

*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. 31919-25-26**

**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.

One witness testified at the hearing. School district exhibits S1 to S17 were admitted into evidence. The parent did not present any witnesses or offer any exhibits. 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 attended the school in the school district until the parent withdrew the student on September 9, 2025. The student had been identified by the school district as eligible for special education services under the eligibility classification of Emotional Disturbance. (S-5, S-11, S-17)
3. The student was reevaluated by the school district on May 20, 2024. The student's father did not submit any input into the reevaluation. The student's team determined that additional data was not needed to conduct the reevaluation. Classroom-based assessments were recorded. Classroom observation was conducted by a teacher. The reevaluation report concluded that the student remained eligible for special education and stated the student's strengths and needs. (S-5; NT 22 – 24)
4. The school district's reevaluation of the student on May 20, 2024 was comprehensive and assessed the student in all areas of suspected disability. The reevaluation was comprehensive in nature. (S-5; NT 21 – 24; record evidence as a whole)
5. The student's father did not raise any concerns or problems with the school district's reevaluation at the time that it was issued. (NT 21 – 24)
6. The student's father objected to and was upset by the fact that the school district had permitted [redacted] personnel to interview the student while the student was at school. (S-6; NT 19 – 21, 28 – 30)
7. On April 28, 2025, the student's father e-mailed the school district with a list of concerns and requested an independent educational evaluation. Among the parent's concerns were the following: a need to rebuild trust; a safety plan to prevent future [redacted] interactions; address the breach of trust caused by the [redacted] incident; a functional behavioral analysis and behavior interventions for the student and staff training. (S-6; NT 19 – 21)

8. On approximately May 1, 2025, the student's IEP team was convened to discuss the parent's concerns. As a result of the discussion, the student's father rescinded his request for an independent educational evaluation and agreed to permit the school district to conduct a new reevaluation of the student in order to attempt to address the father's concerns. (S-7, S-8; NT 20 – 22)

9. The school district issued a Permission to Reevaluate to the father on approximate May 7, 2025 in order to conduct a new reevaluation of the student. Among the types of assessments that were to be conducted in the reevaluation was the ADOS, because the parent had raised concerns that the student might be autistic, and behavior rating scales because the parent had stated issues with regard to the student's behaviors. (S-7; NT 20 – 24)

10. After May 7, 2025, the student did not return to school in the school district. The student did not attend school for the rest of the 2024 – 2025 school year and did not attend the beginning of the 2025 – 2026 school year. On approximately September 9, 2025, the parent withdrew the student from the school district, and since that time, the student has been attending a cyber charter school. (S-17; NT 24)

11. As of the date of the due process hearing for this case, the student's father had not provided consent to the school district for the agreed upon reevaluation of the student. (NT 23 – 24)

12. On approximately August 26, 2025, the parent sent an e-mail to the school district requesting an independent educational evaluation at public expense because he disagreed with the school district's most recent evaluation. (S-10; NT 24 – 25)

13. The school district denied the parent's request by e-mail stating that the student had been withdrawn from the school district. (S-12)

14. The student's father did not respond to any attempts by the school district to resolve his request for an independent educational evaluation. (NT 26 – 27)

15. On September 25, 2025, the school district issued a Notice of Recommended Educational Placement denying the parent's request for an independent educational evaluation at public expense because its evaluation was comprehensive and because the school district had issued a new Permission to Reevaluate the student on May 7, 2025. (S-13, S-14; NT 25 – 26)

16. The school district filed a due process complaint on approximately September 25, 2025 in order to contest the parent's request for an independent educational evaluation at public expense. (S-16)

### **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**

### **Whether the school district has 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 has 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 interview the student while the student was at school. It appears that said incident, and the resulting lack of trust and harm to the parties' relationship, 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.

The record evidence reveals that the student was reevaluated by the school district on May 20, 2024. The parent did not raise an objection to the reevaluation report. indeed, the parent's first request for an independent educational evaluation was not until April of 2025. Accordingly, there was no school district evaluation with which the parent is disagreeing at this time. The case law recognizes that the school district should have first crack at conducting an evaluation before an independent educational evaluation at public expense will be awarded.

Moreover, the evidence in the record reveals that the last reevaluation of the student by the school district in May of 2024 was appropriate. The evaluation was comprehensive, and the student was evaluated in all areas of suspected disability. The parent put on no evidence to demonstrate that the previous evaluation was inappropriate. Indeed, the parent put on no evidence of any kind.

Because the parent presented no evidence at the hearing, a credibility analysis is not necessary. To the extent that the staff of the school district gave testimony at the hearing, 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's 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