

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. 31295-24-25

Child's Name:

C.F.

Date of Birth:

[redacted]

Parent/Guardian:

[redacted]

Local Education Agency:

Chartiers Valley School District
2030 Swallow Hill Road
Pittsburgh, PA 15220

Counsel for the LEA:

Patricia R. Andrews, Esquire
1500 Ardmore Avenue, Suite 506
Pittsburgh, PA 15221

Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

July 11, 2025

Introduction and Procedural History

This special education due process hearing concerns the educational rights of a child (the Student). The Student's public school district (the District) evaluated the Student to determine if the Student was a child with a disability, as defined by the Individuals with Disabilities Education Act (IDEA).¹ The District concluded that the Student has a disability, but did not qualify for special education. The Student's Parent (the Parent) disagreed with the District's evaluation and requested an independent educational evaluation (IEE) at the District's expense. The District denied that request and, as required by law, initiated this hearing to defend its evaluation.

As discussed below, I find that the District's evaluation was incomplete in certain domains but otherwise appropriate. I do not award an IEE at public expense, but I do order the District to expand its evaluation to domains that it did not thoroughly consider. Once that work is complete, I order the District to revise its evaluation if necessary and reconvene a multidisciplinary team to consider any new findings.

Issue Presented

One issue was presented for adjudication: Was the District's evaluation report of May 2, 2025, appropriate?

Findings of Fact

I reviewed the record in its entirety and find as follows:

1. On December 18, 2023, the District completed its first evaluation of the Student and drafted an Evaluation Report (the 2023 ER). S-1.
2. Through the 2023 ER, the District concluded that the Student met criteria as a child with an Other Health Impairment (OHI) resulting from a diagnosis of Obsessive Compulsive Disorder (OCD) and associated symptoms. The District also found reading needs, but those needs did not arise to a level warranting a Specific Learning Disability (SLD) designation. S-1.
3. Through the 2023 ER, the District concluded that the Student was a child with a disability (the OHI designation) but did not require special education. The Student's progress with the District's response to intervention (RTI) tiered reading program was a factor in that analysis.

¹ 20 U.S.C. § 1400 *et seq.*

However, the District also concluded that the Student was entitled to and required supports through a Section 504 Service Agreement.² S-1.

4. At the time of the 2023 ER, the Student's poor attendance was impacting upon the Student's learning, inhibiting the Student's participation in the District's programs (both academic and non-academic). The District was providing attendance support services through multiple programs. *See, e.g.* S-1 at 4, 5, 7, 24-26.
5. There is no dispute that sometime after the 2023 ER, the District issued, and the Parent accepted, a Section 504 Service Agreement for the Student. *Passim*.
6. On February 21, 2025, the District issued an annual Section 504 Service Agreement for the Student (the 2025 Service Agreement). The Parent accepted the 2025 Service Agreement the same day. S-2.
7. The 2025 Service Agreement calls for an "Attendance letter on file from therapist to prevent truancy due to OCD symptoms." S-2. In context, this indicates that the Student's attendance was still a problem, and that the parties were acting to ensure truancy proceedings would not be initiated against the Student or Parent despite the Student's poor school attendance.
8. After the District issued the 2025 Service Agreement, the Parent requested a new IDEA evaluation. Documents in evidence do not reveal the exact date of the Parent's request, but the underlying fact is not in dispute and there is no dispute about the timing of the District's evaluations. *Passim*.
9. On March 7, 2025, in response to the Parent's request, the District sought the Parent's consent to evaluate the Student. On March 13, 2025, the Parent provided consent. S-3.
10. The District evaluated the Student and, on May 5, 2025, issued the Evaluation Report at issue in this matter (the 2025 ER). S-4.

² "Section 504" is Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* Broadly speaking, as implemented in Pennsylvania's public schools, Section 504 requires schools to provide supports to children with disabilities who do not require special education so that such children can benefit from the school's programs. Such accommodations are provided through Service Agreements or Service Plans in accordance with Pennsylvania's implementing regulations at 22 Pa. Code § 15 (Chapter 15). No issues arising under Section 504 or Chapter 15 are before me.

