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**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

 )  
)  
Local School District, ) CASE NO. 2008-0499  
v. )  
)  
 ) MARY SCHWARTZ  
Student. ) Impartial Hearing Officer

**DECISION AND ORDER**

**Jurisdiction**

This matter is before the undersigned hearing officer on the district's request for a due process hearing.<sup>1</sup> This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

**Procedural Background**

On March 6, 2009, the district filed a due process request to contest the parent's request for an independent educational evaluation ("IEE") at public expense. The Illinois State Board of Education ("ISBE") appointed the undersigned as hearing officer on March 9, 2009.<sup>2</sup> The undersigned issued a Preliminary Scheduling Order and a statement of the parties' rights on March 10, 2009. An initial telephone conference call was held on March 26<sup>th</sup>, during which the parties informed the undersigned that they had agreed to participate in mediation. The prehearing conference was scheduled for April 14<sup>th</sup>.

The parent, through her attorney, filed a due process request on March 27<sup>th</sup>. On April 6<sup>th</sup>, the ISBE consolidated the parent's request for a hearing with the case already before this hearing officer. After receiving the ISBE notice of consolidation, the undersigned issued an order recommending the timelines pursuant to 20 U.S.C. §1415(c)(2)(E)(ii). The prehearing conference was rescheduled to May 5<sup>th</sup>.

The parties participated in mediation on April 22<sup>nd</sup> and reached agreement on some of the issues in the parent's complaint. To allow time for an IEP meeting, the

<sup>1</sup> The parent filed a due process complaint on March 27, 2009, which the undersigned dismissed without prejudice on September 25, 2009. See, IHO Exhibit 28.

<sup>2</sup> The appointment was actually a reappointment, as the undersigned had been appointed as hearing officer in a prior case involving the same parties as herein. The district's March 6<sup>th</sup> complaint was filed within one year of the date on which the prior case had been withdrawn. 105 ILCS 5/14-8.02a(f-5).

parties jointly requested a continuance of prehearing conference. Their request was granted, and the prehearing was continued to June 1<sup>st</sup>. The undersigned granted several more joint continuance requests over the summer as the parties continued to work toward resolving this matter without litigation. Then, on August 21<sup>st</sup>, parent's counsel notified the undersigned that he was withdrawing as parent's legal representative. His letter also stated that he had sent the parent a list of parent attorneys.

The undersigned held a telephone conference call with the parent and the district's attorney on August 25<sup>th</sup>, a date that had originally been set aside for the prehearing conference. During the conference call, the parent informed the hearing officer that she was home-schooling the student because she did not think that he would be safe at school. She also stated that she was deciding whether to retain new legal counsel and would inform the undersigned of her decision within two days. The undersigned rescheduled the prehearing to September 4<sup>th</sup> to allow time for the parent to prepare for the prehearing or retain counsel. The hearing dates were also rescheduled to September 22<sup>nd</sup> through 24<sup>th</sup>. The parent did not contact the undersigned as she had agreed to do regarding her decision on retaining legal counsel.

The undersigned sent a letter to parties on August 27<sup>th</sup>, providing information on the structure of the prehearing conference, model witness/document lists, and a list of the issues identified in the parent's due process request. The letter also ordered the parties to provide preliminary witness and document lists by 5:00 p.m. on September 3<sup>rd</sup>. The district provided its preliminary lists via letter dated September 1<sup>st</sup>. The parent did not provide preliminary lists and, when the undersigned placed the conference call on September 4<sup>th</sup>, the parent did not answer her telephone. The undersigned sent a letter to the parent on September 4<sup>th</sup> regarding her failure to attend the prehearing and a notice continuing the prehearing to September 14<sup>th</sup>. The letter also informed the parent that the hearing dates were rescheduled to September 29<sup>th</sup>, 30<sup>th</sup>, and October 1<sup>st</sup> because the district was unavailable on the dates previously scheduled. On September 11<sup>th</sup>, this hearing officer left the parent a telephone message, notifying her that the undersigned had not received the preliminary lists required for the September 14<sup>th</sup> prehearing conference.

