

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code §16.63 regarding closed hearings.

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

Closed Hearing

ODR No. 30399-24-25

Child's Name:

H.D.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

01/31/2025

Introduction

This special education due process hearing concerns the educational program and placement of [Student] ("student"), a student who resides in the McKeesport Area School District ("District").¹ The parties disagree on whether the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education. Parents claim that the District has failed to identify the student for eligibility under IDEA.³

Specifically, the parents claim that the District's evaluation process and September 2023 evaluation report ("ER") were both flawed and that an independent educational evaluation, issued in June 2024, accurately identified the student as eligible under IDEA. The District counters that its evaluation process and September 2023 ER were both appropriate and that, ultimately, the District's conclusion is supported that the student does not qualify for special education services.

For the reasons set forth below, I find in favor of the parents.

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ [redacted].

Issue

Is the student eligible under IDEA for special education services?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. The student received early intervention services and attended a private [redacted]. The student has attended District schools since the student's [redacted] year, the 2021-2022 school year. (Notes of Testimony ["NT"] at 148-193).
2. In July 2021, a private neuropsychological evaluation diagnosed the student with attention deficit hyperactivity disorder ("ADHD") and unspecified anxiety disorder. (School District Exhibit ["S"]-3).
3. The July 2021 evaluation included assessment for autism. The evaluator found that the results of the assessment, provided by the student's mother, needed to be viewed with caution because of rater-reliability. The evaluator concluded that the student did not qualify for a diagnosis of autism. (S-3).

4. The July 2021 evaluation recognized that the student's cognitive assessment fell in the superior range, with a full-scale IQ of 126. (S-3).
5. The July 2021 evaluation did not include any input or assessment results from early intervention providers or kindergarten educators. (S-3).

2021-2022 / [redacted]

6. The student began [redacted] as a regular education student at the District. (NT at 148-193, 198-242).
7. In August 2021, as a result of the ADHD and anxiety diagnoses, the District proposed a Section 504 plan with regular education classroom accommodations, and interventions to address classroom attention and focus, and including access to a school counselor. (S-13 at pages 6-7).
8. The student's mother attended the Section 504 meeting, but the Section 504 agreement was never approved. (S-13 at pages 6-7, S-18 at pages 1-3).
9. In September and October 2021, the student's [redacted] teacher reported slightly disruptive behaviors to parents, including laying-about from being overtired, inattention, lack of focus, and occasional

conflict with peers. The District performed two classroom observations regarding task engagement. (Parents Exhibit ["P"]-11; S-13 at page 8).

10. Over the remainder of the [redacted] year, the student engaged in similar intermittent behavior (overtiredness, lack of focus, occasional conflicts), although the teacher reported chewing behavior, where the student would chew excessively on masks or pencils. (P-11).

11. In January 2022, parents requested that the student's Section 504 team meet to formalize the student's Section 504 plan. (S-18 at page 1).

12. In April 2022, the parents exchanged emails with school personnel about continuing certain strategies, including various approaches to utilize oral devices to safely address the student's chewing behavior. (S-18 at pages 5-6).

2022-2023 / [redacted]

13. Over the period October 2022 – May 2023, the student attended a weekly social skills group for most of those weeks. (P-10).

14. In December 2022, in the midst of the student's [redacted] year, the student exhibited increased frustration, aggression toward siblings,

and low-level property destruction. A change in medication appeared to reduce these behaviors. (P-2; S-13 at pages 1-4).

15. In January 2023, the student inadvertently bumped the back of the head on a wall in school. After the incident, the student experienced concussion symptoms. (P-1).

16. In early March 2023, the student was seen in a follow-up appointment for concussion symptoms. As part of that follow-up, the family noted an increase in anxiety with the evaluator characterizing the result as "mild behavioral dysregulation". (P-1 generally and at page 3).

17. In the March 2023 concussion follow-up, the evaluator recommended that the student see a psychiatrist given the impact of the student's anxiety on the student's ADHD. (P-1).

18. Approximately ten days after the concussion follow-up, in mid-March 2023, the student was involved in an incident in school where the student kept referring to a [redacted]. (P-2; S-13 at pages 1-4).

19. The student was seen at a psychiatric hospital where the parents reported recent intrusive thoughts involving death, both of the student and family members. (P-2; S-13 at pages 1-4; S-18 at page 8).

20. The student denied to the March 2023 evaluator of the [redacted] incident (a professional different from the March 2023 concussion evaluation) any suicidal ideation, but the student indicated racing and intrusive thoughts, which the student described as distressing. (P-2; S-13 at pages 1-4).
21. The evaluator of the [redacted] incident discharged the student as medically stable. (P-2; S-13 at pages 1-4).
22. Parents emailed educators at the District about the results of the medical evaluations for the March incidents. (P-12 at page 1).
23. In April 2023, as a result of behavioral concerns, the parents requested an evaluation of the student, including a functional behavior assessment. (P-12 at page 2).
24. In May 2023, the District requested permission to evaluate the student. (P-6).

2023-2024 / [redacted]

25. In July 2023, the parents obtained, and provided to the District, a one-page diagnostic letter that confirmed the prior ADHD and anxiety diagnoses. The letter indicated a provisional diagnosis of autism. (P-12 at pages 3-4; S-13 at page 9).

26. In late August 2023, the student was involved in an altercation with a classmate on the bus. (P-13 at page 2).

27. In mid-September 2023, the District issued its ER. (P-4).

September 2023 ER

28. The September 2023 ER indicated that parents requested the evaluation based on social and behavioral concerns. (P-4).

29. The September 2023 ER contained parental input. (P-4).

30. The September 2023 ER included the results of the July 2021 neuropsychological evaluation and the July 2023 diagnostic letter. (P-4, P-12 at pages 3-4; S-3, S-13 at page 9).

31. The September 2023 ER included teacher input. The input detailed the student's 504 plan, regular education intervention for behavior concerns, and the weekly social skills sessions. (P-4).

32. Teacher input indicated the student's academic strength. Grades information, curriculum-based assessment, cognitive testing, and achievement testing in the ER all supported the student outstanding academic performance. (P-4).

33. Teacher input indicated behavior concerns with distraction, difficulty working with others, and withdrawal. The teacher also noted

the effectiveness of fidget objects and gum-chewing for sensory needs (especially gum-chewing). (P-4).

34. Teacher input noted that the student preferred to work alone; the teacher sought to place the student in positions where collaboration or group work was necessary. However, although not part of the teacher's input (but from the same form where the teacher input was reported), the teacher indicated that the student has many friends and that other students wish to work with him in small groups. (P-4; S-19).

35. The September 2023 ER included three disciplinary incidents from the [redacted] year (2021-2022), all involving altercations with peers ([redacted] and two physical altercations). There were no disciplinary incidents noted from the [redacted] year (2022-2023). (P-4).

36. The September 2023 ER included the regular interventions provided to the student through the student's Section 504 plan. (P-4).

37. The September 2023 ER included information related to the student's [redacted] programming. (P-4).

38. The September 2023 ER contained no formalized assessment of social, emotional, or behavioral needs. (P-4).

39. The September 2023 ER contained a formalized autism assessment, completed by the student's father and the student's teacher. On the autism assessment, the father rated the student as very-elevated in the unusual behaviors, self-regulation, adult socialization, behavioral rigidity, and sensory sensitivity scales. The total score and alignment with psychological-diagnosis criteria for autism were both rated in the very-elevated range. (P-4).
40. On the autism assessment, the teacher rated the student as average in every scale except for elevated ratings in the stereotypy and sensory sensitivity scales. The total score and alignment with psychological-diagnosis criteria for autism were both rated in the average range. (P-4).
41. The ratings of the student's father were uniformly higher across every scale (with only one scale—stereotypy—in the average range) than the ratings of the student's teacher. (P-4).
42. The September 2023 ER contained the results of formalized assessments of anxiety and anger through student self-report. The student scored in the average range on both assessments. (P-4, P-19).
43. The September 2023 ER contained the results of formalized assessments of social perception and attention, with a view toward understanding potential autism. The student scored at expected levels,

or above expected levels, on all assessments (except for narrative memory recognition where the student performed in the borderline range). (P-4, P-20).

44. The September 2023 ER contained a functional behavior assessment, which is accurately described an amalgam of two processes, one based on generalized input from the student's teacher and one based on three observations by a school counselor. (P-4).
45. In its conclusions, the September 2023 ER noted the student's formal diagnoses and the assessment data for potential autism. The evaluator considered the student's qualification for special education as a student with emotional disturbance, an other health impairment, and/or autism. The student was found to have a disability but not to require special education. (P-4).
46. The September 2023 ER concluded that the student should continue to receive [redacted] programming and regular education supports through a Section 504 plan. (P-4).
47. In October 2023, after the issuance of the September 2023 ER, parents communicated to an advocate their concerns with the ER. The advocate attended the multidisciplinary team ("MDT") meeting where the September 2023 ER was considered by the MDT. (P-14 at pages 1-2).

48. Shortly after communicating concerns with the advocate, the parents requested an independent educational evaluation ("IEE"). (P-5).
49. In January 2024, the student's Section 504 plan was revised. (P-6).
50. The arrangements for the IEE were not undertaken by the District until March 2024. (P-16 at pages 10-11).
51. The arrangements for the IEE process included the participation of the private evaluator in a videoconference meeting following the issuance of the IEE. (P-16 at page 9).
52. In June 2024, the independent evaluator issued the IEE. (P-7).

June 2024 IEE

53. The June 2024 IEE included parental input gathered anew by the independent evaluator. (P-7).
54. The independent evaluator felt it was important to note that the student's mother was part of a [redacted] program for early intervention services with specializations in autism and behavior analysis, and the student's father is a [redacted] in a special education setting. (P-7).

55. Parents' concerns in the June 2024 IEE included physical and verbal aggression, oral stimulation/mouthing of objects, refusing adult directives, impulsivity, school refusal, trichotillomania, lying, stealing, inappropriate behavior, property destruction, and emotional regulation. (P-7).
56. The June 2024 IEE included behavioral observations of the student in multiple school settings. (P-7).
57. The June 2024 IEE contained input from the student's classroom teacher indicating that the only behavioral concern was the student's habit of calling out answers when unprompted. The teacher did not list any social concerns. (P-7).⁴
58. The classroom teacher characterized the student's relationships with peers and adults as 'good' on a scale of good, fair, or poor. (P-7).
59. The only regular intervention the classroom teacher indicated was cuing for the student to raise a hand to be called on, rather than calling out answers. (P-7).

⁴ The teacher who provided input for the District's September 2023 ER was the student's [redacted] teacher since she had more experience with the student because the ER was finalized and issued only a few weeks into the [redacted] year. The teacher who provided input for the June 2024 IEE was the student's [redacted] teacher since, at the point that the IEE was finalized and issued, she had almost an entire school year working with the student. (P-4, P-7).

60. The June 2024 IEE contained input from the student's [redacted] teacher indicating that she had no behavioral or social concerns. (P-7).
61. The [redacted] teacher characterized the student's relationships with peers and adults as 'good' on a scale of good, fair, or poor. (P-7).
62. Like the September 2023 ER, the teacher input in the June 2024 IEE indicated the student's academic strength. The student's grades information, curriculum-based assessment, cognitive testing, and achievement testing in the IEE all continued to support an understanding of the student's outstanding academic performance. (P-7).⁵
63. The June 2024 IEE included the provisions of the student's Section 504 and [redacted] programming. (P-7).
64. During administration of the cognitive assessment for the June 2024 IEE, the student exhibited certain notable behaviors (anxiety as the complexity of tasks increased, avoidance where task-failure might occur, some distraction, lack of eye contact, and elevated excitement with task-completion). The evaluator indicated that the student gave excellent effort and no behavior invalidated testing results. (P-7).

