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**Pennsylvania Special Education Hearing Officer**  
**Final Decision and Order**

**CLOSED HEARING**  
**ODR File Number: 20768-17-18**

**Child's Name:** M. A.                    **Date of Birth:** [redacted]

**Date of Hearing:** 7/20/2018

**Parent:**  
[redacted]

*Counsel for Parent*  
Pamela E. Berger, Esquire  
434 Grace Street  
Pittsburgh, PA 15211

**Local Education Agency:**  
Deer Lakes School District  
163 East Union Road  
Cheswick, PA 15024

*Counsel for the LEA*  
Annemarie K. Harr, Esquire  
Jocelyn P. Kramer, Esquire  
Weiss Burkardt Kramer, LLC  
445 Fort Pitt Boulevard, Suite 503  
Pittsburgh, PA 15219

**Hearing Officer:** Cathy A. Skidmore, M.Ed., J.D.    **Date of Decision:** 8/14/2018

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student)<sup>1</sup> is a late elementary school-aged student in the District (District) who is eligible for special education under the Individuals with Disabilities Education Act (IDEA),<sup>2</sup> although the parties disagree on the specific categories of disability.<sup>3</sup> After the District conducted a reevaluation of Student in the spring of 2018 and identified an Intellectual Disability in addition to Other Health Impairment, the Parent requested an Independent Educational Evaluation (IEE) at public expense. The District denied the request and filed a Due Process Complaint to resolve that dispute.

The case proceeded to a due process hearing that concluded in an efficient single session.<sup>4</sup> The District sought to establish that it complied with all of the IDEA requirements in conducting the spring 2018 reevaluation; the Parent maintained that that reevaluation of Student was not appropriate under the applicable law and that an IEE at public expense is an appropriate remedy. For the reasons set forth below, the District's claim that its spring 2018 reevaluation was in compliance with the law must be granted.

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<sup>1</sup> In order to provide confidentiality and privacy, Student's name, gender, and other personal information are not used in the body of this decision to the extent possible. All potentially identifiable information, including details about the Parent and Student that appear on the preceding cover page, will be redacted prior to the posting of this decision 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).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal implementing regulations 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> Student is also a protected handicapped student pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61.

<sup>4</sup> 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. Citations to duplicative exhibits may not be to all. Prior to the hearing, the District's Motion for Judgment on the Pleadings was denied (Hearing Officer Exhibit (HO-) 1).

## **ISSUES**

1. Whether the District's reevaluation of Student was appropriate and compliant with the requirements in the IDEA and Chapter 14?
2. If the District's reevaluation was not appropriate, should the District be ordered to provide an Independent Educational Evaluation at public expense?

## **FINDINGS OF FACT**

1. Student is a late elementary school-aged child with a disability who is a resident of the District. Student is eligible for special education under the IDEA and is entitled to the protections of Section 504. (N.T. 11-12.)
2. Student exhibits a number of strengths including communication skills, certain adaptive/functional behavioral skills such as self-advocacy and navigating the environment, and independently performs many activities of daily living. (N.T. 159-60, 208-10, 215-16, 218-19.)
3. Student was evaluated in 2012 and qualified for early intervention services. Assessment at that time included the Battelle Developmental Inventory – Second Edition which reflected deficits in cognition and social-emotional functioning. The Wechsler Nonverbal Scale of Ability (WNV) was also administered, yielding a Full Scale IQ score of 67; by contrast, results of the Stanford-Binet Intelligence Scale – Fifth Edition (SB-5) at the same time revealed a Full Scale IQ of 82, in the low average range, with adaptive behavior not a concern in the home. (S-3 p. 3.)

### **INDEPENDENT EDUCATIONAL EVALUATION SPRING 2017**

4. The Parent obtained an Independent Educational Evaluation (IEE) at District expense in the spring of 2017. The assessments were administered on March 3, 2017, with a report issued later in March. (N.T. 21-22; S-1, S-19.)
5. Information for the March 2017 IEE included input from a relative of Student who knows Student well. That relative reported Student's ability to learn best in one-on-one settings. The relative also reported Student's strengths to include reading; but difficulty with following directions, recalling materials, comprehending and sequencing, listening comprehension, phonics skills, organization and planning, perceptual motor skills, hyperactivity/impulsivity and attention span, distractibility, and memory. The Parent also indicated concerns with Student's behavior. (S-1 pp. 4-5.)

