

*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

### DECISION

ODR No. 2218-1112 KE

Child's Name: T.F.

Date of Birth: [redacted]

Dates of Hearing: 11/7/11, 1/12/12

### CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent Attorney

Heidi Konkler-Goldsmith, Esquire  
McAndrews Law Offices  
30 Cassatt Avenue  
Berwyn, PA 19312

School District

Antietam  
100 Antietam Road  
Reading, PA 19606

School District Attorney

Mark W. Walz, Esquire  
Sweet, Stevens, Katz & Williams LLP  
331 Butler Avenue  
P.O. Box 5069  
New Britain, PA 18901

Date Record Closed:

February 10, 2012

Date of Decision:

February 19, 2012

Hearing Officer:

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student in this matter was enrolled in the School District 3<sup>rd</sup> through December of 4<sup>th</sup> grade only. An evaluation in the spring 4<sup>th</sup> grade by the cyber charter school in which Student enrolled for the remainder of the school year resulted in a finding of IDEA eligibility based upon several disability categories. Prior to enrollment in the District, Student had been diagnosed with ADHD and with a physical/neurological impairment caused by a [redacted - birth defect] in infancy. In 3<sup>rd</sup> grade, a developmental pediatrician made an additional diagnosis of Asperger's based upon a rating scale completed by Parent.

At Parents' request, the District evaluated Student in the fall of both 3<sup>rd</sup> and 4<sup>th</sup> grades. Student was provided with §504 Service Agreements but was not found eligible for special education despite ability/achievement discrepancies in math and writing disclosed by the first evaluation and a specific learning disability in math identified in the second evaluation. The District concluded that Student did not need specially designed instruction because of good progress in the general education curriculum. Speech/Language and Occupational Therapy evaluations included in the 2010 evaluation established no need for related services. Student was reported to have no significant behavior problems or peer social interaction difficulties in school.

Parents' claims in this matter are based upon their contention that the District's failure to identify Student as IDEA eligible and provide special education and related services resulted in a denial of FAPE from the beginning of 3<sup>rd</sup> grade through Students' charter school enrollment. The record compiled over two brief due process hearing sessions in November 2011 and January 2012 does not, however, support Parents' claims. Consequently, Parents' request for full days of compensatory education for the period in issue will be denied.

## **ISSUES**

1. Did the School District appropriately evaluate Student in October 2009 and October 2010?
2. Did the School District appropriately determine that Student was not IDEA eligible in 2009 and 2010?
3. Did the School District provide Student with sufficient, appropriate services in the Service Plans provided to Student to Student's needs arising from the conditions that qualified Student as a protected handicapped student under §504 of the Rehabilitation Act of 1973 and 22 Pa. Code, Chapter 15?
4. Is Student entitled to an award of compensatory education based upon Issues 1—3 above, and if so, for what period(s), in what form and in what amount?

## **FINDINGS OF FACT**

1. Student is a pre-teenaged child, born [redacted]. At all times relevant to the matters in dispute, Student was a resident of the Antietam School District. (Stipulation, N.T. pp. 13, 15)
2. Student entered the District with medical diagnoses of [redacted] and attention deficit/hyperactivity disorder (ADHD), for which the District provided §504 Service Agreements during the time Student was enrolled in the District. (Stipulation, N.T. p. 14); 22 Pa. Code §15.7
3. After an evaluation in April 2011, Student's current LEA, a cyber charter school, determined that Student is IDEA eligible in the disability categories of autism, specific learning disability, speech/language impairment and other health impairment (OHI). (Stipulation, N.T. p. 15; P-2, p. 28); 34 C.F.R. §300.8(a)(1), (c)(1), (9), (10), (11); 22 Pa. Code §14.102 (2)(ii)
4. Student enrolled in the District in 3<sup>rd</sup> grade, after spending part of kindergarten and 2<sup>nd</sup> grade in private schools and 1<sup>st</sup> grade in a neighboring public school, where Student had been evaluated for special education services, found ineligible and provided with a §504 Service Agreement. (N.T. pp. 37, 40, 124, 125; P-21, S-1, S-2, S-3, S-4 p.1)
5. Upon enrolling Student in the District, Parents requested a psycho-educational evaluation, which was completed by the end of October 2009. The evaluation included information from Parents, standardized assessments of intellectual ability and academic achievement,<sup>1</sup> rating scales for attention, executive functioning and behavior/emotional

