

*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

DUE PROCESS HEARING

Name of Child: M. H.

ODR #17792 / 15-16-AS

Date of Birth:  
[redacted]

Date of Hearing:  
June 17, 2016

CLOSED HEARING

Parties to the Hearing:  
Parent[s]

Methacton School District  
1001 Kriebel Mill Road  
Norristown, PA 19403

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Michael Raffaele, Esquire  
Frankel & Kershenbaum  
1230 County Line Road  
Bryn Mawr, PA 19010

Christina Stephanos, Esquire  
Sweet, Stevens, Katz & Williams  
331 Butler Avenue  
New Britain, PA 18601

June 22, 2016

June 23, 2016

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is a middle-teen-aged student enrolled in the District. Student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and currently has a Section 504 Plan. At the Parents' request the District evaluated Student to determine eligibility for special education under the IDEA. The Parents subsequently requested an Independent Educational Evaluation (IEE) at public expense because they believe that the District's February 5, 2016 evaluation was inappropriate as it did not evaluate Student in all areas of suspected disability, specifically for autism, for emotional disturbance and for a specific learning disability particularly in written expression. The District filed for this hearing to defend the appropriateness of its evaluation.

After listening carefully to the two witnesses and thoroughly reviewing the exhibits I find in favor of the Parents for the reasons put forth below and will order an IEE at public expense. The IEE will be a multidisciplinary evaluation as put forth below.

## Issue

Was the District's February 5, 2016 evaluation appropriate, and if not is Student entitled to an IEE at public expense?

## Stipulations

The parties entered the following stipulations:

1. Student lives with Parents within the boundaries of [the] School District.
2. The District is a recipient of Federal funds and subject to the IDEA, Section 504 of the Rehabilitation Act, and Pennsylvania and Federal regulations implementing the IDEA and Section 504.
3. In or about 2010, the District identified Student as a protected handicapped student under Section 504 and Chapter 15. Since October 2010, the District has identified Student's disability as Attention Deficit-Hyperactivity Disorder.
4. From 13 October 2010 to the present, the District has provided accommodations to Student pursuant to a Section 504 Service Agreement.
5. On November 30, 2015, Parents requested an evaluation of the Student. The District issued a PTE on 2 December 2015.

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<sup>1</sup> This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

6. On 7 December 2015, Parents requested that the District add assessments of Student's executive functioning to the evaluation.
7. On 7 December 2015, the District issued a new PTE, which indicated that the evaluation would include administration of the BRIEF. Parents returned the signed PTE on 11 December 2015.
8. On 11 December 2015, [the Parent] also completed and submitted the District-provided Parent Input Form.
9. On 12 February 2016, the District mailed its Evaluation Report, dated 5 February 2016, to Parents. The ER concludes that Student is not eligible for special education. The District continues to classify student as a protected handicapped student under Section 504 and Chapter 15.
10. On or about 15 February 2016, Parents communicated their disagreement with the Evaluation Report in an email to District personnel, including [the evaluating psychologist] and [the director of pupil services].
11. By a 16 May 2016 letter from their counsel to counsel for the District, Parents requested an independent educational evaluation of Student at public expense.
12. By a 20 May 2016 letter from its counsel to counsel for the Parents, the District denied Parents' IEE request.
13. On 23 May 2016, the District filed a complaint for due process rather than fund the IEE requested by parents. The Parties understand that the Hearing Officer will decide the issue of the appropriateness of the Evaluation Report dated 5 February 2016. [NT 26; J-15]

## Findings of Fact

### The Student

1. Student was diagnosed by a psychiatrist with ADHD in kindergarten and has had a Section 504 Service Plan since 2010. [NT 178-179; P-6, P-7, P-10]
2. The mother reported that Student is an “out-of-the-box thinker”. The family jokes at home that Student “doesn't even know there's a box”. Student has “incredible ideas” and “loves to go on and on about them”.<sup>2</sup> [NT 173]

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<sup>2</sup> Asked by the hearing officer whether there was any description of Student to which she testified that she did not share with the District psychologist (evaluator), the mother replied that she had shared all the descriptions with the evaluator. Findings of Fact starting with “The mother reported” are all included in this set of responses. [NT 177-178]

