

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. 28911-23-24

Child's Name:

H.M.

Date of Birth:

[redacted]

Parent

[redacted]

Counsel for Parent

Pro Se

Local Education Agency

Hazleton Area School District

Jeffrey Weed

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Hearing Officer:

Charles W. Jelley Esq.

Decision Date:

April 5, 2024

Background

The District filed a due process complaint seeking to override the Parents' refusal to allow the District to complete an Individuals with Disabilities Education Act (IDEA) reevaluation of the Student's educational needs.¹ In December 2023, the District filed a due process complaint asking this hearing officer to override the Parents' refusal to consent to reevaluate the Student's unique needs. After the hearing was scheduled, the Parents consented to the reevaluation. Since then, the Parents have not allowed the District to complete the reevaluation. For all the following reasons, I conclude that the Parents' actions and inactions, described herein, are tantamount to *de facto* revocation of the consent to reevaluate. After carefully reviewing the evidence, I next conclude that the District has proven that it has made reasonable efforts to obtain consent. I further find that the reevaluation is necessary and will assist the team, including the Parents, in designing an appropriate personalized program of instruction. The Parent's refusal to consent to the reevaluation is overridden. Therefore, the District should now complete a comprehensive evaluation of the Student in all areas of suspected disability within 60 days.

Procedural History

All parties received written notice of the hearing date, location, and time. A one-session in-person hearing was conducted at the District's administration

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 CFR § 300.513(d)(2). The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. References to duplicative exhibits are not necessarily to all.

building on March 26, 2024. As the moving party, the District was prepared to present testimony from multiple witnesses. When the Parents did not arrive at the hearing, the District scaled back its case and presented testimony from the District's psychologist. School District Exhibit # 6 is a twenty-one (21) page home and school communication log documenting attempts to schedule the reevaluation and progress monitoring checks.²

Issue presented

Has the District proven that it should be permitted to reevaluate the Student despite the Parents' refusal to consent to the reevaluation? If the answer is yes, should the hearing officer override the Parents' refusal to consent?

Findings of Fact

1. In 2017, the District completed a comprehensive evaluation in all areas of suspected disability. After reviewing the 2017 evaluation, the Parties agreed that the Student should be identified as an IDEA-eligible person with a specific learning disability. (S-4).
2. The 2017 evaluation included ability and achievement testing along with measures of speech and language development, fine motor skills, and social, emotional, and behavioral development measures. (S-4). The Student earned a full-scale IQ score of 75 in the "Very Low" range at the 5th percentile. The Student's achievement scores also fell in the "Low" to "Average" range. (S-4 pp.3-6). The 2017 evaluation report noted that the Student needed specially designed instruction in

² Following my standard practice when the Parents did not arrive at the hearing I called the number on file. After the phone rang several time the call went to voice mail. I left a message asking the Parents to contact me about their intention to participate. Absent a request to continue I proceeded with taking testimony. As the hearing was about to begin the District's solicitor informed the hearing officer that she was received a message that they Student would not attend school on the day of the hearing.

reading, math, and written expression support. The report also included recommendations for occupational and speech therapy services. (S-4 p.2).

3. The District then offered, and the Parents agreed to a proposed individual education program (IEP). (NT *passim*).
4. In 2019, the District offered, and the Parents consented to, a record review-only reevaluation. The 2019 reevaluation report included a review of the existing data, teacher input, parental input, and classroom observations. The 2019 report did not include any updated standardized testing. After the District issued the reevaluation report, the Parties met and developed another IEP. The record indicates that the team, including the Parents, decided that the Student no longer required the Speech and Occupational Therapy goal statements. (S-2 p.2). At the same time, the IEP team concluded that the Student continued to need specially designed reading, math, and writing support. The District offered an IEP with reading, math, and writing support, and the Parents otherwise agreed. (S-2 p.2).
5. The Student currently attends the District Cyber Academy at the Parents' request. For the most part, the Student regularly attends Cyber School. (S-1).
6. In November 2023, the District sent the Parents Prior Written Notice requesting Parental Consent for a Reevaluation. The Notice states that the District offered to reevaluate the Student's ability, achievement, behavioral, emotional, social, and executive functioning needs. The record indicates that the Parents had not responded to four (4) earlier requests for consent. (S-5).
7. In December 2023, the District filed a due process complaint seeking hearing officer permission to reevaluate the Student's needs. (S-1).

8. In December 2023, the cyber school staff administered the online version of the Diagnostic Reading Assessment. The data indicates that although the Student is in [redacted] Grade, the Student's reading scores fell at the 5th-grade level. The December 2023 classroom testing also included the online version of the Adaptive Diagnostic Assessment of Mathematics. The Student's Math skills fell at the 3rd-grade level (S-7, p.18).
9. The Student's December 2023 [redacted] Grade report card indicates that the Student is earning a grade of 100% in English, Foundations of Algebra, Science, Social Studies, Art, Music, and Physical Education. (S-7 p.17). IEP progress monitoring data collection is sporadic as the Student does not attend regularly scheduled progress monitoring checks. (S-7 p.11; S-8).
10. The Student's December 2023 IEP indicates that the Student is in regular education 100 % of the school day. (S-9 p.34).
11. On or about January 10, 2024, the Parents a Prior Written Notice consenting to the District's request to conduct ability, achievement, social, behavioral, emotional, and executive functioning assessments. (S-6, p.4). Upon receipt of the signed consent, the District withdrew the December 2023 request for a due process hearing (NT *passim*).
12. On February 12, 2024, the District asked, and the hearing officer reinstated the due process complaint when the Student failed to attend any of the scheduled testing sessions. (NT *passim*).
13. On or about March 9, 2024, after the Student did not attend any of the scheduled testing sessions, the District prepared another record review reevaluation report. (S-7). After reviewing the 2024 reevaluation report, several team members again requested that the District collect additional standardized testing data. (S-7).

14. On March 13, 2024, the Parents brought the Student in for a scheduled testing session; however, before the testing could start, the Mother told the staff that they had a "Family Emergency" and left the session. (S-5 p.1).
15. On March 17, 2024, the psychologist offered to test the Student on March 22, 2023. The Parents did not respond to the offer. (S-5 p.1; NT pp.44-48).

Conclusions of Law

Based upon all of the evidence in the record, as well as my independent legal research, I make the following Conclusions of Law:

1. A school district must reevaluate each child with a disability at least once every three years unless the Parent and the public agency agree that a reevaluation is unnecessary. 20 U.S.C. § 1414(a)(2)(B)(ii); 34 CFR § 300.303(b)(2).
2. If a parent refuses to consent to a reevaluation, a public agency may, but is not required to, pursue the reevaluation by using the consent override procedures, including filing a due process complaint. 34 CFR § 300.300(c)(ii); *Questions and Answers on IEPs, Evaluations, and Reevaluations*, 111 LRP 63332 (OSERS 2011) (Question D-4).
3. In conducting an evaluation, a local education agency 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 per the test maker's instructions. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting a reevaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher

or related service providers, 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 service needs. The District's Prior Written Notice here satisfied all applicable reevaluation notice requirements. *Perrin ex rel JP v Warrior Run School Dist*, 66 IDELR 254 (M. D. Penna. 2015); 20 U.C.S. § 1414; 34 CFR § 300.301, §§ 300.304 - 300.305; 22 Pa. Code § 14.123.

4. A school district that files a due process complaint to override a parent's refusal to provide consent will be permitted to conduct the reevaluation where it proves that the reevaluation is necessary to determine the Student's needs and weaknesses to design an appropriate program or determine continuing eligibility. Understanding this Student's profile, [redacted], I agree with the evaluation team and now find it necessary to reevaluate the Student's strengths, weaknesses, and circumstances. *Plum Borough Sch. Dist*, 111 LRP 56978 (SEA PA 2011); *Cumberland Valley School Dist*, 117 LRP 39108 (SEA PA 2017).
5. The record is preponderant that the Student's IDEA eligibility and the continuing need for specially designed must now be reassessed. 34 CFR §300.303 (a), 34 CFR §300.304 through 34 CFR §300.311.
6. The District has proven that the proposed reevaluation is reasonable and needed to determine the Student's needs, strengths, and deficits. 34 CFR §300.43; 34 CFR 300.305 (a)(2).
7. The record is preponderant that the District has made reasonable efforts to obtain the Parents' consent. (S-6).

Discussion

The record is preponderant that the District made multiple attempts to schedule the reevaluation at a mutually convenient time, yet nothing

seemed to satisfy the Parents. Without a reevaluation that complies with 20 U.S.C. § 1414, it is impossible to determine what type of special education is appropriate for the Student. In the instant case, the school district has proven that the proposed ability, achievement, social, behavioral, and executive functioning skill assessments listed in the prior written notice are otherwise necessary. A comprehensive assessment is necessary to determine whether and how the Student's disability impacts the Student's functional life skills, academics, transition from school to work interests, emotional, social, and executive functioning skills, and abilities. A variety of standardized assessments will provide the IEP team, including the Parents, with essential data about the Student's needs, interests, and circumstances. Second, the proposed assessments are regularly used, reasonable in scope, and would be conducted by persons qualified to administer such assessments. Accordingly, the District is directed to move forward and complete a comprehensive evaluation in all areas of suspected disability. 34 CFR §300.300(a)(3)(i), 34 CFR §300.502(d), and 22 PA Code §14.102(a)(2)(xxix).

Order

Based on the entire record, the District's request to conduct the proposed reevaluation of the Student without the Parents' consent is Granted. **IT IS SO ORDERED.**

April 5, 2024

s/ Charles W. Jelley, Esq. LL.M.

HEARING OFFICER
ODR FILE #28911-23-24