

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT
LOCAL DUE PROCESS HEARING**

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF YORK	)	
	)	
In the matter of:	)	BEFORE MONICA R. BOHLEN
	)	LOCAL DUE PROCESS HEARING OFFICER
York County School District Four	)	
Petitioner,	)	
	)	
v.	)	
	)	<u>DUE PROCESS HEARING</u>
	)	<u>DECISION and ORDER</u>
CM,	)	
Respondent.	)	
	)	
	)	

**Petitioner: York County School
District Four "Clover"
604 Bethel Street
Clover, SC 29710**

**Petitioner's Representative: David T. Duff, Esq.
Tiffany L. Butler, Esq.
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202**

Respondent:

Respondent's Representative: Pro se

Hearing Dates: April 28 and April 29, 2021

Decision Date: May 6, 2021

Case Background/Procedural History

This matter is before me pursuant to a request I received from the Petitioner (District) that I serve as an independent hearing officer in this matter. The Due Process Complaint and Hearing Request (Complaint/Request) was filed by the District on February 1, 2021 under the Individuals with Disabilities Education Act (IDEA), and served on the Respondent (Parents, Mother or Father) of the Student on the same day.¹ The Complaint/Request also included a copy of the District's Procedural Safeguards, which included a list of organizations that offer free or low cost legal counsel or assistance from individuals with pertinent special knowledge or training. The District confirmed my appointment by letter on February 2, 2021, with a copy served in writing. Also on February 2, 2021, the District notified the Parents in writing with a copy of their procedural rights and safeguards under the IDEA and a further statement of their procedural rights in connection with the hearing.

On February 11, 2021, the Parents provided the District their Response to the Complaint/Request. On February 16, 2021, the parties held a Resolution Meeting that did not result in a written agreement. The parties reconvened on March 2, 2021, for a final resolution meeting, but were still unable to reach a mutually-agreed upon resolution of the matter. Mother signed the "no resolution agreement" on March 3, 2021. Two telephonic pre-hearing conferences were held with the parties, one on March 8, 2021, and another on April 16, 2021.²

During the March 8, 2021 conference, the parties agreed to a joint extension of the 45-day timeline for the decision so that agreed hearing dates could be scheduled. The hearing dates were set for April 28, 2021 and April 29, 2021. The timeline for the decision was extended by Order issued on March 11, 2021 from April 17, 2021 to May 6, 2021, with the document and witness lists exchange to occur on April 19, 2021. The Parents, by email, requested an extension of the hearing dates on April 3, 2021. The District objected to that request and an Order denying the Parents' request for lack of good cause was entered on April 6, 2021. The Parents, by email, requested another extension of the hearing dates on April 11, 2021, which the District also objected to. Parents withdrew that request during the April 16, 2021 pre-hearing conference. Parents, by email, requested a third extension of the hearing dates on April 18, 2021. The District also objected to that request and an Order denying the Parents' third request for lack of good cause was entered on April 21, 2021. Both parents initially requested to attend the hearing virtually, but decided to attend in person. The Parents chose a closed hearing.

A hearing was convened on April 28, 2021 at the Clover School District Administration Building in Clover, South Carolina. A brief final pre-hearing conference was held to discuss the hearing procedure, attendance by virtual witnesses, the handling of exhibits, and other preliminary matters. The District's request to allow other District employees, who were not witnesses, to attend portions of the hearing, which Parents objected to, was not allowed. Shortly

¹ According to the Complaint/Request, Parents had filed a Complaint with the S.C. Department of Education (SCDE) a few days earlier. Upon the notice of the District's filing of the Complaint/Request, the SCDE held Parents' Complaint in abeyance, deferring to a determination of the issues through the due process hearing process.

² Mother did not participate in the April 16, 2021 conference due to illness.

after, the hearing commenced with both parties giving opening statements, then the District proceeded to call its witnesses, followed by the Parents calling their witnesses. Although Parents were unrepresented, they did a capable job of presenting their case throughout the hearing, including examining witnesses. The case was adjourned for the day and the hearing reconvened on April 29, 2021. The student attended the hearing on both days. On the afternoon of the first day of the hearing, the Parents requested that the student be allowed to testify, to which the District objected because she was not on the Parents' witness list that had been exchanged on April 19, 2021. The District's objection was sustained. After the parties presented their cases, each party gave their closing arguments and the hearing was adjourned on April 29, 2021.

Testifying at the hearing were: the Director of Special Education, the school psychologist at the High School, a speech/language pathologist (SLP), an occupational therapist (OT), a school psychologist and District expert, a friend of Parents and Student also serving as a lay advocate for Parents, a friend of parents who was a retired reading specialist, a friend of Parents who was a general education teacher, and both Parents.

Below is a list of the pleadings and orders filed in this matter:

1. Due Process Complaint/Request	February 1, 2021
2. Response to Complaint	February 11, 2021
3. Preliminary Scheduling Order	February 12, 2021
4. Amended Preliminary Scheduling Order	February 12, 2021
5. No Resolution Agreement	March 3, 2021
6. Scheduling Order	March 4, 2021
7. Order Extending 45-Day Decisions Deadline and Setting Hearing Dates	March 11, 2021
8. Notice of Final Pre-Hearing Conference	March 19, 2021
9. Order Denying Respondent's Request to Extend Deadline For Evidence Exchange and Hearing	April 6, 2021
10. Notice of Hearing	April 19, 2021
11. Pre-Hearing Conference Order	April 19, 2021
12. Petitioner's Witness List	April 19, 2021
13. Respondent's Witness List	April 19, 2021
14. Order Denying Respondent's Third Request to Extend Deadline for Decision and Hearing and Setting In-Person Hearing Protocols	April 21, 2021
15. Order Modifying Order of April 21, 2021	April 26, 2021

Issues

The issues in this hearing, as agreed in the pre-hearing conference, were:

1. ISSUE #1 – Whether the parents are entitled to the independent educational evaluation they requested at public expense.

2. ISSUE #2 – Whether the District evaluation was appropriate and comprehensive, addressing all areas of suspected need and complied with its child find obligations.

Findings of Fact

Based on the testimony and evidence presented at the hearing, the hearing officer makes the following findings of fact:

1. Student is 16 years old and in the tenth grade at the District High School (High School) during the current 2020-2021 school year. Student had not been identified as a student eligible for special education prior to this school year. Student first enrolled in the District for the 2015-16 school year.
2. Student has been on a 504 Plan since prior to her enrollment in the District for “other health impaired.” Student has a congenital heart condition (a hypoplastic Right Ventricle, with ventricular septal defect) and an accelerated junctional rhythm. The 504 plan provides Student with certain accommodations. The 504 Plan is not the subject of this due process hearing.
3. During the 2019-2020 school year, Student attended the High School in person, but due to governmental school closures in mid-March, 2020, in response to the Covid-19 pandemic, Student switched to virtual programming offered by the High School for the rest of the school year. Based on Parents’ choice, Student continued with virtual programming this school year, but it is expected she will return to in-person school next school year. Student was given a choice to take either live classes with other students, or to view videos and recordings of lessons provided by the teachers. She chose to view videos and recordings of lessons.
4. In High School, Student has been an excellent student, earning high grades and enrolled in several Honors and AP classes.
5. In August, 2020, the Student’s cardiologist referred Student for a neuropsychological evaluation by a pediatric cardiac neuropsychologist with Atrium Health’s Sanger Heart and Vascular Institute in Charlotte, North Carolina. This evaluation was sought due to Student’s complaints of attention and memory issues, panic attacks, anxiety, and depression. It also sought to assess Student’s academic abilities within the context of her medical history. .
6. According to the report, Student was experiencing mild panic attacks 2-3 times weekly, mainly at night, during which she has difficulty breathing, has trouble standing, begins to shake, becomes lightheaded, increased heart rate, and attempts to cope by distracting herself, has tried calm apps and counseling, but those have not helped. She further reported experiencing anxiety when speaking in front of large groups, some mild difficulty with forgetting things for her tests, and some depression-related symptoms. She takes prescribed medication for her depression.

