

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. 31747-25-26

Child's Name:

[redacted]

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Wallingford-Swarthmore School District
200 Providence Road
Wallingford, PA 19422

Counsel for the LEA:

Lawrence Dodds, Esq.
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460 Norristown Road
Blue Bell, PA 19422

Hearing Officer:

James Gerl, CHO

Date of Decision:

December 17, 2025

BACKGROUND

The school district filed a due process complaint seeking to override the parent's failure to provide consent for evaluation of the student. The parent opposes the evaluation. I find that the school district has proven that the proposed evaluation of the student is necessary to determine whether the student is eligible for special education or [redacted] services, and if so, to determine the student's needs and weaknesses in order to design an appropriate educational program for the student. The failure to consent to the evaluation is overridden.

PROCEDURAL HISTORY

This case has had a complicated and extremely difficult prehearing process. Numerous prehearing motions were filed, including a motion for sanctions and a request for a cease and desist order. The motion for sanctions was denied as being without merit. The requested cease and desist order was denied as being beyond the authority of an administrative IDEA hearing officer. The prehearing communications contained incendiary language and were symptomatic of the highly toxic relationship between the parties. Both parties appear to want to fight, and it appears that they have lost sight of the fact that these proceedings are about the education of a young person. Unfortunately, the toxicity spilled over into the prehearing process and into the hearing itself.

Prior to the hearing, the student's mother requested a [redacted]-English interpreter for the hearing. I initially granted the request. Later I reconsidered my ruling after ODR staff determined while trying to locate an interpreter that the [redacted] I then requested clarification from the parent. The parent responded that the mother does not understand certain legal

terminology. I had previously informed the parent that she had the right to hire a lawyer. It is not the province of a language interpreter to explain legal terms to an unrepresented party. Clearly, the student's mother has demonstrated to the Pennsylvania court system that she is able to understand and effectively communicate in English. Accordingly, I denied the request for an interpreter.

Also prior to the hearing, the school district raised an objection concerning whether the student's "stepfather" was a parent under IDEA who could pursue the complaint. Based upon the stepfather's assertion during a prehearing zoom meeting that he lives with the student and has acted in the student's interest, I denied the motion on the condition that the stepfather provide testimony under oath at the hearing as to the assertions made at the zoom meeting. The stepfather testified at the outset of the hearing. Because his testimony under oath was that he does not live with the student most of the time, I ruled that the stepfather was not a parent as defined by IDEA. 34 C.F.R. § 300.30; QT et al v Pottsgrove Sch Dist, 70 F.4th 663, 123 LRP 18151 (3d Cir. 2023). The student's mother at that point took over and presented the case on behalf of the family.

The previously mentioned toxic relationship between the parties resulted in the parties being unable to agree to any stipulations of fact. The failure to agree to stipulations elongated the hearing process and delayed the decision in this case.

This hearing was conducted in one in-person session. In addition to the preliminary testimony by the stepfather, four witnesses testified at the hearing. School district Exhibits S-1 through S-10 and S-12 were admitted into evidence at the hearing. Exhibit S-11 was withdrawn. A relevance objection to S-13 was sustained, and the exhibit was excluded. Parent Exhibits

P-18, P-20, P-25, P-27, and P-28 were admitted into evidence at the hearing. A relevance objection to P-23 was sustained, and the exhibit was excluded. All other parent exhibits were withdrawn.

At the end of the hearing, the *pro se* parent and counsel for the school district opted to present oral closing arguments. All arguments and proposed findings 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.

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).

ISSUE PRESENTED

Has the school district proven that it should be permitted to evaluate the student despite the refusal of the parent to consent to the evaluation?

FINDINGS OF FACT

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

1. The student's date of birth is [redacted]. (NT 305)
2. The student enjoys [redacted]. (NT 305-306)
3. The school district implements a school-wide PBIS (positive behavior interventions and supports) system for behavior issues at the elementary school attended by the student. The PBIS system has been implemented by the school district with fidelity. Tier-1 of the system is school-wide and applies to all students. Students with more serious behaviors are placed in Tier-2. Tier-2 has more direct interventions and supports, including behavioral check-ins, regular check-ins, social skills groups and small group counselling. Tier-2 includes approximately 15 students at the student's school so far this school year and had approximately 60 students during the 2024-2025 school year. Tier- 3 is designed for students who need even more supports and may include some special education students. Tier-3 currently has no students. The school district offered to provide Tier-2 services to the student, but parent refused to consent to the student receiving the Tier-2 services. (NT 125-126, 151-156, 170-172, 177, 199-203, 224-229, 236-248, 252-254)

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

4. Over the last two school years, the student has been exhibiting problem behaviors that affect the student's learning and the learning of others. The student's improper behaviors have caused some decline in the student's academic performance (NT 171-172, 132-136, 77-78, 87-89, 116-118, 89-94, 168-169, 237-240, 123 – 126; S-7, S-9, S-6)

5. The school district maintains a School-Wide Information System, (hereafter sometimes referred to as "SWIS"), a behavioral referral system. The elementary school attended by the student has over 500 students. For the 2024-2025 school year, the number of behavior referrals of the student was approximately 17% of all behavioral referrals for the whole school. For the 2025-2026 school year to date, the number of behavior referrals of the student was approximately 30% of all behavioral referrals for the whole school. (NT 89-94, 168-169)

6. For the 2025-2026 school year, the school principal was called to the student's class because of behavior incidents involving the student approximately one time per week. [redacted]. (NT 77-78)

7. Over a period of two or three days early in the 2024-2025 school year, during the afternoon bus ride, the student was involved in a series of problem behaviors. The student made references to [redacted]. The student stated that other students needed to lock their doors at night. The student also made improper contact with other students on the bus, including [redacted] students. In addition, on the school bus during this time period, the student cursed, used [redacted] and used other disparaging language. (NT 87-89, 116-118; S-7)

8. In approximately February, 2025, the student was involved in an incident on the school bus. The student was blocking the aisle so that other students could not exit. The student didn't move when asked to do so by a substitute bus aide. The aide then tapped the student on the shoulder or

grabbed the student's [redacted], and the student complied. The student's "stepfather" complained about this incident at a school board meeting describing the event as an "assault." (NT 274-275, 112-116; P-20, P-18, P-25)

9. On approximately April 1, 2025, in a hallway at the school, the student said the words "I'm going to [redacted] you," or "I'm going to [redacted] the school." The student was suspended for three days for this incident. (S-9; NT 237-240, 122 - 127, 287)

10. The school district has requested that the parent consent to a special education evaluation for the student approximately seventeen times beginning in February 2023. School district staff explained why they were recommending that the student be evaluated in a telephone call with the student's stepfather shortly before the first request for consent. The parent has twice declined to consent to the evaluation and on the other occasions, the parent has not responded to the requests. (S-7, S-1, S-4, S-6; NT 173-174, 217-218)

11. On April 1, 2025, the school district issued to the parent another Permission to Evaluate the student. The PTE was drafted by the school district's school psychologist. Based upon the data collected and observations of the student by the classroom teacher, the school team members had concerns about the student's behaviors and the impact upon the student's learning. The proposed multi-disciplinary evaluation was designed to determine whether the student has a disability or may need [redacted] services and to determine the student's educational strengths and needs. The proposed evaluation would include: standardized tests of cognitive functioning; standardized tests of academic achievement; rating scales of social, emotional and behavioral functioning; a functional behavior assessment; curriculum-based measures; occupational therapy

screening/evaluation; parent and teacher input; classroom observations and a review of records. (S-9; NT 175 – 182)

12. On September 25, 2025, the student cursed and made an obscene gesture on the school playground. (S-8)

13. The school district's decisions to request permission to evaluate the student and to pursue a due process hearing to override parental consent were not made in retaliation for the statements by the student's family at a school board meeting that were critical of the school officials. (NT 119-122)

14. The student needs more supports at school. The student believes that the teaching at the elementary school that the student attends is good. (NT 303-305, 275)

15. On August 26, 2025, the school district filed the instant due process complaint to override lack of parental consent so that it may pursue the evaluation of the student. (S-12)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own independent legal research, I make the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of 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 (hereafter sometimes referred to as “FAPE”). IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. School districts are required under the child find requirement of IDEA to identify and evaluate all students who are reasonably suspected of having a disability. P.P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009); Perrin ex rel JP v Warrior Run Sch. Dist., 66 IDELR 225 (MD Penna 2015) adopted at 66 IDELR 254 (MD Penna 2015); 34 C.F.R. § 300.111; 22 Pa. Code § 14.121.

