

*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. 29117-23-24**

**Child's Name:**

A.P.

**Date of Birth:**

[redacted]

**Parent**

[redacted]

**Counsel for Parent**

*Pro Se*

**Local Education Agency**

Wilson School District  
2601 Grandview Boulevard,  
West Lawn, PA 19609

**Counsel for the LEA**

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**Decision Date:**

March 22, 2024

**Hearing Officer:**

Charles W. Jelley Esq.

## **BACKGROUND**

The Student (Student) is an elementary-age pupil who resides in and attends the Wilson School District (District). The Parties agree that the Student is otherwise eligible for special education as a person with a Specific Learning Disability and a Speech and Language Impairment according to the Individuals with Disabilities Education Act (IDEA). On or about January 24, 2024, the District denied the Parent's request for an Independent Educational Evaluation (IEE) at public expense. The Parent contends the Student's December 2023 reevaluation report is incomplete, insufficient, and inadequate. Conversely, the District, the moving party, argues that its December 2023 evaluation meets all IDEA criteria for an appropriate evaluation.<sup>1</sup> Following a review of the entire record and for all of the reasons set forth below, I now find in favor for the District. Therefore, the Parent's request for an independent educational evaluation is denied.

## **ISSUES**

1. Did the District's December 2023 reevaluation of the Student meet all applicable IDEA requirements? and,
2. If the District's December 2023 reevaluation is inappropriate, is the Student entitled to an independent educational evaluation?

## **FINDINGS OF FACT**

<sup>1</sup>. 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 details appearing on the cover page of this decision, will be redacted prior to its 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). The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. References to duplicative exhibits are not necessarily to all.

1. The District completed its evaluation on or about December 4, 2023, and provided the report to the Parent on or about December 23, 2023. (S-2).
2. The reevaluation included a review of the Student's previous IDEA [redacted] records, a classroom observation, a developmental history, a social history, and a parental statement of main concerns at home, school, and in the community. (S-2 p.2; NT p.26).
3. The Student's classroom-based assessments included measures of Letter Identification, Letter Sounds, Developmental Spelling Assessment, and scores from the Fountas & Pinnell Level C. (NT pp.26-27; S-2 p.2).
4. The regular education teacher, who is also a certified special education teacher, reported, and the Parent agrees, that the Student struggles with blending two to three sounds to encode unfamiliar words. The Student also needs help with phonemes. The Parties agree that the encoding and the phoneme deficits adversely impact reading comprehension and fluency. (S-2 p.2; NT pp.48-50).
5. The teacher commented that the Student benefits from sitting close to the teacher. The reevaluation further states that when asked to take turns with the partner, the Student complied and benefited from peer interactions. (S-2 p.3; NT p.26; NT p.46; NT pp.49-50).
6. While social skills are a strength, the Student is sometimes overly helpful. (S-3 p.3).
7. The Student uses manipulatives, including a counter, to solve basic math problems. The teacher also uses Student-specific strategies to address letter reversals. The classroom teacher and the reading specialist provide small group reading instruction targeting decoding, encoding, letter reversal, letter formation, punctuation, and sentence development. (S-2 p.3).

8. The Student works with the regular education reading specialist to correct blending and substitution errors. (S-2 p.3; NT pp.26-30).
9. The psychologist observed the Student in the [redacted] Grade classroom. The observation notes state that the Student participated, waited to take turns, was active, and followed directions. (S-2 p.3; NT p.26-30).
10. The reevaluation included a variety of assessments like the Behavioral Assessment System for Children, Third Edition (BASC-3), the Comprehensive Executive Function Inventory (CEFI), a Conners, 4th Edition (Conners-4), the Wechsler Intelligence Scales for Children Fifth Edition, the Goldman Fristoe Test of Articulation, Third Edition, the Phonological Awareness Test-2 (PAT-2), the Sounds-in-Sentences test, and a Wechsler Individual Achievement Test Fourth Edition. (S-2 p.4).
11. The Parent's BASC-3 scales report "At-Risk" Anxiety, Attention Problems, Adaptability, and Leadership scores. For the most part, the classroom teacher's BASC-3 ratings are in the "Average" range. The teacher's ratings noted relative weakness in the working memory. The Parent's overall ratings fall in the "Below Average" range. (S-4 p.4).
12. The Conners-4 is a rating scale used to collect information concerning behaviors associated with Attention Deficit Hyperactivity Disorder (ADHD). The Mother and the teacher completed the full-length Conners-4 rating form. Parent scores were in the "Very Elevated" range for Inattention/Executive Dysfunction and School Work weaknesses, indicating ADHD Inattentive behaviors in the "Very High" range. (NT p.11; S-2 pp.4-6). Teacher scores, on the other hand, were "Average" on all scales. After reviewing the combined

ratings, the evaluation team concluded that the probability of ADHD is considered to be "Low." (S-2 p.5; NT pp.11-12).

13. The Student was administered the WISC-V to assess cognitive functioning and ability. The WISC-V is an individually administered, standardized assessment that does not require reading or writing. WISC-V scores are reported as scaled scores. Percentile ranks are also reported, which state the percentage of children of the same age/grade whose scores tied or exceeded the Student. The Student's full-scale intelligence quotient (FSIQ) score of 107 is in the "Average" range and falls at the 68<sup>th</sup> percentile. Upon retesting, there is a 95% probability that the Student's FSIQ score would fall within the "Average" range between 101 and 112. (S-2 p.6; NT pp.42-49).
14. The Student was administered selected subtests from the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) to assess current academic functioning levels. The WIAT-4 is an individually administered assessment designed to measure academic achievement. WIAT-4 scores are presented as standard scores (SS) with descriptive categories. All reported scores are age-based. An ability-achievement discrepancy analysis was conducted using the Average FSIQ score of 107 to predict the Student's predicted academic achievement levels. The Students' Word Reading, Pseudoword Decoding, Oral Reading Fluency, Spelling, and Phonemic Proficiency subtests were statistically lower than the predicted achievement. The Student's composite scores for Reading, Total Achievement, Basic Reading, Decoding, and Phonological Processing were also lower than expected. The Student earned seven (7) "Low Average" scores, eight (8) "Average" scores, six (6) "Low Average" scores, and one (1)

"High Average" score. The team concluded, and the Parent agreed that the Student's severe discrepancy profile met IDEA requirements for identification as a person with a Specific Learning Disability (SLD). (S-2 pp.10-12).

15. The Speech and Language Therapist administered the Goldman Fristoe Test of Articulation-Third Edition. The Goldman Fristoe was administered to evaluate the Student's articulation skills. The Student's articulation of constant sounds in the initial, medial, and final word positions was assessed. The Student's scores ranged from "Very Low/Severe" to "Low Moderate." The errors found during testing are consistent with the Student's conversational speech and impact intelligibility when communicating with peers and teachers in the educational setting. The Student's [redacted] speech records also note similar articulation errors. (S-2 pp.12-14; NT pp.74-77; S-1).
16. During the administration of the Sounds in Sentences test, the speech therapist listens to each sentence the individual repeats and rates the individual's intelligibility for that sentence as 1 (good), 2 (fair), 3 (poor), or 4 (no response). The Student's speech was rated "Good" in 75.0% of the productions. (S-2 pp.12-13).
17. The Phonological Awareness Test-2 (PAT-2) was also administered. The PAT-2 is an individually administered test designed to diagnose deficits in phonological processing and phoneme-grapheme correspondence. The Student's PAT-2 included the rhyming, segmentation, isolation, deletion, substitution, and blending subtests. Furthermore, the testing also included the additional graphemes and decoding subtests. Tasks are generally arranged in a developmental sequence. Standard Scores that fall between 86

and 114 are considered average. Scores falling below 86 are considered below average. The Student earned six (6) "Average Scores" and two (2) "Below Average" scores. The Student's rhyming, segmentation, isolation, deletion, substitution, and blending scores all fell in the "Average" range. The Grapheme score also fell in the "Average" range, while the Decoding score was "Below Average." (S-2 pp.13-14; NT pp.77-84).

