

*This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code §16.63 regarding closed hearings.*

**Pennsylvania Special Education Hearing Officer  
Final Decision and Order**

**CLOSED HEARING**

**ODR File Number:**

**23146-19-20**

**Child's Name:**

J.M.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent**

Pro se

**Local Education Agency:**

Westmont Hilltop School District  
827 Diamond Blvd.  
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**Counsel for the LEA**

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**Hearing Officer:**

Charles W. Jelley Esq.

**Date of Decision:**

11/27/2020

## INTRODUCTION

This special education due process hearing was requested by the Parent on behalf of the Student.<sup>1</sup> The Parent contends the District failed to properly evaluate and then offer the Student an appropriate individualized education program (IEP) in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq.* [redacted] At all relevant times, the District, argues it complied with all procedural and substantive requirements of the IDEA [redacted].

There are very few relevant outcome-determinative facts in dispute. This is not surprising, given the short time frame the Student was enrolled in the District from September 2019 to January 7, 2020. Despite the apparent lack of any substantive factual disagreement, all evidence — both documents and testimony — was carefully considered.

I make Findings of Fact and Conclusions of Law, however, only as necessary to resolve the IDEA [redacted] child-find issues before me either in the Complaint or the Parent's on the record statement of the issue. The following factual statements in this Decision constitute the written Findings of Fact required and Conclusion of Law required by the IDEA, [redacted] and all other applicable state law. (20 U.S.C. § 1415(h)(4), 22 PA Code Chapter 14.162, 22 [redacted]). For all of the reasons discussed below, I find in favor of the District and against the Parent.<sup>2</sup>

<sup>1</sup> The Parents claims arise under 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 CFR §§ 300.1-300. 818. The applicable Pennsylvania regulations, implementing the IDEA are set forth in 22 Pa. Code §§ 14.101-14.163 [redacted]. The Decision Due Date was extended for a good cause, upon written motion of the Parties. To accommodate the Parents' request for reasonable accommodations the length of each due process sessions was shortened. Additional accommodations like real time transcription services were provided at each session. References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number.

<sup>2</sup> After carefully considering the entire testimonial record, including the non-testimonial, extrinsic evidence in the record, in its entirety, I now find that I can draw inferences, make Findings of Fact and Conclusions of Law. Consequently, I do not reference portions of the record that are not relevant to the issue(s) in dispute. Further, there was some overlap

## **ISSUES**

1. [redacted]
2. [redacted]
3. [redacted]
4. Did the School District properly evaluate the Student for IDEA educational services?
5. Did the District use appropriate factual and legal criteria for determining Student's eligibility and correctly conclude that Student is not a student with a disability who needs specially designed instruction provided in accordance with an Individualized Educational Program (IEP)?
6. If the District failed to properly evaluate Student or incorrectly concluded that Student is not eligible for an IEP, what is the appropriate remedy?

## **FINDINGS OF FACT**

1. The Student is a District resident and at one time attended third grade in the District's elementary school. Prior to coming to the District in August 2019, the Student was enrolled in a private school. (N.T. pp.2).
2. On August 14, 2019, approximately two (2) weeks before enrolling in the District's elementary school, the Parents secured a private psychological evaluation from a licensed psychologist. [redacted] (S-2, S-5).
3. On or about August 14, 2019, the private evaluator completed a battery of testing. The testing included a Child Behavior Checklist (CBCL), a Child Depression Inventory 2<sup>nd</sup> Edition (CDI-2), a review of records, a Spence Children's Anxiety Scale (SCARS), a Vanderbilt

between the Parent's exhibits and the District's exhibits. In those instances, I refer to only one copy of the document. Consequently, not every document entered into evidence is referenced herein.

ADHD diagnostic Parent rating Scale (ADTRS), a Wechsler Intelligence Scale for Children-5<sup>th</sup> edition (WISC-5), and a Wide Range Achievement Test Fourth Revision (WRAT-4). (SD#5).