3. Student's initial evaluation report (ER) provided the information that on the Wechsler Intelligence Scale for Children - Fifth Edition (WISC-V) Student's Full Scale IQ was 108 at the 70<sup>th</sup> percentile. Index Standard Scores were as follows: Verbal Comprehension 124, 95<sup>th</sup> percentile; Visual Spatial 117, 87<sup>th</sup> percentile; Fluid Reasoning 103, 58<sup>th</sup> percentile; Working Memory 103, 58<sup>th</sup> percentile; Processing Speed 80, 9<sup>th</sup> percentile. [S-3]
4. The evaluator did not report the General Ability Index (GAI). The evaluator's stated reasons for not calculating and reporting the GAI contradicts information in the WISC-V manual. [NT 77-79; S-3]<sup>3</sup>
5. The two subtest scaled scores that comprise Processing Speed were as follows: Coding 6 and Symbol Search 7. The evaluator did not observe that Student's ADHD interfered with these two pencil-and-paper tasks. [NT 51-52; S-3]
6. On the WISC-V, Student's processing was much slower on paper and pencil processing tasks than on tasks requiring visual processing alone. The evaluator opined that this weakness was not affecting Student in the classroom. [NT 51, 54-55]
7. The mother reported that Student works very slowly and can easily take three or four hours to do homework. Student becomes frustrated when not being able to understand the assignment and will bang on the desk or make an angry noise. [NT 175-176]
8. Mother has observed that it takes Student a very long time to generate a page of writing. Student gets very frustrated, depending on the topic. Student's writing, in general, is very succinct, not elaborated, and spelling is "horrendous" in that Student can misspell the same word differently on one page of writing and sometimes it's not a complicated word. The teachers have reported to mother that Student doesn't write a lot – when they ask for a paragraph Student's is too short. [NT 202-203]
9. Although on the Wechsler Individual Achievement Test – Third Edition (WIAT-III) Student's Sentence Combining and Sentence Composition standard scores were in the Above Average Range, Student's Essay Composition and Theme

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<sup>3</sup> "Because working memory and processing speed subtests contribute to the Full Scale IQ, lower Full scale IQ scores may be obtained by children with neurodevelopmental disabilities that are associated with difficulties in working memory and processing speed such as learning disorders, ADHD, language disorders or autism spectrum disorder." [Citations omitted]. "The General Ability Index (GAI) should be reported and interpreted along with the Full Scale IQ and all primary Index scores...The practitioner may wish to consider deriving and interpreting the GAI in a number of clinical situations including when, for example, a significant and unusual discrepancy exists between the Verbal Comprehension Index and the Working Memory Index, a significant and unusual discrepancy exists between the Verbal Comprehension Index and the Processing Speed Index, a significant and unusual discrepancy exists between the Visual Spatial Index and the Working Memory Index, and a significant and unusual discrepancy exists between Visual Spatial Index and the Processing Speed Index." [WISC-V Manual, HO-1]

- Development / Organization scores were at the lower end of the Average range and the Below Average range respectively. [S-3]
10. As reported in the ER, in April 2015 Student scored at the Basic level on English/ Language Arts and Mathematics on the PSSA testing. [S-3]
  11. Student's Verbal Comprehension score on the WISC-V was very high. Student demonstrates a very strong vocabulary, and is able to understand language at a high level. As a result, this score should be a predictor of success with written expression. [NT 55]
  12. Student has excellent conversational skills. Student's verbal language skills are much more developed than Student's writing skills. [NT 46, 109-110]
  13. Student's current English teacher described Student's writing skills as "weak". She noted that Student's written responses were "often minimal and poorly written", that "content is not well developed and conventions is weak". Homework sheets reviewing conventions averaged 30%. [S-3]
  14. Literature test scores for the current year are low, averaging about 65% on the first semester, and the English teacher noted that "grades are lowered due [to] the written responses"; the teacher also noted that Student "scores lower on tests that require [Student] to write written responses". [S-3]
  15. Student's English report card grades this year were 82% in the first marking period and 74% in the second marking period. Student received a 74% on the midterm. [S-3]
  16. At the time of the evaluation in January and February of 2016, Student had several Cs, Ds and Fs; at one point in February Student had two Ds and two Fs, all in major subjects. [NT 220]
  17. A psychiatrist diagnosed Student with autism spectrum disorder two years ago. The mother did not tell the school about this diagnosis when it was first conferred because it did not seem to be affecting Student in school. However, she informed the evaluator of the diagnosis on the Parent Information Form she filled out for purposes of the evaluation because she had begun to see its effects this school year. She also brought the autism spectrum diagnosis up in the 30-minute telephone interview she had with the evaluator as part of the evaluation. [NT 180-182,189; S-2]
  18. One of Student's older same-gender siblings has autism spectrum disorder. [NT 188; P-2]
  19. One of Student's two close friends has autism spectrum disorder. Their play is very immature. [NT 194, 216-217; S-2]

20. Student is not strongly affected by social pressure or social norms. [NT 196-197; S-2]
21. The mother reported that Student is very loud, and jokes around a lot, but not always in an appropriate way. Student draws a lot of attention to self, but not necessarily positive attention. Student does not see how people really are reacting to what Student does. They laugh, but there are situations when Student does not see that peers are laughing *at* Student more than *with* Student. [NT 195]
22. The English teacher reported that Student at times acts in a very immature manner by making faces so that the other students or the teacher will notice and react to the inappropriate behavior. [S-3]
23. The Science teacher reported that Student, “just wants to be left alone and not be communicated with. [Student] shows attitude if you try to engage [Student.]” [S-3]
24. The guidance counselor noted that Student’s social interactions “at times are immature in nature” but Student does sit with a group at lunch. [NT 46; S-3]
25. The mother reported that Student is literal. If you say something to Student and Student doesn’t interpret it the same way that you do, Student will argue the point. If you get tired of arguing and stop, Student really gets upset and will tell you that it causes Student physical pain not to finish the thought. [NT 174]
26. The current year’s Evaluation of Protected Handicapped Student (EPHS) form notes a teacher’s report that Student “gets caught up in [Student’s] own ideas” and “gets stuck chewing on [Student’s] fingers”. This language is taken verbatim from the EPHS forms from 6<sup>th</sup> grade and from 7<sup>th</sup> grade.<sup>4</sup> [NT 96-103; P-6, P-7, P-10]
27. On the Achenbach System of Empirically Based Assessment (ASEBA) scores in the Borderline Clinical range (between the 93<sup>rd</sup> and 97<sup>th</sup> percentile of same age/ same gender peers) or Clinical range (above the 97<sup>th</sup> percentile) suggest that a student is experiencing significant symptoms of a disorder and may need some form of treatment. [S-3]
28. On the Youth Self-Report (YSR) portion of the ASEBA Student’s endorsements of listed items resulted in Syndrome scores in the Clinical range, above the 97<sup>th</sup> percentile, on Social Problems, Thought Problems, Attention Problems, and Aggressive Behavior. Syndrome Scale scores on Anxious/Depressed and Rule-Breaking were in the Borderline range, between the 93<sup>rd</sup> and 97<sup>th</sup> percentile. [S-3]

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<sup>4</sup> Whether this information is still true or not is undetermined. The evaluator reviewed the EPHS forms he created when conducting a record review for the ER.

