

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

## **Pennsylvania Special Education Hearing Officer Final Decision And Order**

### **Closed Hearing**

#### **ODR File Number:**

26985-22-23

#### **Child's Name:**

A.T.

#### **Date of Birth:**

[redacted]

#### **Parent:**

[redacted]

#### **Counsel for Parent:**

Drew Christian, Esquire  
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#### **Local Education Agency:**

Williamsport Area School District  
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#### **Hearing Officer:**

Cathy A. Skidmore, Esquire

#### **Date of Decision:**

11/30/2022

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, A.T. (Student),<sup>1</sup> is a late elementary school-aged student who resides in and attends school in the Williamsport Area School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup>

The District most recently evaluated Student in the fall of 2022, after which the Parent requested an Independent Educational Evaluation (IEE) at public expense. The District denied that request and filed a Due Process Complaint under the IDEA, seeking to defend its evaluation. The case proceeded to a very efficient due process hearing.<sup>3</sup>

Following review of the record and for all of the reasons set forth below, the claim of the District must be granted.

## **ISSUES**

1. Whether the District's evaluation of Student in October 2022 was appropriate based on all applicable standards; and
2. If the District's evaluation was not appropriate under the law, should the Parent be awarded an IEE at public expense?

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<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).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.) and School District Exhibits (S-) followed by the exhibit number.

## **FINDINGS OF FACT**

1. Student is a late elementary school-aged student who is eligible for special education pursuant to the IDEA under the Autism and Speech/Language Impairment disability categories. (N.T. 18-19; S-1 at 1, 46.)
2. Student was first evaluated by the District in August 2017 at the start of the [redacted] year, and reevaluated in September 2018 and again in December 2020. Each time Student's eligibility was based on Autism and Speech/Language Impairment. (S-1 at 1-2; )
3. The District's most recent evaluation of Student was completed in October 2022 with a Reevaluation Report (RR) issued that same month. (S-1.)
4. The October 2022 RR summarized previous educational and developmental history including prior evaluations from preschool and into [redacted] grade. (S-1 at 2-7; S-5.)
5. The October 2022 RR contained input from the Parent. She described Student's preferred activities and areas of need at home and in the community. The Parent noted that she did not believe that Student was learning at school and needed more structure as well as additional participation with typical peers. She described Student's needs to include attention, work completion, behavioral regulation, speech/language, daily living skills, safety awareness, and age-appropriate academic skills. (S-1 at 3.)
6. The District's previous December 2020 reevaluation was also summarized for the October 2022 RR. Results of cognitive and achievement assessments in the fall of 2020 were set forth. Cognitively, Student's Full Scale IQ was determined to be 63, with a

General Ability Index score of 73 that removed the Working Memory and Processing Speed Composite scores, weaknesses for Student (Wechsler Intelligence Scale for Children – Fifth Edition). Assessment of academic achievement (Wide Range Achievement Tests – Fifth Edition) reflected scores in 2020 spanning the average (spelling) to very low (mathematics computation) ranges. Results of both the cognitive and achievement batteries were considered to be low estimates of Student's ability due to inconsistent focus and attention. (S-1 at 7-9; S-5.)

7. The results of several rating scales from the December 2020 reevaluation were included in the October 2022 RR. Both the Parent and special education teacher endorsed behaviors characteristic of Autism Spectrum Disorder as well as adaptive behavior deficits; however, the Parent's ratings were more elevated on both measures. (S-1 at 9-12; S-5.)
8. The October 2022 RR summarized speech/language assessment from the December 2020 reevaluation (Clinical Evaluation of Language Fundamentals – Fifth Edition). Student's receptive and expressive language skills were identified as clear areas of need along with social skills. Speech/language therapy services were recommended. (S-1 at 12-14; S-5.)
9. Occupational therapy assessment for the December 2020 reevaluation was incorporated into the October 2022 RR. This portion of the evaluation examined handwriting skills, visual motor integration, and sensory processing. Occupational therapy services were recommended for each of those areas. (S-1 at 14-18; S-5.)
10. A May 2021 Functional Behavioral Assessment (FBA) was also summarized for the October 2022 RR. That assessment identified

Student's mild behaviors that were hypothesized to serve the function of sensory/automatic reinforcement. (S-1 at 12.)