Student's mother reported Student began counseling in June, 2019, but Mother didn't think it was a good fit so discontinued it.

7. The neuropsychologist administered the WAIS-IV to Student to determine her intellectual functioning. Student's composite scores fell within the Average Range. The neuropsychologist also administered the CPT-3 instrument to assess attention and concentration, select DKEFS subtests to assess executive functioning, the BASC-3 (Parent forms), the ABAS-3 and other assessments. The BASC-3, based on Mother's input, showed no areas of concern in behavior/adaptation functioning. Based on the testing, the diagnostic impressions were: 1. neurodevelopmental disorder owing to congenital heart disease and nonverbal learning disorder; 2. generalized anxiety disorder; 3. panic disorder, and 4. unspecified depression disorder. "Neurodevelopmental disorder" is a controversial term in the field of psychology and South Carolina doesn't recognize it.

8. The neuropsychologist recommended that an IEP team be convened to address the deficits she found. She recommended that her current accommodations specified on her 504 plan be continued because these appear to be significantly assisting Student within the classroom. Although she recommended an IEP, her specific recommendations were accommodations, including extra time on tests, quizzes, and standardized testing, preferential seating, breaking tasks into smaller, more manageable ones, teachers providing her verbal direction and explanation, being provided an outline following her classes, repetition of information, structured assignments when possible. Many of these recommendations were designed to reduce Student's anxiety.

9. The neuropsychologist also recommended that Student engage in individual therapy to address her anxiety, panic disorder and depression symptoms and encouraged Student to engage in extracurricular activities, and that she be assessed by a Sleep Disorder clinic. There was no evidence that Parents followed the recommendations for individual therapy or the Sleep Disorder clinic.

10. Mother submitted the report to the District at the start of the 2020-2021 school year. After reviewing the report, the District considered whether to evaluate and agreed to evaluate Student at a virtual meeting on September 28, 2020, based on Student's medical issues. Also present were the special education director, a special education teacher, the High School psychologist, a general education teacher, a guidance counselor, Parents and Student. At the meeting, the team also reviewed Student's academic performance and standardized test scores. This school year, Student was enrolled in four honors courses (English 3, Algebra 2, Computer Programming and Chemistry) and one A.P. course (US History). Student's grades were above average in all courses, except Computer Programming. Student did well on all standardized test scores reviewed.

11. The evaluation team agreed to rely on the recent assessments and incorporated many portions of her report into the planning form. The team decided to evaluate Student in the following areas: Academic Achievement, Communication, health/development/medical, fine motor and observation to determine her eligibility for special education and related services.

Parents gave virtual consent to the evaluation.

12. A prior written notice (PWN) was sent by the District to Parents the same day. This PWN also included a copy of the Notice of Procedural Safeguards. Also sent was a Consent for Evaluation, which Mother signed, consenting to the planned evaluation on the same date, September 28, 2020.

13. The evaluation report was completed on November 20, 2020. The evaluators included the school psychologist, a SLP, an OT, and a general education teacher and were all qualified evaluators. These evaluators used the following instruments: the KTEA-3 (academic achievement); the CELF-5 (communication); a clinical assessment of motor/sensory; the BASC-3 for teachers, the MASC-2 for anxiety, and the BYI-2 self-report scales (social/behavioral/emotional). One of the teachers served as an evaluator as well. The evaluators summarized their conclusions, determining: 1. the KTEA-3 showed reading scores within the Average to Well-Above Average range, math scores in the Average range, and writing scores within the Average to Above Average range; 2. the CELF-5 scores were all within the Average range and Student did not present with a disability in the area of speech and language; 3. the BASC-3 showed no clinically significant concerns across settings but noted one of two teacher's clinically significant concerns in the areas of Internalizing Problems, Anxiety and Somatization; the mother's "at risk" concerns in the areas of Anxiety, Somatization, Internalizing Problems, and Withdrawal from the neuropsychologist's report; and Student's self-report yielded clinically significant concerns in the areas of Locus of Control, Sense of Inadequacy, Somatization, and Relations with Parents, as well as At Risk concerns in the areas of Emotional Symptoms Index, Personal Adjustment, Attitude to School, Social Stress, Anxiety, Depression, Interpersonal Relationships, and Self-esteem; 4. The MASC-2 showed Significantly Above Average symptoms of anxiety and Well-Above Average scores in the areas of the GAD index, Humiliation/Rejection, and Tense/Restless; the BYI-2 self-report scales showed moderately elevated scores within the Anxiety scale and mildly elevated scores within the depression scale, and her self-concept fell within the much lower than average range.

14. The District evaluation was consistent with the outside report in confirming that Student's main issues are in the social/behavioral/emotional areas, and particularly Anxiety and Depression this school year. It is common to have those diagnoses when a patient has a serious medical condition.

15. On December 11, 2020 the virtual meeting to review the District's evaluation was convened to review the report and determine Student's eligibility for special education services. Seventeen people participated in the meeting, including District staff, a special education teacher, three general education teachers, the SLP, an OT, the school counselor, the school psychologist, two friends of the family, Parents, Student and a parent mentor. The evaluation report was reviewed. The District team members proposed that Student did not meet eligibility as a student with OHI based on their determination that Student, although demonstrating the characteristics of a student with an Other Health Impairment (OHI), does not demonstrate a

negative impact which requires specially designed instruction. The District sent Parents a PWN.

16. Parents did not agree with the eligibility determination. The District informed Parents on the process with requesting an Independent Educational Evaluation (IEE). On December 15, 2020, Parents submitted a request to the District, received on December 18, 2020, for an IEE because the school evaluation was not comprehensive or appropriate. Parents made numerous assertions of the shortcomings of the evaluation process, specifically: vision and hearing tests were not done; the school did not evaluate in a school/virtual home environment; the school was not proficient in evaluating until two weeks before the 60 days was up which caused needed evaluations (unspecified) to not be completed; the school wanted to evaluate online, but Student doesn't attend the live lessons; the school used testing scores from 2017; the school used a therapist (unnamed) that met with Student for two 30 minute sessions; the teachers that evaluated Student were from the previous school year and didn't get to know Student.

17. As a result, the Parents requested evaluations in the areas of: academics, speech/language, social skills, OT, psychological, auditory processing, functional vision, and autism. Parents further identified their chosen providers for these IEEs, including one that was located more than 200 miles from the District. The District agreed to pay for the requested IEEs at public expense in the subject areas that were part of the District evaluation, but not for the three evaluations that were not conducted or requested by Parents during the District's evaluation process – the assessments for auditory processing, functional vision, and autism. Parents' request for an autism evaluation was based on Student's self-diagnosis of autism after the evaluation was completed based on her research. The neuropsychologist's administration of the BASC-3 to Mother showed no areas of concern; in an autism evaluation this test would show areas of concern. These scores were in the normal range.

18. On January 12 and January 21, 2021, the special services director sent letters to Parents in response to their IEE request. The District offered to try to settle the IEE dispute with Parents before the District would have to file for a due process hearing, offering to conduct the hearing and vision tests that were supposed to be done as part of the evaluation, but could not be done because Student did not appear for the tests. Once those tests were done, Gerber would reconsider the requested functional vision and auditory processing IEEs. The special services director offered Parents four different dates within the following week, with four-hour blocks of time each to complete these. The special services director also asked for additional information about the reason Parents suspected autism before the District would agree to such an evaluation, but specifically declined Parents' requested evaluator, who was located over 200 miles away. Parents did not obtain any IEEs nor did Student submit to the proposed vision and hearing screenings prior to the filing of the Complaint/Request.³

³

Student did submit to hearing and vision tests at the District during the resolution period. The vision test showed corrected vision with glasses at 20/20 for both eyes. The hearing test showed she passed in all categories. (Plaintiff's Exhibit 14). Student also obtained an audiological test during the resolution period. (Respondent's Exhibit 1). The test showed hearing in the normal range, with slight or borderline mild hearing loss at the low and high extremes of the examined spectrum. These three tests were not determined to affect the evaluation.

19. An outside evaluator was retained by the District as a consultant and expert witness to review the evaluation report and eligibility determination. The evaluator has a certification as a school psychologist 3, the highest level of licensed psycho-educational specialists, and is qualified to diagnose all DSM-5 conditions. She holds an EdD degree from the University of South Carolina, and has over 50 years experience in her field, including as a school psychologist, special education teacher, and administrator of special education programs. In addition, she has taught as an adjunct faculty member in a number of public and private colleges and universities across the state for decades and has done professional training on special education and autism across the state and internationally. The outside evaluator testified that she developed a course entitled "Students with Challenging Behaviors," that covered, among others, students with autism, learning disabilities and children with behavior issues arising from medical conditions. She was involved with setting up the first programming in the state for students with autism and served on the task force with the SCDE on creating the SEED document and is currently assisting with its update. The District's evaluator established her qualifications as an expert.

20. The outside evaluator testified that she spoke with the special services director and other District personnel, reviewed Student's academic file, the neuropsychologist's report, and the District's evaluation report and eligibility determination. Based on her discussions and review of these documents, she opined that the District's evaluation of Student was comprehensive and appropriate. The evaluator based her opinion, in part, on the many positives Student's evaluation showed, including her academic performance, her ability to handle independent learning, her demonstrated skills, including her really good working memory, and her ability to use her skills to perform well in school. She opined that the District evaluation sought appropriate additional tools to fill in gaps in the outside report, including where inconsistencies were noted in the report, such as motor performance. She confirmed that the testing instruments used by the neuropsychologist and the District evaluators were excellent current instruments. She also agreed that the evaluation showed Student's chronic medical issues and her social and emotional issues, particularly her anxiety and depression, for which she was on medication, but noted that Student doesn't regularly participate in therapy/counseling. She opined that the Covid-19 pandemic could impact Student's emotional issues. She also opined that there was no evidence in the evaluation report that specially-designed instruction was required.

21. On the subject of Parents' request for IEEs in the area of auditory processing, functional vision and autism, the outside evaluator opined "auditory processing" is not a disability itself and is a condition very much questioned in the research, Student does not show hearing problems, noting that there was no indication of auditory processing issues in any of the sub-tests, including the self tests, and Student could not have performed as well as she did during the evaluation had she had auditory processing issues. She further opined that the Wechsler results from the outside report showed no auditory issues. She further opined that the outside report is devoid of any findings or even suspicion of auditory processing, functional vision and autism, which she would have included in her "diagnostic impressions." She further opined that functional vision assessments are typically for students with significant vision issues that impede a student's learning and there was no evidence of that in Student's case. The evaluator further opined that the neuropsychologist administered an excellent test, the ABAS-3, which is a required test for autism, and was based on the outside evaluator's input. She stated there would have to be some very low scores on that test to support a suspicion of autism.

The outside evaluator also opined that “auditory processing” and autism would not just appear later in a student’s education, such as high school.

Discussion

The issues stated earlier in this decision must be assessed in light of the evidence and testimony presented at the hearing, and by applying the existing pertinent federal and state laws to the facts.

