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## **Pennsylvania Special Education Hearing Officer**

### **Final Decision and Order**

#### **CLOSED HEARING**

ODR File Number 21509-18-19

**Child's Name:** W.J.      **Date of Birth:** [redacted]

**Date of Hearing:**

02/06/2019

**Parents:**

[redacted]

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*Counsel for Parents*

**School District:**

Pittston Area School District  
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**Hearing Officer:** Michael J. McElligott      **Date of Decision:** 02/28/2019

## **INTRODUCTION**

[The Student] (“student”)<sup>1</sup> is a student of middle school age who resides in the Pittston Area School District (“District”).<sup>2</sup> In the fall of 2018, the District performed an evaluation of the student, issuing an evaluation report (“ER”) in October 2018. The parents disagreed with the results and recommendation of the ER and requested an independent education evaluation (“IEE”) at District expense. The District declined to fund the IEE and, as required under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)<sup>3</sup>, filed a special education due process complaint to defend the appropriateness of its evaluation process and ER.

As set forth below, the undersigned hearing officer finds in favor of the District.

## **ISSUES**

Were the District’s evaluation process in the fall of 2018,  
and the October 2018 ER, appropriate?

If not, are the parents entitled to an IEE at public expense?

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<sup>1</sup> The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

<sup>2</sup> The student is regularly known by a nickname. As such, readers of the full record will see reference to the student by that nickname in the school records and transcript.

<sup>3</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

## **FINDINGS OF FACT**

1. In the 2016-2017 and 2017-2018 school years, respectively the student's 5<sup>th</sup> and 6<sup>th</sup> grade years, the student had Section 504 plans to address accommodations in the educational environment for attention deficit hyperactivity disorder ("ADHD") and other diagnoses. (Parent Exhibit ["P"]-2, P-3).
2. In July 2018, parents requested, through counsel, an IEE at public expense. (P-4).
3. In August 2018, the District requested permission to evaluate the student. In September 2018, parents provided permission to perform the evaluation. (P-5).
4. In September 2018, as the evaluation process began, the student's Section 504 plan was revised. (P-12).
5. In October 2018, the District issued its ER. (P-6).
6. The October 2018 ER included information and input from the student's parents on the District's input/background questionnaire. The parents' input included a medical diagnosis of ADHD and other diagnoses, a developmental history, an educational history prior to coming to the District, and substantive parental insights. (P-6 at pages 2-4).
7. The October 2018 ER included input from five teachers of the student. This input included substantive insights from each teacher, as well as use of evaluative statements from an instrument to describe the student's learning style, and various academic/functional/behavioral markers (e.g. "can understand content without having the teacher re-explain it", "poor organizational skills", etc.). (P-6 at pages 4-10).
8. The October 2018 ER included health information, including the previous diagnoses. (P-6 at page 10).
9. The October 2018 ER noted previous cognitive and achievement assessments in 2013 [redacted] as part of a [separate] process. (P-6 at page 10).
10. The October 2018 ER included the observations of the student, during administered assessments, by the District school psychologist who conducted the assessments. (P-6 at page 10).

