

*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

Child's Name: N.B.  
Date of Birth: [redacted]  
CLOSED HEARING  
ODR File No. 18803-16-17 KE

Parties to the Hearing:

Parents  
Parents

Representative:

Parent Attorney  
None

Local Education Agency  
North Allegheny School District  
200 Hillvue Lane  
Pittsburgh, PA 15237

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Date of Hearing:

March 20, 2017

Date of Decision:

April 5, 2017

Hearing Officer:

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

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student in this matter (Student)<sup>1</sup> is a late-pre-teenaged student who resides within the North Allegheny School District (District), but currently attends a private parochial school (Private School). Student's Parents sought a District evaluation of Student to determine whether Student is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> After the evaluation was completed, the Parents requested an Independent Educational Evaluation (IEE) at public expense due to their disagreement with the evaluation process and resulting conclusions. The District refused that request and filed a due process complaint seeking to defend its evaluation.

Following assignment of the case to this hearing officer, she provided information to the parties about the hearing process, and a conference call was also conducted to answer procedural questions.<sup>3</sup> The case proceeded to a due process hearing convening over a single session. The District presented evidence seeking to establish that the evaluation it conducted met all criteria in the IDEA and relevant federal and state regulations, while the Parents challenged certain aspects of that evaluation. For the reasons set forth below, the District's claim will be granted.

### **ISSUES**

1. Whether the District's evaluation of Student met all requisite criteria of a special education evaluation; and
2. If the District's evaluation did not meet all required criteria, should the District be ordered to provide an IEE of Student at public expense?

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. The identifying information appearing on the cover page of, and elsewhere in, this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2) without disclosing details that identify the child.

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> Hearing Officer Exhibit (HO-) 1.

## FINDINGS OF FACT

1. Student is a late-pre-teenaged Student who is a resident of the District. Student currently attends Private School and is in sixth grade. (Notes of Testimony (N.T.) 29-30; School District Exhibit (S-) 4 p. 1)

### DISTRICT EVALUATION

2. In November 2016, the Parents requested that the District conduct an evaluation of Student. They specifically asked for an evaluation of a specific learning disability in the area of reading, and assessment of fine motor and writing skills and speech and auditory processing. The Parents further requested that the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) be administered. (N.T. 33-34, 79; S-3 pp. 1, 5)
3. A District school psychologist who is certified both nationally and in the Commonwealth contacted the Parents to discuss their request for an evaluation. A Prior Written Notice for Initial Evaluation and Request for Consent Form for the proposed evaluation was sent to the Parents at the end of November 2016, and specified assessment of “cognitive abilities and processing, academic achievement, behavioral assessments, classroom observations, teacher reports, parent input, curriculum-based assessments, records review including performance on local assessments, standardized assessment of speech/language functioning, and assessment of fine motor/writing skills via occupational therapy evaluation” (S-3 p. 2). (N.T. 74-75, 81-82; S-3)
4. The Parents provided consent by signature on December 8, 2016, stating: “We consent to this evaluation provided it includes: WISC-V; Dibels<sup>4</sup> math + reading; [redacted]” (S-3 p.3). (N.T. 81; S-3)
5. The District school psychologist sought input from the Parents through an open-ended form, developmental questionnaire, and behavior rating scales. (N.T. 88-89)
6. The District school psychologist sought input from Private School through a referral packet that requested information from current teachers, as well as behavior rating scales. Private School advised that its policy was to provide the requested information as a team, and did not identify those teachers who contributed. (N.T. 89-90, 93, 147-50, 158)
7. The District school psychologist conducted an observation of Student at Private School and summarized that observation in the ER. Student was observed during a small-group Mathematics class. The school psychologist described Student’s disorganization in locating homework and the strategy used to address that difficulty; the instruction provided and Student’s participation in the lesson; and Student’s independent work at the end of the class. Student’s overall behavioral functioning in that class was summarized with no significant concerns. (N.T. 124, 153; S-4 p. 10)

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<sup>4</sup> This reference appears to be to the Dynamic Indicators of Basic Early Literacy Skills (DIBELS).

