

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

HEARING

ODR File Number: 21831-18-19 and 21856-18-19

Child's Name: H. P. **Date of Birth:** [redacted]

Parent:
[redacted]

Counsel for Parent
Heather Hulse Esq.
McAndrews Law Office
30 Cassatt Avenue
Berwyn, PA 19312

Local Education Agency:
Oil City Area School District
825 Grandview Road
Oil City, PA 16301

Counsel for the LEA
Teresa Sirianni Esq.
Marshall, Dennehey, Warner, Coleman, & Goggin
Union Trust Building, 501 Grant Street, Suite 700
Pittsburgh, PA 15219

Hearing Officer: Charles W. Jelley Esq.

Date of Decision: 05/31/2019

Introduction and Procedural History

The Student is a kindergarten-age pupil who resides with the Parents in the Oil City School District (District).¹ In March 2018, the intermediate unit (IU) preschool evaluation team identified the student as a person with a disability who because of a disability needed special education supports. Later in May 2018, when the Student became school age, the District completed its first assessment of the Student's IDEA eligibility for school age special education services. The District's reevaluation team identified the Student as a person with a speech and language disability who because of that IDEA eligible disability then required specially-designed instruction. Thereafter, the District offered and the Parents agreed to the District's initial offer of a free appropriate public education (FAPE). In December 2018, the Parties and their attorneys met to review the District's initial reevaluation and the Student's then current individual education program (IEP). Shortly after the 2018 December meeting, the Parents requested an Independent Educational Evaluation (IEE) at public expense.² Although the District denied that request, both parties filed Due Process Complaints to resolve the IEE dispute.³ The case proceeded to a due process hearing that concluded in an efficient single session. The Parents contend the District's evaluation of the Student is insufficient, inappropriate and inadequate. The District, on the other hand, maintains that it complied with all of the IDEA and Chapter 14 reevaluation requirements. For all the reasons set forth below, I disagree with the District's assertions; the District is now Ordered to fund an IEE of the Student's unique needs and circumstances at public expense.⁴

¹ In order to provide confidentiality and privacy, the 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 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 the Individuals with Disabilities Education Act (IDEA). See, 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² The due process request was made pursuant to 20 U.S.C. §§ 1400-1482 of the IDEA and its implementing regulations codified in 34 C.F.R. §§ 300.1- 300.818, 22 PA Code Chapter 14.101 *et seq.*, and Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. § 794 (Section 504).

³ Both due process Complaints were consolidated for a hearing on the same day. The IDEA provides that once the District denies the Parents' IEE request and files a Complaint, the District is the moving party; therefore, since the Parents' Complaint essentially mirrors the District's Complaint, I will now Dismiss the Parents' Complaint, without prejudice, as duplicative.

⁴ Hearing Officer Exhibit # 1 (HO #) is a copy of the hearing officer's opening statement. 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 (SD-) followed by

Issue and Remedies

Whether the District's reevaluation of Student was appropriate and compliant with the requirements in the IDEA and 22 PA. Code Chapter 14? If the reevaluation is not compliant, should this hearing officer Order an Independent Educational Evaluation?

Findings of Fact⁵

The March 2018 Intermediate Unit IDEA Preschool Assessment

1. Shortly after birth, the Student was diagnosed with a [physical condition]. As a consequence of the [condition], the Student has an articulation disorder. As a result of the [condition], the Student continues to be monitored by the medical team at the local children's hospital (SD#1).
2. On or about February 26, 2018, when the Student was [approaching five years] old, the local IU preschool evaluation team conducted a comprehensive evaluation to determine the Student's eligibility for IDEA early intervention services (SD#1).
3. As part of the Parents' input into the IDEA evaluation, the mother reported the Student could answer simple questions, knew four to eight (4 to 8) imitative actions, was somewhat talkative and could use four (4) or more words. The mother then reported that due to [the physical condition] and the Student's readily noticeable speech and language delays, the Student easily gets upset if not understood (SD#1).
4. The IU evaluation report (ER) states the Student is able to attend to one activity for three or more minutes, matches colors, responds to one or more directions and can identify colors of familiar objects (SD#1). The early intervention staff stated that Student's rate of acquisition, the rate at which the Student acquires, understands, and demonstrates competency or mastery of new learning, is slower than other students for colors, shapes, letters, and numbers. The ER also notes that the Student's rate of retention, the rate at which the Student's retains concepts and skills necessary for subsequent learning, is also a developmental concern (S-3).

the exhibit number. The District witnesses' testimony appears at N.T. pp.33-130 and pp.135-149. The mother's testimony appears at N.T. pp.131-135.

⁵ I carefully considered the record of this hearing in its entirety. After reviewing the record, I now find that I can make Findings of Fact and Conclusion of Law. Consequently, I do not reference portions of the record that are not relevant to the single issue in dispute.

5. When assessed with the Battelle Developmental Index (BDI), the Student earned a cognitive developmental quotient (DQ) of 68. A standard score of 100 is average, while a DQ of 77 or below is considered a delay (SD#1). A cognitive DQ of 68 is 2.13 standard deviations below the average score of 100. A 2.13 standard deviation score below the mean is a significant delay. The Student's BDI social and emotional DQ of 66 is also evidence of a developmental delay. The Student's social DQ of 66 is 1.73 standard deviations below the average score of 100 (SD#1). The Student's social and emotional DQ of 66 is evidence of developmental delay.
6. To assess the Student's language development, the IU preschool speech therapist administered the Preschool Language Scale. On the Preschool Language Scale, in the area of receptive language, the Student earned SS of 73 and an expressive language SS of 66 (SD#1). The Student's overall Preschool Language Scale SS of 68 is indicative of a developmental delay in both receptive and expressive language (SD#1).
7. The preschool speech therapist also administered the Goldman Fristoe Test of Articulation-3rd Edition (GFTA-3). The GFTA-3 provides information about a child's articulation ability by sampling both spontaneous and imitative sound production. The GFTA-3 assesses articulation of consonant sounds and compares a student's individual performance to national, gender-differentiated norms. On the GFTA-3 the Student earned a SS of 55. A SS of 100 is average and a score of 77 or below is considered a developmental delay (SD#1, SD#3). The Student's SS of 55 is indicative of a developmental delay in articulation.
8. After reviewing the ER assessment data, along with the Parents' input, the early intervention evaluation team, the Parents and the Student's early intervention IEP team concluded that the Student was a person with a speech and language disability. Both teams also concluded the Student needs specially-designed instruction and related services (SD#1).
9. The Student's initial early intervention IEP included a social skills goal and multiple expressive and receptive language goals (SD## 1, 2, and 3).

The District's April 2018 Reevaluation Report

10. On or about April 19, 2019, the District requested and the Parents consented to the District's request to reevaluate the Student's IDEA eligibility for school age services (SD#2).
11. On or about May 2, 2019, the District provided the Parents with a copy of the results of its reevaluation report (RR) (SD#3). The District's RR notes on several occasions the Student refused to complete several of the norm

referenced assessment tasks presented during the reevaluation. The RR further provides that on multiple occasions, the Student cried, refused to attempt assessment items and/or shut down during the psychological and speech assessments (SD#3). The psychologist also reported that the Student refused to say the alphabet or identify any uppercase letters of the alphabet when presented in random order (SD#3).

12. To determine the Student's then current cognitive ability, the psychologist administered the Pictorial Test of Intelligence - Second Edition (PTI-2). The PTI-2 is a cognitive ability screener. The PTI-2 administration time ranges from 15 to 30 minutes. The Student earned a Verbal Abstractions SS of 5, in the poor range, a Quantitative Concepts SS of 5, also in the poor range and a Form Discrimination SS of 12, in the average range (SD#3).
13. The Student's overall PTI-2 SS of 83 falls within the below average range, at the 13th percentile. The Student's PTI-2 cognitive profile suggests the Student learns at a rate that is slightly below same age peers (SD#3). The evaluator noted that on multiple occasions, the Student's refusal to complete all of the norm referenced assessment tasks resulted in an underestimate of the Student's true cognitive ability (SD#3).
14. The psychologist then administered the Developmental Test of Visual-Motor Integration - Fifth Edition (VMI-5). The VMI-5 is an assessment of the Student's ability to integrate visual perceptual skills requiring fine motor coordination. The VMI-5 requires the Student to copy and draw a series of geometric forms. Visual motor integration deficits often come up during printing and handwriting tasks. On the VMI-5, the Student earned a SS of 85, which when compared with other children places the Student at the 15th percentile in the below average range (SD#3). The VMI-5 can be administered in 10 to 15 minutes.

The District's School Age Speech and Language Assessment

15. The District's speech therapist administered the Goldman Fristoe Test of Articulation 2nd Edition (GFTA-2). On the GFTA-2 the Student had a total of 50 articulation errors and earned a SS of 47. A GFTA-2 SS of 47 places the Student at a level somewhere below the 1st percentile (SD#3). The GFTA-2 can be administered in 15-minutes or less.
16. When the Student refused to complete a modified version of the Receptive One Word Picture Vocabulary Test, the speech therapist abruptly terminated the speech and language assessment. (SD#3).

17. After a 45 to 60 minute battery of norm referenced testing, relying on the PTI-2 ability screener, the GFTA-2 and the VMI-5, the District's evaluators concluded the Student was a person with an IDEA speech and language disability who because of that disability needs specially-designed instruction.
18. Despite the crying, the refusal to complete the norm referenced assessments and the "shut down" the evaluation team did not assess the Student's adaptive behavior, school readiness, executive functioning, social/emotional/behavioral functioning, academic readiness or academic achievement (SD#3).

IDEA and Chapter 14 Evaluation Procedures

The IDEA and state and federal regulations obligate a school district -- *a.k.a.* a local education agency (LEA) -- 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 reevaluation. First, the evaluation should determine whether or not a child is a child with a disability as defined in the law, and second, the reevaluation must "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 disability classifications and who, "by reason thereof, needs special education and related services." 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a).

When "appropriate," as part of an evaluation or a reevaluation, the school district is required to perform a "[r]eview of existing evaluation data" 20 U.S.C. § 1414(c)(1). The review of the existing data must include all existing "evaluations and information provided by the parents," "current classroom-based, local, or State assessments, and classroom-based observations," and "observations by teachers and related services providers." *Id.* "Upon completion of the administration of assessments and other evaluation measures[,] the determination of whether the child is a child with a disability . . . and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child." 20 U.S.C. § 1414(b)(4).

In conducting an evaluation or reevaluation, the IDEA and Chapter 14 imposes certain requirements on LEAs to ensure that sufficient and accurate information about the child is obtained. In conducting the evaluation or reevaluation, the LEA 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 whether the child is a child with a disability under 34 C.F.R. § 300.8; and (2) the assessment tools should assist the team in developing 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). The evaluation team should not use any single measure or assessment tool 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.

IDEA/Chapter 14 compliant evaluators should use technically sound instruments that assess the relative contribution of cognitive and behavioral factors, in addition to physical, social, emotional, behavioral, or developmental factors. 34 C.F.R. §§ 300.304(b); 34 C.F.R. § 303(a).

A full IDEA 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); 20 U.S.C. § 1414(b)(3)(B). Additionally, a full evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service 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); 20 U.S.C. § 1414(b)(3).

An IDEA compliant reevaluation does not have to identify and diagnose every possible disability, but must ensure the child is "assessed in all areas of suspected disability." *D.K.*, 696 F.3d at 250 (3d Cir. 2012) (quoting 20 U.S.C. § 1414(b)(3)(B)); 34 C.F.R. § 300.304(c)(4). Additionally, the reevaluation must be "sufficiently comprehensive to identify all 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." 34 C.F.R. § 300.304(c)(6).

When interpreting the information collected to determine eligibility and educational need, the school district must "(i) [d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) [e]nsure that information obtained from all of these sources is documented and carefully considered." 34 C.F.R. § 300.306(c)(1)(i)-(ii).

In Pennsylvania, LEAs are required to provide a reevaluation report to the parents describing the results of the reevaluation within sixty (60) calendar days of receipt of the parent’s consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). Once the report is completed “[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 the evaluation team should strive to work towards a consensus, under 34 C.F.R. §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).

With respect to the IDEA “need” prong, “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 (1) to address the unique needs of the child that result from the child’s disability; and (2) to ensure the child’s equal access 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). It is important to recognize, that parental disagreement with the conclusions of an LEA’s reevaluation does not, in and of itself, establish that the District’s reevaluation is inappropriate. The sole issue for adjudication is whether the LEA’s reevaluation is appropriate. If a disagreement persists, either party may pursue appropriate relief in an administrative due process hearing before an impartial hearing officer 34 C.F.R. § 300.510-512. Once the hearing officer issues a final order, the aggrieved party may take an appeal to either federal district court or state court. 34 C.F.R. § 300.516.