11. The October 2018 ER included an updated cognitive assessment. (P-6 at page 11-13).
12. The October 2018 ER included an updated achievement assessment. (P-6 at pages 13-14).
13. The October 2018 ER included classroom-based/curriculum-based assessment in the form of earned-grades and scores on the Pennsylvania System of School Assessment (“PSSA”) exams, the Commonwealth’s annual statewide academic-standard testing, for the student’s 5<sup>th</sup> and 6<sup>th</sup> grade years, as well as earned-grade and homework/quiz/test scores in 7<sup>th</sup> grade classes as of October 2018. (P-6 at pages 14-15).
14. The October 2018 ER included speech and language assessments, administered by a District speech and language pathologist including observation of voice, articulation, fluency, and expressive/receptive language skills. (P-6 at pages 15-18).
15. The October 2018 ER included an occupational therapy assessment, administered by a District occupational therapist, including writing, copying, fine motor, and self-care observations. (P-6 at pages 18-19).
16. The October 2018 ER included a social/emotional/behavioral/attention assessment, completed by parents and five teachers. (P-6 at pages 19-21).
17. The October 2018 ER included a consideration of factors (lack of appropriate prior instruction, or lack of English language proficiency) that might impact a student’s eligibility status. (P-6 at page 21).
18. The October 2018 ER had a summary of the student’s present levels of academic achievement, functional performance, and behavioral information. (P-6 at pages 21-23).
19. The October 2018 ER concluded that the student has a disability but does not require specially designed instruction and, therefore, the student was not eligible for special education. The evaluation explicitly considered the input and data in the report in light of potential identification as a student with a potential specific learning disability and/or a student with a health impairment (based on the student’s ADHD and other diagnoses). (P-6 at pages 23-24).
20. The October 2018 ER recommended that the student continue to receive classroom accommodations through a Section 504 plan. (P-6 at page 24).

21. Contemporaneously with the issuance of the October 2018 ER, the District issued a notice of recommended educational placement (“NOREP”), recommending that the student continue with a Section 504 plan because the student’s disability did not require special education. (P-13).
22. In November 2018, the parents disagreed with the October 2018 ER and requested, again through counsel, an IEE at public expense. (P-7).
23. In December 2018, the District filed a special education due process complaint to defend the appropriateness of its evaluation process and ER, the complaint which led to these proceedings. Parents filed a formal response to the District’s complaint. (P-8, P-9).
24. The testimony of the District school psychologist was accorded heavy weight. The testimony of the parent, the speech and language pathologist, and occupational therapist were accorded a medium degree of weight. (Notes of Testimony at 25-164).

## **DISCUSSION AND CONCLUSIONS OF LAW**

### IEE

Where parents disagree with a school district evaluation or re-evaluation report, those parents may request an IEE at public expense. (34 C.F.R. §300.502(a); 22 PA Code §§14.102(a)(2)(xxix)). When faced with such a request, the school district “must, without unnecessary delay, either— file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense....”(34 C.F.R. §300.502(b)(2); 22 PA Code §§14.102(a)(2)(xxix)). This is the procedural background for the filing of the District’s complaint in this matter.

## Evaluation

To determine if a student qualifies as a child with a disability under IDEIA, the student must be undergo an appropriate evaluation process to determine if the student has a disability and, as a result, requires special education. (34 C.F.R. §300.8, 300.301; 22 PA Code §§14.102(a)(2)(xxiv), 14.123). For a school district evaluation or re-evaluation to be appropriate, the evaluation must, among many more detailed requirements, “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....”. (34 C.F.R. §§300.304(b)(1) and, generally, 300.304-300.311; 22 PA Code §§14.102(a)(2)(xxv, xxvi)).

Here, the October 2018 ER is comprehensive and appropriate. The evaluation included input from parents and educators, utilized a variety of assessments in multiple areas, and provided a clear summary and explanation of how the contents of the evaluation informed the District’s position that the student requires regular education accommodations in learning environments based on the student’s disability but does not require special education. (34 C.F.R. §§300.8, 300.39; 22 PA Code §§14.102(a)(2)(ii, viii)). The District met its obligations to the student in undertaking an appropriate evaluation process and in issuing the October 2018 ER.

Accordingly, parents are not entitled to an IEE at public expense. Parents may, however, obtain an outside evaluation at private expense, an evaluation

that, should it meet professional criteria for such an evaluation, must be considered by the student's multi-disciplinary team. (34 C.F.R. §300.502(c)(1); 22 PA Code §§14.102(a)(2)(xxix)).

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**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the District did not fail in its obligations to the student through its fall 2018 evaluation process, or October 2018 evaluation report. That process and that report were both appropriate, and parents are not entitled to an independent education evaluation at public expense.

Any claim not specifically addressed in this decision and order is denied.

*Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire  
Special Education Hearing Officer

February 28, 2019