6. Student's own input and interview with the psychologist who conducted the March 2017 IEE indicated a worried mood and difficulty concentrating, especially with mathematics, and a dislike of homework and studying. (S-1 pp. 7-9.)
7. Teacher input into the March 2017 IEE reflected that Student was successful when spending time to learn material and study. Instructional weaknesses were reported with respect to attention to task, frustration, and reading comprehension. (S-1 pp. 5-6.)
8. Student's cognitive ability was assessed with the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) for the March 2017 IEE. Student attained Index scores ranging from the low average to extremely low range, with a Full Scale IQ reported to be 69 (2<sup>nd</sup> percentile). (S-1 pp. 9-11.)
9. Assessment of Student's academic achievement (Wechsler Individual Achievement Test - Third Edition (WIAT-III)) was obtained for the March 2017 IEE. Resulting scores were in the low to below average range on all subtests and composites in expressive and receptive language, reading, mathematics, and written expression with the exception of the math fluency – addition subtest (39<sup>th</sup> percentile, an average range score). All of the WIAT-III subtest and composite scores were below predictions based on an ability-achievement discrepancy analysis. (S-1 pp. 11-13.)
10. Visual motor skill assessment for the March 2017 IEE reflected deficits in that area. (S-1 pp. 13-14.)
11. The psychologist who conducted the March 2017 IEE noted that Student was compliant with all testing demands although Student did become tired at the end of all administrations. (S-1 pp. 6-7.)
12. The March 2017 IEE reported results of the Adaptive Behavior Assessment System – Third Edition (ABAS-3)) completed by the relative who knows Student well. All scores on that measure (conceptual, social, and practical domains) were at the 1<sup>st</sup> or 2<sup>nd</sup> percentile, extremely low range. (S-1 p. 14.)
13. The Behavior Assessment System for Children – Third Edition (BASC-3) was administered through rating scales provided to the relative who knows Student well and a teacher for the March 2017 IEE. Both raters indicated that Student's adaptive behavior skills were in the at-risk to clinically significant range in all of those areas (adaptability, social skills, leadership, functional communication, and activities of daily living (relative's rating scale)). Other concerns by the relative in the clinically significant range were noted with respect to hyperactivity, aggression, conduct problems, depression, attention problems, and atypicality; and in the at-risk range for somatization. The teacher's rating scale reflected at-risk concerns for aggression, conduct problems, depression, attention problems, atypicality, withdrawal, study skills, and learning problems. (S-1 pp. 14-17.)
14. The Conners Parent Rating Scale, completed by the Parent and the relative who knows Student well for the March 2017 IEE, reflected significant concerns across behaviors. A Parent rating scale of executive functioning revealed clinically significant concerns with

respect to all areas (inhibiting, shifting, emotional control, initiating, working memory, planning/organizing, organizing materials, and monitoring). (S-1 pp. 17-19.)

15. The private psychologist who conducted the March 2017 IEE concluded that Student met the criteria under the IDEA and Pennsylvania's Chapter 14 for eligibility on the bases of Intellectual Disability and Other Health Impairment (based on symptoms of Attention Deficit Hyperactivity Disorder (ADHD)). (S-1 pp. 20-23.)