29. On the YSR, Student's endorsements resulted in DSM-Oriented<sup>5</sup> scores in the Clinical range for Affective Problems, Anxiety Problems, Attention Deficit/Hyperactivity Problems, Oppositional Defiant Problems and Conduct Problems. [S-3]
30. On the YSR open ended questions, Student reported having "ADHD, OCD and undiagnosed schizophrenia".<sup>6</sup> Student wrote that the problem Student was having about school was "the work". For any other concerns Student might have, Student wrote, "I don't like the fact that bagels and donuts have holes in them because I feel robbed". Asked the best things about self, Student wrote, "I'M AWESOME!" (Emphasis in the original). [NT 47; S-3]
31. On the YSR open-ended questions Student reported having interests in one hobby, "collecting knives". [S-3]
32. In the essay portion of the Written Expression section of the WIAT III Student wrote about Student's favorite sport, dodgeball. It is Student's favorite because Student is "good at hitting people out". Student's mother testified that she is aware of Student's liking this sport, and Student has told her that Student likes "to hit people with the ball". Student has told mother that Student wants to play football in the fall because Student gets "to hit people, run them over". [NT 117, 200; S-3]
33. Referencing the Beck results, the evaluator noted that Student "has a much lower than average self<sup>7</sup> concept but at the same time, [Student] is embracing [Student's] strong persona that [Student] speaks about and that [Student] values". Student is "giving you a mixed interpretation. We got into a conversation about what is normal, and unique is normal to [Student] and [Student] said that it was -- you know, it's just something that we're all wanting to be unique so it's -- so normal is not something that [Student] would have respond[ed] to as a positive trait." [NT 43-44]
34. Beck responses indicated moderately elevated levels of depression and anger, and engagement in disruptive behavior is more frequent than that of same-age peers. [S-3]
35. Notably on the Beck Student responded that Student 'always' feels like screaming and feels like exploding, and 'often' thinks that people put [Student] down, are

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<sup>5</sup> The Achenbach's DSM-Oriented scales are aligned with the DSM-IV; the DSM-5 was brought out in 2014 and an Achenbach revision is reportedly in progress. [NT 39]

<sup>6</sup> When the mother questioned Student about the "undiagnosed schizophrenia" response Student told her that sometimes Student hears voices. This piece of information was not shared with the evaluator because mother asked the question after she read the ER. [NT 201-202]

<sup>7</sup> The transcript reads "CELF" instead of "self". The word should be "self". There is a speech/language test called the CELF, pronounced "self" and it seems that the court reporter's translation program confused the two.

- unfair to [Student], people try to control [Student], and people are against [Student]. [S-3]
36. On the Beck Student indicated ‘always’ liking to get people mad, and ‘often’ that Student fights with others, hates listening to other people, and likes it when people are scared of [Student]. [S-3]
  37. Student does not necessarily view the negative parts of self that Student endorsed on the YSR or the Beck as problems. [NT 135-136]
  38. The evaluator opined that Student’s anger was not “necessarily impacting [Student’s] ability to succeed in the school day”. [NT 45-46]
  39. Student participates in family based counseling. [NT 86; S-2]
  40. The mother reported that Student is “very emotional”. When Student is laughing about something, it's “full belly laugh, tears running down [Student’s] face, rolling on the floor”. [NT 173]
  41. Mother reported that Student becomes angry often. When Student is angry about something, [Student] is “loud” and can be very reactive. [NT 173, 197-198]
  42. The mother reported that Student has very strong opinions about what is fair and unfair, and if Student thinks something is unfair Student gets very angry about it. [NT 174]
  43. The mother reported that Student can also jump from one emotional extreme to the other fairly quickly. Student can be “mad as anything” and ten minutes later not be mad at all and you're joking around and everything is fine. [NT 174]

#### The District’s Evaluation

44. For purposes of the initial evaluation, the District’s psychologist (the evaluator) gathered relevant background information about the child, including written information from several teachers, a guidance counselor and the Parent. He also conducted a telephone interview with the Parent on or about December 7, 2015. [NT 34-35, 84-85; S-3]
45. Although the evaluation included teacher observations and assessments it did not include a formal observation by the evaluator. The evaluator did observe Student informally in the hallways and incidentally in class when he was observing other students. The evaluator did not describe his informal observations in the ER. [NT 32-33, 105-107, 123, 125, 129-130, 140-141]
46. The evaluation included a listing of Student’s scores on curriculum based assessments including report card grades, and on the PSSA testing done in April 2015. [S-3]



47. The evaluation included review of Student's Section 504 Plans that the evaluator had written from 6<sup>th</sup> grade through 8<sup>th</sup> grade. Notably all three plans had the exact same two paragraphs of teacher input although Student was in different grades. [NT 34, 95; P-6, P-7, P-10]
48. The evaluator used a variety of assessment tools: the Wechsler Intelligence Scales for Children 5<sup>th</sup> Edition (WISC-V) to assess cognitive functioning; the Wechsler Individual Achievement Test 3<sup>rd</sup> Edition (WIAT III) to assess academic achievement; the Adaptive Behavior Assessment System 2<sup>nd</sup> Edition (ASEBA) to assess behavioral functioning, the Beck Youth Inventory 2<sup>nd</sup> Edition<sup>8</sup> to further explore concerns raised on the ASEBA, and the Behavior Rating Inventory of Executive Functioning (BRIEF) to assess executive functioning. [S-3]
49. The above assessment tools used for the evaluation were technically sound, research-based and well respected and reliable assessment instruments. [NT 49-51]
50. The evaluator was trained in the administration and interpretation of the instruments he used, by virtue of his education and certification as a school psychologist. [NT 27-29; S-1]
51. The evaluator administered the standardized tests to Student in accordance with the instructions provided for the assessments. [NT 49-50, 56]
52. In addition to the Beck, the evaluator assessed emotional functioning through the use of Sentence Completion, a projective assessment that is not standardized, has no norms and relies on the clinical skill of the evaluator to interpret.<sup>9</sup> The District psychologist also conducted a clinical interview to assess emotional functioning. [NT 44-45; S-3]
53. Given the deficits in written expression seen on standardized testing and reported by the English teacher, the evaluator did not further explore Student's deficits in written expression before ruling out a specific learning disability in written expression. [NT 148-149; S-3]
54. The evaluator testified, in connection with his not calculating, reporting and discussing the GAI, "I didn't calculate it because I have looked at all the different

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<sup>8</sup> The Beck Youth Inventory has five scales: self-concept, anxiety, depression, anger and disruptive behavior. [NT 43]

<sup>9</sup> A "projective test" relies on the basic assumption that a person will "project" his or her own personality into whatever open-ended task is presented. Sentence completion, in its various iterations created by evaluators, consists of a series of sentence stems that may include types of items such as, for example, "I am happiest when..." or "School is..." or "Sometimes I wonder..." Or "It makes me angry when..." The evaluators may use the person's answers as a beginning point for further discussion. Interpreting the person's Sentence Completion responses takes training, skill, and experience.

- data over the three years that [Student] has provided us through the District and did not see evidence of a learning disability in that. So having this one test where there's a discrepancy between another test that I just administered would not necessarily be enough evidence for me, even if there was a discrepancy, to determine that [Student] has a specific learning disability.” [NT 78-79]
55. Given the Parent’s verbal report that Student had traits of autism and her written input to the evaluator that Student had “mild” autism spectrum disorder, the knowledge that Student’s sibling has autism, and teacher reports of immature behavior and uncommunicative behavior, the evaluator did not further explore the possibility of autistic spectrum disorder, including contacting the professional who conferred the diagnosis, before ruling out autism. [NT 36, 84-85, 89, 146-147, 182; S-3]
  56. The ASEBA is not the primary scale to use to assess for autism. [NT 142-143]
  57. The evaluator opined that there was no information provided that would raise a concern that further testing had to be completed to determine eligibility under the category of autism. From his informal observations of Student over the years the evaluator “never thought [the Student] had autism”. [NT 49, 71]
  58. The evaluator did not administer an autism diagnostic assessment as he didn’t believe it was necessary because, “I didn’t think [Student] has autism”. [NT 149]
  59. Given the Youth Self Report formal scoring, responses on the Beck, participation in family based counseling, odd statements on open-ended questions, liking to hit/hurt other people in dodgeball, and Student’s hobby of collecting knives the evaluator did not further explore the possibility of mental illness through communication with the family counselor or adding a psychiatric evaluation to an additional PTE before ruling out emotional disturbance. [NT 86; S-2, S-3]
  60. Relying on what Student told him, the evaluator concluded that collecting knives “is not a violent hobby. Not how [Student] describes it. Not what [Student] uses the knives for.” [NT 166]
  61. The evaluator opined that there was no information provided that would raise a concern that further testing had to be completed to determine eligibility under the category of emotional disturbance. [NT 49, 71]

### Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party’s evidence outweighs the other party’s evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that

is equally balanced, or in “equipoise”, then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012). In this case the District asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses”. *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003); *see also generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). There were two witnesses. I found the mother to be credible and I was confident in relying on her testimony. She did not overstate her case, she was willing to acknowledge that she was incorrect on a few points when challenged by District counsel [NT 211-212], and she answered all questions in a straightforward manner without rancor. The District’s psychologist testified for about three hours. His testimony was related to his evaluation of Student as memorialized in the evaluation report. In testimony the evaluator on various occasions glossed over his findings with comments to the effect that all middle school students have this or that difficulty, or that certain low scores were not that serious a concern, or that Student’s effort rather than ability was a factor in a low score. [NT 51, 56, 61-62, 66-67, 69-70, 72, 109, 137]. This frankly became wearisome after a while. I find that it is similar to the evaluator’s glossing over the fact that he repeated word for word the teacher data in Student’s Section 504 evaluations over three years [NT 96-104], his not correcting a date that was at least a year earlier than the purported current input from the counselor [NT 112], and to his careless cutting and pasting of a very important conclusory statement about the category of emotional disturbance [NT 162-163, 165; S-3]. Particularly telling is the evaluator’s testimony when asked by District counsel if it was fair to say that students can have a need in written expression but not qualify for any disability. The witness answered in such a way as to place into question his understanding of specially designed instruction as put forth in the IDEA. He stated, “I think every student has strength and every student has weakness and we address – we intervene on students’ performance all the time whether -- you know, if they have a reading issue like reading comprehension or they’re not decoding well, we intervene. It doesn’t matter that they have a disability or not. [Student] gets regular instruction in written expression. [Student’s English teacher was available to [Student] to support [Student] at any time. [Student] didn’t often use it, but they were -- she was always available to help [Student]”. [NT 153] I could not rely heavily on the evaluator’s testimony.

Independent Educational Evaluations: 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. § 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 at 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).

Standards for Evaluations: The purpose of an initial evaluation is to determine whether the child meets any of the criteria for identification as a “child with a disability” as that term is defined in 34 C.F.R. §300.8, as well as, if the child is found to be eligible, to provide a basis for the contents of the child’s IEP, including a determination of the extent to which the child can make appropriate progress “in the general education curriculum.” C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

The general standards for an appropriate evaluation are found at 34 C.F.R. §§300.304—300.306. The public agency is required to 1) “use a variety of assessment tools”; 2) “gather relevant functional, developmental and academic information about the child, including information from the parent”; 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7). An initial evaluation must also include, if appropriate: 1) A review of existing evaluation data, if any; 2) local and state assessments; 3) classroom-based and teacher observations and assessments; 4) a determination of additional data necessary to determine whether the child has an IDEA-defined disability, the child’s educational needs, present levels of academic achievement and related developmental needs, whether the child needs specially-designed instruction and whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum. 34 C.F.R. §§300.305(a)(1),(2).

Once the assessments are completed, the qualified public agency professionals and the child’s parents determine whether he/she is a “child with a disability” and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, a public

agency is required to: 1) “Draw upon information from a variety of sources,” including those required to be part of the assessments, and assure that all such information is “documented and carefully considered.” 34 C.F.R. §300.306 (c)(1). There is a two-pronged test for eligibility for special education under the IDEA. To be eligible for special education services and entitled to an IEP, the IDEA requires that a child be determined to have at least one of the disabilities identified and defined by the Act, and by reason thereof need special education and related services. 34 C.F.R. §300.8(a). If a child has a disability but does not need specially designed instruction and services to access the general education curriculum the child is not eligible under the IDEA.

### Discussion

There were two intertwined underlying currents that the District introduced into the record: first, that the Parents’ real disagreement was with the conclusions of the evaluation and not the evaluation’s appropriateness per se; and second, that the hearing was the prelude to a child find claim (NT 120, 132, 222). Before discussing the reasons for my findings it is important to understand that parental disagreement with an evaluation’s conclusions is not evidence that an evaluation is inappropriate; parental disagreement with supported conclusions is irrelevant to the inquiry. If this were not the case, parents could defeat any school district’s defense of its own evaluation by simply disagreeing with the outcome. Further, the inquiry is not even whether or not a hearing officer agrees with a school district’s evaluation results. Provided that a district conducted its evaluation under IDEA standards and supported its conclusions with data derived from properly administered assessments the evaluation must be deemed appropriate. Whether or not the new independent multidisciplinary evaluation that will be ordered leads to a child find claim is likewise irrelevant.

A District’s initial evaluation serves the purposes of determining whether a child meets any of the criteria for identification as a “child with a disability” as that term is defined in the implementing regulations of the IDEA, and determining whether by virtue of that disability the child requires specially designed instruction to make appropriate progress in the general education curriculum.

The inquiry when the hearing issue is an LEA’s denial of a parental request for an independent educational evaluation at public expense is whether the LEA’s evaluation met the standards for appropriateness set forth in the IDEA.

In order to be appropriate under the IDEA, among other criteria but as specific to this hearing, an evaluation “must assess the child in all areas of suspected disability [and] must be sufficiently comprehensive to identify all of the child’s special education and related service needs” in order to provide “relevant information that directly assists” in determining the child’s educational program. The IDEA identifies and defines a set of disabilities which if present would meet the criterion for a disability. In addition to already recognized ADHD, among the areas of suspected disability pertinent to this child are specific learning disability (in particular written expression), autism, and emotional disturbance. In the matter before me I find that the District failed to appropriately assess

Student in these areas, therefore rendering its evaluation inappropriate. The evidence for the District's failure to evaluate Student in all areas of suspected disability was in some respects blatant and in other respects present but less obvious.

Specific learning disability: Student has a Verbal IQ Index Score of 124, in the Superior Range. The evaluator found Student to be conversationally fluent. Nevertheless Student has had mediocre scores, and some quite low scores, on curriculum based assessments over the years. Student has failed coursework this year. Student scored poorly in comparison to potential on a nationally normed achievement test in some areas of reading and in written expression. Student struggles with written expression and Student's English teacher noted that Student's writing is "weak" and that Student scores lower on tests that require [Student] to write written responses.

Additionally, the evaluator did not calculate or report a GAI based on the WISC-V and did not sufficiently address or explore why or why not Student's slow processing on paper and pencil tasks, but not on visual processing tasks, would or would not affect Student's accessing the general education curriculum. The evaluator did not issue an additional PTE asking for an occupational therapy re-evaluation.

Autism: When she filled out the parent input form provided by the evaluator the mother noted that Student has "mild" autistic spectrum disorder. The evaluator did not ask the Parent who it was who conferred this diagnosis, did not ask the Parent when it was conferred, did not ask the Parent to give written consent for a release of records from this person and did not seek written parental consent to speak with this person. Further the evaluator did not independently conduct any structured, normed, research based assessment of whether or not Student met the criteria for autism. This is particularly egregious because the evaluator had knowledge that Student's older sibling has autism spectrum disorder and by keeping up with the professional research literature should have known that autism in a sibling is not uncommon<sup>10</sup>.

Aside from not contacting the professional who diagnosed Student, and aside from not conducting his own assessment, and aside from not taking research literature into account, there were other "pink-if-not-red-flags" suggesting that Student may have autism<sup>11</sup> that the evaluator might have seen waving: difficulty with peer interactions, not caring about social norms, out of the box "quirky" opinions on common things such as bagel and donuts, and literal interpretation of language. The evaluator's testimony that it was his 10-year history of observing Student around the school buildings and in classes in the course of observing other students that led him to believe Student does not have autism was unpersuasive, particularly since he did not include any descriptions of these observations over time in his evaluation report. Having worked in clinical settings in

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<sup>10</sup> See for example, Ozonoff S, Young GS, Carter A, Messinger D, Yirmiya N, Zwaigenbaum L, Bryson S, Carver LJ, Constantino JN, Dobkins K, Hutman T, Iverson JM, Landa R, Rogers SJ, Sigman M, Stone WL. Recurrence risk for autism spectrum disorders: A Baby Siblings Research Consortium study. *Pediatrics*. 2011; 128: e488-e495; Therese K. Grønberg, Diana E. Schendel, Erik T. Parner. Recurrence of Autism Spectrum Disorders in Full- and Half-Siblings and Trends Over Time-A Population-Based Cohort Study. *JAMA Pediatrics*, 2013 DOI: 10.1001/jamapediatrics.2013.2259

