

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. 29928-23-24

Child's Name:

Y.C.

Date of Birth:

[redacted]

Guardians:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

12/09/2024

INTRODUCTION AND PROCEDURAL HISTORY

The student, [redacted] (Student),¹ is a mid-teenaged student residing within the boundaries of the Chichester School District (District). Student has not been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student currently attends high school in the District.

In June 21, 2024, the District filed a Due Process Complaint under the IDEA after the Guardian made a request for an independent educational evaluation at public expense. The District sought to defend its initial evaluation of Student, and the Guardian disagreed with that position. The matter proceeded to a hearing following a series of motions and responsive filings.³ A companion case filed by the Guardians is also pending.⁴

Following review of the record, and for all of the reasons set forth below, the claims of the District cannot be sustained and the Guardians shall be awarded an Independent Educational Evaluation at public expense.

¹ 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).

² 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).

³ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and HO Exhibits (HO-) followed by the exhibit number. The various motions are hereby admitted as HO-2 through HO-9. Citation to duplicative exhibits may not include all.

⁴ That case, ODR File No. 22972-2425, similarly involved some delays for other reasons, and has yet to convene an initial session.

ISSUES

1. Whether the District's initial special education evaluation of Student was in compliance with all of the requirements in the IDEA; and
2. If the District did not comply with all of the IDEA mandated criteria in conducting its evaluation, should the Guardians be awarded an Independent Educational Evaluation at public expense?

FINDINGS OF FACT

1. Student is mid-teenaged, is a resident of the District, and is currently [redacted]. (Stipulation, N.T. 26-27; -12; S-2.)
2. Student was [redacted] and little is known about Student's [redacted]. (P-4; S-1.)
3. The Guardians were appointed as educational decision-makers for Student in August 2022 following Student's move into Pennsylvania. One of the Guardians is a [redacted] teacher in a different Pennsylvania school district, [redacted], and [redacted]. (N.T. 225-30; P-1; S-8.)
4. The Guardians do not have access to Student's records that are not education-related, including medical records and any documents from the Department of Human Services. They are not able to obtain those even with a release. (N.T. 155-56; S-14.)
5. The Guardian [redacted] has met with Student at least once every other month in person throughout the appointment as educational decision-maker. They also speak by telephone and communicates via text messaging every other week, particularly about education-related

needs. The other Guardian, a supervisor, attends most court hearings involving Student as an advocate at least every ninety days, and interacts with Student [redacted]. (N.T. 124-26, 128-31, 136-37, 230-33, 239-40, 252-53.)

6. During the time that the Guardians have been involved with Student, Student has shared motivation to do well at school but difficulty doing so. (N.T. 269-75.)
7. Student has been receiving therapy since approximately the same time that the Guardians were appointed due to prior [redacted] and symptoms of anxiety, depression, and post-traumatic stress. (N.T. 273; P-27.)

Early U.S. Educational History

8. Student was evaluated by a different Pennsylvania school district during the 2022-23 school year. [redacted] (S-1; P-4.)
9. The report of the evaluation of Student by the other school district (Other Evaluation Report (OER)) in February 2023 noted that Student entered that district in September 2022. At the time, Student resided [redacted] and had the educational decision-makers/advocate (the Guardians) who had noted Student's significant difficulties with schoolwork. (S-1 at 1.)
10. Teacher input into the OER described Student as quiet and hesitant, engaging in very limited communication at school, needing support from teachers and peers, and [redacted]. However, Student was motivated to and would willingly work to complete tasks, but frequently did not. (S-1 at 2.)
11. Cognitive assessment for the OER was conducted through an instrument [redacted], yielding very low and low scores across most subtests. Student scored in the average range on concept formation

and in the low average range on visualization. General Intellectual Ability (GAI) was in the very low range (Standard Score below the 0.1 percentile). On a non-verbal cognitive assessment, Student's score was in the below average range (9th percentile). Student's lack of exposure to similar tasks was noted to be a factor in the scores. (S-1 at 3-5.)

12. On an instrument of adaptive behavior completed by a teacher and Student's then-current caregiver for the OER, the teacher indicated low-range scores for communication and daily living skills, with adequate socialization skills but a low-range composite score. The caregiver had concern only with communication skills. (S-1 at 8-9.)
13. On an assessment of Academic Achievement for the OER, [redacted], a Student earned scores generally in the low to very low range, but in the average range on word attack (decoding) skills. Overall, Student's academic skills were deficient. (S-1 at 5-6.)
14. An OER measure of Student's cognitive-academic language proficiency revealed very weak skills. (S-1 at 6.)
15. Assessment of social/emotional functioning (Behavior Assessment System for Children - Third Edition (BASC-3)) was conducted for the OER through rating scales completed by a teacher. The results reflected clinically significant concerns with somatization, learning problems, and functional communication; at-risk concerns were noted for atypicality, withdrawal, social skills, leadership skills, and study skills. These results suggested that depression and anxiety may have been impacting Student's difficulties with learning. (S-1 at 7-8.)
16. The OER reached the conclusion that Student was not eligible for special education for several reasons: [redacted]; and not meeting criteria for any of the IDEA categories. (S-1 at 9-10.)

17. The Guardians did not agree with the findings and conclusion in the OER because Student was experiencing significant difficulties at school. (N.T. 190-91, 242-43.)

Entry into District 2023-24 School Year

18. Student moved into the District in the spring of 2023 through [redacted]. [redacted]. Enrollment information was quite limited and did not include any previous education or school information. (N.T. 160, 188, 235-36, 240; S-6 at 6-14.)
19. The District convened in a meeting in the fall of 2023 after the Guardians reported concerned with Student's difficulties at school as they had done in the prior school district. (N.T. 189, 278.)
20. After the September 2023 meeting, the Guardians through counsel requested an evaluation of Student by the District. (N.T. 146, 190; P-8.)
21. The Guardians also asked the District for information about accommodations provided to Student in the fall of 2023. Teachers reported the main accommodations: preferential seating; test and assignment accommodations; [redacted]; and individual support with the teacher and check-ins. (P-9.)
22. The District provided a Permission to Evaluate form to the Guardians in November 2023, and the Guardians consented. (P-11; P-14 at 16-17.)

District Evaluation Report

23. The District school psychologist who conducted its evaluation⁵ has completed approximately 200 [redacted] special education

⁵ This individual was contracted by the local Intermediate Unit (N.T. 75-76), but shall be referred to as the District school psychologist for stylistic and accessibility reasons.

evaluations,⁶ roughly half of all evaluations he has completed. He is employed by another Pennsylvania school district. The Evaluation Report (ER) was issued in January 2024. (N.T. 31-32, 34-35; P-12; S-2; S-3.)

24. Input obtained by the [redacted] for the ER noted two [redacted] siblings in the home; [redacted]. Student reportedly was a caring individual who got along with others but has few friends; unidentified attention problems were also noted. (S-2 at 2.)
25. After the District school psychologist was assigned to conduct the evaluation, he spoke with one of the Guardians who expressed concern with the prior evaluation and Student's then-current difficulties at school. He also communicated with that Guardian through text messaging. (N.T. 45-46, 244, 289; S-11; S-12.)
26. The ER summarized information from the OER including [redacted], assessment scores, and the basis for determining non- eligibility for special education. (S-2 at 10-11.)
27. Input from teachers for the ER included Student's positive motivation, determination, effort, responsibility, and respect; [redacted]; lack of foundation for basic academic skills; deficient mathematics skills (all operations); unknown content-area academic skills [redacted]; and unknown [redacted] skills. Recommendations included a tutor, preferential seating, test and assignment modifications, [redacted], and individual check-ins and support. Two of five teachers believed that Student required specially designed instruction, two did not, and one was uncertain. (S-2 at 2-9.)

⁶ Most if not all of those [redacted] evaluations were speakers of Student's [redacted] language. (N.T. 81-82.)

28. The District school psychologist observed Student in a mathematics class. During that class period, Student worked on the assignments and appeared to not be distracted by a smart-phone or peer conversations. (S-2 at 9.)
29. The District school psychologist spoke with Student and confirmed the [redacted] that Student confirmed was most familiar, with [redacted] (N.T. 36-37, 41-42, 85-86.)
30. Prior to the assessments, the District school psychologist had a conversation/interview with Student to establish rapport. That discussion also gave him the opportunity to gauge whether Student understood the [redacted] before testing for English proficiency. Student described minimal education in the [redacted]. Notably, Student reported that the trauma experienced in the past impacted Student's "ability to focus" (S-2 at 12) while describing Student's [redacted] home as a positive experience. The assessments for the ER were administered through a combination of English and [redacted] based on that conversation/interview. (N.T. 43-45, 55-57, 86, 140; S-2 at 12-13.)
31. At some point during the day that Student was assessed for the evaluation, Student mentioned to the District school psychologist that Student was undergoing therapy and that it was "very helpful" (S-2 at 13). The District school psychologist then reached out to one of the Guardians to learn whether Student had a mental health diagnosis, and the Guardian who responded reported that Student did not but was undergoing therapy for trauma earlier in Student's life that [redacted] (N.T. 47-48, 75, 248-49, 253-57; S-2 at 13; S-11.)

32. The District school psychologist also provided a questionnaire and rating scale to Student's [redacted] for the evaluation after a general conversation with her. The [redacted] did not report any difficulties with completing those forms to the District school psychologist. (NT. 51-53, 100.)
33. During the evaluation, Student appeared to the District school psychologist to be comfortable with [redacted] and did not express or exhibit difficulty understanding [redacted]. Student exhibited strong effort and was attentive and cooperative during the assessments, completing sample activities correctly including on nonverbal tasks. (N.T. 37-38, 63; S-2 at 13.)
34. The District school psychologist did not seek additional information from the Guardians such as written input or rating scales. (N.T. 193-94; S-2.)
35. The District school psychologist was trained in the assessments used and they were administered according to publisher instructions. The instruments are considered to be valid and reliable as well as technically sound. (N.T. 58-60.)
36. Cognitive assessment for the ER was a newer version of the main instrument for the OER. Student's composite scores were all in the very low to extremely low range, with a GAI score in the first percentile (extremely low range). However, the scores on this instrument were not likely to accurately reflect Student's aptitude. (S-2 at 13-16, 37.)
37. Adaptive behavior was also assessed for the ER by the [redacted] and two teachers. The [redacted] indicated average-range adaptive skills whereas the teachers did not have sufficient familiarity with Student's skills in that area. (S-2 at 31-35.)

38. Assessment of academic achievement for the ER included the same instrument as for the OER. Student's scores were in the very low to extremely limited range across most subtests and all clusters. A separate instrument yielded similar scores in the extremely low range across composites. (S-2 at 16-23.)
39. The ER also assessed English vocabulary acquisition, which was reflected to be in the very low range compared to same-age peers. (S-2 at 23-24.)
40. A new administration of the BASC-3 with rating scales by the [redacted] parent, two teachers, and Student were also obtained for the ER. Student's self-report reflected clinically significant concerns with test anxiety, and at-risk concerns with mania and functional impairment. The [redacted] parents and teachers did not identify any clinically significant areas of concern across all raters, but the teachers had some individually. One or both teachers had clinically significant concern with atypicality, withdrawal, and social skills; and at-risk concern with adaptability, functional communication, and leadership. One teacher had additional at-risk concerns in the areas of depression, attention problems, learning problems, and study skills. The [redacted] parent's scores did not identify any non-average range functioning on this instrument. (S-2 at 24-31.)
41. The District school psychologist primarily considered Student's eligibility for special education under the specific learning disability, emotional disturbance, intellectual disability, and other health impairment categories based on Student's known history and profile. (N.T. 57-58.)
42. The District school psychologist did not believe that Student could be eligible under the specific learning disability category because of

Student's limited formal education. Student was determined not to be eligible for special education in the ER because the document noted Student's lack of appropriate instruction in reading and mathematics as well as limited English language proficiency. All of these were considered to be determining factors. However, in the specific learning disability determination section, the ER states that Student's academic difficulties are a result of an Intellectual Disability. (N.T. 77-79; S-2 at 35, 38-40, 42-43.)

