

BEFORE THE NEBRASKA DEPARTMENT OF EDUCATION

**PIERCE COUNTY SCHOOL)
DISTRICT NO. 70-0002,)
Commonly known as)
PIERCE PUBLIC SCHOOLS)
201 N. Sunset St.)
Pierce, NE 68767)**

CASE NO. 23-01 SE

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

Petitioner,)

vs.)

Respondent.)

THIS MATTER was heard on May 17, 2023. Mona (Molly) Burton, the duly qualified and appointed fair Hearing Officer, presided. Petitioner, Pierce County School District No. 70-0002, was represented by its attorneys, Jordan Johnson and Sara Hento. Respondents, _____, were represented by their attorney, Joel Carlson. The hearing was recorded by Sarha Buzi, Court Reporter for Great Plains Reporting. The case was adjourned on May 17, 2023, the record closed, and the case taken under advisement.

Jurisdiction is premised upon Title 92 Ch. 55 and the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 which confers on the Hearing Officer exclusive original jurisdiction of this case.

Petitioner, Pierce County School District No. 70-0002 filed a petition on January 6, 2023, requesting this Hearing Officer issue an order determining _____ was appropriately evaluated and Petitioner is not responsible to publicly fund a further evaluation. (Ex. 41)

ISSUES

1. Whether the psychoeducation assessments used were comprehensive and adequate.
2. Whether the School District sufficiently considered the input from the parents, outside sources, and the student.

The following witnesses testified:

- _____, Respondent and Mother of _____ has been a Special Education instructor at _____ for three (3) years.
- Sara Hento, School Psychologist with Educational Service Unit 8. (80:8-22) Ms. Hento has been a school psychologist for twelve (12) years. Ms. Hento has assessed students with autism and has been part of the Northeast Regional Autism Team. (82: 16-18)
- Christine Peters, 6th grade teacher for Pierce County School District. (118:10-11) Ms. Peters has been teaching in Nebraska for twenty-six (26) years. (118:16-18) Ms. Peters is _____ 6th grade teacher. (119:22-24)

The following Exhibits were received without objection:

Exhibit 1: Cedar Rapids Vision in Motion Multi-Sensory Stipulation Therapy Initial Assessment, June 4, 2019.

Exhibit 2: Midtown Health Center Behavioral Health Diagnostic Clinic Report, June 17, 2018.

Exhibit 3: School referral to ESU 8 for psychological and/or speech-language, August 22, 2022.

Exhibit 4: Medical information from Boystown, August 22, 2022.

Exhibit 5: School-age parent information for referral to ESU 8 for psychological and/or speech language services form.

Exhibit 6: Medical OT Assessment, September 12, 2022.

Exhibit 7: UCC-HF_ Characteristic Checklist, September 12, 2022.

Exhibit 8: Sensory Processing Measure Auto Score and Home Form Profile, September 14, 2022.

Exhibit 9: UCC-HF_ Characteristic Checklist, September 14, 2022.

Exhibit 10: Sensory Processing Measure Autoscore form, September 15, 2022.

Exhibit 11: Sensory Processing Measure Autoscore form, September 18, 2022.

Exhibit 12: 22-23 Quarter 1 grades.

Exhibit 13: MAP Student Progress Report, October 3, 2022.

Exhibit 14: Referral form to Nebraska ASD Network, November 4, 2022.

Exhibit 15: Structured student interview

Exhibit 16: Boystown Diagnosis letter, November 10, 2022.

Exhibit 17: SK Documentation Sheet.

Exhibit 18: ASD Network Northeast Region Observation.

Exhibit 19: Northeast Region ASD Team Interview.

Exhibit 20: Section 504 Student Accommodation Plan, April 23, 2023.

Exhibit 21: Student Benchmark Assessment History.

Exhibit 22: SK Observations Sheet.