The prehearing was held on September 14<sup>th</sup> via conference call. Despite sufficient notice, the parent did not provide the preliminary lists. She refused to answer whether she was planning to retain counsel, stating only that she had questions to discuss with her prior counsel. She agreed to contact the hearing officer by September 17<sup>th</sup> regarding her decision to obtain new legal counsel; however, she did not follow through with her agreement. The option of withdrawing her request and proceeding when she was ready was explained to her, but she did not want to do so. The parent hung up the telephone during the prehearing, and thus the conference was terminated prematurely.

The district submitted its final document list and evidence binder on September 22<sup>nd</sup>, the five day disclosure date. The parent did not provide either final lists or any

documents. The district also filed a Motion to Dismiss Parent's Hearing Request with Prejudice on September 22<sup>nd</sup>. The undersigned gave the parent the choice of responding to the motion orally in a conference call with the district or in writing. The parent chose to respond in writing, and her response was due on September 25<sup>th</sup>. The undersigned did not receive a response from the parent. An order dismissing the parent's due process complaint without prejudice was issued on September 25<sup>th</sup>.

The due process hearing was held on September 29, 2009 at the district's administrative office. The district called four witnesses to testify and submitted two binders, paginated 1-863, into evidence. The parent did not enter any documents into evidence or call any witnesses. She did, however, cross-examine the district's witnesses. [REDACTED] of [REDACTED] was the court reporter. At the close of the hearing, the parent requested a copy of the transcript. The hearing officer did not receive the transcript prior to the issuance of this decision; therefore, the testimony below is based on the undersigned's memory and hearing notes. The undersigned has reviewed all documentary evidence provided at this hearing. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

#### **Issues Presented and Remedies Sought**

The district requested a hearing to contest the parent's request for IEEs at public expense. Thus, the district must show that it has appropriately evaluated the student. As a remedy, the district asks for any order denying the parent's IEE reimbursement request and instructing the parent to direct her request for further evaluations to the district and to allow the district to evaluate the student.

#### **Burden of Proof**

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, the district has the burden of proof.

#### **Findings of Fact**

##### **Educational Information**

The student and his family lived in Arizona until 2006, so [REDACTED] spent his grammar school years in the Arizona school system. He began school in kindergarten and was retained in first grade at parental request. (SD 266). [REDACTED] was first found eligible for special education and related services when he was in second grade. His disability category was a specific learning disability ("SLD"), with deficits noted in basic reading skills, reading comprehension, and visual memory. (SD 267, 552). [REDACTED] entered District 1 in seventh grade, when his family moved to Illinois. (SD 267, 551). The district's initial IEP for the student, developed on September 26, 2006, notes that the student had academic deficits in reading, math, and written expression and was eligible under the

SLD category. (SD 329, 331-333). The IEP team also reported that [REDACTED] had problems staying on task, following directions, and completing assignments. (SD 330). The district held an IEP review meeting on November 1, 2006, to discuss the parent's request for an IEE to assess the student for dyslexia. The district informed the parent that dyslexia is included in the SLD category. School personnel raised concerns about the student's behaviors, but the parent did not want to discuss behavior issues. (SD 337).

The district made several attempts, beginning in December 2006 and continuing through March 2007, to convene another IEP meeting to review [REDACTED] IEP and discuss the need for a functional behavioral assessment ("FBA") and behavior intervention plan ("BIP"). (SD 338-345). The parent cancelled three meetings at the last minute before agreeing on February 21<sup>st</sup> to schedule a meeting in March. (SD 341, 344). The meeting was held on March 19, 2007. At the meeting, the parent gave the district a copy of an evaluation she had obtained for [REDACTED] at the Dyslexia Institute in Champaign, Illinois on January 10, 2007. The IEP team discussed accommodations that were in place for the student to address his academic deficits. (SD 354, 356, 363). The district conducted a FBA and developed a BIP, which was added to the student's IEP. (SD 355, 357-363). The IEP indicates that the student triennial re-evaluation must be conducted by April 15, 2008. (SD 346).