43. A meeting convened to review the ER after being rescheduled several times. The meeting did not conclude and the Guardians were not given the opportunity to ask questions. Although a second session was planned to continue that meeting, it did not occur. (N.T. 194-95, 295; P-14; P-15 at 1.)
44. The Guardians requested an Independent Educational Evaluation (IEE) in April 2024, through counsel, because they did not agree with the results of the District's ER in light of Student's ongoing difficulties at school. (N.T. 196, 295-96.)
45. In early 2024, the Guardians contacted DHS for a referral for a psychological evaluation. That psychologist became involved in the spring of 2024, and issued an opinion in July 2024 recommending that the impact of Student's emotional functioning be considered in determining special education eligibility. She did not conduct an evaluation of Student because she was not practicing at the time and also did not believe she had the experience to do so well. (N.T. 201, 345-48, 379-82; P-26.)
46. The Guardians first learned about Student's mental health diagnoses in approximately September 2024 upon receipt of a September 2022

report by a psychologist to whom Student was referred by the local Family Court. (N.T. 250; P-2.)

September 2022 Psychological Evaluation

47. Student was evaluated by the psychologist following the DHS referral to determine current functioning and any need for treatment. Student consented to the evaluation and to the release of the report to the Family Court, DHS, and others. (P-2 at 1.)
48. [redacted] was present for the 2022 Psychological Evaluation as noted in the Report (PER). (P-2 at 1.)
49. The psychologist conducting the PER described DHS records detailing Student's [redacted]. Because [redacted], DHS and other agencies became involved. (P-2 at 2-5.)
50. The PER included two mental health diagnoses: Unspecified Trauma and Stressor Related Disorder; and Unspecified Depressive Disorder. (P-2.)
51. The Guardians thereafter consulted with a certified school psychologist who reviewed Student's records and expressed concerns with the District's ER. At the time the hearing concluded, this psychologist was in the process of conducting an IEE.⁷ (N.T. 446-48; P-28.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof encompasses two discrete components: the burden of production and the burden of persuasion. 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

⁷ This witness was directed not to provide testimony on the ongoing IEE assessment since it had not yet been completed and its recommendations were not yet available for disclosure.

Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the District because it filed for this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is in “equipoise.” *Schaffer, supra*, 546 U.S. at 58. The District also accepted the burden of production.

Special education hearing officers, in the role of fact-finders, are also responsible for making credibility determinations of the witnesses who testify before them. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them; in the relatively few instances that minor discrepancies may have occurred, those must be attributed to differing perspectives or lack of recall, not intent to mislead. The weight accorded the evidence, however, was not equally placed; the documentary evidence specifically was quite probative and persuasive on the appropriateness of the District’s ER, as was the testimony of the District school psychologist and Guardians.

The findings of fact were made as necessary to resolve the issues; thus, 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’ concise yet thorough closing statements.

Basic IDEA Principles

The IDEA requires the 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); *see also* 34 C.F.R. § 300.8. “Specially designed instruction” is adapting the content, methodology, or delivery of instruction as appropriate to a child with a disability to meet educational needs and to provide for access to the general education curriculum. 34 C.F.R. § 300.39(b)(3). The process of identifying children who may be eligible for special education is generally through an evaluation by the local education agency (LEA).

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 parents⁸ 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 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). The IDEA provides an express rationale for these exclusions: a state must ensure that it maintains “policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401” (defining among other terms “child with a disability”). 20 U.S.C. 1412(a)(24).

⁸ There is no dispute that the Guardians qualify as “parents” for purposes of the IDEA.

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

The District's Complaint seeks to defend its January 2024 ER as fully in compliance with all IDEA mandates. The Guardians contend that the ER is deficient in a number of respects. This issue must be addressed based on the requisite components of an ER under the applicable law. Of import in this case is that the District did file a due process complaint shortly after the IEE request (HO-1; HO-2). It is also undisputable that the circumstances present in this case were quite complex and that the limited information on Student's history greatly impacted its evaluation process. Further, as the District accurately observes, its school psychologist was uniquely experienced and well-qualified to conduct the evaluation of Student.

The District's ER did utilize multiple assessment tools, strategies, and instruments, rather than any single measure, to gather information about Student. More specifically, the District conducted a record review including the OER and summarized those in the ER; interviewed Student and obtained a self-report on social/emotional functioning; incorporated brief parental input through one or more questionnaires that provided their views on Student's home environment and some difficulty with attention; and reported on input from teachers and an observation by its school psychologist.

A variety of different measures comprised the assessment portion of the ER. Cognitive functioning (including adaptive behavior) and academic

achievement, English language (vocabulary) acquisition, and social/emotional functioning were all conducted, with the latter through rating scales. The instruments chosen were technically sound, valid, and reliable for their purposes; were administered in accordance with publisher directions; and were provided in Student's [redacted] with steps taken to ensure that Student understood the tasks.

It is of course true that the District cannot be charged with knowledge that it did not possess or have reason to suspect, and specifically the report of the September 2022 psychological evaluation. However, at the time of the ER, several concerns by the Guardians, Student, and teachers had been raised that merited careful additional examination. Even setting aside for the moment the testimony and reports of the two psychologists who became involved with Student after the District's January 2024 ER, the record is more than preponderant that the evaluation was not sufficiently comprehensive in addressing those reported concerns, particularly in light of the very sparse information about Student's previous home and school experiences. Among the areas that required further consideration are Student's adaptive behavior functioning that was limited to the [redacted] parent because the teachers were unable to provide their perspectives, as contrasted with the previous teachers reporting deficits in that area; Student's reported anxiety; and teacher concerns in the clinically significant and at-risk ranges about social/emotional functioning that were similar to those from the prior OER.

Even more critically, and as aptly noted by the Guardians, the District school psychologist opined that Student could not be eligible for special education under any disability category because of the absence of adequate instruction and the very limited English language proficiency. Even considering his later qualification that some disabilities were possible when these factors were present, this testimony was not convincing that such was

the position of the team when making the eligibility determination for Student. Rather, the testimony suggests that the District viewed the words “determinant factor” as not part of the provisions for the exclusions. Furthermore, and not insignificantly, District failed to establish that the team including the Guardians made that determination as is required; indeed, the meeting to review the ER never reconvened to its conclusion.⁹

Based on all of the foregoing, it is unnecessary to go into detail on the opinions and recommendations of either psychologist who first became involved in 2024. The conclusions above are derived primarily from the explicit content of the ER as well as the testimony of the District school psychologist and the Guardians.

Having thus concluded that the District’s ER did not meet all requisite criteria in the IDEA, the Guardians are entitled to an IEE of Student at public expense. Because an IEE was already underway at the time this hearing concluded, the attached order will provide options for the parties in ensuring that this remedy is provided.

CONCLUSIONS OF LAW

The District’s ER of Student completed in January 2024 failed to comply with all IDEA requirements because it was not sufficiently comprehensive to identify all of Student’s relevant needs. The Guardians are therefore entitled to an IEE at public expense.

ORDER

AND NOW, this 9th day of December, 2024 in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

⁹ The unexplained inclusion of the Intellectual Disability category in the specific learning disability section serves to complicate the eligibility determination.

1. Within five (5) calendar days of the date of this Order, the District shall provide to the Guardians not less than three (3) qualified individuals reasonably within its geographic area to conduct an independent psychoeducational evaluation. Within five (5) calendar days of the date of receipt of those professionals, the Guardians shall provide notice to the District of the selected individual. In the event that the Guardians do not timely provide their selection, the District shall promptly choose the evaluator from the same list.
2. The chosen psychoeducational evaluator shall determine the scope of the IEE including all psychoeducational assessments and the involvement of any other necessary professionals for the IEE following review of the ER and the final report of the psychologist who is in the process of conducting an IEE.
3. If the psychologist currently conducting the IEE meets District criteria, the Guardians may elect to have that evaluation serve as the IEE at public expense.
4. The District shall share any and all available information about Student that is requested by the evaluator chosen to conduct the IEE.
5. Following completion of the ordered IEE and issuance of the report(s), which shall be provided as soon as practicable, the District shall convene a meeting with the Guardians and the independent psychologist to review the results. The participation by the independent psychologist at the meeting shall be at public expense.
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. 29928-23-24

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