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## **Pennsylvania Special Education Hearing Officer**

### **Final Decision and Order**

**ODR No. 27929-22-23**

#### **CLOSED HEARING**

**Child's Name:**

M.L.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parents**

[Pro se]

**Local Education Agency:**

West Chester Area School District  
782 Springdale Drive  
Exton, PA 19341

**Counsel for LEA**

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331 Butler Avenue  
New Britain, PA 18901

**Hearing Officer:**

James Gerl, CHO

**Date of Decision:**

July 14, 2023

# **DECISION**

## **DUE PROCESS HEARING**

27929-22-23

### **BACKGROUND**

The parents requested an independent educational evaluation of the student at public expense. The school district declined the request and then filed a due process complaint asserting that its evaluation of the student on February 22, 2023 was appropriate.

I find in favor of the parents on the issue raised by the instant due process complaint.

### **PROCEDURAL HISTORY**

The parties agreed to a large number of stipulations of fact, which reduced the amount of time necessary to complete the hearing. The parties stipulated to the admissibility of all exhibits, which also shortened the amount of time needed to complete the hearing. The hearing was completed in one efficient in-person hearing session. School district exhibits S-1 through S-10 were admitted into evidence, and parent exhibits P-1 through P-15 were admitted into evidence. Four witnesses testified at the due process hearing.

The parents were not represented by a lawyer in this matter.

After the hearing, counsel for the school district and the unrepresented parents each presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been

considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented herein. To the extent that the testimony of various witnesses is not in accordance with the findings stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

### **ISSUE PRESENTED**

Before the prehearing conference in this case, each party identified the issues, and at the prehearing conference, the issues were narrowed to a single issue:

Whether the school district has proven that its evaluation of the student on February 22, 2023 was appropriate and, therefore, that the parents are not entitled to an independent educational evaluation at public expense?

## **FINDINGS OF FACT**

Based upon the parties' stipulations of fact, the hearing officer makes the following findings of fact:

1. [redacted]
2. The student is a resident of the school district and is a [redacted] student at an elementary school in the district.
3. On December 14, 2022, the parents requested by e-mail that the district conduct an evaluation of the student.
4. The parents' concerns with written expression presented in the middle of Fall, 2022.
5. On December 19, 2022, the district issued a Notice of Recommended Educational Placement (hereafter sometimes referred to as "NOREP") denying the request to evaluate the student.
6. On December 21, 2022, the parents returned the NOREP disagreeing with the district's refusal to evaluate.
7. On December 22, 2022, the parents spoke with the district's school psychologist, who informed the parents that the district had reconsidered the evaluation decision and would issue a Permission to Evaluate (hereafter sometimes referred to as "PTE") after the winter break.
8. On January 5, 2023, the district issued a PTE, which the parents signed and returned on January 6, 2023.
9. The school district issued an Evaluation Report (hereinafter sometimes referred to as "ER") for the student on February 22, 2023. The ER contained assessments for cognitive, academic and social- emotional and behavioral functioning. One observation was completed in the classroom,

along with observation during the assessments. Parent and teacher feedback were also included.

10. The ER found that the student had a disability with mild executive functioning deficits with associated emotional dysregulation and anxiety, but that the student did not need specially designed instruction, and therefore was not eligible for special education.

11. The ER recommended that the student have a Section 504 service agreement.

12. The parents disagreed with the ER in an e-mail dated March 21, 2023, and requested an independent educational evaluation (hereafter sometimes referred to as "IEE") at public expense because they did not agree that the results of the ER were comprehensive enough to identify the student's unique needs.

13. On March 29, 2023, the district responded via e-mail to the parents, stating that the district did not agree to an IEE and proposed having another district-based psychologist complete an evaluation if the parents rescinded the IEE request. The district stated that if the parents did not rescind the request, the district would file for due process.

14. On March 29, 2023, the parents responded that since the student's inability to work on homework, inability to focus and school avoidance had progressed, they would not rescind the IEE request or agree to a second district evaluation.

15. A Section 504 service agreement for the student was developed at a meeting on April 11, 2023.

16. The school district filed a due process complaint on April 17, 2023 to defend the ER as appropriate.

17. The principal of the student's elementary school witnessed the student's school avoidance firsthand on September 17, 2022, December 2, 2022 and March 17, 2023. The principal was involved in trying to encourage the student to go into the school building on each of these three occasions.

18. The principal of the student's school attended the Section 504 meeting on April 11, 2023. In discussing accommodations, the student's mother stated how it's anyone's guess what will help the student and explained to those present how much difficulty the student was having with homework assignments and finishing incomplete work sent home. The principal confirmed that he understood the mother. The principal had not observed the student to be overwhelmed at the end of the school day, but in response to the mother's reported observations at home, the principal said that maybe the student can be so overwhelmed by the end of the school day that starting the homework is too overwhelming for the student.

19. On March 17, 2023, after the school counselor and the head teacher at the school spent an hour trying to encourage the student to come into the building from the mother's car, the principal came out and spoke to the student, encouraging the student to join school for the day. The principal set a three-minute timer and then discussed options with the student's mother. When the student continued to refuse to get out of the car, the principal then recommended that the student's mother take the student to a children's hospital emergency room.

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: <sup>1</sup>

20. [redacted] (S-2; NT 34-35)

21. The student has always been a bright child who loves school. The student's teacher described the student as a "model student." (NT 34, 198, 87-88)

22. Beginning in September 2022, the parents noticed anxiety and school avoidance in the student. The parents had never observed anxiety or school avoidance in the student before the [redacted] grade. (NT 198; P -12)

23. On September 16, 2022, the student did not want to get out of the student's mother's car when they arrived at school. The school counselor talked with the student's mother and others present regarding ways to get the student into the school building. After a while, the student went into the school building through an entrance other than the front door. (P-12; NT 171 – 172)

24. On December 2, 2022, the student missed the school bus. Upon arrival in the student's mother's car, the student did not want to get out of the car. The school counselor participated in trying to get the student to come into the school. One of the school's therapy dogs had come out of the building, and the student agreed to walk into the school building with the therapy dog. (P-1, P-12; NT 173)

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<sup>1</sup> (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT\_\_\_\_").

25. The student was absent five days between December 22, 2022 and March 23, 2023 and the student was tardy six times between September 2022 and March 2023 because of anxiety and school avoidance, causing the student to refuse or resist going to school. (S-2, S-9, P-12; NT 121-122)

26. The student has not exhibited problem behaviors in the classroom. The student works hard in class. (NT 34 – 36, 42)

27. For the first two marking periods of [redacted] grade, the student earned As in all subjects. (S-5; NT 50 – 51)

28. The student did not have difficulty with regard to writing in the classroom. The student's teacher was impressed with the amount of detail and description that the student used in the student's writing. (NT 40)

29. The school psychologist who conducted the evaluation administered the Wechsler Intelligence Scale for Children – 5th Edition (WISC V) for the cognitive assessment of the student. The assessment revealed that the student has a full-scale IQ score of 117, in the high average range. The subtests on the WISC V were all in the average to high average range. The school psychologist administered the Wechsler Individual Achievement Test – 4th Edition (WIAT 4) to assess the student's academic achievement. The results indicated that the student had well-developed academic ability in reading, writing, and math. (S-2)

30. For behavioral and social-emotional information, the evaluator administered the Behavioral Assessment System for Children (BASC 3), the Behavior Rating Inventory for Executive Functioning (BRIEF 2) and Connors Rating Scale (Connors 4<sup>th</sup> Edition) assessments. The parents' rating forms on the BRIEF 2 assessment revealed that the student had clinically elevated scores on the self-monitor scale and the shift scale which indicates that the



student may have marked difficulty monitoring behavior in social settings and adjusting to changes with flexibility. (S-2)

31. The evaluator recommended a Section 504 plan for the student, with accommodations and modifications to reduce anxiety and stress with respect to deadlines, such as advance notice of deadlines and writing prompts; scheduling a regular check-in for a few minutes for the student to meet with a teacher or counselor and process assignments; allowing the student to hand in all written assignments on an iPad or laptop instead of in handwriting; and strategies to address tardiness and absences that are not illness related. In addition, the evaluator noted that the student would benefit from learning coping skills and should meet with the school counselor to develop better emotional awareness. The evaluator also recommended that the student continue to interact with the in-school therapy dogs. (S-2)

32. The input from the student's classroom teacher for the evaluation mentions that there were a couple of instances where the student did not want to come to school and needed help to get into the building. There is no other mention or analysis of the student's school avoidance crisis incidents in the evaluation report. The school counselor who witnessed the three school avoidance crisis incidents involving the student did not provide any input into the evaluation. (S-2; NT 191; NT 46-49)

33. The district's school psychologist discussed the results of the evaluation with the parents on approximately March 1, 2023. At the request of the parents, the initial draft of the evaluation report was amended to include the information regarding tardies and absences because of the student's school avoidance anxiety. (S-2, S-9, P-12; NT 121 – 124, 210)

34. It is the practice of the school psychologist who conducted the evaluation to do observations of a student only after the evaluation is designed and the assessments have been conducted. The school psychologist became

aware of the student's school avoidance issues when the student was not present for class for the observation that the school psychologist had scheduled because the student was absent due to school avoidance. School avoidance was not something that school staff had discussed with the school psychologist before the evaluation was designed and the assessments were conducted. (NT 121 – 122)

35. On March 17, 2023, the student was curled up in the back of the student's mother's car after they had arrived at school. The student's mother could not persuade the student to come into the school building, and the student had wrapped the student up in a seatbelt. The school counselor and head teacher spent about an hour trying to convince the student to come into the school building. School staff eventually suggested that given the crisis, the student's mother should take the student to a children's hospital. The mother took the student to the hospital. The hospital staff did not evaluate, admit or treat the student. (NT 173 – 177; P-6, P-12)

36. On March 23, 2023, the student's mother called the student's pediatrician. The pediatrician advised the mother that the student needed to get enrolled in therapy. The student has had one appointment with a Teledoc therapist in April 2023. (P-12; NT 212-214)

37. On April 19, 2023, the school district mailed the student's parents a truancy notice. The school district sent the parents two additional truancy letters between April 19, 2023 and May 1, 2023. (P-6, P-12)

38. On May 16, 2023, the student's pediatrician wrote a note stating that the student was experiencing significant anxiety. The note stated that the student's parents and doctor were working to obtain appropriate treatment. The note requests any accommodations that the school can offer for the student. (P-15; NT 212-214)

## **CONCLUSIONS OF LAW**

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); PP by Michael P and Rita P v. West Chester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, the school district must either pay for the evaluation or else request a due process hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2); JH v West Chester Area School District, 121 LRP 13514 (SEA Penna 2019); 22 Pa. Code § 14-102(a)(2)(xxix).

2. In conducting an evaluation, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or related service provider, and on that basis determine whether any additional data are needed to determine whether the student is eligible, as well as to identify the child's special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist,

66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

3. The school district has not met its burden of proving that its February 22, 2023 evaluation was appropriate, and therefore, the parents are entitled to the requested independent educational evaluation at public expense.

### **DISCUSSION**

**Has the school district proven that the school district's evaluation of the student was appropriate and, therefore, that the parents are not entitled to an independent educational evaluation at public expense?**

The parents contend that the school district evaluation was not sufficiently comprehensive and did not identify all of the student's disability related needs and, therefore, they requested an independent educational evaluation at public expense. The school district contends that its evaluation was appropriate and that the request for an independent educational evaluation at public expense should be denied.

The school district has not met its burden of proving that the February 22, 2023 evaluation of the student was comprehensive and that the evaluation assessed the student in all areas related to the suspected disability. The district school psychologist who conducted the evaluation did not become aware of the student's problem with school avoidance anxiety until after the evaluator had already designed the evaluation and conducted the assessments. The school psychologist testified that it is her practice to conduct observations of a student only after conducting assessments. The

evaluator learned of the student's problem with school avoidance only because the student was not physically present in school on the date that the evaluator had scheduled an observation of the student. The school psychologist did not design the evaluation to analyze or assess the student's school avoidance issues. The methodology of the evaluation, therefore, was fatally flawed. Accordingly, it is concluded that the school district's evaluation was not comprehensive and did not assess the student in all areas related to the suspected disability.

Moreover, the evaluator did not obtain any input for the evaluation from the school counselor who assisted the parents and other school officials during the school avoidance crisis incidents in which the student would not get out of the parents' vehicle in order to attend school. Two of three such crisis incidents occurred before the evaluation had been conducted. These two significant crisis incidents of school avoidance were not analyzed in the evaluation report. Indeed, the evaluation report does not address the two crisis incidents that occurred before the evaluation with the exception of a brief mention in the section containing input provided by the student's classroom teacher. The failure to properly consider and analyze the two crisis incidents of extreme school avoidance anxiety that occurred in the school parking lot indicates that the evaluation was not comprehensive and that the evaluation did not assess the student in all areas related to the suspected disability.

Moreover, the initial draft of the evaluation report did not even mention the student's large number of absences and tardies caused by school avoidance anxiety. It was only after the evaluator met with the student's parents and they requested that the report be amended to include this information concerning the school avoidance anxiety absences and tardies

that the information was included in the evaluation report. It is clear that the evaluation did not appropriately consider or analyze the student's school avoidance anxiety.

The testimony of the parent was more credible and persuasive than the testimony of the school district witnesses because of the demeanor of the witnesses, as well as the following factors: the district's school psychologist was somewhat evasive in answering the questions asked by the parents at the hearing. Also, it is uncontested that just two days after filing the due process complaint and a week after developing a Section 504 plan for the student, the school district began sending letters to the parents initiating the truancy process against the student. It is very troubling that the school district initiated the truancy process despite having just filed the pending due process complaint that raises issues concerning the student's school avoidance anxiety issues. The initiation of the truancy process while the district had notice that the absences and tardies in question may have been caused by disability-related school avoidance anxiety, an issue underlying the pending due process proceeding filed by the school district, severely impairs the credibility of the district witnesses regarding the appropriateness of its evaluation of this student.

It should be noted that the parents, in their post-hearing brief, also argue that the school district evaluation is wrong because they believe that the student has a specific learning disability with respect to writing. It is not necessary to reach this issue, however, because the school district has not proven that its evaluation of the student was comprehensive or that it assessed the student in all areas related to the suspected disability. See discussion above. If it were necessary to reach this argument, however, the record evidence does not support the parents' contention. The argument

would have been rejected if it were necessary to reach it in order to resolve this complaint.

It is concluded that the school district has not proven that its February 22, 2023 evaluation of the student was appropriate. Accordingly, the parents are entitled to the requested independent educational evaluation at public expense.

### **ORDER**

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. The school district shall provide the independent educational evaluation requested by the parents at public expense on or before September 1, 2023.
2. The parties may adjust or amend the terms of this Order by mutual written agreement signed by all parties and any counsel of record.

IT IS SO ORDERED.

ENTERED: July 14, 2023

*James Gerl*

James Gerl, CHO  
Hearing Officer