- Exhibit 23: Transition Tour to High School Documentation, May 3, 2023.
- Exhibit 24: Affidavit of Speech Language Pathologist Kyle Simmons, May 10, 2023.
- Exhibit 25: ASD Specific Screening Tools.
- Exhibit 26: BASC 3 Behavior Assessment for Children.
- Exhibit 27: Boystown Pediatric Office Visit, June 9, 2020.
- Exhibit 28: Determining Special Education-Eligibility Guidelines for Autism.
- Exhibit 29: Diagnostic Criteria-Autism Spectrum Disorder.
- Exhibit 30: IEE Approved Evaluators.
- Exhibit 31: Independent Education Evaluation-Tips Sheet.
- Exhibit 32: Letter from Katelyn Leming.
- Exhibit 33: Letter from Kenton Amstutz, November 10, 2022.
- Exhibit 34: Letter from Tracie Chochon, March 20, 2023.
- Exhibit 35: MDT Report, October 2, 2019.
- Exhibit 36: MDT Report, October 5, 2022.
- Exhibit 37: Screening and Diagnosis of Autism Spectrum Disorder.
- Exhibit 38: Texts from Jamaal Hale.
- Exhibit 39: Texts with Mrs. Peters
- Exhibit 40: Underlying Characteristics Checklist.
- Exhibit 41: Petition.
- Exhibit 42: Answer.
- Exhibit 43: Stipulated Facts and Contested Issues.
- Exhibit 44: Relevant portions of Rule 51.

FINDINGS OF FACT

At the time of the hearing, _____ was a sixth-grader in the Pierce County School District. Respondents, _____, are _____ parents. In 2019, when _____ was in third grade, a private psychologist, Dr. Turik, diagnosed _____ with Generalized Anxiety Disorder. (Ex. 2) Respondents requested an evaluation to determine whether _____ qualified for school-based services, and in the Fall of 2019, the District completed the requested evaluation.

At that time, the following assessments were completed: Clinical Evaluation of Language Fundamentals (CELF -5), articulation screening, Wechsler Intelligence Scale for Children- Fifth Edition (WISC-V), Wechsler Individual Achievement Test- Third Edition (WIAT-III), and the Revised Children’s Manifest Anxiety Scale (RCMAS-2). (Ex. 35) The evaluation included a comprehensive review and consideration of classroom observational data, input from parents, data from Cedar Rapids Vision in Motion, and data from the Behavior Assessment System for Children rating forms administered by the private

psychologist. (Ex. 35)

was not verified as a student with a disability in need of special education and related services. The Respondents agreed with the decision of the MDT team pursuant to the evaluation undertaken in 2019. (Ex. 35) (22:18-21)

Since that evaluation, has success in the school environment. Academic data obtained from Acadience and MAPS testing from fourth through sixth grade both indicate that performs at or above benchmarks. (Ex. 13 and 21) This is consistent with other academic testing and observational data from instructors; quarter 1 grades in sixth grade contained one A, two A-'s, and three B+'s. (120:9-15; 101:8-13) (Ex. 12) has and continues to demonstrate the ability to excel academically.

is also a well-behaved student who connects with peers. (120:3-8) In grade, a Section 504 plan was put in place for to address anxiety based needs. (23:19-22) The plan allowed for extended breaks, use of a fidget toy, and listening to music. (Ex. 36) Those accommodations worked successfully for to the extent required them, and “ functions pretty much typically like you'd expect a student to behave.” (120:1-2)

In 2022, Respondents informed the School District of a private diagnosis of Autism Spectrum Disorder and requested another evaluation to determine whether is a student with a disability in need of special education and related services. (Ex. 36) The School District agreed to conduct an evaluation and the following assessments and evaluations were performed in the fall of 2022: Test of Pragmatic Language-2 (TOPL-2), Revised Children's Manifest Anxiety Scale- Second Edition (RCMAS-2), Autism Spectrum Rating Scales (ASRS) (completed by , grade teacher, grade teacher, and grade science teacher), Underlying Characteristics Checklist - High Functioning (completed by grade teacher, and outside OT), and an occupational therapy evaluation. (Ex. 36) Classroom and recess observations, educational records, parent input, private provider information, and teacher input were considered as part of the evaluation as well.

