

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

**PENNSYLVANIA**

**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: E.K.

ODR #15115 / 13-14-KE

Date of Birth:  
[redacted]

Date of Hearing:  
July 22, 2014

CLOSED HEARING

Parties to the Hearing:  
Parent[s]

Representative:  
Scott Johnson, Esquire  
Shepherd, Finkelman, Miller & Shah  
35 East State Street  
Media, PA 19063

Rose Tree Media School District  
308 North Olive Street  
Media, PA 19063

Frances Ratner, Esquire  
19 West Third Street  
Media, PA 19063

Date Record Closed :

August 5, 2014

Date of Decision:

August 13, 2014

Hearing Officer:

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is an elementary school-aged student who has been diagnosed with Asperger's Disorder. The District evaluated Student at the Parents' request and determined that although Student has a disability Student is not eligible for special education under the Individuals with Disabilities Education Act [IDEA]. The Parents disagreed and requested an independent educational evaluation [IEE]. Believing its evaluation to be appropriate the District declined the Parents' request and filed for this hearing as the IDEA requires of an LEA when declining a parental request for an IEE at public expense. Subsequent to the District's due process filing, the Parents obtained an IEE and it is for this evaluation that they now seek reimbursement.

## Issue

Was the District's May 14, 2014 evaluation of the Student appropriate under the IDEA?

## Findings of Fact<sup>2</sup>

1. Student attended a private school for Kindergarten [2011-2012] and 1<sup>st</sup> grade [2012-2013]. [S-13/P-2]
2. Pursuant to a parental request for an evaluation, the District evaluated Student and issued an evaluation report in June 2012. The District found at that time that Student did not have a disability and was not eligible for special education services or a 504 Service Agreement. [S-1, S-2]
3. Student began attending school in the District for 2<sup>nd</sup> grade, in the 2013-2014 school year. [NT 53]
4. Because the Parents had expressed concerns about sensory issues and classroom accommodations the school staff and the Parents met on February 21, 2014 and the District agreed to conduct a Sensory Profile. [NT 61-62, 156-157; S-7]
5. Student's teacher who participated in the February 2014 meeting noted that Student had friends and was able to deal with social relationships and with conflicts appropriately. [S-9A]

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<sup>1</sup> This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

<sup>2</sup> The testimony of every witness, and the content of each exhibit, was considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit. The parties' written closings were also carefully considered.

6. Student's teacher noted that Student was a successful and enthusiastic pupil. Although Student needed movement within the classroom this was handled through provision of frequent breaks and allowing Student flexibility of position when completing assignments. [S9A]
7. On March 4, 2014 a primary care physician wrote on a prescription pad that Student had a "sensory overload disorder"<sup>3</sup> and the Parents provided the District with this information asking that Student be given lunch in a quiet area. The District provided noise-reducing headphones and ear plugs for Student to use in the cafeteria. [S-8, S-13/P-2]
8. The Parents then requested a complete psychoeducational evaluation, so on March 14, 2014 the District issued a Permission to Evaluate which was received back signed as approved on March 19, 2014. [NT 63-64; S-9].
9. The District provided a completed Evaluation Report<sup>4</sup> to the Parents on May 14, 2014. [NT 49-50, 52-53, 69; S-13/P-2]
10. The District occupational therapist who contributed to the evaluation holds Pennsylvania and national occupational therapist certification. [NT 155; S-17]
11. The District occupational therapist conducted a Sensory Profile obtaining information from Student's teacher and mother about Student's functioning in a variety of environments. [S-9A; NT 154, 157-158].
12. The teacher's profile showed typical performance in all sensory areas and was consistent with Student's current academic performance and reports of classroom and learning behaviors. Student's mother's profile showed a range of performance, with definite and probable differences in many areas. This report was consistent with Parent's report of difficulties in the home setting. In the District's occupational therapist's experience, it is not uncommon for sensory scales to differ between parents and teachers. She noted that Student thrives in the structure of the school environment but, by its very nature, a home environment cannot be as structured. [NT 159; S-9A]
13. Based on findings from the Sensory Profile, the District's occupational therapist did not recommend any school-based accommodations other than the continuation of movement breaks and positioning flexibility. She did not recommend any occupational therapy services, as neither the parent, the teacher nor the District psychologist raised any concerns about Student's fine motor skills. [NT 159-60; S-9A]