8. The ER also summarized an observation by a Private School administrator during a period of independent student activity involving silent reading and written exercises. This observer noted Student's disorganization, disinterest, and need for assistance, despite reported task completion. (S-4 p. 10)
9. The ER contained, verbatim, all of the Parents' written input with the exception of the family's extensive travel, which was summarized. The District school psychologist also organized their input for the ER. (N.T. 92-93)
10. Strengths reported by the Parents included science, technology, social studies, history, and mathematics; leadership abilities; communication skills; creativity; significant background knowledge in a variety of areas; and listening comprehension skills. (S-4 pp. 2-7, 12-15)
11. Concerns reported by the Parents included some disorganization with tasks and activities, inattention at home, and visual perceptual ability. The Parents reflected needs to include critical thinking skills, a challenging curriculum, handwriting and written expression skills, note-taking skills, spelling, use of technology in the classroom, clear directions and instructions, organizational skills, and testing accommodations. (S-4 pp. 2-7, 12-15)
12. The Parents also provided input from Student's physician, who indicated that Student met criteria for dyslexia and Attention Deficit Disorder (ADD). Medical and educational history was also provided by the Parents and set forth in detail. (S-4)
13. The ER included the information provided by Private School. Student's teachers indicated strengths to include oral communication skills and auditory learning; concerns were noted in the areas of attention to detail, following directions, sustaining attention, avoiding distractions, completing assignments, and organizational skills. Slight concerns were noted with respect to Student's low activity level, mood of unhappiness, inattention, handwriting/fine motor skills, and spelling skills. (N.T. 94; S-4)
14. Private School reported on successful strategies for Student: individualized and small group instruction for Language Arts and Mathematics. (S-4 p. 9)
15. The District school psychologist assessed Student's cognitive ability using the WISC-V. Student attained an average range Full Scale IQ score (98), with average scores on all composites with the exception of Processing Speed in the above average range; the Verbal Comprehension Index was near the upper end of the average range. A General Ability Index (GAI) score was calculated to remove any impact from processing speed and working memory. The GAI score (99) was not statistically discrepant from the Full Scale IQ score. (N.T. 98; S-4 pp. 18-21)
16. Academic achievement was assessed using the Wechsler Individual Achievement Test – Third Edition (WIAT-III). Student scored in the below average range on the Total Reading and Basic Reading Composites and on the Mathematics Fluency Composite, and in the well below average range on the Written Expression Composite. (S-4 pp. 21-22, 24-25)

17. The District school psychologist conducted the standardized assessments based on the protocols established by the publisher. All assessments were administered under standard conditions. (N.T. 99; S-4 pp. 9, 35)
18. The District school psychologist also administered the Feifer Assessment of Reading (FAR) to further examine Student's reading ability. Student was fatigued at the time the District school psychologist attempted to administer the FAR, and that testing session ended early. This circumstance did not impact the determination of Student's specific learning disabilities, but the results were not considered to be valid and reliable, so additional assessments were recommended to guide programming decisions. (N.T. 100, 107; S-4 pp. 21-23, 40)
19. Student's grades for the first quarter of the 2016-17 school year at Private School reflected Basic Performance in English and Science; Proficient Performance in Reading, Handwriting, and Social Studies; and Experiencing Difficulty in Spelling and Mathematics. The ER notes, however, that Student's Mathematics class was using a textbook that was a grade 7 level text. Student's rates of acquisition and retention were reportedly average or slightly below average in most subject areas. Student demonstrated inconsistency in classroom-based measures of achievement. (S-4 pp. 16-17, 37)
20. The District school psychologist obtained and reported results of an online administration of AIMSweb<sup>5</sup> regarding Student's benchmark Reading and Mathematics skills compared to a national sample. The results reflected that Student had relative strengths in reading comprehension (over the 90<sup>th</sup> percentile compared to same grade peers) and some mathematics skills (including probability and statistics) when compared to grade level peers. The Mathematics portion of the assessment was either interrupted or repeated, so those results were interpreted with caution. (N.T. 108-09; P-3, P-4, P-5; S-4 pp. 25-26)
21. The District school psychologist arranged for evaluation by a District occupational therapist. The occupational therapy evaluation consisted of the School Function Assessment, teacher reports, and direct observation; and was conducted under standardized conditions. Several occupational therapy needs were identified: fine motor skills, hand strength/endurance, visual perceptual skills, and visual motor skills. (N.T. 86; S-4 pp. 31-32)
22. The District school psychologist arranged for evaluation by a District speech/language pathologist. Assessment of expressive and receptive language skills, auditory processing, articulation, functional hearing, fluency of speech, and vocal quality did not reveal any speech/language needs. (N.T. 86; S-4 pp. 33-35)
23. Rating scales from the Behavior Assessment System for Children – Third Edition (BASC-3) were summarized in the ER. The Parent Rating Scales reflected no at-risk or clinically significant concerns. The Teacher Rating Scales noted clinically significant

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<sup>5</sup> Like DIBELS, AIMSweb provides benchmark assessment of Reading and Mathematics skills compared to peers. (See P-3, P-4, P-5) AIMSweb is the screener used in the District at the elementary school level; and, in their opening statement, the Parents agreed that AIMSweb provided the benchmark information they sought. (N.T. 18-19, 108-09, 128-31)

concerns for Atypicality and Withdrawal, and on the School Problems Composite; and at-risk concerns for Depression, Somatization, Attention Problems, Learning Problems, and on the Internalizing Problems Composite and Behavioral Symptoms Index. Teachers also indicated concerns with Overall Executive Functioning based on attention control. (S-4 pp. 15-16, 26-29)