Here, the Parent disagreed with the District’s 2018 RR and sought an IEE at public expense, and the District refused; thus, the District, by statute, has the burden of establishing that its March 2018 reevaluation was appropriate.

The Parents’ Claims

The Parents presented a series of discrete contentions that although the District reviewed the IU’s ER and then conducted its own reevaluation, the District’s RR lacks a full individualized comprehensive assessment of the Student’s cognitive ability, social skills, behavioral needs, academic achievement, adaptive behavior, occupational therapy, and speech/language needs. While these contentions are made separately, for this discussion, the Parents’ argument will be addressed as an integrated whole.

Discussion, Analysis and Outcome

The 2018 Reevaluation Report is Inadequate, Insufficient and Inappropriate

Screening, evaluation and assessment are distinct IDEA processes with different purposes. Screening activities identify children who may need further evaluation in

order to determine the existence of a delay in development or a particular suspected disability. Evaluation and assessment, on the other hand, are used to determine the child's present level of performance, educational needs, the existence of an IDEA disability and the student's need for specially-designed instruction. See 34 C.F.R. § 300.304 through 300.311.⁶

In this particular instance, the District's assessment team failed to utilize a variety of assessment tools and/or techniques to gather relevant cognitive, social, emotional, speech/language needs, behavioral and academic data about Student in all areas of suspected disability. Rather than complete a comprehensive and individualized cognitive assessment, the psychologist administered a cognitive screener. Granted, while the PTI-2 is a technically sound ability screener, the PTI-2 screener, in this instance, given the discrepant SS and DQ scores did not provide the evaluation team with sufficient data about the Student's complete cognitive ability profile, academic achievement, social/emotional/behavioral profile or adaptive behavior. When asked about the PTI-2 SS, VMI-5 and the preschool Battelle DQ results, the psychologist glossed over the poor to below average scores and instead focused on the Student's "crying" and the "shut down." The sudden termination of the reevaluation, after these behaviors interfered with the assessments, contributed to the incomplete assessment of the Student in all areas of suspected disability. While the early intervention staff noted that the Student's rate of learning and rate of retention were a concern, the evaluation team did not fully assess either developmental circumstance or the Student's academic profile. Although the Student's May 2018 articulation standard scores went down (March SS 55 vs. May SS 47), the therapist did not discuss or explain the decline or suggest additional assessments. Like the psychologist, once the Student misbehaved, the speech/language assessment stopped. The failure to assess the Student's social, emotional and behavioral needs resulted in an incomplete, inadequate and inappropriate reevaluation. The unsuccessful administration of the cognitive and speech testing, along with the absence of any specific academic, social, or behavioral data about the Student's then-current individual needs and circumstances is of serious concern. This concern is significant since there is preponderant evidence, in the record, that that the Student demonstrated academic

⁶ Compare IDEA Part C preschool regulations found at 34 C.F.R. § 303.321 Evaluation and assessment, 34 C.F.R. § 303.322 Evaluation of the child and assessment of the child and family, 34 C.F.R. § 303.420(a)(1) and (2) Determination that a child is not eligible; with the IDEA school age regulations at Part B 34 C.F.R. § 300.300, Parental consent, 34 CFR § 300.301, Initial evaluations, 34 C.F.R. § 300.302 Screening for instructional purposes is not evaluation, 34 C.F.R. § 300.303 Reevaluations,, 34 C.F.R. § 300.304 Evaluation Procedures, 34 C.F.R.. § 300.305 Additional requirements for evaluations and reevaluations, 34 C.F.R. § 300.306 Determination of eligibility.

rate of learning and retention, behavioral and social skills deficits in the preschool, during the evaluation and in the home.

An in-depth exploration of the Student's skill deficits, abilities and circumstances would have equipped the reevaluation team and the IEP team with the necessary data to develop ambitious specially-designed instruction targeting academic, speech/language, and social/emotional/behavioral annual goals. Since one of the purposes of an evaluation is to gather sufficient data to determine the child's educational needs, such a glaring omission cannot be overlooked, even with the IEP team member's concession that additional skill assessments would take place in the future. In this particular instance, compliance with the sixty calendar day deadline that local educational agencies are required to meet when conducting a reevaluation unquestionably elevated form over substance and resulted in an incomplete, inadequate and non-comprehensive reevaluation.

