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Pennsylvania

Special Education Hearing Officer

FINAL DECISION AND ORDER

Student's Name: J.W.

Date of Birth: [redacted]

ODR No. 17641-1516KE

CLOSED HEARING

Parties to the Hearing:

Parent[s]

Waynesboro Area School District
210 Clayton Ave.
Waynesboro, PA 17268

Representative:

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Carlisle, PA 17013

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Dates of Hearing: 05/19/2016, 06/03/2016

Record Closed: 06/03/2016

Date of Decision: 06/20/2016

Hearing Officer: Brian Jason Ford, JD, CHO

Introduction and Procedural History

This special education due process hearing was requested by the District against the Parents, upon rejecting a parental request for an independent educational evaluation (IEE) at public expense.¹ Special education laws required the District to request this hearing to defend its most recent educational reevaluation of the Student upon rejecting the Parents' request. For reasons discussed below, I find that the District's reevaluation complied with all legal requirements and, therefore, is appropriate. I will not order the District to fund an IEE for this reason.

The District requested this hearing on April 20, 2016. The hearing was initially scheduled for May 4, 2016. After various scheduling motions, the hearing convened over two, full day sessions on May 19 and June 3, 2016. The initial decision due date of June 4, 2016 was extended to June 20 upon the parties' motion.

The parties submitted their exhibits using ODR's pilot program for submitting evidence electronically. I thank both parties for their participation in the pilot program.

Issue

A single issue was presented in this due process hearing: Was the District's reevaluation appropriate and, if not, are the Parents entitled to an IEE at public expense?

Findings of Fact

All evidence submitted in this hearing was carefully considered, as was the entirety of the transcript. Not every entered document is referenced below, as I make findings of fact only as necessary to resolve the issue presented. I find as follows:

1. It is not disputed that the Student is diabetic.
2. It is not disputed that the Student has just completed 6th grade (2015-16 school year).
3. It is not disputed that, historically, the Student has been identified as a student with a disability, under the IDEA eligibility category of Speech and Language Impairment.
4. It is not disputed that the Student has received special education and related services in accordance with an Individualized Education Program (IEP) since 4th grade (2013-14 school year).
5. On December 22, 2015, the District sought the Parents' consent to reevaluate the Student. S-3. According to the evaluation consent form, the evaluation was prompted by the Parents' expression of concern about the Student's reading and speech/language skills. *Id.* During meetings with the District leading up to the reevaluation, the Parents also expressed concerns about anxiety and ADHD. The Student's mother also testified that the Student has a history of depression and, at least once, expressed suicidal ideation.² It is not clear,

¹ With the exception of the cover page of this decision, identifying information is omitted to the greatest extent possible.

² Neither party used the term "suicidal ideation" and it does not appear in any of the documents. I use that term to convey the fact without disclosing any additional information.

however, if the Parents shared this information with the District prior to March 2, 2016 (the day of a team meeting to discuss the Reevaluation Report, discussed below). See, e.g. NT 445-446.³

