

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

Open Hearing

ODR File Number:

26007-21-22

Child's Name:

L.L.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

[pro se]

Local Education Agency:

Rose Tree Media School District
308 North Olive Street
Media, PA 19063

Counsel for LEA:

Linell Lukesh, Esquire
19 West Third Street
Media, PA 9063

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

03/14/2022

INTRODUCTION AND PROCEDURAL HISTORY

The student, L.L. (Student),¹ is an early elementary school-aged student residing within the boundaries of the Rose Tree Media School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA),² and currently attends [school] in the District.

In January 2022, the District filed a Due Process Complaint in order to defend its evaluation of Student in June 2021 after the Parents sought an Independent Educational Evaluation (IEE) at public expense. The case proceeded to a very efficient due process hearing.³ The District maintained that its evaluation of Student was appropriate and no remedy was due. The Parents countered that position, raising several concerns that prompted them to request the IEE.

Following review of the record and application of the relevant law, and for all of the reasons set forth below, the claims of the District must be granted.

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with 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).

² 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).

³ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. The undersigned's initial communication with the parties transmitted by email message on February 4, 2022, together with its attachments, have been marked as Hearing Officer Exhibit (HO-) 1 and is hereby admitted.

ISSUES

1. Whether the District's evaluation of Student reflected in a Reevaluation Report in June 2021 was appropriate under the IDEA; and
2. If the District's evaluation of Student was not appropriate, whether the Parents are entitled to an IEE at public expense?

FINDINGS OF FACT

1. Student is an early primary elementary school-aged student residing in the District. Student has been identified as eligible for special education based on Specific Learning Disability and Speech/Language Impairment. (S-11.)

Early Educational History

2. Student was delayed in developing speech because of a medical condition. Student was provided early intervention services by the local Intermediate Unit (IU) through its infant-toddler program as well as in preschool. (N.T. 137; S-5 at 4.)
3. Student currently is provided private speech/language therapy. (N.T. 142, 143.)
4. The IU evaluated Student in the fall of 2020 and issued an Evaluation Report (ER) in December 2020. (S-5.)
5. The IU ER assessed Student's development across domains: cognitive, communication, social/emotional, physical, and adaptive. Student exhibited identified needs in the areas of communication and physical development (sensory processing, fine and visual motor skills) at the time of that evaluation. (S-5.)

6. Assessment of Student's communication skills for the IU ER included the Clinical Evaluation of Language Fundamentals (CELF), Second Edition. Student demonstrated below average range skills in core language, language structure, receptive language, expressive language, language content, and weak basic concept knowledge. Additional communication assessments revealed articulation and phonological processing weaknesses. (S-5.)
7. The Parents registered Student with the District in January 2021. At that time, Student was provided with specialized instruction in addition to speech/language and occupational therapy services. The District convened a meeting with the Parents at that time to discuss Student's transition to school-age programming. (N.T. 28; S-1; S-6; S-8 at 1.)
8. In March 2021, the District sought consent to conduct a reevaluation of Student. The District proposed assessment of cognitive functioning, academic readiness skills, social/emotional functioning, speech/language skills, and occupational therapy-related skills. The Parents provided permission in early April 2021. (N.T. 125; S-8.)

June 2021 Reevaluation Report

9. The District issued its Reevaluation Report (RR) in June 2021. The Parents' input identified areas of strength and need, with the latter focused on understanding directions as well as expressive language including speech intelligibility. Student reportedly was delayed in developing verbal speech, and interaction with peers was limited due to Student's skill deficits. (S-8 at 5-8.)
10. The June 2021 RR provided a summary of Student's early intervention services at the IU, and incorporated the Parents' input as well as that of the IU teacher. (S-11 at 1-3.)

11. Reporting on previous evaluation results, the June 2021 RR summarized Student's aptitude assessments in December 2020, and input from the IU on Student's current skills in the areas of pre-reading, pre-mathematics, and writing skills, as well as attention. (S-11 at 2-3.)
12. The June 2021 ER included an observation of Student at the IU program by the District's speech/language therapist who conducted that portion of the evaluation. The observation reflected Student's participation in all activities and the teacher reporting a successful transition to the classroom setting. The school psychologist was not able to also conduct an observation because of COVID-19 restrictions. (N.T. 43-44, 86; S-11 at 3-4, 10.)
13. The District school psychologist, who is experienced and well qualified, conducted assessments of Student at its elementary school building. She described Student's initial reserved demeanor that was quickly replaced by rapport between the school psychologist and Student, who was cooperative, attentive, and engaged in the tasks. (N.T. 25-27, 47-48, 63-64, 65, 69, 70-71; S-11 at 4; S-23.)
14. On the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV), a standardized instrument, Student earned a Full Scale IQ score in the low average range with some variability among subtests and Composites. Relative weaknesses (overall aptitude, verbal comprehension, nonverbal aptitude, and processing speed) and strengths (fluid reasoning and visual spatial skills) were identified by the WPPSI-IV. (N.T. 50; S-11 at 4-6.)
15. Assessment of Student's academic readiness skills (Woodcock-Johnson Tests – Fourth Edition, Brigance Comprehensive Inventory of Basic Skills), together reflected low to low average range skills in the areas