4. The CBCL is a parent-report measure of a child's functioning in a variety of 14 domains. The CBCL is norm-based, meaning that the parent's response regarding the child's behaviors is compared with a large sample of children of the same age and gender. A T-score of 50-64 is considered average. Scores above 70 are considered clinically significant. The Student earned one clinically significant score relating to conduct problems. (SD#5 p.3).
5. The ADTRS is a screening measure for Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD) and Anxiety/Depression. The mother completed the measure; her responses indicated clinically significant concern regarding ODD symptoms. (SD#5 p.3).
6. The Spence Children's Anxiety Scale-Parent is a measure of potential symptoms of anxiety. The mother's responses indicate mild symptoms of anxiety. (SD#5 p.3).
7. The Child Depression Inventory 2<sup>nd</sup> Edition (CDI-2) is a 17-item instrument intended to assess the existence and severity of symptoms of depression. The mother's rankings indicated elevated levels of depressive symptoms. (SD#5 p.3-4).
8. On the WISC-V, the Student earned a full-scale IQ of 124, at the 95 percentile. While the report does not identify the Student's raw scores or standard scores (SS) for any of the subtests, the report does state the Student's score in Similarities and Matrix Reasoning fell in the High Average Range, while Coding and Block Design fell in the Average range, and Vocabulary and Figure Weights fell in the Superior range. (SD#5 p.2).

9. The Student's WRAT-4 Math SS of 124 fell in the Superior range, while the Word Reading SS of 114 fell in the High Average range and the Student's Spelling SS of 120 fell in the Superior range. (SD#5 p.3).
10. After reviewing the results, the examiner diagnosed the Student with an "Other Conduct Disorder." The evaluator made nine recommendations related to how to interact with the Student when the Student had trouble following rules. (S#5). The examiner, a licensed psychologist, did not make any recommendations on conclusions regarding IDEA [redacted] eligibility. The private evaluation did not include input from the Student's previous teachers, a review of school records or an observation of the Student in the home or the community. (SD#5).
11. On September 25, 2019, in an email communication to the District's Special Education Director, the mother expressed concern about the District's [redacted] practices. (SD#11 p.1).
12. [redacted] (SD# 1).
13. On or about October 7, 2019, the Parent met with the psychologist in her office to make sure the testing environment was appropriate. (N.T. p. 34). [redacted]. During the face-to-face meeting, the psychologist and the Parent talked about the Student's previous school, allegations of peer-to-peer bullying at the previous school, the results of the independent psychologist's evaluation [redacted] (NT p. 34). At no time during this meeting did the Parent request that the psychologist perform a Chapter 14/IDEA disability-based evaluation for the Student. (NT pp.36-37).
14. [redacted] (N.T. p. 37, SD# 2).
15. [redacted] (N.T. p. 42).

16. The [redacted] team discussed and noted that while the private evaluator diagnosed an "Other Conduct Disorder" the private evaluation did not diagnose the Student as having an anxiety disorder, depression, or [redacted] an IDEA disability. (N.T. p. 42, SD#2 vs. SD#6).
17. [redacted] (N.T. p. 44, SD#2).
18. On the Reynolds Intellectual Assessment Scales Test Second Edition (RIAS-2), another ability measure, the Student earned a full-scale IQ composite score of 113 at the 81<sup>st</sup> percentile in the "Average" range. (N.T. p. 46. SD#2).
19. On the WRAT-4, the Student scores ranged from 105 in the Average range to 132 in Math computation in the Superior range. (N.T. p. 68-69). Although the Student earned a SS of 105 on the Spelling portion of the WRAT4, the psychologist, after reviewing the data set, did not undertake additional Chapter 14 or IDEA assessments as the Student's SS of 105 was still within the "Average" range. (N.T. p. 72).
20. To better understand the Student's overall academic abilities, the psychologist administered two reading and two math subsections of the Wechsler Individual Achievement Test Third Edition (WIAT-3) (N.T. p. 82, SD #2, p.8). On the WIAT-3, the Student earned a SS of 124 in Reading Comprehension, in the "Above Average" range, and a SS of 132 in Math Problem Solving, in the "Superior" range. These scores were comparable to the WRAT-4. (N.T. pp. 82-83).
21. The [team report] includes teacher input and updated benchmark testing along with a social, emotional and behavior assessment. (N.T. p. 40). Using a Student Risk Screening Scale (SRSS), two of the Student's teachers, independent of each other, using a scale from zero to three, zero meaning never an issue with three meaning frequently ranked the Student behavior on twelve indices like stealing, lying,

