

*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. 31918-25-26**

**Child's Name:**

C.O.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Local Education Agency:**

Boyertown Area School District  
911 Montgomery Avenue  
Boyertown, PA 19512

**Counsel for the LEA:**

Shannon Pierce, Esq.  
Fox Rothschild  
980 Jolly Road  
Blue Bell, PA 19422

**Hearing Officer:**

James Gerl, CHO

**Date of Decision:**

December 30, 2025

## **BACKGROUND**

The parent requested an independent educational evaluation at public expense. The school district filed a due process complaint contesting the parent's right to an independent educational evaluation at public expense. I find in favor of the school district on this issue.

## **PROCEDURAL HISTORY**

The student's parent did not appear at the due process hearing, submit any evidence or argument, and the parent did not otherwise participate in the pre-hearing phase of this case. An in-person due process hearing session was convened for this matter.

When the parent did not appear at the hearing, I attempted to telephone the parent to ensure that he knew that the hearing was proceeding. I left a voicemail message stating that the hearing was about to begin. After waiting a reasonable period of time, I then convened the hearing without the parent being present.

Two witnesses testified at the due process hearing. School district exhibits S-1 to S-11 were admitted into evidence. The parent presented no witnesses or exhibits at the due process hearing. Because the parent did not participate in the hearing, at the close of the hearing, I ordered the school district to file a written post-hearing brief and permitted, but did not require, the unrepresented parent to submit a post-hearing brief. Counsel for the school district submitted a post-hearing brief.

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.

Because the parent did not appear at the hearing, my written decision will be sent to the parent by both U.S. mail and by e-mail.

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).

### **ISSUE PRESENTED**

The due process complaint in this matter presents the following issue:

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: <sup>1</sup>

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<sup>1</sup> (Exhibits shall hereafter be referred to as "S-1," etc. for the school's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT\_\_\_\_").

1. The student's date of birth is [redacted]. (S-5)
2. The student is an [redacted] grade student in the school district and is eligible for special education services under the classification of Other Health Impairment and Specific Learning Disability. (S-3)
3. The student was reevaluated by the school district on November 18, 2024, during the student's [redacted] gradeschool year. The team met to review the student's educational data, curriculum-based assessments, grades, progress monitoring and other IEP data. The team also considered teacher input and classroom observations. (S-3; NT 69 - 71)
4. As a result, the IEP team determined that they did not need additional data or assessments to confirm the student's continued eligibility for special education or to determine the student's educational needs. At that time, the student was on a good path and was making good progress. (NT 70 - 76)
5. The November 18, 2024 reevaluation of the student was comprehensive, and it contained all necessary information for the team to make sound decisions concerning the student's continued eligibility and the student's educational needs. (NT 73 - 76, 83 - 85; S-3)
6. The student's father did not express any concerns with the student's reevaluation report at the time that it was issued. (NT 72 - 73)
7. An IEP was developed for the student on November 18, 2024. (S-4; NT 74 - 75)
8. The student's father objected to and was upset by the fact that the school district had permitted [redacted] personnel to interview the student's sibling. (S-6; NT 19 - 21, 28 - 30)
9. On August 26, 2025, the parent e-mailed the school district and requested an independent educational evaluation at public expense because

he disagreed with the school district's most recent reevaluation. (S-5; NT 79 – 80)

10. School district staff attempted to contact the parent following the receipt of the request for the independent educational evaluation, but the parent failed to respond to any contacts by the school district, and the parent did not state any specific concerns with the school district's reevaluation report. (NT 79 – 82)

11. The school district responded to the father's IEE request with an e-mail stating that the school district had evaluated the student less than one year earlier. Therefore, the school district denied the parent's request, but the school district offered to conduct its own new reevaluation of the student instead. (S-5, S-7; NT 80 – 81)

12. On September 25, 2025, the school district issued a Notice of Recommended Educational Placement denying the parent's request for publicly funded independent educational evaluation because the school district had completed a comprehensive reevaluation of the student on November 18, 2024. (S-8, S-9, S-10)

13. On September 25, 2025, the school district filed a due process complaint contesting the parent's request for an independent educational evaluation at public expense. (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. 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).

3. In conducting an evaluation, a school district 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 provider, 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.

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

### **DISCUSSION**

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

The parent has requested an independent educational evaluation at public expense. The school district opposes the request and filed a due process hearing to contest the request. Unfortunately, the parent did not appear at the hearing or participate in the prehearing preparations for this matter. Because the school district has the burden of persuasion, the hearing proceeded even though the parent did not appear.

The school district has proven that the parent should not be awarded an independent educational evaluation at public expense. It is apparent from the documentary evidence that the student's father was upset that the school district permitted representatives of [redacted] to speak with the student's sibling while the sibling was at school. It appears that said incident, and the

resulting lack of trust, is the reason behind the request for an independent educational evaluation.

The school district in its post-hearing brief cites an unpublished decision by the Third Circuit Court of Appeals in support of its argument. The Third Circuit, however, has made it clear that lower courts and hearing officers should not rely upon unpublished decisions by the courts. DF by AC v. Collingswood Borough Bd. of Educ., 694 F. 3d 488, 59 IDELR 211 (3d Cir. 2012). Accordingly, the unpublished Third Circuit decision cited by the school district in its brief has not been considered in reaching this decision.

Because the parent did not appear at the hearing or submit any evidence or argument, the only evidence or argument available is that supplied by the school district.

Because the student's father did not disagree with the November 2024 reevaluation of the student by the school district, the parent is not disagreeing with any specific reevaluation, and therefore, is not entitled to an independent educational evaluation at public expense.

Moreover, all of the evidence in the record supports the conclusion that the school district's November 2024 reevaluation of the student was appropriate. The evidence reveals that the reevaluation was comprehensive and that the student was assessed in all areas of suspected disability. There appears to be no dispute that the student continues to be eligible for special education and that the reevaluation identified the student's needs.

It is concluded that the school district reevaluation was comprehensive and appropriate and met all legal requirements. It appears that the parent's true disagreement with the school district involves the school district permitting the student's sibling to be interviewed by [redacted] while at the

school. Clearly, it is not an appropriate basis for an independent educational evaluation of a sibling.

A credibility analysis is not necessary because the parent presented no witnesses at the hearing. To the extent that the school district staff testified, their testimony was credible and persuasive.

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. The school district complaint is sustained; and
2. The school district is not required to provide an independent educational evaluation to the parent at public expense.

**IT IS SO ORDERED.**

ENTERED: December 30, 2025

*James Gerl*

James Gerl, CHO  
Hearing Officer