

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

Child's Name: G.F.

Date of Birth: [redacted]

Date of Hearing: November 3, 2010

CLOSED HEARING

ODR No. 01413-1011JS

Parties to the Hearing:

Parent[s]

Ms. Christine Raber
Supervisor of Special Education
Antietam School District
201 N. 25th Street
Reading, PA 19606

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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November 12, 2010

November 26, 2010

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a kindergarten-age child residing within the Antietam School District (hereafter District). The District evaluated Student in May and June prior to Student's entry into its kindergarten program at the start of the school year, and determined that Student was not eligible for special education. The parent requested an independent educational evaluation (IEE), and the District filed a due process complaint asserting that its evaluation of Student was appropriate and that the parents were not entitled to an IEE at public expense.²

This hearing was conducted in one session at which the parties presented evidence in support of their respective positions. For the reasons which follow, I find in favor of the District.

ISSUES

Whether the District's evaluation of Student was appropriate in assessing all areas of suspected disability.

FINDINGS OF FACT

1. Student is kindergarten age and currently attends a full-day kindergarten program in the District. (Notes of Testimony (N.T.) 21)
2. Student was evaluated by the county Intermediate Unit (IU) at the age of 2 ½ years because of a developmental delay in the area of speech. Student began receiving speech therapy in an early intervention program following that evaluation. (Parent Exhibit (P) 1; School District Exhibit (S) 1) That evaluation report identified expressive and receptive speech delay and recommended that Student's communication, behavior, and social development be observed for tendencies suggesting the autism spectrum. (S 3 at 1-2)
3. In the following June and July, Student was evaluated by a psychiatrist who diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and Developmental Delay. (S 1)
4. Student began attending a Head Start program in the fall. (P 1; S 1)
5. Following a private psychoneurological evaluation in September, Student was determined to be at risk for ADHD but there was not sufficient evidence to diagnose Student with autism or ADHD. Student's speech and language weaknesses were also noted. (S 1)

¹ The name and gender of the child are not used in this decision in order to preserve Student's privacy.

² Although the parents also requested an IEE under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 754), the provision for an IEE is found in the IDEA, *see infra*, and not Section 504; moreover, the complaint filed by the District in this case was filed pursuant to the IDEA.

6. Student was privately evaluated at the age of 4 years 10 months by a developmental pediatrician who noted that Student “is described as extremely hyperactive and impulsive and has a very limited attention span.” (P 1 at 2) The pediatrician also completed the Childhood Autism Rating Scale (CARS) because Student exhibited some atypical behaviors. Student scored in the borderline category for Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS), an Autism Spectrum Disorder (ASD), but did not meet the criteria for autism. (P 1)
7. A different developmental pediatrician evaluated Student in of the same year using the Autism Diagnostic Observation Schedule (ADOS). The three scores produced by the ADOS were as follows. In Communication, Student scored a total of 2 points, below the 3-point cutoff for the autism spectrum and the 5-point cutoff for autism. In Social Interaction, Student scored a total of 5 points, above the 4-point cutoff for the autism spectrum but below the 6-point cutoff for autism. Student’s combined score was 7 points, below the autism spectrum cutoff of 8 points and the 12-point cutoff for autism. (S 7) This evaluator concluded that Student “could be reasonably identified as PDD-NOS” based on “some significant autistic features.” (S 7 at 5)
8. The county IU conducted a reevaluation of Student at the end of 2009 and beginning of 2010, completing its evaluation report on February 4, 2010. The ER included parental and family input, a summary of Student’s early intervention services and previous evaluations, a health, vision, and hearing summary, and the Battelle Developmental Inventory, Second Edition (Battelle) which assesses the following domains: Cognitive Development, Communication Development, Communication Development, Social and Emotional Development, Physical Development, and Adaptive Development. The IU determined that Student was demonstrating age-appropriate skills in all of these domains, and concluded that Student was no longer eligible for early intervention services. (S 1)
9. An Individualized Family Service Plan (IFSP)/Individualized Education Program (IEP) was developed at a meeting on March 4, 2010, which indicated that Student was demonstrating age-appropriate skills in all areas and did not require specially designed instruction. An outcome/goal specified that a service consultant would monitor Student’s maintenance of skills over a four-month period through communication with the parents and classroom observations. The parents signed the IFSP/IEP signature page, consenting to distribution of the document to the named agencies/providers while noting that they did not completely agree with the conclusion of the team that Student did not require special education services. The Notice of Recommended Educational Placement (NOREP) similarly indicated that disagreement. (P 3)
10. On March 30, 2010, in response to a parental request for an evaluation, the District sent a permission to reevaluate - consent form to Student’s parents, who signed and returned the form on April 6, 2010. The parents were concerned that Student was exhibiting behaviors associated with the autism spectrum. The District received the signed consent form on April 8, 2010. (Notes of Testimony (N.T.) 24-25, 163; S 3 at 19-20)
11. A private psychological evaluation was conducted in May 2010. The psychologist diagnosed Student with PDD-NOS based upon mild symptoms and opined that previous

diagnoses of ADHD and speech delay were encompassed within PDD-NOS. Recommendations included continued speech therapy, “adjunct services” (S 2 at 6), and instruction in social skills. (S 2)³

12. The District’s evaluation report (ER) is dated May 28, 2010 (S 3), and the reason(s) for referral are stated as follows:

[Student] was referred for a multidisciplinary evaluation as part of [Student’s] transition from an early intervention program to kindergarten in the fall. [Student’s] parents would like to determine whether [Student] is displaying a learning exceptionality that makes [Student] eligible for special education services. During the current school year in early intervention, [Student] has made good progress and the team discussed exiting [Student] from the program. (S 3 at 1)

13. In conducting the District’s evaluation, the school psychologist reviewed Student’s available records (specifically the initial evaluation from the IU and the February 4, 2010 report of the ADOS), obtained information from Student’s current early intervention teacher and the parents, and observed Student in the classroom in addition to administering several assessments of Student. An occupational therapy evaluation and a screening in the area of speech/language skills were also obtained. (N.T. 26-27, 30-31, 117-18; S 3)
14. Parent input into the District’s evaluation report (ER) described Student’s activities and behavior at home. Specific challenges noted by the parents included organization, being told what to do, and getting along with other children at times. The parents specifically requested “additional testing for PDD-NOS/Autism.” (S 3 at 1)
15. The District’s school psychologist observed Student on a day near the end of the school year when the teachers were packing up supplies and materials. The observation took place over a period of approximately one hour, during which time Student engaged in sustained interactive play with a peer for approximately 20 minutes, played alone for a short time, then began helping the teacher pack materials. Student’s teacher reported that Student had adapted very well to the classroom and was displaying appropriate pre-academic skills and behavior. (N.T. 28-30, 39-40, 42-44, 46-47; S 3)
16. Based in large part upon that classroom observation, the District school psychologist disagreed with the PDD-NOS diagnosis suggested by the February 2010 report on the ADOS by the developmental pediatrician. Specifically, the school psychologist noted that the only ADOS score which was borderline was in the area of reciprocal social interaction, and Student demonstrated well developed reciprocal social skills on the date of the observation. (N.T. 113-15)

³ This exhibit, which is comprised of 11 pages, was admitted at the hearing in its entirety. This hearing officer does note, however, that while pages 7-11 inclusive contain a running header with Student’s name, these pages appear to relate to a different child and not to Student.

17. The assessments administered by the school psychologist included the Woodcock Johnson III Tests of Cognitive Abilities (WJ III COG) and the Young Children's Achievement Test (YCAT). The school psychologist administered only three of the subtests on the WJ III COG and obtained a Brief Intellectual Ability standard score of 113, within the average to high average range. On the YCAT, Student's scores on all of the subtests fell within the average range with written language skills in the high average range. It was noted that Student was bilingual which could relate to Student's less developed language skills on the YCAT. (N.T. 50-53; S 3)
18. In the area of self-help and social skills, the District used the Adaptive Behavior Assessment System (ABAS) to obtain information from Student's early intervention teacher and one of the parents. Both the parent and teacher reported average or low average skills in the Conceptual domain, with the parent scores reflecting low average communication skills, and both parent and teacher scores reflecting low average self-direction skills. In the Social domain, again the parent and teacher reported average or low average skills, with the parent scores reflecting low average social skills. In the Practical domain, most of Student's scores were in the low average or borderline range for both parent and teacher, with the only disparity between the raters in the area of self-care skills where the teacher score was in the average range and the parent score was in the low average to borderline range. (N.T. 67-71; S 3)
19. On the Beery-Buktenica Developmental Test of Visual Motor Integration-Fifth Edition (Beery VMI), using the short form, the District's school psychologist reported that Student had average skills in copying geometric designs in a designated space. (N.T. 73-74; P 4; S 3)
20. In the area of speech/language, the District utilized several screening tools. In the area of articulation, Student's errors were believed to be developmental in nature. On the Clinical Evaluation of Language Fundamentals Preschool Second Edition (CELF Preschool-2), the District obtained results in the average range of developmental functioning on all subtests as reflected in the following scores and indices: Core Language Score, Receptive Language Index, Expressive Language Index, Language Content Index, and Language Structure Index. (N.T. 125-26, 134-37; S 3)
21. The occupational therapy (OT) evaluation conducted by the District was completed in June 2010 and revealed no concerns with gross motor, visual, or sensory processing skills and age-appropriate pre-writing skills. On the Peabody Developmental Motor Scales (Peabody), Student achieved a score in the average range. The occupational therapist concluded that Student did not require occupational therapy services. (S 3)⁴
22. The District did not convene a meeting to discuss its ER before it was mailed to the parents in June 2010. There was also no discussion with the parents at that time regarding whether Student was eligible for special education. (N.T. 85-86, 160-61)

⁴ The District's ER contained a typographical error on p. 8 and should state that Student "does not qualify for occupational therapy services at this time." (N.T. 35-36; S 3 at 8)

23. Also in June 2010, the parents had Student's OT needs privately evaluated. The evaluator used the Beery VMI as well as the Buininks-Oseretsky Test of Motor Proficiency, in addition to obtaining a sensory profile from the parents and conducting clinical observations. The conclusion of this evaluator was that Student would benefit from OT to improve scissor skills, antigravity flexion and extension patterns, upper limb coordination, motor coordination, visual motor control skills, and ability to process sensory-related information. This report was provided by the parents to the District in early August 2010 when they received it. (N.T. 151-52, 167-68; P 5)
24. The parents also obtained a private speech-language pathology evaluation in June 2010. For that evaluation, several assessments were administered: the Boehm Test of Basic Concepts, the CELF – Fourth Edition, the Expressive One-Word Picture Vocabulary Test, the Peabody Picture Vocabulary Test-Fourth Edition (PPVT-4), and the Test of Auditory Processing Skills-Third Edition. The private speech/language pathologist concluded that Student demonstrated auditory processing weaknesses which would require support and accommodations. He recommended additional testing of Student's word-finding skills as well as a thorough auditory-language processing evaluation. Individual speech language therapy was also suggested. The parents provided this report to the District in early September 2010 after they received it. (N.T. 156-58; 170-71; P 9)
25. Sometime over the summer of 2010, the parents received and provided the District with the report of the May 2010 private psychological evaluation. The school psychologist and the District's Supervisor of Special Education reviewed that report and determined that no changes were necessary to the District's conclusions in its ER. The District did, however, include a summary of that private evaluation in an Addendum to the ER. (N.T. 36-37, 87-90, 110-12, 152-54, 171-72; P 6; S 2, S 3)
26. By letter dated July 19, 2010, the parents expressed their opinion that the District did not adequately assess Student and requested an IEE. (N.T. 143-44, 173-74; S 5)
27. On July 26, 2010, the District sent the parents the ER with its Addendum, and scheduled a meeting in August. Student's ER was discussed in an August 13, 2010 meeting but the District did not change its determination that Student was not eligible for special education. The Addendum did note that Student's needs would be revisited if concerns arose in the school setting. (N.T. 144-46, 150-51, 162-63; S 6)
28. The District filed a due process complaint on August 2, 2010 seeking a determination that its evaluation of Student was appropriate.
29. In early August 2010, the parents provided the District with the private OT evaluation, but the private speech-language evaluation was not received by the District until September 2010. (N.T. 151-52, 156-57; P 5, P 9)

DISCUSSION AND CONCLUSIONS OF LAW

Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production, and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion, lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005);⁵ *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the District which requested the hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D.Pa. 2009). This hearing officer found each of the witnesses to be generally credible, and the testimony as a whole was remarkably consistent. Credibility of specific witnesses is discussed further in this decision where necessary.

The Individuals with Disabilities Education Act (IDEA)⁶ ensures, *inter alia*, that all children with disabilities are provided with a free, appropriate public education (FAPE) to meet their individual needs. Local education agencies, including school districts, are required under the IDEA to conduct a “full and initial individual evaluation” of a student before it provides special education and related services to that child. 20 U.S.C. § 1414(a)(1)(A); *see also* 34 C.F.R. § 300.301(a). In conducting an evaluation, a local education agency must ensure that it

⁵ The burden of production, “*i.e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding,” *Schaffer*, 546 U.S. at 56, relates to the order of presentation of the evidence.

⁶ 20 U.S.C. § 1401 *et seq.*

uses procedures to determine whether the child has a disability and to determine the child's educational needs. 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c)(2). Those procedures include adherence to time limitations which, in Pennsylvania, mandates that evaluations be completed within 60 calendar days following receipt of parental consent. 20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); 22 Pa. Code § 14.123(b). The child must be assessed "in all areas of suspected disability." 20 U.S.C. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4).

The IDEA regulations provide further guidance for conducting the evaluation.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) 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—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. § 304(b); *see also* 20 U.S.C. § 1414(b)(2). The evaluation must assess the child "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]" 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant

information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Further, the team must ensure that it considers existing information about the child.

(a) *Review of existing evaluation data.*

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

34 C.F.R. § 305(a); *see also* 20 U.S.C. § 1414(c)(1). The IEP team, which includes qualified professionals and the child’s parent, makes the determination of, *inter alia*, whether the student is a child with a disability and in need of special education. 20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.306(a)(1). In making these determinations, the local education agency must “[d]raw upon information from a variety of sources, including aptitude and achievement tests,

parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior" and further "[e]nsure that information obtained from all of these sources is documented and carefully considered." 34 C.F.R. § 300.306(c).

When parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 34 C.F.R. § 300.502(b); 20 U.S.C. § 1415(b)(1). When a parent requests an IEE, the local education agency must either file a request for a due process hearing to establish that its evaluation was appropriate, or ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). In this case, the District filed a request for due process seeking a determination that its evaluation was appropriate. (Finding of Fact (FF) 28)

The District's Evaluation

Review of the ER reveals that the District's evaluation used a variety of assessment and tools and strategies designed to gather relevant information about Student. It conducted both cognitive and achievement testing, obtaining a Brief Intellectual Ability score in the average to high average range, and an achievement test score in the average to high average range. (FF 17) While the parents elicited testimony by the school psychologist that she chose not to administer the Standard or Extended Battery of the WJ III COG, she provided a credible and detailed explanation of her reasons for doing so, including Student's young age [under six years] and the difficulties with giving standardized assessments to children of a young age.⁷ (N.T. 58-62) She also considered that there was no information that Student had demonstrated learning problems, nor was any concern over Student's intelligence provided to her, and she believed the subtests administered were adequate to obtain a valid estimate of Student's intelligence. (*Id.*) To assess

⁷ See also Sattler, J. M., *Assessment of Children: Cognitive Applications* (5th ed.) 697 (Author 2008).

achievement, the school psychologist administered the YCAT and obtained average scores for Student. (FF 17) Once again, when questioned why she did not use a different and more comprehensive instrument for assessing Student's achievement, the school psychologist provided a credible explanation for declining to administer additional standardized tests to this [under six]-year-old child who was demonstrating average achievement. (N.T. 61-67) Taken together, these assessments provided information from a variety of sources on Student's academic functioning. 20 U.S.C. § 1412(b)(2); 34 C.F.R. § 304(b)(1).

To assess Student's behavioral and adaptive functioning, the school psychologist used the ABAS to gather information from both Student's parents and an early intervention teacher. (FF 18) The scores obtained from the ABAS were generally in the average to low average range with the exception of some lower scores in the Practical domain. (*Id.*) The results of the ABAS provided important information for the ER from a variety of sources about Student's adaptive behavior functioning. 20 U.S.C. § 1412(b)(2); 34 C.F.R. § 304(b)(1).

The parents emphasized at the hearing that the school psychologist did not report Student's age- or grade-equivalent scores on the WJ III COG or the YCAT, or age-equivalent scores on the ABAS (N.T. 54-57, 67-68). Nevertheless, this hearing officer does not find that omission to be fatal or even problematic, since those types of developmental scores must be interpreted cautiously and carefully and can be misleading.⁸

Additional assessments were obtained to assess Student's needs in the areas of OT and speech/language, areas which were determined to be in need of further consideration. (FF 20, 21; S 3) The District's evaluation also included a review of Student's records including the initial IU evaluation of Student and the ADOS report (FF 13), and parental input including the

⁸ Salvia, J., Ysseldyke, J., & Bolt, S., *Assessment in Special and Inclusive Education* (11th ed.) 40-41 (Wadsworth Cengage Learning 2010); Sattler 104-06. This is true specifically with respect to the WJ III COG. Salvia *et al.* 265.

ABAS (FF 14, 18). The school psychologist gathered information from Student's early intervention teacher and observed Student in the classroom for approximately one hour and described that observation in the ER in detail.⁹ (FF 15, 16) These forms of information, taken together, demonstrate a review of existing evaluation data on the child as set forth in 34 C.F.R. § 305(a). Additionally, the record demonstrates that a significant amount of input and information from the parents was considered in arriving at the eligibility determination in the ER. 20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 306(a)(1).

As a whole, I find that the District utilized appropriate assessment tools and strategies to obtain relevant information about Student, and was sufficiently comprehensive to assess all areas of suspected disability and to identify Student's needs. 34 C.F.R. §§ 304(c)(4), (c)(6) and (c)(7). In their closing argument, the parents find flaws in the District's failures to (1) conduct any ADHD assessments or observe Student during instructional rather than play time to determine whether Student was exhibiting symptoms of ADHD in that setting; (2) include an analysis of any discrepancy between Student's ability and achievement; (3) comprehensively assess Student's speech/language abilities and OT needs; (4) assess Student's auditory processing skills; (5) properly assess Student's adaptive behavior in the areas of self-help and social skills; and (6) utilize any measures for determining whether Student falls on the autism spectrum.

The first challenge is to an absence of ADHD assessment. (Parents' closing at 3-4) There were indications that Student had demonstrated some signs of hyperactivity in the past (FF 3, 5, 6), particularly at home (S 2 at 5), and the District school psychologist noted the references to Student's "high energy and possibly hyperactivity" (S 3 at 5). However, the school

⁹ While the parents point out that this observation was in a setting "vastly different" from that which Student would encounter in kindergarten (Parents' closing at 3), the school psychologist made the observation in Student's then-current educational setting. (FF 15) It is difficult to be critical of the District in this regard.

psychologist described Student in the classroom and testing situations as having “enthusiasm and energy” (*id.*) but did not perceive any signs of hyperactivity, and, significantly, Student’s teacher similarly did not report any behavioral concerns which would have suggested hyperactivity or ADHD. (N.T. 46, 94, 112-13) The school psychologist credibly described Student’s activity level as “acceptable” and “healthy,” suggestive of curiosity and an eagerness to learn. (N.T. 113) Thus, the District, quite reasonably, made the determination that Student’s current behavioral functioning did not indicate hyperactivity. For these reasons, I cannot find the District’s evaluation inappropriate because it did not pursue assessments for ADHD.

Next, on the discrepancy argument (Parents’ closing at 4), the District cannot be faulted for failing to conduct a thorough discrepancy analysis of Student’s ability and achievement since there was no indication that Student was suspected of having a learning disability,¹⁰ and the school psychologist provided a thorough and credible explanation for why further assessment of Student’s average to high average ability and achievement was not necessary at this young age. (N.T. 62-67) It merits repeating that at the time of the District’s evaluation, Student had not yet even entered kindergarten, (FF 12) and as the school psychologist noted, children who are transitioning from early intervention to school-age programming often exhibit variability in their performance and test scores. (N.T. 62-63) Further, review of all evaluations contained in the record fail to suggest that Student was not then demonstrating age-appropriate skills in any academic domain. (FF 8, 9, 17) For all of these reasons, I cannot find the District’s evaluation was inappropriate on this basis.

The parents next challenge the District’s speech/language and OT evaluations as insufficient. (Parents’ closing at 4-7) While it is true that the District’s speech/language

¹⁰ The District utilizes the discrepancy model for determining whether a child has a specific learning disability. (N.T. 67)

evaluation was conducted by its reading specialist (N.T. 124, 129), this professional had a degree in Speech and Language Pathology as well as experience as a speech therapist, and had continued to receive training in that field. (N.T. 125, 128-29) Student's scores on the CELF Preschool-2 were in the average range on all indices as was the Core Language Score. (FF 20) The ER set forth the individual subtests administered and, even though the individual subtest scores were not included, the witness credibly explained the bases for computing the Index and Core Language Scores and also stated that the individual scores are not generally reported. (N.T. 130-37) She also testified, credibly, that her testing of Student's receptive language skills did not reveal any auditory processing weaknesses. (N.T. 139) The fact that a later speech/language evaluation obtained privately found auditory processing weaknesses does not, in and of itself, mean that the District's evaluation of Student was inappropriate particularly when its testing did not reveal a reason to suspect that Student had difficulty in this area. (FF 20) Additionally, the evaluator who completed that private speech/language evaluation report merely predicted that Student would encounter difficulty in a classroom environment due to auditory processing weaknesses (P 9 at 3) which, again, was a setting Student had not yet encountered at the time of the District's evaluation.

With respect to the OT evaluation, I cannot conclude the entire ER is inappropriate merely because the evaluator failed to include all of the subtest scores on the Peabody, since a review of the ER reflects assessments and observations of gross and fine motor skills, visual skills, and sensory processing skills, in addition to Student's overall score on the Peabody. (FF 21; S 3 at 16-17) The school psychologist also credibly testified that she did not see any motor coordination needs based on her administration of the Beery VMI. (N.T. 77-78) Once again, the fact that a private OT evaluation later uncovered sensory and motor coordination weaknesses

does not necessarily mean that the District's OT evaluation was inappropriate as it was based on the information available to it.¹¹ (FF 23; P 5) Furthermore, the District's conclusions regarding speech/language and OT were also consistent with the IU's very recent determinations in February and March 2010 that Student was not in need of special education and related services. (FF 8, 9) For all of these reasons, I cannot find the District's evaluation was inappropriate on the basis of its speech/language and OT assessments.

Next, the parents contend the District failed to sufficiently assess Student's self-help and social skills, as evidenced by a lack of interpretation of the ABAS scores in these areas. (Parents' closing at 7) My review of the ER does not find the District's discussion and reporting of the ABAS to be deficient. The scores for each of the domains were reported, with comments on both the parents' and teacher's responses and the ranges within which the scores fell, respectively. (FF 18) The ER also included other information on these areas based upon previous reports, including parent and teacher input, results of the Battelle in 2008, a report of the February 2010 ADOS (discussed below), and a classroom observation by the school psychologist. (FF 14, 15, 18; S 3) Based upon a review of the ER as a whole including the ABAS results, I cannot find the District's evaluation was inappropriate on this basis.

Lastly, and perhaps most importantly in this case, the parents challenge the District's failure to conduct any assessments for autism or PDD. (Parents' closing at 7-8) The District included in its ER the results of the February 2010 ADOS, on which Student's score was below the cutoff for either autism or the autism spectrum. (FF 13; S 3) The District's school psychologist credibly explained her disagreement with the PDD-NOS diagnosis suggested by the

¹¹ The District school psychologist did provide the parents with a sensory questionnaire which suggested some difficulties with attention, tactile stimulation, excitability, and auditory sensitivity. (P 4) She did not include the results of this questionnaire in the ER because she later determined that this instrument required input from a second source (a teacher) in order to be valid; however, she did review the parents' completed questionnaire. (N.T. 78-80)

evaluator who completed the ADOS in February 2010, based upon more recent observations of Student's reciprocal social interaction. (FF 16) The District's ER Addendum similarly discussed the results of the May 2010 private evaluation which resulted in a diagnosis of PDD-NOS, and contrasted Student's behavior at home with Student's success in the early intervention program. (FF 25; S 3) Careful review of that May 2010 evaluation reveals that this specific PDD-NOS diagnosis was based upon mild symptoms of ASD. (S 2 at 5) It is also not insignificant there was no input from the IU into the report, which contained educational information obtained from the family that Student "is performing very well in school." (S 2 at 3)

After careful consideration of all of the evidence, this hearing officer cannot conclude that the District's evaluation of Student was deficient by reason of its failure to administer any further assessments for ASD. The February and May private evaluations obtained by the parents comprehensively assessed Student for, and diagnosed Student with, PDD-NOS on the autism spectrum. As discussed above, the District's disagreement with these diagnoses were fully explained at the hearing. It is further noteworthy that the District stated its intention before Student entered kindergarten that it would revisit Student's eligibility "if needs arise in the school setting." (S 3 at 15)

It is very apparent that Student's parents are loving parents who are understandably very concerned about Student, and they have sought a number of private evaluations to determine all of Student's needs at an early age. They have also provided all private evaluation reports to the District as soon as they received them. (FF 23, 24) It is, perhaps, inexplicable to them that the District does not agree with all of the recommendations and conclusions provided by those private evaluations. Nevertheless, the sole issue presented to this hearing officer is whether the District's evaluation of Student, as completed in June 2010 and revised in July 2010 based upon

all information available to it, was appropriate under the law. For all of the foregoing reasons, I am compelled to conclude that the District's evaluation was not inappropriate.

It merits the strong suggestion, however, if the parties have not already done so, that the District convene a meeting of qualified professionals, including Student's parents, as soon as possible to review all information available to date. That information would include the July 2010 speech/language evaluation not available before the due process complaint was filed. By this time, the parents and District should both have available to them information about how Student is performing in kindergarten and should be in a position to discuss and determine whether Student's needs are being met in the current placement.

CONCLUSION

For the foregoing reasons, I conclude that the District's June 2010 evaluation of Student, with its Addendum of July 26, 2010, was appropriate, and there is therefore no basis to order an IEE at this time.

ORDER

1. The evaluation conducted by the District in June 2010, together with its Addendum of July 26, 2010, was appropriate.
2. The District is not ordered to take any further action.

Any claims or issues not specifically addressed in this decision and order are denied and dismissed.

Cathy A. Skidmore

Cathy A. Skidmore, M.Ed., J.D.
HEARING OFFICER

November 26, 2010
ODR 01413-1011JS