

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. 31027-24-25

Child's Name:

W.J.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Educational Agency:

Perkiomen Valley School District
3 Iron Bridge Drive
Collegeville, PA 19426

Counsel for LEA:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

06/24/2025

Introduction

This special education due process hearing concerns a potential evaluation of [redacted] ("student"), a student who resides in the Perkiomen Valley School District ("District").¹ The parties disagree over whether or not the student should be evaluated by the District under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA").²

Specifically, the District asserts that it should be provided, through hearing officer authority, with an opportunity to evaluate the student, newly enrolled in the District at the outset of the 2024-2025 school year. Parent had declined to provide consent for an evaluation, as requested by the District.

For the reasons set forth below, I find in favor of the District although the order will set forth certain conditions related to the evaluation process.

Issue

Should the District be provided with hearing officer authority
to conduct an evaluation of the student?

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 ("Chapter 14").

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered.

Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. In May 2019, when the student was in [redacted], the student was privately evaluated given parents' concerns over disruption and attention issues. (School District Exhibit ["S"] – 10).
2. The May 2019 private evaluation ruled out a diagnosis of autism, instead diagnosing the student with attention deficit disorder ("ADD"). The evaluator concluded that the student's ADD, coupled with expressive speech and language ("S&L") needs, led student needs in the educational environment. (S-10).
3. The May 2019 private evaluation utilized certain instruments related to autism; all instruments were parent-focused (parent checklist, parent assessment, parent interview). The student was not directly assessed by the private evaluator. (S-10).
4. The student attended [redacted] in the 2019-2020 in a private [redacted] program which was impacted by the COVID-19 pandemic

and school closure. In the 2020-2021, the student repeated [redacted] in a homeschool program. (S-1).

5. In the 2021-2022 school year, the student was enrolled in [redacted] grade in a different school district ("school district #1"). (S-1; Notes of Testimony ["NT"] at 34-103, 108-167, 298-345).
6. In December 2021, school district #1 issued an evaluation report ("ER"). (S-1).
7. The December 2021 ER identified the student as a student with autism and S&L impairment (expressive, receptive, and pragmatic language). The ER ruled out identification as a student with an other health impairment(S-1).
8. The December 2021 ER noted that most of the assessment instruments could not be completed as a result of the student's problematic behavior in the testing environment. (S-1).
9. In an attempt to ameliorate the student's behaviors, the student's father was present during assessments. At times, the student's father would provide prompting to the student. (S-1).
10. The evaluator from school district #1 opined in the December 2021 ER that the irregularities in the testing environment impacted the

results of those assessments, rendering the testing outside of normal conditions that impacted the validity of results. (S-1).

11. The evaluator also noted that certain conditions in the testing environment, a result of pandemic-related limitations and masking, impacted aspects of standardization and validity of results. (S-1).
12. The December 2021 ER contained assessments, such as checklists, ratings, and other instruments, completed by adults. There were no reported validity concerns with these assessments. (S-1).
13. The December 2021 ER contained the results of a comprehensive S&L evaluation. (S-1).
14. In the spring of the 2021-2022 school year, the student was enrolled in [redacted] grade in a different school district ("school district #2"). (S-2; NT at 34-103, 108-167, 298-345).
15. In September 2022, school district #2 issued an ER. (S-2).³
16. The September 2022 ER identified the student as a student with an other health impairment and S&L impairment. (S-2).

³ The September 2022 ER was provided to the parents on September 30, 2022, with revisions to the content that followed. Because the input, observations, and assessments were all completed prior to the September 30th date, this ER will be referred to as the September 2022 ER. (S-2).

17. The evaluator noted in the September 2022 ER that the results of data, input, and assessments, when taken together, provided a basis for reaching conclusions about the student's needs and identification. But pandemic-related limitations and masking, the presence of the student's father in testing environments, impacted standardization of results and, at times, led to the evaluator cautioning readers about the results. (S-2).
18. The student's behavior in the testing environments for the September 2022 evaluation, however, was less problematic than in during the evaluation for the December 2021 evaluation in school district #1. (S-2).
19. As part of the evaluation process in school district #2, the school district planned to administer a well-known, comprehensive assessment for autism. The assessment involves direct observation and assessment of the student by the evaluator. Parents initially provided consent for administration of the assessment but later withdrew their consent, indicating that they would obtain results for that assessment through a private evaluation. (S-2; NT at 34-103, 108-167, 298-345).

