

*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:**

23634-19-20

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

I.L.

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

[redacted]

#### **Parents:**

[redacted]

#### **Counsel for Parents:**

Pro Se

#### **Local Education Agency:**

New-Hope Solebury School District  
180 West Bridge Street  
New Hope, PA 18938

#### **Counsel for LEA:**

Thomas C. Warner, Esquire  
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#### **Hearing Officer:**

Joy Waters Fleming, Esq.

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

July 5, 2020

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (Student)<sup>1</sup> [redacted] years of age, attended the [redacted] grade during the 2019-2020 school year, in a School District (District) elementary school. In February 2020, the District conducted its reevaluation of Student. Disagreeing with the reevaluation report (RR), Student's Parents requested an independent educational evaluation (IEE) at public expense. In response, the District filed a due process complaint alleging that its reevaluation was appropriate and contesting the Parents' right to an IEE at public expense. One due process hearing session occurred during which the District sought to establish that its reevaluation was legally compliant<sup>2</sup>.

The following exhibits were admitted into the hearing record: S-1 through S-7; P-1, P-6.

For the reasons set forth below, I conclude that the District has preponderantly established that its February 2020 reevaluation of the Student was appropriate and that the Parents are not entitled to an independent educational evaluation at public expense.

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<sup>1</sup> The generic use of "student", rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student. 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 IDEIA 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).

## **ISSUES**

1. Whether the District's reevaluation of Student was appropriate and compliant with the requirements of the IDEA and Chapter 14?
2. If the District's reevaluation was not appropriate, should the District be ordered to provide an independent educational evaluation at public expense?

## **FINDINGS OF FACT**

1. During the 2019-2020 school year, Student, [redacted] years of age, attended the [redacted] grade in a District elementary school. (S-2)<sup>3</sup>
2. During the 2016-2017 school year, [redacted], Student received early intervention services through the Intermediate Unit. (S-7)
3. In March 2017, in preparation for transition to school-age services, a reevaluation determined that Student was eligible for special education services as a student with a specific learning disability with needs in reading, math, writing and a speech or language impairment. (S-7, p.16)
4. The 2017 RR recommended an occupational therapy screening, which resulted in occupational therapy services to address fine and visual motor development and sensory processing in the classroom. (S-2, p.2)
5. On December 6, 2019, the District requested consent from Parents to conduct Student's triennial reevaluation. (S-1)

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<sup>3</sup> 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.

6. Although Parents consented to the reevaluation, they did not return the forms requesting developmental history and parental input. (N.T. 19, 22)
7. The District conducted the reevaluation of Student and issued its report to the Parents on February 14, 2020. (S-2; N.T. 20)
8. On March 5, 2020, the school psychologist contacted the Parents to advise that information needed to be corrected in the RR. (N.T.21-23)
9. When contacted, the Parents requested that additional developmental history of Student as well as their input be included in the RR. (N.T. 21)
10. Parental supplied input included early intervention developmental history, academic, behavioral, social, and speech and language concerns including attention and self-regulation needs of Student. (S-2, p.3)
11. After reviewing the parent input, the District added the eligibility category of Other Health Impaired "OHI" to the RR. (N.T. 21-22, 27)
12. On March 6, 2020, the District issued the revised RR to Parents. (N.T. 21-23)
13. The District's school psychologist that performed Student's reevaluation has 29 years of experience. (N.T. 18-19)
14. The RR summarized past aptitude and achievement data from Student's RR administered by the District in 2017. (S-2, p.3)
15. The RR summarized current classroom-based assessments in math, reading, word study, and writing. (S-2, pp.4-5)
16. The RR contained input from Student's [redacted] grade and special education teachers as well as occupational and speech therapists. (S-2, p.6)

17. The school psychologist completed a classroom observation of Student and provided a summary of findings for the RR. (S-2, p.6)
18. Student's special education teacher completed a classroom observation of Student and provided a summary of findings for the RR. (S-2, p.5)
19. Student's teachers provided instructional recommendations for inclusion in the RR. (S-2, p.6)
20. The RR determined that Student did not lack appropriate instruction in reading or math and did not have limited English proficiency. (S-2, p.7)
21. After the IEP team determined the need for more information, Student was administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) with scores reported in Verbal Comprehension, Visual-Spatial Index, Fluid Reasoning, Working Memory and Processing Speed. (S-2, pp.9, 18-19)
22. For inclusion in the RR, Student was administered the Kaufman Test of Educational Achievement-Third Edition (KTEA-III) with scores reported in reading, math, listening comprehension, written language, and spelling skills. (S-2, pp.9-10, 19, N.T.32, 34)
23. KTEA-III reading subtests reported in the RR included phonological processing skills, letter/word recognition, nonsense decoding, word recognition fluency, silent reading fluency, and reading comprehension skills were assessed and included in the RR. (S-2; pp.9-10, 19)
24. KTEA-III math subtests reported in RR included math concepts/applications and math computation skills. (S-2, p.10)
25. KTEA-III written language subtests reported in the RR included written expression and spelling. (S-2, pp.10-11)

26. To assess Student's behavior, Parents and the [redacted]grade and learning support teachers completed the Behavior Assessment System for Children-Third Edition (BASC-III) for inclusion in the RR. (S-2, p.11)
27. The BASC-III yielded Clinical, Adaptive and Content scale ratings of Student's personality and behavior which were incorporated in the RR. (S-2, pp. 11-14)
28. The occupational therapy reevaluation summarized Student's assessment scores from the Beery-Buktenica Tests of Visual-Motor Integration (VMI), Visual Perception, Motor Coordination, the Evaluation Tool of Children's Handwriting (ETCH) and a Sensory Processing Measure (SPM). (S-2, pp.14-16; N.T. 52-54)
29. The occupational therapist that assessed Student recommended the continuation of services to address concerns with fine motor precision, handwriting, and sensory processing. (S-2, pp.14-16; N.T. 52-55)
30. For inclusion in the RR, the speech/language evaluation included a review of previous assessments, administration of the Goldman Fristoe Test of Articulation-3 (GFTA-3), an Oral Peripheral examination, informal observation of the Student and teacher input. (S-2, pp.17; N.T. 41-43)
31. The speech/language pathologist that assessed Student recommended continuation of speech services to address articulation concerns. (S-2, pp.16-17; N.T.40-44)
32. The RR summarized Student's educational strengths and skill deficits. (S-2, p.21)
33. Based on the RR, Student has skill deficits in basic reading, math computation, fine motor precision/handwriting legibility, articulation, and self-regulation. (S-2, p.21; N.T.34-35)

34. The RR concluded that Student has a disability and continues to need specially designed instruction as a student with a specific learning disability, other health impairment, and a speech or language impairment. (S-2, p.21)
35. The RR contains a comprehensive summary of Student's present levels of academic achievement and related developmental needs. (S-2, p. 22)
36. The RR contains extensive recommendations for consideration by the IEP team needed to enable the Student to meet goals and to participate in the general education curriculum. (S-2, p.24)
37. All assessment tools used to reevaluate Student were administered in accordance with the publisher's recommendations, were technically sound and no concerns were presented about the validity of the results. (N.T. 28)
38. On March 6, 2020, the Parents indicated their disagreement with the RR and requested an IEE at public expense. (S-3; N.T.24)
39. The District denied the Parents' request for an IEE at public expense and on April 17, 2020, filed a due process complaint initiating these proceedings. (S-6)
40. The school psychologist, speech therapist, occupational therapist, and one Parent provided testimony at the due process hearing. (N.T. 16, 37, 49, 60)
41. Parents agree that Student has needs in reading, attention, and speech articulation. (N.T. 84-85)

### **DISCUSSION AND CONCLUSIONS OF LAW**

The burden of proof is composed of two elements: the burden of production or going forward and the burden of persuasion. The essential

consideration is the burden of persuasion. *Schaffer v. Weast*, 546 U.S. 49 (2005), determined that the burden of persuasion is on the party that requests relief in an IDEA case. The burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the hearing officer. The burden of persuasion in this case was borne by the District, the filing party. 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, as is the case here. Whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. *Id.*

Special education hearing officers, in the role of fact-finders, are charged with the responsibility of judging the credibility of witnesses, weighing evidence, assessing the persuasiveness of testimony and, making a decision incorporating findings of fact, discussion, and conclusions of law. *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). In this case, the District presented the testimony of the school psychologist and the speech and occupational therapists, all contributing participants to the reevaluation process. The Parents' presented the testimony of one parent. All witnesses testified persuasively and credibly.

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). When that request is made, the LEA must either file a request for a due process hearing to establish that its evaluation was appropriate or ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2).

Here, after reviewing the conclusions of the District's February 2020 reevaluation of Student, the Parents sought an IEE at public expense. The District refused; thus, the District had the burden of establishing that its reevaluation was appropriate. The sole issue in this case where the District has denied Parents' request for an IEE at public expense is whether its evaluation met the criteria outlined in Chapter 14 and the IDEA. Based on the evidence in this matter, the District has preponderantly established that its February 2020 reevaluation is in full compliance with all requirements of both the IDEA and Chapter 14. The record evidence is clear that the school district utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about this Student, including information provided by the Parents. Parents are not entitled to an IEE at public expense.

In conducting a special education evaluation or reevaluation, the law imposes certain requirements on LEAs to ensure that sufficient and accurate information about the child is obtained:

*(b) Conduct of evaluation. In conducting the evaluation, the public agency must—*

*(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—*

*(i) Whether the child is a child with a disability under § 300.8;*  
*and*

*(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).*

- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and*
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.*

34 C.F.R. §§ 300.304(b); *see also* 34 C.F.R. § 303(a).

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 service 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). IDEA regulations impose additional criteria that school officials must meet when evaluating a child to determine if the child has a disability. The child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments and classroom-based observations, and observations by teachers and other service providers. 34 C.F.R. § 300.305(a)(1). Additionally, based on their review of that existing data, including input from the child's parents, the evaluation team must "identify what additional data, if any, are needed" to assess whether the child has a qualifying disability and, if so, "administer such assessments and other evaluation measures as may be needed." *Id.* § 300.305(a)(2)(c).

In this case, the District's RR was comprehensive and appropriate. The evaluation utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student in all areas of suspected disability. It included input from parents and educators and provided a clear summary and explanation of how the contents of the evaluation informed the conclusions and recommendations. (34 C.F.R. §§300.8, 300.39; 22 PA Code §§14.102(a)(2) (ii, viii). Specifically, the District assessed Student's cognitive ability, academic achievement, behavior, and social functioning; summarized curriculum-based assessment data; obtained and reported input from the [redacted] grade and special education teachers, the speech/language pathologist, the occupational therapist, and the Parents. The RR summarized previous evaluation results as well as information obtained during classroom observations. A variety of assessment tools were used to determine Student's continued eligibility for special education. The District school psychologist and other contributors to the RR responsible for administering the cognitive ability, academic achievement, and related assessments are professionally qualified and trained in the use of the evaluative instruments used. All assessment tools used were technically sound and administered in accordance with the publishers' standards. The results obtained were reliable and valid.

Parents' contend that the District's RR violates the requirements of Chapter 14 and the IDEA because it failed to adequately provide an analysis of Student's IQ scores; identify Student's language deficiencies; and quantify classroom behaviors. These assertions are unsupported by the record evidence in this matter.

The District presented the testimony of the school psychologist who comprehensively and convincingly explained the various assessments selected to assess Student's cognitive and academic levels and the

conclusions reached about continued eligibility for special education and related services. When given the opportunity, the Parents did not ask a single question of the school psychologist about the administration of the WISC-V, the scores obtained, and how they were derived. Additionally, they presented no testimony other than their own to challenge the conclusions reached in the RR.

Concerning the Parents' contention that the reevaluation report failed to understand the scope of Student's language deficiencies, this argument is also unsupported by the evidence in this matter. The District through the presentation of its case has established that any concerns regarding Student's speech and language were professionally and thoroughly assessed and documented. Additionally, the school psychologist provided testimony regarding the KTEA-III subtests administered along with other evaluative measures, all concluding that Student still has a reading disability. Based on the RR, Student will continue to receive speech and language therapy services to address identified speech deficits. Again, when given the opportunity to question the speech and language pathologist and the school psychologist about the District's identification of any language-based learning disabilities or the administration of the various assessments and the results obtained, Parents asked no questions. Instead, the only testimony Parents presented to refute the conclusions of the District came from one of the Parents.

Concerning Parents' claim that the RR was legally deficient because it failed to properly address classroom behaviors, that contention is also unsupported by the evidence. The RR fully outlined the efforts the District undertook to collect information about Student's attention needs. Multiple classroom observations occurred, and the school psychologist amended the RR to include the additional eligibility category of OHI, specifically because of Student's issues with attention and self-regulation, noted by the District and

reported by the Parents. As required by law, the District used varied methods to assess this Student's behavioral needs and provide that information in the RR for the development of responsive educational programming.

Accordingly, The District has established by a preponderance of the evidence that its February 2020 reevaluation of Student complied with all requirements of the IDEA and Chapter 14. Parents are not entitled to an IEE at public expense.

### **ORDER**

AND NOW, this 5<sup>th</sup> day of July 2020, in accordance with the foregoing findings of fact and conclusions of law as set forth above, it is **ORDERED** that the District's February 2020 re-evaluation report met all requirements under the IDEA. The Parents are not entitled to an independent education evaluation at public expense.

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

*Joy Waters Fleming, Esq.*

Joy Waters Fleming, Esquire  
Special Education Hearing Officer  
July 5, 2020