Placement (NOREP). Through the NOREP, the District denied the Parent's request to fund an IEE. S-22.
50. On April 14, 2016, the District requested this due process hearing.
51. On May 23, 2016, the District sought the Parent's permission to reevaluate the Student. Specifically, the District wanted to "make another attempt to assess [the Student's] IQ" and gather information about the appropriateness of the Student's current placement. More specifically, the District proposed: "Intelligence Test, Behavior Rating Scales, Parent Input, Teacher Input, Academic Assessments, Review of Records, Discipline Records, and Attendance Records". S-25.
52. On June 1, 2016 this hearing convened and concluded in one session.

Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3d Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the District is the party seeking relief and must bear the burden of persuasion.

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. §

¹⁰ In making this request, the Parent states no particular disagreement with the ER, or any basis upon which the requested evaluations are warranted. As discussed below, the Parent is not obligated to state the basis of the disagreement, but the absence of such information is striking.

300.502(b)(1). “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense.” 34 C.F.R. § 300.502(b)(2)(i)-(ii).

“If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” 34 C.F.R. § 300.502(b)(4).

As such, the District was obligated to request this due process hearing because it rejected the Parent’s request for an IEE at public expense. The District must prove that its evaluation was appropriate. The evaluation in question is the reevaluation memorialized in the ER. S-15.

Evaluation Requirements

The IDEA establishes requirements for evaluations. Substantively, those are the same requirements as for initial evaluation. 20 U.S.C. § 1414(b).¹¹ In substance, evaluations must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” whether the child is a child with a disability and, if so, what must be provided through the child’s IEP in order for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A). Further, the evaluation must “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” and must “use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors”. 20 U.S.C. § 1414(b)(2)(B)-(C).

In addition, the District is obligated to ensure that

assessments and other evaluation materials... (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess “all areas of suspected disability”. 20 U.S.C. § 1414(b)(3)(B).

Discussion

¹¹ The IDEA also establishes circumstances under which an evaluation must be performed, and consent requirements, none of which are at issue here. See 20 U.S.C. § 1414(a).

When the Parent requested an IEE at the District's expense, the Parent stated no disagreement with the ER. As noted above, the Parent was not obligated to state any objection to the ER. During the hearing, however, the Parent explained the bases of the disagreement. To be clear, the Parent is not obligated to prove anything at all. It is helpful, however, to start with the Parent's objections.

The Parent's primary objection is that the ER is an incomplete evaluation. During the hearing, the District made a confusing, convoluted argument (but vigorously!) that any incompleteness in the ER is mitigated by its request to reevaluate the Student.¹² The District made that request to the Parent after requesting this due process hearing. Regardless, by law, the District must defend its evaluation – the ER; not the RR that may be coming. The District held out the ER as a final document, and used the RR to develop an IEP for the Student. I will, therefore, examine the appropriateness of the ER, including its completeness, at the time it was offered.

In arguing that the ER is incomplete, the Parent points to a lack of cognitive and achievement testing. The Parent correctly points out that the District made just one effort to test the Student, and that testing could not be completed because of the Student's non-compliance. As a result, the District did not obtain information about the Student's verbal comprehension, working memory, and processing speed, as well as any information about the Student's cognitive functioning. This, and the District's post-complaint request to reevaluate the student yield a complicated legal scenario.

On the one hand, the District was only obligated to assess areas of *suspected* disability. See *above*. At the time of the ER, the record reveals no basis whatsoever that should have prompted the District to suspect any type of academic disability, or anything that would qualify the Student as a student with a Specific Learning Disability. Both parties were clearly under the impression that the Student's behavioral problems had a negative impact upon the Student's academic performance. But given the severity of the Student's behaviors, the Student's academic performance was strong. The incomplete intelligence and achievement tests are typically used to determine academic disabilities. While they were incomplete (or not completed at all for academic achievement), it is not clear that they were necessary.

On the other hand, the District believed that those tests were necessary. Two factors support this. First, the District attempted this testing. The District was obligated both to assess suspected areas of disability, and to use assessments to produce actionable information about those suspected areas. I must assume that the District selected the WISC-V and the unspecified test of academic achievement (hopefully the WIAT or something else that was designed for comparative analysis with the WISC) because those tests were likely to yield information about the Student's areas of suspected disability.

Second, the District is still seeking consent to conduct intelligence testing and academic assessments as part of its proposed RR. Again, I must examine the ER at the time it was offered. But the District's current request to complete the testing that it was not able to finish during the ER suggests that testing was necessary at the time. There is some testimony to suggest that the District has offered the RR because, as a result of implementation of the IEP, the Student's behaviors have improved so that the Student is now amenable to testing. The record does not support a definitive finding of fact in this regard, but I will assume that is true for purposes of this decision. This strongly indicates that the missing information is so important

¹² To be fair, the District also argues that the ER is appropriate all by itself.

that the moment the Student became amenable to testing, the District sought the Parent's consent to finish what it previously attempted.

