

*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. 28970-23-24**

**CLOSED HEARING**

**Child's Name**

J.B.

**Date of Birth**

[redacted]

**Parent/Guardian**

[redacted]

*Pro Se*

**Local Education Agency**

Chichester School District  
401 Cherry Tree Road  
Aston, PA 19014

**Counsel for the LEA**

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**Hearing Officer**

Brian Jason Ford, JD, CHO

**Date of Decision:**

February 19, 2024

## **Introduction and Procedural History**

This special education due process hearing concerns the educational rights of a child (the Student). The Student's public school district (the District) evaluated the Student to determine if the Student was a child with a disability, as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The District concluded that the Student was not a child with disabilities. The Student's Parent (the Parent) disagreed with the District's evaluation and requested an independent educational evaluation (IEE) at the District's expense. The District denied that request and, as required by law, requested this hearing to defend its evaluation.

On December 19, 2023, the District requested this hearing by filing a due process complaint with the Office for Dispute Resolution (ODR) with copy to the Parent. The Parent was represented by an attorney at that time.

On December 22, 2023, ODR issued a notice for this hearing, listing the matter for January 24, 2024.

On January 9, 2024, ODR issued another notice for this hearing, updating information about the District's attorney, who had just changed law firms. The notice continued to list the matter for January 24, 2024.

On January 18, 2024, ODR issued a third notice for this hearing, adding additional attorneys as co-counsel for the District. The notice continued to list the matter for January 24, 2024.

ODR sent all three notices to the Parent and the Parent's attorney.

On January 22, 2024, the Parent's attorney moved for a continuance because the Parent wanted to be represented by a different law firm. This resulted in several back-and-forth emails during the same day. The Parent was included directly on those emails and sent an email in the late afternoon. The Parent's email restated the continuance request but did not explain the last-minute decision to change law firms. By the end of the day, it was clear that the Parent had discharged her attorney but had not yet retained a new law firm. That evening, I denied the Parent's request for a continuance without prejudice. I found that an unexplained, last-minute decision to change law firms was not a valid reason to postpone the hearing. I stated that I would accept a motion for reconsideration, either from the Parent or from the Parent's new attorney (if any), that included an explanation about why the hearing should be delayed. The Parent did not move for reconsideration and no attorney entered an appearance on the Parent's behalf.

On January 24, 2024, the hearing convened remotely via video conference as scheduled. The Parent did not connect to the video conference. When the Parent did not appear, I sent an email to the Parent and left a voicemail for the Parent encouraging the Parent to join the hearing. Next, I found that the burden of proof (discussed below) remained on the District, and that the District must have an opportunity to prove its case. See NT at 7. The hearing then proceeded.

In the Parent's absence, I ordered that the hearing would proceed as a closed hearing, that the Parent would receive a transcript of the hearing, and that both parties could submit post-hearing briefs or written closing statements. I set a February 12, 2024, deadline for closings, and notified both parties of that deadline by email (sent immediately after the hearing on January 24, 2024).

On January 29, 2024, both parties received a copy of the hearing transcript.

On February 9, 2024, the District filed a closing brief. The Parent did not file a closing statement or brief before or after the deadline.

As discussed below, I find in favor of the District.

### **Issue Presented**

One issue was presented for adjudication: Was the District's evaluation report of October 19, 2023, appropriate?

### **Findings of Fact**

The record of this case is small, consisting of one document (the evaluation report in question) and testimony from the District's school psychologist. I reviewed the record in its entirety and find as follows:

1. Prior to attending the District, the Student attended a school district that is nearby the District. S-1.
2. While attending the other school district, there were no reports of attendance or disciplinary concerns. S-1.
3. The Student transferred to the District for the 2019-20 school year, which was the Student's [redacted] grade year. S-1.

4. In March 2020, the District closed in accordance with Pennsylvania school closure mandates in response to COVID-19. The Student received asynchronous virtual instruction for the remainder of the school year. S-1.
5. The Student's school performance during asynchronous virtual instruction was poor. S-1 (see below).
6. The District operated under a virtual/hybrid model during the 2020-21 school year. The Student's attendance during virtual/hybrid instruction was poor, and the Student failed academically. S-1 (see below).
7. During the 2021-22, the District returned to fully in-person instruction. The Student's attendance and grades improved. S-1 (see below).
8. The Student attended the District's high school in the 2022-23 school year. S-1.
9. The Student was involved in a disciplinary incident in March 2023. The District documented the incident as a "simple assault on [another] student." The Student was not identified as a child with a disability at that time. S-1.
10. After the disciplinary incident, the Parent asked the District to evaluate the Student to determine special education eligibility. The District agreed to evaluate. S-1.
11. The Student attended a cyber school program operated by the District in the 2023-24 school year. S-1. There, the Student is repeating the same academic grade as in the 2022-23 school year because of failing classes in the 2022-23 school year. S-1 (see below).
12. On October 19, 2023, the District completed the evaluation and issued an evaluation report (the ER). S-1.<sup>1</sup>
13. The ER included a "background and developmental history form" that the Parent completed. The form provided family information, a medical/developmental history, social/behavioral information, and an educational history. S-1.

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<sup>1</sup> Nothing in the record establishes exactly when the Parent requested the evaluation or provided consent for the District to evaluate. Nothing in the record enables a finding concerning the timeline for the ER. More importantly, the Parents entitlement to an IEE at public expense hinges on the ER's substantive appropriateness.

14. The ER included a summary of the Student's report card grades from the 2013-14 school year through the 2022-23 school year, noting a very broad range in report card grades. The Student's final report card grades in the 2022-23 school year were Fs in Science, PE/Health, Design I, Math, and Art; Ds in Freshman Seminar, and Parenting; and Cs in History and English. Some of those grades were stronger in individual marking periods (e.g. an A in History in MP2), but many were low or failing grades for the entire school year. S-1.
15. The ER included an attendance report for the 2019-20 through 2022-23 school years. During the 2020-21 school year, the Student received 114 unexcused absences. That number shrank to 20 in the 2021-22 school year and 13 in the 2022-23 school year. Excused absences were 23 and 31 in those years, respectively. S-1.
16. The ER includes a misconduct report for the 2019-20 through 2022-23 school years. The Student received four disciplinary referrals in total, three of those were comparatively minor. The Student received a one-day, in-school school suspensions (ISS) for reckless horseplay in the 2019-20 school year. No discipline was reported during the 2020-21 school year, but the District was not fully open that year in response to the COVID-19 pandemic. The Student received a half-day ISS for bullying in the 2021-22 school year. In the 2022-23 school year, the Student received a "0.38" day ISS for being in the halls during class in January 2023, and a 10 day out of school suspension for the incident in March 2023. S-1.
17. The ER included input from the Student's teachers from the 2022-23 school year. The teachers reported that the Student's attendance was good up to the disciplinary incident. The Student's work completion, however, was highly variable and the Student's tendency to not turn in work contributed to poor grades. The teachers reported that the Student's academic skills ranged from consistent with to below grade-based expectations, but attributed deficits to low effort and low work completion. S-1.
18. The ER included a report from the 2023-24 cyber program concerning the Student's work completion to date. The Student's work habits and grades in the cyber program were variable class to class. S-1.<sup>2</sup>

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<sup>2</sup> The report of the Student's progress in the cyber program is a bit confusing. Both the Student's grades (how well the Student did on assignments) and the Student's pacing (how many assignments the Student completed) are reported. Grades, however, are represented as a percentage of a year's worth of work. This makes portions of the report look odd. For example, the Student was on pace in an English course because the Student had completed

19. The ER reported the Student's PSSA scores in Math (Below Basic Reading (Basic), and Science (Below Basic) in the 2021-22 school year. S-1.
20. The District administered the Pennsylvania Classroom Diagnostic Tools (CTD) in the 2019-20 and 2021-22 school years. The ER reported the Student's scores on CDT assessments. The CDT is a computer-based test that is adaptive (meaning that the questions change in response to the Student's answers) and is aligned with Pennsylvania's Standards Aligned System (SAS) in the same domains assessed in the PSSA. Performance levels are Red, Green, and Blue. Students in the Red level have areas of need that require intervention to reach grade level mastery. The Student tested in the Red level in Reading/Lit in October 2019 and February 2020. The Student tested in the Red level in Math in October 2019, February 2020, November 2021, and February 2022. S-1.
21. The ER included new testing: the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); the Wechsler Individual Achievement Test, Fourth Edition (WISC-4); the Adaptive Behavior Assessment System, Third Edition (ABAS 3); the Behavior Assessment System for Children, Second Edition (BASC-2); the Conners 3; and the Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF-2). These assessments are described below. S-1
22. The testing took place over four to four and a half hours on July 13 and 27, 2023. The ER included the Psychologist's observations of the Student during the testing. Those observations prompted a cautionary note in the ER: "Given the fast pace with which [Student] completed the cognitive and achievement assessments, coupled with [Student's] tendency to ask for item repetition, respond to items quickly without reconsidering/checking [Student's] response, or respond that [Student] didn't know somewhat quickly at times, it is the impression of this examiner that the results are an underestimate of [Student's] aptitude and achievement skills." S-1 at 7.
23. The WISC-V is a standardized, normative test of cognitive abilities that yields a full-scale IQ score (FSIQ) and several other composite scores which, in turn, are based on several sub-test or domain scores. The

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zero assignments, and zero assignments were due. The Student also had a 0% grade for the class for the same reason. None of that indicates failure. In comparison, the Student was assigned 48 math assignments and had completed none of them as of the ER. The record does not reveal if the cyber program is self-paced.

Student's scores on the WISC-V resulted in a FSIQ score of 60, which is in the "extremely low" range using the test's terminology (the test's 95% confidence interval placed the score between 56 and 67). S-1.

24. The Psychologist also used the Student's WISC-V scores to calculate ancillary index scores to get more information about the Student's cognitive profile. There was no statistical difference between the Student's FSIQ and the Student's General Ability Index (GAI – an IQ measure that does not consider working memory and processing speed) or Nonverbal Index (NVI – an IQ measure that does not require written responses). The Student's Cognitive Proficiency Index (CPI – a measure of working memory and processing speed) was slightly higher, but still in the "very low" range using the test's terminology. S-1.
25. Structurally within the ER, after reporting the WISC-V results, the Psychologist reiterated a similar caution to the warning placed before the WISC-V results: "Overall, [Student] is a young man who performs in a manner that suggests [Student's] cognitive ability is within the Extremely Low range. However, in consideration of the time taken to participate in the cognitive assessment as well as the review of specific tendencies of quick response, saying I don't know somewhat quickly, and providing minimal additional response or elaboration on queried items, it is the opinion of this examiner that the profile produced is an under-representation of [Student's] overall aptitude." S-1.
26. The WIAT-4 is a standardized, normative test of academic achievement that is co-normed with the WISC-V. As a result, the WIAT-4 can be used to measure the Student's academic achievement in comparison to both a representative sample of same-age peers and expected levels of achievement based on the Student's WISC-V results. See S-1.
27. The ER reported the Student's WIAT-4 scores in core composite index scores derived from various sub-tests. The Student's overall Reading score was in the very low range while Written Expression and Mathematics were in the extremely low range. Most sub-tests and supplemental composite scores were consistent with those ranges. That language comes from the test itself and describes the Student's academic achievement relative to same-age peers. The WIAT-4 scores are in line with the WISC-V scores. S-1.
28. The ABAS-3 is a comprehensive norm-referenced assessment of adaptive skills (self-care, meeting environmental demands, and the like). The Parent and two teachers rated the Student's adaptive skills

and the Psychologist reported the results in the ER, but the Psychologist included a cautionary note for interpreting the ABAS-3 results: One of the teachers “engaged in an inordinate amount of guessing” while the Parent and the other teacher did not. The Parent and the teacher who did not guess scored the Student’s adaptive skills similarly (but not identically). The teacher who guessed produced different results. The Psychologist cautioned that the responses from the Parent and the teacher who did not guess more accurately represent the Student’s adaptive skills. S-1.

29. ABAS-3 scores from the Parent and the teacher who did not guess placed the Student’s General Adaptive Composite (GAC) in the average to high average range. The teacher who guessed produced a GAC in the low range, but the Psychologist again urged “extreme caution” when considering that result. Results were similar across sub-domains, and the same caution was repeated. S-1.
30. The BASC-3 is a broad-ranging, standardized behavior assessment in which teacher and parents are asked to rate a student in many domains. The Psychologies asked the Parent and two teachers to complete the BASC-3 for the Student. Both teachers did so, but the Parent did not return the rating form despite the Psychologist’s efforts to obtain the form from the Parent. S-1.
31. The BASC-3 has a series of internal controls that test the validity of the rater’s responses. Neither teacher’s ratings triggered any of those controls, meaning that their ratings were valid and reliable. S-1.
32. The BASC-3 produces *T* Score ratings with index scores comprised of various sub-tests. A *T* Score of 50 is commensurate with average, same-age peers. A *T* Score between 60 and 70 places a student in the “at-risk” range, and a *T* Score above 70 places a student in the “clinically significant” range. S-1.
33. The BASC-3 produces an Externalizing Problems index score comprised of Hyperactivity, Aggression, and Conduct Problems sub-scores. Both teachers rated the Student in the clinically significant range in all three sub-scores except for one teacher who rated the Student in the at-risk range for hyperactivity. Those scores produced a score in the clinically significant range for Externalizing Problems for both teachers. S-1.
34. The Psychologist was surprised by the teachers’ rating for Aggression, given the lack of significant discipline prior to the March 2023 altercation. The Psychologist followed up with the teachers, both of



whom reported that the Student tended to make teasing comments or pick on others, regularly used "foul language," and was disobedient, but was never physically aggressive. One teacher "reported being very surprised" that the Student was involved in the March 2023 incident. S-1.

35. The BASC-3 produces an Internalizing Problems index score comprised of Anxiety, Depression, and Somatization sub-scores. Both teachers rated the Student in the average range in all three sub-scores resulting in an average index score. S-1.
36. The BASC-3 produces a School Problems index score comprised of Attention Problems and Learning Problems sub-scores. Both teachers rated the Student in the at-risk range in both sub-scores resulting in an at-risk index score. S-1.
37. As with the Aggression score, the Psychologist followed up to get more information to interpret the School Problems score on the BASC-3. The Psychologist found that the School Problems score was consistent with academic testing (the WIAT), but also noted (again) why that testing should be interpreted with caution, and correlated the School Problems score with the Student's attention scores on other tests (see below) and the Student's overarching lack of participation in class. S-1.
38. The BASC-3 produces scores for Atypicality and Withdrawal. Both teachers rated the Student in the average range in both domains. S-1.
39. The BASC-3 uses all the above measures to derive an overarching Behavior Symptom Index. Both teacher's ratings placed the Student's Behavior Symptom Index in the at-risk range. S-1.
40. Like the ABAS-3, the BASC-3 includes adaptive skills ratings. Adaptive skills sub-scores include Adaptability, Social Skills, Leadership, Study Skills, and Functional Communication. Those combine to form a total Adaptive Skills score. For adaptive skills, the BASC-3 scoring is reversed (showing adaptive skills more frequently is a positive). *T* scores from 40 to 30 are in the at-risk range while *T* scores below 30 are clinically significant. S-1.
41. One teacher rated the Student in the at-risk range in all adaptive skills sub-scores. The other teacher rated the Student in the average range in Adaptability and Functional Communications, clinically significant in Study Skills, and at-risk for the rest. S-1.

