

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. 31346-24-25

Child's Name:

C.M.

Date of Birth:

[redacted]

Parents:

[redacted]

[redacted]

Local Educational Agency:

Fleetwood Area School District
801 North Richmond Street
Fleetwood, PA 19522

Counsel for LEA:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

09/30/2025

Introduction

This special education due process hearing concerns educational matters related to C.M. ("student"), a student who resides in the Fleetwood Area School District ("District").¹ The parties dispute whether or not events over the period February-April 2025 form the basis of a procedural denial of a free appropriate public education ("FAPE") and/or interfered with parents' participation in the special education programming of the student under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA").²

Specifically, the parents assert that in early May 2025 they provided permission for a re-evaluation of the student but that were they were forced, or compelled, or manipulated, or harassed, or deceived into granting the District permission to re-evaluate.³ The District counters that, at all times, it acted in good faith in collaborating with the parents about the proposed

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ In mid-May 2025, parents filed the complaint which led to these proceedings. The District responded to the complaint, including a motion to dismiss the complaint. The parents then submitted a more comprehensive filing. The hearing officer considered all of parents' filings to be the basis of parents' complaint, as filed or as amended. The descriptors above are the words of the hearing officer, characterizing the broad allegations of the parents regarding their views of the District's alleged acts and omissions in the re-evaluation process. See School District Exhibit ["S"]-16 (initial complaint), S-17 (District response), S-18 (amended complaint), S-18 (second amended complaint), S-21 (District response to the amended complaints), and S-22 (parents reply to the District response). See *also* Notes of Testimony ["NT"] at 13-25).

evaluation process and did not act in any way that was unprofessional or inappropriate, in any way that might be viewed as a denial of FAPE, or in any way that interfered with parents' participation in the special education programming for the student.

For the reasons set forth below, I find in favor of the District.

Issue

Did the parents provide permission for a re-evaluation of the student
as a result of
force, or compulsion, or manipulation, or harassment, or deception
by the District?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. On February 12, 2025, the District began planning for the student's triennial re-evaluation. (S-3; NT at 42-116).

2. The District holds a pre-reevaluation meeting to gather the student's multi-disciplinary team in advance of the re-evaluation process to discuss the process and to make sure everyone has the opportunity to share views about the re-evaluation. (NT at 42-116).
3. The pre-reevaluation meeting was scheduled for February 25, 2025. In the days before the meeting, the student's mother requested the identification of the specific assessments and instruments that would be part of the re-evaluation. (S-4; Parents Exhibit ["P"] – A⁴; NT at 42-116, 495-579).
4. The District offered to reschedule the pre-reevaluation meeting to put the student's mother in a position to be comfortable at the meeting. Parent declined the offer to reschedule the meeting and, on the evening of February 24, 2025, the day before the meeting, the parent confirmed her in-person attendance at the meeting the next day. (S-4; P-A; NT at 42-116, 495-579).
5. The morning of the February 25th meeting, the District changed the room location. This change was communicated to the parent and came through the District's email notification system as a "cancellation",

⁴ Prior to the hearing, parent was instructed not to mark exhibits so that exhibits could be marked numerically as those exhibits were brought into the record. Parent, however, pre-marked exhibits with letters and not numbers. Because reference in the record was to these letter-exhibits ('turn to parents' exhibit A'), the citation in this decision is to the letter-exhibit.

without any indication of the rescheduled location. Therefore, the parent did not appear at the meeting, and the District-based members of the team went forward with the meeting. (S-4; P-A, P-B; NT at 42-116, 119-203, 495-579).

6. The District-based members of the team felt that updated assessments, rather than a records-review or curriculum-based assessments only, was necessary. (NT at 42-116, 119-203, 317-382).
7. On February 28, 2025, the District sought permission to re-evaluate the student. The District utilizes school psychology services under contract with the local intermediate unit ("IU"). The IU school psychologist prepared the permission to re-evaluate ("PTRE") form. (S-14; NT at 42-116, 119-203, 317-382).
8. The PTRE was provided to parents in early March 2025. (S-5; NT at 119-203).
9. Parent reiterated her request to have the identification of the specific assessments and instruments that would be part of the re-evaluation. (S-5; P-C, P-D, P-E, P-F).
10. On March 26, 2025, the parent was afforded the opportunity to review the assessments and instruments that would be part of the re-evaluation process. The first phase of the meeting involved the

assessments that a speech and language (“S&L”) evaluator proposed to use for the re-evaluation. The parent reviewed the S&L materials with the S&L evaluator and the District superintendent both present. (P-E, P-F; NT at 206-307).

11. The second phase of the March 26th meeting involved the student’s mother reviewing the proposed assessments and instruments that the IU school psychologist would use in the re-evaluation. (P-G; NT at 206-307).