24. The ER reached a conclusion that Student was eligible for special education on the basis of a specific learning disability in basic reading and reading fluency, as well as written expression. That conclusion was not based on a lack of appropriate instruction in Reading or Mathematics, or a lack of English proficiency; and, the ER documented the analysis of Student's specific learning disability. (N.T. 100-04; S-4 pp. 35, 39-40, 45-48)
25. The ER provided a number of recommendations for Student's educational programming related to areas of strength and need, including program modifications, suggested specially designed instruction, and further assessments for developing goals and objectives. (S-4 pp. 40-42)

[REDACTED]

#### EVENTS SUBSEQUENT TO THE ER

26. In late February 2017, a team met to develop an Individualized Education Program (IEP) for Student. (N.T. 53; S-16 p. 1)
27. After the ER was complete, the Parents provided information about Student's performance at Private School. (N.T. 45-47)
28. Approximately one month after the ER was complete, the Parents provided information from Student's pediatrician that Student has Attention Deficit Hyperactivity Disorder (ADHD). (N.T. 38; S-8)
29. [redacted]
30. The District did not share or seek additional information from Private School following completion of the ER because the Parents asked that the District not do so. The District did not provide the ER to Private School. (N.T. 39-40, 62-63; S-9)
31. The Parents requested an IEE at public expenses, and the District denied that request by Notice on February 20, 2017. (N.T. 34; S-6, S-7)

### **DISCUSSION AND CONCLUSIONS OF LAW**

#### GENERAL LEGAL PRINCIPLES

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the

burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the District as the party requesting this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also 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). This hearing officer found each of the witnesses to be credible, and the testimony overall was rather consistent. It should be noted that the disagreement was not a dispute about the facts, but rather on how the undisputed facts should be construed. In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, as well as the parties’ arguments.

#### IDEA PRINCIPLES

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all children who qualify for special education services. 20 U.S.C. §1412. The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. The IDEA sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in

the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i).

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

In conducting the evaluation, the law imposes certain requirements on local education agencies to ensure that sufficient and accurate information about the child is obtained:

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b). The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services



needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3).

Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1). When evaluating a student for autism, an emotional disturbance, intellectual disability, multiple disabilities, other health impairment, traumatic brain injury, or specific learning disability, a certified school psychologist must be part of the team. 22 Pa. Code § 14.123(a). In interpreting evaluation data and making these determinations on eligibility and educational needs, the team must:

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

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

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

When parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 34 C.F.R. § 300.502(b); 20 U.S.C. § 1415(b)(1). When a parent requests an IEE, the local education agency must either file a request for a due process hearing to establish that its evaluation was appropriate, or ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). In this case, the District filed a request for due process seeking a

determination that its evaluation was appropriate.

#### THE DISTRICT'S EVALUATION

The record as a whole clearly supports a conclusion that the District's evaluation met the requisite criteria under the IDEA and the implementing federal and state regulations. The District's evaluation of Student utilized a variety of informants in gathering functional, developmental, and academic information about Student. A number of assessment tools and instruments were administered to examine cognitive, achievement, behavioral, physical, and developmental factors, yielding an ER that reflected careful consideration of Student's strengths and needs across all domains and unique learning profile. All assessments were conducted under standardized conditions and in accordance with publisher instructions, and a certified school psychologist was part of the team and administered many of the assessments reported. The ER assessed Student in all areas of suspected disability: specific learning disability, fine motor skills, speech/language skills, and auditory processing, with careful consideration of all of the Parents' concerns. None of the results suggested that further assessments were necessary. All available information, including aptitude and achievement testing, behavioral and emotional functioning, detailed parental input, teacher recommendations, and two separate observations in the educational setting, were included in the ER and considered by the District.

For all of these reasons, the preponderant evidence establishes that the District's evaluation was sufficiently comprehensive to determine whether Student has a disability and to identify all of Student's special education needs, with a significant number of resulting recommendations to guide and inform educational programming. Accordingly, the District's evaluation of Student was appropriate under the IDEA and implementing regulations, and there exists no basis for awarding an IEE at public expense as permitted those regulations.

[REDACTED]

It is quite evident that the Parents have had some disagreements with Private School, including its resistance to providing testing accommodations to Student, its failure to share certain information with the District that the Parents deemed important, its culture, and possible bullying of Student at Private School. (S-9, S-10, S-14, S-18) That the ER may serve to compound the difficulties in that relationship is quite unfortunate. Nevertheless, the District met its obligations under federal and state law in evaluating Student, and there is nothing in the record to suggest that it was somehow remiss in failing to go beyond those requirements. Accordingly, the District shall not be ordered to provide an IEE of Student at public expense.

### **CONCLUSION**

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District's evaluation of Student met all legal requirements, and that no basis exists for ordering an IEE at public expense.

### **ORDER**

**AND NOW**, this 5<sup>th</sup> day of April 2017, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's evaluation of Student in the fall of 2016 met all legal requirements. The District is not ordered to provide an IEE at public expense or to take any further action.

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

*Cathy A. Skidmore*

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Cathy A. Skidmore  
HEARING OFFICER  
18803-1617KE