---

<sup>1</sup> WISC-IV- Wechsler Intelligence Scale for Children-Fourth Edition;

issues,<sup>2</sup> as well as a classroom observation by the school psychologist and teacher input. The three rating scales were completed by both Parents and the 3<sup>rd</sup> grade teacher. (N.T. pp. 25, 38, 47, 123, 192, 212; S-4, pp. 1—6, 8—10)

6. Student's Full Scale IQ (FSIQ) on the WISC-IV was 101 in the average range (53<sup>rd</sup> %ile). The test revealed little scatter in the separate index scores from which the FSIQ is derived, with Verbal Comprehension (99/47<sup>th</sup> %ile) and Processing Speed (100/50<sup>th</sup> %ile), within 1 point of the FSIQ score. Perceptual Reasoning (106/66<sup>th</sup> %ile) and Working Memory (94/34<sup>th</sup> percentile), were higher and lower by 5 and 7 points, respectively, but still well within the average range of 90—109. For that reason, the school psychologist considered Student's FSIQ to be a reliable and valid measure of general cognitive ability and used it to determine whether Student exhibited a severe discrepancy between ability and achievement. (N.T. pp. 25, 126; S-4 pp. 4—6)
7. The achievement tests results indicated that Student's reading was generally within the average range, with a weakness in passage comprehension (89), which was 11 points lower than Student's FSIQ and one point below the 90—109 average range. Overall reading comprehension is assessed by considering both the passage comprehension score and the reading vocabulary score (100), which placed Student within the average range for reading comprehension. There was no significant discrepancy between Student's FSIQ and any measure of reading achievement. (N.T. p. 129; S-4 p. 3)
8. In math, three of the five standard scores on the WJ-III fell below the average range, and two scores were 15 points or more lower than Student's FSIQ, indicating a significant discrepancy between ability and achievement with respect to math calculation (85) and broad math (86). The school psychologist did not recommend finding a learning disability in math based upon curriculum-based assessments indicating that Student was not having difficulty with skill development in the regular education setting. (N.T. pp. 31, 130; S-4, p. 3)
9. In addition to the WJ-III writing subtests, which assessed Student's Broad Written Language in the low average range (86), the District School Psychologist administered the OWLS (Oral and Written Language Scales), another standardized writing test to further explore Student's writing ability. On that assessment, which provided more structured directions and reminders about conventions such as punctuation and capitalization, Student's performance improved to the average level. Based upon an ability/achievement discrepancy of exactly 15 points, the School Psychologist's knowledge that discrepancies in the WJ-III writing scores are often quite a bit larger than in reading and math and Student's performance on the OWLS, she did not recommend finding a learning disability in writing. (N.T. pp. 126—128, S-4, p. 4)

---

WJ-III—Woodcock-Johnson Tests of Achievement-Third Edition. Although the District's evaluation reports do not indicate it, the school psychologist testified that she actually used the WJ-III NU—Woodcock-Johnson Tests of Achievement-Third Edition, Normative Update. It is the same test but scored in comparison to an updated standardization sample. (N.T. p.179 ; S-4 pp.3, 4; S-10 pp. 6, 7)

<sup>2</sup> Connors Rating Scales-Revised; BRIEF—Behavior Inventory of Executive Functions; BASC-II --Behavior Assessment System for Children-Second Edition.

10. Student's 3<sup>rd</sup> grade teacher reported some inattention and disruptive classroom behaviors, notably calling out in class. On the Connors Scale, the teacher rated Student as "often" excitable/impulsive, but it was the only one 1 of the 30 behavior statements the teacher placed at that level and she rated only eight of the behaviors as occurring "occasionally." (N.T. pp. 52, 55; S-4, p. 2; S-17)
11. On the Connors, BRIEF and BASC-2, Parent rated Student significantly higher in problem behaviors than the teacher, with far more scales in the "significant" or "at risk" than in the average range, while the teacher's ratings were the opposite. On the BRIEF, none of the teacher's ratings were above the average range, and only one scale was in the "at risk" range on the BASC-II. Although the school psychologist gave equal weight to the Parent and teacher ratings, the behavior issues Parents identified did not affect the eligibility determination because the behaviors occurred in the home setting, not at school. (N.T. pp. 49—52; S-4 pp. 8, 9)
12. Parents also rated Student much lower in the positive behaviors of adaptability, social skills, leadership, activities of daily living and functional communication. All of Parents' ratings were in the "low" or "at risk" range, while the teacher's ratings on those traits were all solidly average. (S-4 pp. 8, 9)
13. The teacher believed that Student was appropriately placed in the general education classroom where Student's needs could be met with the interventions available to regular education students. (S-4 p. 2)
14. The school psychologist noted that the standardized test scores placed Student's academic skills and fluency in the average range, but academic applications in the low average range suggested that Student might have some difficulty using academic skills to solve problems. Other scores indicated that Student struggled at times to sustain effort and concentration and would benefit from structure and clear expectations. (S-4 p. 4)
15. No concerns were noted by Student's teacher with respect to receptive/expressive language, social skills/ability to interact with peers, gross or fine motor skills, including handwriting, and no significant issues were noted with respect to sensory needs and organization skills in the school setting. The school psychologist's screenings also indicated no need for an occupational therapy (OT) or speech/language evaluations at that time. Student's solid scores on the W-J III oral language measures served as the screening tool that indicated no need for a speech/language evaluation. (N.T. pp. 44, 119, 120; S-4 pp. 7, 8)
16. The school psychologist's classroom observation and analysis of the evaluation results supported the teacher's conclusion that Student could be appropriately maintained in the regular education classroom. The School Psychologist did not find learning disabilities and did not see any need for specially designed instruction. The psychologist recommended that the District staff consider a §504 Service Plan to address the impact of Student's medical diagnoses on school functioning, as well as methods to address the

stress that Parent reported Student felt during the school day but did not express at school. (N.T. p. 58; S-4 p. 11)

17. Parents, the 3<sup>rd</sup> grade teacher and the school principal comprised the team that devised a §504 Service Agreement consisting of accommodations such as extended time to complete assignments, repeated directions as needed, modifications as needed for physical limitations, opportunities to visit the school counselor as needed and sensory integration for relaxation as needed. (N.T. pp. 58; S-5 pp. 4, 5)
18. On the final report card of the 3<sup>rd</sup> grade school year, Student received an A or a B in all academic subject areas and received “Satisfactory” ratings by the teacher in all areas designated “Personal Growth,” *i.e.*, maintaining self control, accepting constructive criticism, respecting others and personal property, following classroom rules, self-confidence and positive attitude. (S-6, p 1)
19. After Parents provided the District with a January 2010 report from a developmental pediatrician who made a diagnosis of “mild” Asperger’s disorder based upon Parent reports and rating scales, the District School Psychologist updated the 2009 evaluation report (ER). The School Psychologist noted in the addendum that if additional concerns arose with respect to Student’s progress in math, or if social, emotional or behavior concerns arose, another evaluation could be conducted. (N.T. pp. 131—133; P-17 pp. 5, 6; S-7 pp. 2, 3)
20. Just before the 4<sup>th</sup> grade school year began, Student’s §504 Service Agreement was updated. The new Service Agreement included more specific and detailed accommodations than the 2009 Plan, including strategies for maintaining focus and addressing fatigue in the school setting, more practice in academic areas and sensory integration strategies. (S-5 pp. 4, 5, S-8 pp. 1--4)
21. In September of 4<sup>th</sup> grade, Parents again requested an evaluation, which was completed and a reevaluation report (RR) issued in early November. (S-10 p. 1)
22. As part of the new evaluation, a comprehensive Speech/Language evaluation was conducted. The speech/language pathologist administered two standardized assessments<sup>3</sup> and observed Student in the classroom, as well as during the testing sessions. The test scores on the District assessments were very similar, and in some cases identical, to the scores on the same language measures administered during an evaluation arranged by Parents during the summer between 3<sup>rd</sup> and 4<sup>th</sup> grades. The District speech/language pathologist concluded that Student’s test scores indicated age appropriate language skills. Based on Parent and teacher ratings on the CELF-IV pragmatics profile and observational scale, Student exhibited far more language difficulties at home than in school. (P-8, p. 2; S-10, pp. 3, 4, 8—11)

---

<sup>3</sup> CELF-4 (Clinical Evaluation of Language Fundamentals-Fourth Edition); EOWPVT (Expressive One Word Picture Vocabulary Test)

23. The OT evaluation revealed no concerns with respect to school-based tasks such as writing and no significant concerns with sensory regulation. The therapist's observations during the evaluation indicated that Student was attentive, completed each component of the evaluation without difficulty and maintained appropriate posture and exhibited no maladaptive behaviors. Student was functioning at an age appropriate level on all measures, indicating no need for school-based OT services. (P-6; S-10 pp. 4, 17—19)
24. A physical therapy/gross motor physical therapy evaluation completed by the District's consulting physical therapist revealed no concerns or difficulties, including navigating the school environment. (S-10, pp. 19—21)
25. A different form of the WJ-III was administered to assess Student's academic achievement and compared to the FSIQ from the prior evaluation to determine whether Student had any learning disabilities. In reading, all scores improved except Letter-Word Identification, in which Student's standard score (SS) and percentile rank decreased, but still remained solidly in the average range at 101/54<sup>th</sup> %ile. Passage comprehension rose from SS 89 to 104 and from the 35<sup>th</sup> to 60<sup>th</sup> percentile. Reading fluency increased from 102 to 115, and from the 55<sup>th</sup> to the 83<sup>rd</sup> percentile, above the average range. Broad reading also improved, from 98/43<sup>rd</sup> %ile to 107/68<sup>th</sup> %ile. Because Student was well within the average or above average range and meeting age level expectations for reading, there was no basis for finding a learning disability in reading. (N.T. pp. 138, 139; S-4 p. 3, S-10, p.6)
26. Student's scores in writing also increased on every measure: Spelling (92/29<sup>th</sup>–101/52<sup>nd</sup> %ile); Writing Samples (85/15<sup>th</sup>--104/ 60<sup>th</sup> percentile); Writing Fluency (90/25<sup>th</sup> – 111/77<sup>th</sup> %ile); Broad Written Language (86/17<sup>th</sup>–107/66<sup>th</sup> % tile). (N.T. pp. 138, 139; S-4 p. 3, S-10 p.6)
27. On the two WJ-III math subtests administered in the fall of 2010, Student's scores declined from 95/38<sup>th</sup> to 89/23<sup>rd</sup> %ile in Math Fluency and from 87/19<sup>th</sup> to 84/15<sup>th</sup> in Applied Problems, indicating that Student lost ground relative to the standardization sample of same-age peers. (N.T. pp. 139, 140; S-4, p. 3, S-10, pp. 6, 7)
28. Because of the increased ability/achievement discrepancy, on those tests and the Key Math Assessment, the District School Psychologist concluded that Student was in the below to low average range in almost all areas and has a learning disability in math. Based upon teacher input, grades and curriculum-based group assessments that indicated satisfactory progress in the regular education curriculum, the School Psychologist further concluded that Student was not IDEA eligible because of no need for specially designed instruction in math. (N.T. pp. 139, 140; S-10 pp. 7, 23)
29. With respect to behavior and attention, the School Psychologist's classroom observation indicated that Student had more difficulty attending and following instructions than observed during the 2009 evaluation. Neither the classroom observation of Student's behaviors nor the Gilliam Asperger's Disorder Scale (GADS) completed by the 4<sup>th</sup> grade teacher confirmed the January 2010 Asperger's diagnosis. The teacher also did not

