

*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.*

IN THE PENNSYLVANIA OFFICE FOR DISPUTE RESOLUTION

**Final Decision and Order**

ODR File No. 2619-1112AS

OPEN HEARING

Child's Name: G.R.<sup>1</sup>

Date of Birth: [redacted]

Hearing Dates: January 18, 2012

Parties to the Hearing

Representative

Reading School District  
800 Washington Street  
Reading, PA 19601

Kathleen Metcalfe, Esquire  
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Parent

*Pro Se*

Record Closed: February 3, 2012

Date of Decision: February 17, 2012

Hearing Officer: Brian Jason Ford

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<sup>1</sup> Other than this cover page, the child and parent's names are not used to protect their privacy - even though the Parent requested an open hearing. "Parent" and "Student" is used instead. Other identifying information, such as the Student's gender, is omitted to the extent possible. Citation to the notes of testimony (transcript) are to "N.T.". Citations to exhibits are "P-#" for Parents' exhibits and "S-#" for the school's exhibits.

## Introduction and Procedural History

The Reading School District (“District”) requested this hearing on December 6, 2011, shortly after rejecting the Parent’s request for an independent educational evaluation (IEE) at the District’s expense. The Individuals with Disabilities Education Act, as amended 2004, 20 U.S.C. § 1400 *et seq.* (IDEA) and its federal implementing regulations require local educational agencies to request due process hearings when rejecting parental requests for IEEs at public expense. See 34 U.S.C. 300.502(b)(2)(i).<sup>2</sup>

For reasons set forth herein, I find that the District’s evaluation was appropriate. Consequently, the District will not be ordered to fund an IEE for the Student.

## Issue

The sole issue presented in this due process hearing is whether the District’s speech and language evaluation, contained in a 2011 reevaluation report, is appropriate.

## Findings of Fact

1. The Student is an IDEA-eligible student with a primary disability category of Autism and secondary disabilities of Other Health Impairment and Specific Learning Disabilities in math, written expression, and reading comprehension. S-3 at 26. Previously, the Student had satisfied eligibility criteria for Emotional Disturbance and Speech/Language Impairment. See S-3 at 1, P-13, P-10.
2. The Student received a speech and language evaluation as part of a more comprehensive reevaluation. The results of the speech and language evaluation were reported to the Parent via a Reevaluation Report that was issued on May 15, 2011 (2011 RR). S-3, NT at 18.
3. The speech and language evaluation was conducted by the head of the District’s speech and language department (District’s Pathologist), who is a speech pathologist with nearly 30 years of experience. The District’s Pathologist holds bachelors and masters degrees in communication disorders, a teaching certificate in speech correction, a Certificate of Clinical Competence from the American Speech and Hearing Association and is licensed in Pennsylvania to provide speech and language therapy.<sup>3</sup> NT at 16-17.
4. The District’s Pathologist provided speech and language services to the Student in accordance with the articulation goals in the Student’s IEP during the 2009-10 and

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<sup>2</sup> In its Complaint and during the hearing session, the District noted that it requested this hearing because it was statutorily obligated to do so, implying that it may have chosen otherwise were different options available.

<sup>3</sup> Some of these certificates and licenses require the District’s Pathologist to maintain continuing education credits, which the evaluator has done. See NT at 119.

2010-11 School years. During this time, the District's Pathologist worked with the Student for 30 minutes per week.

5. The Student mastered the articulation goals in the IEP during the 2010-11 school year. S-2 at 2, NT at 26-27.
6. Standardized speech assessments were administered as part of the 2011 RR. These included the Arizona Articulation Proficiency Scale III (AAPS) and the LinguiSystems Articulation Test (LAT). See S-3 at 13, NT at 28, 30-31. These assessments reveal that the Student's articulation and intelligibility are average as compared same-aged peers.
7. Standardized language assessments were also administered as part of the 2011 RR. These included the Comprehensive Assessment of Spoken Language Test (CASL) and the Test of Pragmatic Language, 2nd edition (TOPL-2). S-3 at 14-15, NT at 33, 35. The CASL was used to assess the Student's receptive and expressive language functioning while the TOPL-2 was used to measure the Student's pragmatic language abilities. See S-3 at 14. These skills are often interrelated.
8. The District's Pathologist explained, credibility, that the CASL includes various core sub-tests and additional sub-tests that may be administered if a need is revealed in the core sub-tests. See NT at 34, 102-103.
9. On the CASL, the Student scored in the average range compared to same-aged peers on all of the core sub-tests including: Antonyms, Syntax Construction, Paragraph Comprehension, Nonliteral Language and Pragmatic Judgement. S-3 at 14. As a result, the Student's "Core Composite" was also average compared to same-aged peers. *Id.*
10. On the TOPL-2, the Student's Pragmatic Language Use Index was measured at 102, which places the Student in the average range compared to same-aged peers.
11. All speech and language testing was administered under standard conditions and in accordance with instructions from the tests' authors. NT at 127.
12. No other speech or language tests were administered because, at the time of the 2011 RR, both the District's Pathologist and the teachers who worked with the Student felt that the Student's articulation was age-appropriate and intelligible, and that the Student was able to use language to interact with adults and peers and access the curriculum. NT at 32, 36, 37, 121, 134-135, 156, 159. These impressions are supported by the Student's progress and by standardized testing. See S-2, S-3. The Student's grades, while low in some areas, do not demonstrate particular speech therapy needs. See P-2, NT at 185-188.
13. Progress reports at S-2, supported by progress logs containing raw data at S-1, demonstrate that the Student has mastered /sh/, /ch/ and /r/ sounds in words and

sentences as early as September of 2010. See S-1, S-2. The operative IEP at that time contained goals for these sounds. See P-13 at 7, 14. It does not appear that other sounds were of concern to the Student's IEP team at that time. See P-13 at 7.

14. The speech and language testing in the 2011 RR was prompted in part by the Parent's ongoing concerns about the Student's speech and language abilities. NT at 31. S-4. These concerns persisted after the 2011 RR.
15. In the 2011 RR, the District's Pathologist concluded that the Student no longer required speech and language services. S-3 at 15, NT at 32.
16. The Parent neither approved nor disapproved the 2011 RR in its entirety. See S-3 at 32. However, based on subsequently drafted documents, it is clear that the Parent disapproved the particular section of the 2011 RR reporting the findings and opinions of the District's Pathologist. See S-4.
17. The Parent requested an IEE in writing via email on November 21, 2011. S-4. That request shows that, at the time, the Parent was concerned with the Student's articulation (as opposed to expressive, receptive or pragmatic language). *Id.* Specifically, at that time, the Parent believed that the Student "still needs speech therapy because [Student] has problems pronouncing words with letters /s/ /sh/ /d/ /du/ [and] /tion/." S-4 at 1.
18. The Parent also testified, credibly but as a layman, that the Student's recent Autism Spectrum diagnosis implicates the need both for additional testing and the provision of speech and language services. NT at 171.<sup>4</sup>
19. The Parent also expressed concerns that the District's Pathologist did not review all existing information when completing her part of the 2011 RR, and did not undertake speech and language evaluations prior to the 2011 RR. See, e.g. NT at 76, 82-90, 164-165, 188-189. This Hearing Officer allowed the Parent to make a record of these concerns despite their questionable relevance.<sup>5</sup> Regardless, the District's Pathologist carefully explained both how the information that was considered in the 2011 RR validated the conclusions therein and why other information was either irrelevant to her analysis or would not have lead to a different conclusion. See, e.g. NT at 83-84.

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<sup>4</sup> Other testing in the 2011 RR revealed that the Student met diagnostic criteria for an autistic spectrum disorder. See S-3 at 10-12. As such, it was the 2011 RR that shifted the Student's primary disability category from Emotional Disturbance to Autism.

<sup>5</sup> For example, exhibit P-15 (concerning standards in Texas) was entered into the record over the District's reasonable and well-argued objection. During the hearing session, some documents that could possibly have even *de minimis* probative value, like P-15, were accepted and carefully reviewed by the Hearing Officer. Documents not referenced in this decision were not ignored, but added nothing to the straightforward issue presented in this due process hearing. A complete accounting of the documents that were admitted into the record is found at NT at 197-199. All admitted documents were carefully reviewed in their entirety.

## **Discussion and Conclusions of Law**

### **I. The Burden of Proof**

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). In this particular case, the District bears the burden of persuasion because the District requested the hearing and is seeking relief. The District must meet that burden by a preponderance of the evidence. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). Under this standard, the District must prove entitlement to the demanded relief by preponderant and cannot prevail if the evidence rests in equipoise.

### **II. The Right to an IEE at Public Expense**

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: “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). “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense...” 34 C.F.R. § 300.502(b)(2)(i)-(ii).

It should be noted that parents always have the right to obtain an IEE, even when an LEA is not obligated to fund it. See 34 C.F.R. § 300.502(b)(3).

### **III. Reevaluation Criteria**

The IDEA establishes procedures and criteria for evaluations and reevaluations at 20 U.S.C. § 1414. See also 34 C.F.R. § 300.303. Reevaluations are specifically addressed at 20 U.S.C. § 1414(a)(2), which establishes when reevaluations must take place and requires reevaluations to conform to requirements set forth at 20 U.S.C. § 1414(b) and (c). Those sections, in turn, set forth parental notice and consent requirements and a number of substantive elements.

When conducting reevaluations, LEAs must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum... .” 20 U.S.C. § 1414(b)(2)(A).

Consistent with the obligation to use a “variety of assessment tools,” an LEA may “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child...” 20 U.S.C. § 1414(b)(2)(B). Further, the assessment tools must be “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.” 20 U.S.C. § 1414(b)(2)(C).

LEAs must select assessment tools that will yield information about each student’s disability or suspected disability that can be used by the IEP team for making programming decisions. See 20 U.S.C. § 1414(b)(3); see *also* 20 U.S.C. § 1414(c)(2). At the same time, the assessment tools must account for linguistic and cultural differences, and must be used in a non-discriminatory way. See 20 U.S.C. § 1414(b)(3).

“As part of any reevaluation... [the multidisciplinary team] shall (A) review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related services providers” to determine the student’s present academic achievement and needs. 20 U.S.C. § 1414(c). For reevaluations, this information should enable the team to determine “whether the child continues to have such a disability and such educational needs” that warrant continued IDEA eligibility. 20 U.S.C. § 1414(c)(1)(B)(i). If the evaluation yields insufficient information to make these determinations, more data should be collected. See 20 U.S.C. § 1414(c)(1)(B).

Pennsylvania regulations concerning reevaluations essentially adopt the federal regulations, but set faster timelines under some circumstances. See 22 Pa Code § 14.124.

#### **IV. Eligibility**

Eligibility to receive special education services is a two part test derived directly from the IDEA. First, a child must have one of the disabilities recognized by the IDEA. 20 U.S.C. § 1401(3)(A)(i). Second, the child must, “by reason thereof, need special education and related services.” 20 U.S.C. § 1401(3)(A)(ii). “Speech or language impairments” is one of the recognized disabilities but, under this standard, it is possible for a Student to have a speech or language impairment and *not* need special education and related services. Many of the reevaluation criteria described above compel evaluators to consider each Student’s individual needs rather than their diagnoses in the abstract.

#### **V. Analysis**

Legal merits aside, the Parent’s desire for an IEE at public expense is understandable. The Student has a history of speech and language difficulties. Those difficulties were recognized by the District and accounted for in the Student’s prior IEPs. As importantly

(if not more so from the Parent's perspective), the speech and language services that the Student received in the past were, by all accounts, excellent. The Student made significant progress towards speech and language goals, and it is easy to grasp why the Parent wants speech and language services to continue. The Parent's perception that the Student still has some articulation issues should not be discounted. Similarly, the Parent's opinion that the Student's recent Autism Spectrum diagnosis, in and of itself, calls for further inquiry into the Student's speech and language needs has some rational basis. Autism is frequently addressed by schools under the umbrella of speech and language services.

Assuming, however, that the Student still has some articulation problems does not resolve the issue presented in this case. Similarly, assuming that the symptoms of the Student's Autism are best addressed through speech and language services does not resolve the issue. The District's obligation to fund an IEE hinges on the appropriateness of its speech and language evaluation, not the legitimacy of the Parent's desires. See 34 C.F.R. § 300.502(b)(3).

Although she is technically a respondent, the Parent does not challenge the appropriateness of the 2011 RR in its entirety. The Parent's demand for an IEE at public expense was quite specific, even though it did not have to be. See 34 C.F.R. § 300.502(b)(4) (LEAs may inquire, but may not require parents to explain why they are requesting an IEE). The Parent questioned the determination that the Student no longer required speech and language services because, in her opinion, the Student still had articulation issues. No evidence or testimony was presented by either party concerning the appropriateness of any other aspect of the 2011 RR. Consequently, only the appropriateness of the speech and language evaluation will be considered.<sup>6</sup>

The speech and language evaluation is appropriate because it conforms to the mandates of 20 U.S.C. § 1414 both procedurally and substantively. First, a variety of assessment tools were used. The District did not rely on a single test, but rather used four (4) speech and language assessments. Those assessments evaluated the Student's speech and language abilities for the purpose of informing the IEP team. Those assessments yielded data that enabled the District's members of the team to conclude that the Student no longer required speech and language services. These standardized, normative assessments were not used for a discriminatory purpose. They were selected because they generate precisely the type of information that would both identify a speech and language disability and inform an IEP team about how such a disability should be addressed. The testing results, which place the Student in the average range compared to same-aged peers, are reliable. Similarly, additional testing (including additional sub-tests of tests that were administered) was unwarranted.<sup>7</sup>

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<sup>6</sup> It should be noted that the speech and language evaluation was just one, relatively small part of the 2011 RR, which includes a great deal of information about the Student's other needs, including the recent Autism Spectrum diagnosis.

<sup>7</sup> See FF 8, 9.

The District did not decide to terminate the Student's eligibility for speech and language services based on the results of standardized testing alone. The District, through its Pathologist, also relied on analysis of the Student's progress with speech and language services, classwork and input from teachers.<sup>8</sup> The Pathologist did not review all documents in existence concerning the Student at the time of the 2011 RR, but that does not invalidate her conclusions. The Pathologist was aware of the Student's history, had worked extensively and directly with the Student, and considered the most current and pertinent information available from multiple sources.

The District's consideration of parental input is less obvious and somewhat problematic. Although the record is too vague to make specific findings of fact, the Hearing Officer is under the impression that there have been many meetings between the Parent and the District. See, e.g. NT at 31, 87, 182, 187. It is clear that the District understood that the Parent was concerned about the Student's speech and language needs - particularly regarding articulation. See NT at 87. The Parent's IEE request memorializes those concerns in writing. Ultimately, the assessments conducted and information considered by the District's Pathologist was responsive to the Parent's concerns. The 2011 RR represents a thorough and accurate assessment of the Student's speech and language needs.

Finally, evidence supporting the District Pathologist's substantive conclusions significantly outweighs evidence to the contrary. Through standardized testing, consultation with teachers, and her own work with the Student, the District's Pathologist concluded that the Student no longer needed special education and related services to address a speech or language impairment. It is possible, and the Parent insists, that the Student still has a speech and language impairment. Even assuming that is so, the evidence presented in this hearing supports the conclusion that the Student no longer requires speech and language services in order to receive FAPE.<sup>9</sup>

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<sup>8</sup> The importance of generating and keeping both regular progress reports and the data used to generate them must be highlighted. In this case, the District presented both the reports and data that the Pathologist generated through her work with the Student and then relied upon when drafting her part of the 2011 RR. This fosters the Pathologist's credibility as a witness and give additional credence to her opinions.

<sup>9</sup> In the strictest possible sense, the Student's need for speech and language services is not relevant to the issue presented in this case. However, in light of the real-world implications of this decision and the Parent's concerns, it is important to note that the Hearing Officer is persuaded that the evidence supports the District Pathologist's conclusions, not just the technical sufficiency of the evaluations.



## Conclusion

For all of the reasons articulated above, the speech and language evaluation in the District's 2011 RR is appropriate. Although the Parent's concerns are understandable, the evaluation was conducted in conformity with all applicable statutes and regulations. Evidence and testimony supports the substantive findings and conclusions reported in the speech and language evaluation. Consequently, the District will not be ordered to fund an IEE.

## ORDER

And now, February 17, 2012, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that:

1. The District's speech and language evaluation, contained in its 2011 Reevaluation Report, is appropriate; and
2. The District is *not* ordered to fund an independent speech and language evaluation for the Student; and
3. The Parent may obtain an independent speech and language evaluation, but not at public expense.

It is **FURTHER ORDERED** that any claims not specifically addressed in this Decision and Order are denied and dismissed.

/s/ Brian Jason Ford  
Hearing Officer