

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. 30623-24-25

Child's Name:

C.G.

Date of Birth:

[redacted]

Parent(s):

[redacted]

Local Education Agency:

Palisades School District
39 Thomas Free Drive
Kintnersville, PA 18930

Counsel for the LEA:

Sharon Montanye, Esq.
Sweet Stevens
331 E. Butler Avenue
New Britain, PA 18901

Hearing Officer:

James Gerl, CHO

Date of Decision:

March 28, 2025

BACKGROUND

The school district filed a due process complaint seeking to override the mother's failure to provide consent for a reevaluation of the student, including assessments. In this case, both of the student's parents have educational decision-making rights, and the student's father has agreed with the proposed reevaluation of the student, but the student's mother has refused to consent to the assessments and reevaluation. I find that the school district has proven that reevaluation and testing of the student is necessary to determine whether the student continues to be eligible for special education, and if so, what the student's IEP needs are. The failure to consent to the reevaluation by the student's mother is overridden.

PROCEDURAL HISTORY

It must be noted at the outset that the parties to this matter have a highly toxic relationship. The toxic relationship spilled over into the due process proceedings in this case. Multiple *ex parte* communications were attempted. Refusals to communicate were encountered. Evidence at the hearing revealed that a school district staff member inexplicably confronted the student about wrongfully receiving supports and services.

This hearing was conducted in one in-person session. Four witnesses testified at the hearing. School district Exhibits S-1 through S-8 were admitted into evidence. Neither parent offered any exhibits into evidence. Both parents were unrepresented in this proceeding.

The parties to this hearing did not agree to any stipulations of fact. The failure to agree to stipulations of fact unnecessarily and unduly elongated and prolonged the hearing process and the decisional process in this case.

The parties opted to make oral closing arguments. On the record at the hearing, counsel for the school district and each parent made oral closing arguments. All arguments and proposed findings offered by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUE PRESENTED

Has the school district proven that it should be permitted to reevaluate the student, and conduct the proposed assessments, despite the refusal of the student's mother to consent to the reevaluation?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact:¹

1. The student's date of birth is [redacted]. (S-5)
2. The student is kind, cooperative and hardworking. (S—8)
3. The student is in [redacted] grade in the school district. The student is eligible for special education under the specific learning disability category of eligibility. The student participates in the general education setting for all of the student's classes. The student receives speech language therapy one time per six-day cycle for 30-minute sessions. (S-1, S-5)
4. Since May 2024, the student has received grades of "A" in the student's classes and has met or exceeded all of the student's IEP goals. (S-3, S-6; NT 51 – 52, 29)
5. In May of 2024, the student's IEP team completed a review of records and recommended that the student return to general education because the student no longer needed specialized instruction. At the suggestion of the student's father at the meeting, the IEP team agreed to wait until the student began [redacted] grade to minimize the transition involved in exiting special education. (S-1; NT 22 – 23, 27 – 28)

¹ (Exhibits shall hereafter be referred to as "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

6. In September 2024, the school district issued a Permission to Reevaluate the student. The proposed reevaluation included a review of records, parent and teacher input, ability assessments and achievement assessments. The student's father consented to the reevaluation on September 3, 2024. The student's mother did not respond to multiple attempts by the school district to obtain her consent. (S-2; NT 23 – 30, 49 – 50)

7. The purpose of the proposed testing and reevaluation of the student is to determine whether the school district's suspicion, after a review of records, that the student may no longer need special education was correct, and if not, to determine the student's IEP needs. (NT 34, 43, 46 – 49, 58 – 60)

8. The school district's school psychologist, who would conduct the assessments of the student, is qualified to administer the proposed assessments. (NT 45 – 46)

9. After the student's father consented to the evaluation, testing for the reevaluation began on October 1, 2024 (NT 51)

10. One day after the testing began, on October 2, 2024, the student's mother emailed the principal of the student's school objecting to the assessments and the evaluation. The school district stopped testing the student at that point. (S-2; NT 26 – 27, 50 – 51)

11. At an IEP team meeting in November of 2024, the student's mother understood that the school district's special education director agreed to an independent educational evaluation of the student. The special education director misspoke when he made that statement. The school district subsequently denied the mother's request for the independent educational evaluation. (S-4, S-5; NT 72 – 73, 81 – 86)

12. The student had a conversation with the school district's special education case manager on December 2, 2024 in which the case manager told the student that the student did not need an IEP and that the student was taking supports that should go to other students. The parents reported the incident to the school district. The school district's special education director responded by e-mail acknowledging the conversation and noting that, in any event, the special education case manager would still enjoy working with the student. (S-8; NT 73 – 74, 33)

13. On January 28, 2025, the student's mother had a telephone call with the school district's special education director in which she stated that she opposed additional testing. In that conversation, the student's mother told the special education director that it was the mother's opinion that the school district had already predetermined the results before conducting any assessments. (S-2; NT 41)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own independent legal research, I have made the following conclusions of law:

1. A public agency must reevaluate each child with a disability at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary. Individuals With Disabilities Education Act (hereafter sometimes referred to as "IDEA") 20 U.S.C. § 1400, *et seq.* § 614(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2).

2. A public agency may conduct a reevaluation of a student, if it determines that the educational or related services needs, including improved academic achievement and functional performance, of a child warrant a

reevaluation or if the child's parent or teacher requests a reevaluation. Individuals With Disabilities Education Act (hereafter sometimes referred to as "IDEA") 20 U.S.C. § 1400, *et seq.* § 614(a)(2); 34 C.F.R. § 300.303(a).

3. If a parent refuses to consent to a reevaluation, a public agency may, but is not required to, pursue the reevaluation by using the consent override procedures, including the filing of a due process complaint. IDEA § 614(c)(3); 34 C.F.R. § 300.300(c)(ii); Questions and Answers on IEPs, Evaluations and Reevaluations, 111 LRP 63322 (OSERS 2011) (Question D-4).

4. In conducting an evaluation, a local education agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer of the assessment. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or a related service provider, and on that basis determine whether any additional data are needed to determine whether the student is eligible, as well as to identify the child's special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist, 66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

5. A local education agency that files a due process complaint to override consent will be permitted to conduct the reevaluation where it proves that the reevaluation is necessary to determine the student's needs and weaknesses in order to design an appropriate program or to determine continuing eligibility. See, Downingtown Area School District, 79 IDELR 149

(SEA Penna. 2021); Plum Borough Sch Dist, 111 LRP 56978 (SEA Penna. 2011); Cumberland Valley Sch Dist, 117 LRP 39108 (SEA Penna. 2017); GB by TB v. San Ramon Area Valley Unified School District, 51 IDELR 35 (N.D. Calif. 2008); Spring Branch Independent School District, 76 IDELR 59 (SEA Tex. 2019).

6. In the instant case, the school district has proven that the proposed reevaluation, including assessments, is needed to determine whether the student continues to be eligible for special education.

DISCUSSION

Has the school district proven that it should be permitted to reevaluate the student despite the refusal of one parent to consent to the reevaluation and testing?

This case is atypical in that it is not the usual configuration of a school district versus the student's parents. Instead, this case involves the school district and one parent, the father, on one side against the other parent, the mother, on the other side. The school district seeks to override the mother's refusal to consent to the reevaluation and testing of the student.

The school district contends that it is necessary to conduct the assessments and the evaluation in order to determine whether the student continues to be eligible for special education given that the student has met or exceeded the student's IEP goals and is receiving superior grades in the student's classes. The father agrees and has consented to the reevaluation. The mother refuses to consent.

Hearing officers generally permit a local education agency to override the lack of consent for a reevaluation when the local education agency proves

that the reevaluation is necessary to determine the student's continued eligibility for special education, and if eligible, the student's needs.

In the instant case, the school district has proven that the proposed reevaluation and the proposed assessments are necessary. The student is doing well in school, having met or exceeded the student's IEP goals and is receiving good grades. There appears to be some strong evidence that the student may no longer require special education, and the proposed assessments would provide additional useful information concerning that question.

Moreover, the school district has proven that the proposed reevaluation is reasonable and would assess the student in all areas of suspected disability. The proposed assessments are reasonable and would be conducted by persons who are qualified to administer such assessments. It is concluded that the reevaluation and the assessments proposed by the school district are appropriate and are necessary to determine the student continues to need specialized instruction. As is explained more fully later in this decision, one additional area will need to be added to the proposed reevaluation to ensure that it is comprehensive.

In this case, the student's father agrees with the evaluation and assessments and has signed the consent form therefor. The father has made it clear, however, that he reserves the right to request an independent educational evaluation if he disagrees with the results of the school district evaluation.