42. Both teachers' ratings placed the Student in the at-risk range in the BASC-3's Adaptive Skills index. S-1.
43. The BASC-3 also includes a self-report on which the Student rates the Student's own behaviors. The Student's responses on the BASC-3 self-report triggered an *L* Index warning, meaning that the Student was likely minimizing behaviors to present themselves in the best possible light. The Psychologist highlighted an example to illustrate the statistical warning: the Student responded "to items such as 'I never get in trouble' with a 'true' response." S-1.
44. For what it is worth, the Student's self-report on the BASC-3 put the Student in the average range across all index scores and sub-scores, including those for adaptive skills (called Personal Adjustment on the self-report) except for a single at-risk sub-score in Attitude to Teachers. S-1.
45. The Conners 3, like the BASC-3, is a standardized behavior rating scale. Unlike the BASC-3, the Conners 3 targets behaviors commonly associated with Attention Deficit Hyperactivity Disorder. The Parent and two teachers completed the Conners 3, and the Student completed a Conners 3 self-assessment. S-1.
46. Both teacher's ratings on the Conners-3 placed the Student in the "elevated" or "very elevated" range across all domains measured by the test (one teacher placed the Student in the average range for "peer relationships). The Parent rated the Student in the average range in all domains. The Student's self-rating was elevated for Inattention, Hyperactivity/Impulsivity, and Learning Problems. S-1.
47. The BRIEF 2 is also a standardized behavior rating scale. The BRIEF 2 examines behaviors associated with executive functioning. Using language from the BRIEF 2, the Psychologist explained that the "term executive function represents a broad construct that includes a collection of interrelated functions that are responsible for purposeful, goal directed, problem solving behaviors." S-1 at 19.
48. With a few exceptions, both teacher's ratings on the BRIEF 2 were similar. One teacher's ratings in domains related to planning were elevated, resulting in an overall executive functioning score (GEC) that was one point into the "mildly elevated" range. The other teacher's ratings resulted in a GEC within normal limits. The Parent's ratings on the BRIEF 2 were within normal limits across every domain. The

Student's self-ratings were highly variable across domains, resulting in a GEC at the threshold for the "mildly elevated" range. S-1.

49. The Psychologist considered all the input and wrote a comprehensive analysis, synthesizing the data and information. S-1 at 20-21.<sup>3</sup>
50. The Psychologist concluded that the Student had a disability, but that the Student did not require specially designed instruction (SDI) and, therefore, was not eligible for special education. S-1.
51. The Psychologist considered whether the Student was a child with a specific learning disability (SLD). The Psychologist noted the Student's poor academic achievement on standardized tests but found that was not discrepant from the Student's cognitive profile – even considering that both the WISC and WIAT may have underestimated the Student's abilities. The Student's pre-COVID academic success was also a factor in the Psychologist's analysis. S-1.
52. The Psychologist found that the "assessment results do highlight the presence of weaknesses with attentional control and executive functioning to a somewhat lesser degree." The Psychologist viewed these weaknesses as a function of a disability but placed that in the context of the Student's history of social, behavioral, and academic success pre-COVID. The Psychologist reasoned that the history of effective accommodations through regular education interventions signaled that the Student did not require SDI. S-1.
53. Although the Psychologist found that the Student did not require SDI at the time of the ER, the Psychologist recommended formalizing the Student's regular education accommodations through a Section 504 service agreement.<sup>4</sup> The Psychologist also recommended carefully monitoring the Student's needs and reassessing if warranted. S-1.
54. In addition to a general recommendation for the Parent and School to consider a Section 504 service agreement, the Psychologist included several specific recommendations to accommodate the Student's

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<sup>3</sup> It is not my practice to quote at length from evidence that speaks for itself. The Psychologist's interpretation of the behavior ratings (starting on Page 19), and synthesis of those ratings with the cognitive and academic testing to produce a comprehensive, thorough, and well-reasoned analysis is well worth reading. S-1 at 19-21.

