

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

Final Decision and Order

CLOSED HEARING
ODR File Number: 19817 17 18

Child's Name: I. D.

Date of Birth: [redacted]

Dates of Hearing:

11/14/17

Parent:

Parent(s)

Counsel for Parent

Pro se

Local Education Agency:

Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335-2643

Counsel for the LEA

Katie Metcalfe Esquire
331 Butler Avenue, New Britain PA 18901

Hearing Officer: Charles W. Jelley Esquire

Date of Decision: 01/02/2018

Background

The Parties agree the Student [needs and] has an Individualized Education Program (IEP), which includes specially-designed instruction to address an Individuals with Disabilities Education Act (IDEA) disability of an Other Health Impairment (OHI) [redacted]. The IEP also includes the related services of speech therapy and occupational therapy (OT).¹ [A]t all times relevant, the Student's [redacted] needs were addressed and set out in [an] IEP document. The Parent filed the due process request when the District refused to include a [redacted] goal into the IEP. The Parent concedes the Student does not need specially-designed written expression instruction. The Parent seeks an Order directing the District to provide the Student with a reading goal to address the Student's alleged [redacted] needs, beyond that provided in the District's regular education English Language Arts (ELA) curriculum. The Student is currently in the middle school. As the Party who requested the hearing, the Parent has the burden of proof to demonstrate the Student is not receiving a free appropriate [] education. After carefully reviewing all of the evidence, I find the Parent did not meet her burden of proof. Therefore, I find the current IEP addressing the Student's [redacted] needs is appropriate.

Issue

Does the current IEP, provide the Student with a free appropriate [] education program, and if not, should the IEP be revised to include an English Language Arts goal in reading?

Findings of Fact

1. The Student has been enrolled in the District since first grade (S#1).
2. [Redacted.]
3. In December of third grade, during the 2013-2014 school year, the district agreed to place the Student in a 4th-grade math class.² The math [class was and has been successful] through the current 6th grade school year (S##3,4,16,19).

¹. [redacted]

² 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.

4. In spring of third grade, during the 2013-2014 school year, the Parent voluntarily removed the Student from [redacted class] for the English Language Arts (ELA) block of time (N.T. p.9). The Parent believed then and now that the changes in Student's schedule, IEP and level of [redacted] support were appropriate (N.T. p.9).
5. Continuing into the 2014-2015 school year, (*i.e.*, fourth grade) the Student's IEPs have not included a [redacted] ELA goal (N.T. 112).
6. On January 23, 2015, the District completed a second comprehensive evaluation which found the Student eligible for special education as a student with an Other Health Impairment, due to Attention Deficit Hyperactivity Disorder (ADHD) and a Speech and Language Impairment (S#2 p.26).
7. The January 23, 2015, IDEA evaluation included portions of the Wechsler Individual Achievement Test–Third Edition (WIAT-III). The Student earned an Oral Language/Listening Comprehension Standard Score (SS) of 126, a SS of 120 on Receptive Vocabulary, and a SS of 122 on Oral Discourse Comprehension, all in the Superior Range (S#2 p.11-12). On the reading portion of the WIAT-III the Student earned a 122 in Pseudoword Decoding, and a 128 in Word Reading, both in the Superior Range. Student also earned a SS of 103 in Oral Reading Fluency in the Average Range, and a SS of 119 in Reading Comprehension in the Above Average Range (S#2, pp.11-12).
8. The Student's WIAT-III Writing scores were a 113 in Sentence Composition, and a SS of 119 on the Sentence Building task, both in the Above Average Range. Student earned a SS of 105 on the Sentence Combining, a SS of 106 on the Essay Composition subtest, a SS of 107 in Word Count and a SS of 104 in the Development and Text Organization, all in the Average Range. Student's SS of 127 on the Spelling subtest was in the Superior Range. (S#2, pp.11-12).
9. The Student earned an overall Written Expression Composite SS, on the WIAT-III, of 120, within the superior range. (S#2 p.12).
10. On the Test of Written Language 4th Edition (TOWL-4), the Student earned an average Composite SS. The Student scored at the 75th percentile in Vocabulary, the 63rd percentile in Spelling, the 98th percentile in Logical Sentences, the 98th percentile in Sentence Combining, the 37th percentile in Contextual Conventions and the 75th percentile in story Composition (S#2 pp.11-13). The Student's work product was notable for poor spacing among individual letters and words (S#2 pp.11-13). The spacing problems made it

difficult for the evaluator to read the work product (S#2 pp.11-13). The evaluator noted the Student did not consistently use the left margin (S#2 pp.11-13). The spacing and the left margin writing errors were reported to the OT (S#2 p.13). Overall, the Student earned a Writing Composition score of 107, at the 68th percentile, and a Vocabulary, Spelling, Punctuation and Logical Sentence Writing SS in the average range of 104 (S#2 p.13). The evaluator noted that the scores should be interpreted with caution as the Student was younger than the youngest age norms available from the test maker at the time of the test (S#2 pp.12-13).