of oral expression, listening comprehension, reading, writing, and mathematics, with emerging pre-academic skills. (S-11 at 6-8.)

16. The speech/language therapist who assessed Student for the June 2021 RR is certified and experienced in the field. (N.T. 77-78.)
17. Student went to the District elementary school for speech/language assessments for the June 2021 RR. Student transitioned easily from the Parent for that evaluation, and was generally attentive to task with a few instances of responding in a joking manner then correcting the response. (N.T. 82-84; S-11 at 8-9.)
18. Speech/language assessments were conducted for the June 2021 RR. Several subtests of the Third Edition of the CELF, a standardized instrument, were administered, with Student scoring below the average range on all Composites (sentence comprehension, word structure, and expressive vocabulary) and on the Core Language Score Composite. An instrument for measuring articulation skills similarly identified areas of weakness. Speech/language services to address receptive and expressive language as well as articulation was recommended. (N.T. 83, 88-89; S-11 at 8-10.)
19. On assessments by the occupational therapist for inclusion in the June 2021 RR, Student demonstrated average or better performance with fine motor and visual motor skills. Services in that area were not recommended. (S-11 at 10-11.)
20. The June 2021 RR assessed social and emotional functioning through rating scales completed by one of the Parents and the IU teacher. The Parents' ratings endorsed clinically significant concerns with functional communication; and at-risk concerns with withdrawal and adaptive behavior. The teacher's ratings revealed no areas of concern. (S-11 at 8.)

21. The assessments conducted for the June 2021 RR were administered in accordance with publisher instructions, were free of discriminatory bias, and are considered to be valid and reliable in the fields. (N.T. 48-49, 89-90.)
22. The conclusions in June 2021 RR were that Student was eligible for special education based on Specific Learning Disability in Oral Expression and Speech/Language Impairment. Needs identified by that evaluation were for improvement in academic readiness skills (early reading and mathematics); receptive and expressive language and articulation skills; and support for working memory and social skills/engagement weaknesses. (S-11.)
23. The June 2021 RR made the following recommendations to Student's IEP team: learning support for academic readiness (early reading and mathematics skills); direct speech/language therapy; multisensory instruction with review, repetition, and practice; multimodal presentation and chunking of directions with checks for understanding; support for transitions and unexpected changes; positive behavior reinforcement and recognition of effort; Student's understanding of progress; support for social skill development; and strategies such as preferential seating and test/assignment accommodations. (S-11.)
24. On June 7, 2021, the District provided the Parents with a copy of the June 2021 RR. A meeting convened later than month to discuss the results. (N.T. 55-56, 130-31, 134-35; S-10; S-12; S-24.)
25. The IEP developed in June 2021 incorporated the needs identified in the June 2021 RR. Goals addressed letter and number identification, listening comprehension, counting objects, expressive language, and articulation. Program modifications/items of specially designed instruction adopted the ER recommendations; and small group

speech/language therapy was specified as a related service. Student's program was one of learning support at an itinerant level. (S-12.)

26. Another IEP meeting convened in early December 2021 to address concerns expressed by the Parents. At that time, the Parents raised questions about Student's progress; number of transitions during the school day; socialization opportunities and communication skills; and increasing the level of difficulty of academic skills. The team revised Student's IEP with updated information in the present levels; deleted the letter identification and counting goals due to mastery; added a new goal in sight word recognition; and changed speech/language therapy to individual rather than group. (P-5; S-15; S-16.)
27. Later in December 2021, the Parents requested an IEE because of their concerns with Student's program. Those are principally based on what they perceive as a lack of adequate progress for Student. (N.T. 138-39; P-7; S-18.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. 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 must rest with the District, which also accepted the burden of production. Nevertheless, application of the burden of persuasion principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of 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 who testified to be credible as to the facts. There were a few instances of lapses in memory or recall, as well as differing perspectives on the facts; however, none of those were impediments to resolving the issue presented. The weight accorded the evidence was not evenly placed, and will be discussed further below as necessary.

The findings of fact were made as required to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. Still, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles

The IDEA requires the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. States, through local educational agencies (LEAs), meet that obligation of providing FAPE to eligible students through development and implementation of an IEP that is "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). IEP development, of course, must follow and be based on an evaluation. 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).

Evaluation Requirements

Substantively, the IDEA sets forth two purposes of a special education 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). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) 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—

(i) whether the child is a child with a disability; and

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

(B) 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

(C) 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); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child “in all areas related to the suspected disability[.]” 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).

In Pennsylvania, LEAs are required to provide a report of an evaluation or reevaluation to parents within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). 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).

Finally, when parents disagree with an LEA’s educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). In such a circumstance, the LEA “must, without unnecessary delay,” file a due process complaint to defend its evaluation, or ensure the provision of an IEE at public expense. 34 C.F.R. § 300.502(b)(2). Whether or not the LEA funds an IEE, a private evaluation that meets agency criteria and is shared with the LEA must be considered. 34 C.F.R. § 300.508(c).

The Parties’ Claims

The District’s Complaint seeks an order finding that its evaluation of Student in 2021 met all requirements of the IDEA, and that the Parents are not entitled to an IEE at public expense. The Parents disagree and argue

that specific elements of the evaluation render it inappropriate. It merits repeating that where, as here, parents seeks public funding of an IEE, the LEA has only two options: agree to the request, or file a Complaint. The District elected to pursue the second alternative.

The District's evaluation utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student, all relating to areas of suspected disability. Specifically, the District examined Student's cognitive functioning, academic readiness skills, social and emotional functioning, speech/language needs, and occupational therapy-related skills. Substantively, the District incorporated results of previous evaluations; included parental input on Student's strengths as well as communication and other needs; and obtained and reported information from a teacher and related service providers. The District speech/language therapist conducted a classroom observation of Student that supplemented those made during the testing process.

The District's RR described the results of the cognitive and achievement testing, the evaluation by related service providers (occupational and speech/language therapists), and the rating scales completed to evaluate Student's social/emotional functioning. The instruments chosen were appropriate for Student, were valid and reliable, and were administered in accordance with publisher recommendations.

In sum, the RR considered and reviewed all data and available information that was gathered, assessed all relevant areas of need, and proceeded to determine Student's eligibility for special education for school-aged programming. The RR made a number of programming recommendations to address Student's identified needs, and an IEP followed based on its results. All of this evidence preponderantly supports the conclusion that the District's RR was sufficiently comprehensive to identify Student's disability and related special education needs. Accordingly, the

District has met its burden of establishing that its RR met IDEA criteria and served the purposes of special education evaluation.

The Parents' concerns with the June 2021 RR merit some discussion. Those essentially are that Student was likely not willing to engage in the assessments administered by the school psychologist and that the speech/language evaluation could have been more thorough. Additionally, they are disappointed in Student's progress. Student is nearing the end of the [school] year and they are not confident that Student will be prepared to enter [the next] grade in the fall.

The testimony of the District school psychologist and speech/language therapist who conducted assessments of Student was both knowledgeable and persuasive, particularly given their credentials and experience. That is true with respect to the questions about Student's demeanor at the time of testing. The speech/language therapist's additional explanation at the hearing on why he did not administer more subtests of the CELF was also convincing, and the records are consistent with his determination that the recent IU evaluation results were useful to his own assessments for the June 2021 RR. This hearing officer cannot conclude that merely because the District could have administered more assessments, the RR is necessarily inadequate. The same could likely be said about any evaluation.

Finally, the Parents expressed concerns with how Student is progressing now and raised a question about Student's readiness for [the next] grade. Yet, while evaluations (including input from parents) certainly are critical to special education program development, the claim presented by the District's Complaint was limited to the narrow issue of its compliance with relevant criteria in the law in completing the June 2021 RR. This decision must address only the issue that was properly presented.

For all of these reasons, the District shall not be ordered to provide an IEE at public expense. The Parents are certainly free to obtain an IEE, and the IEP team must consider private evaluations, but there is no basis in the law to order that the District now fund one for Student. This hearing officer does, nonetheless, respectfully suggest that the parties consider requesting an IEP facilitator⁴ for the next scheduled meeting to assist them in collaborative decision-making about Student's programming and placement needs at this early stage of Student's school career.

CONCLUSION OF LAW

The District's evaluation of Student was appropriate under applicable standards and the Parents are therefore not entitled to an IEE of Student at public expense.

ORDER

AND NOW, this 14th day of March, 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's evaluation of Student in June 2021 was appropriate, and its claim is **GRANTED**. No remedy is ordered.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 26007-21-22

⁴ This service is available through the Office for Dispute Resolution.