

*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**

**CLOSED HEARING**  
**ODR File Number: 21469-18-19**

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

**Parent:**  
[redacted]

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**Hearing Officer:** Cathy A. Skidmore, M.Ed., J.D.

**Date of Decision:** 2/11/2019

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student),<sup>1</sup> is currently a late-teenaged student residing in the District (District). Student was previously identified by the District as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> Student has been attending a private school since the fall of 2016, but near the start of the 2018-19 school year, the Parent sought reimbursement from the District for tuition and related expenses at that private school. The District responded by conducting a new special education evaluation that was completed in late October 2018 and concluded that Student was not eligible under the IDEA but qualified for services under Section 504 of the Rehabilitation Act of 1973 (Section 504).<sup>3</sup>

After the Parent made a request for an Independent Educational Evaluation, the District filed a Due Process Complaint seeking to defend its evaluation, and the case proceeded to an efficient due process hearing.<sup>4</sup> After careful review of the record and for the reasons set forth below, the District's claim that its evaluation report met the requisite criteria under the law must be sustained.

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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. All personally identifiable information in this decision, including details appearing on the cover page, 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).

<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> 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

<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, School District Exhibits (S-) followed by the exhibit number, and the single Hearing Officer Exhibit (HO-1). References to duplicate exhibits may not be to all. This hearing officer notes with appreciation that the parties participated in the electronic exhibits pilot program.

## **ISSUES**

1. Whether the District's evaluation of Student in the fall of 2018 was appropriate and compliant with the requirements in the IDEA and Chapter 14;
2. Whether the District's conclusion on Student's eligibility based on that evaluation was appropriate; and
3. Whether the District should be ordered to provide an Independent Educational Evaluation at public expense?

## **FINDINGS OF FACT**

1. Student is late preteenaged and is a resident of the District. Student is attending a private school for the 2018-19 school year, where Student also was enrolled for the 2016-17 and 2017-18 school years, at the Parent's election. (N.T. 22; S-6 at 1, 2.)

### **EDUCATION-RELATED BACKGROUND**

2. Student was identified as eligible for early intervention services based on developmental delay beginning in the fall of 2009. Services included occupational, physical, and speech/language therapy. (P-1; P-2.)
3. Student was identified by the District in the spring of 2012 for entry into school-aged programming for first grade (2012-13 school year). Student's eligibility classification was Autism. (P-2.)
4. An Individualized Education Program (IEP) developed by the District in the spring of 2012 for Student identified needs as working within time parameters, self-care, self-advocacy, social skills, and sensory processing. The IEP included annual goals and program modifications/specially designed instruction as well as consultative occupational therapy. Student's program was for itinerant autistic support. (P-3.)
5. Student continued to be eligible for special education through the 2015-16 school year, with annual IEPs developed to address identified needs. (P-4; P-6; P-7.)
6. Student's most recent District IEP, developed in the fall of 2015, identified needs as writing organization and self-advocacy skills. Annual goals addressed written expression (organization) and social skills (self-advocacy). A number of program modifications and items of specially designed instruction provided for testing accommodations, preferential seating, the availability of the autistic support teacher as needed to manage emotions, social skills instruction, and graphic organizers and writing checklists. Student's program was for itinerant autistic support. (P-7.)

7. Student was withdrawn from the District by the Parent in the spring of 2016. (S-6 at 1, 2.)
8. The private school that Student attends is not licensed to provide special education to students, and its teachers are not required to be certified in special education. However, there is a team of professionals who create and provide a Formal Education Plan (FEP) for its students who need additional support or enrichment. (P-15 at 17, 60, 66.)
9. An FEP at the private school contains accommodations and strategies that are suggested for a student by teachers as well as any other necessary support. (P-15 at 61.)
10. Student has an FEP at the private school. That document is two pages in length, and lists Student's strengths as responding well to one-to-one instruction and having a positive attitude; and needs are listed as math (multiple step problem solving), executive functioning, advocacy skills, and written organization. (P-8; P-15 at 62.)
11. Student's current FEP as revised in October 2018 also lists eleven "strategy suggestions": previewing, assistance with organizational strategies and prompting, chunking of assignments and directions, checklists for long-term assignments, multisensory instruction in math, nonverbal cues for task initiation, access to a counselor, immediate positive feedback, concrete goals for expectations, recording of oral presentations, and support for class participation. Preferential seating, a calculator, and test accommodations were also noted. (P-8.)

