

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

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

Open Hearing

ODR No. 29201-23-24

Child's Name:

A.K.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

04/16/2024

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who resides in the Pleasant Valley School District ("District").¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with a speech and language ("S&L") impairment.

The parent feels that the District's evaluation process and report do not accurately address [parent's] concerns or assess the student's needs. Following the initial evaluation of the student in December 2023, which found that the student should not be identified as a student with a S&L impairment, the parent requested an independent educational evaluation ("IEE") at District expense. The District filed the complaint in this matter, seeking to defend its December 2023 evaluation process and report in the face of the parent's request.

For reasons set forth below, I find in favor of the parent as to the appropriateness of the December 2023 evaluation process and report. The District will be ordered to provide various independent reports at public expense.

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² 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 §§14.101-14.162 ("Chapter 14").

Issue

Must the District provide an IEE at public expense?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. In February 2023, the parent received a letter from a private medical provider. (Parent Exhibit ["P"]-1).
2. Based on a medical evaluation, the student was diagnosed with attention deficit hyperactivity disorder ("ADHD") and opposition defiance disorder. The medical evaluation noted that the student exhibited developmental delays, significant separation anxiety, and aggressive behaviors, along with inattention, impulsivity, and hyperactivity. The medical evaluation recommended supports for self-regulation skills, coping techniques, and strengthening communication skills to replace acting-out behaviors. The report also noted that the student exhibited struggles with emotional regulation and required assistance with de-escalation strategies. (P-1).

3. In August 2023, the student entered [redacted] at the District. (Notes of Testimony ["NT"] at 40-41).
4. In August 2023, the parent provided the medical evaluation from February 2023. (P-1; NT at 124).
5. In August 2023, the District designed a Section 504 plan to address school-based manifestations of the student's ADHD. (P-2).
6. The Section 504 plan included modifications in the form of preferential seating, simplified directions, movement breaks, and frequent praise for positive peer interactions. (P-2).
7. In September 2023, the student began to receive community-based mental health support in the home and, in October 2023, in school. (NT at 43, 51, 123).
8. The student's [redacted] teacher testified that she felt the community-based mental health support was appropriate. (NT at 51).
9. The student often required support in the classroom for following directions and task-completion. The teacher testified that she felt the degree to which the student's attention/task-approach issues interfered with learning was atypical. (NT at 40-67).

10. The student was often allowed to have access to a sensory room. The sensory room includes a trampoline, a quiet area, and sensory objects. At times, the student's access to the sensory room was used as part of behavior reward, or withholding access was used as a consequence. (NT at 40-67, 122-170).
11. In October 2023, the District issued a permission-to-evaluate form, seeking permission to evaluate the student based on academic and behavior concerns of the parents. (School District Exhibit ["S"]-1, S-2).
12. Over the course of the fall of 2023, the student was involved in a handful of behavior incidents in the school environment, some involving inappropriate peer interactions. (P-3; NT at 40-67, 122-170).
13. In December 2023, the District issued its evaluation report ("ER"). (S-2).
14. The December 2023 included parent input. The parent's input included the diagnoses from the February 2023 medical evaluation and the community-based mental health support in school and home. (S-2).

15. Parent indicated that the student exhibited sensory needs, especially with the texture of clothing. The student also used fidget items. (S-2).
16. The parent input in the December 2023 ER indicated that the student had occasional difficulty with peers. Parent reported that the student would sometimes engage in screaming, hitting, throwing items, and meltdown behavior. (S-2).
17. Parent's input in the December 2023 ER focused mostly on the student's focus, impulsivity, and emotional regulation. Parent also indicated concern with the student's ability to communicate frustration and needs. (S-2).
18. The December 2023 ER indicated that the student was exhibiting proper academic skills. (S-2).
19. Like parent, the teacher's input in the December 2023 ER focused mainly on the student's behavior. Specifically, the teacher opined: "(The student) has a hard time staying on task and focusing on completing [student's] work. Once (the student) is focused (the student) can complete all assigned tasks. (The student) needs to be prompted throughout lessons to stay focused but works well with others in groups. (The student) does not have empathy for others and wants attention throughout the day. (The student) seems to act out

when (the aide) is in the classroom, appearing to want to get attention. (The student visits the sensory room in the building prior to lunch.” (S-2).

20. The teacher opined in the December 2023 ER, however, that “no emotional concerns are observed during the school day”. (S-2).

21. The December 2023 ER contained a S&L evaluation performed by a District speech and language pathologist. (S-2; NT at 72-89).

22. The S&L pathologist performed an articulation assessment. The results of the articulation assessment were in the average range. (S-2).

23. The S&L pathologist performed an assessment of language fundamentals. The results of the language-fundamentals assessment yielded below average results in word structure, following directions, and formulated sentences subtests, as well as below average results in the expressive language, language content, and language structure indices. (S-2).

24. The S&L pathologist concluded that the student exhibited age-appropriate “articulation, voice, and fluency skills” but “present(ed) with deficits in the area of language”. (S-2).

25. The S&L pathologist did not observe the student in the instructional environment. (NT at 75).
26. The S&L pathologist recommended that the student receive S&L services, but there is a lack of specificity of what those services would be and what, exactly, those services would address. (S-2).
27. The December 2023 ER contained an occupational therapy ("OT") evaluation performed by an intermediate unit occupational therapist. (S-2; NT at 16-35).
28. The occupational therapist gathered parent input about OT needs but did not put that input into the December 2023 ER. (S-2; NT at 16-35).
29. The occupational therapist administered assessments in gross and fine motor skills, visual-motor integration, and a sensory profile. (S-2).
30. The sensory profile questionnaire was completed by the student's teacher; the occupational therapist did not request that the parent complete the questionnaire. (S-2; NT at 16-35).
31. At the time of the OT evaluation, the evaluator was not aware of the behavior support in the school setting or the student's use of the sensory room. (S-2; NT at 16-35).

32. The December 2023 concluded that the student did not qualify for OT services. (S-2).
33. A District school psychologist provided most of the content of the December 2023 ER. (S-2).
34. The input of the student's teacher in the December 2023 ER did not indicate any concerns with reading, but the school psychologist indicated that the student's success in reading utilized "remedial reading instruction/reading interventions". (S-2 at page 7).
35. The December 2023 ER contained cognitive testing, which yielded a full-scale IQ score of 101 (as well as a nonverbal IQ of 104 and a verbal IQ of 98). (S-2).
36. The December 2023 ER contained achievement testing, with scores statistically discrepant from the student's cognitive ability in spelling (83), phonological processing (82), reading comprehension (75), and written expression (71). (S-2).
37. The December 2023 ER contained curriculum-based assessments in reading, with a score indicating "a need for reading remediation and intervention. (S-2).
38. The December 2023 ER contained behavior rating scales completed by the student's teacher. (S-2).

39. The student's teacher rated the student with at-risk levels of behavior in the externalizing behaviors composite and behavioral symptoms index composite, including at-risk scores in the hyperactivity, aggression, attention problems, and social skills subtests. The teacher also rated the student with at-risk levels of behavior in the content scales of bullying, executive functioning, functional performance, and "clinical probability" (an indication of similarity between ratings and clinical diagnoses). (S-2).
40. The evaluator recommended that the student's behaviors might warrant a behavior plan if problematic behaviors escalated. (S-2).
41. The District evaluator did not complete an observation of the student in the classroom and did not consult or solicit input from the community-based mental health aide who worked with the student in the school setting. (NT at 93-118).
42. The December 2023 identified the student with a S&L impairment and recommended programming for language. (S-2).
43. The student's first quarter report card indicated "insufficient progress" in the following areas: identifying both upper case and lower case letters, identifying letter sounds, automaticity with high-frequency words, independence with school routines, following directions, showing pride in work, completing work independently,

staying on task, respects others and their property, demonstrating self-control, accepts responsibility for problems/problem-solving, and demonstrating fine motor skills. (S-2).

Discussion

Under the terms of the IDEA, “(a) parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency....” (34 C.F.R. §300.502(b)(1); 22 PA Code §14.102(a)(2)(xxix)). Upon requesting an IEE at public expense, a school district has one of two choices: the school district must provide the evaluation at public expense, or it must file a special education due process complaint to defend its re-evaluation process and/or report. (34 C.F.R. §300.502(b)(2)(i)-(ii); 22 PA Code §14.102(a)(2)(xxix)).

An evaluation must “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” an understanding of the student’s disability and the content of the student’s individualized education program. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)). Furthermore, the school district may not use “any single measure or assessment as the sole criterion

for...determining an appropriate educational program for the child". (34 C.F.R. 300.304(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Here, the only question presented is whether the District's December 2023 ER is appropriate under the terms of the IDEA. The evidence shows that it is not an appropriate evaluation.

The December 2023 ER is not entirely faulty. But there is an accumulation of deficits which, taken all together, lead to a conclusion that independent evaluation is necessary. These deficits are explored in thematic grouping.

S&L. The S&L language evaluation seems broadly appropriate, but there are material deficits. First, the evaluator did not observe the student. This is problematic because the parent's input indicated concern with social skills and potential peer issues, as well as frustration rooted in communication needs. The teacher's behavior ratings also indicated multiple areas where aggression, social skills, and bullying were all areas where the student was at risk. One does not know what the S&L pathologist might have observed, but the fact that an observation was not attempted is a material deficit.

Second, the conclusions and recommendations of the S&L pathologist were also deficient. One has very little concrete sense of what type of S&L

goals might be crafted for the student or how instruction/modifications will help the student make progress toward S&L goals.

The December 2023 ER's conclusion that the student qualifies as a student with a S&L impairment is appropriate. But an independent S&L evaluation will be ordered so that the independent evaluator can perfect an understanding of the student's needs (if he/she determines that is necessary) and, at least, make concrete, goal-oriented programming recommendations.

OT. In a similar way, the OT evaluation is not wholly deficient, but there is one glaring omission, and that is the lack of parental results on the sensory needs assessment. The OT testified that parent's assessment of potential sensory needs would be based only on the home environment and therefore was not necessary. The ending point of that reasoning is 'parent never, or almost never, sees the child in a school setting, so there is little value in parental input on anything'. Obviously, that reasoning would be inappropriate and untenable. Indeed, highly disparate results are often the result between educator assessments/input and parental assessments/input. But the evaluator's role is to understand how that disparity may be understood, or explained, or, perhaps with additional assessments, probed further. But here, the occupational therapist discounted entirely the parent's view of a sensory assessment, even where sensory issues were an explicit

concern of the parent. Additionally, resort to a sensory room was part of the student's school experience, but this information was not within the occupational therapist's knowledge or, if so, part of her analysis of potential sensory needs. Thus, an independent sensory evaluation by an occupational therapist will be ordered.

Academics. There are no explicitly deficient aspects of the input, assessment, and results of the student's academics. But there are multiple areas of concern which, in sum, will support an order for an independent comprehensive psychoeducational evaluation.

The student's teacher did not indicate any academic concerns in her input. Yet the first quarter grades, which the teacher had assigned by the time the December 2023 ER was issued, indicated multiple areas of "insufficient progress" with foundational literacy skills. In a similar vein, in her input the teacher voiced no concerns with the student's reading, but the evaluator herself, in a section entitled "recommendations by teachers" (S-2 at page 7), indicated that the student would benefit from remedial reading instruction or reading interventions; this view was reinforced by the curriculum-based reading assessment in the December 2023 ER.

The student's scores on standardized achievement testing also raise a level of concern about the student's achievement in literacy. Scores in phonological processing, reading comprehension, written expression, and

spelling were all significantly discrepant from the level one would expect given the student's full-scale IQ. Again, these scores—especially the foundational reading skills implicit in phonological processing—are problematic in light of the entire mosaic of other assessments and the teacher's grades.

The school psychologist voiced in the December 2023 ER and during her testimony a salient point: The student had only been in formal K-12 schooling for approximately two to three months when the student was evaluated. Academic learning for the student was in its earliest stages. Therefore, a degree of caution might be warranted as the student grew into learning and achievement in the [redacted] year. This is certainly valid. Yet the uneven sense of some results, and the consistent levels of other results, build a picture that even at this early stage the student might need specialized instruction. This decision does not stand for the proposition that the student absolutely requires specialized academic instruction. But an independent comprehensive psychoeducational evaluation, to be undertaken and issued in the weeks to come after a year—or nearly a year—of instruction, will give parent and educators a stronger sense of whether or not the student has a need for specialized academic instruction and/or for a formal identification as a student with a specific learning disability.

Behavior. The areas where the student exhibits the most need for support, in terms of parental input, teacher input, and formalized assessment, is attention, focus, following directions, and peer interaction. Yet the District evaluator did not include any parent behavior ratings in the report.

The evaluator testified that she provided the instrument to the parent, and it was not returned. Parent testified that she did not receive an instrument and, when asked for any input—including her anecdotal input requested at the same time—, she provided it; she testified that had she received the instrument, she would have completed it.

It is impossible to determine where the truth lies between the testimony of the two witnesses, as credibility determinations do not sway one way or the other. However, even if one takes the position of the evaluator, the instrument was not requested from the parent a second time or re-supplied to the parent. Given the teacher's results on the instrument, and in light of the anecdotal input of parent and teacher, not seeking out the concrete results of an instrument completed by parent is deeply problematic.³

³ Of note is the fact that the parent's concerns and input fall simply and clearly into two broad categories, behavior needs and, to a lesser degree, sensory needs. In both areas, formalized assessment of these areas by the parent are entirely missing from the evaluation.

In sum, then, this collection of deficits in the December 2023 ER amounts to an evaluation report that does not meet the requirements of IDEA. Accordingly, the District will be ordered to provide a independent evaluations, including a comprehensive psychoeducational evaluation, a select S&L evaluation, and a select OT evaluation, at public expense.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Pleasant Valley School District must provide independent evaluations as outlined in the following paragraphs:

Within 30 calendar days of the date of this order, the parents shall provide the name of independent evaluators selected to perform (a) a comprehensive psychoeducational evaluation, (b) a S&L evaluation, to include specific and concrete recommendations for S&L goal-writing and programming, and (c) an OT evaluation focused on potential needs in sensory processing. The parents shall provide the selected evaluators' professional resume/curriculum vitae to the school district at the same time they indicate the identity of these evaluators.

By way of background, training, and experience, the independent psychoeducation evaluator shall be qualified to conduct a comprehensive

psychoeducational evaluation of the student. By way of background, training, and experience, the independent S&L evaluator shall be qualified to conduct a S&L evaluation of the student with the explicit intention of assisting the student's individualized education program ("IEP") team to write appropriate, concrete, measurable goals and to recommend appropriate programming to help the student make progress toward those goals. By way of background, training, and experience, the independent OT evaluator shall be qualified to conduct an OT evaluation that provides insight into the student's needs, if any, in sensory processing.

The independent evaluators shall be made to understand that it is hoped, but not required or ordered, that the independent reports can be issued as soon as practicable, but if possible by July 13, 2024, approximately sixty calendar days beyond May 14th, the last day for the identification of an evaluator by the parents.

The independent evaluators shall each be informed of the evaluation that he/she is undertaking, namely (a) a comprehensive psychoeducational evaluation of the student to fully inform the student's multi-disciplinary team of the student's strengths and weaknesses, to include any formal identification of the student under the terms of the IDEA, if applicable, and any recommendations of the evaluator for the student's education; (b) a S&L evaluation of the student with the explicit intention of assisting the student's

IEP team to write appropriate, concrete, measurable goals and to recommend appropriate programming to help the student make progress toward those goals; and (c) an OT evaluation to fully inform the student's multi-disciplinary team of the student's needs, if any, in sensory processing and, if so, programming recommendations for those needs.

The record review, materials, artifacts, input, observations, assessments, testing, consultation, scope, details, findings, recommendations, and any other content as part of the independent evaluations, and independent reports, shall be determined solely by each of the independent evaluators.

The cost of the independent evaluations, and issuance of the independent reports, shall be at the independent evaluators' individual rate or fee and shall be borne by the District at public expense.

Finally, nothing in this order should be read to interfere with or limit the ability of the parties to agree otherwise as to the independent evaluation processes, so long as such agreement is in writing and specifically references this order.

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

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

04/16/2024