On May 1, 2007, the district sent a conference notice to the parent, informing her that an IEP meeting would be held on May 11<sup>th</sup> to review the student's IEP and BIP. (SD 364). One day before the IEP meeting, the parent requested that the meeting be rescheduled. (SD 365). The meeting was rescheduled several times and finally held on October 10, 2007. (SD 366-370). The IEP again notes that [REDACTED] has deficits in reading, math, and written expression. (SD 371). A FBA and BIP are included as part of the IEP. (SD 379-381). The IEP notes in several places that the student's triennial re-evaluation is due by April 15, 2008. (SD 370, 383). The student's last evaluation had been conducted on April 15, 2005, while he resided in Arizona. (SD 370).

The district began its efforts to conduct the triennial reevaluation in January 2008, informing the parent of the necessity of the evaluation and providing her with a statement of her procedural safeguards. (SD 391). A domain meeting, at which the IEP team would decide the evaluation components, was scheduled for February 6, 2008. (SD 392, 393). The meeting was rescheduled to March 5<sup>th</sup> and then, on March 4<sup>th</sup>, cancelled because the parent asked that the meeting be delayed until she had the results from a hearing evaluation she was securing for her son. (SD 395). The district offered to address the need for a hearing evaluation during the domain meeting and, if found necessary, have its personnel conduct the evaluation. The district proposed three dates for the meeting, asked the parent to respond to the proposed dates by a date certain, and stated that it would schedule the meeting if it did not hear from the parent by the set date. The parent indicated that she preferred to have the evaluation done by someone outside of the district. (SD 396). The domain meeting, which the mother did not attend, was held on April 1, 2008.

The IEP team completed a document entitled "Identification of Needed Assessments" at the domain meeting and determined that updated evaluations were needed in three areas: comprehensive achievement testing, general ability testing, and behavior (social-emotional status). The team agreed that the school psychologist would conduct the achievement and IQ testing, and the school social worker would administer adaptive behavior scales to the parent, student, and the student's teachers. (SD 399).

By letter dated May 7, 2008, the district again requested that the parent provide consent for the re-evaluation. The letter states that although the mother did not attend the April 1<sup>st</sup> domain meeting, district staff did meet with her on April 2<sup>nd</sup> to review both the recommendations that were made at the domain meeting as well as the parent's procedural safeguards. The parent requested time to review the information. The district agreed to review any evaluation changes the parent proposed and asked that she respond by April 4<sup>th</sup>. When the parent did not respond by the set date, the district made two more requests for parental consent and also contacted the ISBE complaint investigator, who then contacted the mother twice and encouraged her to respond to the district's requests for consent and input on evaluations. The district informed the parent that if she did not respond by May 23<sup>rd</sup>, when the school year ended, it would consider her lack of response as a denial of consent. It also informed her that the student's IEP would be valid until October 2008 and, if parental consent were not given, the district would develop a new IEP in the fall based on the information it had available at the time of the IEP meeting. (SD 121).

The parent sent two letters to the district on May 8, 2008. The first, addressed to the school social worker, asked that the new IEP include all accommodations and modifications recommended in numerous evaluations, dated from July 2005 through April 2007. (SD 122, 123). The letter asserts that the district's domain assessment was "flawed" because it had not used the information from an evaluation done at the Dyslexia Institute. (SD 126). Rather than providing consent for a re-evaluation, the parent requested that "(a)ll future testing shall be performed by licensed, experienced, independent third party evaluators certified specialist in the field of dyslexia and or Communication Disorders, agreed upon by the parent (with proven records for academic growth)." (SD 124). She specifically stated that she did not "want evaluators that are in any way affiliated with the school or district, as there is evidence that there exists a 'conflict of interests.'" (SD 127).

The second letter, which is addressed to the district, was written after the mother met with school personnel to review the recommendations from the domain meeting. The letter states that the parent did not agree with the domain determinations because "the data collected...was not based on scientifically researched data" and does not reflect the student's disability or educational needs." (SD 129). The parent asserts that the district has a "conflict of interest", evidenced by "denial of testing, improperly written IEPs, incorrectly written domain assessment, denial of services and technical assistance, and a false implementation of a behavior plan." (SD 130). The parent states that only independent third party evaluators will be allowed to test the student: he is to have no testing by school personnel and no evaluations for social emotional

status. (SD 130, 131). (emphasis in the original).

The district filed a due process request on May 13, 2008, to contest the parent's request for an IEE at public consent. The parent had not provided consent for the district to reevaluate the student. (SD 1). The undersigned was appointed as hearing officer on May 15, 2008. (SD 3). The parties participated in mediation on June 11, 2008 and entered into a mediation agreement. The terms of the mediation agreement provide that: the parent will provide written consent for the district to re-evaluate the student in the areas agreed upon at the mediation; the district will complete the re-evaluation during summer 2008 and provide completed reports to all parties prior to an IEP meeting, to be held prior to the beginning of the 2008-09 school year; and, the parties will develop an IEP for the student prior to the start of the 2008-09 school year, which would begin on August 14, 2008. The parties also agreed to meet again approximately one month after school started to review the results of the FBA and discuss whether any modifications to the IEP were necessary, based on the FBA. The district agreed to withdraw its pending due process request, and the parent agreed to withdraw her IEE requests. The agreement is signed by the district's attorney and by an attorney who represented the parent. (SD 11, 12). The agreed upon assessments include the Wechsler Individual Achievement Test, 2<sup>nd</sup> Edition ("WIAT-II"), the Wechsler Intelligence Scale for Children, 4<sup>th</sup> Edition ("WISC-IV"), the Visual Motor Integration Test, 5<sup>th</sup> Edition ("VMI-V"), and a FBA. The parties agreed that the school psychologist would conduct the first three assessments and that a special education teacher would perform the FBA. (SD 13). The parent provided written consent for the re-evaluation, and the district withdrew its due process request. (SD 14, 15).

The district then began its efforts to conduct the reevaluation. It made several attempts to contact the mother by telephone and left a voice message requesting that the mother call the school psychologist to set up times for the re-evaluation. The district memorialized its efforts in a letter to the parent dated June 30, 2008 (SD 139). The re-evaluation was finally conducted on July 15, 2008.

The school psychologist administered the agreed-upon assessments. On the WISC-IV, the student achieved a full scale IQ of 90, which is within the average range. ■■■ received a verbal comprehension score of 106, a perceptual reasoning score of 94, a working memory score of 97, and a processing speed score of 68. Because of the substantial variability in these subtests, the evaluator calculated a general ability index ("GAI"), which is based on the student's verbal and non-verbal subtest scores. The student's GAI score is 101. The student placed within the average range in verbal comprehension and non-verbal reasoning. He achieved a working memory score of 97, indicating that his auditory sequential memory, attention span, and concentration are average for his age. (SD 268, 269). On the WIAT-II, ■■■ overall reading skills were within the borderline to below average range. He has difficulty decoding words and spent a lot of mental energy and time trying to do so. His lowest reading subtest standard score was in reading comprehension, in which he scored only 75. The student received the following WIAT math subtest scores: numerical operations, 81 (low average range) and math reasoning, 77 (borderline range). (SD 270). In written

language skills, ■■■ received a standard score of 87 in spelling (low average) and 77 in written expression (borderline range). He had difficulty with sentence structure and the mechanics of writing. Comparing the student's intellectual functioning to his academic achievement scores, the examiner opined that ■■■ has significantly low skills in reading decoding, reading comprehension, math reasoning, math computation, and written language. (SD 270). On the VMI, the student achieved a standard score of 94, indicating average visual-motor coordination. Although the test is untimed, the examiner reported that ■■■ worked slowly but maintained his focus. The examiner noted that the student's slow visual processing ability negatively impacts his rate of completion on paper and pencil tasks. (SD 270).