The student's mother objects to the evaluation and the testing because she believes that the school district is not honest and has already predetermined the result of any potential assessments or evaluation. Although

the issue is not before me in this complaint, the mother has requested an independent educational evaluation, but that request is premature because the school district has not yet completed its reevaluation of the student. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); PP by Michael P and Rita P v. West Chester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009).

I understand the mother's reservations and concerns, but she does not state any good reason to deny the evaluation and assessments. It is concluded that the school district has shown a solid reason to suspect that the student may no longer be eligible for special education. Therefore, the assessments and the evaluation are necessary to confirm or to refute that suspicion.

But it should be noted that the student's mother has some legitimate concerns in this case. It is outrageous that the school district special education case manager told the student that the student no longer needs special education and is taking up resources and supports that should go to other students. The student's mother testified credibly and persuasively concerning this incident. The school district witnesses did not contradict this testimony, and the documentary evidence supports the mother on this point.

What possible legitimate reason could the case manager have had for directly confronting the student with this statement rather than bringing up the concern at an IEP team meeting? This statement to the student makes it sound like the school district had already predetermined the results of the reevaluation and had concluded that the student is not eligible for continued special education despite the fact that a reevaluation has not been conducted. The school district should not be surprised, therefore, that the student's mother does not trust the school district and believes that the school district has predetermined the results of any potential assessment.

Moreover, this dressing down of the student by the case manager could well have adversely impacted the student. In order to be a comprehensive reevaluation, therefore, the school district reevaluation must include an analysis or assessment concerning whether the impact of this incident has resulted in continued eligibility or a need for counselling for the student or any other special education or related services needs.

Nonetheless, despite this incident, the school district has proven that there is strong evidence to suspect that the student may no longer be eligible for special education. Assessments will confirm or contradict this conclusion, and if the student still is eligible, the testing will help identify the student's current IEP needs. Moreover, after the evaluation is conducted, if the student's mother believes that the assessment results or evaluation report was predetermined or is otherwise inappropriate, the mother still has a right to request an independent educational evaluation at public expense at that point. The mother's objections are noted, but do not constitute a good reason to prevent the evaluation of the student.

The school district's request to override the lack of consent from the mother will be granted. The permitted reevaluation, however, will need to include an analysis or assessment of whether the impact of the case manager's highly inappropriate comment to the student has adversely impacted the student's continuing eligibility or the student's special education or related services needs.

The testimony of the school district's school psychologist was more credible and persuasive than the testimony of the student's mother concerning this issue. This conclusion is based upon the demeanor of the witnesses, and the following factor: the documentary evidence in the record supports the

school district's suspicion that the student may no longer be eligible for special education.

It is concluded that the school district has proven that it should be permitted to override the lack of consent of the student's mother for a reevaluation and to conduct the proposed reevaluation, including the proposed assessments, provided however that the additional analysis or assessment described above must be included in the reevaluation to ensure that it is comprehensive. The school district has shown that there is reason to suspect that the student may no longer be in need of specialized instruction.

NOTE: As has been previously noted, the parties to this matter clearly have a toxic relationship. For example, the mother concedes in her post-hearing brief that she does not trust the school district staff. Another example of the toxic relationship is the outrageous confrontation of the student by the special education case manager. It appears that the parties have unfortunately lost sight of the fact that what we are talking about here is the education of a young person. As the United States Supreme Court has noted, the special education process is designed to be a collaborative in nature. Schafer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005). The parties should seriously consider taking affirmative steps to repair their relationship. Although the parties have the right to utilize any procedural safeguard provided by IDEA, they are strongly urged consider using mediation or a facilitated IEP team meeting to help repair their relationship in the event that they have any future disagreement concerning the student's education.

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. That the relief requested in the due process complaint herein is granted, as modified by the next paragraph. The school district's request to conduct the proposed reevaluation of the student, including the assessments proposed therein, over the refusal to consent by the student's mother, is granted.
2. That the school district shall include in its reevaluation of the student an analysis or assessment of whether the impact of the case manager's highly inappropriate confrontation of the student has adversely impacted the student's continuing eligibility or the student's special education or related services needs.

IT IS SO ORDERED.

ENTERED: March 28, 2025

James Gerl

James Gerl, CHO
Hearing Officer