3. If a parent refuses to consent to an initial evaluation, a public agency may, but is not required to, pursue the evaluation by using the consent override procedures, including the filing of a due process complaint. IDEA § 614(a); 34 C.F.R. § 300.300(a); 22 Pa. Code § 14.102(a)(2)(xxiv).

4. In conducting an evaluation, a local education agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or related service providers, and on that basis determine whether any additional data are needed to determine whether the student is eligible, as well as to identify the child’s special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist., 66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

5. A local education agency that files a due process complaint to override a lack of consent will be permitted to conduct the evaluation where it proves that the evaluation is necessary to determine the student's eligibility and the student's needs and weaknesses in order to design an appropriate program. Downingtown Area Sch Dist, 79 IDELR 149 (SEA Penna. 2021); Palisades School District, 125 LRP 15160 (SEA Penna. 2025); See, Plum Borough Sch Dist, 111 LRP 56978 (SEA Penna. 2011); Cumberland Valley Sch Dist, 117 LRP 39108 (SEA Penna. 2017); GB by TB v. San Ramon Area Valley Unified School District, 51 IDELR 35 (N.D. Calif. 2008); Spring Branch Independent School District, 76 IDELR 59 (SEA Tex. 2019).

6. In the instant case, the school district has proven that the proposed evaluation is needed in order to determine whether the student is eligible to receive special education or [redacted] services, and, if so, to determine the student's needs and weaknesses in order to design an appropriate educational program.

DISCUSSION

Has the school district proven that it should be permitted to evaluate the student despite the lack of parental consent?

The school district seeks to override the parent's refusal to consent to an initial evaluation of the student. The school district states that it has a reasonable suspicion that the student may have a disability or be [redacted] and contends that the evaluation is necessary to collect data to determine whether the student has a disability or is [redacted] and if so, the needs of the student in order to design an appropriate program if eligible. The

parent contends that the school district should not be permitted to evaluate the student.

Although there is no relevant Supreme Court or Third Circuit precedent, hearing officers generally permit a local education agency to override the lack of consent for an evaluation where the local education agency proves that the evaluation is necessary to determine whether a student is eligible for special education and, if so, to determine the student's needs in order to design an appropriate educational program for the student. In the instant case, the school district has proven that it has a reasonable suspicion that the student may have a disability and that the proposed evaluation is necessary.

The school district has demonstrated that the student's improper behaviors are concerning and that they are increasing. The student exhibits behaviors that interfere with the student's learning and the learning of others. Based upon the quantity of the student's inappropriate behaviors and the seriousness of many of the behaviors, it is reasonable to suspect that the student may have a disability and that the student may be in need of special education.

The number of behavioral infractions by this student are overwhelming. In a school of more than 500 students, this student alone had 17% of all behavior referrals in the 2024-2025 school year. The behaviors have dramatically increased this school year, as this student accounts for 30% of all behavioral referrals in the school so far. This student [redacted].

Some of the behavioral incidents involving the student have been very serious. On one occasion the student said the words "I'm going to [redacted] you." The student has mentioned [redacted] and has told other students that they had better lock their doors at night. On the school bus, the student has

[redacted] students. Also on the bus, the student has used [redacted], disparaging language and the student has cursed.

The unrebutted testimony in the record is that the student's improper behavioral incidents are beginning to adversely affect the student's academic performance.

Given the large number of behavioral incidents and the seriousness of many of the behaviors, as well as the impact of the behaviors upon the student's learning, the school district's conclusion that it suspects that the student may have a disability is clearly reasonable. The student's behaviors are impeding the student's learning and the learning of others.

Perhaps the most compelling evidence was the testimony of the student to the effect that the student needs more supports at school. The student opposes the evaluation, but the way in which the student might be able to get the additional supports, that even the student concedes are necessary, is to be evaluated. If eligible for special education and related services or for [redacted] services, the student will be able to get those additional supports.

Moreover, the school district has proven that its proposed evaluation is comprehensive and would assess the student in all areas of suspected disability. The proposed assessments are reasonable and would be conducted by persons who are qualified to administer such assessments. It is concluded that the evaluation and the assessments proposed by the school district are appropriate and are needed to determine whether the student is eligible and, if so, to determine the student's needs in order to design an appropriate educational program for the student.

The parent asserts many reasons why the override of consent should be denied, but the parent's contentions are not supported by the record evidence.

It should be noted that the parent called only the student and a regular education (Tier 2 lead) teacher as witnesses at the hearing. Neither the student's mother nor the student's "stepfather" provided any sworn testimony concerning the merits of the case. As a result, there is not any evidence in the record to support the parent's contentions.

The thrust of the parent's closing argument is that there is a complete lack of trust between the parent and the school district. This was apparent from the contentious prehearing proceedings and the tense nature of the hearing itself. The parties obviously have a toxic relationship. It is unfortunate when such an extreme lack of trust exists where the underlying topic involves the education of a young person. A lack of trust, however, is not a good reason to prevent an evaluation of the student.

The parent also argues that the request to override consent was done in retaliation for a complaint against the principal by the student's "stepfather" at a school board meeting. The parent did prove that the stepfather made a complaint about the school bus incident in which a substitute bus aide grabbed the student's [redacted] or tapped the student's shoulder because the student was blocking the aisle so that other students could not move. Documentary evidence introduced by the parent supports the fact that the stepfather complained about the incident at a school board meeting. The unrebutted testimony of the school principal at the hearing, however, was that the district did not retaliate against the student or parent because of the complaint to the school board. No evidence in the record contradicts the testimony of the principal on this point. It is concluded that there was no retaliatory purpose behind the request to evaluate the student.

The parent's closing argument also raises alleged discrimination based upon race as a basis for denying the request to override consent. No evidence

in the record supports the parent's argument. The student did testify that the student was told not to use foreign languages at school, but the student testified further that it was the student's mother who instructed the student not to speak in foreign languages at school. No evidence in the record supports the parent's allegation of racial bias or discrimination by the school district.

The parent's closing argument also asserts that the school district did not properly exhaust the appropriate Tier 2 services for the student under the school-wide PBIS system before requesting an evaluation. Under IDEA, a school district is not permitted to delay a needed special education evaluation for this reason. Even assuming, *arguendo*, that non-exhaustion of the PBIS system was a basis for delaying the evaluation process, the undisputed evidence in the record indicates that the parents refused to provide consent for the Tier 2 services offered by the school district. The parent cannot have it both ways; she cannot refuse consent for the services and then blame the school district for not having provided the services. The argument is rejected.

Finally, the parent's closing argument asserts that the student is a kid and that all kids will engage in misbehaviors like those committed at school by the student. It is difficult to believe that this argument is made seriously. Many of the student's improper behaviors were highly inappropriate and simply cannot be tolerated. An ostrich-like "kids will be kids" argument is clearly not acceptable and is definitely not a good reason to deny an initial evaluation.

The parent's arguments are not supported by the record evidence, and they are rejected. In summary, the parents have offered no good reason to oppose the evaluation. It is concluded that the school district has proven that it should be permitted to override the lack of consent for an evaluation and to conduct the proposed evaluation, including the proposed assessments. The

school district has shown that the proposed evaluation is necessary to determine whether the student is eligible for special education and/or [redacted] services, and, if so, to determine the student's needs and weaknesses so that the district may design an appropriate educational program for the student.

Because neither the mother nor the stepfather testified at the hearing, no detailed credibility analysis is required because there is no conflicting testimony. To the extent that the testimony of the student is contradicted by the testimony of school district staff, the testimony of the school district staff was more credible and persuasive than the testimony of the student. This conclusion is made because of the demeanor of the witnesses, as well as the following factor: the documentary evidence supports the testimony of the school district staff.

NOTE: As has been previously mentioned, the parties to this matter clearly have a toxic relationship. Incendiary language and entrenched positions by the adults do not benefit the student. As the United States Supreme Court has noted, the education system is designed to be a collaborative in nature. Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005). The parties should seriously consider taking affirmative steps to repair their relationship. Although the parties have the right to utilize any procedural safeguard provided by law, they are strongly urged to consider using mediation or other non-adversarial methods to help them repair their relationship in the unfortunately very likely event that they have future disagreements concerning the student's education.

ORDER

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

1. The school district's complaint is sustained; and
2. The school district's request to conduct the proposed evaluation of the student, including the assessments proposed therein, is granted.

IT IS SO ORDERED.

ENTERED: December 17, 2025

James Gerl

James Gerl, CHO
Hearing Officer