⁵ The independent evaluator included cognitive testing results from the September 2023 ER and performed updated cognitive testing. The evaluator did not perform updated achievement testing. (P-4, P-7).

65. The June 2024 IEE contained the results of formalized autism assessment provided to parents, the classroom teacher, and the [redacted] teacher. The instrument utilized by the independent evaluator was the same instrument utilized by the District evaluator in the September 2023 ER. (P-7).
66. The results of the autism assessment mirror those of the results reported in the September 2023 ER. The parents' scales were all reported in the elevated or very-elevated range; both teachers' scales were almost uniformly in the average range, although the classroom teacher rated the student as slightly-elevated in stereotypy and sensory sensitivity scales and the [redacted] teacher rated the student as slightly-elevated in the peer socialization and atypical language scales. (P-7).
67. The June 2024 IEE contained the results of a comprehensive behavior assessment from the parents and the [redacted] teacher; the classroom teacher did not return the behavior assessment. (P-7).
68. The results of the behavior assessment align with the skew of the results in the autism assessment: Parents ratings on the behavior ratings are completely divergent from the ratings of the [redacted] teacher. (P-7).

69. On the behavior assessment in the June 2024 IEE, the parents rated the student as very-elevated in twenty of the twenty-four scales. The parents rated the student as elevated in the separation-fears scale and as average in the three academic-problems scales (academic difficulties, language, and math). (P-7).
70. On the behavior assessment in the June 2024 IEE, the student's [redacted] teacher rated the student as average across twenty-three of the scales and rated the student as above-average in the manic episode scale. (P-7).
71. In the June 2024 IEE, the evaluator concluded as follows: "(T)he information gathered on (the student) indicates (the student) meets diagnostic criteria as a student with an Autism Spectrum Disorder. (The student) is demonstrating both persistent deficits in social communication/social interaction and restricted/repetitive patterns of behavior/interests." (P-7 at page 38).
72. In the June 2024 IEE, the evaluator noted that the student's high IQ and excellent academic performance masks the need for autism support, or diminishes others' view of the need for such support. (P-7).
73. In the June 2024 IEE, hallmarks of autism that the evaluator identified from observations in the testing and educational

environment include rigidity in handling changed expectations, inappropriate social interaction/communication, restricted/repetitive behavior and interests, sensory stimulation (especially mouthing object, and slight stimming or body activity with elevated interest). (P-7).

74. In the June 2024 IEE, the evaluator credits parents' autism and behavior assessment results while discounting the teachers' results without a detailed balancing or triangulation of consistently disparate views of the student's behaviors. (P-7).

75. In the June 2024 IEE, the evaluator dismisses the longstanding ADHD and anxiety diagnoses as the basis for educational services and folds all of the student's needs into an identification of the student as a student with autism. (P-7).

76. The evaluator made recommendations in the June 2024 IEE. These recommendations are largely regular education interventions (many of which have been part of the student's Section 504 plan). There are a number of recommendations that are not disability-related. The recommendations in the nature of specially education or related services to address the student's needs related to autism, ADHD, and/or anxiety include occupational therapy services (for

sensory needs) and specially-designed instruction in social skills (including increased levels of servicing in social skills). (P-7).

77. In June 2024, after the issuance of the June 2024 IEE, the independent evaluator twice emailed a District administrator about scheduling the videoconference meeting. The administrator did not respond. (P-16 at page 2).

78. Over June – September 2024, the independent evaluator continued to communicate with the District about final payment of the invoice for the IEE without success or response until mid-September. (P-16 at pages 1-3).

2024-2025 / [redacted]

79. In mid-October 2024, parents filed the special education due process complaint that led to these proceedings. Later that month, the District filed a response to the complaint. (P-8, P-9).⁶

80. As of the filing date of the complaint, the District had not convened a meeting to consider the IEE nor had it revised the

⁶ The parents filed a wide-ranging complaint, centered on the eligibility issue but with claims based thereon for denial-of-FAPE for lack of programming and, consequently, a claim for compensatory education. To handle the eligibility claim in one evidentiary session to give the parties clarity on that issue, all other aspects of parents' claims, including the compensatory education claim, were bifurcated into a separate process which unfolds at a different ODR file number. Additionally, the hearing session, originally scheduled for November 22nd, was rescheduled at the joint request of the parties to allow for a settlement conference.

September 2023 ER to include the results of the IEE. In November 2024, the MDT met to consider the IEE. (P-7; NT at 198-242).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

Legal Framework

Child-Find & Evaluation. A determination of eligibility under IDEA, and identifying a student's individual need for special education, is the initial step in the provision of services under IDEA. A local education agency's duty to locate, evaluate, and identify students who might require special education is commonly referred to as an agency's "child find" obligation. (34 C.F.R. §300.111; 22 PA Code §14.121). In meeting its child-find obligation, once a school district receives parental consent, it initiates an evaluation process to see whether or not the student qualifies for special education. (34 C.F.R. §§300.300-300.311; 22 PA Code §14.123). If the student qualifies for

special education through the evaluation process, the student receives an individualized education program (“IEP”) to meet the goal-driven, individualized services required as a result of the needs related to the student’s disabilities.

Qualifying for eligibility under IDEA has two distinct aspects: (1) A student must have one or more of the qualifying disability profiles under IDEA/Chapter 14 and (2) as a result of that disability, the student requires specially-designed instruction (i.e., special education). (34 C.F.R. §§300.8, 300.39; 22 PA Code §14.101(a)(2)(ii, viii)). A student without a qualifying disability is not eligible for services under IDEA. A student with a qualifying disability who does not require specially-designed instruction as a result of the disability is not eligible for services under IDEA. Both aspects of a student’s needs must be present.

As for a school district evaluation process, an evaluation must “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” an understanding of the student’s potential disability and, if eligible, the content of the student’s IEP. (34 C.F.R. 300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)). Furthermore, the school district may not use “any single measure or assessment as the sole criterion for...determining an

appropriate educational program for the child". (34 C.F.R. 300.304(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Discussion

Here, the record taken as a whole supports a conclusion that the student should be identified as a student with autism and with other health impairments (on the basis of the student's ADHD and anxiety diagnoses). Therefore, the District failed to accurately identify the student's disability profile. As will be set forth below, autism should be identified as the student's primary disability; the other health impairment (based on ADHD and anxiety) should be identified as the student's secondary disability.

However, to be eligible for services under IDEA, the student must require specially-designed instruction as a result of those disabilities. Ultimately, the conclusion is that the student requires special education is supported on this record; but the District's initial conclusion—that the student did not require special education—is not wildly off the mark. Whether the student requires special education as a result of the student's autism, ADHD, and anxiety is a much closer question than the parents would argue. In that way, on this record, each party mis-interprets (or, perhaps better said, over-invests) the separate prongs of the eligibility question: The District overlooked the student's autism, and the parents overestimate the degree to which the student requires special education.

There is no doubt that the student's [redacted] and excellent academic performance moot the need for special education support in academic areas. But there are social and behavioral needs—primarily social skills and sensory processing—where specially-designed instruction is necessary. Below, the student's IEP team will be ordered to meet to design an IEP to meet the student's needs.