12. Because the evaluator was an employee of the IU, the District needed to coordinate with the evaluator for sharing the assessment/instrument materials. Additionally, some of the materials were on portable devices and some were paper-and-pencil instruments, so the IU school psychologist had to configure device-based assessments so the parent could review those materials. (S-6; 119-203, 317-382).

13. Prior to the meeting, the parent was incredulous that some of the assessments and instruments were not available through paper-and-pencil administration. The parent also wished to review the materials without anyone present, or at least with a minimal number of people present, as she performed the review. (S-6, S-8; P-F, P-G; NT at 206-307, 495-579).

14. Four individuals attended the March 26th meeting during the review of the IU school psychologist's proposed assessments and instruments: the student's mother, the IU school psychologist, an IU administrator who was the school psychologist's supervisor, and the District superintendent. (NT at 206-307, 317-382, 384-402, 495-579).
15. The IU school psychologist testified that having parents request review of the specific assessment and testing-instrument materials is a rare occurrence in her approximately eighteen years of experience as a school psychologist. (NT at 317-382).
16. Given the tenor of the parent's communications with individuals at the District, communications on which the IU school psychologist was copied, the school psychologist requested that her supervisor accompany her to the meeting. (NT at 317-382, 384-402).
17. The District had no role in inviting the IU administrator, or knowledge about his attendance at the meeting. (NT at 206-307, 317-382, 384-402).
18. The parent sat side-by-side with the IU school psychologist to review the materials. The IU administrator sat on the other side of the school psychologist (i.e., with the school psychologist between the parent and the IU administrator). The superintendent was seated on

the opposite side of the table from the trio of other attendees. (NT at 206-307).

19. The IU administrator and the superintendent did not participate in any substantive way during the review of the materials. The substantive interaction was between the IU school psychologist and the student's mother. (NT at 206-307, 317-382, 384-402).

20. The parent testified that she felt intimidated by the presence of the IU administrator, including allusions to his physical size. (495-579).

21. While perceptions may vary, it is an explicit finding that the physical size and presence of the IU administrator, who testified at the hearing, is not of a proportion that those characteristics are striking or remarkable for an objective observer.

22. The March 26th meeting ended with the IU school psychologist feeling that it had accomplished its goals, namely sharing materials and answering parent's questions about those materials. At the meeting, the parent did not share that the meeting had been problematic from her perspective but later shared a view that she did not find it helpful. (P-G; NT at 206-307, 317-382, 495-579).

23. The mother wished to review all of the materials on paper. The District arranged for those materials to be reduced to paper. On April 4, 2025, the District arranged for the student's mother to review those materials. The mother and the District superintendent were the only individuals gathered for the April 4th meeting. (P-G, P-H; NT at 206-307, 495-579).
24. Soon after the April 4th meeting, the District assigned its director of special education to communicate and to coordinate with the student's parents. (S-8; NT at 404-486).
25. Throughout March and April 2025, the student's mother and District personnel exchanged emails. Mother's emails were often pointed and utilized adversarial language. (S-8, S-9, S-10, S-11; P-C, P-E, P-J, P-Q, P-U; NT at 404-486, 495-579).
26. The District had not received parents' permission to proceed with the re-evaluation process. The student's individualized education program ("IEP") was due for its annual revision in early May 2025. (S-8, S-9; P-Q; NT at 404-486).
27. The District wished to move forward with the re-evaluation process. At the same time, it was under an obligation to meet to consider potential revisions to the IEP. (S-11; P-Q; NT at 404-486).

28. On April 25, 2025, the District filed a special education due process complaint, seeking a hearing officer's authority to proceed with the re-evaluation process. (S-12).
29. On May 2, 2025, parents signed the PTRE, and the District withdrew its complaint. (S-14).
30. On May 19, 2025, parents filed the special education due process complaint, and follow-on filings, which led to these proceedings. (S-16, S-21, S-22).

Legal Framework

School districts must identify and provide appropriate special education programming for students who reside in the school district and who qualify under IDEA. This programming must be reasonably calculated to yield meaningful educational benefit to the student. ((34 C.F.R. §300.17; 22 PA Code §14.102(a)(2)(iv)); Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)).

Part of the mosaic of special education programming includes an appropriate evaluation, or re-evaluation, of a student so that a school district can accurately gauge the student's strengths and needs. The evaluation or re-evaluation process leads to the issuance of a report which

can be used as the basis for a student's IEP team to design special education programming. (34 C.F.R. 300.301, 300.303; 22 PA Code §14.102(a)(2)(xxv)). An evaluation or re-evaluation must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining" an understanding of the student's disability and the content of the student's individualized education program. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)).