6. On January 6, 2016, during the meeting, the District issued an invitation to an IEP team meeting using an Invitation to Participate form. The stated purpose of the meeting was to “Develop an IEP, if your child is eligible, or continues to be eligible, for special education and related services.” The Parents signed the form on January 6, 2016, during the meeting. S-7.
7. An IEP dated January 6, 2016 was presented at the meeting. That IEP calls for an itinerant level of Speech and Language Support. S-6.
8. The 2016 IEP included a statement of the Student’s present educational levels, including updated information from 6th grade teachers. S-6.
9. The 2016 IEP included two goals: The first goal called for the Student to improve pragmatic language skills by increasing use of appropriate eye contact, volume, inflection, and manners. The second goal called for the Student to improve expressive language skills by decreasing the use of “filler” words (um, uh, like, so). S-6.
10. The 2016 IEP included a modest amount of modifications and specially designed instruction, most of which called for prompting the Student to exhibit the skills called for in the goals, and encouraging the Student to self-monitor use of those same skills. S-6.
11. The 2016 IEP also includes nursing as a related service to help monitor the Student’s blood sugar, and extra time for work and tests if the Student misses school as a result of diabetes (specifically, “if [Student] misses instructional time due to high or low blood sugar.”). S-6.
12. On February 25, 2016, the District invited the Parent to a meeting using an Invitation Form. The meeting was scheduled for March 2, 2016. The Stated purpose of the meeting was to “Discuss the results of the psychological evaluation.” The form indicates that a draft copy of the evaluation was attached. The Parents signed the form on February 27, indicating that they would participate. The District received the form back from the Parents on March 2, 2016. S-5.
13. The reference to a “psychological evaluation” on the invitation is to a reevaluation report (RR) of March 2, 2016. S-2.
14. The dates printed on the RR are confusing out of context. The date of the report is March 2, 2016. The RR states that a copy was provided to the Parents on February 25, 2016. This reflects the draft copy that was included with the February 25, 2016 Invitation Form. There were no changes to the RR between the February draft and the March presentation. S-2, NT *passim*.
15. On March 2, 2016, the Parents and the District met. The District issued the RR. S-2.

³ The Parent’s testimony does not pinpoint this period of time, but it appears to be shortly after the initial diabetes diagnosis, several years ago. Nothing in the record suggests that the Student is currently depressed or suicidal.

16. The 2016 RR includes a review of prior evaluations, including a private evaluation from 2011, and an evaluation conducted by the District in 2014. S-2
17. The District obtained parental input for the 2016 RR. Input was solicited in several ways. The Parents completed behavioral rating scales, the results of which are reported in the RR. Also, District personnel called the Parents by phone on or about January 11, 2016, soliciting input from the Student's mother. S-2 at 4.
18. The District has a standard parental input form, but did not use that form to solicit parental input for the 2016 RR. Instead, the District called the Parents to get the same type of information that the form solicits. S-2 at 4, H-1, S-19, NT at 40, 352-355.
19. There is some ambiguity in the record as to whether the Parents knew that the purpose of the phone call was to provide input for the 2016 RR. The record as a whole also supports a conclusion that District personnel did not follow the District's parental input form verbatim. NT *passim*. See, e.g. NT at 446.
20. Information provided by the Student's mother during the phone call was written into the 2016 RR. While information attributed to the Student's mother appears in quotation marks, there is insufficient evidence for me to conclude that the mother's comments are verbatim quotes. However, I find that the parental input drafted into the 2016 RR accurately captures the information that the Student's mother shared during the January 2016 phone call. S-2 at 4. That information includes (all from S-2 at 4):
 - The Student is shy at times.
 - The Student is more comfortable with other children than with adults.
 - The Student enjoys socializing with other children, which also gives the Student an opportunity to practice communication skills.
 - The Student has difficulty understanding humor and idioms. This occasionally results in the Student incorrectly perceiving a joking peer as being mean.
 - The Student has difficulty maintaining appropriate eye contact.
 - The Student does not use appropriate grammar.
 - The Student sometimes requires repetition or rephrasing of simple questions, and sometimes "appears to use words/phrases before answering as if 'buying time' to process the question."
21. The Student's mother testified that when the 2016 RR was presented, there was "so much" information that the Parents would have included if given the opportunity. NT at 445. This prompted the Parent to share information about the Student's suicidal ideation, which occurred sometime between January and June of 2015. S-2 at 4.
22. The Parents' feeling that they did not fully contribute information during the 2016 RR's development also prompted the Parents to obtain a letter from a private counselor, which

states the counselor's impressions of the Student's needs. The letter is dated May 9, 2016. It is not clear exactly when the letter was shared with the District, but it was shared sometime shortly thereafter. P-9, NT at 117.