18. The evaluation team, including the speech therapist and the Parent, agreed that the Student continues to qualify for Speech and Language support targeting articulation errors. (S-2 pp.12-14; NT pp.74-77).
19. Overall, the evaluators found, and the Parent agreed, that the Student's strengths include a "Very High range of Cognitive Proficiency Skills," a "Very High range of Working Memory Skills," and a "Strong" desire to succeed. The evaluators concluded, and the Parent agreed that the following are areas of educational need: "basic reading skills," "decoding/phonemic skills," "fluency skills," "encoding/letters," "reversals," "spelling skills," "articulation," and "phonological awareness" skills. (S-2).
20. The Students' classroom testing includes below-grade-level AimsWeb benchmark Phoneme Segmentation and Reading Fluency scores. (S-3).
21. The evaluation team concluded, and the Parent agrees, that the Student is IDEA eligible as a person with a Specific Learning Disability and a secondary disability of Speech and Language impairment. (S-3 p.15).

## **DISCUSSION AND APPLICATION OF LAW**

### **GENERAL LEGAL PRINCIPLES**

The burden of proof encompasses two discrete components: the burden of production and the burden of persuasion. The burden of persuasion and production lies with the party seeking relief. Therefore, since the District filed this administrative action, the burden of persuasion and production rests with the District.<sup>2</sup> Special education hearing officers, as fact-finders, are also responsible for determining the credibility of the witnesses who testify before them.<sup>3</sup> In reviewing the record, the testimony of all witnesses, the content of each exhibit, and the parties' closing statements were thoroughly considered.

This hearing officer now finds that each witness who testified was credible as to the facts as they recalled them; the testimony was more consistent than not where it overlapped. The documentary evidence was probative and persuasive regarding the appropriateness of the District's evaluation. The above findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited.

### **BASIC IDEA EVALUATION PRINCIPLES**

The IDEA requires the states to provide a "free appropriate public education" (FAPE) to children with disabilities who are eligible for special education services.<sup>4</sup> The IDEA definition of a "child with a disability" requires the team to identify if the child's profile matches one of the 13 disabilities and, by reason thereof, needs special education and related services.<sup>5</sup> Special education is then defined as "specially designed instruction," which includes adapting the content, methodology, or delivery of instruction as appropriate

<sup>2</sup> *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

<sup>3</sup> *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014).

<sup>4</sup> 20 U.S.C. § 1412; 20 U.S.C. § 1415(k); 34 CFR § 300.530(a).

<sup>5</sup> The IDEA explicitly identifies the following qualifying disabilities: "intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities." 20 U.S.C. § 1401(3); 34 CFR § 300.8(a).



to a child with a disability to meet educational needs and to provide access to the general education curriculum.<sup>6</sup>

### **IDEA EVALUATION AND IDENTIFICATION REQUIREMENTS**

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law and to "determine the educational needs of such child."<sup>7</sup> A full comprehensive evaluation must assess the child "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."<sup>8</sup> In conducting the evaluation, the local educational agency must — (A) 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— (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for [redacted] children, to participate in appropriate activities; (B) 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 (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors<sup>9</sup>.

Furthermore, the evaluator must utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining

<sup>6</sup> 34 CFR § 300.39(b)(3).

<sup>7</sup> 20 U.S.C. §1414(a)(1)(C)(i)

<sup>8</sup> 34 CFR § 304(c)(4); 20 U.S.C. § 1414(b)(3)(B).

<sup>9</sup> 20 U.S.C. § 1414(b)(2); 34 CFR § 300.303(a); 34 CFR §303.304(b).

the educational needs of the child[.]”<sup>10</sup> Finally, the evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to available assessments and observations.<sup>11</sup>

### **WHAT HAPPENS WHEN THE REEVALUATION REPORT IS COMPLETED**

In Pennsylvania, school districts must provide parents with a copy of the reevaluation report within sixty calendar days of receipt of consent, excluding summers.<sup>12</sup> Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]”<sup>13</sup>

When parents disagree with the District's educational evaluation, they may request an independent evaluation at public expense.<sup>14</sup> In such a circumstance, the district “must, without unnecessary delay,” file a due process complaint to defend its evaluation or ensure the provision of an IEE at public expense.<sup>15</sup>

### **ANALYSIS AND CONCLUSIONS OF LAW**

The Parent contends that the reevaluation report lacks sufficient data and multiple measures necessary to assess the Student's decoding and encoding of letters and sounds, phonic skills, reading comprehension, reading fluency, articulation, and speech. She next contends that absent additional data in all areas, the Student, a [redacted] grader, will not learn how to speak, read, or write at grade level. I disagree and now find in favor of the District.

