

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. 32080-25-26

Child's Name:

J.C.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Owen J. Roberts School District
901 Ridge Road
Pottstown, PA 19465

Counsel for LEA:

Jason Fortenberry, Esq.
Sweet Stevens Katz & Williams
331 E. Butler Ave.
New Britain, PA 18901

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

December 10, 2025

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently [redacted] years of age and enrolled in the [redacted] grade in the District. The Student is eligible for and receives special education pursuant to the Individuals with Disabilities Education Act (IDEA) as a child with autism, a specific learning disability, and a speech or language impairment.² The Student also has disabilities conferring protections under Section 504 of the Rehabilitation Act of 1973.³

The District last evaluated the Student in January 2023. In October 2025, the District requested permission to conduct a reevaluation of the Student. After the Parent repeatedly refused, the District filed a due process complaint seeking to override the Parent's lack of consent. The District seeks to establish that a reevaluation of the Student is both necessary and permissible under the law, while the Parent objects to the administration of all proposed assessments.

Following review of the record and for all of the reasons set forth below, the District's claim must be granted.

¹ To protect confidentiality and privacy, the Student's name, gender, and other potentially identifiable information are not included in the main body of this decision. All personally identifiable information, including details on the cover page, will be redacted before posting on the Office for Dispute Resolution's website, in accordance with its obligation to publicly share special education hearing officer decisions under 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 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

ISSUE

1) Whether the District should be permitted to override the Parent's refusal to consent to a reevaluation of the Student?

FINDINGS OF FACT

1. The Student is [redacted] years old and is enrolled in the [redacted] grade in the District. The Student is eligible for special education as a child under the classifications of autism (primary), a specific learning disability (secondary), and a speech or language impairment (tertiary). (S-4)

Background

2. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District. (S-1)
3. On November 17, 2022, the Parent consented to an initial evaluation (ER) of the Student. (S-1; N.T. 22-23)
4. On January 20, 2023, the District issued its ER. The ER included Parent input (concerns, developmental/medical history), educator input, classroom assessment data, a cognitive assessment (WISC V), academic assessment (WIAT 4), and behavioral assessments (ASRS,

BRIEF 2), a structured observation (ADOS 2), speech and language and occupational therapy evaluations, and a functional behavior assessment (FBA). (S-2; N.T. 20)

5. The ER concluded that the student was eligible for special education as a child under the classifications of autism, a specific learning disability, and a speech or language impairment. (S-2, p. 24)

2025-2026 School Year

6. During the 2025-2026 school year, the Student is enrolled in the [redacted] grade in the District and receives supplemental autistic support, learning support, and speech and language support. (S-3, S-4)
7. On October 3, 2025, the IEP team, including the Parent, met to review existing evaluation data and discuss the upcoming triennial reevaluation due January 30. Parent input noted needs in occupational therapy for handwriting-related motor skills, speech-language services, and math and reading skill development. (S-2, S-3, S-4, S-5; N.T. 28-30, 32)
8. On October 3, 2025, the District issued a permission to reevaluate (PTRE) requesting parental consent to conduct a comprehensive reevaluation of the Student. (S-5; N.T. 36)
9. The District proposed assessments including an observation; social, emotional, behavioral, and executive functioning assessments (rating scales from parents and teachers); cognitive processing measures; and an updated occupational therapy evaluation. (S-5, S-6)

10. On October 8, 2025, the Parent refused consent, objecting to any medical testing and noting that the Student had previously received a nurse-administered health assessment in September 2025. (S-6, p. 3)

11. On October 15, 2025, the Parent reiterated refusal for any medical or mental health assessments. The Supervisor of Special Education responded with an explanation of the purpose of each proposed assessment. (S-7)

12. On October 16, 2025, the District clarified that the reevaluation would involve only educational testing. The Parent continued to refuse consent. (S-7)

13. An updated cognitive assessment is needed to provide data regarding attention and focus, for consideration along with a student observation and behavior rating scales. (N.T. 41-42)

14. A student observation is needed to obtain information about the Student's functioning across school settings, including comparison to peers and response to environmental demands. (N.T. 37- 38)

15. Updated social, emotional, behavioral, and executive functioning rating scales are needed to quantify behaviors and inform programming based on record reviews, current performance, and teacher input. These standardized assessments ask informants (Parent and educators) to rate the frequency of Student's specific behaviors at home and school. (N.T. 38)
16. An updated occupational therapy assessment is needed to determine the Student's current strengths, needs, and functional levels. (S-4, S-7)
17. Three-year-old evaluation data are insufficient due to the Student's developmental changes, current [redacted] grade placement, and functioning. (N.T. 39)
18. Since the filing of the due process complaint, the District has observed that the Student requires significantly more time to complete benchmark assessments, sometimes needing more than one day. To understand and address academic productivity and completion of work, the District now proposes a functional behavioral assessment (FBA).(N.T. 43-44)
19. Since the filing of the due process complaint, the District has observed the Student struggling with daily routines, including [redacted]. To better understand these needs, the District now proposes adaptive assessments. (N.T. 43-44)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

Burden of proof

In general, the burden of proof consists of two elements: 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 Cir. 2006).

Accordingly, the burden of persuasion in this case must rest with the District since it filed the Complaint that led to this administrative hearing.

Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in “equipoise.” *Schaffer, supra*, 546 U.S. at 58.