23. The letter from the private counselor mostly reiterates concerns stated in the Parental Input section of the 2016 RR, placing an emphasis on anxiety and peer relationships. In a single sentence, the letter says that the Student displayed "a consistent pattern of struggling with reading over at least the last 2 1/2 years..." The private counselor does not state any basis for that conclusion.⁴
24. Sometime after the March 2, 2016 meeting, the RR was revised to include information shared by the Parents during the meeting. S-2 at 4. The record does not reveal when the edits were made or when the revised report was presented to the Parents. However, there is no dispute that the report at S-2, which includes the revisions, is the report in question in this matter. NT *passim*.⁵
25. The revisions reference the Parents' comments during the March 2, 2016 meeting concerning a history of counseling and prior suicidal ideation. S-2 at 4.
26. The 2016 RR also includes information from the Parents about the Student's anxiety over the upcoming transition to middle school. The Parents linked that anxiety to a particular worry about how other children will perceive the Student's diabetes. S-2. It is not clear if these remarks were in the report presented on March 2, 2016, or if they were added during subsequent revisions.
27. The 2016 RR does not explicitly reference the note from the private counselor. S-2.
28. The 2016 RR includes information about the Student's attendance. S-2 at 5.
29. The 2016 RR includes information about the Student's final grades from 5th grade (2014-15 school year) and grades from the first and second marking periods from 6th grade (2015-16 school year), all of which were in the 80 to 90 range, with two exceptions (75 in Science and 72 in Social Studies in the 2nd marking period of the 2015-16 school year). S-2 at 5.
30. The 2016 RR includes information about the Student's performance on 3rd, 4th, and 5th grade PSSAs. In 5th grade, the Student scored in the "basic" range in both Reading and Math. S-2 at 5.
31. The 2016 RR includes information about the Student's performance on Study Island, which is a computer-based benchmarking program, aligned with PSSA standards. The most recent Study Island scores reported are from October of 2015. At that time, the Student scored in the "below basic" range in English and Language Arts (ELA) and Math. S-2 at 5.

⁴ The contents of the counselor's letter is hearsay. Hearsay is admissible in special education due process hearings, but cannot form the basis of this decision. I do not accept the letter as proof of any reading problem. Rather, the letter is evidence of information that was provided to the District around the time of the 2016 RR.

⁵ The 2016 RR does not explicitly say that it is a revised document. Rather, it is clear that information shared during the March 2, 2016 meeting was ultimately drafted into the 2016 RR, most likely sometime shortly after the meeting. Again, there is no question that the document at S-2 is the document that both parties point to as the RR in question in this case.

