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

OPEN HEARING

ODR No.30627-24-25

Child's Name:
K.P.

Date of Birth:
[redacted]

Parent:
[redacted]

Local Education Agency:
Philadelphia City School District
440 N. Broad Street
Philadelphia, PA 19130

Counsel for the LEA
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Hearing Officer:
James Gerl, CHO

Date of Decision:
March 14, 2025

BACKGROUND

The parent filed a due process complaint alleging that the school district unduly delayed a special education evaluation for the student and that the school district's evaluation was not appropriate. The school district contends that it did not unduly delay the evaluation, that the evaluation was appropriate and, in any event, was not due by the date of the due process hearing. The school district argues further that because the student is now enrolled in a charter school, the school district is no longer the student's local education agency and therefore should not be required to provide any relief if a violation occurred. I find in favor of the parent with regard to the issues of undue delay in the evaluation process and of the district as the correct local education agency. I find in favor of the school district with regard to the appropriateness of the evaluation insofar as it has been conducted to date.

PROCEDURAL HISTORY

The parties failed to agree to any stipulations of fact. The failure to stipulate to facts that both parties clearly agree to unnecessarily protracted and delayed the hearing and the decisional process.

The hearing was conducted in one in-person hearing session. Three witnesses testified at the due process hearing. Parent exhibits P-1 through P-3 and P-10 through P-16 were admitted into evidence at the hearing. The parent withdrew exhibits P-4 through P-9. School district exhibits S-1 through S-16 were admitted into evidence.

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

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).

ISSUES PRESENTED

At the prehearing conference, a number of issues that were raised by the parent's complaint were eliminated by agreement of the parties because the hearing officer did not have jurisdiction over such issues. For example, one issue raised in the complaint that was withdrawn alleged negligence by the school district. After the other issues were withdrawn, the following three issues are presented by the due process complaint:

1. Whether the parent has proven that the school district unduly delayed the process of evaluating the student for special education?

2. Whether evaluation conducted by the school district was appropriate?

3. Whether the school district is responsible for relief to the parent if the parent prevails given that the parent has enrolled the student in a charter school which is now the student's local education agency?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact: [1]

1. The student's date of birth is [redacted]. (P-13; S-10, S-12)

2. The student is very helpful to the student's mother and the student is good with electronics. (NT 70 – 71)

3. For the 2023 – 2024 school year, the student attended school in [redacted], most recently at a cyber charter school. (NT 51 – 54)

4. While in [redacted], the student received counseling services in school and separately received therapy outside of school that was organized by the student's [redacted]. The private [redacted]therapy agency diagnosed the student as having adjustment disorders and disruptive impulse control. (P-13; NT 41 – 43, 56-57)

5. The student enrolled in the school district for [redacted] grade and attended from August of 2024 through January of 2025. (S-10; NT 51)

6. On September 30, 2024, the student's mother made an oral request to the school climate manager for the student to receive a special education evaluation. (NT 71 – 76, 40-41; P-10)

[1] (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___").

7. While enrolled at the school district for the 2024-2025 school year, the student had 36 unauthorized absences. (S-10; S-15; NT 54-55)

8. The student had numerous fights with other students and with nonstudents during the student's time in the school district during the 2024 – 2025 school year. The student also had had a number of fights while in [redacted]during the 2023 – 2024 school year before the student changed to the virtual school. (NT 45 – 48, 53 – 54, 73-75; S-3, P-11)

9. On November 6, 2024, the parent made a written request to the school district climate manager for a special education evaluation of the student. (S-2; NT 63-64)

10. The student stopped coming to school on November 12, 2024 after a fight on a day when the student was either absent from school or cutting class. The student has not returned to school in the school district since that date. (NT 54-56; P-11)

11. The school district issued a Permission to Evaluate form on December 5, 2024. The parent refused to sign the Permission to Evaluate because the parent believed that the document had been backdated. (S-4, S-5; P-16; NT 78 – 79)

12. The school district's school psychologist telephoned the parent on December 10, 2024, and the parent explained that she had refused to sign the form because she believed that the form had been backdated. (S-5; NT 87-88, 78-79)

13. The school district issued another Permission to Evaluate form on December 11, 2024. The parent signed the Permission to Evaluate form, approving it on December 13, 2024. The Permission to Evaluate form added assessment of behaviors to the evaluation because of parent concerns about the student's behaviors. (S-7; NT 87 – 89, 78-79)

14. The school principal e-mailed the parent on December 16, 2024. The principal offered options to the parent, including a possible transfer to another school in the school district. (S-15)

15. On approximately January 6, 2025, the parent enrolled the student in a cyber charter school and the school district is no longer the student's local education agency. (S-16; NT 69)

16. On January 10, 2025, the parent corresponded with the district's school psychologist to provide medical records of the student from [redacted]and to arrange the testing of the student for the evaluation. The school psychologist agreed to conduct the testing for the evaluation at the school district's central office but noted that he would also like to observe the student in multiple settings. The testing of the student began on January 13, 2025. The assessments were reliable and valid, and they assessed the student in all areas of suspected disability. The evaluator was qualified to administer the assessments. (S-15; P-15; NT 89 – 91, 82-107)

17. Based upon the limited information available, including a lack of any classroom observations of the student, the school district school psychologist could not conclude whether the student was eligible for special education. (NT 100)

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 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. A school district must obtain informed parental consent prior to conducting an evaluation of a child with a disability. 34 C.F.R. § 300.300(c)(1)(i).

3. "Consent," for purposes of IDEA, means that the parent has been informed of all relevant information, and that the parent understands and agrees in writing to the activity and that the parent understands that the granting of consent is voluntary. 34 C.F.R. § 300.9.

4. Parents may request an evaluation at any time and the request must be in writing. The school entity shall make Permission to Evaluate forms readily available for that purpose. If a request is made orally to any professional employee or administrator of a school entity, the individual shall provide a copy of the Permission to Evaluate form to the parents within 10 calendar days of the oral request. 22 Pa. Code § 14.123(c) The evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301(c)(1); 22 Pa. Code § 14.123(b)

5. 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.

6. IDEA requires that a parent of a student with a disability be afforded meaningful participation in the evaluation and IEP processes and in the education of the student. DS & AS ex rel DS v. Bayonne Bd of Educ, 602 F.3d 553, 54 IDELR 141 (3d Cir 4/22/10); Fuhrmann ex rel Fuhrmann v. East Hanover Bd. of Educ., 993 F.2d 1031, 1036, 19 IDELR 1065 (3d Cir. 1993); MP by VC v Parkland Sch Dist, 79 IDELR 126 (ED Penna 2021); 34 C.F.R. § 300.501. See, Deal v. Hamilton County Bd of Educ, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd of Educ, 48 IDELR 159 (S.D. WVa. 2007).

7. The fact that a student is subsequently enrolled in a different local education agency does not deprive parents of the right to seek relief against a previous local education agency for a violation of IDEA. LRL by Lomax v. District of Columbia, 59 IDELR 273 (D.D.C. 2012). See, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005); Ferren C v. Sch. Dist., 612 F. 3d 712, 54 IDELR 274 (3d Cir. 2010).

8. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010); School District of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna.

2015); Stapleton v. Penns Valley Area School District, 71 IDELR 87 (N.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010). See, Branham v. District of Columbia, 427 F.3d 7; 44 IDELR 149 (D.C. Cir. 2005).

9. The parent has proven that the school district unduly and wrongfully delayed the evaluation process for the student.

10. The parent has not proven that the school district's evaluation of the student was inappropriate.

DISCUSSION

I. Merits

1. Whether the parent has proven the school district violated IDEA by delaying the evaluation process for the student?

The parent contends that the school district wrongfully delayed the special education evaluation of the student. The school district contends that its actions were consistent with IDEA.

The evidence in the record supports the parent's position concerning this issue. The parent testified that she made an oral request to the school climate manager for a special education evaluation for the student on September 30, 2024. In its posthearing brief, the school district contests this

fact. The testimony of the student supports the parent's testimony. No evidence in the record supports the denial of this fact by the school district. Thus, the uncontroverted evidence in the record supports the parent's assertion that she made an oral request for a special education evaluation of the student on September 30, 2024. Accordingly, under Pennsylvania law, the parent should have received a Permission to Evaluate form on or before October 10, 2024. The school district did not issue a Permission to Evaluate form until December 5, 2024. The long delay by the school district in issuing the consent form is unreasonable.

By failing to issue a Permission to Evaluate form for nearly two months after the parent requested a special education evaluation, the school district violated the special education laws. Also, by failing to begin the evaluation process of the student on a timely basis, the school district denied the parent meaningful participation in the process. Moreover, the school district's action in simply ignoring the request for a special education evaluation clearly had a deleterious impact upon the relationship of the parties. The unreasonable delay is not acceptable.

It is acknowledged that the parent can be difficult to work with. A few examples include the following: the parent was late in arriving at the due process hearing. The parent also refused to mark exhibits and upload them to the Dropbox folders, as instructed at the prehearing conference. Moreover, in the parent's post-hearing brief and during the hearing, the parent contended unreasonably that the student should not be marked absent when the student cuts classes.

Regardless of whether or not the parent is difficult to work with, however, the school district cannot simply disregard the requirements of the

special education laws. The school district cannot simply ignore a parent's request for a special education evaluation.

The facts concerning this issue are not in dispute. To the extent that a credibility determination is necessary, however, the testimony of the parent and the student is more credible than the testimony of school district witnesses concerning this issue. This conclusion is based upon the demeanor of the witnesses and the lack of contradictory testimony or documentary evidence. It should be noted further that the climate control manager to whom the parent made the oral request for a special education evaluation on September 30, 2024 was present at the due process hearing but did not testify. The school district had the opportunity to contest this fact but elected not to do so.

It is concluded that the school district unduly and unreasonably delayed the evaluation process for the student and thereby denied the parent the opportunity for meaningful participation, in violation of the special education laws.

2. Whether the parent has proven that the school district's evaluation of the student was inappropriate?

The parent contends that the school district's evaluation was inappropriate. The school district contends that because the evaluation was not due by the date of the due process hearing, it was not complete.

The record evidence supports the position of the school district on this issue. Because the parent had not provided written consent until December 13, 2024, the school district's evaluation was technically not yet due by the date of the due process hearing. The matter was complicated further by virtue

of the fact that the parent had removed the student from enrollment in the school district and that the school district evaluator was unable to make classroom observations of the student.

The parent's contention that the evaluation is inappropriate appears to be based upon the parent's general distrust of and dislike of the school district. The parent does not point to any specific reason why she feels that the evaluation is not appropriate.

The school district provided testimony by its school psychologist concerning the assessments that were administered to the student as part of the evaluation process. The assessments were reliable and valid, and they would assess the student in all areas of suspected disability. The evaluator was qualified to administer the assessments. The evaluation was comprehensive. It is noted that the school district did not provide any written documentary evidence to support the testimony of the school psychologist regarding the assessment results, but there is no contradictory evidence in the record, and it is concluded that to the extent that it has been completed, the school district evaluation of the student was appropriate.

The credibility of the school district school psychologist is more credible and persuasive than the testimony of the parent with regard to this issue. This conclusion is made because of the demeanor of the witnesses and the lack of contradictory evidence.

It is concluded that, to the extent that the evaluation had been completed, it was appropriate.

3. Whether the school district may be found to be responsible for relief if the parent prevails given that the

parent has enrolled the student in a charter school which is now the student's local education agency?

The school district asserts as a defense that even in the event that it violated IDEA, it cannot be responsible for relief to the student or parent because the parent disenrolled the student and placed the student in a charter school that then replaced the school district as the student's local education agency. The school district argues that the successor LEA should be responsible for completing the evaluation or other relief.

The school district's argument in this regard is inconsistent with case law. It is rudimentary that if a local education agency violates the special education laws, that local education agency, and not a successor local education agency, is responsible for providing the relief that is awarded because of the violation. The equities and general principles of fairness also favor a conclusion that the local education agency that violates the law should be the LEA responsible for providing the relief.

In this case, the school district unduly and unreasonably delayed the evaluation process after the parent made an oral request for a special education evaluation, thereby denying the parent meaningful participation in the evaluation process. The delay by the school district is the problem. Accordingly, it is the school district, and not the charter school to which the student was subsequently enrolled, that is responsible for providing the relief awarded in this case.

To the extent that credibility is relevant to this issue, the testimony of the parent and the student is more credible and persuasive than the testimony of the school district. See the credibility discussion for issue number 1 above.

II. Relief

The parent has proven that the school district violated IDEA by unduly and unreasonably delaying the evaluation process and seriously impairing the parent's right to meaningful participation. Because the violation by the school district significantly impaired the relationship between the school district and the parent, and because the violation seriously impaired the parent's right to meaningful participation in the process, the appropriate relief is that the school district be ordered to fund an independent educational evaluation of the student.

It is true that generally the local education agency gets the first chance to complete an evaluation of a student before the parent may receive an independent educational evaluation at public expense. In this case, however, the cavalier disregard by the school district of the parent's evaluation request warrants this relief. Although the sixty-day period from the receipt of consent had not yet run by the time of the hearing and the district's evaluation had not yet been completed, the timeframe was elongated by the wrongful action of the school district in ignoring the parent's oral request for an evaluation. It would not be fair to reward the school district for dragging its feet rather than complying with the law. The school district's unlawful failure to act resulted in the delayed due date for the evaluation. Given the significant impairment of the parent's right to meaningful participation, merely ordering the school district to complete the evaluation would not be an adequate remedy. Instead, to make the parent and student whole, the appropriate remedy is to have the school district pay for an independent evaluator to conduct an evaluation of the student. The equities, therefore, require a conclusion that an IEE at the

school district's expense should be awarded as a remedy for the school district's violation of the law.

Because all relief under IDEA is equitable relief and should be flexible, and because special education under IDEA requires a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as both parties and their lawyers, if any, agree to do so in writing.

ORDER

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

1. The school district shall provide an independent educational evaluation of the student at the school district's expense. The purpose of the evaluation shall be to determine whether the student is eligible for special education and related services, and if so, to determine the student's educational needs. On or before April 2, 2025, the school district shall provide the parent with information about where and how an independent educational evaluation may be obtained. The evaluation shall be consistent with the school district's criteria applicable to independent educational evaluations. The independent educational evaluation shall be completed on or before May 19, 2025;

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; and

3. All other relief sought by the due process complaint herein is denied.

IT IS SO ORDERED.

ENTERED: March 14, 2025

James Gerl

James Gerl, CHO
Hearing Officer