The multidisciplinary team convened in October 2022. (Ex. 36) “To qualify as a child with autism, there needs to be atypical development of social competence, atypical development of communication, and atypical range of interests and patterns of behavior,” in addition to educational impact. (Ex. 36) The evaluations indicated symptoms of autism manifested more at home than in school, and there was no reported educational impact related to the diagnosed disability. (93:7-13) The data gathered indicated the parents reported concerns over social communication, language, and peer socialization. (Ex. 36)

In the educational environment, there were no reported concerns of repetitive behaviors, inability to handle routine changes, or school reported atypical ranges of interest. (Ex. 36) was not verified as a student with a disability in need of special education and related services. Instead, continued SAT intervention and Section 504 accommodations were recommended given the continued success had with those in place. Section 504 plan was subsequently amended to address lingering concerns expressed by the Respondents during the MDT meeting. (Ex. 20, an accommodation to allow to wear sport shorts during the school day was added to address sensory needs reported in the MDT meeting. In April 2023, prompting by teachers language was added in regard to potential need of extended breaks. If leaves or is prompted to leave, that is communicated with parents per the April 2023 revisions.) The Respondents disagreed with the decision made by the 2022 MDT team. (Ex. 36)

Despite Respondents reporting concerns over “tells,” did not exhibit “tells” in the school setting. (122:10-12) demonstrated the ability to self-advocate for in the school environment. (120:24-121:15) The results of the evaluation were consistently corroborated by subsequent educational and academic data produced over the remainder of the school year. (Ex. 17) Throughout sixth grade provided his own self-assessment scores almost daily on how he felt about that day. (Ex. 17) The scale ranged from 1-5 with 5 being “awesome” and 1 being “bad.” r never self-assessed below a 3. (Ex. 17)

After the MDT meeting, was referred to the Autism Spectrum Disorders Network. (98:3-6) This referral was initiated based on parental request at the MDT meeting. An outside individual from the network performed a classroom observation and an interview of in February 2023. (Ex. 19) The observational data mirrored the information the multidisciplinary team used in its verification decision and supported the outcome did not verify. (99:17-22)

In November 2022, Respondents requested an Independent Educational Evaluation (IEE) at public expense. (17:23-25) (Ex. 41) The School District reviewed its evaluative data and in December 2022, the School District responded providing the criteria and policy applicable to IEE requests along with prior written notice of the decision to deny the request for the IEE. (Ex. 41)

The School District initiated these proceedings to defend the sufficiency of its evaluation.

CONCLUSIONS OF LAW

I. **Whether the psychoeducation assessments used were comprehensive and adequate.**

Rule 51 outlines the verification criteria and procedures for school districts. 92 NAC 51 § 006.02C. The contested issues at question arise from 92 NAC 51 § 006.02C. The School District must prove “by a preponderance of the evidence that its evaluation was appropriate.” *B.G. v. Bd. of Educ.*, 901 F.3d 903, 909 (7th Cir. 2018).

The educational experts testified uniformly the MDT team followed all requirements of Rule 51. (103:2-106:8; 124:13-125:14) This testimony was credible.

a. **The assessments were conducted in native language and the assessment methods were valid. See 92 NAC 51 § 006.02C1b; 92 NAC 51 § 006.02C2.**

There is no dispute native language is English, the same language used in the assessments, and the assessments used were done so in a valid and reliable manner. (28:7-9; 29:17-22; 103:2-12) (Ex. 24)

b. **A variety of validated, tailored assessment tools were used accurately reflecting aptitude in light of skills, ensuring a single measure was not used as the sole criterion. 92 NAC 51 § 006.02C5; 92 NAC 51 § 006.02C6a; 92 NAC 51 § 006.02C7; 92 NAC 51 § 006.02C8; 92 NAC 51 § 006.02C9.**

The School District provided evidence it satisfied each of these requirements. (103:13-104:12) (Ex. 4) ESU 8 school psychologist, Gina Ohnesorg, who was responsible for the psychoeducational report, has over ten years of experience and is qualified in both administering and interpreting the results of educational evaluations. (80:20-22) Ms. Ohnesorg’s evaluation utilized valid instruments geared at examining both autism and anxiety. Testimony also indicated during the MDT meeting, multiple measures and assessments were used to make the verification decision. (105:10-14) This evidence, including witness testimony, was credible.

c. **All areas of suspected disability were assessed and the evaluation was comprehensive. 92 NAC 51 § 006.02C10; 92 NAC 51 § 006.02C11.**

The evaluations performed were tailored to address both autism and anxiety, and testimony supports all areas of suspected disability were assessed. (104:13-19) The evaluation included a multitude of different information sources and evaluation tools, and testimony supported the comprehensive nature of the evaluation. (104:20-25)

d. Technically sound instruments to assess cognitive and behavioral factors were used and the assessment tools provided relevant information. 92 NAC 51 § 006.02C12; 92 NAC 51 § 006.02C13.