32. The 2016 RR includes information about the Student's performance on the STAR, which is a computer-based benchmarking program for reading and math that uses its own benchmarks as opposed to PSSA standards. The most recent STAR testing reported is from December 2015. At that time, the Student was in the "basic" range in Reading and the "advanced" range in Math. S-2 at 5-6.
33. The 2016 RR includes information from Fountas and Pinnell, which is a running record reading assessment, conducted in "Winter '15." A running record reading assessment calls for the Student to read passages of increasing difficulty and answer questions about those passages. According to that assessment, the Student tested in the "intensive" range at an end of 5th grade level. This means that in the winter of 4th grade, the reading passages became too difficult for the Student at an end of 5th grade level. S-2 at 6.
34. The 2016 RR notes that the District has adopted a Multi-Tiered System of Supports (MTSS) for reading. This means that the District provides different levels of reading intervention outside of the special education framework. At the time of the RR, the Student was in level 1, which is the least supportive level. Generally, students who do not have reading problems are placed in level 1. S-2, NT at 46.
35. The 2016 RR includes input from the Student's 6th grade teachers, but that input was provided as a single statement, synthesizing input from each teacher into a single aggregate. Therefore, it is not possible to know what information was contributed by each teacher, or whether different teachers reported differently. S-2 at 6. This is the opposite of how teacher input from specialists (PE, Media, Music, and Art) was reported, although information from specialists was minimal. S-2 at 6.
36. The 2016 RR includes input from the Student's ELA teacher and Speech/Language (S/L) Therapist regarding the Student's needs and presentation in the domain of Speech/Language. S-2 at 6-7. The ELA teacher reported that the Student participates in class discussions, small group work, and activities with partners, and uses appropriate grammar. The ELA teacher reported no articulation difficulties. The S/L Therapist reported that the Student was achieving at the 90% level across all targeted domains during twice-weekly, 25 minute, small group S/T sessions. S-2 at 7.
37. As part of the reevaluation, the District administered the Comprehensive Test of Spoken Language (CASL). The CASL is a standardized, normative assessment of S/L abilities. The 2016 RR reports the Student's performance on the CASL, and the Student's performance on a prior administration of the CASL in 2014. The Student scored in the "average" range in all S/L domains assessed by the CASL. This means that the Student's scores were less than one standard deviation from the 50th percentile of the normative sample (i.e., there is no statistical difference between the Student's scores and an average person of the Student's same age). Further, across all previously assessed domains, the Student's standard scores improved between administrations of the CASL. S-2 at 7-9.
38. As part of the reevaluation, the District administered the Test of Problem Solving, 3rd Edition (TOPS). According to test publishers, the TOPS is a reliable measure of how a student's language skills affect the student's "ability to think, reason, problem solve, infer, classify, associate, predict, determine causes, sequence, and understand directions." S-3 at 9. The Student's performance on the TOPS was reported in the 2016 RR, along with the Student's performance on a prior administration in 2014. The form of the TOPS changed slightly in the intervening years, but the assessment still measures the same thing and results can be compared. S-2 at 9-10.

39. The Student's scores went from "below average" in five domains and "average" in two domains to "high average" in five domains, "above average" in one domain, and "average" in two domains. S-2 at 10.⁶ Standard scores improved across the board. Taken as a whole, the Student's performance on the TOPS during the 2016 administration was as good as or statistically better than average students of the same age. This indicates that the Student's language skills are not currently affecting the Student's problem solving abilities. S-2 at 10.
40. As part of the reevaluation, the Parents completed the Children's Communication Checklist, 2nd edition (CCC-2). Based on the Parents' ratings, the Student rated in the average range on measures of the Student's general communication abilities and social interaction skills. S-2 at 10. A version of the same assessment was given to the Student's teachers, who rated the Student in the average range on measures of the Student's classroom, social, and personal interactions. S-2 at 10-11.
41. As part of the reevaluation, the District administered The Listening Test, which measured the Student's ability to "attend to, process, and respond to what [the Student] hears." S-2 at 11. The Student scored in the "high average" or "above average" range in all domains.⁷ *Id.*
42. As part of the reevaluation, the District administered the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V). Scores are reported and analyzed in the 2016 RR. The WISC-V is a comprehensive, highly regarded, standardized, nationally normed intelligence test. S-2 at 13-14. The Student's performance on the WISC-V resulted in a Full Scale IQ score of 99, with a confidence interval of 90%, meaning that the Student's IQ falls between 94 and 104, accounting for statistical error. *Id.* On WISC-V sub-domains, the Student tested in the average range for Verbal Comprehension (95), Visual Spatial (94), Fluid Reasoning (97), and Working Memory (100). The Student tested in the high average range for Processing Speed (114). Taken together, this means that the Student has average to high average cognitive skills, with no statistically significant differences between subdomains. *Id.*
43. As part of the reevaluation, the District administered the Wechsler Individual Achievement Test, 3rd Edition (WIAT-III). Scores are reported and analyzed in the 2016 RR. S-2 at 15-16. The WIAT-III is a comprehensive, highly regarded, standardized, nationally normed assessment of academic abilities. The Student obtained a Total Achievement Score of 104 with a confidence interval of 90%, meaning that the Total Achievement Score falls between 100 and 108, accounting for statistical error. *Id.* The Student tested in the average range in all subtest indexes: Oral Language (101), Total Reading (102), Basic Reading (100), Reading Comprehension and Fluency (107), Written Expression (110), and Mathematics (97). Taken together, this means that the Student has average academic abilities, with no statistically significant differences between subdomains. *Id.*
44. I take judicial notice that the WISC-V and the WIAT-III are the most current versions of those tests, and are designed so that a student's ability and achievement can be compared. As

⁶ The "average" range on the TOPS corresponds to a standard score of 85 to 115. Scores above 115 are in the "above average" range. Some scores near the line between "average" and "above average" are reported as "high average." In this case, scores of 106, 107, 108, and 113 in subtests were reported as "high average." The record does not reveal where the line between "average" and "high average" is, but the range descriptors for the 2016 TOPS administration were not challenged.

⁷ See Footnote 6. The average range in The Listening Test is also 85-115.

such, according to testing performed for the reevaluation, there is no statistical discrepancy between the Student's intellectual ability and academic achievement.

45. As part of the reevaluation, the District administered the Behavior Assessment System of Children, 2nd Edition (BASC-2). Scores are reported and analyzed in the 2016 RR. S-2 at 16. The BASC-2 is a rating scale in which raters are asked to assess the Student's behaviors across a broad range of domains. A teacher version of the BASC-2 was completed by the Student's 6th grade teachers as a group. A parent version of the BASC-2 was completed by the Student's mother. A self-rating version of the BASC-2 was completed by the Student. *Id.*
46. On the BASC-2, the Student self-rated better than peers across all domains (e.g., fewer problems and better adjusted). S-2 at 16.
47. On the BASC-2, the Student's mother rated the Student average across all domains (Externalizing Problems, Internalizing Problems, and Adaptive Skills), yielding average rating on the Behavioral Symptoms Index (49). S-2 at 16.
48. On the BASC-2, a team of the Student's 6th grade teachers collectively rated the Student as average across the same domains as the Student's mother. S-2 at 16.
49. As part of the reevaluation, the District administered the Bender-Gestalt II test, which measures visual-motor integration (e.g., hand-eye coordination). Scores are reported and analyzed in the 2016 RR. S-2 at 17. The Student scored in the average range, indicating no visual-motor problems. *Id.*
50. As a result of all of the testing and information collected and reported in the 2016 RR, the District determined that the Student continued to have a disability (diabetes) but no longer required specially designed instruction (SDI). The 2016 RR concludes that the Student should be exited from special education for that reason. S-2 at 17.
51. On March 17, 2016 the District issued a NOREP, proposing to exit the Student from special education. S-4.
52. On March 17, 2016, the District also issued a Section 504 service agreement.⁸ In doing so, the District acknowledged that the Student is a "protected handicapped student" and offered services to monitor and accommodate the Student's diabetes. S-4.
53. Later on March 17, 2016, the Parents wrote to the District to confirm their disapproval of the NOREP and to request an IEE at public expense. S-17.
54. On April 20, 2016, the District requested this due process hearing. *Complaint.*

Legal Principles

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

⁸ Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* Section 504 is implemented in Pennsylvania schools via 22 Pa. Code § 15 (Chapter 15).

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 their 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 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the District is the party seeking relief and must bear the burden of persuasion.

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: “A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency...” 34 C.F.R. § 300.502(b)(1). “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense.” 34 C.F.R. § 300.502(b)(2)(i)-(ii).

“If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” 34 C.F.R. § 300.502(b)(4).

As such, the District was obligated to request this due process hearing because it rejected the Parent's request for an IEE at public expense. The District must prove that its reevaluation was appropriate. The reevaluation in question is the reevaluation memorialized in the 2016 RR, S-2.

Reevaluation Requirements

The IDEA establishes requirements for reevaluations. Substantively, those are the same requirements as for initial evaluation. 20 U.S.C. § 1414(a)(2)(A).⁹ In substance, reevaluations 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 in order for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A). Further, the reevaluation 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

⁹ The IDEA also establishes timelines for reevaluations, and circumstances under which a reevaluation must be performed regardless of the timeline, none of which is at issue here. Similarly, the IDEA's provisions requiring schools to obtain parental consent prior to conducting a reevaluation are not at issue in this case.

assessments and other evaluation materials... (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, reevaluations must assess “all areas of suspected disability”. 20 U.S.C. § 1414(b)(3)(B).