11. Student's current performance on classroom-based assessments in the areas of reading fluency and comprehension, mathematics computation, and written expression were included in the October 2022 RR. Progress toward Student's academic, related service, and behavioral goals in the existing IEP was also summarized. (S-1 at 18-26.)
12. Teacher input appears throughout the October 2022 RR; and recommendations included a small setting for academic learning, a modified curriculum, small group and individual work, repetition, frequent breaks, and prompting and redirection for attention and focus. (S-1.)
13. The District school psychologist who conducted assessments for the October 2022 RR is qualified and has experience in the field. (N.T. 52-54.)
14. The District school psychologist observed Student in the classroom informally, and again during the administration of assessments. (N.T. 55; S-1.)
15. The District school psychologist conducted the assessments of Student over two separate days. (N.T. 55, 60.)
16. Student's attention was variable during administration of assessments by the District school psychologist, but Student was generally redirected as needed. (N.T. 60-61.)
17. The assessments administered by the District school psychologist are standardized, are appropriate for Student's age, and were conducted according to publishers' directions. (N.T. 62-64, 66, 68-71, 80.)

18. The District school psychologist administered the Kaufmann Brief Intelligence Test – Second Edition (KBIT-2) for the October 2022 RR, a screening measure, because a number of previous cognitive assessments of Student had been conducted over time. (N.T. 62-63, 98, 125-26.)
19. Results of the KBIT-2 for the October 2022 RR yielded an IQ Composite score of 74 in the below average range. However, Student’s Verbal standard score was in the lower extreme range while the Nonverbal standard score was in the average range, indicating that fluid intelligence was a deficit. The District school psychologist considered Intellectual Disability but determined that Student did not meet criteria in light of Student’s complete presentation, and noted that Student’s inattention and distractibility suggested that the scores obtained on the KBIT-2 were not commensurate with ability. These results are not inconsistent with prior measures but reflected some growth over time. (N.T. 113-14, 119-20, S-1 at 31-33, 43; S-5.)
20. The District school psychologist also administered select subtests of the Wechsler Individual Achievement Test – Fourth Edition (WIAT-IV) for the October 2022 RR. Not all subtests were administered because the school psychologist found many to be unnecessary in light of all of the information available; it was again noted that Student required frequent prompting and redirection, and the WIAT-IV scores were deemed not to be accurate representation of ability. (N.T. 65-66, 127-2; S-1 at 31.)
21. Results of the WIAT-IV for the October 2022 RR reflected an average range score on the Spelling subtest and low range scores on the Mathematics Composite and subtests. (S-1 at 33.)

22. The District school psychologist also obtained rating scales completed by the Parent, a home health aide, and Student's teacher, for the October 2022 RR. Those measures were the Autism Spectrum Rating Scales (ASRS); Conner-3 Rating Scale; Adaptive Behavior Assessment System –Third Edition (ABAS-3); and Behavior Assessment System for Children – Third Edition (BASC-3). (N.T. 66-67; S-1 at 33-44.)
23. Scores on the ASRS for the October 2022 RR were in the elevated (home health aide) to very elevated (Parent and teacher) range across scales (Parent) and overall (all raters), endorsing Student's Autism. (S-1 at 33-34.)
24. Results of the October 2022 RR ABAS-3 were consistent across raters that Student exhibits difficult with adaptive behavior in all domains and overall. (S-1 at 36.)
25. As part of the October 2022 RR, the District school psychologist compared Student's adaptive behavior skills over time (2016 through 2022), and concluded that Student demonstrated growth in developing daily living skills. (S-1 at 42.)
26. Scores on the BASC-3 ratings in October 2022 were somewhat variable across the raters. The teacher endorsed a clinically significant concern with atypicality and at-risk concerns with hyperactivity, attention problems, learning problems, withdrawal, adaptability, social skills, leadership, study skills, and functional communication. The Parent endorsed clinically significant concerns with hyperactivity, attention problems, atypicality, withdrawal, social skills, leadership, functional communication, and activities of daily living; and an at-risk concern with depression. The home health aide's ratings were in the clinically significant range for hyperactivity, learning problems, school problems, study skills, and functional communication; with at-risk

concerns with atypicality adaptability, social skills, and leadership. (S-1 at 36-42.)

27. On the October 2022 RR Conners-3, all three rating scales included scores in the elevated and very elevated ranges, with the teacher and/or home health aide indicating defiance and aggression in the average range. These results were consistent with ADHD. (S-1 at 34-36.)
28. The October 2022 RR incorporated results of an April 2022 Assistive Technology consultation. That consultation indicated that Student's use of writing prompts and a visual schedule were appropriate and helpful for Student, and further recommended use of visuals for answering questions and a graphic organizer. (S-1 at 27-28.)
29. The District's speech/language pathologist who conducted assessments for the October 2022 RR is qualified and very experienced in the field. (N.T. 25-28.)
30. The speech/language assessments administered for the October 2022 RR are standardized instruments that assess a variety of language skills for children of Student's age. (N.T. 31-33, 35-38.)
31. The speech/language pathologist administered all assessments for the October 2022 RR in accordance with the publishers' instructions. (N.T. 32-34, 38.)
32. The October 2022 speech/language assessments were conducted over two days to avoid fatigue, and Student's attention to the tasks was appropriate with some reminders to focus. (N.T. 33, 35, 39; S-1 at 30-31.)
33. Formal speech/language assessment for the October 2022 RR included the Expressive One Word Vocabulary Test and Receptive One Word Picture Vocabulary Test. The expressive language score on this



measure was in the average range, while the receptive language score was in the below average range. (S-1 at 30.)

34. Additional formal assessment of language for the October 2022 RR was conducted through the Test of Language Development – Intermediate Fourth Edition. Results reflected areas of strength and weakness, but Student did not understand or was unable to complete some of the subtests. (S-1 at 30-31.)
35. The speech/language pathologist also completed informal assessments of Student’s language skills through a language sample. Results indicated language within the functional range for Student’s age, but pragmatic language was a relative weakness. (N.T. 39-41; S-1 at 31.)
36. The speech/language pathologist recommended in the October 2022 that those services continue. (S-1 at 31.)
37. The occupational therapist who conducted assessments for the October 2022 RR is qualified and very experienced in the field. (N.T. 142-43.)
38. The occupational therapist formally observed Student in the classroom for the October 2022 RR. (N.T. 153-54.)
39. The occupational therapist determined that assessment Student’s handwriting was appropriate, but not a sensory profile because a sensory processing assessment had been completed just that spring. (N.T. 146-47.)
40. The results of the sensory profile from April 2022 was included in the October 2022 RR. That profile was based on teacher report and reflected sensory processing deficits, particularly with sensory seeking and registration as well as sensory sensitivity and avoidance. A

number of interventions were specified to address those needs, including breaks as needed. (S-1 at 26-27.)

41. The occupational therapist used an instrument to assess handwriting skills that is standardized, is appropriate for Student's age, and was administered according to the publisher's directions. (N.T. 148-49.)
42. Results of the handwriting skill assessment reflected that Student generally exhibited little difficulty with handwriting, except that writing speed, reversals, and overlapping letters contributed to some illegibility. (S-1 at 45-46.)
43. The October 2022 RR concluded that Student was eligible for special education with a primary disability category of Autism and a secondary disability category of Speech/Language Impairment. A number of areas of need were identified, including mathematics skills, reading comprehension, writing, communication, focus and attention, and sensory processing. Recommendations related to task-analysis, structure and routine, simple and concrete language, limited and clear choices, visuals and graphic organizers, notice of changes to routine or transitions, and avoidance of open-ended questions. (S-1 at 46-48.)
44. A meeting convened to review the October 2022 RR that was attended by the District school psychologist, speech/language pathologist, occupational therapist, Director of Special Education, and the Parent. (N.T. 29, 44-45, 76, 155-56, 171.)
45. The Parent made a request for an IEE at public expense following the meeting to review the October 2022 RR. She set forth a number of reasons for disagreeing with the RR, including limited cognitive and achievement assessments; inadequate academic skill assessments; and evaluation for learning disability and ADHD, motor skills, sensory

processing, adaptive behavior, and functional behavior. (N.T. 171-73; S-2.)