11. On the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), the Student demonstrated Very Superior ability earning an estimated full-scale IQ of 131. The evaluator reported that the Student's processing skills were assessed at the Superior to High Average ranges (S#2 p.9). The Student's General Ability Index Score of 133 ranks at the 99th percentile, when compared to same age peers (S#2 p.9).
12. The Student's February 22, 2016, fourth to fifth-grade IEP, revised again in May 2016, revised again on April 5, 2017, May 30, 2017, June 14, 2017, and September 18, 2017, do not include an ELA [redacted] goal (S#4). All of the IEPs from February 2016 through September 18, 2017, did not include an ELA goal and were approved by the Parent (S## 3, 4, 16, 19).
13. On September 21, 2017, in sixth grade, for the first time since third grade, and after the 2017-2018 school year started, the Parent in an email requested that an ELA [redacted] reading goal be included in the 2017-2018 IEP. *Id.*
14. On November 3, 2017, the IEP team met to discuss Parent's request for a [redacted] ELA goal (S#18). At the IEP meeting, the Parent presented test scores from a privately administered Kaufman Test of Educational Achievement-Third Edition Brief version (KTEA-3 Brief) score sheet (S#19, 19; P#2). The KTEA-3 Brief is a nationally normed assessment instrument with established validity and reliability (P#2).³
15. The KTEA-3 Brief score sheet reflected raw scores for the Letter and Word Recognition and Reading Comprehension subtests (P#2). The Student

³ The Kaufman Test of Educational Achievement, Third Edition – Brief Form - (KTEA-3 Brief) is an individually administered norm-referenced measure of core academic skills well-suited for screening, pre-referral, and re-testing. Three achievement domains are measured by the KTEA-3 Brief: reading; mathematics; and written language.

<https://www.pearsonclinical.com/education/products/100001342/kaufman-test-of-educational-achievement-third-edition-brief-form-ktea-3-brief.html>

earned a raw score of 88 in Letter and Word Recognition and a raw score of 216 for Reading Comprehension (P#2).

16. On the KTEA-3 Brief (P-2) the Student earned the following scores, Decoding: > 12.10 GE (grade equivalent) and Comprehension: 9.6 GE (grade equivalent). The evaluator did not include KTEA-3 Brief Standard Scores (P#2). The Parent offered the KTEA-3 Brief testing to support her position that Student needs specially designed instruction in written expression (P-2). The scoring of the KTEA-3 is in doubt. The KTEA-3 Brief is made up of six subtests (which are listed on the front page of the record form (P#2; N.T. p. 120). The record is preponderant that the Letter and Word Recognition and Reading Comprehension subtests were not given in accordance with the publisher's test protocols (N.T. pp.121-126). The cover sheet providing the scoring for the KTEA-3 listed the wrong school and wrong grade for the Student (N.T. p.121). The highest raw score a student can earn on the Reading Comprehension subtest is 105, the evaluator used a raw score of 216 as the base level raw score (N.T. pp.121-126). When the KTEA is accurately scored, it is impossible to have a Reading Comprehension raw score of 216 (N.T. p.124). To reconcile the KTEA-3 Brief test results with its own prior test findings the District issued a Permission to Reevaluate. The Permission to Reevaluate included additional academic achievement testing (N.T. p.126). When presented with the Permission to Reevaluate, the Parent refused to give permission to conduct a reevaluation (N.T. p.126).
17. After reviewing the existing data, including the Parent's KTEA-3 Brief results, the District members of the team concluded that the Student was not [redacted] in need of specially-designed ELA instruction beyond that offered in the general education ELA curriculum. In reaching the conclusion, the District team members relied on the Student's score of a 3 on the District-wide written expression testing, which, along with a review of the existing data, indicated that the Student did not qualify for [a specific] ELA course (S#13, NT pp.143-148). [That] ELA course is a general education course (N.T. p.148).
18. When assessing students using the District-wide matrix scoring assessment rubric, the highest score any student can earn in each of the 3 District-wide matrix assessment areas is 3 points per assessment area, out of a total possible score of 9 S#13; N.T. 145-147). The Student's earned zero (0) points for the Pennsylvania Value-Added Assessment System (PVAAS) test

score.⁴ The Student earned a score of 2 points for District-wide Fountas and Pinnell reading scores, and 1 point for ELA classroom grade (S#13; N.T. 145-147). When reviewing the Student's matrix scores and overall classroom performance the District members of the team concluded that the Student did not demonstrate a need or qualify to participate in the general education ELA class for participation in a [particular] experience beyond the regular education [other] ELA course offering and curriculum (N.T. p.145).

19. Additionally, the Student did not meet the District-wide matrix cut score criteria to be placed into the regular education [other] ELA course. Any student who earns a score of 7 out of 9, is eligible to participate in the [other] ELA class (S#13; N.T. p.148).

20. As of November 6, 2017, the Student's then current ELA grade was 90.33% (S#14, pp. 1-2). The Student's ELA grade reflects test scores of 83.33% and 76.67% (S#14, p.1) The Student's test grades do not suggest that Student has written expression needs beyond the general education curriculum (N.T. 151).