- observe social deficits in Student's classroom functioning. Parents' ratings on the GADS indicated a high probability of Asperger's. (N.T. pp. 136, 137; S-4 p. 2, S-10 pp. 4, 16, 17)
30. On the BRIEF rating scales, the 4<sup>th</sup> grade teacher's ratings were elevated on several scales, but did not indicate as significant a level of need in as many areas as Parents' ratings. The scales included in the BRIEF to determine excessive negativity in responses indicated that Parents' ratings were excessively negative. (N.T. pp. 134—136; S-10 pp. 15, 16)
  31. The 4<sup>th</sup> grade teacher noted the persistence of Student's calling out in class, as also observed by the 3<sup>rd</sup> grade teacher. That behavior was considered a strategy to maintain focus. Student was provided with "fidgets" such as silly putty to address focus issues and sensory needs in the classroom. (S-4 p. 2, S-10 pp. 3, 4, 14, 23)
  32. On the 1<sup>st</sup> quarter report card for 4<sup>th</sup> grade, Student received an A in reading, writing, social studies and science and a B+ in math. In the Personal Growth section, the teacher rated Student's functioning in the areas of maintains self control, accepts constructive criticism, follows classroom and school rules, displays positive attitude as "Needs Improvement". Student was "Satisfactory" in the areas of respects others and their personal property and shows self-confidence. (S-12 p. 1)
  33. In late December 2011, Parents notified the District that they were likely to leave the District and enroll Student in a cyber charter school due to significant changes in Mother's work schedule, requiring more travel, and her preference for taking the children with her rather than leave them with other caretakers for significant periods of time. (S-15)

## **DISCUSSION AND CONCLUSIONS OF LAW**

The record and hearing in this case were notable in two respects. First, Parents called only two witnesses, the School Psychologist who conducted both evaluations at issue in this case and the District Supervisor of Special Education. The District also examined those witnesses but called no additional witnesses. Consequently, no one who had or has extensive personal contact with Student testified, leaving in effect, a "paper" Student, since the only evidence concerning how Student functions at home or in school was contained in the documentary evidence, particularly the evaluations.

Second, the District evaluations and an evaluation conducted approximately six months later by the cyber charter school Student currently attends are so divergent that they could be describing two entirely different children.<sup>4</sup> The only possibility of reconciling the pictures of Student that emerge from the District evaluation reports and the charter school evaluation report (P-2) is that Student's behaviors are vastly different in the public school setting and in the home setting, where Student is now being educated.

Parents' claims in this matter appear to rest almost entirely upon the enormous difference between the District and charter school evaluation results. It is not appropriate, however, to base a decision concerning the appropriateness of the District's evaluations, and its non-eligibility conclusions reached after both evaluations, upon a comparison of the results of the two evaluations. The District's evaluations must be compared to the legal standards applicable to an appropriate IDEA evaluation, and if they meet those standards, the District evaluations are appropriate, regardless of the difference in evaluation results and in the conclusions reached by two different school psychologists in the exercise of their respective professional judgments. In other words, even significant and virtually irreconcilable differences between the evaluations do not mean that the District evaluations are flawed and wrong and the charter school evaluation is valid and correct, or vice versa, particularly in this case.

---

<sup>4</sup> The absence of Findings of Fact concerning the tests administered, the results and the conclusions of the charter school evaluation was not an oversight. Although the evaluation was admitted into the record over the objection of the District, the parties were explicitly informed that the relevance of the evaluation would be determined in light of the entire record. (N.T. p. 193) After thorough review of the charter school evaluation report in light of the other evidence in the record, it is very clear that it has no direct relevance to the primary issue in the case, the appropriateness of the District evaluations. Nothing about the charter school evaluation makes the District's evaluations more or less likely to conform to IDEA legal requirements, and the appropriateness of the charter school evaluation is not an issue in this case.

The charter school evaluation is certainly relevant, however, to fully explaining why Parents' claims failed in this matter.

The charter school evaluation will be discussed in somewhat more detail after discussion of the appropriateness of the District evaluations to the extent necessary to fully explain why the charter school evaluation does not provide to support Parents' claims in this case.

**A. Legal Standards**

1. Burden of Proof

In November 2005, the U.S. Supreme Court held that the burden of persuasion, one of the two elements comprising burden of proof, is properly placed on the party seeking relief in an IDEA due process hearing. This outcome determining rule, however, applies only when the evidence is evenly balanced or in "equipoise". *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well in *L.E. v. Ramsey Board of Education*, 435 F.3d. 384 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

Parents, who requested the hearing and, therefore, were assigned the burden of persuasion pursuant to *Schaffer* also bore the burden of production. Parents did not meet their burden of persuasion, having failed to establish by a preponderance of the evidence that the District's evaluations were inappropriate and its non-eligibility determinations incorrect. The documentary evidence produced by the District in this case, as well as the testimony of the District witnesses called by Parent as part of their burden of production, established no IDEA violations with respect to the evaluations or the District's conclusions based on the evaluation results. Parents also failed to produce any evidence that the §504 Service Agreements did not fully meet Student's limited needs in the school setting, leading to denial of Parents' claims in their entirety.

## 2. Legal Standards Applicable to Evaluations/ Reevaluations under IDEA

The IDEA statute and regulations require an initial evaluation, provided in conformity with statutory/regulatory guidelines, as the necessary first step in determining whether a student is eligible for special education services, as well as for providing special education services. *See* 20 U.S.C. §1414; 34 C.F.R. §300.8(a). The primary purpose of the initial evaluation is to determine whether the child meets any of the criteria for identification as a “child with a disability” as that term is defined in 20 U.S.C. §1401 and 34 C.F.R. §300.8, and should the child be determined to be IDEA eligible, to provide a basis for the contents of an eligible child’s IEP. 34 C.F.R. §300.304(b)(1)(i), (ii).

The regulations also require that school districts must provide a reevaluation in accordance with the evaluation procedures listed in 300.304 through 300.311 if, among other reasons, “the student’s parent or teacher requests a reevaluation.” 34 C.F.R. 300.303(a)(2).

The general standards for an appropriate evaluation or re-evaluation are found at 34 C.F.R. §§300.304—300.306, which require a school district to: 1) “use a variety of assessment tools;” 2) “gather relevant functional, developmental and academic information about the child, including information from the parent;” 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that

directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

Every reevaluation (and initial evaluations if appropriate) must also include: 1) a review of existing evaluation data, including a) local, state and current classroom-based assessments; b) classroom-based observations by teachers and related service providers; 2) a determination of additional data, if any, necessary to determine a) whether the child has an IDEA-defined disability; b) the child’s educational needs, present levels of academic achievement and related developmental needs; c) whether the child needs/continues to need specially-designed instruction and related services. 20 U.S.C. §1414(c); 34 C.F.R. 300.305(a)(1), (2). It is the district’s responsibility to administer all assessments and other measures needed to compile the required evaluation data. 34 C.F.R. 300.305(c).

Once the assessments are completed, a group of qualified school district professionals and the child’s parents determine whether he/she is a “child with a disability” and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, the district is required to: 1) “Draw upon information from a variety of sources,” including those required to be part of the assessments, assure that all such information is “documented and carefully considered.” 34 C.F.R. §300.306 (c)(1). The District must also provide a copy of the evaluation report and documentation of the eligibility determination to the Parents at no cost. 34 C.F.R. §300.306(a)(2).

A child is IDEA eligible if he or she is a “child with a disability,” defined as having one of the conditions listed in 34 C.F.R. §300.8 (c), and who “by reason thereof, needs specially designed instruction.” §300.8(a).

**B. The District Evaluations**

Both of the District's evaluations in this case meet the legal standards for an appropriate evaluation. A variety of standardized assessments were administered by a certified School Psychologist to assess cognitive ability and academic achievement, as well as attention/focus, social/emotional issues, language and motor needs. (FF 5, 9, 11, 22, 23, 24, 25, 28, 30) In addition, the school psychologist considered input from Parents and from the classroom teacher, as well as her own classroom observations. (FF 10, 11, 12, 13, 29, 31)

Through questioning of the District school psychologist, Parents attempted to suggest that the 2009 evaluation was flawed because it did not include either a formal OT evaluation or speech/language evaluation. There was, however no evidence to contradict the District's testimony and documents that indicated no school-based needs in those areas. *See* FF 15. Moreover, assessments in those areas were included in the 2010 District evaluation, resulting in findings of age appropriate functioning in those areas in the school setting. (FF 22, 23)

In short, Parents produced no evidence casting doubt on the appropriateness of the District's selection of evaluation measures or the administration of any assessments. There is, therefore, no basis for concluding that the District's evaluations were inappropriate in any way.

**C. Evaluation Results/Parents' Arguments**

The true focus of Parents' disagreement with the District's evaluations is not the measures used, or the way the evaluations were conducted, but the conclusions reached after both evaluations that Student was not IDEA eligible. Parents contend that the District ignored its own evaluation results and the results of numerous outside evaluations indicating that Student has significant needs in reading, writing and math, as well as in language, social/emotional functioning, focus and attention and fine motor skills. Those arguments are based almost

entirely upon the results of the charter school evaluation which identified Student as IDEA eligible in a number of disability categories. (FF 3) Parents, in effect, argue that the District's conclusions must be rejected because they differ so dramatically from the charter school's conclusions. The charter school's eligibility conclusion could cast doubt on the District's contrary conclusions only if there is evidence establishing that Student had significant needs in the school setting while enrolled in the District that were not effectively addressed. The record in this case, however, is entirely devoid of such evidence.

#### 1. Academic Progress/Specific Learning Disabilities

Although the results of the 2009 evaluation disclosed a discrepancy of 15 points or more between Student's ability and achievement scores in math and writing, and that level of discrepancy, is often considered "significant" there is no fixed or absolute standard establishing that a 15 point ability/achievement discrepancy establishes a learning disability. In this case, the District School Psychologist reasonably considered an additional measure of writing ability administered during the 2009 evaluation to conclude that the discrepancy between the WJ-III score in writing and Student's average ability did not establish a learning disability in writing. (FF 9) The correctness of that conclusion was confirmed by the great improvement in Student's WJ-III writing scores in the 2010 evaluation, all of which were well within the average range. (FF 26)

In math, Student's performance on the WJ-III subtests administered as part of the 2010 evaluation declined from the 2009 evaluations, and Student's below to low average achievement was confirmed by the Key Math assessment. (FF 8, 27, 28) Based on those results, the School Psychologist concluded that Student does have a specific learning disability in math, meeting the first criterion for IDEA eligibility, but further concluded that Student did not meet the second

criterion, need for specially designed instruction. (FF 28) There is no evidence casting doubt on that conclusion. As indicated by Student's 1<sup>st</sup> quarter math grade, Student was successfully accessing the general education math curriculum. (FF 32)<sup>5</sup>

Because many of Student's scores on the WJ-III were considerably lower in the charter school evaluation than on the District evaluation, some of the reasons for not considering the differences in evaluation results as persuasive evidence that casts doubt on the appropriateness of the District's non-eligibility conclusion in 2010 should be listed and explained. The charter school evaluation itself provides no description of the conditions under which the tests were administered. The absence of such information is significant in light of the reference in the evaluation report to Student's cooperation during a "long and challenging evaluation period." (P-2, p. 3) If all of the many assessments listed in the charter school ER were administered in one long session and the achievement measures were given at the end of the session, Student's scores could have been adversely affected. In the absence of any information that suggests an explanation for the difference in standardized achievement scores, there is certainly no basis for concluding that the charter school evaluation results should be credited and the District evaluation results discounted.

An additional concern with respect to the charter school evaluation from several startling differences in information concerning Student in the charter school evaluation compared to other reports, including the origin of Student's [redacted]. The charter school evaluator reported in several places in the ER, purportedly based on Parent's report, that Student had a "normal birth" and suffered a [redacted - birth defect] at the age of 10 months. *See, e.g.*, P-2, p. 1. Information from every other source, however, including Parent's letter introducing Student to the 3<sup>rd</sup> grade

---

<sup>5</sup> Parents' attempt to suggest that Student's success in regular education classes should be disregarded due to a flawed or inadequate curriculum is somewhat puzzling in light of the IDEA regulations explicitly precluding a finding of disability based on "lack of appropriate instruction" in math. 34 C.F.R. §300.306(b)(i)(ii)

teacher upon enrollment in the District, indicated that Student suffered a [redacted - birth defect] at birth and needed to be resuscitated. *See* P-27 p. 2. In addition, the charter school psychologist noted reports that Student was teased while enrolled in the District in 3<sup>rd</sup> and 4<sup>th</sup> grade, and Parent reports of “[redacted - self injury]”. Neither of those issues were mentioned in any District document, and it does not seem plausible that Parent would have so graciously thanked the School District staff for their efforts in educating Student at the time she informed the District of Student’s likely disenrollment, for reasons having nothing to do with dissatisfaction with Student’s treatment in the District by either peers or staff. (FF 33, S-15) It is impossible to determine whether the charter school evaluator misheard or misinterpreted information received from Parents or confused information about Student with information received about another child. The questions raised by the new or inaccurate information, however, make it impossible to accord any weight to the charter school evaluation results in the absence of any explanation of the differences in the background information included in the report.

## 2. Social/Emotional Issues

Parent’s most significant disagreement with the District’s evaluations centers on the perception that the District ignored or discounted outside evaluations and Parents’ reports of significant social/emotional and behavior issues. There is no evidence, however, establishing that the District observed the same kinds of behaviors in school that Parents were seeing at home and on which Parents’ reports of significant problems and very negative ratings were based. *See, e.g.,* FF 11, 12. Moreover, much of the information in other reports was based upon Parent reports. *See, e.g.,* FF 19

It may well be that Student maintained far more appropriate behaviors at school than at home, as suggested by differences in the District evaluation results and other information in the

record. That is not, however, an entirely maladaptive behavior. It is certainly not an indication of a problem with the District's observations and conclusions if Student recognizes that public settings require more control of impulses and conformity to the norms of the group. It is difficult to imagine that anyone's behaviors are exactly the same in public and private settings. Although it is certainly frustrating to parents to deal with behaviors at home that are far less regulated than a child exhibits in school or other public settings, it is a universal parenting experience that differs only in degree between typical children and children with disabilities.

Student's difficult behaviors had consistently been reported at higher levels by Parents in the home setting than by teachers in the school setting. It is not particularly surprising, therefore, that the charter school evaluation revealed a greater need for services in the areas of behavior and social skills several months after Student stopped attending school in a regular classroom and is now educated in a cyber charter school and at home every day, without the opportunity for regular, in-person contact with peers and a structured classroom setting.

It does appear that Student's behavior and attention/focus issues showed an increase in the 2010 evaluation compared to the 2009 evaluation. (FF 11, 16, 29, 30, 31) It is also quite possible that Student's behaviors and the effects of the ADHD disability, as well as the Asperger's diagnosis, might affect Student's performance in school to a greater extent in each school year, particularly as demands increase with respect to curriculum, the need for planning and organization and as peer social relationships become more complicated. It is possible that had Student remained in the District, Student would have been identified as IDEA eligible later in 4<sup>th</sup> grade or in a later school year. That possibility, however, does not establish that the District failed to properly evaluate Student in either 2009 or 2010 or that the District was incorrect in its conclusions that Student was not IDEA eligible at the time of those evaluations.

The record establishes that the District carefully considered outside evaluations such as the Asperger's diagnosis (FF 19, 20) The District responded to that information with a more detailed §504 Service Agreement for 4<sup>th</sup> grade. Nothing in the record suggests that the District would not have continued to respond to Parents' concerns or that it would not have responded to concerns raised by teachers, had Student remained in the District and such concerns arose in the classroom. It is quite possible that Student's needs did increase and establish a need for special education services between the time Student left the District and was evaluated by the charter school, due on any number of reasons.

With respect to the brief period during which Student was enrolled in the District, however, there is no evidence that the District ignored social/emotional, behavior, language or motor skills needs that Student exhibited in the school setting, or otherwise did not appropriately educate Student. The record establishes that the District's School Psychologist conducted appropriate evaluations and exercised appropriate professional judgment in determining that Student was not IDEA eligible following the evaluations. There is no basis, therefore to conclude that the District's evaluations, conclusions, or provision of services via regular education interventions or the §504 Service Agreements violated either IDEA or §504 of the Rehabilitation Act/22 Pa. Code Chapter 15.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Parents' claims in this matter are **DENIED** and the School District is required to take no action concerning the claims asserted in the due process complaint in this matter.

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

Anne L. Carroll

---

Anne L. Carroll, Esq.  
HEARING OFFICER

February 19, 2012