In sum, nothing in the record yields a conclusion that the incomplete or missing cognitive and achievement testing was actually warranted, but the District's actions yield the opposite conclusion. Although this is a close call, I must find that the District failed in its effort to "gather relevant functional, developmental, and academic information" to assess "all areas of suspected disability" 20 U.S.C. §§ 1414(a), (b)(3)(A). The District made one attempt to test the Student. No other effort was made to secure the Student's compliance, and no effort was made to obtain similar information through alternative means.

The Parent also argues that the District did nothing with information suggesting that the Student may have Autism Spectrum Disorder. The District had the Parent complete the ASRS. As with the cognitive and academic achievement testing, I must conclude that the ASRS was warranted because the District made it a part of its evaluation. Many ratings came back in statistically significant ranges. The District did nothing but report the results of the ratings.

The ASRS is not a substitute for a complete inquiry as to whether the Student has Autism Spectrum Disorder. Rather, it is a red flag that a complete inquiry was required. This is especially so when the ASRS is viewed in conjunction with the Student's social interactions – the hallmark of which appears to be quick anger towards peers for no apparent reason. It is possible that the Student does not have Autism, and that the Student's behaviors are (at least in large part) attributable to the Student's Emotional Disturbance. It is also possible that the Student has Autism, and that the Student's behaviors (perhaps including the Student's ability to cope with the death of a parent – a difficult challenge regardless of disability) are a function of that. By law, Autism and Emotional Disturbance are mutually exclusive eligibility categories. 34 C.F.R. 300.8(c)(1)(ii). All the more reason to fully explore problems flagged by the ASRS.

While the ER is incomplete, I find no legal flaw in the significant portions of the ER that were completed. The Parent takes particular issue with both the FBA and the Psychiatric Evaluation. I find no legal deficiency with either of those components of the ER.

The FBA was certainly imperfect, particularly in regard to how observational data was reported. Data showing when behaviors occurred and more carefully aligning perceived antecedents to the reported behaviors would have been helpful. Perfection, however, is not the standard. Moreover, the FBA was conducted in such a way as to help collect data for the ER, which was ultimately useful for both making an eligibility determination and designing programming. The team, including the Parent, drew reasonable hypotheses concerning the function of the Student's behaviors, collected data through observation, and used that data to craft an individualized behavior plan. There is no fatal legal flaw in that process.

The Parents argue that the psychiatric evaluation was inappropriate because the entire evaluation lasted one hour, and the psychiatrist spoke with the Student for only eight minutes. The Parent's testimony about this time period was credible but ultimately insufficient to yield a conclusive finding of fact. What is more important is the psychiatric evaluation was only a very small part of the overall ER, and simply served as one among many indications that the Student requires special education. Had the District hung its hat on the psychiatric evaluation, the scope

and duration of the evaluation would matter more. But the District took the psychiatric evaluation for what it was: one more data point supporting the ultimate eligibility determination.¹³

Given the foregoing, I find that the ER was inappropriate for its incompleteness. As the District has failed to prove the appropriateness of the ER, the Parents are entitled to an IEE at public expense. However, the full scope of evaluations that the Parent requests is not warranted. Specifically, the Student is not entitled to an independent FBA at the District's expense, as the District's FBA was sufficient. Similarly, there is no evidence whatsoever to suspect any Occupational Therapy needs. I am persuaded that the other evaluations that the Parent requests will yield information that is both missing from the ER, and necessary to determine (or confirm) the Student's proper eligibility category, and provide more complete information for IEP development. Specifically, the Student is entitled to an independent Neuropsychological Evaluation, Speech/Language Evaluation (to assess pragmatic language), and an Auditory Processing Evaluation at the District's expense.

An order consistent with the foregoing follows.

¹³ It is worth noting that the particular DSM diagnoses provided by the psychiatrist or in any of the private testing is valuable information. But DSM diagnoses do not always square with IDEA eligibility categories and do not, by themselves, make a student eligible for special education.

ORDER

Now, June 30, 2016, it is hereby **ORDERED** as follows:

1. The District's educational evaluation, as documented in the November 2015 ER is inappropriate for the reasons stated in the above decision.
2. The Student is entitled to an independent Neuropsychological Evaluation, Speech/Language Evaluation (to assess pragmatic language), and an Auditory Processing Evaluation at the District's expense.
3. The District may propose independent evaluator(s) but, in the event of a dispute, the independent evaluator(s) will be chosen by the Parent, provided that the independent evaluators are trained and knowledgeable to administer and interpret the evaluations required by this Order.
4. Evaluator(s) shall be selected and contracted to conduct the evaluations within thirty (30) days of this Order.
5. Nothing in this Order prohibits the Parent from obtaining an independent Functional Behavioral Assessment or Occupational Therapy Evaluation at the Parent's own expense. Should the Parent obtain an independent FBA, the District may implement its own policies regarding classroom observations by third parties, but may not otherwise hinder the FBA.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER