

*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**

**CLOSED HEARING**

**ODR No. 32469-25-26**

**Child's Name:**

M.S.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Local Education Agency:**

Minersville Area School District  
1 Battlin' Miner Drive  
Minersville, PA 17954

**Counsel for the LEA:**

Shawn Lochinger, Esquire  
331 East Butler Avenue  
New Britain, PA 18901

**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

03/25/2026

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, M.S. (Student),<sup>1</sup> is an [redacted] elementary school-aged student residing with the Parent and enrolled in Minersville Area School District (District). Student has been determined to be eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> as a child with a Speech/Language Impairment pursuant to an evaluation completed in January 2026.

Early in the fall of the 2025-26 school year, the Parent<sup>3</sup> expressed a concern about Student to the District that was treated as a request for a special education evaluation. After a delay in obtaining consent, the Parent provided written permission for the evaluation in early November 2025. An extraordinary series of events far beyond the control of either party led to a completed evaluation on the due date that lacked critical assessments. As a result, the Parent sought an Independent Educational Evaluation (IEE) at public expense. The District responded by filing a Due Process Complaint under the IDEA to defend its evaluation under the circumstances. The narrow issue was heard in a single efficient hearing session.<sup>4</sup>

Following review of the record and for all of the reasons set forth below, the District's claim shall be granted.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> The Parent used in the singular throughout this decision is the parent with whom Student resides.

<sup>4</sup> References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.) and School District Exhibits (S-) followed by the exhibit number.

## **ISSUES**

1. Whether the District's special education evaluation of Student was in compliance with law applicable to such evaluations; and
2. If the evaluation was outside of legal compliance, whether an IEE at public expense should be awarded?

## **FINDINGS OF FACT**

1. Student is an [redacted] elementary school-aged child attending the District's elementary school. Student is eligible for special education under the Speech/Language Impairment category. (N.T. 10-11.)
2. In the spring of 2025, prior to Student's actual enrollment in the District, Student like all new students was screened for speech/language, physical, and occupational therapy needs. Student exhibited no weaknesses with occupational and physical therapy related skills; however, Student did display articulation deficits. (N.T. 46-47, 58-60; S-19.)
3. During the first week of the 2025-26 school year, the District administered a standard screener of reading and literacy skills of all students in its elementary school. Students with skills needing intervention would then be offered Title I services to target weaknesses. (N.T. 16-18.)
4. Student's screener yielded a score just below benchmark at the 53<sup>rd</sup> percentile, and the District sought the Parent's permission to receive Title I services. The Parent expressed concern about the process and declined to grant permission after several attempts. (N.T. 17-20; S-2.)

5. The District considered the Parent's concerns to be a request for a special education evaluation and sought information from its staff. A Permission to Evaluate (PTE) form was immediately sent home but not returned. (N.T. 19-20, 97-98, 105; S-3; S-4; S-5; S-21.)
6. The Parent attended a parent-teacher conference in early November 2025. Student's asked the Parent to sign the PTE form at that time, and the Parent did. (N.T. 32-35, 107.)
7. A second screener for Title I services administered halfway through the 2025-26 school year yielded a score for Student that was beyond the end-of-year benchmark. (N.T. 22-24; S-25.)
8. Student's teacher over the 2025-26 school year frequently redirected Student and provided reminders throughout the school day, as she did with all of her students, so that they would understand the daily routine and its consistency. (N.T. 39.)
9. The Parent reported to the District in the fall of 2025 that Student exhibited difficulty following directions at home. At the time of the hearing, the Parent also had concerns with organizational skills and learning. (N.T. 68, 134-35.)

### **Evaluation Report**

10. A non-District-affiliated school psychologist was assigned to conduct Student's initial evaluation. (N.T. 73-75, 107-08.)
11. The assigned school psychologist used the first two weeks following the Parent's consent to explore the types of assessments that would be necessary. This was particularly important because Student had no educational history prior to the start of the 2025-26 school year. (N.T. 76-77.)

12. The District Evaluation Report (ER) contained teacher observations that included positive attention to tasks, good reasoning skills, consistent work effort, cooperation, class participation, quality work, positive work with peers and adults; whereas also noted were difficulty with written tasks, speech/language needs, and poor organizational skills. Student's classroom performance and report card grades were also incorporated reflecting Student's satisfactory performance. (S-9 at 3-5, 18-19.)
13. An occupational therapy evaluation was completed in November 2025 and included a school observation, review of writing samples, teacher input, informal assessment of skills, and the Beery-Buktenica Developmental Test of Visual-Motor Integration. On that instrument, Student attained solidly average visual-perceptual and visual-motor scores; the other elements of this evaluation revealed age-appropriate related skills. (N.T. 48-52; S-7; S-9 at 13-15, 27-29.)
14. Evaluation of speech/language functioning also conducted in November 2025 utilized several formal measures, informal assessment, and observations by the speech/language therapist. Student's articulation skills were below the average range for Student's age with several sounds. In the areas of oral structures and function, linguistic achievement, pragmatics, and voice, Student exhibited average to superior range skills for Student's age. Speech/language services were recommended solely for articulation. (N.T. 62-66; S-6; S-8; S-9 at 5-13, 19-27.)
15. Although the District's own information did not indicate any concerns with Student's academic progress, the assigned school psychologist determined that both cognitive ability and academic achievement instruments were necessary for a full special education evaluation, as

well as broadband behavior rating and executive functioning rating scales. (N.T. 77-78, 132-33.)

16. Student's cognitive and achievement testing were initially scheduled for early December 2025, approximately thirty days after the Parent's consent. This timeframe is consistent with District practice. However, Student was absent from school that day. (N.T. 79-81, 111-12, 129; S-15.)
17. Additional dates were scheduled for Student's cognitive and achievement testing approximately five and twelve days later. Those instruments could not be administered because there was a weather-related early dismissal on the earlier date; the District was then subject to a cybersecurity threat for that entire week. No District staff were able to log on to email accounts or other District resources throughout that week, including completing or accessing the rating scales for Student. (N.T. 82-84, 113-15, 117-19.)
18. The assigned school psychologist attempted to reschedule the assessments of Student each school day until the District winter break began. None of those efforts were successful due to weather-related schedule changes and closures. On the final day of school before that break, holiday activities were planned and in the psychologist's experience, testing on that date would almost certainly not have yielded reliable results. (N.T. 83-86, 116; S-14.)
19. The ER documented the efforts made to administer cognitive and achievement assessments and obtain rating scales that were not returned. (S-9 at 29.)
20. The Parent rating scales were similarly not provided to the school psychologist before the ER due date. (N.T. 89-90.)

21. The only eligibility determination that could be made for the ER related to speech/language needs because of the inability to obtain rating scales and conduct necessary assessments. (N.T. 86-87; S-9.)
22. The ER was completed and provided to the Parent on the 60<sup>th</sup> calendar day after permission was obtained for the evaluation. That day was also the last day of the District's winter break. The psychologist did speak with the Parent the day before to explain the challenges and his intention to conduct a new evaluation on an expedited basis after the District returned to school in January. (N.T. 87-90; S-9; S-10; S-11.)
23. The day after the ER was disseminated, as part of written communication between the District and the Parent, the District sought permission from the Parent to conduct a reevaluation for cognitive and achievement assessment as well as parental input and rating scales. The Parent expressed an intention not to grant consent, and a few days later again requested an IEE at public expense. (S-12; S-13; S-18.)
24. Ten days after the permission to reevaluate was sent and declined by the Parent, the District provided a Notice of Recommended Educational Placement/Prior Written Notice refusing to provide an IEE at public expense. S-17.)
25. The District arranged to use a school psychologist from the local Intermediate Unit for the reevaluation; however, Parent declined to grant permission. (N.T. 123, 127-28.)
26. The District is willing to grant an IEE at public expense if the Parent makes such a request after its own second evaluation is completed, when there is sufficient information with which the Parent might disagree. (N.T. 123-24.)

27. The Parent has arranged speech/language services for Student through the family physician. Student also had such services in the past. (N.T. 135, 140, 146.)
28. The Parent also works with Student at home with reading skills such as phonics as well as speech. (N.T. 146-47.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

As a general premise, the burden of proof is viewed as comprising two elements: the burden of production and the burden of persuasion. The latter 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). As such, the burden of persuasion in this case must rest with the District since it filed the Complaint leading to this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in “equipoise.” *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, who have the role of fact-finder, are responsible for assessing the credibility of testifying witnesses who. *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts based on the perspective and understanding of each, without intention to mislead. The weight accorded the evidence was rather equally placed in light of the very narrow issue presented and the unusual circumstances surrounding the evaluation.

The findings of fact were made as necessary to resolve the issues; accordingly, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the

content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

### **General IDEA Principles: Child Find and Eligibility**

The IDEA requires all states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. The IDEA applies to a "child with a disability." 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(a). The definition of a "child with a disability" is two-pronged: having one of certain enumerated conditions and, by reason thereof, needing special education and related services. 20 U.S.C. § 1401(3).

The IDEA and state and federal regulations further obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. This mandate is commonly referred to as "Child Find." LEAs are required to fulfill the Child Find obligation within a reasonable period of time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). In other words, an LEA must consider an evaluation for special education services within an appropriate amount of time after notice of behavior or other functioning and performance that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). They need not, however, identify a disability "at the earliest possible moment" or to evaluate "every struggling student." *Id.*

### **Evaluation Requirements**

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following

qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); *see also* 34 C.F.R. § 300.8(a).

Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) 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, or, for preschool children, to participate in appropriate activities;

(B) 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; and

(C) use 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); *see also* 34 C.F.R. §§ 300.303(a), 304(b).

The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also involve a review of existing data including that provided by the parents<sup>5</sup> in addition to available assessments and observations. 34 C.F.R. § 300.305(a). In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b).

## **Eligibility**

Upon completion of all appropriate assessments, “[a] group of qualified professionals *and the parent* of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1) (emphasis added). There are nonetheless explicit provisions that exclude a child from eligibility “[i]f the determinant factor” is

- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect

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<sup>5</sup> There is no dispute that the Guardians qualify as “parents” for purposes of the IDEA.

on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria[.]

34 C.F.R. § 300.306(b); *see also* 20 U.S.C. § 1414(b).

Finally, when parents disagree with an LEA's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). In such a circumstance, the LEA "must, without unnecessary delay," file a due process complaint to defend its evaluation, or ensure the provision of an IEE at public expense. 34 C.F.R. § 300.502(b)(2).

### **The District's Claim**

Essentially, the District contends that it need not have granted, and should not be ordered to comply with, the IEE requests because it has not yet had the opportunity to conduct a full evaluation of Student. In response, the Parent accurately observes that the initial evaluation does not meet IDEA criteria.

There is no dispute that the ER did not assess student in all areas of suspected disability. On its face, one might easily determine that an IEE is appropriate at this time as a matter of law. Nonetheless, there are two critical reasons that the District's contentions are valid and that the remedy should be denied at this time.

The first is that, through no fault of its own, the District simply could not administer all of its planned assessments or incorporate the results of completed rating scales in light of the series of unavoidable events that occurred from the beginning of December through the due date for the ER.

It is important to observe that none of these circumstances may be attributed to any actions on the part of either party.

In accordance with standard practices, and in light of Student's very limited educational history in the fall of 2026, this hearing officer concludes that the delay of approximately thirty days before actual testing was both rational and necessary so that the school psychologist could review available information and determine what assessments were indicated before scheduling time to conduct them. The assigned school psychologist worked diligently to reschedule the testing session on a near daily basis from its initial planned assessment date through ongoing weather changes to Student's availability before the holiday break. The District-wide cybersecurity threat could clearly not reasonably be predicted, nor its impact on the ability of District staff to access the rating scales and other District information for the ER. It was, quite simply and literally, impossible for the District to complete and disseminate the ER within sixty calendar days, and the District must accordingly be excused from that requirement for a period of time. *Compare Independent School District No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1080 (8th Cir. 2020) (concluding functional behavior assessment was not "impossible to undertake" merely because the student was chronically absent when information for that assessment could be obtained in other ways).

The second, much more practical reason is that, in this hearing officer's experience, independent evaluations generally take a significantly longer period of time for completion than the allotment for evaluations by local education agencies in Pennsylvania. Although the Parent will likely be disappointed that an IEE may be delayed by the District's reevaluation, permitting a District reevaluation at this time will almost certainly not affect the timing of an IEE whether granted in this decision and order or by the District at a later date. The attached order is intended to limit any

postponement of that remedy to the extent possible should the Parent elect to request same.

Finally, by way of dicta, the undersigned offers the following. Student is currently [redacted] elementary school-aged and only recently engaging in school-based programming. It is evident that the parties will need to work collaboratively and cooperatively together for the long term, and their ability to do so will undoubtedly be made at least somewhat more challenging following this dispute. This hearing officer strongly encourages the parties to do their best to put this disagreement behind them and to consider using facilitated services available through the Office for Dispute Resolution as they begin to meet for the purposes of developing appropriate programming for Student as a team.

### **CONCLUSIONS OF LAW**

The District's evaluation of Student, although not strictly appropriate under the law, does not require the remedy of an IEE at this time due to extenuating circumstances.

### **ORDER**

AND NOW, this 25<sup>th</sup> day of March, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District was unable to complete an evaluation of Student that complied with all legal requirements within the sixty (60) calendar day timeframe as a result of impossibility.
2. The District is permitted to conduct a reevaluation of Student to include all assessments that it was prevented from obtaining by early January 2026 as well to gather any other relevant

information as updated during the time that reevaluation is ongoing.

3. The reevaluation of Student shall be expedited, completed within thirty (30) days or as soon as possible.
4. Within fifteen (15) calendar days of the date of this Order, the District shall provide to the Parent a list of not less than three (3) qualified individuals reasonably within its geographic area to conduct an independent psychoeducational evaluation. This provision is intended to afford the Parent time to determine the qualifications of each evaluator and be prepared to make a selection if he elects to do so.
5. Within ten (10) calendar days following completion of the reevaluation, the District shall convene a meeting of all relevant team members including the Parent to together determine Student's eligibility under the IDEA.
6. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore  
Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 32469-25-26

Sent to both parties this date as required by 34 C.F.R. § 300.515  
by electronic mail message as requested on the record consistent with 22  
Pa. Code § 14.162(n).