#### DISTRICT REEVALUATION APRIL 2017

16. In late March 2017, the District initiated a reevaluation of Student following receipt of the March 2017 IEE. At the time, it proposed additional assessment of Student's adaptive behavior functioning and occupational therapy needs. (S-2.)
17. The District issued a Reevaluation Report (RR) in April 2017. Information from prior evaluations, including the March 2017 IEE, was incorporated. Also reported were results of Student's scores on the 2016 Pennsylvania System of School Assessment (PSSA), in the below basic range in both mathematics and language arts, and Student's then-current grades and performance on curriculum-based measures in addition to reading assessments. Occupational therapy input was also provided. (S-3.)
18. Teacher input into the April 2017 RR revealed a number of strengths including performing group tasks and class participation. However, concerns with Student's organizational skills, attention to task, following directions, transitioning between activities, and peer interactions were also noted. (S-3 p. 5.)
19. Cognitive assessment for the April 2017 RR (SB-5) yielded a Full Scale IQ of 64 (1<sup>st</sup> percentile), in the deficient range, with some variability among Index scores. Student's verbal reasoning abilities were determined to be less developed than nonverbal reasoning abilities. (S-3 pp. 9-11.)
20. On an administration of the Woodcock-Johnson Tests of Achievement – Fourth Edition (WJ-IV-ACH) for the April 2017 RR, Student earned scores reflecting deficits across reading, mathematics, and written language subtests and clusters. (S-3 pp. 11-12.)
21. Speech/language assessment for the April 2017 RR reflected weak receptive and expressive spoken language skills across subtests and composites (at or below the 6<sup>th</sup> percentile on the Test of Language Development – Intermediate – Fourth Edition (TOLD-I:4)). Social language assessment similarly revealed weaknesses with the exception of supporting peers (average range score). No articulation or voice fluency needs were identified. (S-3 pp. 19-22.)
22. BASC-3 rating scales from a teacher and speech/language pathologist were also obtained for the April 2017 RR to supplement those in the March 2017 IEE. The results indicated scores in the clinically significant range on many areas of the clinical scales by both District professionals, with the exceptions of anxiety (at-risk range by one, not a concern by the other), somatization (at-risk range by one, clinically significant by the other), learning problems (at-risk range by one, not a concern by the other), attention problems

(at-risk range by one, not a concern by the other), and withdrawal (at-risk range by both); and all at-risk concerns on the adaptive scales. (S-3 pp. 13-14.)

23. A Functional Behavioral Assessment (FBA) was conducted as part of the April 2017 RR based on concerns with attention to task, peer interactions, and avoidance behaviors. A hypothesis statement of the function of those behaviors and recommendations for the Positive Behavior Support Plan (PBSP) were included in the RR. (S-3 pp. 5-6, 23.)
24. The April 2017 RR determined that Student was eligible for special education under the Intellectual Disability and Other Health Impairment categories. Recommendations for programming were included in the RR. (S-3.)

#### PROGRAMMING SPRING 2017 THROUGH SPRING 2018

25. During spring of the 2016-17 school year and into the fall of the 2017-18 school year, pursuant to a prior settlement agreement, Student attended a private educational center (Private School) four days per week and was in District programming one day a week. The number of days at the District increased to two per week in the spring of 2018. (N.T. 94-95, 185; S-19.)
26. Student's District-provided program in the spring of 2017 through the spring of 2018 included life skills, social skills, speech/language therapy, and regular education participation for lunch, recess, and special classes. Reading and mathematics instruction was provided in small groups or individually. (N.S. 95-96; S-15.)
27. In December 2017, the Private School administered several testing instruments to ascertain Student's then-current levels in reading fluency and mathematics to guide curricular decisions. It was not a full psychoeducational evaluation, although it did include results of a new administration of the WISC-V but not under standardized conditions. The WISC-V scores were reported as standard scores, rather than the actual scaled scores that the instrument yields; the conversion was based on an unknown table/chart and was meant to provide results that were more understandable to the Parent. (N.T. 192-94, 204; P-1.)
28. The results of that December 2017 Private School assessment of Student's skills were at the 9<sup>th</sup> percentile for reading fluency (select subtests of the Gray Oral Reading Test – Fifth Edition (GORT-5)) and between the 45<sup>th</sup> and 9<sup>th</sup> percentiles in mathematics (KeyMath - Revised version). (P-1.)
29. Student's level of participation at the Private School has been variable ranging from cooperation and task completion, especially when challenged, to work refusal and elopement. Student's progress over the course of the 2017-18 school year at the Private School was also variable in part because of those behaviors. (N.T. 129-33, 136-37, 155, 185-88; P-2; S-6.)
30. An Individualized Education Program (IEP) was developed for Student in January 2018. That IEP included plans for gradual transition back to the District. Annual goals and related short-term objectives addressed needs in reading comprehension, reading fluency,

mathematics calculation, fine motor (handwriting) skills, speech/language, and social skills. This IEP also had a PBSP. A number of program modifications and items of specially designed instruction were also included in that IEP. (S-15.)