Witness credibility

Special education hearing officers, in the role of fact-finders, are also responsible for making credibility determinations of the witnesses who testify. 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). The school psychologist, the Parent and the Student’s grandparent testified during this hearing.

This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them, without any intention to mislead. However, the school psychologist’s testimony was especially detailed, consistent with the documentary record, and directly tied to the Student’s identified needs. The Parent and grandparent demonstrated deep concern for the Student, but certain stated objections were not fully supported by the factual record—particularly regarding the nature of the proposed assessments, which the District clarified were educational, not

medical, in nature. For purposes of determining the necessity of the reevaluation, the testimony of the school psychologist carried the greatest weight.

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 qualifying disabilities and, by reason thereof, needing special education and related services. 20 U.S.C. § 1401(3).

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). 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 include a review of existing data, including that provided by the parents, in addition to available assessments and observations. 34 C.F.R. § 300.305(a).

The LEA must obtain informed consent of the child's parents prior to conducting a special education evaluation. 20 U.S.C. § 1414(a)(1)(D)(i)(I);

34 C.F.R. § 300.300(a)(1). The same is required for any reevaluation. 20 U.S.C. § 1414(C)(3); 34 C.F.R. § 300.300(c)(1)(i). If the child's parents do not provide consent to the reevaluation, the LEA is permitted, but not required, to request a due process hearing and ask a hearing officer to grant permission to conduct the evaluation. 20 U.S.C. §§ 1414(a)(1)(D)(ii)(I) and 1414(c)(3); 34 C.F.R. §§ 300.300(a)(3) and 300.300(c)(1)(ii). LEAs must conduct reevaluations when a child's educational needs so warrant. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1).

The District asserts that it has provided a valid basis for conducting a new reevaluation, while the Parent questions its necessity. Based on the evidence of this hearing record, I must conclude that the District has established that the Student's current educational needs can only be met following a full reevaluation, which will seek to develop updated and responsive special education programming consistent with the Student's growth and progress.

The Student was last evaluated in January 2023. The Student is now [redacted] years old and in the [redacted] grade. As the school psychologist explained, the assessment results from three years prior no longer reflect the Student's current developmental level or functioning. Developmental changes, particularly for students with autism, specific learning disabilities, and speech-language impairment, can significantly affect educational needs and require updated data to ensure appropriate programming. The law anticipates that earlier evaluation results may become outdated. The triennial timeline itself presumes that the Student's needs evolve and that new information is periodically required to maintain an appropriate educational plan.

On October 3, 2025, the IEP team, including the Parent, reviewed existing data and noted concerns regarding handwriting/motor skills, speech

and language needs, and academic skills in math and reading. These concerns, standing alone, indicate that additional assessment is appropriate. The District's proposed reevaluation appropriately targets the very domains identified during the team meeting, social/emotional functioning, cognitive processing, attention and executive functioning, and occupational therapy needs. The Parent did not dispute the existence of these needs, but rather objected broadly to "medical" or "mental health" assessments. The record, however, demonstrated that the District sought only educational assessments necessary to determine the Student's learning profile. The District repeatedly clarified that no medical procedures would occur.

The District also observed new concerns during the fall of 2025: the Student required significantly extended time to complete benchmark assessments and had difficulty with daily routines and adaptive functioning, including [redacted]. These observations are highly relevant, as they emerged after the IEP meeting and after the refusal of consent. They indicate new challenges that must be evaluated through a functional behavioral assessment (FBA) and adaptive assessments to understand underlying causes and to adjust supports as needed. These additional data points underscore that the District lacks sufficient current information to address emerging needs.

The proposed components of the reevaluation that include observations, updated cognitive processing measures, social/emotional rating scales, and functional behavioral, adaptive, and occupational therapy assessments are appropriate tools for determining special education needs. The school psychologist articulated how each assessment contributes necessary information about the Student's functioning across environments and how these data points work together to guide individualized programming. None of the proposed assessments exceed what is reasonably

necessary. Each directly corresponds to documented needs or to gaps in current information. The Parent's categorical refusal, based on a misunderstanding that these assessments were "medical," does not outweigh the District's obligation to gather adequate data to ensure FAPE.

In sum, based on the record as a whole, the District must be permitted to conduct a reevaluation. The parties will then have the opportunity to review the results and consider together whether any revision to the Student's programming may be necessary. In conclusion, the District has established by a preponderance of the evidence that a reevaluation of the Student is warranted, and it shall be permitted to conduct its proposed reevaluation without the Parent's consent.

ORDER

AND NOW, this 10th day of December 2025, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The District is authorized to proceed with the proposed reevaluation of the Student without parental consent. The reevaluation may include all assessments described in the District's October 3, 2025, permission to reevaluate (PTRE), as well as the subsequently proposed functional behavioral assessment (FBA) and adaptive assessments identified as necessary during the course of this proceeding.

2. The Parent shall make the Student reasonably available for all components of the reevaluation, including observations, standardized assessments, rating scales, and related procedures customarily used for educational evaluation under the IDEA.
3. Upon completion of the reevaluation, the District shall convene an IEP team meeting to review the results and consider whether revisions to the Student's educational program are warranted.
4. Nothing in this Order precludes the parties from mutually agreeing to additional assessments or from addressing any other issues consistent with IDEA requirements.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED.

Joy Waters Fleming, Esq.

Joy Waters Fleming, Esq.
Special Education Hearing Officer

December 10, 2025