The usual remedy for a reevaluation that does not meet the requisite criteria is an IEE. 34 C.F.R. § 300.502, 34 C.F.R. § 300.502(d). After reviewing the exhibits and the transcript, this hearing officer now concludes that the remedy of a publicly funded independent evaluation will not only confirm the Student's eligibility but will also inform the Student's reevaluation team and the IEP team about the Student's unique needs and circumstances. The IEE will also serve the crucial function of "guarantee[ing] meaningful participation [of the Parents] throughout the development of the IEP" and the placement decision. *Phillip C. v. Jefferson County Board of Education*, 701 F.3d 691, 698 (11th Cir. 2012); see also *Schaffer*, supra, at 61 (noting that an IEE can afford parents "a realistic opportunity to access the necessary evidence" and information relating to an appropriate program and placement for their child). Given the Student's very young age, the IEE will place the Student on the path to a FAPE in the least restrictive setting.

Accordingly, I now find the independent evaluations should include an assessment of the Student's cognitive ability, academic achievement, speech/language needs, occupational therapy needs and social, emotional and behavioral needs. I also find that, if necessary, the independent evaluators may add any other additional assessments they determined are needed to complete a full and comprehensive reevaluation of the Student in all areas of suspected disability.

Conclusion

Based on the foregoing findings of fact and for all of the above reasons, the Student must be provided an IEE at public expense.

Order

AND NOW, this 31st day of May 2019, in accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** as follows.

1. Pursuant to 34 C.F.R. §300.300(a)(3)(i), 34 C.F.R. §300.502(d) and 22 PA Code §14.102(a)(2)(xxix) I now find good cause exists to **Order** the District to fund the following Independent Educational Evaluations at public expense: (1) a comprehensive assessment of the Student's cognitive ability, (2) a comprehensive assessment of the Student's academic achievement, (3) a comprehensive assessment of speech/ language needs, (4) a comprehensive assessment of the Student's occupational therapy needs, and, (5) a comprehensive assessment of the Student's social/behavioral/emotional functioning.
2. Within five calendar days of the date of this Order, the District shall provide to the Parents a list of not less than three qualified individuals to perform an Independent Educational Evaluation in each area described above in Paragraph 1.
3. Within seven calendar days of the date of receiving the list, the Student's Parents shall then make the decision on the individual to perform each Independent Educational Evaluation. If the Parent does not notify the District, in writing, of their selection within seven calendar days of receipt of the list, the District shall make the selection from that same list. In the event, the District does not provide a comprehensive list of independent evaluators the Parents are free to select the independent evaluators. If an evaluator once selected cannot complete the IEE, said evaluator should then name his/her replacement.
4. The selected evaluator(s) shall be given access to Student's education records and shall determine the scope of the evaluation.
5. The selected evaluator(s) shall provide a written report of his or her Independent Educational Evaluation within a reasonable time, not to exceed 60 calendar days from the date of engagement, unless otherwise agreed by the parties. Once completed the Independent Educational Evaluation Report shall be provided to both Parents and the District at the same time.
6. Following the completion of the Independent Educational Evaluation Report(s), and within fifteen calendar days of receipt of the IEE report(s) by the District, a meeting shall be scheduled with the Parents to consider each IEE and prepare a revised RR. The meeting to review the IEE assessments shall be held at a time that is mutually agreeable to both Parents.
7. Within fifteen calendar days of the Parents' receipt of the RR, the District shall schedule an IEP meeting. The independent evaluators' engagement shall include participation in any meeting to review the IEE, the RR and the development of the

IEP. The independent evaluators' engagement shall end once the District offers a revised IEP and a Notice of Recommended Educational Placement (NOREP).

8. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its time lines.

9. As a result of the District's due process Complaint at ODR FILE #21856-1819 AS I now find the Parents' due process Complaint at ODR FILE #21831-1819 AS is dismissed as duplicative.

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

Charles W. Jelley, Esq. LL.M.

Charles W. Jelley, Esq.

Hearing Officer

ODR FILE # 21831-1819 AS and

ODR FILE #21856-1819 AS

May 31, 2019