31. For extended school year programming in 2018, Student participated in the District's program with some time at the Private School. (N.T. 95.)

#### DISTRICT SPRING 2018 REEVALUATION

32. The District sought and obtained consent of the Parent to conduct the reevaluation in 2018. The Parent requested additional assessments for that RR, including an assistive technology evaluation. (N.T. 24-25; S-7.)
33. The Parent provided input into the 2018 RR at the time the Permission to Evaluate form was returned. (N.T. 25-26; S-8.)
34. The District issued a Reevaluation Report (RR) in April 2018. Information from prior evaluations, including the March 2017 IEE and April 2017 RR, was incorporated. Also reported were results of Student's scores on the 2017 PSSA, in the below basic range in both mathematics and science, as well as Student's then-current grades and performance on curriculum-based measures. (S-11.)
35. District teacher input into the April 2018 RR revealed several demonstrated strengths including class participation and following schedules/routines. However, concerns were noted with respect to academic skills (all subject areas), as well as attention to and completion of tasks, self-advocacy skills, and peer interactions/social skills. (S-11 pp. 10.)
36. Input from staff at the Private School for the April 2018 RR reflected variable performance with significant work refusal through Thanksgiving 2017, with noted improvement after that holiday break. (S-11 pp. 10-12.)
37. Reading assessment results from February 2018 were also incorporated into the April 2018 RR. On an administration of the GORT-5, Student's scores on all subtests and on the Oral Reading Quotient were in the below average to very poor range, with the Oral Reading Quotient at the 4<sup>th</sup> percentile. On the Test of Word Reading Efficiency – Second Edition, Student exhibited deficits with sight word and phonetic decoding skills (7<sup>th</sup> and 8<sup>th</sup> percentile, respectively), as well as Total Word Reading Efficiency (6<sup>th</sup> percentile). (S-11 p. 9.)
38. The District school psychologist observed Student for the April 2018 RR in four different settings over a three-week period of time. Those observations were conducted as part of an FBA of several targeted behaviors: attention to task, avoidance of tasks, and peer interactions. The hypothesis of the function of those behaviors was determined to be avoidance of non-preferred or challenging academic tasks in addition to receiving attention. Recommendations for a PBSP were provided as a result of the FBA. (N.T. 42-43; S-11 pp. 13-14, 21-22.)

39. The District school psychologist administered the WNV for the April 2018 RR in order to minimize verbal language requirements because Student had not been receiving speech/language therapy at the Private School. Student earned a Full Scale Score of 66 (extremely low range) on the WNV. (N.T. 48; S-11 pp. 16-17.)
40. Student was cooperative with testing demands for the April 2018 RR. (S-11 p. 17.)
41. The District school psychologist selected the ABAS-3 for assessing Student's adaptive behavior for the April 2018 RR because it focuses on adaptive or functional behavior skills. Other factors in that decision were scores on the BASC-3 and results of the WNV. (N.T. 54.)
42. The ABAS-3 rating scales were completed by a family member, two District teachers, and the Private School teacher for the April 2018 RR. The General Adaptive Composite scales for the family and District teachers were commensurate (ranging from 68 to 74, low to extremely low range) while the Private School teacher's rating was 86 (low average range). The other Composite scores were relatively similar for each rater, with the Private School teacher's scales higher than the others. (S-11 p. 18.)
43. The District school psychologist included the results of the Private School's December 2017 administration of reading and mathematics assessments in the April 2018 RR, but not the results of the WISC-V because the results were reported as standard scores contrary to the publisher's use of scaled scores. Among other concerns, that WISC-V was within a year of the IEE and, further, was not administered under standardized conditions (including that extra time was given; prompts, explanations, and examples were provided; and additional subtests were administered but were not reported). (N.T. 63-68; P-1 p. 2.)
44. On a new administration of the WJ-IV-ACH for the April 2018 RR, Student attained scores reflecting deficits across reading, mathematics, and written language subtests and clusters. (S-11 pp. 19-20.)
45. BASC-3 rating scales from a family member, two District teachers, and the Private School teacher were also obtained for the April 2018 RR. Those results indicated scores in the clinically significant range on many areas of the clinical scales by one or both District professionals: aggression, conduct problems, depression, somatization, attention problems, and atypicality. One or both of those same raters reported at-risk concerns with hyperactivity, learning problems, withdrawal, and all areas on the Adaptive Behavior Composite (one teacher reported clinically significant concerns with study skills). The family member's ratings were in the clinically significant range for aggression, conduct problems, and atypicality; and at-risk concerns with hyperactivity, attention problems, withdrawal, and all areas on the Adaptive Behavior Composite with the exception of leadership. The Private School teacher's ratings reflected only at-risk concerns with anxiety and depression. (S-11 pp. 20-21.)
46. Speech/language assessment for the April 2018 RR (TOLD-I:4) yielded results in the poor to very poor range across composites, consistent with a March 2017 administration.