11. The 2025 ER included narrative parental input. The Parent described concerns about the impact of the Student's anxiety and OCD symptoms in relation to schoolwork, and concerns about how the Student's poor attendance was resulting in negative social consequences. S-4.
12. The 2025 ER included two observations by the District's Certified School Psychologist (the CSP). The 2025 ER notes that the CSP attempted four observations but completed only two because the Student did not attend school on two days that observations were scheduled. S-4.
13. The 2025 ER included a summary of the CSP's interview with the Student. S-4.
14. The 2025 ER included short, bulleted blurbs of teacher input. Generally, teachers described the Student's independence, social skills, and reading and writing ability as strengths but listed the Student's attendance and assignment completion as weaknesses. S-4.
15. The 2025 ER included input from the school nurse, who noted that the Student had gone to the nurse's office three times after experiencing anxiety symptoms. S-4.
16. The 2025 ER included input from the school guidance counselor. The guidance counselor noted the supports that were in place for the Student under the 2025 Service Agreement but explained that the Student's poor attendance resulted in the Student not receiving all the services that were available. The guidance counselor noted that she and the Parent had discussed placement at a virtual or cyber program to address the Student's attendance. S-4.
17. The 2025 ER included a class-by-class attendance report for the 2024-25, 2023-24, and 2022-23 school years. S-4. That report reveals consistent, persistent, significant attendance issues. During the 2024-25 school year, the Student was absent for at least 70 classes in English, Math, and History classes, and over 50 foreign language classes. S-4.
18. The Student's attendance and homework completion had a significant impact upon the Student's grades. The Student passed classes and was promoted, frequently earning very high marks when viewed on a marking period by marking period basis. At the same time, failure to attend classes and complete assignments resulted "Incomplete" marks

for some classes and noticeably poor grades in several classes. This pattern was particularly evident in the third and fourth marking period of the 2024-25 school year, coinciding with the Parent's request for a special education evaluation. S-4.

19. The 2025 ER reports the Student's performance on statewide standardized tests and standardized curriculum-based assessments. The Student's performance on these assessments was highly variable, but the Student's performance on PA Classroom Diagnostic Tools during the 2024-25 school year was notably poor both in absolute terms and relative to prior years. S-4.
20. The 2025 ER included an administration of the Behavioral Assessment System for Children-Third Edition (BASC-3). The BASC-3 is a broad ranging, standardized rating scale. In this instance, three teachers completed the BASC-3 teacher ratings, the Parent completed the BASC-3 parent ratings, and the Student completed the BASC-3 self-report. S-4.
21. The teachers' BASC-3 ratings are described and evaluated by the CSP within the 2025 ER. However, only two of the teachers' scores are reported in detail. S-4 at 12-18.³ Two of the three teacher's ratings placed the Student's behaviors in the average range in all domains. One of the three teachers' ratings resulted in elevated but not statistically significant ratings for anxiety but did result in statistically significant ratings in multiple adaptive skills. Of the adaptive skills assessed by the BASC-3, only Functional Communication was in the average range for this teacher. Adaptability and Study Skills were in the At-Risk range and Social Skills and Leadership were in the Clinically Significant range. This resulted in a total Adaptive Skills index score in the At-Risk range for one of the three teachers. S-4.
22. The Parent's ratings on the BASC-3 resulted in an At-Risk rating in the Internalizing Problems composite score (resulting mostly from a Clinically Significant Anxiety rating). The Parent's ratings also placed Attention Problems and Adaptability in the Clinically Significant range. The Parent's overall ratings resulted in some elevation in the Student's

³ The 2025 ER reported a narrative summary of all three teachers' ratings written by the CSP and graphs from two of the three teachers. Three graphs are included, but the graphs at S-4 page 15 is the same as the graph at S-4 page 16. The narrative at S-4 pages 12-13 indicates that only one teacher's ratings indicated clinical levels of concern. The identical graphs both indicate concern, and I conclude that the concerned teacher's graph was copied twice.