<sup>4</sup> Section 504 is Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). A section 504 Service Agreement or Plan is a document by which schools and parents agree to what non-special education disability accommodations a child will receive to access school programs. See *also* 22 Pa. Code § 15.

attention and executive functioning deficits, interventions that could be used in the District's cyber program, and other recommendations that could be implemented if the Student returned to in-school instruction. S-1.

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

The one witness who testified in this case was entirely credible.

### **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.<sup>5</sup>

### ***Evaluation Criteria***

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 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 a free appropriate public education (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, the District is obligated to ensure that assessments and other evaluation materials are (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. 20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess “all areas of suspected disability.” 20 U.S.C. § 1414(b)(3)(B).

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<sup>5</sup> From a different point of view, the Parent is seeking relief (an IEE at public expense). But the IDEA is clear that the District must prove that its evaluation was appropriate. The burden, therefore, is on the District. See 34 C.F.R. § 300.502(b)(4).

## ***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 ER was procedurally and substantively appropriate, satisfying all IDEA mandates.

The ER used "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent." Those included significant input from the Parent through open ended forms and standardized assessments, information from teachers, cognitive assessments, academic assessments, behavioral assessments, multiple forms of input from the Student, clinical observations, and more. Notably, the Psychologist closely examined test results and sought additional information when results were unexpected. This helped the Psychologist use her professional judgement to analyze data to reach well-reasoned, amply supported conclusions.

The ER did "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability." Here, the ER is exemplary. The Psychologist interpreted many individual test results with caution and explained the basis of that caution. Moreover, the Psychologist carefully explained how the different tests and sources of information worked with each other to paint a complete picture of the Student. That synthesis of information was logical and highlighted the Psychologist's careful, global approach.

The multiple factors listed within 20 U.S.C. § 1414(b)(3)(A) are satisfied as well. There is no indication that any of those factors are pertinent to this case. For example, there can be no serious debate as to the Psychologist's qualifications to administer and interpret the cognitive assessments used in the ER.

The ER also evaluated all suspected areas of disability. The ER was broad and comprehensive. The Psychologist reviewed the Student's entire educational history, administered board, comprehensive tests of cognitive ability and academic achievement, and both broad and targeted behavior rating scales. Again, the Psychologist's approach was global, resulting in a complete picture of the Student's strengths, needs, and abilities. Further, despite finding the Student ineligible for special education, the Psychologist included "relevant information that directly assists persons in determining the educational needs of the child are provided." 34 C.F.R. § 300.304. In the ER, that took the form of a broad recommendation for a Section 504 plan, and specific recommendations to accommodate the Student's attention and executive functioning deficits both in the District's cyber program at in school, should the Student return.

Regarding the eligibility determination, it is rare in my experience for a student with scores like the Student's scores on standardized tests to *not* qualify for special education. Looking at any of the Student's tests in isolation, however, could yield an entirely inaccurate picture. The Psychologist was careful to explain why she interpreted tests results with caution, and how the Student's history, more recent presentation in school, and behaviors during testing contextualized those scores. Importantly, the Psychologist did not wait until she was on the witness stand to do this work. Her reasoning was clear, well-supported, and reflected in the ER itself. In this way, the Psychologist did exactly what the IDEA requires when reaching the eligibility determination: she took a broad view, applying her professional judgement to a large volume of data from many sources to reach conclusions and make recommendations.

The District has proven by preponderant evidence that the ER was appropriate. Consequently, the Parent is not entitled to an IEE at public expense.

An appropriate order follows.

**ORDER**

Now, February 19, 2024, it is hereby **ORDERED** that the District's Evaluation Report dated October 29, 2023, is appropriate and that the Parent is not entitled to an independent educational evaluation at public expense.

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

/s/ Brian Jason Ford  
HEARING OFFICER