Student's social language skills (Social Language Developmental Test – Elementary) similarly were assessed to be at an impaired range, consistent with March 2017 results. Articulation was determined to not be a concern. (S-11 pp. 22-29.)

47. Occupational therapy assessment for the April 2018 RR determined that Student no longer had needs in that area. (S-11 p. 29.)
48. An assistive technology evaluation utilizing the SETT process was also conducted in conjunction with and made part of the April 2018 RR. That process resulted in a number of recommendations in the form of an Action Plan to trial various forms of low- and high-technology options to assist Student with written expression/writing tasks, developing social/peer relationships, and increasing independence with task completion. (S-11 pp. 41-45.)
49. The April 2018 RR determined that Student was eligible for special education under the IDEA categories of Intellectual Disability and Other Health Impairment (based on ADHD). The RR noted that the determining factor of Student's eligibility for special education was not a lack of appropriate reading and mathematics instruction or lack of English proficiency. (S-11 pp. 15, 30.)
50. Student's strengths and needs were identified in the April 2018 RR, with the latter including reading, mathematics, and written expression academically in addition to social skills, behavior, and speech/language. Recommendations for programming were provided in the RR to include possible flexible scheduling; small group instruction both inside and outside the life skills environment; instruction in adaptive behavior/daily living skills; some individual direct instruction; speech/language and social skills supports; a PBSP; development of social/emotional control and management skills; and counseling. Other suggestions were for program modifications and items of specially designed instruction to address memory, focus and attention, and related needs. (S-11 p. 34-36.)
51. The April 2018 RR was provided to the Parent in early May 2018. No meeting to review that RR, or to develop an IEP, convened after completion of the reevaluation because of scheduling difficulties. The Parent did, however, indicate disagreement with the April 2018 RR and requested an IEE at public expense. (N.T. 100-01; S-12.)
52. The District denied the request for an IEE and filed a Complaint in order to defend its April 2018 RR. (S-14.)
53. The District school psychologist who evaluated Student in 2017 and 2018 has undergraduate and graduate degrees in psychology including a Doctorate. She is a certified school psychologist in Pennsylvania as well as nationally. The District school psychologist has experience in the mental health field, in addition to conducting FBAs and psychoeducational evaluations over the past six years. (N.T. 14-19, 21; S-18.)
54. The District school psychologist who evaluated Student in 2017 and 2018 has known Student for the past two school years and Student engages with her on a regular basis. (N.T. 19-20, 76-77.)

55. The District school psychologist adhered to the standards for administration of each instrument for the April 2018 RR. (N.T. 34-35, 51.)
56. It was not necessary nor useful to administer a second set of adaptive behavior scales for the April 2018 RR because the same skills would be measured as in the ABAS-3. (N.T. 54.)

