

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. 30447-24-25 and 30758-24-25

Child's Name:

Y.C.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Unionville – Chadds Ford School District
740 Unionville Road
Kennett Square, PA 19348

Counsel for the LEA:

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Hearing Officer:

James Gerl, CHO

Date of Decision:

April 10, 2025

BACKGROUND

The parent filed a due process complaint alleging failure to implement the student's IEP, two procedural violations allegedly resulting in a denial of FAPE, that an assessment was given to the student without parental consent and that a functional behavioral analysis of the student is not needed. I find in favor of the school district on all issues raised by the parent's complaint.

The school district filed a complaint contesting the parent's right to an independent educational evaluation. I find in favor of the school district with regard to the school district's complaint.

PROCEDURAL HISTORY

The school district filed a sufficiency challenge to the parent's complaint. The sufficiency challenge was sustained, and the parent was given leave to amend the complaint. The parent then filed an amended complaint, which reset the timelines. A second sufficiency challenge by the school district was denied.

Thereafter, the school district filed a complaint contesting the parent's request for an independent educational evaluation at public expense. Both complaints were heard together in one in-person session. The parties failed to agree to any stipulations of fact in this case. The failure to agree to stipulations elongated the hearing process and delayed the decision in this case.

Six witnesses testified at the due process hearing. School district exhibits S-1 through S-11 were admitted into evidence. The following parent exhibits were excluded based upon relevance: P-3, P-4, P-6, P-7. All other parent exhibits were withdrawn.

After the hearing, counsel for the school district and the unrepresented parent each presented written closing arguments/post-hearing briefs and proposed findings of fact. The parent's brief was filed twenty-four hours after the deadline. To prevent any unfairness because the parent had the school district's brief in hand for a day before filing, the school district was given the opportunity to, and did, file a responsive brief within one day. 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 the issues raised by the parent's complaint and by the school district complaint were clarified and discussed in detail. It should be noted that in the parent's post-hearing brief, the parent raises some issues that were not in the parent's complaint or over which an IDEA hearing officer has no jurisdiction, as discussed at the prehearing conference. Such issues included allegations of negligence and violations concerning speech-language therapy. These issues are not properly before the hearing officer and were not considered in this decision. 34 C.F.R. § 300.511(d). The issues

raised by the parent's complaint that are properly before the hearing officer as set forth below:

1. Whether the parent has proven that the school district failed to implement material portions of the student's IEP concerning occupational therapy?
2. Whether the parent has proven that the school district committed a procedural violation by failing to consider parent input and data and to include it in the student's IEPs?
3. Whether the parent has proven that the school district has committed a procedural violation by failing to maintain accurate progress monitoring for the student and to report it to the parent.?
4. Whether the parent has proven that the school district conducted an assessment of the student without first obtaining parental consent.?
5. Whether the parent has proven that a functional behavioral analysis is not needed?

The complaint filed by the school district presents the following issue:

6. Whether the school district has proven that the parent is not entitled to an independent educational evaluation at public expense?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

1. The student's date of birth is [redacted]. (S-11, S-1)
2. The student likes baseball and is very kind. (NT 90 – 91, 115)
3. The student was enrolled in the school district for the student's [redacted]- grade year during the 2021 – 2022 school year. (S-1)
4. The student is a [redacted]-grade student in the school district. (S-11; NT 167-170)
5. While the student has been enrolled at the school district, the student's mother has requested that the school district send documents related to the student's education home by including IEPs, progress reports, and other documents in the student's backpack, as well as by sending them electronically or otherwise to the student's mother and to the mother's adult son. The school district has complied with this request. (NT 70 – 72, 170)
6. An evaluation report was issued for the student on April 5, 2022 by the school district that found the student eligible for special education under the eligibility category of speech-language impairment. (S-1; NT 139-141)

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; and "S-1," etc. for the charter school's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

7. An IEP team meeting was conducted on April 27, 2023. Present at the meeting were the student's mother and the student's adult brother. The April 27, 2023 IEP indicates that the student had mastered all of the student's academic goals in reading, math computation, math application, written expression and spelling. The student had also mastered a speech goal and was approaching mastery in another speech goal. The student had mastered one occupational therapy goal and was approaching mastery of another goal in occupational therapy. A new occupational therapy goal was added to the student's IEP. The student's mother expressed concerns during the meeting and some of the parent's suggestions were added to the specially designed instruction section of the IEP. The parent requested that the student be made eligible for extended school year services, but the team determined that the student was not eligible for ESY. (S-2; NT 66-68, 141-142)

8. An IEP revision meeting was convened by the IEP team on January 24, 2024 to revise the student's IEP to update the student's math goal because the student had met the math goal. The parent and the parent's adult son participated in the IEP team meeting. A Notice of Recommended Educational Placement was issued on January 24, 2024 to the parent but was not returned. On February 22, 2024 a NOREP was issued to the parent noting that the student was now eligible for extended school year services. The parent signed the NOREP and indicated that she requested IEP goals to be higher and more accommodations. (S-2, S-3; NT 154-155)

9. As of April, 2024, the student was exhibiting behaviors that were adversely impacting the student's progress and the progress of other students in the student's class, including distracting themselves and others. (S-4; NT 54, 170 – 174, 198)

10. An IEP team meeting was conducted on April 12, 2024. At the IEP team meeting, it was recommended that the student no longer receive direct

occupational therapy services because the student had mastered the student's occupational therapy goals. The occupational therapist recommended to the team that occupational therapy consultation services be provided during which the occupational therapist and teachers would review handwriting samples and ensure that the student was able to generalize skills across environments. At the meeting, the parent expressed concerns, including "unable to write words / sounds [the student] is saying." At the meeting, the student's mother requested that the student be given narrow, three-lined paper to assist with handwriting legibility. The parent's request for triple-lined paper was added to the specially designed instruction portion of the IEP. The IEP includes three speech goals, a reading fluency goal, a reading comprehension goal, a written expression goal, and a spelling goal. The IEP changed occupational therapy from direct services to consultative services. The student was found to be eligible for extended school year services. (S-4; NT 54, 57 – 58, 73-76, 78, 142 – 145, 154)

11. A NOREP was issued to the parent on April 16, 2024. The parent returned the NOREP disagreeing with it and stating, "amount of support, determination of eligibility and details of support." The returned NOREP was received by the school district on May 1, 2024. (S-4)

12. Since April 16, 2024, the school district has provided occupational therapy consultation services to the student as required by the student's IEP. (NT 76-78, 147-148, 153-154; S-8)

13. On May 10, 2024, the school district sent a letter to the parent regarding the parent's concerns listed on the NOREP. (S-4)

14. An IEP revision meeting was held on September 30, 2024 by the IEP team. The student's mother and the student's adult brother attended the meeting, as well as school district staff, including a board-certified behavioral analyst. The meeting was held to include additional specially designed

instruction to support the student's problem behaviors and to include a behavior chart. The September 30, 2024 IEP notes that the student is exhibiting problem behaviors. An SDI for the behavior chart was added to the IEP. During the September 30, 2024 IEP team meeting, the board-certified behavior analyst provided a brief summary of a functional behavioral analysis. The BCBA explained to the parent why a functional behavioral analysis was recommended for the student. (S-5; NT 107, 119-120, 135-136, 176 - 178)

15. A NOREP was sent to the parent on October 7, 2024. The parent did not approve it and returned the NOREP stating, "Lack of info and not understanding info on FBA and other testing." The school district received the returned NOREP on October 15, 2024. (S-5; NT 222-223)

16. On October 16, 2024, the school district issued a prior written notice for a reevaluation that included a Permission to Reevaluate consent form. The proposed reevaluation was to consist of the following: a review of records, classroom observations, teacher and parent input, standardized cognitive assessments, standardized academic assessments, social-emotional/ behavior/ executive functioning assessments and/or rating scales, standardized adaptive assessments and/or rating scales, functional behavioral assessment, speech and language tests and occupational therapy assessments. The parent refused to give consent to the proposed reevaluation and checked the box requesting a due process hearing. (S-6; NT 79-81)

17. AIMSweb and/or STAAR testing was given to the student on November 7, 2024. (NT 39, 179 - 181)

18. The school team members started a draft review of records document. The school team commonly uses questions on the form to review information already collected in order to determine what, if any, additional testing needed to be completed. A draft document was presented to the parent during the December 19, 2024 IEP team meeting. On the draft

document, AIMSweb testing results were included and presented to the parent. The STAAR testing results were also provided. AIMSweb and STAAR assessments are baseline and benchmark assessments. The STAAR assessments are given to all students in the entire school. The AIMSweb assessment is used to determine if there are more specific needs. The AIMSweb math probe takes approximately eight minutes. The AIMSweb fluency tests are approximately one minute. The AIMSweb written expression assessment takes approximately four minutes. The AIMSweb reading comprehension takes approximately three minutes. The AIMSweb spelling assessment takes approximately five minutes. (S-8; NT 153, 175, 179 – 184)

19. On December 19, 2024, the school district team members met with the parent to address the parent's concerns regarding the proposed evaluation. The meeting lasted approximately four hours. During the meeting, the school district staff reviewed the proposed assessments with the parent, including the type of assessments, samples of test booklets, demonstrations of how testing occurs. The purpose of the meeting was to address the parent's questions, specifically that the parent did not understand the proposed testing and did not want the functional behavioral analysis to be conducted. During the meeting, the student's mother requested an independent educational evaluation at public expense. (S-9; NT 87 – 88, 93, 149, 180-181, 226 – 227)

20. On January 2, 2025, a revised Permission to Reevaluate form was issued. The form detailed specific assessments that were reviewed with the parent at the December 19, 2024 meeting. On January 10, 2025, the parent did not give consent to the proposed reevaluation, objecting to the testing and making it clear that the parent did not agree with the testing requested. (S-9; NT 94 – 96)

21. The school district filed a due process complaint on January 24, 2025 because it had denied the parent's request for an independent educational evaluation at public expense. (S-10)

22. Prior to the January 31, 2025 IEP team meeting, the student's teacher had been using a tally chart that noted improper behaviors by the student. (NT 56, 101 – 102)

23. On January 31, 2025, an IEP revision meeting was convened. The team members present included the student's mother, the student's adult brother and the school district's board-certified behavioral analyst. During the IEP team meeting, the parent expressed disagreement with the tally behavior chart. The student's behavior chart was revised to include a more a positive approach based upon the parent's feedback, including the student using kind words and raising the student's hand to share ideas. The team reviewed the Wilson Sequence Chart for spelling because of the parent's concerns about spelling instruction. (S-11; NT 120 – 123, 132 - 133, 184 – 190. 193-194)

24. All IEPs during the relevant time frame have included accurate progress monitoring data and have been provided to the parent. (Record evidence as a whole)

25. A functional behavioral analysis of the student is needed because it would provide valuable information to the IEP team concerning strategies to address the student's problem behaviors. (Record evidence as a whole)

26. As of the date of the due process hearing, the student was making progress toward the student's IEP goals. (NT 204 – 209; S-11)

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 the 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. To prevail on a claim of failure to implement an IEP, a parent must show that the school district failed to implement substantial or material provisions contained in the IEP. Abigail P by Sarah F v. Old Forge Sch Dist, 105 F.4th 57, 124 LRP 21769 (3d Cir 2024); MP by VC v. Parkland School District, 79 IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F 3d 770, 47 IDELR 182 (9th Cir. 2007).

3. The United States Supreme Court has developed a two-part test for determining whether a local education agency has provided a free appropriate public education (hereafter sometimes referred to as “FAPE”) to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program (hereafter sometimes referred to as “IEP”) is reasonably calculated to enable the child to make progress in light of the child’s unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178,

553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

4. The IEP is the centerpiece of IDEA, and it is the central mechanism through which the local education agency provides FAPE to a child with a disability. T.R. v SD of Philadelphia, 4 F.4th 279, 79 IDELR 33 (3d Cir 2021); Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012).

5. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

6. The appropriateness of an IEP in terms of whether it has provided FAPE must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

7. For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. Ridley School District v. MR and JR ex rel. ER, *supra*; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

8. A school district must obtain informed parental consent prior to conducting an evaluation or reevaluation of a child with a disability. Parental

consent is not required to review existing data or for assessments that are administered to all students. 34 C.F.R. § 300.300.

9. Where a student with a disability has behaviors that impede the student's learning or the learning of others, the student's IEP team must consider the use of appropriate positive behavior interventions and supports and other strategies to address those behaviors. IDEA § 614(d)(3)(B)(1); 34 C.F.R. § 300.324(a)(2)(i); 22 Pa. Code 14.133; Sean C by Helen C v. Oxford Area School District, 70 IDELR 146 (E.D. Penna. 2017); Lathrop R II Sch. Dist. v. Gray ex rel BG, 611 F. 3d 419, 54 IDELR 276 (8th Cir. 2010).

10. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); PP by Michael P and Rita P v. West Chester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either pay for the evaluation or else request a due process hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2); JH v West Chester Area School District, 121 LRP 13514 (SEA Penna 2019); 22 Pa. Code § 14-102(a)(2)(xxix). The IDEA regulations contemplate that a school district will get the first crack at evaluating the student. PP ex rel. Michael P and Rita P v. Westchester Area School District, 585 F.3d 727, 740 (3d Cir. 2009); see D.Z. v. Bethlehem Area School District, 2 A.3d 712, 54 IDELR 323 (Pa. Comm. Ct. 2010); School District of Philadelphia, 74 IDELR 27 (SEA Penna 2019); 34 C.F.R. § 300.502(b)(1).

11. The parent has not proven that the school district failed to implement the occupational therapy portions of the student's IEP.

12. The parent has not proven a denial of FAPE because of a procedural violation involving a failure to include parent input and data in the student's IEPs.

13. The parent has not proven that the school district denied a free and appropriate public education to the student because of a procedural violation involving progress monitoring reporting.

14. The parent has not proven that the student was given an assessment without parental consent in violation of IDEA.

15. The parent has not proven that the school district has failed to appropriately address the student's problem behaviors, including that a functional behavioral analysis is not necessary.

16. The school district has proven that the parent is not entitled to an independent educational evaluation at public expense.

DISCUSSION

I. Merits

1. Whether the parent has proven that the school district has failed to implement material portions of the student's individualized educational program?

The parent's complaint alleges that the school district did not implement the student's IEP, particularly the portions concerning the related service of occupational therapy. The school district contends that the occupational therapy provisions of the IEP were implemented with fidelity.

The parent has not proven that material provisions of the student's IEP were not implemented. The student's IEP was changed in April of 2024 to

remove direct occupational therapy services because the student had mastered the student's goals for occupational therapy. At that time, the student's IEP team changed the student's occupational therapy from direct services to consultation. The purpose of the OT consultation is to have the occupational therapist review handwriting samples of the student with the student's teachers in order to ensure generalization of skills across environments. The record evidence demonstrates that the consultative OT services provided on the student's IEP were implemented by the school district.

It was clear at the due process hearing that the student's mother does not understand what "consultation services" means. The questions that the parent asked of witnesses at the hearing and the parent's brief both indicate that the parent believes that the student's IEP continues to require direct services delivered by the occupational therapist despite the change by the IEP team. The record evidence reveals that the school district has taken extraordinary steps to explain things to the parent, but the parent sometimes still does not understand. Despite the school district's efforts, however, communication between these parties clearly remains a problem. The school district should strongly consider providing additional assistance to the parent in understanding special education concepts. Parent training or other services may be useful in helping the parent to understand what the student's IEP does and does not require. The evidence in the record, however, clearly demonstrates that the school district has implemented the occupational therapy provisions of the student's IEP. The parent's argument is rejected.

The parent's posthearing brief contains citations to legal authority, but it does not include any citations or references to the hearing transcript or the exhibits admitted into evidence. Indeed, as to this and the other issues raised

by the parent's complaint, the record evidence does not support the parent's allegations.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student. This determination was made because of the demeanor of witnesses, as well as the following factor: the student's mother was extremely confused about what occupational therapy services were required by the student's IEP. In addition, please see the credibility discussion for the other issues in this decision.

The parent has not proven that the school district failed to implement the occupational therapy provisions of the student's IEP.

2. Whether the parent has proven that the student's IEPs do not include input and data from the parent?

The parent contends that the school district committed a procedural violation because the student's IEPs do not include parent input. The school district contends that it properly considered parent input and included the parent's concerns in the student's IEPs.

The evidence in this case reveals that the parent has been afforded meaningful participation in the IEP process for the student. The parent has been an active member of the student's IEP team. The parent's adult son, at the request of the parent, has also been an active member of the student's IEP team. Their input was documented in the IEPs.

The record reflects further that the school district members of the IEP team considered the parent's input and were open to the parent's suggestions. For example, the parent requested that the student be provided triple-lined paper to help the student write more legibly. The school district team

members agreed with this suggestion and included it in the student's IEP as specially designed instruction.

More importantly, the student's mother was upset that the student's teacher was using a behavior chart that included a tally sheet to mark bad behaviors by the student. The parent requested a more positive approach to the student's behavior issues. The school members of the student's IEP team agreed with the parent's suggested change and, in consultation with a board-certified analyst, developed a positive behavior reward system to address the student's problem behaviors. Again, the IEP team adopted the parent's suggestion.