<sup>11</sup> The DSM-5 has eliminated what was in my opinion the formerly very useful diagnosis of Asperger's Syndrome, aka "high functioning autism" and has subsumed this diagnosis under Autism Spectrum Disorder.

addition to school settings, the evaluator knows the standard that, “If it’s not written down it didn’t happen.”

Emotional Disturbance: Student’s own self-reporting of behaviors on the YSR and beliefs on the Beck could alone support a classification of emotional disturbance. The evaluator also chose to use a clinical interview and Sentence Completion to determine whether or not Student qualifies for the classification of emotional disturbance. In the ER, the evaluator does not discuss the clinical interview content in any way that would provide the basis for a useful conclusion to be drawn. The evaluator does not indicate if he used a formal clinical interview format, whether he conducted a mental status examination<sup>12</sup>, nor did he provide much of any other descriptive interview data. He also used Sentence Completion, a projective test. I do not at all question the evaluator’s skill or expertise in using and interpreting this test, but I do find that projective testing is not a robust enough basis on which to help determine whether Student has an emotional disturbance.

As was the case with autism, the evaluator did not seem to give serious consideration to red flags signaling possible emotional disturbance: Student is oppositional, has low self-esteem on the one hand and is grandiose (“I AM AWESOME!”) on the other; has difficulty with peer relations; quickly changes from level mood, to angry mood, and back to level mood; feels angry much of the time to the point of feeling like screaming and exploding; feels people are against [Student]; always likes to get people mad, and likes it when people are scared of [Student]; loves the game of dodge ball because Student is good at it and Student likes to hit people; wants to play football in order to hit people and run them over. Some of these characteristics are not unusual for an adolescent; it is the combination of these characteristics that demands that emotional disturbance be explored more thoroughly. Nevertheless, the evaluator failed to issue another PTE to obtain a psychiatric evaluation.

Dicta: In an abundance of caution, and certainly influenced by current happenings in schools and elsewhere, I am compelled to offer the observation that taken as a whole Student’s presentation disturbs me. I am particularly concerned that Student’s hobby is collecting knives, given Student’s admission of liking to hurt people, one teacher’s observation that Student just wants to be left alone and shows attitude if engagement is attempted, and Student’s low self-esteem coupled with grandiosity. I urge the Parents to monitor Student closely and to make every effort to channel Student’s interest into an area that does not involve weapons of any kind.

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<sup>12</sup> A mental status examination looks at, among other things, such areas as whether the person reports or is observed to be exhibiting visual or auditory hallucinations and whether the person is experiencing suicidal or homicidal ideation.

## Order

It is hereby ordered that:

1. The District's February 5, 2016 evaluation of Student was not appropriate and Student is entitled to an IEE at public expense. The IEE shall be a multidisciplinary evaluation.
2. The IEE shall include an evaluation by a private neuropsychologist who is school certified, a private board certified child and adolescent psychiatrist, and a private occupational therapist. All three selected evaluators must be experienced in conducting evaluations of adolescents.
3. The District and the Parents must make all educational and medical records available to the evaluator[s], and the Parents must sign any "consent to release information" form that the independent evaluators might require in the course of carrying out their professional responsibilities.
4. Upon the completion of the multidisciplinary evaluation the District shall convene a multidisciplinary evaluation team meeting to determine whether Student is eligible for special education. The private evaluators shall be invited to participate in the meeting in person or by telephone and the District shall reimburse them at their hourly rate for the time they spend at the meeting.
5. The District shall not be required to reimburse the private evaluators for their attendance at any subsequent meeting, and unless privately retained by the Parents their involvement shall end at the conclusion of the multidisciplinary evaluation team meeting.

Any claims not specifically addressed by this decision and order are denied and dismissed.

June 23, 2016

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official