

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. 32593-25-26

Child's Name:

F.L.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Philadelphia City School District
440 N. Broad St., Suite 313
Philadelphia, PA 19130

Counsel for LEA:

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

May 13, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is a [redacted]-year-old, enrolled in [redacted] in the District. Under the Individuals with Disabilities Education Act (IDEA), the Student is eligible for special education as a child with Autism and Speech or Language Impairment.²

After an October 2025, the District conducted a psycho-educational evaluation, the Parents expressed disagreement with the procedures and conclusions and requested an independent educational evaluation (IEE). The District filed a due process complaint in response to the Parents' request.

After reviewing the record, and for the reasons detailed below, it is determined that the District has met its burden of proof. The evaluation is appropriate. The Parents request for an IEE is denied.

ISSUES

- 1) Is the District's reevaluation of the Student legally appropriate?

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 the details on the cover page, will be redacted prior to the decision's 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 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). Section 504 is found at 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11.

- 2) If the District's reevaluation of the Student was not legally appropriate, are the Parents entitled to an independent educational evaluation at public expense?

FINDINGS OF FACTS

1. The Student is a [redacted]-year-old [redacted] student enrolled in the District. The Student is currently identified with Autism Spectrum Disorder and Speech or Language Impairment, receiving speech-language and occupational therapy services twice weekly (S-3, S-17)
2. The Student's primary language is [redacted], with exposure to English beginning at approximately age [redacted]. The Parent speaks [redacted] and has some understanding of English. (S-3)
3. Before [redacted], the Student received early intervention services due to developmental delay. (S-3; N.T. 66)
4. On October 8, 2025, the District issued a Permission to Reevaluate (PTRE) electronically and in hard copy, which the Parents reviewed on October 9–11, 2025 and signed on October 11, 2025. The PTRE proposed assessments across psychological, academic, speech-language, adaptive, motor, and behavioral domains, including a functional behavioral assessment, and was provided to the Parents in both English and [primary language]. (S-1, S-18; N.T. 70–73)

5. The PTRE included a parent input form, which the Parents completed in [primary language], describing the Student as social with strong memory and interest in group play, while identifying concerns with communication, early literacy, and behavior, including refusal, anger, and throwing objects, and noting outside speech and occupational therapy services (S-1, p. 6–7, S-18)
6. On October 22, 2025, the District provided the Parents with rating scales and background forms, which they completed and returned on October 23, 2025, contributing information regarding the Student’s functioning (S-15, S-16; N.T. 26-27, 33)
7. The District conducted a reevaluation and issued a reevaluation report dated December 15, 2025, which included a review of records, parent and teacher input, classroom observations, and standardized and informal assessments across developmental, cognitive, communication, adaptive, behavioral, and sensory domains. (S-3)
8. Parent input during the reevaluation reflected concerns with communication, behavior, and early academic skills, while teacher input reflected strengths in rote learning and preferred activities and significant concerns with attention, engagement, behavior, social interaction, and communication. (S-3)

9. The District utilized multiple assessment tools, including developmental measures such as the Battelle Developmental Inventory–3 showing delays across domains, and attempted to administer standardized cognitive and readiness assessments, including the WPPSI-IV and Bracken School Readiness Assessment, but discontinued these due to the Student’s lack of participation. (S-3)
10. Speech-language assessments, including the GFTA-3, KLPA-3, OWLS-II, SLAM Cards, and a Communication Matrix, demonstrated average articulation and phonological skills but significant deficits in expressive, receptive, and pragmatic language, supported by informal assessments showing pragmatic language deficits. (S-3)
11. Adaptive behavior ratings completed by the Parents and teachers through the ABAS-3 reflected average functioning at home and extremely low functioning in the school setting, while occupational therapy and sensory assessments indicated age-appropriate motor skills with sensory processing needs and some delays in self-care and fine motor functioning. (S-3)
12. Autism-specific rating scales placed the Student in the “very elevated” range for behaviors associated with autism spectrum disorder, and classroom observations consistently documented significant difficulties with engagement, communication, following routines, completing work, and behavioral regulation, including

running around the classroom and failure to participate in instruction. (S-3; N.T. 110–111)

