

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

ODR No. 27848-22-23

CLOSED HEARING

Child's Name:

O.G.

Date of Birth:

[redacted]

Parent(s)/Guardians:

[redacted]

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Hearing Officer:

Brian Jason Ford

Date of Decision:

06/09/2023

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's public school district (the District) requested this hearing upon rejecting the Student's parents (the Parents') request for an Independent Educational Evaluation (IEE) at public expense.

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The IDEA requires the District to request a due process hearing to defend its own evaluation or reevaluation whenever it denies a request to fund an IEE. It is the District's burden to prove that its own evaluation was appropriate. If the District's evaluation was not appropriate, it must fund an IEE.

The evaluation in question is a reevaluation report dated March 16, 2022 (the RR). The parties do not agree about whether that date controls for assessing the timeliness of the Parents' IEE request. More fundamentally, the parties do not agree about whether timeliness can be a threshold issue in cases like this. However, prior to the hearing, both parties were aware of previous decisions in which I held that the amount of time between the issuance of a school's evaluation and a parent's request for an IEE may indicate whether the parent disagreed with the evaluation. Such disagreement is a threshold issue.

Issue

One issue is presented: Was the 2022 RR is appropriate?

The parties' briefs imply that questions concerning the timing of the Parents' IEE request and their actual disagreement with the District's evaluation are separate, additional issues. In my view, those questions are threshold questions to reach the single underlying issue.

Stipulations

I thank both attorneys for the efficiency with which they presented this case. Rather than spending too much time establishing facts that are not in dispute, the parties filed joint stipulations and used joint exhibits whenever possible in a one-session hearing.

Nothing in the record contradicts the parties' stipulations. I adopt those stipulations as if they are my own findings. I reproduce them here, edited as

indicated to protect the Student's privacy. Not every stipulation is strictly relevant to the issue presented and some have been redacted entirely.

1. [Student] is an [age redacted] child who currently attends [redacted] Grade at [a school] within the [District].
2. [Parents] are the parents of [Student], as defined by 34 C.F.R. § 300.30(a)(1).
3. [Student] was a resident of the District at all times relevant to the District's due process complaint.
4. [Student] has been identified by the District as a student with an Other Health Impairment ("OHI") and Autism Spectrum Disorder ("ASD").
5. The District re-evaluated [Student] on May 18, 2017 ([redacted]) and May 18, 2020 ([redacted]).
6. In [Student's] [redacted] Grade (21-22 school year), Parents requested that the District re-evaluate [Student] in anticipation of [the Student's] transition from [one of the District's elementary schools] to [Student's current school building].
7. On December 21, 2021, the District issued to Parents a Permission to Reevaluate/Prior Written Notice Consent Form.
8. The District received the approved consent form from Parents on January 14, 2022.
9. The reevaluation was conducted by [the District's doctoral-level certified school psychologist], who issued the report to Parents on March 16, 2022 ("RR").
10. On April 7, 2022, the District held an IEP meeting to review the RR. Parents attended that meeting and approved the accompanying [Notice of Recommended Educational Placement] NOREP the same day.
11. On February 16, 2023, Parents, through counsel, requested the District fund a comprehensive [IEE] of [Student], alleging that the March 2022 RR was inappropriate.

12. On February 22, 2023, the District, through counsel, proposed that the [Intermediate Unit in which the District is located (IU)] conduct a comprehensive re-evaluation of [Student] in lieu of a private evaluator.
13. On February 28, 2023, the [parties' attorneys] discussed the parties' respective proposals via phone. On that call, Parents' counsel rejected the District's proposal that the [IU] conduct a comprehensive RR in lieu of an IEE, and instead requested that the District fund a partial re-evaluation by a private evaluator and a partial re-evaluation by the [IU].
14. On March 3, 2023, the District through counsel rejected Parents' proposal of a split re-evaluation and stated that the District would file a due process complaint to defend the March 2022 RR if resolution could not be reached.
15. [Stipulations 15 and 16 explain the timing of the District's complaint but are not relevant to the issue presented].
16. [Stipulations 15 and 16 explain the timing of the District's complaint but are not relevant to the issue presented].
17. On March 29, 2023, the District filed a Due Process Complaint to defend its March 15, 2022 Reevaluation Report.
18. On April 6, 2023 and April 11, 2023, the District issued Permission to Reevaluate/Prior Written Notice Consent Forms to Parents.
19. On April 25, 2023, Parents returned the Permission to Reevaluate, indicating that they would not consent to a District conducted Functional Behavioral Assessment until after Hearing Officer Ford's decision regarding their IEE request.