<sup>10</sup> 34 CFR §§ 304(c)(6) and (c)(7); 20 U.S.C. § 1414(b)(3).

<sup>11</sup> 34 CFR § 300.305(a).

<sup>12</sup> 22 Pa Code §§ 14.123(b), 14.124(b).

<sup>13</sup> 34 CFR § 300.306(a)(1).

<sup>14</sup> 20 U.S.C. § 1415(b)(1); 34 CFR § 300.502(b).

<sup>15</sup> 34 CFR § 300.502(b)(2).

The District's reevaluation included a variety of assessments that evaluated the Student in all areas of suspected disability. Rather than relying on a single measure, the team used a variety of measures to establish the nature of the Student's disability and need for specially designed instruction. The evaluation included multiple assessments of attention, concentration, and behavior. Finally, the speech therapist administered multiple measures of speech and language skills.

The reevaluation includes regularly used measures of ability and achievement. The WICS IQ testing identified the Student's overall potential in the "Average" range. The Student's WIAT achievement testing noted weaknesses in Word Reading, Pseudoword Decoding, Oral Reading Fluency, Spelling, and Phonemic Proficiency. The WIAT composite scores further identified the Student's need for specially designed instruction in Basic Reading, Decoding, and Phonological Processing. After comparing the Student's average ability and discrepant achievement scores, the evaluation team, including the Mother's input, accurately determined that the Student had a qualifying Specific Learning Disability.

The Student's regular education teacher, who also holds a special education teaching credential, administered the AIMS Web reading, phoneme segmentation, and reading fluency subtests. The AIMS Web classroom measures provided additional data about how the Student's SLD adversely affects the Student's participation in regular education. The reevaluation report and the AIMS Web data provided the evaluation team, the IEP team, and the Mother with sufficient information to identify different forms of specially designed instruction. The psychologist recommended, and the team, including the Mother, agreed that the Student should receive specially designed instruction in "basic reading skills," "decoding/phonemic skills," "fluency skills," "encoding/letters,"

"reversals," "spelling skills," "articulation," and "phonological awareness" skills.

Aware of these confirmed weaknesses, the Speech Therapist administered multiple standalone speech and language measures. The speech assessments further isolated articulation and phonological weaknesses like blending, letters, sounds, and overall phoneme weaknesses. The comprehensive speech and language testing assessed rhyming, segmentation, isolation, deletion, substitution, and blending subtests in the initial, medial, and final positions. The Phonological Awareness subsection of the PAT-2 assessed the Student's graphemes and decoding skills, two areas that the Mother alleges remain undefined.

The speech therapist also administered the Phonological Awareness and Phoneme Grapheme subtest, which yielded one "Average" and one "Below Average" score. The "Below Average" score confirmed earlier testing that "Blending Phonemes" and "Decoding" are weaknesses. This combination of assessments led the team to conclude that the Student also has a Speech and Language impairment.

Contrary to the Parent's contention, the reevaluation includes multiple measures that otherwise assessed the Student's reading, phonemic, blending, speech, language, and letter and sound production needs.<sup>16</sup>

The record is preponderant that no sole measure was used to identify the Student's disabilities, needs, or circumstances. The record also supports a finding that the assessments were administered and scored in accordance

<sup>16</sup> *Vernon Bd. of Educ.* 121 LRP 36211 (SEA CT 10/13/21)(parent's disagreement with an evaluator's findings or his belief that the evaluator could have done more does not open the door for the parent to receive a publicly funded independent evaluation under the IDEA).

with the test maker's instructions. Accordingly, the Parent's request for an independent educational evaluation is denied. All other claims, demands, or requests for appropriate relief are Denied.

### **FINAL ORDER**

**AND NOW**, on the 22nd day of March 2024, I find that the above Findings of Fact and Conclusion of Law have resolved this dispute. The Parties are now free to appeal this **ORDER**.

1. The Parent's request for an independent educational evaluation is Denied.
2. The District's claim that its evaluation is appropriate is Granted.
3. All other claims and demands for appropriate relief are denied.

Date: March 22, 2024

s/ Charles W. Jelley, Esq.  
LL.M.

Hearing Officer  
ODR FILE #29117-23-24