cheating, sneaking, behavior problems, peer rejection, low academic achievements, negative attitude, aggressive behavior, emotionally flat, shy/withdrawn, sad/depressed, anxious, and lonely. Both teachers' independently rated the Student zero (0) in all 12 areas, meaning they never observed an issue in school. (N.T. p.67, SD# 73, N.T. p. 89, SD## 6, 7). The Student's math, science, and social studies teacher indicated on the form that the Student was an independent learner and could grasp material taught at a good pace with little to no repetition. (N.T. p. 90, SD#6). The Student's English Language Arts (ELA) teacher indicated that the Student was an independent learner as well. (N.T. p. 96, SD# 7). Overall, the teacher and psychologist did not note any warning signs of academic deficits or [redacted]. (N.T. p. 97).

22. [redacted][T]he Student, along with all grade-level peers, completed other District-wide grade-level benchmark assessments throughout the year. (N.T. p.72). On the "Linkit" assessment of math and reading administered at the beginning of the school year, in August 2019, after a few weeks in school, the Student scored in the 50<sup>th</sup> percentile in Language Arts with 13 out of 26 correct answers (N.T. p.77). The Student also scored 100 percent in two math, while the other score areas fell at 33 percent and 67 percent on the "LinkIt" assessment. (N.T. p. 77).
23. On the Acadience, another grade level reading assessment, the Student scored at or above the benchmark (N.T. p. 74). [redacted] (N.T. p. 86).
24. In Oral Reading Frequency, while the benchmark score was 70 at the beginning of the year for third grades and the Student obtained a 122 on that assessment. In Oral Reading Frequency Accuracy, the benchmark goal at the beginning of the year for the third grade was a 95 and the Student's SS was a 99. (S-68 p.6).

25. On the Dynamic Indicators of Basic Early Literacy Skills 6th Ed., Retell measure, with a Third Grade benchmark of 20, the Student's scored a 44. On the Maze, the ability to correctly select the missing words in a passage, with a benchmark of eight (8) the Student scored and 18. (N.T. p. 298-299, SD# 68). The Student's benchmark scores all fell in the Above Average range. (N.T. p. 301).
26. [redacted] (N.T. p. 440-441).
27. [redacted] (N.T. p.238).
28. [redacted]. (Hearing Officer Exhibit No. 2, N.T. p. 105). On the District's WRAT-4 screener, the Student earned a SS of 132 in the Math achievement test. Consistent with then-existing practices, the District provided the Student with regular education enrichment. (N.T. p.105).
29. [redacted] (N.T. p.238).
30. Neither the psychologists nor the teachers ever reported any signs of anxiety or inattention issues when working with the Student. The psychologist noted the Student was very pleasant and adjusted well to the new testing environment. (N.T. p.24, N.T. p.255).
31. In school, the Student did not display any difficulty maintaining and sustaining interpersonal relationships or signs of a general pervasive mood of unhappiness or depression. (N.T. p.449).
32. [redacted] (N.T. p.103, SD#2).
33. The [redacted] evaluation was completed on December 4, 2019, which was within the 60 day calendar period. (N.T. p.451, SD# 2).
34. The Math and the English Language Arts (ELA) teachers provided input into the [team report] about the Student's rate of acquisition and retention, classroom adaptations, work habits, attitude and motivation and behavioral/social interactions. Under "Instructional Level," in the

areas of Reading/English, Math, Social Studies, and Science, the ELA teacher identified the Student as working on an independent level. The teacher did not check the advanced level for any areas. Under "Rates of Acquisition and Retention," the teacher noted the Student did not need comprehensive instruction on higher-level material. Under "Behavioral/Social Interactions", the teacher ranked the Student "Average" under "Higher Level Thinking Skills," "Above Average," under "Academic Creativity," "Average" under "Leadership Skills," "Intense Academic Interest" and "Communication Skills." When asked to rate the Student's "Rates of Acquisition" and "Retention," the teachers noted the Student did not need faster pacing or require higher-level material. Under "Classroom Adaptations," the teachers commented that they could meet the Student's educational needs without additional SDI supports and/or services. (S-7, NT pp.559-687).

### **APPLICABLE LAW, ANALYSIS AND CONCLUSIONS OF LAW<sup>3</sup>**

[redacted] Likewise, the record is preponderant that during the Student's enrollment, the District met all applicable IDEA and state Chapter 14 child-find requirements. There is, therefore, no basis for either reversing the District's substantive determination that Student is not eligible [redacted] or for that matter requiring the District to reexamine its evaluation results or consider additional or different assessments regarding IDEA eligibility.

[redacted]

**[REDACTED]**

[redacted]

<sup>3</sup> In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. At the outset of the discussion, it should be recognized that the burden of persuasion lies with the party seeking relief. *E.N. v. M. Sch. Dist.*, 928 A.2d 453 (Pa. Commw. 2007), *In Re Student SD, Central Dauphin School District*, ODR No. 17651-15-16 (DOH 7/9/2016). Accordingly, the burden of persuasion, in this case, must rest with the Parents who requested this administrative hearing.

## **THE RECORD AS A WHOLE DOES NOT SUPPORT A FINDING OF ANY OF THE TYPICAL IDEA CHILD FIND SUSPICION TRIGGERS**

School Districts have a "continuing obligation ... to identify and evaluate all students who are reasonably suspected of having a disability under the statute."<sup>4</sup> The IDEA child find duty does not demand that schools conduct a formal evaluation of every struggling student. A school's failure to identify a disability at the earliest possible moment is not *per se* actionable. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). However, once school districts have a "reasonable suspicion" the Student is otherwise IDEA eligible, the District is required to fulfill their child find obligation within a reasonable time. *Id.* Failure to conduct a sufficiently comprehensive evaluation is a procedural and substantive violation of the District's "child find" obligation. Substantive child find violations can cause a denial of a FAPE. *D.K.*, 696 F.3d at 250 (a poorly designed and ineffective evaluation does not satisfy "child find" obligations). Therefore, an evaluation must be sufficiently comprehensive to assess all of the child's suspected disabilities. 20 U.S.C. §1414(b)(3)(B); 34 CFR §300.304(c)(4), (6). Simply stated, the child find trigger or starting point occurs when the school district has a reasonable suspicion that the child may be eligible under the IDEA. Once the child find duty is triggered, the District must initiate a comprehensive evaluation of the child within a reasonable period of time. Both of these triggers, the "reasonable suspicion" and the "reasonable time to evaluate" a student is an issue of fact.

The Parent relying on the private evaluator's diagnosis of an "Other Conduct Disorder" and/or the Parent's "Anxiety Disorder," ranking, now argues the District failed to identify the Student as a person with a disability, within the meaning of the IDEA. The record viewed as a whole does not support this argument.

An "Other Conduct Disorder" or an "Anxiety Disorder" is not one of the

<sup>4</sup> *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 271 (3d Cir. 2012) (citing *P.P. v. West Chester Area School District*, 585 F.3d 727, 738 (3d Cir. 2009)); *Taylor v. Altoona Area Sch. Dist.*, 737 F. Supp. 2d 474, 484 (W.D. Pa. 2010); 20 U.S.C. § 1412(a)(3)(A); 34 CFR § 300.111(a), (c).

identified IDEA disabilities. Therefore, the Parent's standalone bootstrapped "Other Conduct Disorder" and/or "Anxiety Disorder" argument is a non-starter. Assuming however, the "Other Conduct Disorder" or "Anxiety Disorder" adversely affects the Student's social or emotional behavior, the Student may be IDEA eligible as a person with an "emotional disturbance." In the alternative, either disorder could fall under the umbrella catchall "Other Health Impairment" IDEA disability category. Assuming either "disorder" fits within the working definition of an IDEA disability, the Parents must also establish the Student needs special[ly]-designed instruction. In this instance, for all of the following reasons, the record is preponderant that the Parents failed to prove the Student's private diagnoses line up with either an identified IDEA disability or the need for specially-designed instruction.

The Student enrolled at the beginning of the school year and withdrew in January 2020; therefore, the timeline to form a reasonable suspension and evaluate the Student was abbreviated. The Student's attendance was regular; the Student made friends, completed homework, followed the District's student code of conduct and earned high grades. For example, the Student's report card grades ranged from a low of 94.55% in Reading to a high of 100% in Science, Technology, Engineering, Art and Math. (STEAM). Likewise, the record is clear that the transition from private to public school went relatively well. The teachers did not observe and the record does not establish an inability to learn that cannot be explained by intellectual, sensory, or health factors. The record does not support a finding that the Student displayed an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. The record does not support a finding that the Student displayed inappropriate types of behavior or feelings under normal circumstances.

The record does not support a finding that the Student displayed a general pervasive mood of unhappiness or depression. The record does not support a finding that the Student displayed a tendency to develop physical symptoms

or fears associated with personal or school problems.

The teacher's ratings of the Student's social skills using the SSRS rankings are not remarkable for social, behavioral or emotional deficits. With the exception of a significant CBCL ranking of an "Other Conduct Problem," the Parent's remaining 14 CBCL social ratings did not identify any other clinically significant social skills deficits. The mother's standalone checklist clinically significant rankings predate the Student's enrollment in the school, did not include past or present teacher input and do not relate to behavior that occurred during the school day. Therefore, absent a link to other relevant circumstances, the Parent's contentions are not supported by the record as a whole.

When the mother's ratings favoring ODD, anxiety and depression are compared with the mother's CBCL scores, the record reveals a glaring yet unexplained conflict. The mother's non clinically significant rankings on 14 out of 15 CBCL indices assessing ODD, Anxiety and Depression contradicts the Parent's SCARS and CDI-2 ratings suggesting the existence of an Anxiety or Depressive disorder. Read fairly, the mother's CBCL ratings indicate the Student is not anxious, depressed, aggressive, experiences thought or attention problems and clearly does not support a finding of rule-breaking conduct in the school. Therefore, I now find the record is preponderant that the Parent did not meet her burden that the District missed the telltale signs of an emotional disability in school.

Similarly, even if one considers a possible IDEA "Other Health Impairment" disability, the record is clear that the Parent failed to establish that either disorder adversely affected the Student's strength, vitality or alertness. The record is preponderant that the Student's report card grades, coupled with the benchmark scores, the RAIS, [redacted], WRAT-4 and WICS-V scores, undercuts a finding that the Student's alleged "Other Health Impairment" adversely affected the Student's education such that the Student is a person with a disability or the Student "needs" SDI. Therefore, I now find the evidence is preponderant that the Student did not exhibit any behaviors, for a

long period of time, in the school or the community that would cause the teachers to suspect an IDEA qualifying disability. Accordingly, the Parent's IDEA child find claim is dismissed.

### **CONCLUSION**

[redacted] Likewise, for all of the reasons stated above, after reviewing the record as a whole, the Parents' IDEA child find claim is **DENIED**. An appropriate **ORDER** in favor of the District follows.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' [redacted] IDEA and Chapter 14 child-find and IDEA claims in this matter are **DENIED**. [redacted]

The School District is not required to take any further action with respect to conducting additional assessments or reexamining its conclusion that Student is not a Student with an IDEA disability. All other claims or defenses are **DISMISSED AND DENIED**.

Date: November 27, 2020

s/ Charles W. Jelley, Esq. LL.M.  
ODR FILE #23146-1920 KE

**A Notice of Appeal will be included with the email forwarding this Decision and Final Order to the Parties. The Parties are reminded to calendar all applicable federal or state court appeal deadlines.**