13. The reevaluation team determined that the Student's needs adversely affect access to the general education environment and recommended a structured classroom environment, continued speech and occupational therapy, and behavioral and sensory supports. The evaluation relied on multiple sources of data and assessed all areas of suspected disability. (S-3)
14. The RR made recommendations for specially designed instruction and related services and suggested a repeat of cognitive testing at the next reevaluation. (S-3, p. 35)
15. During the evaluation process, the District communicated with the Parent through meetings, emails, and phone calls, and the District's compliance monitor met with the Parent multiple times regarding services and programming. (N.T. 33, 48, 64–66, 74)
16. The District provided certain documents, including the PTRE, in both English and [primary language]. The procedural safeguards were not provided to the Parents in [primary language] until March 2026, after completion of the reevaluation. (N.T. 68, 71–73, 80, 85–86, 93–94)

17. The Parent did not request translation of the reevaluation report or other documents during the evaluation process and had some familiarity with the school setting, including working as a substitute paraprofessional for two days. (N.T. 33, 48, 69)
18. On January 9, 2026, the District conducted an IEP meeting lasting over three hours with an interpreter present, during which the Parents participated and expressed disagreement with the evaluation but did not indicate that they did not understand the report. (N.T. 39–40, 75–77)
19. The Parents requested an independent educational evaluation (IEE) at public expense, and the District denied the request and filed for due process to defend the appropriateness of its evaluation. (S-6; N.T. 74)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The Burden of Proof

The burden of proof consists of two elements: the burden of production and persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the District, as the party seeking relief, bears the burden of proof.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses.” *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (“[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v. Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

This hearing officer found each of the witnesses who testified to be credible as to the facts. In the relatively few instances that there were contradictions, those are attributed to variations in memory, or to differing perspectives, rather than any intention to deceive. The weight accorded the evidence, however, was not equally placed and is discussed further below as

necessary. The findings of fact were made only as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. For example, testimony that merely reiterated the content of documents was not necessary and is generally not referenced. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act. The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017)

Individualization is, accordingly, the fundamental consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). “The IEP must aim to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original). IEP development, of course, must follow and be based on an evaluation as monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

Evaluation Requirements

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 20 U.S.C. § 1414. In substance, evaluations must “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” whether the child is a child with a disability and, if so, what must be provided through the child’s IEP for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A). Further, the evaluation must “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 must “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)(B)-(C).

When parents disagree with LEA's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense.” 34 C.F.R. § 300.502(b)(2)(i)-(ii). A parent is entitled to an IEE funded by the LEA if its evaluation does not meet IDEA criteria.

The District's Claims

The Parents challenge the appropriateness of the District's December 15, 2025, reevaluation and seek an independent educational evaluation (IEE) at public expense on grounds that procedural irregularities occurred. The dispositive question is whether the District's evaluation met the standards required by the Individuals with Disabilities Education Act (IDEA). If the evaluation was appropriate, the Parents are not entitled to an IEE.

Under 34 C.F.R. § 300.503(c), prior written notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless clearly not feasible. Furthermore, procedural safeguards must be provided in the parent's native language, reflecting the IDEA's guarantee that parents have meaningful opportunities to participate in the education of their child. The Third Circuit has confirmed that both the NOREP/PWN and the procedural safeguards notice must be provided in the parent's native language unless infeasible. *T.R. v. School District of Philadelphia*, 4 F.4th 179 (3d Cir. 2021). In addition, districts must take necessary steps, including the provision of an interpreter, to ensure that parents understand

IEP team proceedings. However, every procedural violation does not result in a denial of a free appropriate public education (FAPE). A procedural violation rises to that level only if it impeded the student's right to FAPE, significantly impeded parental participation, or caused a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E)(ii).

The record established that the Student's family speaks both English and [language other than English], with [redacted] being the primary language. The evidence further demonstrates that the District translated certain documents, including the permission to reevaluate (PTRE), into [primary language] and obtained parental consent. The Parents also provided input through forms and rating scales and participated in meetings. An interpreter was present at the IEP meeting at which the evaluation was discussed. However, the record also supports the Parents' contention that procedural safeguards were not consistently or timely provided in [primary language] at the outset of the process. Accordingly, a procedural violation occurred.

The critical inquiry is whether that violation significantly impeded the Parents' opportunity to participate in the evaluation process. The record does not support such a finding. The Parents reviewed and signed the PTRE in [primary language], provided detailed input regarding the Student's strengths and needs, completed additional forms, and participated in the evaluation process. They attended the IEP meeting with the assistance of an interpreter and were able to engage in discussion regarding the evaluation and proposed programming. The Parents also expressed disagreement with the evaluation, demonstrating an understanding of its contents and conclusions. While the timing of translated procedural safeguards was imperfect, the totality of the evidence shows that the Parents were able to meaningfully participate in the process. The procedural deficiency did not

impede the Student's right to FAPE, significantly impede parental participation, or result in a deprivation of educational benefit.

Turning to the substance of the evaluation, the record establishes that the District conducted a comprehensive, multidisciplinary reevaluation that addressed all areas of suspected disability. The District gathered or attempted to gather information across developmental, cognitive, communication, adaptive, behavioral, and sensory domains. The evaluation included standardized testing where feasible, as well as observational, functional, and informal measures when the Student's participation limited standardized administration. The District attempted to administer cognitive and school readiness measures but discontinued those assessments when the Student did not respond to prompts. Under these circumstances, the District appropriately relied on alternative methods to obtain meaningful information regarding the Student's functioning. IDEA does not require the generation of standardized scores where a child's disability interferes with valid administration; rather, it requires the use of appropriate tools and strategies to assess the child, which the District did here.

The evaluation reflects the use of multiple data sources and sufficiently comprehensive in order to identify all of the child's special education and related service needs. 34 C.F.R. §300.304 (c)(7); *see also* 34 C.F.R. §300.303 and 22 Pa Code §14.153 (3). The District incorporated parent input, teacher input, direct observations, and a range of assessment tools. Parent concerns regarding communication, behavior, and early academic skills were included in the evaluation, and teacher reports and classroom observations consistently described difficulties with engagement, communication, and behavioral regulation in the school setting. The evaluation further included speech-language assessments, adaptive behavior scales, occupational therapy and sensory measures, and autism-specific

rating scales. The results across these domains were consistent and supported the identification of significant communication, behavioral, and adaptive needs affecting the Student's ability to access the general education environment.

The Parents disagree with the content and conclusions of the evaluation, particularly the characterization of the Student's functioning and the determination of Autism Spectrum Disorder. However, disagreement with an evaluation's conclusion does not render the evaluation inappropriate. The relevant standard is whether the evaluation was sufficiently comprehensive and reasonably calculated to identify the Student's needs. Here, the District gathered extensive data, used a variety of tools, adapted its methods when standardized testing was not feasible, and produced results that were internally consistent and aligned with observations of the Student's functioning. The evaluation identified needs across communication, behavior, and adaptive domains and provided a basis for educational programming.

In sum, the District assessed the Student in all areas of suspected disability, used a variety of assessment tools and strategies, incorporated parent and teacher input, and produced a coherent and comprehensive understanding of the Student's needs. Although a procedural violation occurred with respect to the timing of translated procedural safeguards, that violation did not significantly impede the Parents' participation or otherwise result in a denial of FAPE. The District has therefore met its burden of demonstrating that its evaluation was appropriate under the IDEA. Because the evaluation was appropriate, the Parents are not entitled to an independent educational evaluation at public expense.

ORDER

AND NOW, this 13th of May 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's December 15, 2025, evaluation of the Student was legally appropriate.
2. The Parents' request for an independent educational evaluation is denied.

Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

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

May 13, 2026