Those needs, however, do not seem to be deep. This is not to minimize the needs that the student exhibits, especially sensory needs related to oral stimulation/mouthing of object and social needs related to social cuing and the pragmatics of conversation/social communication. But on this record taken as a whole, the student appears to need surgical interventions targeted to very explicit, identifiable needs rather than broad-ranging or intensive interventions because the student is floundering as a result of those needs.

Here, too, it must be pointed out that the June 2024 IEE, in the view of this hearing officer, is not a very strong document for educational planning purposes. The reason for this rests primarily on the lack of a nuanced understanding of very stark data, both the historical data in this record and the data developed as part of the IEE. The data in the IEE is very consistent with the historical data—the student exhibits very specific sensory and social needs where parents view those needs, and experience the student's behavior, in dramatically different ways than District educators

who have worked with the student over the three school years on this record. Many of the things parents see and experience are simply not on this record in the educational environment; to the maximal extent the parents share their views and assess the student on testing instruments, one would expect to see something in the educational environment other than the indications of the educators from [redacted] grades. It is a remarkably consistent presentation in both environments: At home, the student's behavior in the home environment seems to be far more problematic than what is exhibited in the school environment.

In this regard, the day-long observation undertaken by a behavioralist as part of the IEE supports a view of the student which conforms more closely to the experience and assessments shared by educators than what parents share. This is not to choose sides—the student may well present differently in the home and school environments and, ultimately, one might not be surprised that the day-to-day experience with the student is somewhere in the middle: not exhibiting needs for support as significant as the parents' data would support but exhibiting needs for support that are more necessary than the educators' data would support.

The weight accorded to the IEE must be reduced, however, because the evaluator seemingly takes no account of this divergence and does not work through how all of the views of the student over the years coalesces in a much more layered presentation.

In the June 2024 IEE, as the evaluator moves to conclusions, he writes: “Currently, (the student’s) high level of intelligence is helping to mask some of the overt features of (Autism Spectrum Disorder), which can be seen in both (the classroom teacher’s) and ([redacted] teacher’s) ratings....” (P-7 at page 39). The first part of this statement is absolutely accurate—the student’s outstanding intellectual and academic functioning almost certainly informs how anyone, especially educators, might view the student in the acts of teaching and learning. But the second part of this statement is unsupportable—the teacher’s autism and behavioral ratings are evidence of ‘masking’? Indeed, those ratings are remarkably consistent, and comport with those teachers’ anecdotal reports, and comport with data over prior school years, and largely comport with the in-person observations undertaken as part of the IEE. At a point where the evaluator might be expected to say, in effect, ‘there are some very disparate views of the student here, in the moment and over time, which we need to unpack’, the evaluator says, in effect, ‘the views of the teachers are understandably less reliable’. This is not sound analysis, especially when viewing the record as a whole (including educational and evaluation documents which the evaluator had as part of his evaluation process).

Accordingly, the order below will find that the student is eligible under IDEA as a student with autism and other health impairments (ADHD,

anxiety). But it is an explicit finding that this determination is made on the record as whole and not simply as a result of the June 2024 IEE.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student should have been identified by the McKeesport Area School District as a student with the primary disability of autism. The student should be identified as a student with the secondary disability of other health impairments as a result of the student's ADHD and anxiety diagnoses. Both disability identifications require that the student receive specially-designed instruction and/or related services to address needs related to these disabilities.

As soon as practicable, the student's most recent school district evaluation report, or re-evaluation report, shall be revised to reflect this. The most recent evaluation report, or re-evaluation report, shall also indicate that the identification statuses of the student are a result of the determinations in this decision.

Forthwith, but not later than Monday, February 10, 2025, the student's IEP team shall meet to design an IEP for the student to address the student's needs in the school environment related to autism, ADHD, and anxiety.

A separate special education due process proceeding is unfolding for the consideration of other issues presented in the parents' complaint. Whether the school district's initial eligibility determination amounts to a denial of a free appropriate public education, and if so whether any remedy is due, will be issues taken up through the affiliated due process proceeding.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

01/31/2025