

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

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 30206-24-25

Child's Name:

R.S.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

Philadelphia City School District
440 N. Broad Street
Philadelphia, PA 19130

Counsel for LEA:

Shahirah Brown, Esq.
440 N. Broad Street
Philadelphia, PA 19130

Hearing Officer:

James Gerl, CHO

Date of Decision:

December 4, 2024

BACKGROUND

The parent requested an independent educational evaluation of the student at public expense. The school district declined the request and filed a due process complaint asserting that its March 5, 2024 evaluation of the student was appropriate.

I find in favor of the parent on the issue raised by the instant due process complaint.

PROCEDURAL HISTORY

The prehearing phase of this proceeding did not go smoothly. Prior to the hearing, the parties failed to submit a timely status report by the deadline established for the report, and no reasonable excuse for the failure was provided. In addition, the parties agreed to only four stipulations of fact. The small number of stipulations delayed and elongated the hearing and the decisional process. The parties did, however, participate in a prehearing conference prior to the hearing.

The hearing was completed in one virtual hearing session. School district exhibits S-1 through S-11 were admitted into evidence. Parent exhibits P-1, P-3, P-4, P-6, P-8, P-9, P-10, P-13, and P-15 through P-18 were admitted into evidence. Parent's exhibit P-14 was conditionally admitted as relevant to the Chromebook issue only. Relevance objections were sustained to Parent's exhibits P-2, P-5, P-7, P-8.1, P-11, and P-12. Four witnesses testified at the due process hearing.

The parent was not represented by a lawyer in this case.

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

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

ISSUE PRESENTED

At the prehearing conference, the parties identified and clarified the issue presented by the complaint. The parent attempted to raise other issues that were outside the scope of the due process complaint, but it was made clear that such issues would not be considered in this case. See, 34 C.F.R. § 300.511(d).

The sole issue presented by the due process complaint is the following:

Whether the school district has proven that its March 5, 2024 evaluation of the student was appropriate and that the parent is therefore not entitled to an independent educational evaluation at public expense?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. The student's date of birth is [redacted].
2. The student is presently enrolled in the school district.
3. In February 2023, the student's parent (mother) requested a [redacted] multidisciplinary evaluation, which included the Wechsler Intelligence Scale for Children – Fifth Edition, a cognitive assessment. The student was not found to be [redacted] and, therefore, was not eligible for a [redacted] placement and programming.
4. A report for an evaluation of the student was completed by the school district on March 5, 2024. It concluded that the student is eligible for special education services under the eligibility categories of emotional disturbance and specific learning disability.

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

5. The student is a charming child who [redacted]. (NT 220 – 222; S-4)

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

6. The student transferred from [redacted] to the school district to begin the student's [redacted] school year. The student attended the student's neighborhood school for [redacted] as the student resided with the student's mother at that time. The student engaged in self-injurious behaviors while at that school after a close friend also engaged in self-injurious behaviors. (NT 185 – 186, 190, 223 – 224)

7. The student began the student's [redacted] school year (2023 – 2024) at the student's current school, which is the neighborhood school where the student now resides with the student's father. (S-4; P-17; NT 190 – 191, 223 – 224)

8. The student struggled with problem behaviors during the 2023 – 2024 school year. (S-9; S-4; NT 194, 197- 198, 223 – 224, 46 - 47)

9. On January 3, 2024, the school district issued a Permission to Evaluate form because of parental concerns regarding academic and behavioral issues. (S-3; NT 41, 198 - 199)

10. The student's father signed and returned the Permission to Evaluate form on approximately January 18, 2024. The father stated on the form that the father had concerns regarding academic and behavioral issues. On two places on the form, the father also raised concerns about the student's [redacted] allergies, which the father stated might be affecting the student's attendance, punctuality and attentiveness. (S-3, S-4; P-17; NT 41, 100)

11. The March 5, 2024 evaluation was conducted by a school psychologist. The evaluator obtained parent and teacher input. The evaluator considered previous evaluations of the student, including an April 2023 [redacted] evaluation by the school district during which the student was administered the Wechsler Intelligence Scale for Children – Fifth Edition. On that assessment, the student received a full-scale IQ score of 94, which is in

the average range. The evaluator conducted a classroom observation of the student. The evaluator administered the Wechsler Individual Achievement Test, Fourth Edition and the Conners-4 to gather information concerning possible ADHD. The student's scores on the achievement test were in the average range or better in reading and writing, but the student's math skills were identified as an area of need. The behavior scales revealed that the student suffered from depression and anxiety and that the student had difficulty with emotional regulation. The evaluator determined that the student was eligible for special education and related services under the disability categories of emotional disturbance and a specific learning disability in math. (S-4; NT 41 – 63)

12. During the evaluation of the student, the student's teachers told the evaluator that the student can be lethargic and may sleep at times during class. (S-4; NT 49, 73-74)

13. During the evaluation process, the student told the evaluator that the student had been chronically fatigued, stating that the student had been tired for "about three years." (S-4; NT 50 – 51, 67 – 68, 102 – 103)

14. The student had twenty absences and seventeen tardies in the 2023-2024 school year as of March 5, 2024. The student had had sixty-three and a half absences and twenty-one tardies during the 2022-2023 school year. During the ninety days that the student was enrolled in the school district in the 2021-2022 school year, the student had twenty-two and a half absences and zero tardies. The student's absences and tardies are noted in the evaluation report. (S-4; NT 101)

15. Fatigue can be caused by allergies. Allergies can impact attentiveness and punctuality. (NT 103, 173-174)

16. The school psychologist who conducted the March 5, 2024 evaluation of the student did not take the student's allergies into account or analyze or assess the student's allergies in conducting the evaluation. (NT 99 - 100, 110 - 111)

17. On approximately November 1, 2023, the principal of the student's school confiscated the student's Chromebook after the student used extreme profane language during conversations on Discord that were not related to the student's schoolwork. (S-7, S-10; P-13; NT 177 - 178, 159 - 160, 213 - 214)

18. The student's teachers use the Chromebook in their classrooms infrequently. When Chromebooks are used, the teachers make other arrangements for students who do not have a working Chromebook available to them in class. Such students are provided an opportunity to complete their class work by alternative means without using the Chromebook. (NT 115 - 118, 138 - 139, 156 - 159)

19. The school psychologist who conducted the March 5, 2024 evaluation of the student determined by herself that the student was eligible for special education. The school psychologist's conclusion was a determination regarding eligibility and not a recommendation to a team. (NT 239)

20. The student's father requested an independent educational evaluation of the student at public expense in late August 2024. (NT 206, 209 - 210, 224 - 225)

21. Shortly after the request was made, the school district issued a Notice of Recommended Educational Placement denying the request for an independent educational evaluation at public expense. (NT 209-210)

CONCLUSIONS OF LAW

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

1. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); PP by Michael P and Rita P v. West Chester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either pay for the evaluation or else request a due process hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2); JH v West Chester Area School District, 121 LRP 13514 (SEA Penna 2019); 22 Pa. Code § 14-102(a)(2)(xxix).

2. In conducting an evaluation, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or related service provider, and on that basis determine whether any additional data are needed to determine whether the student is eligible, as well as to identify the child's special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist,

66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

3. The school district has not met its burden of proving that its March 5, 2024 evaluation was appropriate, and therefore, the parent is entitled to the requested independent educational evaluation at public expense.

DISCUSSION

Has the school district proven that the school district's March 5, 2024 evaluation of the student was appropriate and that the parent is therefore not entitled to an independent educational evaluation at public expense?

The school district contends that its evaluation was appropriate and that the request for an independent educational evaluation at public expense should be denied. In its closing argument, the school district cited no caselaw or legal authority other than the federal regulations in support of its argument.

The parent contends that the school district's evaluation was not sufficiently comprehensive and did not assess the student in all areas of suspected disability, and the parent therefore requests an independent educational evaluation at public expense. Specifically, the parent argues that the school district evaluation is not appropriate because it did not sufficiently analyze or consider the student's allergies.

On the parent information form that the father submitted with the permission to evaluate, the father alerted the evaluator that the student suffers from allergies that may affect the student's attendance, punctuality and attentiveness.

During the course of the evaluation process, the student's teachers informed the evaluator that the student was lethargic and falls asleep at times during class. The student indicated during the evaluation process that the student suffers from chronic fatigue, stating that the student had been "tired for three years." The school psychologist who conducted the evaluation for the school district conceded during her testimony that fatigue can be caused by allergies. The school psychologist did not conduct any analysis or assessment of the student's allergies as a part of the March 5, 2024 evaluation.

Because the March 5, 2024 evaluation by the school district did not duly consider or analyze the student's allergies, it is concluded that the evaluation was not comprehensive and that it did not assess the student in all areas of suspected disability. The school district has not proven that the March 5, 2024 evaluation was appropriate.

The copy of the March 5, 2024 evaluation report that was admitted into evidence was not complete. The school district was the filing party, but the 24-page evaluation report submitted into evidence by the school district was blank from pages 14 through 24. It is obviously difficult to rule upon the appropriateness of an evaluation when the party defending it fails to offer the complete evaluation report into evidence. It is not necessary, however, to reach the question of whether the school district's failure to submit a complete report into evidence in itself renders the evaluation inappropriate because the testimony at the hearing makes it clear that the evaluation was not comprehensive and that the student was not assessed in all areas of suspected disability. The conclusion that the school district's evaluation failed to adequately analyze and consider the student's allergies is supported by the testimony of the witnesses who testified at the hearing, as well as the portion

of the evaluation report that was submitted into evidence and the other record evidence.

It is also not necessary to reach the other arguments advanced by the parent because the school district has not proven that its evaluation properly considered and analyzed the student's allergies. Specifically, the parent's arguments regarding confiscation of the student's Chromebook and the asserted inappropriateness of the learning disability classification were not supported by the record evidence. The invalidity of these additional arguments, however, does not affect the conclusion that the school district evaluation did not duly consider and analyze the student's allergies and therefore was not appropriate.

The testimony of the student's father was more credible and persuasive than the testimony of the school district's school psychologist with regard to the allergy issue because of the demeanor of the witnesses, as well as the following factors: the school psychologist was somewhat evasive in answering questions about the student's allergies. Also, the school psychologist appears to misunderstand the importance of the role of the parent in the special education process. The school psychologist's testimony was that she alone determined the student's eligibility for special education. IDEA requires, however, that an eligibility decision be made by a team of qualified individuals, including the parent. 34 C.F.R. §§ 300.306(a)(1). Given this testimony, it is likely that the school psychologist also minimized the role of the parent in the evaluation process and didn't take seriously the parent's input regarding the student's allergies.

Because all relief under IDEA is equitable relief, it should be flexible, and because special education under IDEA works best with a collaborative process, Schafer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have

the option to agree to adjust or amend the relief awarded herein, so long as both parties and any counsel of record agree in writing.

It is concluded that the school district has not proven that its March 5, 2024 evaluation of the student was appropriate. Accordingly, the parent is entitled to an independent educational evaluation at public expense.

ORDER

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

1. The school district shall provide the independent educational evaluation requested by the parent at public expense. The independent educational evaluation shall be completed on or before February 4, 2025;

2. The parties may adjust or amend the terms of this Order by mutual written agreement signed by all parties and any counsel of record.

IT IS SO ORDERED.

ENTERED: December 4, 2024

James Gerl

James Gerl, CHO
Hearing Officer