Also, when the parent objected to a functional behavioral analysis and refused to consent to a reevaluation, specifying that she did not understand the proposed FBA, school staff participated in a four-hour meeting with the parent. The meeting was convened to help the parent understand the FBA and other assessments to be administered and to answer the parent's concerns. The meeting included samples of the type of questions on an assessment and role-playing. See further discussion of this meeting later in this decision.

It is clear from the evidence in the record that the parent actively participated in the student's education, that the parent and the parent's adult son were active participants in the student's IEP team, and that the school district duly considered and even adopted some of the parent's suggestions for the student's IEP. The evidence in the record does not support the parent's contention that the parent's input was ignored or not duly considered.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student in this

regard. This conclusion is made because of the demeanor of the witnesses, as well as the factors identified in the other issues in this decision.

It is concluded that the parent has not proven that the school district committed an actionable procedural violation by not duly considering the parent's input in the IEP team process.

3. Whether the parent has proven that the school district failed to provide the parent with accurate progress monitoring on behalf of the student?

The parent contends that the school district committed a procedural violation by not accurately measuring the student's progress and by not reporting the progress to the parent. The school district contends that the progress monitoring on behalf of the student was accurately and appropriately done and that it was reported to the parent.

The parent has not proven the allegation concerning progress monitoring. The record evidence indicates that documents were sent from the school district to the parent in the student's backpack and electronically to the parent's e-mail, as well as to the e-mail of the parent's adult son. The student's mother requested that the adult son also receive documents concerning the student, and the school district agreed to provide documents in this manner. Progress monitoring on the student's IEP goals was kept and recorded in the student's IEPs and it was also sent home to the parent in the student's backpack and through e-mails and correspondence with the parent and the parent's adult son. There is no evidence in the record that any of the progress monitoring on behalf of the student is inaccurate. The parent has also not proven that the school district failed to provide the parent with its progress monitoring concerning the student.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the factors set forth in discussion of the other issues in this decision.

It is concluded that the parent has not proven that the school district committed an actionable procedural violation failing to accurately keep or report progress monitoring data.

4. Whether the parent has proven that the school district gave the student a math assessment without first obtaining parental consent?

The parent contends that the student was given a math test on November 7, 2024 without first requesting consent from the parent. The school district contends that consent was not required because the assessments given were universal screening devices and that one of the purposes of the assessment was to determine in the review of records process whether additional assessments were needed for the student.

The parent has not proven that the school district wrongfully failed to obtain consent. The federal regulations provide an exception to the parental consent requirement for reviews of existing data as a part of an evaluation or a reevaluation or for universal screening devices given to all students.

The AIMSweb and the STAAR tests are universal screening devices that compare a student's achievement to other students across the nation, estimate mastery of state standards and common core standards. These assessments are given to all students. The assessments were also part of the

school district's records review for the student's reevaluation. Accordingly, the school district was not required to obtain the parent's consent before administering the AIMSweb math assessment to the student. The parent has not proven that the school district violated IDEA by failing to obtain consent before administering the tests.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the factors identified in other issues in this decision.

The parent has not proven a violation of IDEA with regard to failure to obtain consent.

5. Whether the parent has proven that the school district's request for a functional behavioral analysis of the student is inappropriate?

The parent contends that a functional behavioral analysis of the student is not needed. The school district contends that a functional behavioral analysis is needed to appropriately address the student's behavioral issues.

It is the undisputed testimony of the student's teacher that the student engages in problem behaviors in the classroom. Indeed, the student's mother acknowledges in her testimony that the student does engage in problem behaviors.

It was the compelling testimony of the school district's board-certified behavior analyst that a functional behavioral analysis of the student would be helpful in addressing the student's problem behaviors. It should be noted that

the school district staff had a meeting to address the parent's concerns about the functional behavioral analysis. The meeting lasted for four hours. During the meeting, the school district staff, including the board-certified behavior analyst, addressed the parent's concerns with regard to the student's behaviors. The board-certified behavior analyst explained to the parent in detail what would be involved in a functional behavioral analysis. The team members roleplayed how the assessments would be conducted. The school district staff provided a wealth of information to the parent about the functional behavioral analysis.

It appears from the hearing testimony that the student's mother is very angry at the school district because of its previous use of a behavior tally chart. The classroom tally chart recorded a tally mark each time the student committed a negative behavior. The student did not like the behavior chart, and the student's mother strongly objected to it. It appears that much of the parent's anger toward the school district, as well as anger toward the student's classroom teacher, is the result of the previous use of the behavior tally chart.