#### MAY 2018 PROPOSED IEP

57. In May 2018, a new IEP was drafted. This IEP identified needs in oral reading fluency, reading comprehension, basic mathematics skills, writing support, social skills, speech/language skills, and behavior. The IEP contained annual goals and short-term objectives addressing reading fluency (grade level passages); reading comprehension (grade level passages); mathematics calculation; social skills; and speech/language weaknesses. A PBSP was also included. (S-16.)
58. Program modifications/specially designed instruction in the May 2018 IEP included small group/individual reading and mathematics instruction; review and practice; test and assignment accommodations and modifications; wait time; mathematics manipulatives and supports; and text-to-speech and word prediction software. There were also a number of program modifications and items of specially designed instruction as part of the PBSP. (S-16.)
59. The May 2018 IEP included paraprofessional support, speech/language therapy, counseling, and transportation as related services. Student's proposed program was for a supplemental level of learning and life skills support, with participation in regular education during science and social studies classes, lunch, and specials. (S-16.)
60. The content of the draft May 2018 IEP was not based on Student's eligibility categories. (N.T. 102-03.)

### **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. In special education cases, the burden of persuasion generally 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 lies with the District who requested this administrative hearing. Nevertheless,

application of this 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. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

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 all witnesses to be credible, each testifying to the best of his or her recollection from his or her own perspective. There were few if any factual inconsistencies in the testimony, but credibility is discussed further below as necessary. In reviewing the record, all of the testimony and the content of each exhibit, were thoroughly considered in issuing this decision, as were the parties’ closing statements.

#### IDEA PRINCIPLES: CHILD FIND AND EVALUATION

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 local educational agencies (LEAs) 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 statute itself 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).

As is relevant here, the regulations implementing the IDEA provide the following definitions.

*Intellectual disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term “intellectual disability” was formerly termed “mental retardation.”

*Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that -

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.

34 C.F.R. §§ 300.8(c)(6) and (9).

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). When such a request is made, the LEA 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).

Here, the Parent disagreed with the April 2018 RR and sought an IEE at public expense, and the District refused; thus, the District had the burden of establishing that its evaluation was appropriate.

In conducting an evaluation or reevaluation, the law imposes certain requirements on LEAs 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); *see also* 34 C.F.R. § 303(a). 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). Any evaluation or reevaluation must also include a review of existing data including that provided by the parents in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(a).

In Pennsylvania, LEAs are required to provide a report of an evaluation 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).

#### APRIL 2018 REEVALUATION

At the outset of this discussion, it is important to recognize that parental disagreement with the conclusions of an LEA evaluation does not establish that the evaluation is inappropriate. Moreover, whether or not the hearing officer agrees with the results of the evaluation is similarly not the dispositive question. The sole issue when an LEA has denied a parental request for an IEE at public expense is whether its evaluation met the standards for appropriateness set forth in the IDEA.

The District’s April 2018 RR utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student in all areas of suspected disability. Specifically, the District conducted assessment of Student’s current cognitive ability and academic achievement; summarized available curriculum-based and statewide assessment data; obtained and reported input from teachers at both the District and the Private School; incorporated results of previous evaluations; obtained and summarized parental input; and provided a variety of rating scales to evaluate Student’s social/emotional/behavioral functioning and adaptive behavior. The District school psychologist responsible for administering the cognitive ability, academic achievement, and related assessments is exceptionally well qualified and was known by and familiar to Student, who cooperated with testing demands. Those assessments were administered in accordance with the

publishers' standards. The results of cognitive ability and achievement testing were analyzed to determine whether the latter was discrepant from predicted scores. Speech/language therapy, occupational therapy, and assistive technology needs were fully examined. The District school psychologist also conducted four different observations of Student in a variety of District settings as part of an FBA targeting identified problem behavior. All of this evidence supports the conclusion that the District's April 2018 RR was sufficiently comprehensive to identify Student's special education and related service needs in all areas related to suspected disability, irrespective of previously identified disability categories.

The Parent raised concerns with the April 2018 RR at the hearing. Specifically, he questioned the conclusion that Student meets eligibility criteria for an Intellectual Disability. Pursuant to the above-quoted definition in the federal regulations, this criteria is satisfied if a child exhibits significantly subaverage general intellectual functioning, and concurrently displays deficits in adaptive behavior, which together combine to adversely affect his or her educational performance. The District school psychologist provided very persuasive testimony regarding Student's cognitive and adaptive behavior deficits and why the requisite criteria for an Intellectual Disability were met (N.T. 59-60, 61-62). Support for the latter conclusions was gathered through both the ABAS-3 and the BASC-3 completed by multiple raters. Although the Parent proposed that further assessment of Student's adaptive behavior functioning (such as through non-standardized questions and demonstrations, *see* N.T. 79, 203, 228-31) would provide useful and likely contrary information, the District school psychologist explained very cogently at the hearing how the rating scales that were used yielded the necessary data. In addition, it is unclear how non-standardized questionnaires or demonstrations would aid in determining Student's eligibility or special education and related service needs. Moreover, the

suggestion that Student performs better when Student is familiar with the evaluator (N.T. 156-57, 196-97) was certainly satisfied through the relevant assessments administered by the District school psychologist. Finally, in response to the concern that possible gaps or deficiencies in Student's educational program at some point in the past may have impacted Student's cognitive assessments, those assertions were not only speculative but were directly contradicted by the District school psychologist's credible testimony (N.T.69-70). It is also not insignificant that the April 2018 RR is wholly consistent with the results of the District's own April 2017 RR and the March 2017 IEE.

While it is completely understandable that the Parent would find the Private School's December 2017 testing, and specifically the WISC-V, to be a better estimate of Student's cognitive and adaptive functioning, the unconventional methods used to arrive at IQ scores in the below average to low average ranges is troubling to say the least, and serve no valid purpose beyond, perhaps, the curricular decision-making for which they were obtained.<sup>5</sup> The documentation of that testing could also be easily misunderstood by a lay person, including a parent, who is unfamiliar with standardization and the necessity for strictly observing publisher protocols in order for the results to be properly considered for comparison to peers. Furthermore, those results are not consistent with any other data obtained after Student entered into school-aged programming. It is also important to recognize that individuals who meet criteria for a specific disability category merely fall somewhere along a continuum of ability; and, Student likely falls near the upper limits of that classification.<sup>6</sup> Simply because a student

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<sup>5</sup> The District school psychologist also explained, quite persuasively, that the failure to clarify which score, Full Scale IQ or General Ability Index, was considered to be more valid raised significant questions about the results of the WISC-V (N.T. 86). Other testing by the Private School at the time similarly yielded questionable results (N.T. 37-39, 67).

<sup>6</sup> The District will also be required to reevaluate Student again within two years of the April 2018 RR. 22 Pa. Code § 14.124(c).



may be classified under the IDEA as a student with an Intellectual Disability does not equate to any predetermined limitations on potential for growth in the educational environment or beyond.

Moreover, as the District argued, a child's special education program is not dependent upon nor dictated by an eligibility classification; indeed, the District's program proposed in the May 2018 IEP reflects careful consideration of Student's unique abilities and needs and provides appropriately ambitious goals such as for grade-level reading fluency and comprehension. *See Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 1001, 197 L.Ed.2d 355, 352 (2017) (explaining that, "the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."). The Parent's related concerns about Student being provided with life skills programming, while again understandable, cannot defeat the existence of demonstrated deficits in adaptive behavioral functioning in comparison to peers. Indeed, it is difficult to conceive how the District might defend against a special education program that failed to address those identified needs. *See id.*, 137 S. Ct. at 999, 197 L.Ed.2d at 350 (observing that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth."). The concerns raised by the Parent at the hearing are the very sort of considerations that the IEP team as a group should consider as they focus on Student's strengths and needs moving forward in collaborative decision-making.

## **CONCLUSION**

Based on the foregoing findings of fact and for all of the above reasons, the District's April 2018 RR was appropriate under the law, and there is no basis for Student to be provided an IEE at public expense.

**ORDER**

AND NOW, this 14<sup>th</sup> day of August, 2018, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's April 2018 RR was appropriate. Student is not entitled to an IEE at public expense.

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  
ODR File No. 20768-1718KE