Findings of Fact

I reviewed the record in its entirety. I make findings only as necessary to resolve the issues before me. I find as follows:

1. April 7, 2022, is the day that the Parents were in receipt of the RR. *Stipulation 10.*¹

¹ The Parents present several arguments that this date, April 7, 2022, should not control. I disagree with all of those arguments. As discussed below, however, the exact amount of time between the Parents' receipt of the RR and their disagreement with the RR does not alter the outcome of this case.

2. The RR included an "Other Information" section. In that section, the District acknowledged the Student's medical and educational diagnoses of Other Health Impairment (OHI), Anxiety, Obsessive Compulsive Disorder (OCD), Autism Spectrum Disorder (ASD) including sensory integration issues, and vision difficulties (borderline oculomotor dysfunction and accommodative excess/spasm). J-9 at 1-2.
3. As discussed below, the Parents had shared the ASD diagnosis with the District years prior, and the vision assessment more recently. The District had previously acknowledged the ASD diagnosis and provided ASD-related special education. See, e.g. J-2, J-3, J-4.
4. The RR included brief, narrative report of the Student's progress and narrative parental input. J-9 at 2-3.
5. The RR included a summary of prior standardized testing and classroom diagnostic tests, all of which placed the Student in the "average" to "upper extreme" ranges relative to peers and well above grade level academically in several domains. J-9 at 3-4.²
6. The RR includes a report of a classroom observation conducted by the District's school psychologist, who is a doctoral-level certified school psychologist. J-9 at 4-5.
7. The RR included teacher-generated lists of strengths, interests, and concerns. The concerns appear to be chosen from a list, but teachers provided examples of the Student's behaviors as well. Those included, "extreme difficulty with keeping materials neat and organized," perseverative tendencies, and problems in Math (math skills, avoidance of Math, and focus and attention during Math lessons).³ J-9 at 6.
8. The RR included a report of the Student's grades, which were two Bs and an A. One B was in Math. The teacher reported that the student was "on-grade level, but benefits from re-tests).⁴ J-9 at 6.

² This testing and diagnostic reporting was from 2017. In the future, I urge the District to draw a clear line between the presentation of old data and new data.

³ As written, it is not clear if the teacher implies that the Student's math difficulties are related to each other. In my own experience, it is common for children to avoid and lose focus during non-preferred activities, but I cannot substitute my personal experience for the record in this case.

⁴ As written, it is not clear if the Student's grade would have been lower than a B but for retests.