It should be noted, however, that the parent raised concerns to the IEP team concerning the behavior chart and requested that a more positive approach to the student's problems behaviors be adopted. The school district team members agreed with the parent and changed the behavior chart to one that recognizes positive behaviors, such as kind words, raising the student's hand before sharing ideas. The IEP team, including school district staff, agreed to adopt the changes suggested by the parent concerning a more positive behavioral approach.

Moreover, it should be noted that the parent criticizes the school district for not previously conducting a functional behavioral analysis, and at the same time refuses to consent to the school district's request to conduct a functional

behavioral analysis. The parent cannot have it both ways. It is clear from the record that the student exhibits problem behaviors that interfere with the student's learning and that of the student's classmates. It is concluded that a functional behavioral analysis is needed, and that it would be very helpful to the student's IEP team in order to develop appropriate strategies to address the student's problem behaviors.

In addition, the school district is legally obligated to develop appropriate behavior supports and strategies to address the student's problem behaviors. Conducting a functional behavioral analysis would be helpful to IEP team members for this purpose.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the inconsistent positions the student's mother has taken with regard to the issue of whether a functional behavioral analysis of the student is needed. In addition, in the parent's post-hearing brief the parent falsely claims that the student's teacher testified that the teacher prepared the original behavioral chart and that the special education supervisor claimed that it was a team decision. The record evidence does not support the statements asserted in the parent's post-hearing brief. It was the testimony of the student's teacher that the original behavioral chart was a team decision. No special education supervisor testified at the due process hearing. The special education director did testify, but the special education director did not testify concerning who developed the behavior chart. The statements in the parent's brief are not supported by the evidence in the record.

The parent has not proven that a functional behavioral analysis is not needed.

6. Has the school district proven that the parent is not entitled to an independent educational evaluation at public expense?

The school district filed a due process complaint asserting that parent is not entitled to an independent educational evaluation at public expense. The parent contends that the school district staff is “biased” and would not appropriately evaluate the student. The parent, therefore, requests that an independent educational evaluation at public expense be provided.

The school district has proven that the parent is not entitled to an independent educational evaluation at public expense. The federal regulations provide that a parent may request an independent educational evaluation at public expense if the parent disagrees with an evaluation performed by or obtained by the school district. In the instant case, the last evaluation of the student was more than two years ago. The school district has requested to complete evaluations since that time, but the parent has refused to consent.

Accordingly, there is no school district evaluation which the parent is disagreeing with at this time. It is generally recognized in the case law that the school district has first crack at conducting an evaluation before an independent educational evaluation at public expense will be awarded. In this case, the prerequisite has not been met, because the parent is not disagreeing with any school district evaluation. Accordingly, the parent is not entitled to an independent educational evaluation at public expense.

Moreover, there is no evidence in the record to support the parent’s allegation that the school district staff is biased against the parent. The school district staff met with the parent for over four hours to review all concerns that the parent had with regard to the permission to reevaluate that was

issued on October 16, 2024. The evaluation that was proposed by the school district included a functional behavioral analysis and other assessments of the student. The parent actively participated in this meeting, during which the school district staff roleplayed with the parent concerning what the testing would be, provided sample forms and arranged meetings with individual evaluators. Despite this effort by the school district staff, the parent refused to consent to the proposed evaluation.

Because the parent has refused to consent to the school district's evaluation despite extraordinary efforts by the school district to satisfy any concerns that the parent may have had, the school district has not had an opportunity to evaluate the student. Accordingly, it is premature to consider any request for an independent educational evaluation at public expense. If a school district evaluation is completed and the parent disagrees with it or believes that it does not meet all legal requirements, the parent may then request an independent educational evaluation at public expense.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother and the student with regard to this issue. This determination is made because of the demeanor of the witnesses, as well as the factors set forth with regard to the other issues in this decision.

It is concluded that the school district has sustained its burden and that the parent is not entitled to an independent educational evaluation at public expense.

ORDER

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

1. Based upon the foregoing, it is hereby ordered that all relief requested in the parent's due process complaint is denied and the complaint is dismissed; and
2. Based upon the foregoing, it is hereby ordered that the school district's complaint is sustained. The school district is not required to provide an independent educational evaluation to the parent at public expense; and
3. Any and all other relief requested by the instant due process complaints is hereby denied.

IT IS SO ORDERED.

ENTERED: April 10, 2025

James Gerl

James Gerl, CHO
Hearing Officer