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<sup>3</sup> Student's mother later indicated on a questionnaire given by the private evaluator in June/July 2014 that Student previously had many sensory issues but these had decreased. [P-5]

<sup>4</sup> Although this was really a reevaluation the District titled its report Evaluation Report [ER]. [S-13]

14. The District psychologist who contributed to the evaluation is a Pennsylvania certified school psychologist and also holds national certification as a school psychologist. [NT 51-52; S-17]
15. The District psychologist reviewed the District's 2012 evaluation, records from Student's previous school, and Student's 2<sup>nd</sup> grade progress report. [NT 54, 55-56, 59, 61, 64-65, 67, 69; S-13/P-2]
16. In Student's previous private school Student's four teachers rated Student on various dimensions, all noting that Student functioned appropriately in that setting. For the third reporting period of Student's 1<sup>st</sup> grade Student received the top two possible marks out of four in Language Arts (including Writing and Spelling) and Math, the top two marks in areas of Personal Growth and Work/Study Habits, the top mark in all areas of Quaker Life Skills including remaining on task and responding appropriately to peers, the top mark in all areas of Social Development and Game Skills, which includes cooperating with classmates and practicing self-discipline, and the top mark in all areas of Personal Development, which includes staying focused and partnering well. [NT 56-57; S-4]
17. Student's second marking period<sup>5</sup> progress report in the District in 2<sup>nd</sup> grade indicated that Student was at grade level in all subjects, showed outstanding effort in all subjects, and achieved mostly outstanding scores in areas of learning quality. [S-13/P-2]
18. The District psychologist reviewed Student's scores on the DIBELS assessment, a universal screening for early literacy skills. Student's median scores at the beginning and middle of the school year were above benchmark. Student achieved a Level N on the Teacher's College Reading Level assessment, which correlates to the beginning of third grade. [NT 58-60, 88; S-5, S-13/P-2]
19. The District psychologist reviewed Student's MAP tests which are computer-based tests in math and reading that are given two or three times per year. Student's scores in reading and math improved from fall to winter of second grade, and were in the 89<sup>th</sup> and 91<sup>st</sup> percentiles for math and the 97<sup>th</sup> percentile for reading.<sup>6</sup> [NT 87; S-13/P-2]
20. The District psychologist reviewed Student's results on the Naglieri Nonverbal Ability Test, a computer-based test used for [redacted] screening purposes. The Naglieri is very narrow in scope, and looks at basic matrix reasoning. Student

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<sup>5</sup> At the time of the completion of the District's evaluation in May 2014 the third marking period ratings were not yet available.

<sup>6</sup> Percentile rankings, simply stated, indicate where a person ranks relative to other individuals who took the same test. A percentile rank of 97 for example means that the person scored better than 97 percent of others who took the test.

- scored a 110, a score similar to Student's Matrix Reasoning score on the WISC-IV. [NT 60- 61; S-6]
21. The District psychologist observed Student in three settings. She conducted a 30-minute classroom observation during which she tracked Student and two other comparison peers, recording every 15 seconds whether they were on task. Student was on task 97% of the time, comparable to the two other students' time on task. She observed Student for 15 minutes in the cafeteria at lunch and 15 minutes at recess. Student spoke with her during lunch and played with another student during recess. She also observed Student during testing. [NT 67, 86; S-13/P-2]
  22. The District psychologist reviewed a questionnaire completed by Student's classroom teacher. The teacher noted that Student was a dedicated, conscientious learner who relates well to peers, who plays with others on the playground and who rarely has difficulty attending to work. Given a list of about forty potential school-related difficulties, the regular education classroom teacher did not endorse any of them. Further, she reported that Student was at grade level in all subjects and completed work accurately in language arts. [S-12]
  23. The District psychologist administered a battery of tests in order to evaluate Student in all areas of concern. To assess Student's cognitive ability she utilized the Wechsler Intelligence Scale for Children – Fourth Edition [WISC-IV]. On this instrument Student obtained a Verbal Comprehension Index score of 130 [very superior range], a Perceptual Reasoning Index score of 94 [average range], a Working Memory Index score of 113 [high average range], and a Processing Speed Index score of 97 [average range] with a Full Scale IQ score of 112 [high average range].<sup>7</sup> [S-13/P-2]
  24. As part of the test battery, to determine academic achievement the school psychologist administered the Wechsler Individual Achievement Test, Third Edition [WIAT-III]. Student achieved the Composite Standard Scores as follows: Basic Reading, 124 [superior range]; Reading Comprehension and Fluency, 110 [high average range]; Total Reading, 119 [high average range]; Oral Language, 133 [very superior range]; Written Expression, 112 [high average range]; Mathematics 106 [average range]; Math Fluency, 114 [high average range].<sup>8</sup> [S-13/P-2].
  25. The cognitive and achievement testing resulted in the finding that Student's academic performance is age and grade appropriate, indicating that Student was not classifiable under the IDEA category of Specific Learning Disability. [S-13/P-2]

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<sup>7</sup> The hearing officer, a clinical and Pennsylvania certified school psychologist, takes judicial notice that WISC-IV standard scores are arranged on the bell-shaped curve as follows with 100 being dead average: 69 and below- Deficient; 70 through 79 – Borderline; 80 through 89- Low Average; 90 through 109 – Average; 110 through 119 – High Average; 120 through 129 – Superior; 130 and above – Very Superior.

<sup>8</sup> See above regarding standard scores.

26. An April 2, 2014 evaluation by a physician from Crozer-Keystone noted a possible articulation issue. Accordingly, a District speech/language therapist administered a screening to Student and found no further evaluation was needed to assess whether Student was classifiable under the IDEA with a Speech/Language Disability. [NT 65; S-10, S-13/P-2]
27. As part of the test battery, in order to assess Student's social and emotional functioning, the District psychologist used the Behavior Assessment System for Children – Second Edition (BASC-2), a broad measure of social, emotional and behavioral development.<sup>9</sup> [S-13/P-2]
28. Student's mother and classroom teacher each completed the BASC-2 questionnaires. The classroom teacher's endorsements did not yield any at-risk or clinically significant scores. The mother's ratings indicated at-risk scores in four areas and clinically significant scores in two areas. Parent's endorsements yielded normal range scores on anxiety, attention, and social skills. [NT 75-77; S-13/P-2]
29. The District psychologist explained that it is not rare for a teacher's and a parent's BASC-2 scores to differ, and the difference could reflect environmental factors, the raters' subjective perceptions, and/or their comparisons to other children. A school cannot address a behavior if a child is not displaying that behavior in the school setting. [NT 77]
30. Given the disparity between the teacher and Parent ratings, the District psychologist administered an appropriately age-normed BASC-2 self-report to Student. The results of the BASC-2 self-report were considered to be valid and reliable as, according to the instrument's validity indicators, Student's responses were consistent with each other and did not reflect an overly negative or overly positive response style. Student's self-report showed a clinically significant score in attitude towards school and at-risk scores in three other areas. Student's scores in the areas of depression, anxiety, and attention were within normal limits.<sup>10</sup> [NT 77-78; S-13/P-2]

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<sup>9</sup>On the BASC-2, in every area but adaptive skills scores of 60-69 indicate at-risk results and scores of 70 or above are considered clinically significant. For adaptive skills however, scores of 31-40 are considered at-risk and scores of 30 and below are considered clinically significant. In other words, except for Adaptive skills the higher the score the greater the problem once the numbers enter the at-risk or significant ranges, whereas in Adaptive Functioning the lower the score the greater the problem. At-risk scores are areas to monitor, while clinically significant scores may require intervention. [NT 75]

<sup>10</sup> The District psychologist met with Student on another day to review items Student reported in the atypicality area of the BASC-2, such as seeing and hearing things. Student explained that Student daydreams and sees and hears things in Student's mind due to imagination and also sees dots when Student closes Student's eyes. Student indicated that Student pinches Student's nose to keep mentally alert. Student provided realistic explanations for Student's questionable answers and the District psychologist did not believe Student's self-report required further evaluation or intervention. Neither the Parent nor the teacher had reported that Student saw or heard things that were not there. [NT 79-82]

31. Based on the social, emotional and behavioral rating scales completed by Student's teacher, the District psychologist concluded that Student has age-appropriate social, emotional, and behavioral functioning at school and was therefore not appropriately classifiable under the IDEA category of Emotional Disturbance. [NT 85; S-13/P-2]
32. The District psychologist utilized the Conners 3, a questionnaire that addresses behaviors associated with Attention Deficit Hyperactivity Disorder [ADHD] and related concerns. The teacher's ratings indicated no elevated levels, while the Parent's ratings indicated three very elevated areas. [NT 83-84; S-13/P-2]
33. In order to assess issues which are frequently associated with ADHD, Specific Learning Disabilities and autistic spectrum disorders such as planning, organizing and self-monitoring difficulties the District psychologist used the Behavior Rating Inventory of Executive Function [BRIEF] with Student's Parent and teacher. The teacher did not report any elevated scores while the Parent reported several elevated areas. [NT 84-85; S-13/P-2]
34. The BASC-2, the Connors 3, and the BRIEF as well as classroom observation by the District psychologist and written observations by the classroom teacher all resulted in findings that Student's attention and impulsivity are age appropriate within the school environment. As "symptom count criteria is not evident in two or more settings" the District psychologist could not find Student has ADHD, thus eliminating a current classification of Other Health Impairment. [S-13/P-2]
35. As the April 2, 2014 evaluation by a physician from Crozer-Keystone yielded a diagnosis of Asperger's disorder, the District psychologist administered the Gilliam Asperger's Disorder Scale [GADS]. The parent ratings indicated a high probability for Asperger's while teacher scores indicated a low probability of Asperger's. [NT 64, 82-83; S-10, S-13/P-2]
36. Consideration of the physician's diagnosis, the Parent ratings, and Student's self-report supported a diagnosis of Asperger's Disorder, an autism spectrum disorder. Autism is one of the disability categories recognized under the IDEA. [S-13/P-2]
37. Based on Student's ability to successfully access the general education curriculum as noted by progress reports, teacher's observations, and formal achievement testing with the WIAT-III the District concluded that although Student has a disability [Asperger's Disorder] Student does not meet the second prong of eligibility for special education under the IDEA, the need for specially designed instruction. [S-13/P-2]
38. The District did conclude that Student qualifies for a Section 504 plan and the evaluation report included recommendations for accommodations. [NT 91; S-13/P-2]

39. The Parents requested an IEE on May 22, 2014, the District denied their request, and on June 5, 2014 the District filed its request for a due process hearing to defend its evaluation. [S-14/P-3, P-7, P-8]
40. The Parents obtained a private evaluation which was issued on July 9, 2014 and seek reimbursement for same. [P-5]

### Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012). In this case the District asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to 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); *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). I accorded more weight to the witnesses who observed and worked with Student in the school setting on an ongoing basis, as the instant matter is addressing whether or not the Student meets federal and state guidelines for specially designed instruction in school. I found the information on "second opinions" from the private evaluator's website to be appallingly inflammatory against school districts [S-19], and was frankly disappointed in the clear bias expressed therein given that over the years this practitioner has provided valuable expert testimony on which in several cases I have relied.

Independent Educational Evaluations: 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).

Standards for Evaluations: The purpose of an initial evaluation is to determine whether the child meets any of the criteria for identification as a “child with a disability” as that term is defined in 34 C.F.R. §300.8, as well as to provide a basis for the contents of an eligible child’s IEP, including a determination of the extent to which the child can make appropriate progress “in the general education curriculum.” C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

The general standards for an appropriate evaluation are found at 34 C.F.R. §§300.304—300.306. The District is required to 1) “use a variety of assessment tools”; 2) “gather relevant functional, developmental and academic information about the child, including information from the parent”; 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7). An initial evaluation must also include, if appropriate: 1) A review of existing evaluation data, if any; 2) local and state assessments; 3) classroom-based and teacher observations and assessments; 4) a determination of additional data necessary to determine whether the child has an IDEA-defined disability, the child’s educational needs, present levels of academic achievement and related developmental needs, whether the child needs specially-designed instruction and whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum. 34 C.F.R. §§300.305(a)(1),(2). 305(a)(1)(2).

Although the IDEA obligates a local educational agency to conduct a “full and individual initial evaluation ...” [20 U.S.C. §1414(a)(1)(A)], there is less specificity regarding reevaluation. C.F.R. §§ 300.304 – 300.305. As part of any re-evaluation, the IEP team and appropriate professionals, with “input from the child’s parents,” must “identify what additional data, if any, are needed to determine ... [t]he present levels of academic achievement and related developmental needs of the child ... .” 20 U.S.C. §1414(c)(1)(B)(ii); 34 C.F.R. §300.305(a)(2). The IDEA requires utilization of

assessment tools and strategies aimed at enabling the child to participate in the “general education curriculum” and “determining an appropriate educational program” for the child. 20 U.S.C. §1414(b)(3)(A)(ii). The evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7). If additional data from testing is utilized in a reevaluation, then that portion of the reevaluation must comport with the requirements set forth in 20 U.S.C. §1414(b)(2)(C); 34 C.F.R. §300.304(b)(c).

Once the assessments are completed, the qualified district professionals and the child’s parents determine whether he/she is a “child with a disability” and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, a district is required to: 1) “Draw upon information from a variety of sources,” including those required to be part of the assessments, and assure that all such information is “documented and carefully considered.” 34 C.F.R. §300.306 (c)(1).

There is a two-pronged test for eligibility for special education under the IDEA. To be eligible for special education services and entitled to an IEP, the IDEA requires that a child be determined to have at least one of the disabilities identified and defined by the Act, *and by reason thereof need special education and related services.* [emphasis added] 34 C.F.R. §300.8(a). If a child has a disability but does not need specially designed instruction and services to access the general education curriculum the child is not eligible under the IDEA. Such a child, however, may be entitled to a Section 504 Service Agreement.

### Discussion

The inquiry in a due process hearing such as this, in which the issue is a district’s denial of a parental request for an independent educational evaluation, is whether the district’s evaluation met the standards for appropriateness set forth in the IDEA.

It is important to understand that parental disagreement with an evaluation’s conclusions is not evidence that an evaluation is inappropriate; parental disagreement with supported conclusions is irrelevant to the inquiry. If this were not the case, parents could defeat any District’s defense of its own evaluation by simply disagreeing with the outcome. Further, the inquiry is not even whether or not a hearing officer agrees with a district’s evaluation. Provided that a district conducted its evaluation under IDEA standards and supported its conclusions with data derived from properly administered assessments the evaluation must be deemed appropriate.

The IDEA does not provide the opportunity for parents to obtain a “second opinion” at public expense. Again, the standard is whether the District’s evaluation was proper under the IDEA. There may be cases in which an independent evaluator’s evaluation is superior to a district’s evaluation – the private evaluator may be much more experienced than the district evaluator or even may be renowned in his/her field, there may have been a greater number of tests administered, there may have been a longer more detailed

report, and there may have been many more recommendations. However, if a district's initial evaluation serves the purposes of determining whether a child meets any of the criteria for identification as a "child with a disability" as that term is defined in the implementing regulations of the IDEA, and determining whether by virtue of that disability the child requires specially designed instruction to make appropriate progress in the general education curriculum, and, if the child is eligible, providing information to inform the IEP team of the child's educational needs, then that evaluation is appropriate.

In their closing statement the Parents assert that in conducting its evaluation of Student, the District failed to adhere to at least six applicable statutory and regulatory standards or requirements. The Parents assert that the District: 1) failed to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents; 2) failed to use technically sound instruments that assess the relative contributions of cognitive and behavioral factors, in addition to physical or developmental factors; 3) failed to conduct its evaluation in a manner that ensured that the assessments and other evaluation materials are administered by trained and knowledgeable personnel; 4) did not adhere to the standard requiring that assessments and other evaluation materials are administered in accordance with any instructions provided by the producer of such assessments; 5) did not ensure that Student was assessed in all areas of suspected disability; and 6) failed to ensure the use of assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. I will address each assertion in turn.

The Parents focus their first assertion on the District's method of gathering information from the Parents, specifically the amount of time spent in this part of the evaluation and the failure to interview/obtain separate information from the father. The Parents are both well-educated professionals. The District provided them with a developmental questionnaire on which their responses were notably brief. The District did not specify that one or both Parents were expected to fill out the developmental questionnaire; it is to be assumed that one Parent would respond on behalf of both or that the couple would together formulate responses. In addition to the Parents' having the opportunity to fill out the questionnaire, Student's mother was contacted directly by telephone and spoke with the District psychologist for a total of about 30 minutes. Further parental input was gathered for the evaluation through the BASC-2, the Connors 3, the Gilliam, the BRIEF and the Sensory Profile - inventories containing multiple series of detailed questions. The District also considered information provided by the Parents from Crozer-Keystone and used this information in drawing its conclusions about Student's disability. The IDEA does not quantify the amount of time gathering information from parents for the purposes of an evaluation must take, nor does it specify that information must be taken from each parent individually, even in situations where parents are separated which is not the case here. The District obtained a robust amount of data from the Parents and considered all of it in coming to its conclusions about Student's eligibility.

The Parents' second assertion is that the District did not use technically sound instruments to assess Student's cognitive, behavioral, physical and developmental factors.

The District used well-researched and well-normed instruments when assessing Student. The Wechsler Intelligence Scale for Children Fourth Edition [WISC-IV], the Wechsler Individual Achievement Test Third Edition [WIAT-III], the BASC-2 Teacher, Parent and Student forms, the Connors 3, the Gilliam, the BRIEF and the Sensory Profile are all well-established instruments for assessing children's needs in the educational setting and in the case of the BASC-2, in other settings as well. There are many test instruments in publication, different professionals may choose different tests and psychologists and others in related fields are expected to choose those instruments that in their professional judgment will answer the question[s] asked in an evaluation. In this instance, the question posed was "Is the child eligible for special education services under the IDEA?" The District evaluators selected instruments that answered that question.

The Parents' third assertion is that the District personnel conducting the evaluation were not knowledgeable. The District personnel conducting the evaluation were appropriately educated and trained, and hold Commonwealth of Pennsylvania and national certifications in their professions. In making this assertion, the Parents particularly focus on the possibility of Student's having Tourette's Disorder. Although Tourette's is not a category of eligibility for special education under the IDEA, if the manifestations interfered with Student's functioning in school a 504 Plan would be appropriate. Further, however, although there is an alleged remote family history of Tourette's, Student's humming can also be accounted for by an autistic spectrum disorder, a diagnosis that was given to Student by a medical professional. Student's nose-pinching although not described in detail in the hearing record, is less likely to be a tic and more likely to be a way Student has devised to focus Student's attention.

The Parents' fourth assertion is that the District evaluator[s] did not adhere to the standard requiring that assessments and other evaluation materials are administered in accordance with any instructions provided by the producer of such assessments. They base this assertion on the District psychologist's choosing to administer the WISC-IV instead of the Stanford Binet 5. The IDEA does not require an examiner to use a test instrument favored by a child's parents. This assertion is rejected and no further analysis is necessary.

Fifth, the Parents assert that Student was not assessed in all areas of suspected disability. The classifications under the IDEA that can qualify a child as a child with a disability are "intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities." 20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a). The District had no reason to suspect that Student is deaf or hard of hearing, blind or visually impaired, or orthopedically impaired, and the Parents provided no reports of Student suffering a traumatic brain injury. Although intellectual disability was certainly not suspected, an IQ test was administered. Based on a possibility of a phonological disorder, a speech/language screening was completed. Serious emotional disturbance was assessed through the BASC-2; autism was assessed through the Gilliam with consideration given

to the Crozer-Keystone report; other health impairment [ADHD] was assessed through the BASC-2, the Connors 3, the BRIEF, and structured classroom observation; and specific learning disability was assessed through the WIAT-III in conjunction with the WISC-IV and classroom based assessments. Student was assessed in all areas of potentially suspected disability recognized under the IDEA. The Parents make a great deal of the fact that the District's psychologist did not suspect Tourette's, which the private evaluator listed as a "rule-out" diagnosis. As noted above, Tourette's is not a disability recognized under the IDEA; if Student receives that diagnosis in the future a 504 Service Plan may be warranted if any manifestations are present in school and interfere with learning.

Last, the Parents assert that the District failed to ensure the use of assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. They criticize the amount of time and the settings in which the District observed Student and the lack of input from the counselor who saw Student in a "lunch bunch" on a few occasions. The latter is not a significant flaw, and the testimony of the school counselor revealed that his input into the evaluation would have had no bearing on the outcome. The District psychologist not only observed Student in more than one setting in the school environment, she solicited direct input from Student's teacher who is with Student for most of the school day. In contrast, there is no evidence in the record or in her report that the private evaluator who opined about the alleged inappropriateness of the District's evaluation either observed Student in school or sought to speak with any of Student's teachers.

### Conclusion

The District has met its burden of proof that its evaluation was appropriate in all respects under the requirements of the IDEA and therefore Student is not entitled to an independent educational evaluation at public expense. The District is not required to reimburse the Parents for the private evaluation they obtained after the District filed for this due process hearing.

## Order

It is hereby ordered that:

1. The District's May 14, 2014 evaluation of Student is appropriate under the IDEA.
2. The District is not required to fund an independent educational evaluation in the form of reimbursement for the July 9, 2014 private evaluation the Parents obtained.

Any claims not specifically addressed by this decision and order are denied and dismissed.

August 13, 2014

Date

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official