9. The RR included a statement of what support services the Student was receiving at that time. Those included meetings with the School Counselor, and weekly SEL with a special education teacher. J-9.
10. The RR included a statement of what interventions the Student's teachers found to be helpful. These included reteaching math skills, small group support for math skills, and testing in an alternate location. J-9. The alternate testing location (a different spot in the classroom) was observed during the Psychologist's observation. J-9 at 4-5.
11. The RR included narrative input and suggestions from the Student's Art, Music, Learning Support, and "Challenge" teachers and from the School Counselor. Taken as a whole, these inputs paint a picture of a smart, talented student who exhibits difficulties with organization and interpersonal skills. J-9 at 6-7.
12. The RR included a Psychoeducational Evaluation conducted by the District's Psychologist for the RR. The Psychoeducational Evaluation included:
 - a. A report of the Student's behavior observed by the Psychologist during testing. J-9 at 10.
 - b. The results of a Wechsler Intelligence Scale for Children, 5th Edition (WISC-V), which is a standardized, normative assessment of intellectual ability. The WISC-V results indicate that the Student's Working Memory and Processing Speed were both in the Low Average range – but all other composite scores were in the Average to Extremely High ranges, yielding a Full-Scale Intelligence Quotient (FSIQ) score in the High Average range. J-9 at 11.
 - c. A calculation of the Student's General Ability Index (GAI) and Cognitive Proficiency Index (CPI), which are derived from the WISC-V scores. The GAI is intended to account for both variability in composite scores and minimize deficits in Working Memory and Processing Speed. The Student's GAI was in the Very High range. The CPI does the opposite, summarizing the Student's Working Memory and Processing Speed. The Student's CPI was in the Low Average range. J-9 at 11-12.

- d. The Psychologist's explanation and interpretation of the WISC-V scores. J-9 at 10-13.
 - e. The results of a Wechsler Individualized Achievement Test, 4th Edition (WIAT-4), which is a standardized, normative test of academic achievement. The WIAT-4 can be compared to the WISC-V to determine if a child's academic achievement is in line with expectations based on the child's intellectual ability. As with the WISC-V, the Psychologist provided an explanation and interpretation of the WIAT-4 results. J-9 at 13-16.
 - f. On the WIAT-4's reading assessments, all of the Student's index scores placed the Student in the Extremely High range except for Reading Fluency, which was in the Very High range. J-9 at 13-14.⁵
 - g. On the WIAT-4's writing assessments, the Student scored in the Average to Very High ranges in all index and sub-test scores. J-9 at 15
 - h. On the WIAT-4's math assessments the Student's Mathematics and Math Fluency index scores were both in the average range. The Student scored in the High Average range in Math Problem Solving but in the Average range in all other sub-tests, indicating a better ability to understand and apply math concepts than to do arithmetic. Even so, none of the Student's math abilities fell below the Average range, placing the Student in line with peers at the least and ahead of peers in some domains. J-9 at 16.
13. The RR included the results and analysis of the Behavior Assessment Scale for Children, Third Edition (BASC-3), which is a comprehensive behavioral rating of the Student completed separately by a teacher and one of the Student's parents. J-9 at 17-19.
14. Both the Parent and teacher ratings on the BASC-3. Generally, the teacher reported or endorsed more significant behaviors than the parent. On index and composite scores, the teacher's rating placed the Student in the Clinically Significant range (albeit at the bottom of that range) for Externalizing Problems and the Behavioral Symptoms Index. The Parent's ratings were in the Average range in both domains. Both the Parent and teacher rated the Student in the Average range for

⁵ The Student's Dyslexia Index was in the Extremely High range, meaning that the Student did *not* show symptoms associated with dyslexia.

Internalizing Problems and Adaptive Skills. However, there was significant variability in sub-test scores that make up the Adaptive Skills score both for the Parent and teacher individually and compared to each other. Despite this variability, both the Parent's and teacher's ratings were valid as measured by the test itself. J-9 at 18-19.

15. The District's Psychologist highlighted specific findings from the BASC-3 in addition to presenting the scores. Those findings related to the Student's impulsivity, hyperactivity, aggressiveness, and peer relationships. J-9 at 18-19.
16. The RR included a Functional Behavior Assessment (FBA) conducted by a Board Certified Behavior Analyst (BCBA). The BCBA was employed by the Intermediate Unit (IU) in which the District is located. J-9 at 19-24. The FBA included:
 - a. A review of records.
 - b. An interview with the Student's teachers.
 - c. Detailed reports of three, targeted behavioral observations.
 - d. A functional hypothesis that the Student's disruptive behaviors and inappropriate peer interactions functioned to gain attention and automatic reinforcement.
 - e. Recommendations including development and use of a Positive Behavior Support Plan (PBSP) to provide positive reinforcement for expected behaviors, instruction in gaining attention from and interacting with peers, and minimization of attention to challenging behaviors.
17. The RR included an Occupational Therapy (OT) Review of Records, through which the District considered outside reports from a vision therapy center. Based on that review of records, the District recommended school-based OT to increase "exposure to organizational skills" and improve "visual tracking during academic tasks." J-9 at 24-25.
18. The RR concluded that the Student continued to be a child with a disability who was in need of specially designed instruction (SDI). The District listed Autism as the Student's primary disability and Other Health Impairment (OHI) as the Student's secondary disability. J-9 at 25.

19. The RR summarized the Student's strengths and needs, consistent with the document in its entirety. J-9 at 25-27.
20. The RR included ten recommendations for the Student's IEP team to consider. J-9 at 25-26.
21. The Student's IEP team met remotely on April 7, 2022 (the same day that the District gave the RR to the Parents). *See, e.g.* J-11 at 3.
22. During the IEP team meeting, the District presented an IEP that included a PBSP with a NOREP. *See, e.g.* J-11 at 1, 34, 47.⁶
23. The Parents approved the IEP by signing the NOREP in the evening of the same day, April 7, 2022. J-11 at 49.
24. 315 days later, on February 16, 2023, the Parents requested an IEE and claimed that the RR was inappropriate. *Stipulation 11*.
25. The Parents did nothing to indicate any disagreement with the RR from its issuance on April 7, 2022, through their request for an IEE on February 16, 2023.

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.*

⁶ No issues concerning the substantive appropriateness of the IEP, including the PBSP [redacted], are before me. I, therefore, decline to include detailed findings of fact about the substance of those documents.

Dist., No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I find that all witnesses testified credibly and that the very few conflicts between witnesses' testimony are attributable to those witnesses remembering facts differently or reaching different conclusions from the same set of facts.

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. *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 its 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 is the party seeking relief and must bear the burden of persuasion.

Evaluation Criteria

The IDEA establishes requirements for evaluations at 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).

In addition, under 20 U.S.C. § 1414(b)(3)(A), the District is obligated to ensure that:

assessments and other evaluation materials... (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.

Finally, evaluations must assess "all areas of suspected disability". 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..." 34 C.F.R. § 300.502(b)(1). "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 it's evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

"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." 34 C.F.R. § 300.502(b)(4).

Discussion

The Threshold Disagreement

During the hearing and in their briefs, both parties address the timeliness of the Parent's IEE request. This case is similar to *In re: L.M., Downingtown Area School District*, ODR No. 26937-2223-AS, which is a due process decision in which a long time passed between the school's issuance of an evaluation and the guardian's disagreement with that evaluation. In resolving the *Downingtown* case, I wrote:

The IDEA does not establish a clear timeline for parents/guardians to disagree with an LEA's evaluation and request an IEE at public expense. In this case, the Guardians agreed with the District's evaluation and then, nearly 16 months later, disagreed with it and asked the District to fund an IEE. Even ignoring the Guardians' initial agreement with the ER, 480 days is too long. The IDEA permits the Guardians to request a new evaluation every year. Had the Guardians requested a new evaluation from the District, they would have been entitled to it. Instead, they seek to bypass the District's first bite at the apple and move directly to a District-funded IEE.

As such, in the *Downingtown* case, I found that the school district proved that a threshold condition was missing: the guardians had not disagreed with the school's evaluation, as required by 34 C.F.R. § 300.502(b)(1).

The instant case, like the *Downingtown* case in some ways, the Parents affirmatively approved educational placements flowing from the RR for a long time and never disagreed with the RR before requesting an IEE. In this case, through their actions, the Parents demonstrated their agreement with the RR for 315 days.⁷ Their abrupt disagreement with the RR after more than 10 months of active agreement separates the circumstances of this case from the second opinion that the law seems to contemplate.

Even so, as in *Downingtown*, I recognize that no law or regulation sets a timeline for the Parents to disagree with the District's evaluation and request an IEE. The question in *Downingtown* was not whether the Parents exceeded some hearing officer-made deadline. Rather, the question was whether the guardians ever disagreed with the RR. My analysis in this case is the same. I

⁷ The Parents argue that they never agreed with the RR. Their actions indicate otherwise, and affirmative agreement or disagreement is required only in cases of specific learning disability.

consider the amount of time that passed, relative to other IDEA timelines, only as evidence to support or refute the existence of the disagreement required by 34 C.F.R. § 300.502(b)(1). In this respect, this case is different from *Downingtown* in an important way: less than a year passed between the District's issuance of the RR and the Parents' disagreement with it.

In *Downingtown*, if the guardians requested a reevaluation from their school district instead of requesting an IEE, they would have been entitled to it because their school district's last evaluation was more than a year old. See, e.g. 20 U.S.C. § 1414(a)(2)(B). That timeline, among other things, established that the guardians had not disagreed with the school's evaluation in a way contemplated by the IDEA. Rather, they were trying to bypass their school district's right to conduct its own evaluation before funding an IEE.

In the instant case is different. The Parents had no entitlement to a new evaluation from the District when they disagreed with the RR. See *id.* The IDEA permits schools and parents to agree to a faster schedule but does not guarantee parents more than one evaluation from their school per year.⁸ See, e.g. 20 U.S.C. § 1414(a)(2)(B). Therefore, unlike *Downingtown*, the Parents in this case were not bypassing the District's right to conduct its own evaluation.

IEEs have been described by the Supreme Court as the "firepower" that parents sometimes need to substantiate the sort of IDEA claims that are not presented here. *Schaffer v. Weast*, 546 U.S. 49, 61 (2005). This recognition, along with the absence of a statutory or regulatory timeline, signal a need for cautious analysis. I find that the Parents agreed with the RR for 315 days and then disagreed with it. At the time of their disagreement, the Parents had no right to a school-conducted evaluation, and no obligation to accept a school-conducted evaluation if offered. I find nothing in the law that prohibits the Parents from changing their mind about the RR after 315 days and requesting an IEE.

There is plenty in the record to suggest that the Parents' sudden disagreement with the RR is pretext and part of an effort to obtain the "firepower" to bring claims that are not presented in this matter. Nothing in the IDEA requires an examination of whether the "disagreement" contemplated at 34 C.F.R. § 300.502(b)(1) is genuine. In fact, the Parents are not obligated to state a basis for their disagreement. See 34 C.F.R.

⁸ The record of this case shows that the District offered a new evaluation (through either itself or the IU) in response to the Parent's request for an IEE, but no law or regulation required either party to make such an agreement.

§ 300.502(b)(4). I find, therefore, that all threshold conditions to the Parents' IEE request were met.

The RR Was Mostly Appropriate

Having found that the Parents' IEE request was permissible under the IDEA, I turn to the core question presented in this matter: was the RR appropriate? I find that it was almost entirely appropriate. Nothing in the RR was inappropriate, but preponderant evidence in the record establishes that a few areas of suspected disability were not assessed.

First, the RR used "a variety of assessment tools and strategies to gather relevant ... information." 20 U.S.C. § 1414(b)(2)(A). Those tools and strategies included a review of records, multiple forms of input from Parents and teachers, multiple observations of the Student both in and out of the classroom, a psychoeducational evaluation that included standardized, normative assessments of the Student's academic achievement and intellectual ability, standardized behavior ratings, a functional behavioral assessment, and formalized incorporation of outside evaluations through an occupational therapy review.

Second, these assessments were used to gather information to determine that the Student was still a child with a disability (there was never any doubt), and to make recommendations to the IEP team. The RR included multiple recommendations in its conclusion, and some parts of the RR (like the OT records review) included their own recommendations as well.

Third, the RR used multiple measures and assessments to determine both that the Student is a child with a disability and what educational program is appropriate for the Student. Some documents in this case suggest that the Parents initially took the position that the District failed to use multiple measures, but no argument was presented about multiple measures. If it were, the standard is clearly satisfied.

Fourth, the District used technically sound instruments to assess the Student. Here, the parties disagree about whether the standard was met. While the District bears the burden of proof, the Parents' argument illustrates the dispute. The Parents argue that District personnel came to the evaluation with preconceived notions of the Student's needs and then substituted their opinions for technically sound instruments. There is no preponderant evidence in the record supporting the Parents' position. The RR includes analysis of testing, and that analysis relies on the expert interpolations of psychologists and other professionals. The RR would be incomplete and inappropriate without that analysis. "Technically sound

instruments” refers to the validity of the instruments themselves (e.g., the WISC-V, WIAT-4, BASC-3). There is nothing in the record suggesting that the instruments are anything but technically sound. Arguments about the technical soundness of instruments should not be conflated with arguments about the analysis of the data produced by those instruments or the completeness of the RR as a whole.

Fifth, all the factors listed at 20 U.S.C. § 1414(b)(3)(A) are satisfied. For example, there is no evidence or arguments about racial or cultural bias in this case.

The District satisfied its burden in the above five factors. The sixth factor is whether the RR assessed all areas of suspected disability. The parties’ strongest disagreement falls in this domain. The District argues that the RR was thorough, comprehensive, and responsive to everything that was known about the Student at the time. The Parents take the opposite position. It is worth noting, again, that the burden of proof is on the District, not the Parents. But, again, the Parents’ argument is the best illustration of the dispute and is worth tracking for that reason.

The Parents correctly highlight that, at the time of testing, the District had actual knowledge of the Student’s medical Autism diagnosis. That came from a 2019 report from the Children’s Hospital of Philadelphia (the CHOP report) that the Parents shared with the District shortly after they received it. J-2. The District acknowledge that report and started using it for educational programming in 2020. See J-3, J-4. The Parents also correctly highlight that the RR included no Autism-specific testing. When questioned about this, the District’s psychologist explained that the District did not test for Autism because there was not doubt that the Student had Autism. See NT 204-205. Moreover, the RR included several assessments to collect information and drive programming to address the Student’s Autism-related behaviors as they present in school (e.g., the BASC, FBA, observations, etc.).

The District’s acknowledgement of the Student’s Autism diagnosis and assessment of the Student’s Autism-related behaviors were appropriate. However, the District did not assess the Student’s Autism-related sensory needs or pragmatic language needs. The District had actual knowledge that the Student’s Autism resulted in sensory integration issues that presented in school. J-2, J-3, J-4. The District also had actual knowledge that the Student’s social skills deficits may result from Autism-related pragmatic language deficits. J-2, J-3. Teacher comments in the RR itself suggest at least the possibility of pragmatic language difficulties. See, e.g. J-9 at 2-3. The District’s evaluative approach to the Student’s Autism was, however, almost entirely behavioral. Based on the information available to the District

at the time of the RR, it was necessary to determine if the Student's sensory and pragmatic language needs must be addressed through special education and, if so, how.

The Parents make a similar argument regarding executive functioning. They argue that the RR itself indicates significant executive functioning problems but included no assessment that specifically targets executive functioning. The Parents are half-right: the RR itself indeed indicates significant executive functioning deficits, but that is because the District evaluated the Student's executive functioning needs. The District's methods included, *inter alia*, parent and teacher input, observations, and standardized assessments like the BASC. The BASC is a broad, comprehensive behavior rating scale that generates data in executive functioning domains. There are other assessments that specifically target executive functioning. Those assessments may yield more granular information about the Student's executive functioning needs. However, there is no preponderant evidence in the record to suggest that more information about the Student's executive functioning was needed, and the RR included recommendations to address the Student's executive functioning needs.⁹

The Parents also make a similar argument about the District's incorporation of the private vision assessment through the OT records review. The Parents argue that a school-based, functional vision assessment was needed but not performed. I agree. The RR included assessments of the Student's ability to write and copy sentences presented at a close distance. Those assessments do not, for example, examine the Student's ability to see and copy from a board at the front of a classroom. *See, e.g.* NT 126-127. A school-based, functional vision assessment is necessary to determine what vision accommodations, if any, the Student requires in school.

The Parents also argue that the RR lacked sufficient assessment of the Student's fine motor skills. I disagree. The RR included several measures of the Student's mechanical writing ability.

The Parents also argue that the RR did not include sufficient input from the Parents or the Student's private service providers. I disagree. The District actively solicited input from the Parents and used information from the Student's outside providers in the RR to a degree beyond what the IDEA requires.

⁹ Issues concerning the appropriateness of the how the subsequent IEP addressed the Student's executive functioning needs are not before me.

Finally, the Parents argue that the District delayed filing its due process complaint when rejecting the Parents' IEE request.¹⁰ The IDEA requires the District to file "without unnecessary delay." 34 CFR § 300.502(b)(2). Under the circumstances of this case, the timeline does not indicate unnecessary delay. The Parents argue that the timeline violated the District's own policy. I make no ruling about whether the District complied with its own policy. My task is to determine if the RR was appropriate under the IDEA, not whether the District acted in conformity with the rules that it created for itself.

Summary, Legal Conclusions, and Remedies

No portion of the RR was inappropriate, but the RR did not assess all areas of suspected disability in a few ways. The District should have assessed the Student's Autism-related pragmatic language and sensory needs. The District also should have assessed the Student's school-based functional vision needs. It is entirely possible that the Student has none of these needs, or that these needs are appropriately addressed through other aspects of the RR. But, at the time of the RR, these were known unknowns that required investigation.

Having found that the RR fell short of IDEA requirements in specific, discrete ways, I turn to remedies. An IEE at public expense is the remedy contemplated by the regulations. See 34 C.F.R. § 300.502. In this case, the Parents demand multiple independent evaluations to cure what they view as the deficiencies in the RR.¹¹ Discussed above, some but not all of those deficiencies are substantiated by preponderant evidence. The Parents are awarded an IEE to assess the Student's sensory, pragmatic language, and functional, school-based vision needs.

The IEE awarded herein may be a single IEE conducted by one qualified evaluator, or separate IEEs conducted by separate qualified evaluators. The IEE may not exceed the market rate within the District's geographical area for such evaluations. The parties may agree that the IEE can go beyond the scope of what is ordered here, but the District is only required to fund the portion of the IEE related to the Student's sensory, pragmatic language, and school-based functional vision needs. The Parties may also agree that the District may conduct, or may retain the IU or private evaluators to conduct,

¹⁰ Some information accounting for the timeline is included in the redacted stipulations.

¹¹ It is procedurally weird to consider the Parents' demands in the context of the District's due process complaint. However, as seen throughout this decision, the Parents' arguments bring focus to what would otherwise be the District's obligation to defend every sentence in the RR.

any of the evaluations ordered herein.¹² Absent any such agreement, it is the Parents obligation to obtain the IEE and the District's obligation to reimburse the Parents for the same in accordance with the District's usual practices for accounts payable.

ORDER

Now, June 2, 2023, it is hereby **ORDERED** as follows:

1. The Reevaluation Report of March 16, 2022, is appropriate except as specified in the accompanying decision.
2. To remedy the specific deficiencies identified in the accompanying decision, the Parents are awarded an Independent Educational Evaluation at public expense, but under the terms and conditions specified in the accompanying decision.

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

/s/ Brian Jason Ford
HEARING OFFICER

¹² To the extent that it is important to assess the Student's abilities in school, particularly with a functional, school-based vision assessment, the District and the IU may be in the best position to evaluate the Student in school. The Parents, however, are under no obligation to accept a District-conducted evaluation in lieu of the relief ordered herein.