

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. 31875-25-26

Child's Name:

L.O.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Boyertown Area School District
911 Montgomery Avenue
Boyertown, PA 19512

Counsel for the LEA:

Shannon Pierce, Esq.
Fox Rothschild
980 Jolly Road
Blue Bell, PA 19422

Hearing Officer:

James Gerl, CHO

Date of Decision:

December 30, 2025

BACKGROUND

The parent requested an independent educational evaluation at public expense. The school district filed a due process complaint contesting the parent's right to an independent educational evaluation at public expense. I find in favor of the school district on this issue.

PROCEDURAL HISTORY

The student's parent did not appear at the due process hearing, submit any evidence or argument, and the parent did not otherwise participate in the pre-hearing phase of this case. An in-person due process hearing session was convened for this matter.

When the parent did not appear at the hearing, I attempted to telephone the parent to ensure that he knew that the hearing was proceeding. I left a voicemail message stating that the hearing was about to begin. After waiting a reasonable period of time, I then convened the hearing without the parent being present.

Two witnesses testified at the due process hearing. School district exhibits S1 to S10 were admitted into evidence. The parent presented no witnesses or exhibits at the due process hearing. Because the parent did not participate in the hearing, at the close of the hearing, I ordered the school district to file a written post-hearing brief and permitted, but did not require, the unrepresented parent to submit a post-hearing brief. Counsel for the school district submitted a post-hearing brief.

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. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Because the parent did not appear at the hearing, my written decision will be sent to the parent by both U.S. mail and by e-mail.

To the extent possible, 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

The due process complaint in this matter presents the following issue:

Whether the school district has proven that the parent is not entitled to an independent educational evaluation at public expense?

FINDINGS OF FACT

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

¹ (Exhibits shall hereafter be referred to as "S-1," etc. for the school's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

1. The student's date of birth is [redacted]. (S-3)
2. The student is a [redacted] grade general education student in the school district. The student has never been evaluated under IDEA or Section 504. (S-2; NT 44)
3. On approximately August 21, 2025, the student's father e-mailed the school district requesting an independent educational evaluation at public expense because he disagreed with the school district's most recent evaluation and suspected the student of having a learning disability.
4. The school district sent an e-mail to the parent noting that an independent educational evaluation would not be appropriate because the student had not been identified as eligible for special education, but the school district offered to perform an evaluation of the student instead. The school district sent a Permission to Evaluation form to the parent on approximately September 19, 2025. (S-4, S-5; NT 53 - 54)
5. On approximately September 25, 2025, the school district issued a Notice of Recommended Educational Placement denying the parent's request for an independent educational evaluation at public expense. (S-7, S-8)
6. The parent never responded to the Permission to Evaluate issued by the school district. (NT 55 - 56, 58)
7. The parent and the student's teachers have never requested that the school district evaluate the student for special education services. Prior to requesting an independent educational evaluation, the parent did not raise any concerns with the school district concerning the student's performance in school or any suspected disability. (NT 43 - 46)
8. The student's father filed independent educational evaluation requests for this student and [redacted] of the student's siblings after

becoming upset that the school district had permitted a representative of [redacted] to interview the student's sibling. (NT 58 – 61)

9. The student is making good progress academically and is progressing on grade level. The student's teachers have not raised behavioral concerns about the student. (S-1, S-2; NT 44 – 49, 54 – 58)

10. The school district filed a due process complaint on approximately September 18, 2025 to contest the parent's right to an independent educational evaluation at public expense. (S-10)

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. A parent or a local education agency may file a due process complaint alleging one or more of the following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. 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, without unnecessary delay, 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). The IDEA regulations contemplate that a school district will get the first crack at evaluating the student. PP ex rel. Michael P and Rita P v. Westchester Area School District, 585 F.3d 727, 740 (3d Cir. 2009); see D.Z. v. Bethlehem Area School District, 2 A.3d 712, 54 IDELR 323 (Pa. Comm. Ct. 2010); School District of Philadelphia, 74 IDELR 27 (SEA Penna 2019); 34 C.F.R. § 300.502(b)(1).

3. 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.

4. The school district has proven that the parent is not entitled to an independent educational evaluation at public expense.

DISCUSSION

Whether the school district has proven that the parent is not entitled to an independent educational evaluation at public expense?

The parent has requested an independent educational evaluation at public expense. The school district filed a due process complaint contesting the parent's right to an independent educational evaluation at public expense. Unfortunately, the parent did not appear at the hearing or participate in the prehearing preparations for this matter. Because the school district has the burden of persuasion, the hearing proceeded even though the parent did not appear.

The school district has proven that the parent is not entitled to an independent educational evaluation at public expense.

This case is unusual in that the student is a regular education student who has never been evaluated for special education. Indeed, there has been no request by the parent or by school district staff that the student be evaluated for special education. Because the student is a general education student and because there is no evidence to support that the student may be eligible for special education, the provisions of IDEA concerning independent educational evaluations do not apply. Accordingly, there is no legal basis under the special education laws for the parent's request for an independent educational evaluation at public expense, and the request is rejected.

Moreover, even assuming *arguendo* that the provisions of the special education laws apply to this request for an independent educational evaluation, no IEE would be appropriate here because there has been no

previous initial evaluation or reevaluation with which the parent disagrees. The case law is clear that the school district should get the first crack at evaluating the student. Even assuming that there were some basis for conducting a special education evaluation of the student, therefore, it would be inappropriate to award an IEE at public expense where the school district has not had the opportunity to conduct the first evaluation. Indeed, there is no basis in the record evidence to conclude that an initial evaluation of the student would be appropriate. There is no evidence that the student has demonstrated a suspected disability or any other concerns regarding the student's educational performance or behaviors. It is clear that the school district has established that the parent is not entitled to an independent educational evaluation at public expense.

It should be noted, however, that in its post-hearing brief, the school district cites an unpublished decision by the Third Circuit Court of Appeals in support of its argument. The Third Circuit has made it very clear to lower courts and hearing officers that they should not rely upon unpublished decisions by the Courts. DF by AC v. Collingswood Borough Bd. of Educ., 694 F. 3d 488, 59 IDELR 211 (3d Cir. 2012). Accordingly, the unpublished Third Circuit decision cited by the school district in its brief has not been considered in reaching this decision.

A credibility analysis is not necessary because the parent presented no witnesses at the hearing. To the extent that the school district staff testified, their testimony was credible and persuasive.

It is concluded that the school district has sustained its burden and that the parent is not entitled to an independent educational evaluation at public expense.

ORDER

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

1. The school district complaint is sustained; and
2. The school district is not required to provide an independent educational evaluation to the parent at public expense.

IT IS SO ORDERED.

ENTERED: December 30, 2025

James Gerl

James Gerl, CHO
Hearing Officer