Discussion

While it is the District’s burden to prove that the 2016 RR was appropriate, it is helpful to understand the Parents’ objections. After carefully reviewing the entire record of this matter, the only objection that I can clearly identify is the Parent’s claim that they were denied an opportunity to contribute information to the reevaluation in a meaningful way. The record does not support this assertion. More importantly, the record shows that the reevaluation, as documented in the 2016 RR, complies with all of the IDEA’s substantive standards.

The reevaluation used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. This included assessments of the Student’s intellectual ability and academic achievement, multiple assessments and ratings of the Student’s behavior (including anxiety), and speech and language abilities. The reevaluation also included an analysis of the Student’s performance in school, on high-stakes tests, and on benchmarks tied to those tests. All of these showed the Student performing in the average range as compared to same-aged peers. Even the vague assertion of some reading problem was addressed through the WISC, WIAT, Fountas and Pinnell, and benchmark testing. While the Student’s performance on PSSA-aligned benchmarks could have been better, the tests of the Student’s actual ability to read all showed no problems. The same is true for both observations and objective measures of the Student’s anxiety and social skills.

The reevaluation did not use any single measure or assessment as the sole criterion for determining whether the Student continued to require special education. Rather, the District comprehensively looked at all of the information that the reevaluation generated, the overwhelming majority of which showed great improvement, and placed the student in the average range relative to same-aged peers. The District relied upon these multiple measures to determine that the Student no longer required special education.

The District used technically sound instruments. While the decades of research and statistical analysis that validate assessments like the WISC and WIAT were not literally put into evidence, there is no dispute that these instruments are technically sound. It is also clear that the District assessed the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Multiple cognitive and behavioral assessments were administered, and there was even a visual-motor integration (physical) test.

Some factors mandated in the IDEA are simply not pertinent in this case. For example, nothing in the record warrants an in-depth analysis of whether tests were selected for a racially or

culturally discriminatory purpose. Similarly, the Student's native language is not an issue nor is the training and knowledge of the individuals who administered the tests.

Although not highlighted by the Parents, there is a minor issue about whether the testing instruments were administered in accordance with the publisher's guidelines. The instruments in question are the CCC-2 and the BASC-2. On both of those, the Student's teachers completed the rating scales as a team. In my experience, particularly with the BASC-2, rating scales are completed by individuals and reported individually. For example, it is common to see reports presenting ratings from one or two parents and one or two teachers. This enables anybody who reads the report to look for commonalities and differences between raters, as opposed to just the home and school environment. My surprise at seeing data presented in aggregate, however, does not warrant a finding that publisher's guidelines were violated. My impression after having read many evaluation reports is not a substitute for the training and expertise of the District personnel who administered the assessments. Moreover, I am constrained by the evidence that was actually presented. No evidence in this case suggests that the District's methods are at odds with the publisher's guidelines.

With all other criteria addressed, I turn back to the Parents' principal objection: a lack of meaningful parental input. I note, again, that it is not the Parents' burden to prove that the reevaluation is inappropriate. It is the District's obligation to prove that the Parents were given an opportunity to contribute information, and that their contribution was used as part of the reevaluation.

The District did not use all of the tools that it created internally to solicit information from the Parents. The Parents highlighted this fact several times during the hearing, but it is ultimately irrelevant. As a matter of law, it makes no difference what tools a school district creates to obtain parental input, or whether those tools are used. All that the law requires is that "information provided by the parent" is part of the "variety of assessment tools and strategies used" in the reevaluation. 20 U.S.C. § 1414(b)(2)(A).

The IDEA does not specify what quantum of information must be obtained, but the purpose of soliciting parental input is not simply to check a box. As discussed further below, the District must actively solicit meaningful information from the Parents. Further, the IDEA requires schools to actually "use" the information that parents contribute to reevaluations. The ultimate question, therefore, is two-part. Did the District give the Parents an opportunity to provide meaningful information? Did the District use the information that the Parents provided?

The District gave the Parents an opportunity to contribute meaningful information. This happened at least four different ways. First, information communicated to the District by the Parents was the impetus for the reevaluation, and that information helped the District focus the reevaluation to address parental concerns. Second, the Parents contributed information by completing behavior rating scales at the District's request. Third, the District called the Parents to solicit additional information. Fourth, the Parents contributed more information when the team met to discuss the 2016 RR. While the District did not use its own forms, there is a preponderance of evidence that the District actively solicited parental input. There is no evidence that the Parents were ever refused when they shared information with the District.

Next, the District used the information that the Parents contributed. This happened at all levels, but most notably when the 2016 RR was presented. According to the Parent's testimony, the Parents believed that they did not have a chance to contribute all of the information that they wanted to contribute prior to the meeting. So, naturally, the Parents shared information during

the meeting and in correspondences after the meeting. The District then took that information and incorporated it into the 2016 RR. This did not change the District's ultimate conclusion, but certainly evidences the District's serious consideration of all information that the Parents shared. Similarly, the 2016 RR reflects the Parents' concerns expressed prior to the testing, and incorporates the information shared by the Parents during the testing.

I note that the Parents point to a recent decision by Hearing Officer Skidmore, *D.J. v. Susquehanna Twp. Sch. Dist.*, ODR No. 17110-1516KE (Feb. 23, 2016), to argue that behavior rating scales alone do not indicate a meaningful opportunity for parental input. In that case, the LEA only sought general information from a student's parents, and had the parents complete rating scales. Hearing Officer Skidmore found that under the circumstances of that case (a student with significant disabilities receiving an initial evaluation from a new LEA after moving into that LEA from an out-of-state program), the LEA was obligated to seek more specific information than was solicited in its generic inquires. More importantly, in *Susquehanna Township*, the Hearing Officer was persuaded that the Parents would have contributed more and different information, had the LEA only asked.¹⁰ This case is different. The record shows that the Parents frequently shared detailed information with the District at every opportunity, regardless of what information the District was asking for. The testing was guided and driven by parental concerns, and parental information flowed back into the reevaluation. This is consistent with IDEA mandates.

The Parents are naturally concerned about the Student's social and academic wellbeing, in addition to the Student's physical health. They disagree with the ultimate conclusion of the 2016 RR because they believe that the Student requires a level of support to be successful that can come only from a special education program. While the Parents are well meaning, the District has proven with preponderant evidence that the reevaluation memorialized in the 2016 RR satisfies all IDEA requirements. The reevaluation was appropriate for that reason, and I will not order the District to pay for an IEE.

ORDER

Now, June 20, 2016, it is hereby **ORDERED** as follows:

1. The District's reevaluation of the Student, memorialized in the 2016 Reevaluation Report (S-2) is appropriate.
2. The District is not required to pay for an independent educational evaluation.

¹⁰ I note that the Parent used similar words when testifying and, via counsel, presented similar arguments. It is more than strange that the Parents' primary contention with the 2016 RR is that they would have provided more information if given the opportunity, but then said practically nothing about what information they would have shared. While the Parents have no obligation to establish what information they would have shared, it is striking that the information shared by the Parent while testifying is reflected (to more or lesser degrees) in the 2016 RR. Even the scant and vague references to some unspecified reading problem was addressed through the District's academic and cognitive testing. Regardless, it is the District's burden to prove that it solicited meaningful parental input and then used that input in the reevaluation. The District has proven this with a preponderance of evidence.

3. Nothing in this Decision and Order prohibits the Parents from obtaining an independent educational evaluation at their own expense.

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

/s/ Brian Jason Ford
HEARING OFFICER