#### FALL 2018 EVALUATION BY THE DISTRICT

12. In August 2018, the Parent requested reimbursement by the District for Student's private school tuition and related expenses.<sup>5</sup> The District responded by issuing a Permission to Evaluate form in order to determine whether Student was eligible for special education, and the Parent provided consent. (N.T. 29, 145; P-12; S-1; S-2; S-6 at 1.)
13. The Permission to Evaluate form proposed assessments of cognitive ability, academic achievement, neuropsychological functioning, executive functioning, social/emotional/behavioral functioning, and skills within the realms of speech and occupational therapy; an autism evaluation was also proposed. (P-12 at 2; S-1; S-2.)
14. The District Supervisor of Pupil Services is a licensed psychologist and an experienced certified school psychologist with a doctoral degree in psychology. He oversees the completion of evaluation reports by other certified school psychologists. (N.T. 25-28, 31; S-8.)
15. The District school psychologist who was assigned to complete Student's fall 2018 evaluation is an experienced certified school psychologist with a doctoral degree in

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<sup>5</sup> A separate proceeding was held regarding the tuition reimbursement claims that was decided in favor of the District. *A.B. v. Abington School District*, No. 21197-1819AS (Skidmore, February 1, 2019). That case was not consolidated with the present one following the Parent's objection to the District's request to do so; nevertheless, the transcript of that proceeding was introduced by the Parent and admitted as an exhibit in this matter. (P-15; HO-1.)

psychology. She was not available to testify at the hearing due to a medical leave of absence. (N.T. 30, 213; S-9)

16. The District school psychologist spoke with the Parent at length by telephone in conducting the 2018 evaluation to obtain information and other input. The Parent also provided some written input. (N.T. 145-46, 176; S-3.)
17. The District school psychologist sought information from the private school, including reports of evaluations, assessments, and instructional support, with authorization from the Parent. When the school psychologist experienced delays in receiving those records from the private school, the Parent offered to provide records that she had, namely the report cards. (N.T. 199-200; S-3 at 2; S-4.)
18. The private school did not provide a copy of Student's FEP to the District.<sup>6</sup> (N.T. 86, 129.)
19. The 2018 ER provided a summary of developmental and educational history obtained from the Parent. The ER described Student as receiving one-on-one support for mathematics and writing and summer assignments to help keep up with peers. (S-6 at 1-2.)
20. The 2018 ER incorporated results of a fall 2009 evaluation by the local Intermediate Unit when Student had been identified as a child with developmental delay and eligible for early intervention services. (S-6 at 2-3.)
21. The 2018 ER summarized input from the Parent into Student's IEPs during the 2012-13 through 2015-16 school years. Concerns were reportedly with speech/language including social skills, written expression skills, and emotional regulation. (S-6 at 5.)
22. The 2018 ER incorporated results of a 2012 ER by the District. At the time of that 2012 ER, Student earned a high average full scale IQ score (114) on assessment of cognitive ability (Stanford-Binet – Fifth Edition); and attained average (mathematics and written expression) to high average (early reading skills) range scores on select subtests of the Wechsler Individual Achievement Test – Third Edition (WIAT-III). (S-6 at 2-5.)
23. The 2018 ER also summarized results of social/emotional/behavioral functioning from the 2012 ER. Specifically, Student's teachers did not report any concerns on rating scales for the Behavior Assessment System for Children – Third Edition (BASC-3); while the Parent endorsed clinically significant concerns with anxiety, somatization, withdrawal, adaptability, and activities of daily living, and at-risk concerns with atypicality, social

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<sup>6</sup> As noted, the District school psychologist who was responsible for the 2018 ER was not able to testify. The Supervisor of Student Services who reviewed the test protocols and the ER with the school psychologist was not aware of the document through the date that it was issued (N.T. 129). His testimony and the absence of any mention of the FEP in the 2018 ER strongly supports the conclusion that it was not provided to the District by the private school.

skills, and functional communication. Both the Parent and teachers reflected that Student met criteria for Autism. (S-6 at 4-5.)

24. The District school psychologist conducted an observation of Student at the private school for the 2018 ER. She utilized the Behavioral Observation of Students in Schools (BOSS) to assess Student's on-task and off-task behaviors during direct instruction. Student was on-task 94% of the time for that observation, and the teacher reported that Student's behavior during the observation was typical for Student. (S-6 at 6.)
25. Five of the private school teachers completed a Teacher Observation Rating Scale for the 2018 ER that measured aspects of classroom performance (punctuality, attentiveness, participation in discussions, turning in completed assignments, following rules and policies of the classroom, and seeking assistance when needed). Student was rated as below average or well below average for attentiveness (two teachers), participating in discussions (all five teachers), turning in assignments (two teachers), and seeking assistance when needed (four teachers). Additional teacher input reflected some needs for writing support including notetaking, practice with mathematics word problems, asking for help to complete assignments, test-taking skills, and occasional lack of focus and attention; but no other accommodations were noted. (S-6 at 7-9.)
26. Student reported difficulties with writing tasks including notetaking to the District school psychologist. Student was compliant with the assessments conducted for the 2018 ER, completed tasks willingly, and the results were reportedly believed to be an accurate representation of Student's functioning. (S-6 at 6-7.)
27. Cognitive assessment for the 2018 ER (Wechsler Intelligence Scales for Children – Fifth Edition) reflected average range scores on all composites with the exception of processing speed (low average range). Student's Full Scale IQ score was solidly in the average range (standard score of 96). The District school psychologist provided an explanation in the ER for each of the composites and subtests and how Student performed on those measures, and how the relative weakness in processing speed did not significantly impact the other composite scores but may be expected to impact certain skills. (S-6 at 10-12.)
28. Select subtests of the WIAT-III were administered to assess academic achievement. Student earned scores in the average range across all subtests and composites measured (reading, mathematics, and written language). (S-6 at 15-18.)
29. Student's executive functioning skills were assessed through rating scales (Comprehensive Executive Function Inventory (CEFI)) completed by two teachers and the Parent. The teachers both reported concerns with initiation (one in the clinically significant range, the other in the at-risk range); one teacher or the other reported at-risk concerns with flexibility, organization, and self-monitoring. The Parent endorsed at-risk concerns with emotional regulation and initiation but no clinically significant concerns. One of the teachers and the Parent omitted too many items on the CEFI to be considered valid. (S-6 at 13-15.)

30. Select subtests of the NEPSY-2 were administered to further examine specific neuropsychological functioning (memory). Those results suggested weaknesses with some aspects of word retrieval fluency and recall. (S-6 at 15.)
31. One of Student's teachers<sup>7</sup> and the Parent completed BASC-3 rating scales, and Student completed a self-report, for the 2018 ER. The teacher endorsed only an at-risk concern with functional communication. The Parent reported at-risk concerns with withdrawal, adaptability, leadership, functional communication, and resiliency; and a clinically significant concern was reflected on the Developmental Social Disorders composite. Student did not indicate any concerns on the BASC-3 self-report. (S-6 at 18-21.)
32. The Autism Spectrum Rating Scales (ASRS) and an Autism Diagnostic Observation Schedule – Second Edition (ADOS-2) were also utilized for the 2018 ER. On the ASRS, one or both teachers reported slightly elevated concerns in the areas of social/communication and peer socialization, but the Total Score was in the average range for both. The Parent reflected very elevated concerns in the areas of social/communication, unusual behaviors, peer socialization, social/emotional reciprocity, stereotypy, behavioral rigidity, and social sensitivity, as well as the DSM-5<sup>8</sup> scale. The Parent also reported elevated concerns with adult socialization and atypical language and an elevated Total Score. The ADOS-2, a standardized assessment administered by the school psychologist, yielded results that were indicative of a moderate level of behaviors that are associated with Autism Spectrum Disorders (limited reciprocal social interactions, facial expressions, and social overtures). (S-6 at 21-23.)
33. Speech/language functioning for the 2018 ER assessed pragmatic language and social communication skills as well as articulation, the areas of concern identified by the Parent. None of those measures identified any skill deficits or suggested any need for further assessments. (S-6 at 23-26, 30.)
34. Assessment of Student's occupational therapy-related functioning was also conducted for the 2018 ER. Visual motor integration skills were in the below average range. Sensory needs (School Companion Sensory Profile – Second Edition, completed by a teacher) reflected one area of weakness, registration of sensory input, with a need for support for learning engagement. No fine motor, self-care, or sensory processing needs were identified. The occupational therapist recommended consultative services to support visual motor skills and sensory registration in the school environment. (S-6 at 26-28, 30.)
35. The "Determining Factor" section of the 2018 ER reflected that lack of appropriate instruction in reading and mathematics and limited English proficiency were not factors for Student's eligibility. That section used a different (similarly spelled) first name in one place rather than Student's name, and also an incorrect pronoun (opposite gender) in two places. (S-6 at 29.)

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<sup>7</sup> One teacher's rating scales were not returned and another teacher omitted too many items for the results to be considered accurate. (S-6 at 8.)

<sup>8</sup> Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013).

36. The 2018 ER determined that Student had a disability (Autism), but did not need specially designed instruction. Student was determined to be eligible under Section 504 and in need of accommodations. (S-6 at 31.)
37. The testing instruments used for the 2018 ER were all valid and reliable. (N.T. 52, 54, 57-58, 59, 71.)
38. There was nothing in the results of the assessments that were administered for the 2018 ER, or other input provided, that suggested a need for further tests beyond those that were conducted. (N.T. 131-34.)
39. The District Supervisor of Pupil Services discussed Student's ER with the assigned District school psychologist and reviewed the testing protocols. The two reviewed the findings and the eligibility determination and there were no concerns with that evaluation. (N.T. 32-33, 75.)
40. The District Supervisor of Pupil Services and the District school psychologist provided a copy of the 2018 ER to the Parent and discussed that ER with her following its completion. The Parent expressed disagreement with some of the information in the ER including its conclusions. (N.T. 71-73, 194, 203-04; P-14.)
41. During that conversation to discuss the 2018 ER, the Parent also asked about obtaining an Independent Educational Evaluation (IEE). (N.T. 73.)
42. The Parent indicated disagreement with the 2018 ER, including its eligibility determination, and returned a form noting that disagreement on November 5, 2018. (N.T. 38-39, 206-07; S-6 at 1, 33.)
43. The District prepared a proposed Section 504 Service Agreement in November 2018, which the Parent did not approve. (S-10.)

## **DISCUSSION AND CONCLUSIONS 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. At the outset of the discussion, it should be recognized that the burden of persuasion lies with the party seeking relief in this type of proceeding.

*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 as the filing party for 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 “equipose.” *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.

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). The two witnesses were considered to be testifying truthfully to the best of his or her recollection and, with the single exception noted below, were accorded equal weight.

In reviewing the record, the testimony of both the witnesses and the content of each admitted exhibit, as well as the parties’ closing statements, were thoroughly considered in issuing this decision.

#### 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). Thus, merely having a disability does not automatically mean that a child is eligible, since it is a two-part test. With respect to the second prong of IDEA eligibility, “special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). More specifically,

*Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child’s disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3).

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). Although “[t]he eligibility group should work toward consensus, [ ] under §300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination.” 71 Fed. Reg. 156 at 46661 (August 14, 2006). However, “[i]f the parent disagrees with the public agency’s determination, under §300.503, the public agency must provide the parent with prior written notice and the

parent's right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in §300.503 and section 615(b)(3) of the Act." *Id.*

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 2018 ER and sought an IEE at public expense, and the District refused; thus, the District had the burden of establishing that its evaluation was appropriate. It is important to recognize, though, that parental disagreement with the conclusions of an LEA evaluation does not, in and of itself, establish that the evaluation is inappropriate. 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 2018 EVALUATION REPORT

The District's 2018 ER 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 (including written expression); administered an assessment of neuropsychological functioning; obtained and reported input provided from teachers at the private school in addition to an observation by the District school psychologist; incorporated results of previous evaluations; obtained and summarized parental input, both current and when Student was attending school in the District; summarized information directly from Student; and provided a variety of rating scales to evaluate, in both the home and school settings, Student's social/emotional/behavioral functioning, including executive function skills,

and suspected Autism. All areas of concern expressed by the Parent and private school teachers were examined for the 2018 ER. The District school psychologist responsible for administering the cognitive ability, academic achievement, and related assessments is well qualified, and concluded that Student was cooperative with testing demands and that the results were valid. Speech/language therapy and occupational therapy strengths and needs, including pragmatic language and social communication skills, were fully examined. All of this evidence supports the conclusion that the District's 2018 ER was sufficiently comprehensive to identify Student's special education and related service needs in all areas related to suspected disability.

The Parent raised a number of interrelated concerns with the 2018 ER (N.T. 146-53, 155-56, 159, 164-65). The first area of concern related to a few errors in the content of the ER and specifically inclusion of a name other than Student's and the use of the incorrect gender pronoun on one page of the document. The second concern was based upon missing details from her own input, such as the support that Student was receiving at the private school and previous speech/language and occupational therapy services, in the body of the report, as well as with Student's own input. In essence, the Parent objected to the District school psychologist's use of a summary of information from both her and Student in the 2018 ER. The third and related concern essentially challenged the information provided by teachers at the private school as not accurate or complete. Finally, the Parent disagreed with the use of results in the 2018 ER that provided a comparison of Student to peers, and believed that additional assessments should have been administered.