20. In the 2023-2024 school year, the student was enrolled in [redacted] grade in a cyber charter school ("charter school"). (S-2; NT at 34-103, 298-345).
21. The parents and charter school discussed the possibility of having the charter school provide an independent educational evaluation, but an IEE was not completed. (NT at 34-103, 298-345).
22. In the 2024-2025 school year, the student was enrolled in [redacted] grade in the District.(NT at 34-103, 108-167, 172-198, 203-242, 298-345).
23. Parents had provided the ERs issued by school district #1 and school district #2. The District school psychologist was also provided with a copy of the private evaluation completed in preschool. (S-1, S-2, S-10; NT at 34-103, 108-167).
24. In September 2024, the District requested permission to evaluate the student. (S-3).
25. Given the concerns shared in each of the ERs, the different results in terms of the identification of the student across all three evaluations, and the fact that the private evaluator and the two school district evaluation processes did not have deep, if any, experience with the student in educational settings over an extended period of time,

the District wished to conduct a comprehensive evaluation of its own.
(NT at 34-103, 108-167).

26. The District school psychologist shared her specific reasons for the need for an evaluation. One, given the disparate content and conclusions of the evaluations, she felt it was important for the District to conduct its own testing to form its own understanding of the student and the student's needs. Two, at least as of the date of the hearing and, now, the issuance of this decision, the time was approaching for the required triennial school district evaluation, which was last completed at school district #2 in September 2022. (NT at 108-167).

27. In seeking the parents' permission for the evaluation, the District described a comprehensive evaluation process, to include cognitive testing, academic achievement testing, social/emotional/behavioral assessments, a S&L evaluation, an occupational therapy ("OT") evaluation, a physical therapy ("PT") evaluation, a functional behavior assessment, adaptive functioning assessments, a "semi-structured, standardized interview and observational assessment of communication, social interaction, play, and restricted and repetitive behaviors"—described in testimony as an in-depth assessment for

markers of autism—and social-perception assessment. (S-3; NT at 108-167).

28. The parents denied permission for an evaluation, indicating that they needed to know more about the reasons for the evaluation and the details of the evaluation process. Parents indicated that they would give permission for a S&L evaluation but only with certain accommodations for the student, accommodations to be discussed between the parties before the evaluation took place. (Parents Exhibit [“P”] – 2; S-3; NT at 298-345).

29. In October 2024, the District again sought permission to evaluate the student, using the same instruments. (P-4; NT at 34-103).

30. By the fall of 2024 and continuing into the spring, the parties were not reaching common ground on the student’s education generally, or on the need for an evaluation by the District. (NT at 34-103, 298-345).⁴

⁴ In March 2025, when the District filed its complaint that led to these proceedings, the parents filed a contemporaneous complaint of their own, alleging denial of a free appropriate public education, among other claims, related to the student’s education in the 2024-2025 school year. That complaint has unfolded at a different ODR file number, with a separate set of proceedings, which will result in its own decision on parents’ claims.

31. In March 2025, the student's individualized education program ("IEP") team met to revise the student's IEP. Based on concerns about the student's participation in the educational environment and the student's educational progress, the District again sought permission to evaluate the student. (S-5, S-6; NT at 34-103).
32. The parents continued to share their concerns over the basis and nature of the evaluation. (S-7; NT at 298-345).
33. The parties' discussion of the basis and nature of the evaluation, and more specific concerns about the testing instruments that would be employed and the testing environment generally, continued into May 2025. The parents requested certain accommodations for the evaluation. (P-5; S-8; NT at 34-103, 298-345).
34. In May 2025, the District issued a formal notice of recommended educational placement ("NOREP"), responding to the parents' specific concerns. (S-9).
35. The May 2025 NOREP indicated that the District would:
- disclose the precise testing instruments within 48 hours of administration;
 - allow the student behavior support aide to remain in the testing environment with the proviso that the aide would

“need to meet with the evaluator prior to the testing sessions to provide instruction on what the person can and cannot do in order to remain compliant with standardized procedures”;

- allow the use of pencil and paper for any assessment where that option is available; and
- provide appropriate time for response, allowing breaks every 20 minutes, and testing in the morning hours only instead of afternoon hours. (S-9).

36. The May 2025 NOREP indicated that the District would not limit or omit assessments in certain areas (OT, PT, autism) “because this would not identify all of the student's strengths and weaknesses and would not satisfy child find obligations”. (S-9).

37. The student’s regular education teacher, who spends the most time with the student in educational environments, testified that the student exhibited academic concerns (not on grade-level in many areas), social concerns (appropriate behavior and interaction with peers), and behavior concerns (impulsivity, safety). (NT at 172-198).

38. The student’s special education teacher shared similar concerns as the regular education teacher, with throwing objects,

distractedness, attention-seeking, and socialization (age-appropriate conversation and issues with personal space) being particular concerns. (NT at 203-242).

39. Both an OT and a PT testified that their evaluations, respectively, would take approximately 45-60 minutes and 30-90 minutes, depending on how the student engage in the evaluations. (NT at 247-278, 283-293).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

Legal Framework

Where a parent does not provide consent for a school district evaluation, " a school district...may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the district's...proposed evaluation or reevaluation." (22 PA Code §14.162(c)).

As for a school district evaluation process, an evaluation must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including

information provided by the parent, that may assist in determining” an understanding of the student’s potential disability and, if eligible, the content of the student’s IEP. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)).

Additionally, at a minimum, a re-evaluation must be take place every three years. Parents and a school district may agree otherwise; but without such an agreement, a student with an IEP must be evaluated triennially. (34 C.F.R. 300.303(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Discussion

Here, the District has chosen to utilize special education due process to seek hearing officer authority to perform an evaluation of the student since parents have declined to provide permission to perform the evaluation. This is permissible under IDEA and Pennsylvania special education regulations. The evidence, taken as a whole, supports a conclusion that the District should be allowed to undertake a comprehensive evaluation of the student.

Specifically, the District’s concerns are rooted in concrete concerns with the evaluation history of the student that has been presented. Across three evaluations (the private evaluation, the December 2021 ER and the September 2022 ER), there are issues that do not necessarily invalidate results and conclusions about the student’s educational profile, strengths, and needs, but there is a lot of static amongst the reports.

At times, there is even outright disagreement (for example, the private evaluation discounting autism as part of the student's educational profile but school district #2 finding the student eligible as a student with autism; or school district #1 explicitly ruling out an other health impairment but school district #2 finding that the student is eligible for special education programming as a student with an other health impairment). Too, the evaluators issuing the December 2021 and September 2022 ERs both shared concerns with the standardization of results, the validity of results, and/or cautions about results, given various issues with the student's participation and/or the testing environments.

During testimony, the District school psychologist also makes an important point, namely that the student's triennial re-evaluation is due in the fall of 2025. Regardless of the parties' substantive dispute about an evaluation of the student, procedurally an evaluation must take place under the terms of relevant special education law.

Having said all of this, parents have consistently presented their concerns, deeply held, about the evaluation process. They are concerned about the nature, scope, and specific details of the evaluation process.

The District has just as consistently presented its position that while certain accommodations are available, the nature, scope, and details of the evaluation process must unfold in a way that the District feels it can obtain the information necessary to inform it of the student's strengths and needs

and to allow it to design programming based on its own view of the students.

Both of these concerns can be addressed and will be addressed in the order below.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Perkiomen Valley School District may undertake a comprehensive psychoeducational evaluation of the student.

In accord with 22 PA Code §14.123(b), the timeline for issuance of the evaluation report shall be 60 calendar days, beginning with the first day of the school term at the school district in the upcoming 2025-2026 school year.

The evaluation process shall include:

- cognitive testing;
- academic achievement testing;
- social/emotional/behavioral/adaptive assessments;
- a speech and language evaluation;
- an occupational therapy evaluation;
- a physical therapy evaluation;
- a functional behavior assessment;
- adaptive functioning assessment;
- a semi-structured, standardized interview and observational assessment of communication, social interaction, play, and restricted and repetitive behaviors; and
- social-perception assessment.

School district administrator(s), the evaluator(s) and parent(s) shall meet, in person or using videoconference technology, to discuss the testing instruments and assessments that the evaluators envision using for the particular area for assessment. (This may be one cumulative meeting, or individual meetings with particular evaluators, based on the requirements of personal and professional schedules.) This meeting may take place at any time but shall take place no later than 10 school days after the commencement of the 2025-2026 school year at the school district.

There is no need for agreement between the parties on the instruments/assessments to be utilized for the evaluations, but the parents will have an opportunity to understand the instruments/assessments and to ask questions about the instruments/assessments. Ultimately, the selection and use of any instrument or assessment is at the sole discretion of the particular evaluator.

The evaluator shall provide the family with notice at least three calendar days prior to the particular date(s) that testing instruments/assessments will be administered.

The following accommodations shall be implemented during any testing or assessment:

- allow the student's behavior support aide to remain in the testing environment with the proviso that the aide shall need to meet with the evaluator prior to the testing

session(s) to provide instruction on what the person can and cannot do in order to remain compliant with standardized assessment procedures;

- allow the use of pencil and paper for any assessment where that option is available;
- provide appropriate time for response;
- allow breaks every 20 minutes; and
- the testing/assessment shall take place in the morning only instead of the afternoon.

It is left to the sole discretion of any evaluator to change or modify any listed accommodation to the extent the evaluator feels any accommodation is jeopardizing the standardization or validity of results of any testing instrument/assessment.

Nothing in this order shall be read to limit the ability of the parties to modify the terms of this order, to the extent that both parties agree to the modification, and the modification is in writing.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

06/24/2025