The District filed this case to raise two issues related to its evaluation and the subsequent request for IEEs by Parents. The District’s second issue will be considered first.

1. Was the District evaluation comprehensive and appropriate, evaluating all areas of suspected need and in compliance with its child find obligations.

The District agreed to Parents’ request to conduct an initial evaluation of Student based on the outside report that Parents gave them. Prior to receipt of that report, although Student was on a 504 Plan, which Student had been on when she first enrolled in the District for the 2015-2016 school year, there was no evidence that the District had any reason to suspect that Student was a child with a disability and there had been no prior request from Parents that Student be evaluated. The evidence showed Student was a high achieving student, able to work independently and succeed with her 504 Plan accommodations.

Upon receiving the request for evaluation, the District scheduled a meeting with teachers, parents and other school professionals to decide on whether an evaluation would be conducted and, if so, what testing would be appropriate. The District agreed to incorporate the outside report into the evaluation. Once consent is granted, a district “must conduct a full and individual initial evaluation” consisting of “assessment 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. § 300.301(a); 34 C.F.R. § 300.304(c)(4). The S.C. SEED requirements are in accord.

An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental and academic information to assist in determining if the child is eligible for special education services. 34 C.F.R. § 300.304(b)(1)(i).

The District evaluation complied with all of these requirements. The planning team, including Parents, agreed on the scope of the evaluation and the only contemplated areas that were not done were vision and hearing, due to Student’s failure to appear at the scheduled time. There was no evidence that Parents attempted to reschedule those appointments prior to the conclusion of the assessments.

Upon the conclusion of the report, the District considered whether Student qualified under IDEA as a child with a disability under the category Other Health Impairment (OHI). OHI means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that (in pertinent part):

- i. Is due to chronic or acute health problems such as *** a heart condition ***; **and**
- ii. Adversely affects a child's educational performance.

34 C.F.R. § 300.8(a)(9). (emphasis added)

The evaluation team, applying this definition, concluded that Student did not meet the definition because the evaluation did not show that her heart condition adversely affected her educational performance. The District's expert, also concluded that the District's evaluation report was appropriate and comprehensive and agreed with the eligibility determination that the report did not support a need for specially designed instruction for Student.

Parents contended, in their December 15, 2015 letter, that the school evaluation was not comprehensive or appropriate in that: 1. vision and hearing tests were not done; 2. the school did not evaluate in a school/virtual home environment; 3. the school was not proficient in evaluating until two weeks before the 60 days was up, which caused needed evaluations (unspecified) to not be completed; 4. the school wanted to evaluate online, but Student doesn't attend the live lessons; 5. the school used testing scores from 2017; 6. the school used a therapist (unidentified) that met with Student for two 30 minute sessions; 7. the teachers that evaluated child were from the previous school year and didn't get to know Student.

In considering Parents' various contentions, the vision and hearing tests were scheduled in October, 2020, but could not be done because Student failed to appear at the scheduled time. The planning form did not mandate vision and hearing tests, but only indicated the evaluation "may" include vision and hearing tests. There was no evidence that Parents attempted to reschedule those missed appointments prior to the conclusion of the assessments, or even later when the District offered to conduct them prior to the filing of the Complaint/Request. This tends to show that these tests were not important to Parents. IDEA does not require that school districts compel parents to comply with evaluations.

There was no agreement at the planning meeting or reflected on the planning form indicating any part of the evaluation would be conducted in Student's home. There was no evidence that Parents had ever asked for that. The Parents' evaluator, did not evaluate Student in her home environment. The District offered to observe Student in her virtual class, but that could not be done due to Student's choice not to attend the live virtual classes. The District's evaluation did include two teacher observations from the previous school year. One was by a teacher who worked with Student in the home during her intermittent homebound period. That teacher's observation showed that she knew Student very well. Parents acknowledged that the other teacher completing an observation was a favorite of Student's. Further, there was nothing inappropriate in this situation to incorporate teacher's observations from the previous school year, due to Parents' choosing virtual rather than in person this school year, and Student's choosing not to attend live classes.

There was insufficient evidence to support Parents' assertion about the school's lack of proficiency in completing the evaluation which caused needed evaluation (unspecified) to not be completed. The District's evaluation report included all needed evaluations and was completed

within 60 days of receiving parental consent for the evaluation, as required by IDEA. 34 C.F.R. § 300.502(b)(3).

There was insufficient evidence to support Parents' assertion the school used a therapist (unidentified) that met with Student for two 30 minute sessions. The psychologist, who assessed Student, spent two hours with her during the initial session alone. The assertion that the school used testing scores from 2017 appears to refer to the audiologist report which the school had in its records and utilized due to Student's failure to appear for the scheduled hearing test. That report concluded Student "is a normal hearing student."

There was insufficient evidence that the District's evaluation was not comprehensive due to its failure to evaluate Student in the areas of functional vision, auditory processing and autism. No member of the evaluation planning team, including Parents, requested such evaluations. Further, there was no evidence that District had any reason to suspect that Student had vision or auditory problems, or autism, nor was there any evidence that any District evaluator, during their evaluation, learned of any reason to suspect that Student had vision or auditory problems, or autism. Leon did not add any of these areas to her diagnostic impressions.

The District carried its burden of showing that its evaluation is comprehensive and appropriate and complied with the IDEA requirements, including the District's child find obligations.

2. Were the Parents entitled to the independent educational evaluations they requested at public expense.

Under the IDEA, Parents have the right to obtain an IEE at public expense if they disagree with an evaluation obtained by the school district, subject to certain conditions. 34 C.F.R. § 300.502(b)(1). A school district must either: 1. ensure that an IEE that complies with these conditions is provided to Parents at public expense, provided the evaluation meets the district's criteria, or 2. must, without unnecessary delay, file a due process complaint requesting a hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2).

The District attempted to resolve the issues arising from Parents' request for the IEEs by offering to pay for IEEs on all areas assessed in the District evaluation, but not in the additional three assessment areas not covered. The District then filed this due process complaint, pursuant to 34 C.F.R. § 300.502(b)(2). After that, the District continued to attempt to resolve the IEEs issue during the 30-day resolution period, but were not able to do so.

If the District files a due process complaint to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3). The resolution of the first issue, determining that the District's evaluation was comprehensive and appropriate, is dispositive of the District's second issue. The Parents are not entitled to the IEEs that they requested at public expense. 34 C.F.R. § 300.502(b)(3).

Conclusions of Law

Petitioner has the burden of persuasion as it is the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

Respondent gave informed consent to the District on September 28, 2020 to conduct evaluations. 34 C.F.R. § 300.9.

The District filed a complaint to determine whether its evaluation was comprehensive and appropriate. 34 C.F.R. § 300.502(b)(2).

Student's November 20, 2020 evaluation report by the District was comprehensive and appropriate. 34 C.F.R. § 300.301; 34 C.F.R. § 300.304.

Student is not a child with a disability under IDEA. 34 C.F.R. § 300.8(a)(1).

Parents are not entitled to IEEs at public expense. 34 C.F.R. § 300.502(b)(3).

IT IS SO ORDERED this 6th day of May, 2021.

NOTICE OF RIGHT TO APPEAL

The decision of the local due process hearing officer is a final order unless a party seeks a state-level review. Any party aggrieved by the hearing officer's decision has the right to appeal this decision within ten calendar days of receipt of the written decision. Either party may appeal this ruling by writing a letter that includes the request to appeal to the South Carolina Department of Education, Office of General Counsel, 1429 Senate Street, Rutledge Building, Columbia, South Carolina 29201. The state-level review must be concluded and the written decision issued within thirty-calendar days from the date of receipt of the appeal.



Monica R. Bohlen
Local Due Process Hearing Officer