It is unfortunate that a page in the 2018 ER references a name that is similar to but is not Student's name, and uses an inaccurate pronoun twice. Certainly to a parent, this type of error can be glaring and may be potentially alarming. Nevertheless, this hearing office cannot

conclude that those relatively minor errors in the ER detract from the substance of the document that is clearly about Student and not some other child.

Next, the Parent's own input is included in the ER as a whole, even if not necessarily in the language that she used or in any specific section of the document. For example, the Parent expressed a belief that the supports provided at the private school (including those she mentioned to the District school psychologist) were not fully included in the ER and were thus disregarded. However, the ER does include the information that she considered to be missing: that Student needed and was provided with mathematics and writing (including note-taking) support; and had needs with respect to asking for help to complete assignments, test-taking skills, and maintaining focus and attention, as well as practice during the summer months. Thus, the teachers' specific input was also explicitly included. Whether or not the Parent agrees with that information provided by the teachers at the private school, there is nothing in the record to indicate that what they did share was not considered as part of the 2018 ER.<sup>9</sup> Furthermore, there is additional information from the Parent and the teachers on Student's social, emotional, and behavioral functioning, as well as symptoms of Autism, through the various rating scales that were completed for and made a part of the 2018 ER. The fact that the results between home and school are somewhat disparate also does not render either set of ratings incomplete or inaccurate.

Similarly, to the extent that the District school psychologist summarized Student's own input for the 2018 ER and did not necessarily use the specific words that Student may have said, an evaluation report is not a verbatim transcript but rather is a synthesis of information compiled to determine a child's eligibility for special education and to assist in programming decisions.

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<sup>9</sup> Although the Parent also claimed that some of the teachers who were contacted to give input did not all know Student well, the District had sixty calendar days from receipt of the signed Permission to Evaluate form, and could therefore not delay obtaining information from them.

The input from both the Parent and Student are clearly incorporated into the 2018 ER and there is simply a lack of any evidence that any specific area from their perspectives was truly overlooked or disregarded.

In the final areas to be addressed, the Parent disagreed with the assessments that compared Student to peers, raising a perhaps understandable concern that the 2018 ER did not focus enough on Student. But standardized assessments are designed to do just that, to allow for a comparison of a child's performance to that of a representative sample such as same-aged peers, so that his or her functioning relative to those peers can be gauged. Such measures enable educators to determine relative strengths and weaknesses and to identify individual programming needs, in both general and special education. Thus, the standardized assessments administered for the 2018 ER serve an important purpose and do not support a conclusion that the District's evaluation was not appropriate. Moreover, there was also a significant amount of information in the ER beyond standardized assessments that was specific solely to Student. In addition, the related argument of the Parent that additional assessments should have been conducted must be rejected based on the contradictory and compelling testimony of the District Supervisor of Special Education, whose expertise and professional judgment must be and is fully credited, that the information gleaned for the 2018 ER, including results of the assessments that were administered, did not suggest any need for further tests (N.T. 131-34).

The Parent further argued that because there is language in Student's previous District IEPs indicating that Student was eligible under the IDEA based solely on the disability of Autism, that conclusion should continue. This contention ignores the two-part test in the IDEA that requires both a disability and a resulting need for special education. As set forth above, special education involves adaptation to the content, methodology, or delivery of instruction that

is based on the needs of the child because of the disability in order to provide access to the general curriculum. The District's 2018 ER that examined both prongs of this test cannot be considered inappropriate under the IDEA and Chapter 14.

It is wholly understandable that the Parent is seeking as much information as possible to plan for Student's future success, including an outside opinion on eligibility and recommended programming. Nevertheless, while she is certainly free to do so on her own, for all of the above reasons, there is no basis for awarding an IEE at public expense.<sup>10</sup>

### **CONCLUSION**

For all of the above reasons, this hearing officer concludes that the District's 2018 ER was appropriate under the law, and no IEE will be awarded.

### **ORDER**

AND NOW, this 11<sup>th</sup> day of February, 2019 in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's 2018 ER complied with the IDEA and Chapter 14. The District is not required to take any action.

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

*Cathy A. Skidmore*

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Cathy A. Skidmore  
HEARING OFFICER  
ODR File No. 21469-1819AS

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<sup>10</sup> As such, and with the Parent not intending to remove Student from the private school during the current school year (P-15 at 12), there is no need to address the 2018 ER further.