At a minimum, a re-evaluation must take place every three years.⁵ Parents and a school district may agree otherwise; but without such an agreement, a student with an IEP must be evaluated at least triennially. (34 C.F.R. 300.303(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Where a parent does not provide consent for a school district re-evaluation, "a school district...may request a hearing to proceed with a reevaluation when a parent fails to respond to the district's...proposed...reevaluation." (22 PA Code §14.162(c)). Thus, a school district can proceed with a re-evaluation process under the authority of a hearing officer's order.

⁵ Students who are identified with an intellectual disability, however, must be re-evaluated every two years. (22 PA Code §14.124(c)).

Finally, determinations of denial-of-FAPE through special education due process must be made on substantive grounds. Certain interactions, courses of action, or procedural processes between a school district and parents might support a finding of denial-of-FAPE where those procedural inadequacies “(i) impeded the child's right to a FAPE, (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or (iii) caused a deprivation of educational benefit.” (34 C.F.R. §300.513(a); 22 PA Code §711.3(b)(27)).

Discussion

On this record, there is no indication whatsoever that the District forced, or compelled, or manipulated, or harassed, or deceived the parents over the period from the point it began a conversation about re-evaluating the student in mid-February 2025 and early May 2025, when parents signed and returned the PTRE.

The only instance of a hiccup regarding the District’s approach to working through a re-evaluation process was moving the location of the February 25th pre-reevaluation meeting. Here, however, the miscommunication was not intentional or intended to deceive. The special education teacher who arranged that meeting testified credibly that she did

not realize that rescheduling the meeting in the District's scheduling/communication system would lead to a cancellation notice. On that count, neither party can be faulted—the parent proceeded with an understanding that the meeting had been cancelled; the District proceeded with an understanding that parent, who had confirmed her attendance only the evening before, had not come to the meeting. But in the end, it was a simple mis-communication.

More broadly, even this procedural hiccup did not interfere in a material way with the parents' views or concerns for the re-evaluation process. Ultimately, parents sought to understand what the District was seeking through the re-evaluation and, more particularly, to review the assessments and instruments that would be utilized in the re-evaluation. Within a month of the pre-reevaluation meeting, the District had arranged exactly that—an in-depth review of the assessments and instruments, in person, with the evaluators themselves. It is hard to put oneself in a position to see how the mis-communication of February 25th interfered with the parents' desires and requests surrounding their understanding of the re-evaluation process.

Aside from that procedural hiccup, the record solidly supports the conclusion that the District acted diligently, professionally, and appropriately in working with the parents on the re-evaluation process. Particular instances through that process must be addressed at this point. First, the

March 26th and April 4th meetings were conducted professionally and in a comprehensive way. The participation of the IU supervisor at the March 26th meeting did not involve the District at all and, as that participation unfolded at the meeting, was not prejudicial in any way to the parents.

Second, the emotion injected into the dynamic of the communications between the parties was the result of the tenor of the student's mother's exchanges as part of those communications. Certainly, a parent in these situations is communicating about his/her child; at times, that can lead to concern and emotion coloring how a parent communicates, and that is understandable. Having recognized that, the language, tone, and deportment of any individual is within his/her control and must be accounted for in how others gauge their interaction with that person. The contentiousness which often served as a backdrop for the student's mother's interaction with District personnel, however, was never met with anything but forthright, professional, and appropriate responses from those personnel.

Third, the District's decision to pursue special education due process to seek hearing officer authority to undertake the re-evaluation process was not punitive. By the end of April, the District had requested permission to re-evaluate the student, a necessary triennial re-evaluation. It felt that updated assessments should be part of that re-evaluation. It worked with the parents to place the parents in a position to understand the exact assessments and

instruments that would be part of that re-evaluation. And part of its decision-making was geared not only to the re-evaluation but how the results of the re-evaluation would intersect with the necessary update/revision of the student's IEP, due in May 2025. In short, special education obligations were surfacing for the District vis a vis the student, and lack of permission to re-evaluate was putting it in a position where it was not moving toward meeting those obligations. In such a situation, utilizing special education due process to break the impasse is not only contemplated under IDEA but it understandable in this situation.

Accordingly, over the period from mid-February 2025, when the District requested permission to re-evaluate the student, through early May 2025, when parents provided permission, the District did not engage in any act or omission which might be viewed as forcing, or compelling, or manipulating, or harassing, or deceiving parents into the provision of permission to re-evaluate the student.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, in pursuing a re-evaluation of the student over February – April 2025 the Fleetwood Area School District did not proceed in any way which was problematic, unprofessional, inappropriate, in any way which amounted to a denial of a free appropriate public education, or in any way which interfered with the parents ability to participate in the educational decision-making regarding the student.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ *Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire
Special Education Hearing Officer

09/30/2025