21. Although the Student did not meet the District-wide criteria for participation in the Advanced ELA experience, the District at the November 3, 2017, IEP meeting offered to place the Student in the regular education [other] ELA

⁴ "PVAAS is a statistical analysis of Pennsylvania (PA) state assessment data, and provides Pennsylvania districts and schools with growth data to add to achievement data. Districts, schools and teachers are using PVAAS growth data, in conjunction with achievement data, to make sure students are on the path to proficiency and beyond. Utilizing all the data available (growth and achievement), educators are able to make data-informed instructional decisions to ensure the academic growth and achievement of all students." The Pennsylvania Department of Education notes that "Achievement data measures a student's performance at one single point in time. (2) Achievement data is highly correlated with a student's demographics. Achievement data compares student performance to PA Core Standards and achievement data is critical to a student's post-secondary opportunities. Growth data on the other hand, measures a student's group's growth across time; i.e., across the year. Growth data typically has little to no relationship with students' demographics. Growth data compares performance of a student group to its own prior performance. Growth data is critical to ensuring students' future academic success. PDE goes on to state "By measuring students' academic achievement AND growth, schools and districts have a more comprehensive picture of their own effectiveness in raising student performance." <http://www.education.pa.gov/K-12/Assessment%20and%20Accountability/Pennsylvania%20Value%20Added%20Assessment%20System/Pages/default.aspx#tab-1>

experience. The Parent declined the offer to have the Student participate in the regular education [other] ELA experience (N.T. 153).

22. The Parent admitted that the Student's current ELA class is "fine" because "[redacted] needs grade level instruction in writing" (N.T. p.93). Although [all] ELA instruction includes instruction in two areas, reading and writing, the Parent is seeking [redacted] in reading only—not writing (N.T p. 111).

GENERAL LEGAL PRINCIPLES

BURDEN OF PERSUASION AND PRODUCTION

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 Parent 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.

CREDIBILITY

Hearing officers, as fact-finders, are 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); *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. While the Parent's witnesses were credible, I will, however, give limited weight to the Parent's witnesses' testimony. The first witness did not observe or evaluate the Student in the ELA curriculum. The second witness, while a teacher [redacted], met with the Student for an hour, at a bookstore. The second witness did not observe the Student in class. The Parent's witnesses were not familiar with the District's regular education [redacted] supports. The Parent's witnesses failed to comment positively or negatively about the District's evaluation(s) or the criteria applied by the

District team members to determine the Student's eligibility. The third individual who conducted the Parent's independent testing did not testify and the Parent did not offer any evidence, on the record, to contradict the District's psychologist's testimony about the KTEA-3 Brief scoring errors. The testimony of every witness and the content of each exhibit were thoroughly considered in issuing this decision, as well as the Parties' closing arguments. All of the witnesses were candid, clear and concise in their recollection of the relevant facts at issue.

[Section redacted.]

ANALYSIS

The Parent contends the Student needs specially-designed [redacted] ELA instruction. The District, on the other hand, argues that [redacted and] they are willing to place the Student in [the other] regular education ELA class. When the Parent provided the District with private achievement testing, after reviewing the testing the District offered and the Parent refused to allow the District to do additional achievement testing. The Parent offered two witnesses. The witnesses did not conduct any norm-referenced or curriculum-based assessments. The witnesses did not observe the Student during ELA instruction. Neither of the witnesses reviewed the Student's entire educational record or talked to the Student's teachers. Neither of the witnesses reviewed the District's ELA regular education curriculum and neither of the witnesses reviewed the District's [other] ELA curriculum. After reviewing all of the exhibits and rereading the record, I now find the Parent did not meet her burden of proof.

The private evaluator who performed the independent testing did not testify. The Parent did not explain how the private evaluator scored the Student's KTEA-Brief Letter and Word Recognition and Reading Comprehension testing results. The Parent did not offer any other evidence to explain the substantive concerns about the scoring of the KTEA- 3 Brief. Setting aside the evaluator's error in identifying the Student's grade and school, the Parent did not persuade the hearing officer that the KTEA-3 Brief testing was administered and scored consistently with the test maker's directions. The evidence is preponderant that the private evaluator erred when she administered and scored the KTEA-Brief Reading Comprehension testing. Curiously, the private evaluator did not provide a SS for the Reading Composite testing or the Letter and Word Recognition subtests. The private evaluator did not offer any interpretation or application of the KTEA-3 Brief

testing in light of the Student's intellectual ability. Neither the witnesses nor the KTEA evaluator linked the KTEA-3 Brief testing to the Student's need for specially-designed instruction above that provided in the District's regular education curriculum. When the Student's District-wide testing and classroom grades are factored into the mix, the Student's performance does not indicate a need for specially-designed instruction in the ELA curriculum. Therefore, the Parent's evidence is insufficient and inadequate.

Accordingly, the Parent's request for relief is denied.

ORDER

AND NOW, this 2nd day of January of 2018, in accordance with the preceding Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Student's [redacted] IEP meets all legal requirements [reacted]. Accordingly, the District is not ordered to provide compensatory education for any alleged violations [redacted].

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

January 2, 2018

[Charles W. Jelley, Esq. LL.M.](#)

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HEARING OFFICER
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