

*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**

**ODR No. 28221-22-23**

#### **Closed Hearing**

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

D.H.

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

[redacted]

##### **Parent**

[redacted]

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

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##### **Hearing Officer**

Brian Jason Ford

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

12/22/2023

## **Introduction**

This special education due process hearing concerns an evaluation of a child with disabilities (the Student). The Student's public school district (the District) evaluated the Student and drafted a Reevaluation Report (the RR). The Student's parent (the Parent) disagreed with the RR and asked the District to fund an Independent Educational Evaluation (IEE). The District declined the Parent's request.

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The IDEA requires the District to request a due process hearing whenever it denies a parent's request to fund an IEE. The District must prove that the RR was appropriate. If the District satisfies its burden, it need not fund the requested IEE.

Having carefully reviewed the record of this case, I find that the RR in question was appropriate. However, I also find that the District must take action based on what it learned during this hearing.

## **Issue**

A single issue was presented for adjudication: Was the District's RR of April 10, 2023, appropriate?

## **Findings of Fact**

I reviewed the record in its entirety. I make findings of fact only as necessary to resolve the issue before me. I find as follows:

1. The Student has a rare genetic condition.<sup>1</sup> The Student's genetic condition has several outward symptoms and can interfere with the Student's ability to regulate temperature. Hot weather is dangerous for the Student. *Passim*.
2. The Student has a medical diagnosis Attention Deficit Hyperactivity Disorder (ADHD). *Passim*.
3. Before the 2022-23 school year, the Student attended school in person for a time, and then received synchronous remote instruction during the COVID-19 pandemic (meaning that a teacher instructed the

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<sup>1</sup> Naming the Student's genetic condition might identify the Student, and so I decline to do so. I describe the condition only as necessary. The record of this case includes a more complete description.

Student live but remotely). At all times, the Student received special education pursuant to an Individualized Education Program (IEP). See, e.g. S-6, S-13.

4. After the COVID-19 pandemic, the District no longer offered synchronous remote instruction. However, the Intermediate Unit (IU) in which the District is located operates a "Cyber Academy" that is available to all students within the District, regardless of disability. See, e.g. NT at 36. The Cyber Academy is completely asynchronous, meaning that students enrolled in the Cyber Academy do not receive live instruction from a teacher. Rather, instruction is provided through a series of pre-written/pre-recorded online resources. Students may contact teachers, but that is not a regular part of the Cyber Academy program. See, e.g. NT at 35-36.
5. Students enrolled in the Cyber Academy program can work whenever they please. As a substitute for attendance monitoring, the IU tracks each student's logins to the Cyber Academy system. The IU expects students to log in and complete work on five of every seven days. See, e.g. NT at 36, 38, 41.
6. The Parent enrolled the Student in the Cyber Academy for the 2022-23 school year. The District did not place the Student in the Cyber Academy or recommend that program.<sup>2</sup> *Passim*.
7. During the 2022-23 school year, the Student did not regularly engage in the Cyber Academy program. The Student did not regularly log into the Cyber Academy or complete work. The IU reported the Student's poor attendance to the District. At first, the District contacted the Parent to improve the Student's participation and initiated a SAIP process. The District ultimately initiated truancy proceedings. *Passim*; see, e.g. NT at 126.
8. Throughout the 2022-23 school year, the Parent was mostly unresponsive to the District's efforts to gain information about the Student's nonattendance. The few times that the Parent was responsive were mostly related to truancy proceedings. At that time, the Parent attributed the Student's poor attendance to a death in the Student's family, a need to make funeral preparations, and a period of

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<sup>2</sup> The appropriateness of the Student's IEPs, the Parent's reasons for placing the Student in the Cyber Academy, and the program that the Student would have attended but for the Parent's placement are not at issue in this case. Nothing herein should be taken as an indication about the Student's prior or current receipt of a Free Appropriate Public Education (FAPE).

mourning. S-7, S-8, S-10, S-11, S-16, S-17, S-18; NT at 126, 130, 136, 149.

9. Early in the 2022-23 school year, the Parent asked the District to reevaluate the Student. The Parent requested a comprehensive evaluation, but raised concerns about the Student's social, emotional, and behavioral functioning. The District issued a what is commonly referred to as a Permission to Reevaluate – Consent form (PTRE).<sup>3</sup> See, e.g. S-2.
10. On February 9, 2023, the Parent signed and returned the PTRE, giving the District consent to reevaluate the Student. S-2.<sup>4</sup>
11. After receiving parental consent, the District reevaluated the Student both by bringing the Student to the District's buildings for testing and by having the Parent complete standardized ratings of the Student, as described below. See, e.g. P-8.
12. On April 10, 2023, the District concluded the reevaluation by documenting its findings in the RR and sharing the RR with the Parent. P-8.
13. The RR included a summary of the Student's educational placement history. P-8 at 2.
14. The RR included narrative information provided by the Parent, which contained information about the Parent's pregnancy, the Student's behaviors, the Student's eating and sleeping problems, the Student's prior history of psychological and psychiatric services, and the Student's genetic condition. P-8 at 3.
15. The RR included summary of a prior RR completed in 2020. P-8 at 4.
16. The RR included a summary of the Student's current grades and statewide standardized test performance. P-8 at 5.
17. The District's determined that additional information was required, and then listed the new testing and rating scales that the District

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<sup>3</sup> The title of the document is "Prior Written Notice for a Reevaluation and Request for Consent Form." This is a standardized form used to obtain parental consent for reevaluations.

<sup>4</sup> On its face, the PTRE was issued on September 2, 2022, and returned on February 9, 2023. There is no dispute concerning the reevaluation timeline. Rather, the parties dispute the reevaluation's substantive appropriateness.

administered. Those included the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), the Wechsler Individual Achievement Test – Fourth Edition (WIAT-4), the Behavior Assessment System for Children – Third Edition (BASC-3) the Conners Behavior Rating Scale (the Conners). P-8 at 7.

18. The RR includes a statement of the evaluator's observations of the Student during testing. The Student displayed no outward signs of anxiety or inattention, was engaged and cooperative, and was quiet but comfortable responding to questions verbally. P-8 at 7.
19. The WISC-V and the WIAT-4 were administered by the District's School Psychologist. The RR includes a brief statement of the Psychologists observations of the Student during testing. Those observations led the Psychologist to conclude that the test results were valid and reliable for the Student. P-8 at 7.
20. Using the WISC-V, a standardized, normative assessment, the District determined that the Student's cognitive ability was in the "Low Average" range, measured both as a Full Scale IQ score and as a General Ability Index score (81 for both with similar margins of error). P-8 at 7-11.
21. The Psychologist who completed the testing noted some variability within the sub-tests that make up the IQ score and explained what those sub-tests measure. The Psychologist included both a narrative interpretation of the WISC-V results and a table of the Student's test scores. P-8 at 7-11.
22. Using the WIAT-4, a standardized, normative assessment, the District evaluated the Student's academic achievement. As assessed by the WIAT-4, there was variation in the Student's academic skills. The Student's Reading composite score was in the average range (90) while the Student's Mathematics composite score was in the "Very Low" range (74). P-8 at 11-12.
23. Not all of the WIAT-4 sub-tests were administered. As a result, the Psychologist did not calculate a composite score for Written Expression or a Total Achievement index score. Some of the WIAT-4's supplemental tests were omitted as well. P-8 at 11-12.
24. The Psychologist compared the Student's WIAT-4 achievement test results to the Student's cognitive ability as represented by the FSIQ score on the WISC-V. The WISC-V and WIAT-4 are designed for this

comparison, and the test publisher provides a statistical model that must be used. The model identifies achievement scores that represent an area of significant academic weakness and a statistically significant discrepancy between the achievement score and the achievement that is expected based on the Student's FSIQ. See, e.g. P-8 at 14.

25. Using the publisher's model, the Psychologist found that the Student's achievement in Mathematics (particularly Math Problem Solving and Math Calculations) was statistically discrepant from expectations based on the Student's FSIQ. Scores in other academic domains represented relative academic weaknesses (e.g. a Reading Comprehension score in the "Very Low" range) but were not statistically discrepant from expected results based on the Student's FSIQ. P-8 at 13-14.
26. The Psychologist urged caution in interpreting the WIAT-4 results, both on their own and in relation to the WISC-V. The Psychologist stated in the RR that the Student's WIAT-4 results may be a function of the amount of instruction that the Student missed, as opposed to a learning disability. See P-8 at 14.
27. The BASC-3 is a wide-ranging behavioral assessment in which raters are asked to evaluate a child's behaviors in multiple domains by answering questions on a Likert scale. Typically, the BASC-3 collects information from multiple raters who know the Student well, including teachers and parents. There are differences between the questions presented in the parent rating scale and the teacher rating scale. Scores in the "at-risk" range indicate potential problems that may require monitoring while scores in the "clinically significant" range suggest "a high level of maladjustment" and a likely need for intervention. *Passim*; see, e.g. P-8 at 14.
28. For the RR, the District used the BASC-3 to collect information from the Parent only. By the BASC-3's own formula, the Parent's ratings did not trigger validity warnings. P-8 at 14.
29. BASC-3 results are divided into behavioral scores and adaptive scores. There are sub-groups within each, and those sub-groups are used to derive composite and index scores. P-8 at 14.
30. The Parent's ratings of the Student on the BASC-3 placed the Student in the "at-risk" range on the Internalizing Problems composite score and on the Behavioral Symptom Index. The Parent's rating for Withdraw (a sub-group that contributes to the Behavioral Symptom Index) was well within the "clinically significant" range. The Parent's

ratings placed the Student within the average range for Externalizing Problems and the sub-groups contributing to that score. P-8 at 14.

31. For adaptive skills, the Parent's ratings of the Student on the BASC-3 placed the Student in the at-risk range on the Adaptive Skills composite, but very close to the clinically significant range. Sub-group adaptive scores were similar except for Activities of Daily Living (which was clinically significant but just so). P-8 at 14.
32. Like the BASC-3, the Conners is typically used by multiple raters in multiple settings to assess a wide range of behaviors, but tends to focus on behaviors related to ADHD. *Passim*. As with the BASC-3, the questionnaires for parents and teachers are different. The District used the Conners to collect information from the Parent only. P-8 at 14-15.
33. On the Conners, the "very elevated" range is the highest range, indicating "many more concerns than are typically reported" for same-age children. See P-8 at 15. This is followed by the "elevated" range (same descriptor but without the "many"), the "high average" range (same descriptor as "elevated" but prefixed with "slightly"), and the "average" range (which speaks for itself). P-8 at 15.
34. The Parent's ratings placed the Student in the very elevated (highest) range in the Emotional Distress composite score. Scores for Worrying, Social Problems, and Physical Symptoms were also in the "very elevated" range. Scores indicating Perfectionistic and Compulsive Behaviors were in the "elevated range." Scores for Separation Fears and Hyperactivity/Impulsivity were in the "high average" range. All other segments were "average." P-8 at 15-16.
35. The District did not make any medical diagnoses but did report how the Conners scores align to medical (DSM-5) problems. Based on the Conners results, the Student likely met diagnostic criteria for Generalized Anxiety Disorder, Social Anxiety Disorder (School Phobia), and Obsessive-Compulsive Disorder. P-8 at 16-17. Additionally, the Parent's ratings of the Student on the Conners placed the Student in the "high average" range for ADHD Inattentive and in the "elevated" range for ADHD Hyperactive-Impulsive. *Id.*
36. The Psychologist provided a narrative summary of the testing results within the RR. In that section, the Psychologist concluded that the Student remained eligible for special education as a child with Other Health Impairment (OHI) because of the Student's ADHD medical diagnosis. P-8 at 17-18.

37. The Psychologist considered whether Emotional Disturbance (ED) was an appropriate classification for the Student but could not reach that result. The Psychologist acknowledged that some factors identified in the RR might indicate ED. However, the Psychologist could not determine how the Student behaves or feels in school because the Student had not attended school in person for a long time. The Psychologist recommended deferral of any ED designation until the Student could be observed while attending a brick-and-mortar school. P-8 at 18.
38. Like the ED consideration, the Psychologist concluded that the Student could not be classified as a child with a Specific Learning Disability (SLD). The Psychologist could not determine if discrepancies between the Student's FSIQ and academic achievement were attributable to the amount of school that the Student had missed or to a learning disability, leading the Psychologist to conclude that an SLD designation was not appropriate at the time of the RR. See P-8 at 18.
39. The RR included a statement about the Student's strengths and needs, and numerous recommendations for the IEP team to consider. Although OHI was the Student's only qualifying disability, the Psychologist made recommendations regarding the Student's general cognitive functioning, verbal comprehension, math skills, and anxiety. All those recommendations were directly linked to the Student's individual testing results. P-8 at 18-20.
40. The Parent disagreed with the RR and asked the District to fund an IEE. The District rejected that request and, on June 19, 2023, requested this hearing.<sup>5</sup>

### **Witness Credibility**

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d

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<sup>5</sup> There is no dispute concerning the timing of the Parent's request for an IEE at public expense, the District's rejection of that request, or the District's initiation of these proceedings.



Cir. 2014) (“[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

While none of the testimony triggered credibility issues, I do not assign equal weight to all testimony. Differences in how I weigh the witnesses' testimony are discussed below.

### **Applicable Laws**

#### **The Burden of Proof**

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3d Cir. 2010), *citing Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the District is the party seeking relief and must prove entitlement to the relief that it demands by a preponderance of evidence.

#### **Evaluation Criteria**

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 20 U.S.C. § 1414(a)(2)(A).

Evaluations must “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” whether

the child is a child with a disability and, if so, what must be provided through the child's IEP for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A).

Further, the evaluation must "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 must "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)(B)-(C).

In addition, the District is obligated to ensure that assessments and other evaluation materials are (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess "all areas of suspected disability". 20 U.S.C. § 1414(b)(3)(B).

### **Discussion**

The RR is not perfect. The question, however, is whether the RR satisfies the IDEA's requirements. Under the unique facts of this case, I find that the RR meets those requirements. However, my analysis is fact specific. If the Student's circumstances change, the District must do what is implied in the RR itself: it must carefully monitor the Student to determine if additional testing is required, additional eligibility criteria are met, or additional (or simply different) special education is required.

The District did "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent" in compliance with 20 U.S.C. § 1414(b)(2)(A). Assessment tools included the WISC-V, the WIAT-4, the BASC-3, and the Conners. Each of those tools collects functional, developmental, and academic information. The BASC-3 and the Conners include information provided by the Parent. Beyond those rating scales, the District solicited information from the Parent through less formal means, and presented parental concerns in the RR.

The District did “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” in compliance with 20 U.S.C. § 1414(b)(2)(B). As noted above, multiple measures were used to enable the Psychologist to reach her eligibility determination and to make recommendations to the IEP team.

The question of whether the District used “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors” is not as clear-cut as it is in most cases about IEEs at public expense. In this case, the District used the BASC-3 and the Conners in somewhat unusual ways. Both instruments are technically sound, but both anticipate multiple raters: parents and teachers who know the Student well. In this case, there was no teacher who knew the Student well enough to complete either rating. The Student had no contact with any teacher for when the RR was being conducted. Under the record of this case, any teacher rating on the BASC-3 or Conners would have been invalid and unusable. Given the choice between not collecting data in the domains that were most important to the Parent, and using sound instruments as well as possible under the circumstances, the District’s choice comported with its obligations.

Most of the factors listed at 20 U.S.C. § 1414(b)(3)(A) are not at issue in this case. For example, racial or cultural bias is not a factor in this case. Two factors listed in this sub-section are noteworthy. First, I find that the tests used to develop the RR were used “for purposes for which the assessments or measures are valid and reliable.” Second, I find that the tests were “administered in accordance with any instructions provided by the producer of such assessments.” Regarding validity, the Psychologist made sure to check the Parent’s responses on the BASC-3 and Conners to make sure that validity warnings were *not* triggered. Regarding instructions, while it is unusual to use the BASC-3 and the Conners with a single rater, such use is not prohibited by the publishers.

A similar analysis applies to the WIAT-4. Not all sub-tests were administered, but the portions that were administered were technically sound and used for their intended purposes. Nothing in the record of this case establishes that using the WIAT-4 in the way it was used for the RR breached testing protocols.

Additionally, consistent with the obligations about validity and reliability, the Psychologist made several cautionary statements in the RR. For example, comparing the WISC-V and the WIAT-4 is consistent with the publisher’s

instructions but, in this case, doing that work raised concerns for the Psychologist about validity. For the academic measures that fell below expectations based on the Student's IQ, the Psychologist could not tell if she was measuring the effect of a learning disability or the Student's absenteeism. The RR shows a real concern not just for the tests results, but also for what the tests were really measuring.<sup>6</sup>

The parties' strongest disagreement concerns the District's obligation to evaluate "all areas of suspected disability". 20 U.S.C. § 1414(b)(3)(B). To determine if the District met this obligation, I look to the information that the District had about the Student at the time of the RR.

The Parent testified about concerns that were not addressed in the RR. The District argues that those concerns are addressed in the RR or were not known to the District when the RR was being conducted. The District's IDEA obligations are ongoing. If, through this hearing, the District learned about concerns for the first time through the Parent's testimony, the District must determine if additional (perhaps limited) evaluations are necessary and, if so, propose them.

With that caution, the record preponderantly supports the District's position. For example, the Parent testified that the Student is not self-sufficient and struggles with activities of daily living (e.g. food preparation). See, e.g. NT at 412. Taking the Parent's testimony as true, there is no evidence that the District was aware of this problem at any point before the Parent took the witness stand during this hearing. Additionally, the Student's ability to perform activities of daily living was assessed – by the Parent's ratings – through the BASC-3. The Parent's rating placed the Student's abilities in this domain in the "at risk" range but right at the boarder of average.

Above, I find no credibility issues with the Parent's testimony. I accept the Parent's testimony about the Student's skills as true. But there is no reason that the District knew, or should have known, about those problems at the time of the RR (counting either from when the District requested consent in September 2022 or received consent in February 2023).

The same is true for the Parent's testimony concerning the Student's lack of attendance and work completion. The Parent testified that the Student's problems participating in the Cyber Academy may relate to a host of un-assessed potential disabilities. However, throughout the 2022-23 school year,

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<sup>6</sup> In Pennsylvania, as part of any determination that a child has a SLD, the school must determine if the child's "underachievement" is the result of lack of exposure to "appropriate instruction." 22 Pa. Code § 14.125(4).

the Parent, the District and, eventually, a court, were all in frequent communication about the Student's truancy. None of the excuses and explanations that the Parent provided at that time signaled the needs that the Parent testified to during this hearing.

Even though the District did not know about the Parent's suspected concerns, the District was keenly aware of the Student's attendance and work completion problems. The District selected assessments to gain information about those problems. The assessments provided information about the Student's anxiety and school phobia. The RR included several recommendations for the IEP team to consider that are directly related to the Student's anxiety. By doing so, the District also assessed the domains raised as concerns by the Parent when the RR was requested.<sup>7</sup>

For all the reasons discussed above, I find that the District has satisfied its burden. The RR evaluated all areas of disability that the District could have suspected at the time. Again, the District's obligation is ongoing. If, through this hearing, the District learned new information about the Students' needs or suspected disabilities, the District must act on that new information. That new information, however, does not invalidate the RR under the standard that I must apply.

For completeness, I note that the Parent makes several arguments to the contrary. I decline to list all of them here. Any argument not explicitly addressed is rejected, but two arguments warrant additional consideration.

First, the Parent argues that the District failed to conduct a Functional Behavioral Assessment (FBA) and should have completed an FBA by observing the Student at home. I agree with the Parent that, in a literal sense, it is possible to conduct an FBA in the way that the Parent suggests. Any FBA conducted this way is sub-optimal to say the very least. But, if an FBA is needed, the District cannot point to the Parent's placement choice to escape its obligation. The Parent chose a placement that the District made available, and that choice does not diminish the Student's rights. Nevertheless, I reject the Parent's argument because there is no evidence that an FBA was needed at the time of the RR (more accurately, that the District should have known an FBA was needed at that time). Poor attendance and work completion can be viewed through a behavioral lens, but the District had no indication that the Student's behaviors were impeding

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<sup>7</sup> The District also argues that the Parent may overstate the Student's anxiety and school phobia. This argument is based on the Psychologist's observations of the Student during testing. Those observations do not square with many of the Parent's reported concerns. See P-8 at 7. At the same time, the BASC-3 and Conners both indicate anxiety and school phobia issues. The District argues that both assessments are valid, and the District included recommendations to address the Student's anxiety in the RR.

the Student's learning. In fact, such a conclusion would be contrary to information that the Parent shared with the District at the time. The absence of an FBA does not make the RR inappropriate.

Second, the Parent argues that the District should have suspected that the Student had psychiatric issues, but neither contacted the Student's mental health providers nor offered a psychiatric evaluation. I find no preponderance of evidence in the record that the Student was receiving outside mental health services at the time of the RR, or that a psychiatric evaluation was needed. Rather, in the context of ongoing truancy hearings, in March 2023, the District attempted to follow up on the Parent's statements concerning the Student's mental health needs (see P-41 at 11). In response, the Parent sent a letter from the Student's medical doctor about the Student's temperature regulation difficulties, an information sheet about the Student's genetic condition, and a HIPAA form allowing the District to communicate with the Student's doctor (see P-41 at 13). The Parent's reply indicates that the Student was not receiving mental health services at that time. *Id.* The Parent's reply also mischaracterizes the District's communication. At no point did the District tell the Parent that the Student must have an outside psychiatric evaluation or imply that was necessary. Rather, the District asked the Parent to share the results of any outside psychiatric evaluation, if the Parent obtained one, and to permit communication with outside providers. At the same time, the RR included broad measures of the Student's behavioral and mental health. The absence of a psychiatric evaluation does not make the RR inappropriate.

### **Summary and Legal Conclusions**

The RR of April 10, 2023, was appropriate under the IDEA's standards for reevaluations. As discussed above, the RR satisfies the IDEA's procedural requirements. The RR also satisfies the IDEA's substantive requirements.

Regarding the substantive requirements, the parties' strongest disagreement concerns the District's obligation to assess all suspected areas of disability. Discussed above, I find that the District evaluated all the areas of disability that it could have suspected at the time of the RR.

I accept the District's argument that it learned new information about the Student's suspected areas of disability during this due process hearing. While the RR was appropriate, the District cannot ignore what it has learned. If more or different testing is required, the District must propose a reevaluation. If no additional testing is required, the District must inform the Parent of that determination. The order below, however, is limited to resolution of the issue presented.

Nothing herein alters the Parent's right to obtain an IEE not at public expense, the District's obligation to consider any such IEE, or the Parent's right to disagree with any subsequent reevaluation conducted by the District.

**ORDER**

And now, December 22, 2023, it is hereby **ORDERED** as follows:

1. The Reevaluation Report of April 10, 2023, (P-8) is appropriate.
2. The District need not fund an Independent Educational Evaluation of the Student.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER