

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. 32447-25-26

Child's Name:

T.D.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Colonial School District
230 Flourtown Road
Plymouth Meeting, PA 19462-1252

Counsel for LEA:

Tammy J. Schmitt, Esq.
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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

5/14/26

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is [redacted] years old, enrolled in the [redacted] grade in the District. The Student is eligible for special education as a child with other health impairment (OHI) and Autism. In December 2025, the Student transferred into the District. Previous evaluations conducted by former school districts were incomplete. Although the District issued permission to reevaluate to the Parents, they refused to consent. Pursuant to the Individuals with Disabilities Education Act (IDEA), the District filed a due process seeking to override the Parent's refusal to consent to a reevaluation of the Student.²

The Parent briefly joined the remote hearing platform, interrupted the proceedings with threats of litigation before disconnecting. The Parent was provided with access to the hearing exhibits and the transcript of the hearing that outlined the requirements to submit a closing statement. The Parent did not submit a closing statement.

Based on the evidence presented, the District's claims are granted.

ISSUE

May the District proceed with an evaluation of the Student without parental consent?

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including the details on the cover page, will be redacted prior to the decision's posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818.

FINDINGS OF FACT

1. The Student is [redacted] years old and is enrolled in the [redacted] grade in the District. The Student is eligible for special education as a child under the classifications of OHI and Autism. (S-8, S-9)
2. The Student attended [redacted] grade through the first marking period of [redacted] grade in [outside state]. For the remainder of [redacted] grade, the Student attended school in a Pennsylvania school district. (S-8)
3. During [redacted] grade (2022-2023 school year), the Student transferred to a second [outside state] school district. In spring 2023, the Student entered a partial care program to address mental health needs. (S-9, p. 2-3)
4. In August 2023, before [redacted] grade, a psychoeducational evaluation was initiated due to academic and behavioral concerns. The Parent reported diagnoses of ADHD and ODD. (S-8)
5. The District held the evaluation in abeyance pending completion of Child Study Team (CST) evaluations. The CST referred the Student for a psychiatric evaluation. (S-8, S-9)

6. During [redacted] grade (2023-2024 school year), the Student received special education services as a child with a disability under the classification of Other Health Impairment (OHI). (S-7, p. 19; S-9)
7. In February 2024, the Student received a medical diagnosis of Autism. (S-7, p. 19, S-9; N.T. 21)
8. A psychiatric evaluation completed in March 2024 concluded that the Student had a history of ADHD, combined type. The evaluator noted concerns regarding autism spectrum disorder but did not have access to the medical report confirming that diagnosis. The evaluation also identified a disorder of written expression and found no evidence of a conduct disorder. (S-9, p. 3)

2025-2026 School Year

9. The Student began [redacted] grade enrolled in a virtual charter school. (S-7)
10. In October 2025, the charter school proposed to reevaluate the Student and issued multiple requests for parental consent, which were not returned. (S-7)

11. Following a review of records, the charter school maintained the Student's eligibility for special education under the classifications of Autism (primary) and Other Health Impairment (secondary). (S-7, p. 19)
12. In December 2025, the Student enrolled in the District. (N.T. 20)
13. On January 8, 2026, the IEP team convened. At that meeting, the District discussed programming and reviewed the last implemented IEP that indicated the Student exhibited behaviors that impeded learning. The District requested consent to conduct a functional behavioral assessment (FBA), which the Parent declined. (S-4; N.T. 26-28)
14. On January 8, the District proposed to reevaluate the Student to determine the Student's current educational strengths and needs. The proposed reevaluation would include cognitive and academic assessments; assessments of social/emotional/behavioral functioning; Autism assessments (including ADOS and rating scales); Speech and Language Assessments; Functional Behavior Assessment (FBA); classroom observation; parent and teacher input; student input and a review of records. (S-5, p. 2, N.T. 39)
15. A reevaluation of the Student is needed to address academic inconsistencies, eligibility clarification and to appropriately program for the Student's needs. (N.T. 28)

16. The Parent has refused to consent to the reevaluation of the Student. (S-6; N.T. 28-29)

DISCUSSION

General Legal Principles

The burden of proof consists of two elements: the burden of production and the burden of persuasion. 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). Thus, the burden of persuasion in this case must rest with the District, the party that filed the complaint. Application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, who assume the role of factfinders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *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). Only District witnesses testified. This hearing officer found each of the witnesses who testified to be credible.

Child Find

The IDEA's child find provision requires states to ensure that "all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services

are identified, located and evaluated." 20 U.S.C. § 1412(a)(3); ; 34 C.F.R. § 300.111(a); see also 22 Pa. Code §§ 14.121-14.125. For school districts, the child find duty creates a continuing obligation to identify and evaluate all students who are reasonably suspected of having a disability under the statutes. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995); *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); see also 20 U.S.C. § 1412(a)(3). LEAs must evaluate children who are suspected of being children with disabilities within a reasonable period of time after the school is on notice of academics or behavior that is likely to reflect a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012).

Evaluation Consent

The IDEA requires local educational agencies to obtain informed consent from the parents prior to evaluating a child to determine whether or not the child is a child with a disability. 20 U.S.C. § 1414(a)(1)(D)(i)(I), 34 C.F.R. §300.300(a)(1). The notice required includes prior written notice of the intention to evaluate. 34 C.F.R. §300.300(a)(1), 300.503, 300.504. If parents refuse to consent to evaluation, the agency is allowed to request due process and seek an order from a hearing officer permitting it to conduct the evaluation. 20 U.S.C. §1414(a)(1)(D)(ii)(I), 34 C.F.R. §300.300(a)(3). The decision is an application of the hearing officer's equitable authority, and rests within the hearing officer's sound discretion. *Upper Darby School District*, 116 LRP 20230; *G.B. v. San Ramon Valley Unified Sch. Dist.*, 51 IDELR 35 (N.D. Cal. 2008).

The District's Claims

The District has decided to pursue due process to proceed with an evaluation of the Student after the Parents declined to consent. The record preponderantly supports the District's claim.

The record reflects that the Student presents with a complex and evolving profile of needs. The Student has a history of attention and behavioral concerns, has received a diagnosis of ADHD, and more recently received a medical diagnosis of Autism. Prior evaluations reflect concerns in multiple domains, including behavioral functioning and written expression, yet those evaluations were conducted by various school districts and, at times, without access to complete information. The Student's educational history includes multiple transitions between school districts and educational settings, culminating in enrollment in a virtual charter school and subsequently the District. This pattern of movement further contributes to the lack of cohesive, current evaluative data.

When the Student enrolled in the District in December 2025, the District acted promptly by convening an IEP team meeting and proposing both a reevaluation and a functional behavioral assessment. These proposals were reasonably based on the District's need to understand the Student's present levels of performance and to address reported behavioral concerns. The Parent declined consent for these assessments and did not meaningfully engage in the hearing process, offering no substantive evidence to counter the District's position.

The evidence demonstrates that the Student's needs have changed over time and are not fully understood based on existing data. The addition of an autism diagnosis, coupled with prior ADHD and behavioral concerns, creates a need for updated, integrated evaluation data that addresses all

areas of suspected disability. The prior evaluations were either incomplete, conducted without full information, or are no longer sufficiently current to guide educational programming. In addition, the Student's transition from a virtual educational setting to a district-based program reasonably necessitates updated assessment to determine appropriate supports and services in the current environment.

Without the ability to conduct a reevaluation, the District is significantly constrained in its ability to develop an appropriate educational program. Evaluations are the foundation upon which IEPs are built, and the absence of current, comprehensive data undermines the District's ability to identify the Student's needs, develop appropriate goals, and provide services that are reasonably calculated to enable the Student to make progress. While the Parent has the right to withhold consent, that right does not negate the District's obligation to ensure that it has sufficient information to provide FAPE. Where, as here, the District has demonstrated that a reevaluation is necessary and appropriate, it may seek and obtain authorization to proceed without parental consent.

Based upon the totality of the evidence, the District has met its burden of proof. The proposed reevaluation is reasonable, necessary, and consistent with the requirements of the IDEA. Accordingly, the District shall be permitted to proceed with the reevaluation of the Student without parental consent.

ORDER

AND NOW, this 14th day of May 2026, upon consideration of the foregoing, it is hereby ORDERED that:

1. The District's request to override the Parent's refusal to consent to a reevaluation is GRANTED.
2. The District is authorized to conduct a comprehensive reevaluation of the Student, including all assessments deemed necessary to identify the Student's educational needs, consistent with the requirements of the IDEA.
3. The District shall take reasonable steps to include the Parent in the evaluation process and to consider any information the Parent wishes to provide.

Any claim not specifically addressed in this decision and order is denied and dismissed.

/s/Joy Waters Fleming, Esquire

Joy Waters Fleming, Esquire
Special Education Hearing Officer

Dated: 5/14/26