

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 Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 27427-22-23

Child's Name

T.H.

Date of Birth

[redacted]

Parents

[redacted]

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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

05/04/2022

Introduction

This special education due process hearing concerns the evaluation process of the Wyoming Valley West School District ("District") for T.H., a student who resides in the District.¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student who requires special education. The parties disagree about the appropriateness District's most recent re-evaluation process and report.

In the 2022-2023 school year, the student transitioned [redacted] in the District. In November 2022, the District issued a re-evaluation report ("RR"). In December 2022, the student's parent requested an independent educational evaluation ("IEE") at District expense, including a neuropsychological evaluation, speech and language ("S&L") evaluation, occupational therapy ("OT") evaluation (including a sensory integration evaluation), a functional behavior assessment ("FBA"), and an assistive technology evaluation.³

In accord with 34 C.F.R. §§300.502(b), when parent made her request, the District, seeking to defend its re-evaluation process and the

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").

³ Hearing Officer Exhibit ["HO"]-2.

November 2022 RR, filed the complaint which led to these proceedings.⁴ The student's parent filed the special education due process complaint.

For the reasons set forth below, I find in favor of parent in some regards and in favor of the District in some regards.

Issue

1. Are the District's re-evaluation process and November 2022 RR appropriate?
2. If not, to what extent is parent entitled to an IEE at District expense?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

Prior to District Enrollment

1. In December 2021, the student was evaluated by a [redacted] provider. (Parent Exhibit ["P"]-1; School District Exhibit ["S"]-3)⁵.

⁴ HO-1.

⁵ P-1 and S-3 are identical documents. For ease in citation, only S-3 will be cited.

2. The December 2021 [redacted] evaluation indicated that in September 2021, the student was identified by an outside provider with autism spectrum disorder, global developmental delay, and mixed expressive-receptive S&L disorder. (S-3 at page 4).
3. The December 2021 [redacted] evaluation indicated that the parent's concerns were for the student's social development, speech development, and communication needs. (S-3 at page 5).
4. The December 2021 [redacted] evaluation indicated in August 2021, the student was identified by an outside provider with bilateral hearing loss but the nature or extent of the hearing loss was not documented. The evaluation indicated that follow-up for a specialized auditory test had not been scheduled. (S-3 at page 7).
5. Cognitive assessment for global developmental levels in the December 2021 [redacted] evaluation indicated that the student struggled at times with attention to the assessment. There were some results reported, and the overall conclusion of the evaluator was that the student qualified for [redacted] cognitive/developmental services. (S-3 at page 9).
6. S&L assessment in the December 2021 [redacted] evaluation indicated that the student exhibited expressive and receptive language delays. The student struggled with attention, but the evaluator opined that the student responded to one-on-one attention, prompting, and positive

reinforcement. The student utilized sign, gesture, and some vocalizations to communicate. (S-3 at page 10).

7. The social/emotional development assessment in the December 2021 [redacted] evaluation indicated that the student would engage in solitary play and began to exhibit parallel play. The student did not always respond appropriately when sharing objects or having preferred objects removed. The evaluator recommended [redacted] services in this area. (S-3 at page 11).
8. OT assessment in the December 2021 [redacted] evaluation indicated that the student required OT support for fine motor skills (pencil grasp and prewriting skills). A physical therapy screening indicated that the student did not require support for gross motor skills. (S-3 at page 12).
9. Adaptive assessment in the December 2021 [redacted] evaluation indicated that the student required support in areas of adaptive development, including not being toilet-trained. (S-3 at page 13).
10. In the December 2021 [redacted] evaluation, the student scored at the 0.1 percentile for cognitive, communication, social/emotional, and adaptive standardized assessments, and at the 2nd percentile for the fine-motor/gross-motor assessment. (S-3 at pages 14-15).

11. The December 2021 [redacted] evaluation identified the student as a student with autism and recommended that the student receive [redacted] services. (S-3 at page 16).
12. In April 2022, the student was evaluated by a community psychological services group. (P-2).
13. The April 2022 psychological evaluation indicated that the student was largely non-verbal and utilizes gesture to communicate. The inability to communicate with peers could lead to frustration. (P-2 at page 2).
14. The April 2022 psychological evaluation indicated that the student exhibited certain sensory issues, including intermittent screeching, certain necessities with footwear, and difficulty with texture of certain foods. (P-2 at pages 2, 3).
15. The April 2022 psychological evaluation indicated that the student exhibited perseverative behavior, including organizing objects, attachment to objects, and repetitive viewing of videos. (P-2 at pages 2,3).
16. The April 2022 psychological evaluation indicated that the student exhibited some rigidity, namely an intolerance for anyone touching preferred objects. (P-2 at page 2).
17. The April 2022 psychological evaluation indicated that, via parent report, the student engaged in tantrum behavior at home,

including hitting, biting, property destruction, throwing objects, and swiping objects off the table. The behavior was exhibited when the student was corrected with 'no' and when the student is denied preferred objects or activities. (P-2 at page 2).

18. In the April 2022 psychological evaluation, the evaluator indicated that she could not assess certain elements of the evaluation due to the student's "limited verbal abilities". (P-2 at page 4).

19. The April 2022 psychological report indicated that the student was not toilet-trained and that the student's mother denied any hearing loss. (P-2 at page 3).

20. The April 2022 psychological report confirmed psychological diagnoses of autism and other specified disruptive, impulse-control, and conduct disorder. The psychological report identified needs, from a school-based perspective, in managing tantrum behaviors, physical aggression, socialization, and functional communication. (P-2 at page 6).

2022-2023 School Year/[redacted]

21. The student enrolled [redacted] in the District in the 2022-2023 school year.

22. In November 2022, the District issued its RR. (P-4; S-7)⁶.
23. The November 2022 RR included content from the December 2021 [redacted] evaluation and the April 2022 psychological evaluation. (p-4 at page 2, 3-4).
24. The November 2022 RR included parent input. The parent input largely mirrored the content of prior evaluations, indicating concerns with aggression, vocalized speech, gross motor skills (skipping, ball catching/throwing), social skills, impulsivity, self-control, and over-reaction. (P-4 at page 3).
25. The November 2022 RR contained the student's two S&L goals from the [redacted] individualized education program ("IEP") but did not include any goal information for other goals in the IEP. (P-4 at page 3).⁷
26. The November 2022 RR contained information related to the student's current classroom programming. The student was receiving autism support services, OT services, S&L services, and transportation. The student required a highly structured environment, 1:1 or small

⁶ P-4 and S-7 are nearly identical documents. The date of the RR between the two documents is different—the RR at P-4 is dated November 10, 2022 and at S-7 is dated November 14, 2022. The evaluator did not know why the dates varied between the two documents (Notes of Testimony ["NT"] at 41-136), but the substantive content of each document is identical. For ease in citation, only P-4 will be cited.

⁷ The [redacted] IEP was not made part of the record, so it is unclear whether the student had IEP goals in other areas, although the text of RR would appear to indicate that other goals were present: "Outcome/Goal statements from (the student's) 2021 IEP related to speech and language skills have been included as part of this review of records". (P-4 at page 4).

group instruction, and positive reinforcement. Problematic behaviors impeding the learning of the student or that of others included aggression, screaming/yelling, property destruction, spitting, and eloping. These behaviors at times interfered with the student's ability to participate in regular education environments. The student often has trouble remaining seated and will attempt to gain peer attention by screaming or yelling. (P-4 at pages 5-6; NT at 227-252).

27. As part of curriculum-based assessment levels in the November 2022 RR, the report contained scores from a comprehensive verbal behavior assessment tool but the reported scores. The scores were not broken down across assessment areas and only partially reported with specificity. (P-4 at page 5; NT at 41-136, 227-252).
28. The November 2022 RR contained information related to the student's needs in expressive language (using American Sign Language) and receptive language (following directions). Observation by the S&L therapist indicated that the student was attentive and used verbal responses and approximations; with the refusal of a preferred item, the student dis-engaged from group interaction and refused to follow directions. (P-4 at pages 5-6; NT at 141-189).
29. Both the student's teacher and S&L therapist provided recommendations, respectively 1:1 or small group instruction and high rates of positive reinforcement (teacher), and use of signs/picture

communication/alternative augmentative communication device for expressive language and focus on concrete one-step directions for receptive language (S&L therapist). (P-4 at page 6).

30. The November 2022 RR contained updated assessment data in various areas. (P-4 at pages 8-19).
31. In the November 2022 RR, the evaluator attempted to conduct a cognitive assessment of the student. The evaluator could not establish control to administer the instrument and abandoned the attempt to administer it. The evaluator did not re-visit any other attempt with the instrument or attempt to utilize a different instrument. (P-4 at page 8; NT at 41-136).
32. The evaluator testified that she would attempt further cognitive assessment in one year. (NT at 41-136).
33. In the November 2022 RR, the student's teacher and parent each completed behavior scales. In terms of school-based scores, the teacher rated the student with clinically significant scores in the following sub-scales: hyperactivity, aggression, attention problems, atypicality, withdrawal, social skills, functional communication, and adaptive skills, leading to clinically significant composite scores in externalizing problems and behavioral symptoms. (P-4 at pages 8-10).
34. In the November 2022 RR, the student's teacher and parent each completed executive functioning scales. In terms of school-based

scores, the teacher rated the student with elevated scores in the behavioral control and emotional control indices, and extremely elevated scores in the attention control index and the overall executive functioning index. (P-4 at page 10).

35. In the November 2022 RR, the student's teacher and parent each completed autism rating scales. In terms of school-based scores, the teacher rated the student with very elevated levels in peer socialization, adult socialization, and attention/self-regulation; the teacher rated the student with elevated levels in social/communication scales, and in total score. (P-4 at pages 11-12).
36. In the November 2022 RR, the student's teacher and parent each completed adaptive behavior scales. In terms of school-based scores, the teacher rated the student as extremely low in most sub-skills and in all composite skill areas. (P-4 at pages 12-13).
37. The November 2022 RR included a FBA. The FBA identified three areas of concern—physical aggression, elopement, and verbal aggression. (P-4 at pages 13-15; NT at 227-252).
38. Physical aggression in the FBA was defined as hitting, pushing, pinching, punching, kicking, and spitting. Data was collected on the behaviors in aggregate but was not collected across the various types of physical aggression or in terms of whether aggression was exhibited toward peers or adults. (P-4 at pages 13-15; NT at 227-252).

39. Elopement in the FBA was not defined as between elopement from class, or from the instructional area. Data was not collected on elopement. (P-4 at pages 13-15; NT at 227-252).
40. Verbal aggression in the FBA as screaming or yelling. Data was not collected on verbal aggression. (P-4 at pages 13-15; NT at 227-252).
41. The November 2022 RR included an OT evaluation. (P-4 at pages 15-16; NT at 197-222).
42. The OT evaluation in the November 2022 RR contained evaluator observation, formal assessment, and task assessment. (P-4 at pages 15-16; NT at 197-222).
43. On the OT evaluation in the November 2022 RR, the student required "max verbal and gestural cues for redirection, focus, and participation" in the OT evaluation. (P-4 at page 15).
44. On the OT evaluation in the November 2022 RR, the student scored in the below average range on an assessment involving lines, shapes, and letter size/directionality. (P-4 at page 15).
45. On the OT evaluation in the November 2022 RR, the student exhibited a degree of need in terms of self-help skills (snaps, zipper, buttoning), visual-motor skills (letter identification and copying, number identification and copying, color identification, shape identification), and scissor skills. (P-4 at pages 15-16; NT at 197-222).

46. The OT evaluator recommended that the student receive OT services. (P-4 at page 16; NT at 197-222).
47. The November 2022 RR included a S&L evaluation. (P-4 at pages 16-19; NT at 141-189).
48. The S&L evaluation in the November 2022 RR contained therapist observation, formal assessment, and task assessment. (P-4 at pages 16-19; NT at 141-189).
49. During the S&L assessment, the student was easily distracted and required high levels of prompting and positive reinforcement. At times, the student engaged in task-refusal, including pushing away/swiping away testing materials, vocalizing 'no', and spitting. (P-4 at page 16).
50. The S&L therapist observed that pairing preferred activities with assessment activities increased the student's attention to task and decreased refusal/avoidant behaviors. (P-4 at page 17).
51. The S&L therapist noted that the student employed some one-word or small-phrase vocalizations, although these were often unintelligible. The student employed signs and gesture (pointing, pulling, presenting objects) to communicate. The therapist documented that the student does not have an individualized communication plan. (P-4 at page 17).

52. On picture card identification, the student has some success with object identification and common-word identification. The student was observed to increase some vocalizations and employ functional communication, as well as following some directions. (P-4 at page 17).
53. As part of the S&L evaluation, the therapist utilized a comprehensive, informal functional communication checklist. (P-4 at pages 17-19; NT at 141-189).
54. In terms of assistive technology, the S&L therapist opined that: “[The student] does not currently have a designated and individualized communication system (e.g., multi-modal approach to communication, picture exchange communication book, communication board, etc.). Options should be explored to best support [the student] in communicating...wants/needs/choices/etc. in all academic settings and environments. A defined communication system including multiple modes of communication should be considered.” (P-4 at page 19; parenthetical in the original, bracketed material edited for student confidentiality).
55. The S&L therapist made broad recommendations for the student to receive S&L services, including American Sign Language signs as part of functional communication. (P-4 at page 16; NT at 141-189).

56. The testimony of the S&L therapist was found to be credible and was accorded a bit more weight than the other witnesses in the hearing. (NT at 141-189).
57. The November 2022 RR identified the student as a student with autism and a S&L impairment. (P-4 at page 19; NT at 41-136).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. Where particular emphasis was accorded to a witness's testimony on a particular issue or event, that is pointed out above in a specific finding of fact, as applicable.

Discussion

Under the terms of the IDEIA, "(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 (or re-evaluation, as the evaluation provisions of IDEIA apply equally to re-evaluations as well [34 C.F.R. §§300.15, 300.304-311; 22 PA Code §14.102(a)(2)(iii),(xxv),(xxvi)]), 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 special education programming. (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 parent has requested independent evaluations in multiple areas. On this record, there is a basis to order independent evaluations in some areas but not in other areas.

The District will be ordered to provide a comprehensive independent neuropsychological evaluation. The deepest flaw in the District’s re-evaluation process and November 2022 RR is the lack of any cognitive assessment. It is clear from the record, both in [redacted] and the OT and S&L evaluations as part of the November 2022 RR, that the student does not easily attend to evaluation processes/instruments and can engage in refusal/avoidance behavior during evaluations. The student exhibited those

behaviors with the District school psychologist during the cognitive assessment. At that point, the school psychologist simply stopped attempting to evaluate the student. She did not attempt to re-administer the instrument or to utilize a different instrument, either at that point or later; she opined that she would wait a year before attempting cognitive testing. The latter is entirely untenable and the former is unfortunate because both the OT evaluator and the S&L therapist were successful in their evaluations by utilizing various approaches and interventions that led to successful assessment processes. Therefore, due to the lack of any cognitive assessment data and the decision to abandon such an assessment, a comprehensive independent neuropsychological evaluation will be ordered.

The OT evaluation was broadly appropriate, allowing the student's IEP team to design appropriate OT services for the student. An independent OT evaluation will not be ordered. As part of the request for an independent OT evaluation, however, the parent requests specifically a sensory-need/sensory-integration evaluation. The OT testified that review of the December 2021 [redacted] evaluation report and conversations with the school psychologist did not indicate any concerns with sensory needs. Yet the April 2022 psychological evaluation report, made part of the November 2022 RR, indicated various sensory needs reported by the student's parent. Also, the student engages in screaming/yelling behavior. The District appears to view this as a functional behavior to gain peer/adult attention; it

may be. But screeching behavior was also reported as part of the April 2022 psychological evaluation, where peer/adult attention in a clinical setting was absent. It would appear, then, that a sensory evaluation should be undertaken to determine if screaming/yelling/shrieking behavior might be a solely sensory behavior, or a sensory behavior in addition to a functional behavior. Therefore, an independent sensory-need/sensory-integration evaluation will be ordered.

The S&L evaluator opined in the November 2022 RR that the student would benefit from assistive technologies for communication needs. There is no assistive technology evaluation in the RR and, as of the date of the evidentiary hearing (April 4, 2023), no assistive technology evaluation had taken place. (NT at 181-182). Therefore, an independent assistive technology evaluation will be ordered.

The parent requests an independent FBA. The FBA in the November 2022 RR is prejudicially flawed, lacking necessary specificity in terms of the data collection and assessment of the student's physical aggression. The FBA is entirely lacking definitions, data collection, and assessment of elopement and verbal aggression. And, as set forth above, the District's understanding of "verbal aggression" did not account for the potential impact of sensory basis for the student's screaming/yelling. Therefore, an independent FBA will be ordered.

The parent requests an independent S&L evaluation. The S&L evaluation did not contain standardized S&L assessments, but the S&L content in the November 2022 RR is comprehensive and allows the student's IEP team to design appropriate programming for the student's expressive, receptive, and social skills needs. Therefore, while an independent assistive technology evaluation for the student's communication needs will be ordered, a comprehensive independent S&L evaluation will not be ordered.

Finally, in the December 2021 [redacted] evaluation, there was an indication that the student might have bilateral hearing loss. A follow-up audiological evaluation, to assess if hearing loss is present and, if so, what impact it may have on the student, was apparently never performed. The indications in the record in this regard are very thin. Therefore, a hearing officer order for an audiological evaluation would be unsupportable. But the order below will include a provision for the student's multi-disciplinary team— including educators, parent, and the independent assistive technology evaluator— to consider explicitly whether or not the student might benefit from an audiological evaluation.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Wyoming Valley West School District is ordered to provide, at

District expense, independent evaluations in the following areas: a comprehensive neuropsychological evaluation, a sensory-need/sensory-integration evaluation, an assistive technology evaluation geared to understanding how assistive technology might be necessary for the student's communication needs, and a functional behavior assessment.

The independent evaluators shall be selected solely by the parent and, having made those arrangements, the rate or fee for those independent evaluations shall be borne by the school district.

The independent assistive technology evaluator shall be informed that the possibility of hearing loss is part of the student's educational documentation and so that the evaluator will be cognizant of that information during the assistive technology evaluation. In this regard, once the independent assistive technology evaluator has issued his/her report, he/she shall be invited to participate in the multi-disciplinary team meeting where the independent assistive technology report is discussed in order to be part of the team as it considers what, if any, issues might be related to potential hearing loss. The rate or fee for the evaluator to participate in the multi-disciplinary team meeting shall be borne by the school district.

Additionally, as set forth above, the results of the independent sensory-need/sensory-integration evaluation may or may not impact the independent functional behavior assessment. In this regard once the independent sensory-need/sensory-integration evaluator has issued his/her

report, and the independent functional behavior evaluator has issued his/her functional behavior assessment, both evaluators shall be invited to participate in the multi-disciplinary team meeting where the independent evaluation and independent functional behavior assessment are discussed in order to be part of the team's consideration of the basis and/or function of the student's screaming/yelling behaviors. The rate or fee for these evaluators to participate in the multi-disciplinary team meeting shall be borne by the school district.

The school district need not provide an independent speech and language evaluation or a broad-based occupational therapy evaluation.

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

05/04/2023