As testified to by Ms. Ohnesorg, the decision of what psychoeducational assessment tools to use is based on the needs of the individual student and concerns present in the referral. (89:3-6) The NDE verification guidelines inform the determination process as well. (89:13-20) Even though the NDE verification guidelines are not legal requirements, the School District aligned its evaluation with the NDE verification guidelines, demonstrating the evaluation was also within best practices. Per the NDE verification guidelines for Autism Spectrum Disorder, educational evaluation tools should include some combination of the following: behavioral observations, developmental history, screening tool specific to ASD completed by family and/or teacher, teacher input, review of educational records, direct interaction with the child in a play-based environment, reports by outside sources, standardized assessments, and if needed, additional information like an Autism Diagnostic Interview. (Ex. 28)

Here, _____ was observed in both the classroom and recess setting, meaning the evaluation gathered information from behavioral observations and information regarding _____ ability to interact with _____ peers in a play environment. (86:8-14) (Ex. 36) Additionally, autism specific questionnaires were completed by teachers, a private provider, and the family. (Ex. 36) Education records and outside medical information were considered, an outside private counselor was part of the MDT meeting, and _____ provided input through various assessment tools. (Ex. 6-11) The wide variety of assessment tools used demonstrates the School District exceeded the regulatory requirements of Rule 51 and followed the advisory NDE verification guidelines.

e. Interpretation of evaluation data ensured a variety of sources were drawn upon and documented. 92 NAC 51 § 006.02C14a; 92 NAC 51 § 006.02C14b.

The record demonstrates the MDT team utilized a multitude of different sources of information and provided the space and opportunity for parent concerns to be heard, considered, and addressed. (124:13-125:5; 105:10-23) (Ex. 24)

f. the School District appropriately considered all sources of information.

Testimony by the education experts, who were both members of the MDT team, support the conclusion the wide range of evaluations and data gathered were discussed and appropriately considered. (106:3-8) (Ex. 24)

The School District evaluated _____ thoroughly, comprehensively, and competently. The School District has proven by a preponderance of the evidence it conducted a comprehensive and lawful evaluation of _____. Respondents may disagree with the MDT decision _____ did not verify, however, that disagreement alone does entitle them to

an independent educational evaluation at public expense. In fact, at one point in her testimony, Respondent conceded the School District satisfied the requirements of Rule 51.

Q. So I'm trying to understand the processes that Pierce Public School did prior to that meeting, that you sort of outlined here today; was there something about those processes that were not in line with either Rule 51 or best practices?

A. They were in line with Rule 51, as it is stated. However, best practices would've taken the parental information into account, and should a parent request an extension on an MDT -- typically, in best practices is in the request to look at those further areas before making that final decision.

Q. Okay. All right. I think I was going down a rabbit trail on something here, but -- we talked earlier -- a while ago. We talked about these best practices. And you said that Ms. Chochon has things that are in Rule 51 and what she believes are best practices. What Pierce Public did school did was in -- within Rule 51, but you have a disagreement as to those best practices, correct?

A. Correct.

Q. You testified a few times with Mr. Carlson that you understand that the school's evaluation met the requirements of Rule 51 but did not meet what you believe to be educational best practices; is that correct?

A. Correct.

(57:2-12; 60:18-61:1; 72:25-73:5)

The uniform testimony from the educational experts supports the conclusion Rule 51 was followed. This evidence was credible.

g. A difference in opinion regarding the psychoeducational assessments performed is insufficient to warrant an IEE.

Although the Respondent conceded the District's evaluation met the requirements of the IDEA and Rule 51, the Respondent argues the school district's evaluation was deficient because it did not incorporate all of the assessments preferred by the Respondent. Respondents' preferences are not the relevant legal standard. The IDEA "requires only that the proper assessment tools [are administered] and qualified individuals conduct the evaluation." *Gwinnett County Sch. Dist.*, 59 IDELR 21 (SEA GA 2012) (quoting *L.S. v. Abington Sch. Dist.*, 2007 WL 2851268 (E.D. Pa. Sep. 28, 2007)). Decisions about the evaluation and placement of a student must be made based upon the unique circumstances of the individual student and their related needs. *See, e.g., Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386 (2017).

Differing opinions regarding evaluations to perform is not a sufficient basis to support an order to fund an IEE. *Northwest Indep. Sch. Dist.*, 120 LRP 162 (SEA TX 2019), *aff'd*, No. 21-40316, 2022 U.S. App. LEXIS 15247 (5th Cir. June 2, 2022). In *Northwest Indep. Sch. Dist.*, the parents had obtained an outside diagnosis which diagnosed the student with Generalized Anxiety Disorder, Autism Spectrum Disorder, and separation anxiety. The school assessed the student using a variety of metrics and tools and determined the student was not eligible for special education services. The parents argued other autism instruments should have been used, such as the re-administration of the ADOS-2. The hearing officer rejected this claim.

The fact that other instruments were available to the LSSP to choose from does not mean the instruments and other tools and strategies she did use were insufficient under IDEA evaluation criteria. Reasonable minds may differ in the choice of instruments used to evaluate for autism. ***However, a mere difference of opinion between qualified, knowledgeable professionals as to the choice of instruments used to assess a student for autism does not prove the choices the school district made, in this case, were inappropriate.***

Id. (emphasis added). The decision of what tools to administer is not a uniform process and will differ across professionals.

This logic is supported by the Third Circuit as well in *A.H. v. Colonial Sch. Dist.*, 779 F. App'x 90 (3rd Cir. 2019). There the district demonstrated it had used a variety of assessment tools and strategies that were all technically sound instruments. A private psychologist, testifying on behalf of the parents, expressed that the district's evaluation was "incomplete" because it did not include neurological, occupational therapy, psychiatric, or functional behavioral assessments. *Id.* at 93. The court rejected this argument. Instead, the court held the sole focus of a fact-finder in a due process hearing in which a school district seeks to defend its evaluation is whether the school district "had appropriately considered all of [the] Student's assessments and did not rest its decision on a single criterion." *Id.* at 94.

Here, the Respondents provided a letter from school psychologist Tracie Chochon that outlines her preferred practices for evaluating students with autism spectrum disorder. (Ex. 34) However, that does not render the evaluation conducted by Ms. Ohnesorg deficient. The letter provided by Ms. Chochon does not provide any direct criticism of the evaluation of . (102:12-14; 36:12-14) In fact, Ms. Chochon neither met nor observed . (36:21-37:9) In preparing this letter, Ms. Chochon did not review any of the psychoeducational report data or underlying assessments performed. (36:15-20) The letter is merely a statement as to what Ms. Chochon generally does and is not an individualized recommendation based on needs. Ms. Chochon even noted "this is not an exhaustive list regarding instrumentation or methods in assessing an AU verification." (Ex. 34) The Respondents have only brought forward a difference of opinion based upon vague generalities and have not shown any error

in the evaluation. The evaluation conducted by Ms. Ohnesorg was done with an acute awareness regarding individual needs and was sufficiently comprehensive to evaluate all areas of suspected need.

II. The School District Adequately Considered Parent Input, Information from Outside Sources, and Input from the Student.

92 NAC 51 § 006.02C14a requires the School District to draw upon parental input in conducting its evaluation. The NDE verification guidelines provide reports by outside sources, screening tools completed by family, and direct interaction with the child are tools to consider in satisfying this requirement. (Ex. 28) Respondents assert the School District did not adequately consider the input they provided, including information from third-party providers. However, this is not supported by the record but instead reflects the Respondent's disagreement with the conclusions drawn from that input when considered along with the totality of educational information and data.

The Respondent's position on this issue is comparable to that of the Respondent in *Franklin Cnty. Sch. Dist. No. 31-0506*, 77 IDELR 147 (SEA NE 2020). In *Franklin Cnty. Sch. Dist. No. 31-0506*, the Respondent did not object to the testing that was conducted by the school, but rather expressed additional concerns regarding articulation and gross motor skills that were inconsistent with the other sources of data and information available to the team. There, the school district's evaluation was appropriate even though it did not engage in further assessment of those areas to corroborate the parent's concerns because the evaluation fully and comprehensively assessed the student in all areas of suspected need. *Id.*

Here, Respondent testified in the hearing she had concerns over ability to self-advocate and ability to engage in social communication. (18:5-21:4) In support of these concerns, the Respondent provided a letter from Dr. Amstutz, a private provider with Boys Town National Research Hospital, that states, "[redacted] struggles with social communication and self advocacy, and identifying his emotions and giving an appropriate reaction." (Ex. 33)

Respondent believes additional testing would address the concerns raised by Dr. Amstutz. However, much like the circumstances in *Franklin Cnty. Sch. Dist. No. 31-0506*, there is no data to suggest self-advocacy and social communication are areas of suspected need that were not adequately evaluated. In fact, the School District considered this input, assessed [redacted] in this area, administered a pragmatics test to assess social communication, and confirmed [redacted] does not exhibit self-advocacy difficulties at school. (Ex. 24) (121:16-24) Notably, this opinion was informed by comprehensive evaluation and testing, while Dr. Amstutz never performed any evaluations of [redacted] in educational placement. (38:2-5) (Ex. 28)

Finally, Respondents argue the School District's evaluation is deficient because the District did not perform a formal interview of . However, an interview with the student is neither required by rule nor regulation. Further, an interview with the student is not included as a necessary component of an evaluation for autism in the guidance provided by the Nebraska Department of Education. (Ex. 28) Regardless, the District demonstrated its providers regularly and routinely interacted with and considered those interactions in reaching a decision. More formally, in completing her psychoeducational report, Ms. Ohnesorg solicited and documented the direct input of and that information was considered by the MDT team. (90:16-91:3)

The record is replete with evidence parental input was considered throughout the verification process. Respondents provided, and the team considered, personal input provided formally in writing prior to the meeting in response to assessments administered by the District in both the ASRS instruments and the Underlying Characteristics Checklist- High Functioning. Respondents provided, and the team considered, additional input at the MDT meeting, and through a dissenting opinion with the verification decision. (105:10-14; 125:1-2) Respondent, , testified input was collected and used during the process as well. (26:23-27:3) (Ex. 7 and 10) Furthermore, the record indicates the MDT team sought out and considered input from outside medical professionals. (93:20-96:12) (Ex. 6)

The School District adequately considered parent input, information from outside sources, and input from the student in conducting its evaluation.

CONCLUSION

Parents of special education students have the right to obtain an IEE at their own expense. The Individuals with Disabilities in Education Act (IDEA) and Rule 51 of the Nebraska Department of Education allow for publicly funded IEEs in some circumstances. Parents have the right to an IEE at public expense if they disagree with an evaluation obtained by the district, unless (1) the district demonstrates in a due process hearing that its own evaluation of the child was appropriate; or (2) the district demonstrates in a due process hearing that the evaluation obtained by the parents did not meet district criteria. 34 C.F.R. § 300.502 (b)(1)-(b)(2); 92 NAC 51 § 006.07D.

The School District demonstrated by a preponderance of the evidence, its evaluation was appropriate. The School District presented credible evidence demonstrating it appropriately and comprehensively assessed . The School District utilized evaluation tools that gathered parent input, included the parents throughout the MDT process, and used information provided from outside medical professionals. Respondents are not entitled to an IEE at public expense.

IT IS, THEREFORE, ORDERED, AS FOLLOWS:

1. Petitioner's special education petition is sustained.
2. Petitioner is not obligated to grant Respondents' request for an Independent Education Evaluation at public expense.

Dated: August 21, 2023.

By: /s/ Mona L. Burton
Mona L. Burton, #21696,
Hearing Officer
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing was duly served on the 21st day of August, 2023, via email as follows:

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