Behavioral Symptoms Index and Adaptive Skills Index, but both remained in the average range. S-4

23. The CSP used the teachers' and the Parent's BASC-3 ratings to calculate Emotional Disturbance Qualification Composite scores for the Student. None of the teachers' ratings signaled a risk of emotional disturbance or social maladjustment. The Parent's ratings placed the Student in the At-Risk range for Physical Symptoms or Fears, but all other indicators were in the Acceptable range, and there was no indication of social maladjustment from the Parent. S-4.
24. The Student's BASC-3 self-report ratings were in the average range across social domains, but in the At-Risk or Clinically Significant range in multiple Internalizing Problems domains. Atypicality, Loss of Control, and Sense of Inadequacy were all in the At-Risk Range and Anxiety was in the Clinically Significant range. This resulted in the Student's Internalizing Problems index score in the At-Risk range. S-4.
25. The 2025 ER included an administration of the Scales for Assessing Emotional Disturbance, Third Edition (SAED-3). The Parent and the same three teachers who scored the BASC-3 scored the SAED-3 for the Student. All three teachers rated the Student across sub-tests in ranges that do not indicate an emotional disturbance, resulting in an SAED-3 Quotient that does not indicate an emotional disturbance. The Parent's ratings, in contrast, scored the Student in a range that indicates emotional disturbance in two domains (Inability to Learn, and Unhappiness or Depression) and near the high end of the average range in other domains. The Parent's combined ratings produced an SAED-3 quotient is considered to be significant and may indicate an extreme number of emotional and behavioral problems. S-4.
26. The SAED-3 permits raters to provided commentary, and two teachers did so. Their commentary is insightful. One teacher wrote, "The issue at hand only results when [Student] does not come to school. When [Student] is in school, [Student] is academically successful." Another teacher wrote, "When [Student] is present in class, I do not notice any of these behaviors that would adversely affect [Student's] educational performance. [Student] is capable, on-task, motivated, and works well with others. When [Student] is not present in class, [Student] does not consistently complete classwork. I have not witnessed any behavioral concerns that would impact [Student's] educational performance while in class. [Student's] grade would be greatly improve[ed] with consistent attendance." S-4 at 24.

27. The 2025 ER incorporated the findings of an administration of the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). The WISC-V is a standardized, normative test of intellectual ability. S-4
28. The WISC-V revealed some discrepancies in sub-test and composite scores (e.g. the Student's Processing Speed was at least one standard deviation below all other composite scores, and the Student's Verbal Comprehension and Working Memory scores were two standard deviations above the Processing Speed score). S-4.
29. The Student's full scale IQ score was found to be in the High Average range. S-4.
30. The 2025 ER also incorporated the findings of an administration of the Wechsler Individual Achievement Test, Fourth Edition (WIAT-IV). The WIAT-IV is a standardized, normative test of academic achievement that can be compared to the WISC-V. S-4.
31. As with the WISC-V, the WIAT-IV showed some variability between sub-test and composite scores. The Student's Total Achievement as measured by the WIAT-IV was found to be in the Average range. While the Student's Full Scale IQ reached a different descriptor range (High Average), the Student's Total Achievement and Full Scale IQ, as measured by standard scores, were within one standard deviation from each other. Across various composites and sub-domains, the scores were even closer and, in some, the Student's WIAT-IV scores were higher than the Student's WISC-V scores. S-4.
32. The District also completed a Functional Behavioral Assessment (FBA) as part of the 2025 evaluation. That resulted in a report dated May 2, 2025. S-5. The FBA was referenced in the 2025 ER, and was used by the District to make conclusions about the Student in the 2025 ER. The FBA was not incorporated into the 2025 ER in a literal sense. S-4, S-5.
33. The "Behavior of Concern" that was the FBA's target was, "Attendance - [Student] struggles with having consistent attendance at school. Due to this [Student] begins to fall behind on assignments." S-5 at 1.
34. The FBA included a statement that the Student's poor self-regulation was a skill deficit related to the behavior of concern (attendance). The FBA also noted – albeit through a checkbox – that engaging in the behavior of concern enabled the Student to "postpone, avoid, or escape something such as a task demand, social interaction, etc." The Evaluator expanded on this statement, writing, "Not attending school

consistently does allow [Student] to postpone assignments. However, when [Student] does attend school and complete work, [Student] demonstrates on-task behavior and adequate grades.” S-5 at 3.

35. The FBA included observations on the same days as the 2025 ER. The Student was absent on the first two attempted observations and present for the second two. The evaluator found that the Student was on task during the observations and did not exhibit behaviors that interfered with the Student’s learning while attending school. S-5.
36. The evaluator included a noteworthy summary of recommendations within the FBA (S-5 at 9):

Based on observations and teacher input, when [Student] is present in school and completes [] assignments, [Student] is successful academically and on-task. There are no behaviors of concern, outside of [Student] missing classes. [Student’s] attendance behavior does not warrant a Positive Behavior Support Plan and should be addressed through [student’s] 504 Service Agreement. Additionally, [Student] may benefit from working with the school counselor on developing a plan to help build attendance.

37. As with the 2023 ER, the 2025 ER concluded that the Student was a child with a disability but did not require special education. The District determined that the Student should continue to receive accommodations thorough a Section 504 Service Agreement. The District shared this conclusion with the Parent through the 2025 ER and through a Notice of Recommended Educational Placement (NOREP). S-4, S-6.
38. There is no dispute that the Parent disagreed with the 2025 ER and requested an Independent Educational Evaluation at the District’s expense. There is no dispute that the District denied that request and, as required by law, filed a due process complaint on May 12, 2025.

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.”⁴ One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review.⁵

In this case, the material facts are not truly in dispute. Nothing hinges on a credibility determination. Regardless, I find that the District’s CSP was strangely reluctant to testify about any connection between the Student’s disability and the Student’s attendance. This reluctance was odd because the CSP was the primary author of a report reaching that very conclusion. I attribute this to nervousness while testifying and not any purposeful obfuscation.

With that note, I find that all witnesses, including the District’s CSP, were credible. Some of those witnesses see the same facts differently and reach different conclusions. This is to be expected and is not a mark against any witness’s credibility.

Applicable Laws

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief.⁶ The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence is equal on both sides (if the evidence rests in equipoise).⁷

⁴ *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003).

⁵ 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).

⁶ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

⁷ 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 is the party seeking relief and must bear the burden of persuasion.⁸

Evaluation Criteria

The IDEA establishes requirements for evaluations.⁹

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 a free appropriate public education (FAPE).¹⁰

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”.¹¹

In addition, the District is obligated to ensure that assessments and other evaluation materials are (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.¹²

Finally, evaluations must assess “all areas of suspected disability.”¹³

⁸ From a different point of view, the Parent is seeking relief (an IEE at public expense). But the IDEA is clear that the District must prove that its evaluation was appropriate. The burden, therefore, is on the District. See 34 C.F.R. § 300.502(b)(4).

⁹ 20 U.S.C. § 1414.

¹⁰ 20 U.S.C. § 1414(b)(2)(A).

¹¹ 20 U.S.C. § 1414(b)(2)(B)-(C).

¹² 20 U.S.C. § 1414(b)(3)(A).

¹³ 20 U.S.C. § 1414(b)(3)(B).

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..."¹⁴

"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 public expense."¹⁵

"If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation."¹⁶

Discussion

The record of this case reveals that the Parent is concerned about the appropriateness of the Student's Section 504 Service Agreement and the Student's possible IDEA eligibility. I understand and appreciate the Parent's concerns, but those questions are not before me. The only question before me is whether the 2025 ER was appropriate under IDEA standards. I am limited to answering only that question.

I do not fault the 2025 ER for what it contains. Everything that the 2025 ER contained was appropriate and consistent with IDEA mandates. However, I find that the 2025 ER was incomplete because it did not sufficiently evaluate all of the Student's suspected areas of disability. The District did not evaluate whether or how the Student's disabilities may be inhibiting the Student's attendance and work completion. Both parties recognize that the Student's attendance and work completion adversely affect the Student's education. The District must determine if the Student's attendance and work completion problems are behavioral functions of the Student's disabilities and, if so, whether the Student qualifies for special education on that basis.

¹⁴ 34 C.F.R. § 300.502(b)(1).

¹⁵ 34 C.F.R. § 300.502(b)(2)(i)-(ii).

¹⁶ 34 C.F.R. § 300.502(b)(4).

For clarity and completeness, I find that the 2025 ER used “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent.” Those included input from the Parent (both narrative and through rating scales), information from teachers, cognitive assessments, academic assessments, behavioral assessments, input from the Student, clinical observations, and more.

The 2025 ER did “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability.” The use of multiple ratings, observations, assessments, and information about the Student complied with this obligation.

The other “multiple factors” are satisfied as well.¹⁷ There is no indication that any of those factors are pertinent to this case. For example, there can be no serious debate as to the CSP’s qualifications to administer and interpret assessments used in the 2025 ER. Again, everything that the 2025 ER contained complied with IDEA requirements.

My concern is limited to what the 2025 ER does not address. Before, during, and after the 2025 ER, both parties acknowledged that the Student’s poor attendance and work completion have an adverse impact upon the Student’s education. The parties’ concerns in this regard are not identical. Within the body of the 2025 ER and the FBA, the District explicitly recognizes that the Student’s attendance and work completion issues are problematic and result in diminished academic performance (despite passing grades and academic progression). The Parent’s concerns are broader. The Parent links the Student’s attendance not only to academic concerns, but to social and emotional concerns as well.

Ironically, these differences underscore an important area of *agreement* between the parties. Both parties agree that the Student’s poor attendance and work completion are avoidant behaviors. Seen through this lens (as both parties do), there can be little doubt that the Student is exhibiting behaviors that impede the Student’s learning. Inappropriate behaviors under normal circumstances that adversely affect a child’s educational performance can be a qualifying basis of eligibility under the IDEA.¹⁸

¹⁷ See 20 U.S.C. § 1414(b)(3)(A).

¹⁸ See 34 C.F.R. § 300.8(c)(4). I appreciate that the District’s CSP takes the position that she cannot “diagnose” an Emotional Disturbance. However, regardless of any diagnosis, if a child meets the IDEA’s definition of an Emotional Disturbance and, by reason thereof, requires special education, the District’s procedural and substantive obligations to the child are unambiguous. See 20 U.S.C. §§ 1414, 1415.

Considering the 2025 ER and the FBA together, it is not possible to determine the relationship between the Student's disabilities and the Student's avoidant behaviors, if any. The Parent is sure the two are connected, but I cannot make that assumption. Rather, the concern must be evaluated through the IDEA's process. Neither the 2025 ER nor the FBA included assessments to determine whether the Student's behaviors were related to the Student's disabilities. The District must undertake this effort and cannot limit its consideration to environments where the Student's behaviors rarely if ever appear. Saying that the Student is fine when the Student attends and completes assignments misses the point. The District must evaluate to determine why the Student is chronically absent and why the Student can work in school but not at home.

Observing the Student outside of school may or may not be necessary to complete this work. I will not substitute my judgement for planning that should be completed by the District's professionals. Similarly, if the District finds that the Student's avoidant behaviors are a function of the Student's disability, I do not hold that the Student necessarily requires special education *per se*. I hold only that the District must evaluate these areas and then reach a conclusion. Doing so will cure the 2025 ER's insufficiency. The 2025 ER is otherwise consistent with everything that the IDEA requires.

ORDER

Now, July 11, 2025, it is hereby **ORDERED** as follows:

1. Within ten (10) calendar days of this Order, the District shall issue a form to the Parent, seeking the Parent's consent to reevaluate the Student for the purposes of:
 - a. Obtaining information about whether the Student's attendance and work completion behaviors are a function of the Student's disability or disabilities and, if so;
 - b. Determining whether the Student requires special education by reason thereof.
2. If the Parent withholds consent for the reevaluation described in this Order, the District's obligations under this order shall terminate.
3. If the Parent does not respond to the District's within fifteen (15) calendar days of receipt of the District's form, the District's obligations under this order shall terminate.

4. The District's shall complete the evaluation described in this order and the accompanying decision within the timeline set forth by the IDEA and its implementing regulations, running from the date that the Parent provides consent.
5. Nothing herein terminates or abrogates the District's obligations to the Student pursuant to 20 U.S.C. 1412(a)(3).
6. Nothing herein terminates or abrogates the Parent's right to request subsequent evaluations from the District, or to obtain an independent educational evaluation at the Parent's own expense.
7. Nothing herein terminates or abrogates the Parent's right to request an independent educational evaluation at public expense if the Parent disagrees with the reevaluation ordered herein or any subsequent IDEA evaluation or reevaluation.
8. The Parent's demand for an independent educational evaluation at the District's expense, addressed in the decision above, is **DENIED**.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER