

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: [REDACTED]
ODR #9511/08-09 AS

Date of Birth:
March 27, 2002

Date of Hearing:
February 9, 2009

CLOSED HEARING

Parties to the Hearing:

[REDACTED]
Manheim Township School District
2933 Lititz Pike
Lititz, Pennsylvania 17696

Representative:

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Date Record Closed:

March 6, 2009

Date of Decision:

March 10, 2009

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

██████████ is a nearly seven year old student, a resident of the Manheim Township School District (hereinafter District). Currently in regular education, ██████████ was found ineligible for special education pursuant to a District evaluation. ██████████'s mother ██████████ (hereinafter Parent) disagreed with the District's determination of ineligibility and requested an Independent Educational Evaluation (hereinafter IEE). The District declined the Parent's request and filed for this hearing to defend its evaluation. At the hearing the Parent sought to add the issue of whether ██████████ is properly placed in an English as a Second Language program; the District objected. The hearing officer deferred a determination on whether this issue would be addressed until written closing arguments were available for review.

██████████ is one of a set of triplets, and the same dispute exists for each of the children. The Parent, through counsel, requested a consolidated hearing with no objection from the District, therefore all three cases were held on the same day in a consolidated manner. In order that the parties would have time to individualize their closing arguments and so that there would be ample time for the hearing officer to write each decision, the due dates of the written closing arguments were staggered two days apart, with the records closed accordingly. ██████████'s is the third of the three decisions.

Issue¹

Did the Manheim Township School District perform an appropriate evaluation of ██████████? If not, is she entitled to an independent educational evaluation (IEE) at public expense?

Findings of Fact

1. ██████████ was born at 33 weeks gestation weighing 5 lbs 3 oz. She began to walk at eighteen months of age and began to speak around two years of age. (S-49)
2. In September 2007 ██████████ was tested for language proficiency in English using the WMLS Normative Update Version 1.1 test. The evaluator noted that her conversational proficiency seemed typical for her age level, that she was exceptionally cooperative and attentive during the testing, demonstrated an age-typical activity level, but responded too quickly to test questions and gave up easily after attempting difficult tasks. (S-41)

¹ As noted below, the ESL issue is not being addressed in this decision.

3. ██████ entered Kindergarten in the District in late March 2008. The District began providing ESL services to her because she had them in the previous school district.² (NT 310-311)
4. Pursuant to a parental request for an evaluation the District issued a Permission to Evaluate form on April 29, 2008. (NT 107-108; S-47)
5. The Parent and the District met on May 14, 2008 and speech/language and social/emotional concerns were removed from the proposed areas to be evaluated as the child's Kindergarten teacher did not see needs in these areas. Assessment of attention was added. (NT 108; S-47)
6. ██████'s evaluation was to include assessments of cognitive functioning, academic achievement and attention. (NT 108; S-47)
7. The District's evaluation included a review of written information from the Parent, a review of information from the teachers including classroom assessments, classroom observations, behavior rating scales, and testing administered by the District's psychologist. (NT 117-118; S-48, S-51)
8. In August and September 2008, prior to the District's evaluation, ██████ was evaluated privately by Mr. Alan Babcock. The District received Mr. Babcock's evaluation report on or around October 13, 2008 and incorporated his testing information into its report. (NT 114-115; S-49, S-51)
9. A written Evaluation Report (ER) was presented to the Parent on October 29, 2008 a date which was within 60 school days³ of the date she signed the Permission to Evaluate. The District held an MDT meeting a few days before the written report was issued. Neither mother nor her counsel, nor school District participants other than the school psychologist, had a copy of the ER at the time of the MDT meeting. The District's psychologist read the ER from her laptop screen to them, and invited discussion. (NT 108-109, 122; S-51)
10. On November 19, 2008, the Parent, in writing, cited her disagreement with the District's evaluation and requested an independent educational evaluation. (S-16)

² ██████ is not proficient in any non-English language and does not read, speak or write Spanish. The District maintains that she qualifies for ESL, and that she cannot be discharged from ESL until she scores at a certain level on an assessment instrument. The Parent gave permission for her to remain in ESL classes, but is now seeking her removal, and cites what she believes are PDE guidelines that over-ride the set that the District is using. This information is noted here, as after reading the parties' briefs, this hearing officer has concluded that as a currently regular education student, ██████'s participation in ESL is not a subject over which she has authority. In the case of a special education student, a hearing officer may have jurisdiction if there is a question of whether the provision of ESL is used to supplant the student's specially designed instruction.

³ Pennsylvania Special Education regulations allowed 60 school days at the time the PTE was signed. As of July 1, 2008 the requirement changed to 60 calendar days, exclusive of summer break.

11. Assuming that [REDACTED] had verbal problems in English the District psychologist chose to use the Wechsler Nonverbal Scale of Ability (WNV) to assess her cognitive functioning. (NT 110)
12. The WNV is designed for persons ages 4.0 to 21.11 years "who are neither English-language nor Spanish-language proficient, or have other language considerations". (HO-3)
13. On the WNV [REDACTED] received a nonverbal Full Scale IQ score of 120 which is at the 91st percentile with a 95% confidence interval. Because [REDACTED] became frustrated because she was not allowed to correct an error during a timed subtest (coding), the District psychologist re-scored the test eliminating the coding subtest, which resulted in a nonverbal Full Scale IQ score of 131, at the 98th percentile with a 95% confidence interval. The lower (4-subtest) score is the one she later used to determine ability/achievement discrepancy. (NT 112-113, 193; S-51)
14. Mr. Babcock assessed [REDACTED] using the complete Woodcock Johnson III Tests of Cognitive Abilities. An overall score and her score on General Abilities was not reported because her profile was so inconsistent. (S-49)
15. On the Babcock-administered WJ III TCA [REDACTED]'s standard scores ranged from 118 (88th percentile) to 79 (8th percentile). Notably, given the District psychologist's belief that it was necessary to utilize a nonverbal instrument, the verbal tasks of Verbal Comprehension (standard score 95 at the 37th percentile) and General Information (standard score 108 at the 70th percentile combined to yield a Comprehension-Knowledge score of 101 at the 54th percentile. Comprehension-Knowledge reflects language-based acquired knowledge and the ability to communicate it verbally. (S-49)
16. Mr. Babcock also administered the Woodcock-Johnson III Tests of Achievement. In the area of Language, [REDACTED]'s Oral Language standard score was 104 (60th percentile), Story Recall was 118 (88th percentile), Understanding Directions was 96 (40th percentile) and Picture Vocabulary was 107 (67th percentile). Her Oral Expression standard score was 111 (76th percentile), her Oral Comprehension was 98 at the 45th percentile, and her Listening Comprehension was 97 at the 42nd percentile. (S-49)
17. Although the District psychologist gave certain subtests of the Woodcock-Johnson III Tests of Cognitive Abilities Form A, these were invalidated as she later learned that Mr. Babcock had already administered this version of the test. (NT 111-112)
18. The District psychologist substituted the Woodcock-Johnson III Tests of Cognitive Abilities Form B (WJ III-TA B). [REDACTED]'s standard scores in reading

were as follows: Letter-Word Identification 99 (47th percentile), Word Attack 101 (52nd percentile), Basic Reading Skills 100 (50th percentile). ████████'s teachers provided information regarding reading for the evaluation. He said that she was performing significantly below average in reading (decoding, fluency, oral expression and comprehension). Her reading level was given as A. On the DRA her letter-naming and phoneme segmentation fluencies were proficient, while her nonsense word fluency was below basic. (S-51)

19. The District psychologist does not know what a "reading level A" means other than that it is below basic, nor does she know how many leveled steps there are in ████████'s reading program, although she used this information in her report. (NT 188; S-51)
20. On Mr. Babcock's administration of the Woodcock-Johnson III Tests of Achievement, ████████'s standard scores in reading were as follows: Letter-Word Identification 72 (8th percentile), Word Attack 95 (95th percentile), Basic Reading Skills 86 (18th percentile). (S-49)
21. On the District-administered Woodcock-Johnson III Tests of Cognitive Abilities Form B (WJ III-TA B), ████████'s standard scores in math were as follows: Calculation 92 (29th percentile), Applied Problems 90 (25th percentile), Brief Math 88 (21st percentile). ████████'s teacher provided information regarding math for the evaluation. Her teacher said her math is significantly below average (computation skills, applied skills, and word problems). (S-51)
22. Mr. Babcock's administration of the Woodcock-Johnson III Tests of Achievement yielded the following math standard scores for ████████: Brief Math 86 (18th percentile), Calculation 75 (5th percentile) and Applied Problems 98 (44th percentile). (S-49)
23. The District psychologist did not administer written (writing, spelling) or oral language WJ III-TA B subtests. ████████'s teacher provided information regarding writing for the evaluation. Her teacher reported that her writing was significantly below grade level (focus, content, organization, style and conventions, and that she was significantly below average for her grade level in written spelling. (S-51)
24. The District psychologist administered the Bracken Basic Concept Scale – Third Edition (BBCS-3) to assess school readiness. Notably, this measure is generally used for preschoolers and kindergarten students but ████████ was a first grader when it was administered to her. The measure was scored using her age cohort. (NT 52-53; S-51)
25. On the BBCS-3 ████████ scored as follows expressed in terms of percentage of items correct: Colors 100%, Letters 100%, Numbers/Counting 83%, Sizes/Comparison 77%, Shapes 80%. ████████'s School Readiness was Delayed,

in the 16th percentile of her age-peers, and her Receptive School Readiness was Delayed/Average, at standard score 85, also at the 16th percentile. (S-51)

26. Although the District psychologist administered the Beery-Buktenica Developmental Test of Visual-Motor Integration she considered her results invalid because [REDACTED] had been administered this instrument by Mr. Babcock several weeks prior. (NT 57-58; S-13)
27. The District psychologist concluded that [REDACTED] did not have a specific learning disability. She utilized an ability/achievement discrepancy model that compared her cognitive functioning as assessed on the WNV with her academic achievement as assessed on the WJ III-TA B. (NT 121-122)
28. It was difficult for the District psychologist to determine whether or not [REDACTED] had a significant discrepancy because her non-verbal ability is very high and her verbal ability was "a lot lower" by Mr. Babcock's testing. (NT 121)
29. The District psychologist said that she "somewhat" used [REDACTED]'s WNV score to determine the discrepancy between her ability and achievement, but this was difficult because of the difference from the scores she herself obtained and Mr. Babcock's scores. She testified, "I didn't have a verbal ability and was very reluctant to take into consideration a verbal ability because at that time I didn't know how much the ESL issue would take a factor in her verbal - in where she would function verbally. So I did take into consideration the significant discrepancy, but I didn't find one based on my observations of her". She also used the District's formula for assessing ability/achievement discrepancy. (NT 192-193)
30. The District psychologist testified that the District staff on the multidisciplinary evaluation team wanted to try interventions (reading support, ESL, and math support) with [REDACTED]. The District concluded that [REDACTED] did not have a specific learning disability in reading, math, or writing, although the District psychologist did not assess her in the area of written language. (NT 120; S-51)
31. Mr. Babcock's conclusion was that [REDACTED] should be classified as having a specific learning disability. (S-49)
32. [REDACTED]'s attention was assessed through the Connors' Behavior Rating Scales (L), Parent and Teacher Versions. The Parent's endorsements resulted in a clinically significant score for the presence of both Inattentive Type and Hyperactive-Impulsive Type of Attention Deficit Hyperactivity Disorder (ADHD), while the teacher's ratings reached clinical significance in the

Inattentive Type only.⁴ Both raters' DSM-IV total was in the "markedly atypical" range indicating a "significant problem". (NT 119-120; S-51)

33. The District apparently concluded that Gabriella did not qualify for the classification of Other Health Impaired. (S-51)
34. [REDACTED] receives 30 minutes a day of reading support with a reading specialist. (NT 312)
35. [REDACTED] receives an hour of ESL instruction daily. (NT 311)
36. Despite her above average cognitive abilities, [REDACTED]'s teacher notes that she has needs in improving sight words, letter naming fluency, nonsense word fluency, written expression and written spelling. (S-51)
37. [REDACTED]'s teacher reported having limited success and recommended: reading support, math support, ESL, preferential seating, increased cuing for attention, breaking assignments down, small group instruction, individual instruction, repetition and review, modified assessments/tests, modified assignments and tests read aloud. (NT 189-190; S-51)

Credibility of Witnesses

Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. The decision shall be based solely upon the substantial evidence presented at the hearing.⁵ Quite often, testimony or documentary evidence conflicts; this is to be expected as, had the parties been in full accord, there would have been no need for a hearing. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. 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). This is a particularly important function, as in many cases the hearing officer level is the only forum in which the witnesses will be appearing in person. This hearing officer found the District's psychologist in general not to be a credible witness, and the reasons for this are reflected in the findings of fact above. The school principal's testimony was largely informational and was relied upon for discrete facts rather than substantive conclusions. Although Mr. Babcock was generally credible, his equivocation both in his report and in his testimony about whether or not to classify [REDACTED] under the IDEIA was not helpful

⁴ Symptoms of ADHD must be seen in more than one setting in order for the diagnosis to be conferred, according to the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) published by the American Psychiatric Association.

⁵ Spec. Educ. Op. No. 1528 (11/1/04), quoting 22 PA Code, Sec. 14.162(f). See also, Carlisle Area School District v. Scott P., 62 F.3d 520, 524 (3rd Cir. 1995), cert. denied, 517 U.S. 1135 (1996).

in this legal forum. Although his nuanced considerations are appropriate in a consultation role in the context of a discussion, a more black and white, or at least light grey and dark grey, perspective would have been more helpful to a trier of fact, even though the trier of fact, in this case, is a psychologist.

Legal Basis

Burden of Proof

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). As the District asked for this hearing, the District bears the burden of persuasion. However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio.

Special Education

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA" or "IDEA 2004" or "IDEA"), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004).

Child Find

IDEA's so-called "Child Find" provision requires that states ensure that:

"...All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services." 20 U.S.C. § 1412(a)(3).

A 'child with a disability' means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, **and** who, by reason thereof, needs special education and related services. (emphasis added) 34 C.F.R. §300.7

Evaluations

IDEA 2004 provides, at Section 614(b)(2) that

In conducting the evaluation the local educational agency shall

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

The content of the child's individualized education program...

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

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

Further, IDEA 2004 at Section 614(b)(3) imposes additional requirements that local educational agencies ensure that

Assessments and other evaluation materials used to assess a child under this section--

Are selected and administered so as not to be discriminatory on a racial or cultural basis;-

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;

Are used for purposes for which the assessments or measures are valid and reliable;

Are administered by trained and knowledgeable personnel; and

Are administered in accordance with any instructions provided by the producer of such assessments;

The child is assessed in all areas of suspected disability;

Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Once a child has been evaluated it is the responsibility of the multidisciplinary team to decide whether the child is eligible for special education services. IDEA 2004 provides, at Section 614(b)(4) that

Upon completion of the administration of assessments and other evaluation measures,

The determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5).

In the instant matter, the district has the burden of proving that its evaluation was appropriate. IDEA 2004 at Section 615(b)(6) provides for the opportunity for any party to present a complaint - with respect to any matter relating to the identification, evaluation, or educational placement of the child, and for that complaint to be resolved at a due process hearing. An appropriate remedy for a district's failure to provide an appropriate evaluation for a student is the awarding of an independent educational evaluation at the district's expense. This right is explained in the implementing regulations of IDEA 2004:

A parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency... If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process complaint notice to request a hearing to show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. 34 CFR §300.502(b)(1)(2)(3).

Discussion

In order to be eligible for special education a student has to have a disability (or in Pennsylvania, meet criteria for giftedness) and by virtue thereof require specially designed instruction. Eligibility is determined by an evaluation that is appropriate under the IDEA. Children must be evaluated in all areas of suspected exceptionality, so that appropriate classifications, if any, may be determined, and so that the child's subsequent IEP including present levels (baselines), goals and objectives, specially designed instruction and supportive services can combine to form an appropriately comprehensive plan of education.

In its opening statement, the District as the filing party established the correct parameters of this matter: "The District will show that its evaluations were appropriate in all ways. It doesn't matter if another school psychologist or another team would have come to a different conclusion..." Bearing this legally correct statement in mind, and in consideration of all the evidence presented however, this hearing officer finds the District's evaluation inappropriate for three reasons.

First, there is no evidence that the District psychologist attempted to ascertain directly from the Parent or from any of [REDACTED]'s teachers whether or not [REDACTED] was fluent in English. She made the assumption that since she was in ESL, language issues would interfere with assessment of her cognitive abilities. This failure to ascertain [REDACTED]'s English proficiency from reliable sources led to a flaw in the District's evaluation. Instead of using one of the several respected and age appropriate instruments assessing intelligence in young children along various cluster skills, the District psychologist utilized a brief, 4-subtest, nonverbal measure that is designed for persons age 4 through age 21.11. This instrument is designed for test subjects "who are neither English-language nor Spanish-language proficient, or have other language considerations". The WNV was wholly inadequate as a measure of [REDACTED]'s cognitive ability, and the fact that Mr. Babcock and the District's speech/language pathologist were both able to assess her in English demonstrates that the use of this inadequate instrument was totally unnecessary.

The use of this too brief, and very circumscribed instrument led to yet another major flaw in the District's evaluation, that is that the results from the WNV were used in the formula that determined whether or not there was a significant discrepancy between [REDACTED]'s cognitive ability and her achievement. Using the Full Scale IQ, which is comprised of verbal, nonverbal, attention, memory and processing skills (among others, depending on the test), is the standard method for ascertaining discrepancy. A discrepancy comparison using only one dimension of cognition is inappropriate, and in [REDACTED]'s case was particularly inappropriate given the inconsistency between her cognitive scores found by Mr. Babcock and those found by the District evaluator.

Whether or not using a discrepancy model to determine eligibility and classification is appropriate is not going to be addressed here. The discrepancy model, when used with scientific rigor, is a legitimate tool that provides some degree of assurance of standardization when determining whether a child has a specific learning disability. However, the formula used by the District psychologist in itself presents a grave concern. There are a number of published comparison tables in manuals for cognitive and achievement tests, and there is a web-based program that some psychologists use when they need to ascertain discrepancy. In this case the District psychologist used a method (plugging numbers into a formula) that she testified was developed by another psychologist in the District. The District evaluator could not explain the formula, how it had been developed, by whom it had been developed, the research/statistics credentials of the person who had developed it and any process of determining that the formula was valid and reliable. What the District psychologist was able to testify to was that the formula is no longer used in the District.

With respect to the WNV and its use in the formula which was itself questionable, this hearing officer must reject the District's closing argument assertion that the assessments used to evaluate [REDACTED] "are among the best-know [sic] and most widely-accepted assessments used for determining students' developmental, functional, and achievement information...selected and administered because they are commonly used and widely-accepted for assessing students' cognitive ability, academic achievement, and

development". The WNV is not commonly used and widely accepted for assessing young children, and was inappropriate for assessing the totality of [REDACTED]'s cognitive functioning and whether or not she has a specific learning disability.

The second major area of concern this hearing officer has about the District's evaluation and recommendations is that although the District psychologist received, read, incorporated and said she considered Mr. Babcock's evaluation, she did not provide any explanation in her testimony or in her report why her conclusions differed from his. This is not to say that she could not have legitimate professional differences, but given that she inserted his findings into her evaluation it is troublesome that she then appeared to ignore the data she had incorporated. She also seemed to ignore the input of the child's teacher, whose recommendations, presented as a list, looked very much like specially designed instruction.

The third major concern about the District's evaluation is that the District psychologist, and by her report the rest of the District staff on [REDACTED]'s team, seemed to have decided that [REDACTED] did not need to be classified as having a specific learning disability and receive specially designed instruction because she was already receiving a variety of services (reading support, math support, ESL, one-to-one instruction and modifications of assessments and assignments in class) that made classification and a subsequent well-designed IEP unnecessary. Whether or not [REDACTED] is entitled to a classification of specific learning disability and/or other health impaired is yet to be determined through an Independent Educational Evaluation, but it is unacceptable and inappropriate to deny her the classification and programming because of existing supports in regular education that may or may not be adequate and are not guaranteed through a legally enforceable IEP.

Finally, this hearing officer must comment that she finds the District's method of conducting the MDT meeting atypical and inappropriate, and the inappropriateness may even rise to the level of denying the Parent meaningful participation in the process. Because of the amount of technical information contained in any ER, and particularly in the ERs for [REDACTED] and her siblings, both the Parent and the child's teachers were seriously disadvantaged by not having a written copy in front of them during the meeting. It was particularly egregious that the District's attorney was given a hard copy but the Parent's attorney was not. The District psychologist defended her practice by explaining that she makes revisions to the document during the meeting; however, these revisions could be made in exactly the same manner while all meeting participants have the draft in front of them, with new hard copies incorporating the agreed upon changes being distributed as soon as they were available. The District is strongly urged, by way of dicta, to abandon this practice and issue its ERs in hard copy to MDE team participants.

Order

It is hereby ordered that:

1. The Manheim Township School District's evaluation of [REDACTED] is not appropriate.
2. [REDACTED] must receive an Independent Educational Evaluation at public expense. The Independent Evaluator must, at a minimum:

Review Mr. Babcock's Evaluation Report
 Review the District's Evaluation Report
 Interview Mr. Babcock in person or by telephone
 Interview the District psychologist in person or by telephone
 Interview the Parent in person or by telephone
 Interview each of [REDACTED]'s teachers in person or by telephone
 Conduct any additional testing, disseminate any additional rating scales,
 and/or conduct any direct classroom observations that are required to
 determine:

- Whether [REDACTED] qualifies for a classification of specific learning disability;
- Whether [REDACTED] qualifies for a classification of other health impairment; and
- Whether by virtue of either or both these classifications [REDACTED] requires specially designed instruction to address needs arising from these deficits.

After the Independent Evaluation is completed, the Independent Evaluator must:

- 1) provide hard copies by US Mail or by email to the District Supervisor of Special Education, the Parent, and the attorneys representing the parties;
- 2) must in person or by telephone participate in a Multidisciplinary Evaluation Meeting regarding [REDACTED] wherein the results of the Independent Evaluation are explained and discussed.

The District must reimburse the Independent Evaluator for all aspects of the evaluation process, including participation in the Multidisciplinary Evaluation Meeting.

3. This hearing officer does not have jurisdiction over the District's policies or PDE's policies regarding ESL. However, provision of ESL to [REDACTED] must not be used as a substitute for classifying her as having a specific learning disability and/or other health impairment and must not be used as a substitute for specially designed instruction in the event that she is classified in either or both these categories.

March 10, 2009
 Date

Linda M. Valentini, Psy.D.
 Linda M. Valentini, Psy.D.
 Hearing Officer