

*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 Due Process Hearing Officer**

### **Final Decision and Order**

**ODR No. 27642-22-23**

#### **CLOSED HEARING**

**Child's Name:**

M.G.

**Date of Birth:**

[redacted]

**Parents/Guardians:**

**Counsel for Parents:**

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59 Creek Drive  
Doylestown, PA 18901

**Local Education Agency:**

Easton Area School District  
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**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

04/01/2023

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, M.G. (Student),<sup>1</sup> is a late teenaged student who resides and attends school in the Easton 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 last evaluated Student in April 2022. In January 2023, the District sought to conduct a new reevaluation. After the Parents declined to consent to that reevaluation, the District filed a Due Process Complaint under the IDEA seeking to override the Parents' lack of consent. The matter proceeded to an efficient single-session hearing.<sup>3</sup> The District sought to establish that a new reevaluation of Student was both necessary and permissible under the law, while the Parent disputed both the need for another evaluation as well as the District's authority under the applicable statutory and regulatory provisions.

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

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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.), School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. References to Parents in the plural will be made where it appears that one was acting on behalf of both. S-38 was redacted to remove what appear to be other students' names. The Parents had a standing objection to all documents and testimony for events prior to the 2022-23 school year, which was overruled; some but not all of that evidence provided important context.

## **ISSUE**

Whether The District should be permitted to override the Parents' lack of consent to a new reevaluation?

## **FINDINGS OF FACT**

1. Student is a late-teenaged student currently residing within and attending school in the District. Student has been identified as eligible for special education under the IDEA. (N.T. 23-24.)
2. Student was born with a congenital condition that impacts Student's vision. (S-19 at 14.)
3. Student was previously enrolled in the District [redacted] in kindergarten and remained there before transferring to a charter school (Charter School) in the fall of 2017. Student was identified by the District as eligible under the IDEA [redacted] as a child with Speech/Language Impairment but exited from those services in 2014. (N.T. 53-54; S-1 at 4; S-2 at 1-29; S-3 S-4 at 1; S-5 at 1.)
4. Charter School evaluated Student in the spring of 2018 and identified Student as eligible under the IDEA based on Specific Learning Disability in the areas of reading comprehension and mathematics calculation. (S-6 at 1.)
5. The Parents obtained private evaluations of Student in the fall of 2018 through the summer of 2019. One private evaluator diagnosed Student with Attention-Deficit/Hyperactivity Disorder (ADHD) and Adjustment Disorder, and provisionally diagnosed Autism Spectrum Disorder. The second evaluator added Intellectual Disability (Mild) and

Generalized Anxiety Disorder diagnoses, and recommended an educational life skills program. (N.T. 126-28; P-4; P-5; S-6; S-7; S-39.)

6. Following the private evaluations, Charter School identified Student as eligible under the IDEA under the classifications of Intellectual Disability, Autism, Vision Impairment, Speech/Language Impairment, and Other Health Impairment (ADHD) in a revised report in the fall of 2019. (S-6.)
7. In October 2021, Charter School developed an Individualized Education Program (IEP) for Student addressing the identified needs through a program of learning support at a supplemental level, along with related services (speech/language, occupational, and vision therapy; counseling). (S-13.)
8. The Parents obtained another private evaluation in December 2021 by one of the prior evaluators. The results of the cognitive assessment for that evaluation was to be viewed with caution because Student at times discontinued test items before they were complete, but the Intellectual Disability (Mild) diagnosis was maintained. (P-3.)

### **Relevant District Programming**

9. The District conducted a reevaluation of Student in the spring of 2022, issuing a Reevaluation Report (RR) in April of that year. The 2022 RR followed Student's re-enrollment in the District with comparable services based on the Charter School then-current IEP. (N.T. 29-30, 130-31; S-16; S-17; S-19.)
10. The District did not conduct cognitive or achievement assessments for the April 2022 RR because those had recently been administered for

the Parents' private evaluations, and the results were accepted by the District. (N.T. 30-31, 40.)

11. The 2022 RR summarized existing information, including the results of the private evaluations between October 2018 and December 2021; input from the Parents; teacher input that was generally positive with the exception of some refusal to attend class and engage in minor disruptive behaviors; District and state assessments; classroom observations; and elements of the then-current IEP. (S-19.)
12. Results of cognitive and achievement assessments from the 2021 private evaluation was included in the 2022 RR. Student's Full Scale IQ was reported as below the first percentile (Standard Score 63) with Composite scores ranging from the low average to extremely low ranges. Assessment of Student's academic achievement reflected broad Cluster scores ranging from the low (Broad Math) to average (Broad Reading, Broad Written Language) ranges.<sup>4</sup> (S-19 at 1-2.)
13. A functional vision assessment was conducted for the 2022 RR, and vision support services were recommended in addition to a number of program modifications and accommodations. (S-19 at 14-20.)
14. A speech/language evaluation for the 2022 RR revealed areas of strength and weakness, with the latter encompassing expressive, receptive, and pragmatic language skills. (S-19 at 4-9.)
15. Occupational therapy evaluation for the 2022 RR identified areas of deficit and determined that services related to sensory processing

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<sup>4</sup> Student's Broad Achievement score on this instrument was in the low average range. (P-3 at 6.)

(planning and ideas), emotional regulation/coping skills, and an adaptive skill were appropriate. (S-19 at 9-14.)

16. The District utilized rating scales (Behavior Assessment System for Children – Third Edition (BASC-3) and the Gilliam Autism Rating Scale – Third Edition (GARS-3)) for the 2022 RR. The teacher completed the BASC-3, endorsing clinically significant concerns with anxiety, somatization, and leadership. The Parents completed the GARS-3, yielding scores indicating that Autism was very likely. (S-19 at 20-21.)
17. The 2022 RR reached the conclusion that Student was eligible for special education based on the classifications of Intellectual Disability, Speech/Language Impairment, Visual Impairment, and Other Health Impairment (ADHD and anxiety). (S-19 at 23.)
18. A number of educational recommendations were set forth in the 2022 RR for Student’s programming in the areas of reading comprehension; mathematics problem solving and mathematics calculations; expressive/receptive language skills; fine motor and visual perceptual skills; social skills; and coping skills. (S-19 at 22-23.)
19. All members of the reevaluation team, including the Parents, agreed with the 2022 RR. (S-19 at 25.)
20. The District developed and implemented a new IEP for Student after the 2022 RR for a program of learning and speech/language support at a supplemental level. The IEP was revised several times over the 2022-23 school year. (S-21; S-22; S-23; S-26.)
21. The District sought permission to reevaluate Student again in January 2023 due to concerns with Student’s current functioning, including

frequent, newly manifested behaviors at school (such as missing class, wandering the hallways, crying in the restroom, engaging in arguments with paraprofessionals, and making negative comments toward peers). A Permission to Reevaluate Form (PTRE) was issued to the Parents on January 5, 2023, specifying ability (cognitive) and achievement assessments; rating scales (broad band, adaptive behavior, and autism scales); the Autism Diagnostic Observation Schedule (ADOS); a Functional Behavior Assessment (FBA); speech/language evaluation; and observations along with parent and teacher input. The Parents returned the form, declining consent. (N.T. 33-34, 70, 73-74, 88, 95-96, 99-100, 104-05; S-25.)

22. The Parents did not consent to the January 2023 PTRE because Student had been privately evaluated in late 2021, and they did not believe that they were not provided sufficient reasons for conducting additional assessments. They did not have concerns with the proposed assessments other than the speech/language portion of the evaluation; nor were they worried about Student's anxiety if reevaluated. (N.T. 122, 125, 145-47, 149.)
23. The District proposed the speech/language evaluation in the January 2023 PTRE because the local Intermediate Unit, which conducts those evaluations, typically asks to re-assess for any reevaluation. (N.T. 111.)
24. The District proposed an administration of the ADOS in order to obtain information about Student's social and interpersonal skills. That instrument involves activities and, for Student, would evaluate Student's social interaction skills. (N.T. 113-14, 118, 119.)

25. In early March 2023, the District conducted a manifestation determination review for Student following a disciplinary incident with potential resulting consequences. The team determined that the behavior was a manifestation of Student's disabilities and that an FBA was necessary. (S-29.)
26. Also in early March February 2023, the District communicated with the Parents about some of the behavioral concerns observed at school. The Parents agree that behaviors have changed over the current school year, but question the reasons behind them. (N.T. 134-35, 149; P-10; S-38 at 15.)
27. The District issued a new PTRE form in March 2023 after the manifestation determination review, specifying ability (cognitive) and achievement assessments; rating scales (broad band, adaptive behavior, and autism scales); the ADOS; a psychiatric evaluation; a Functional Behavior Assessment (FBA); and observations, a review of records, and input from teachers and the Parents. (S-30.)
28. The District is able to expedite the reevaluation, if granted, so that it is completed before the end of the 2022-23 school year. (N.T. 51-52.)
29. Student will be eligible for graduation at the end of the 2022-23 school year, but the Parents and Student have not made any decision on whether [Student] will remain at school in the District beyond the end of this school year. (N.T. 72, 148.)



## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof consists of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the District since it filed the Complaint that led to 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 responsible for 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 as they recalled them, without any intention to mislead. The testimony related to the issue that was presented was rather consistent where it overlapped, although the parties do view the facts differently. The weight accorded the testimonial evidence based on its persuasive value is briefly discussed below as relevant.

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 qualifying disabilities 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 conducted by the local education agency (LEA).

The LEA must obtain informed consent of the child’s parents prior to conducting a special education evaluation. 20 U.S.C. § 1414(a)(1)(D)(i)(I); 34 C.F.R. § 300.300(a)(1). The same is required for any reevaluation. 20 U.S.C. § 1414(C)(3); 34 C.F.R. § 300.300(c)(1)(i). If the child’s parents do not provide consent to the reevaluation, the LEA is permitted, but not required, to request a due process hearing and ask a hearing officer to grant permission to conduct the evaluation. 20 U.S.C. §§ 1414(a)(1)(D)(ii)(I) and 1414(c)(3); 34 C.F.R. §§ 300.300(a)(3) and 300.300(c)(1)(ii).

LEAs must conduct reevaluations when a child’s educational needs so warrant. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1). The IDEA does not, however, permit LEAs to conduct a reevaluation within one year of a prior evaluation, unless the parties agree otherwise. 20 U.S.C. § 1414(a)(2)(B)(i) and 1414(c)(3); 34 C.F.R. § 300.303(b)(1) and 300.303(c)(1)(ii). Case law has interpreted these provisions as a prohibition against a reevaluation more frequently than one time a year without agreement of both parties. *See, e.g., M.L. v. El Paso Independent School District*, 369 Fed. App’x 573, 577 (5<sup>th</sup> Cir. 2010).

## 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).

### **The District’s Claim**

The District asserts that it has provided a valid basis for conducting a new reevaluation, while the Parents question the necessity. Both parties agree that Student’s behaviors have increased markedly over the course of the 2022-23 school year; their disagreement is essentially over the reasons for the changes. The record supports the parties’ shared position that Student is engaging in frequent concerning behavior that was not previously exhibited on a regular basis. This hearing officer must conclude that the District has thus established that Student’s current educational needs can only be met following a full reevaluation consistent with the above IDEA requirements that will, among other things, seek to understand the reasons for the increase in Student’s concerning behaviors.<sup>5</sup> The reevaluation may

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<sup>5</sup> In addition, the most recent cognitive assessment administration in 2021 was to be interpreted with caution, strongly supporting a new evaluation of ability.

begin on April 24, 2023 so that one full calendar year will have elapsed since the previous reevaluation.

The Parents specifically objected to use of the proposed ADOS instrument because of previous rating scales that were consistent with an Autism diagnosis. The District school psychologist who would administer the ADOS is familiar and experienced with that assessment, and her persuasive testimony on the information to be gleaned from the ADOS would go beyond an Autism diagnosis to other related areas of need for Student, social and interpersonal skills. This hearing officer therefore finds an ADOS administration to be wholly appropriate.

In addition, the Parents expressly challenged any speech/language assessment of Student. The District's most recent PTRE in March 2023 did not include a speech/language evaluation, and one will not be ordered.

In sum, based on the record as a whole, the District must be permitted to conduct a reevaluation as set forth in the March 2023 PTRE. The parties will then have the opportunity to review its results and consider together whether any revision to Student's programming may be necessary.<sup>6</sup> The reevaluation will undoubtedly also be useful to the decision on whether Student will graduate at the end of this school year.

## **CONCLUSION OF LAW**

The District has established that a reevaluation of Student is warranted, and it shall be permitted to conduct its proposed reevaluation without consent of the Parents.

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<sup>6</sup> The parties may wish to consider inviting a facilitator to the next IEP meeting to encourage meaningful collaboration.

## **ORDER**

AND NOW, this 1<sup>st</sup> day of April, 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District may conduct a reevaluation of Student consistent with the March 2023 PTRE, to begin no later than April 24, 2023, without the consent of the Parents. If additional assessments beyond that PTRE are indicated through the reevaluation process, the District shall seek to obtain the consent of the Parents.
2. The District shall expedite completion of the reevaluation to the extent reasonably practicable.

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. 27642-22-23