46. The District denied the requested IEE. (N.T. 171-73; S-3.)

47. Student's Individualized Education Program (IEP) team met following the October 2022 RR and discussed possible revisions but decided none were necessary. (N.T. 175-76.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof is viewed as consisting 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). Accordingly, the burden of persuasion in this case rests with the District after it filed a Complaint resulting in this administrative hearing. Nevertheless, 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.

Special education hearing officers, in the role of fact-finders, 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). This hearing officer found each of the witnesses who testified to be credible as to the facts. All of the testifying witnesses were District professionals who are properly credentialed, and those who participated in the October 2022 provided persuasive and rational explanations for the instruments each selected for Student, as well as for

assessments not administered. The testimony of the District school psychologist, speech/language therapist, and occupational therapist were accorded significant weight in considering the parties' respective positions on the adequacy of the October 2022 RR.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

### **Basic IDEA Principles**

The IDEA requires the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. The IDEA applies to a "child with a disability." 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(a). The definition of a "child with a disability" is two-pronged: having one of certain enumerated conditions and, by reason thereof, needing special education and related services. 20 U.S.C. § 1401(3). The process of identifying children who may be eligible for special education is generally through an evaluation.

### **Evaluation 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[.]" 20 U.S.C. §1414(a)(1)(C)(i). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(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 preschool 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.

20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The 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[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6)

and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data including that provided by the parents in addition to available assessments and observations. 34 C.F.R. § 300.305(a).

In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). 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[.]” 34 C.F.R. § 300.306(a)(1).

Finally, when parents disagree with an LEA’s educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). In such a circumstance, the LEA “must, without unnecessary delay,” file a due process complaint to defend its evaluation, or ensure the provision of an IEE at public expense. 34 C.F.R. § 300.502(b)(2). Whether or not the LEA funds an IEE, a private evaluation that meets agency criteria and shared with the LEA must be considered. 34 C.F.R. § 300.508(c).

### **The District’s Claim**

The District’s Complaint seeks to establish that its reevaluation of Student in October 2022 met all requirements of the IDEA, and that the Parent is not entitled to an IEE at public expense. The Parent disagrees, arguing that specific flaws or omissions in the reevaluation are fatal, entitling her to relief. As noted, where, as here, a parent seeks public funding of an IEE, the LEA has only two options to respond: agree to the request, or file a Complaint. The District elected to pursue the second.

The District’s reevaluation in October 2022 unquestionably utilized a variety of assessment tools, strategies, and instruments (rather than any

single measure) to gather relevant functional, developmental, and academic information about Student, all relating to areas of Student's suspected disabilities based on the record as a whole. This is precisely what the regulations require. Importantly, the District expressly incorporated results of previous evaluations including Student's developmental history; included parental input that provided her views on Student's behavioral, communication, daily living, and sensory needs in the home and community; and obtained and reported information from the teacher and relevant related service providers. The District school psychologist conducted informal classroom observations of Student and those, in addition to testing observations, provided useful details on Student's attention and focus and how they impacted Student's performance, as is explicitly reflected throughout the RR.

The October 2022 RR included brief cognitive and achievement testing; evaluation by two related service providers (occupational and speech/language therapists); and a variety of rating scales to evaluate Student's adaptive behavior skills, social/emotional functioning, and characteristics of Autism and ADHD. The instruments used in the October 2022 were appropriate for Student, and administered according to publisher instructions. The October 2022 RR summarized and reviewed all data and available information that was gathered, assessed all relevant areas of need, and then proceeded to determine Student's eligibility for special education.

This RR identified a number of Student's areas of weakness, some of which are not commonly associated with Student's particular disabilities, and further made programming recommendations to address Student's unique profile. A meeting convened with the Parent to review the October 2022. Viewed as a whole, and according appropriate weight to the testimony of the evaluating professionals discussed above and below, the record evidence is preponderant in this particular case that the District's October 2022 RR was

sufficiently comprehensive to identify Student's special education and related service needs in all areas of suspected disability. This RR thus served the purposes of a special education evaluation; and, the District has met its burden of persuasion.

The Parent's main disagreements with the District's RR were raised with her IEE request as well as at the hearing, and a discussion of those is warranted. First, she challenged the use of the KBIT-3 rather than a full cognitive assessment and suggested that Student may qualify under the Intellectual Disability (ID) category. As for the instrument used for the October 2022 RR, the testimony of the District school psychologist on the reasons for using the one she selected was sound and persuasive. With respect to the category, the IDEA implementing regulations define ID as "significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance." 34 C.F.R. § 300.8(c)(6.) However, the District school psychologist considered that classification and rejected its application. She confirmed that the general threshold for ID is often considered to be an IQ below 70 (N.T. 103-05), but also acknowledged that other factors must be considered rather than that score alone (*id.*)<sup>4</sup> Her testimony as to the reasons therefor was logical and convincing, and is further supported by the various references throughout the October 2022 RR that Student's cognitive and achievement scores were, and have been previously, likely not accurate reflections due to attention and focus. This contention regarding cognitive testing accordingly must fail.

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<sup>4</sup> See *also* American Psychiatric Association (2022), Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. Text Revision, at 37-46.



In a related argument, the Parent similarly disputed the use of only a few select subtests of the WIAT-IV for the October 2022 RR. Once again, there are achievement test scores available from a fairly recent RR in December 2020 that, when considered with all available data and information, lend credence to the District school psychologist's rationale for limiting that assessment in this case in light of Student's attention and focus difficulties. This hearing officer also cannot conclude that the omission of a full achievement battery here led to a failure to consider possible specific learning disabilities. The Parent pointed to the state regulation that requires an examination of a child's achievement compared to grade level-standards. 22 Pa. Code § 14.125. However, that factor is but one of several that the team must assess. Moreover, there is no indication in the record to suggest that a specific learning disability was suspected in the fall of 2022, even in light of the Parent's concerns that Student lacked age-appropriate academic skills. Had Student not qualified for special education, this contention may have merited closer examination, but the District did continue to find Student eligible, and identified academic and non-academic needs to be addressed through Student's program. The October 2022 RR is not inappropriate on this basis.

Finally, the Parent contended that the efforts to obtain information about Student's sensory needs were inadequate, suggesting that the District could and should have conducted additional assessments in the area of sensory processing. As the District observed and its occupational therapist noted, however, there was information about Student's sensory processing obtained in the spring of 2022, and interventions were already implemented to gauge their success as the RR was in the process of completion. This hearing officer cannot find the October 2022 RR flawed merely because the District did not again gather information it had very recently already acquired in this area.

The Parent, quite understandably and appropriately, clearly has high aspirations for Student, but her concern that Student is not attaining higher levels of academic success cannot defeat the compliant IDEA evaluation in October 2022. It is always the case that an evaluator might have used other or additional assessment measures, but that fact alone does not provide a basis for a publicly-funded IEE. The District in this case has established that its October 2022 RR met all of its obligations in this regard, and its Complaint must be sustained.

### **CONCLUSIONS OF LAW**

The District's October 2022 met all requisite criteria in the IDEA and its implementing regulations and, accordingly, there is no basis in this case for an IEE at public expense.

### **ORDER**

AND NOW, this 30<sup>th</sup> day of November, 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's October 2022 RR was appropriate under the applicable law, and its Complaint is SUSTAINED. No further action by the District is ordered.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Cathy A. Skidmore

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 26985-22-23