The district's school psychologist also reviewed extensive private evaluations provided by the parent and prepared a summary of those evaluations as part of her evaluation. (SD 267). In September and October 2006, the student was assessed using the Peabody Picture Vocabulary Test (PPVT-III) and the Woodcock Reading Mastery Test, Revised ("WRMT-R"). The PPVT-III assessed the student as having average receptive vocabulary skills. On the WRMT-R, ■■■ achieved a standard score of 85 and a total reading cluster grade equivalency score of 4.0, indicating that his reading skills were low for his age. The Dyslexia Institutes of America evaluated ■■■ in January 2007 and determined that he has moderate dyseidetic/moderate dysphonetic dyslexia. The evaluation consisted of the following assessments and scores: Word Attack Test, on which ■■■ received a grade equivalency ("GE") score of 3.0 and a reading decoding GE score of 3.2; the Gray Oral Reading Test ("GORT-4"), on which ■■■ received a GE score of 3.7 in reading rate, GE score of 4.7 in reading accuracy, and a GE score of 4.0 in reading fluency; the VMI, on which scored at the 30<sup>th</sup> percentile in visual motor integration and at the 63<sup>rd</sup> percentile in visual perception; the Learning Efficacy Test, on which ■■■ scored at the 13<sup>th</sup> percentile in overall visual memory and at the 42<sup>nd</sup> percentile in overall auditory memory. (SD 275). The Eastern Illinois University ("EIU") Reading Center evaluated the student on April 6, 2007. He was given the Bader Reading and Language Inventory, 4<sup>th</sup> Edition, which found that he has difficulty discriminating between short and long vowel sounds and made errors identifying words that have double consonants and plurals. On the Stanford Diagnostic Reading Test, 4<sup>th</sup> Edition, ■■■ received the following GE scores: 3.0 in comprehension; 4.5 in vocabulary; 4.0 in scanning. These scores yielded a total GE score of 3.4. The examiner noted that the student's scores were affected by his inability to finish the comprehension and scanning test items within the allotted time. On the PPVT-III, ■■■ received a standard score of 89, which is in the low average range. The EIU Speech/Language/Hearing Clinic evaluated ■■■ on February 22, 2008. On the Clinical Evaluations of Language Fundamentals, 4<sup>th</sup> Edition ("CELF-4"), the student received a standard score of 98, indicating overall average oral language ability. On the Qualitative Reading Inventory-3 ("QRI-3"), ■■■ rate of reading words/minute was 78 at the 3<sup>rd</sup> grade level, 75 at the 4<sup>th</sup> grade level, 76 at the 5<sup>th</sup> grade level, 68 at the 6<sup>th</sup> grade level, and 102 at the 6<sup>th</sup> grade level in silent reading. The EIU evaluator opined that these results were consistent with the diagnosis of moderate dyseidetic/moderate dysphonetic dyslexia. (SD 275-277).

Based on her evaluation and records review, the district's school psychologist

determined that [REDACTED] has a visual processing deficit, with significant weaknesses in visual memory and visual-motor speed on paper and pencil tasks. In reading, [REDACTED] has deficits in decoding, reading comprehension, and reading fluency. Her report states that the student's "visual processing deficit and significant discrepancies between his intelligence and achievement in basic reading skills and reading comprehension are evidence of a continuing learning disability known as dyslexia. It is this examiner's opinion that (the student's ) dyslexia also has contributed to his significantly low achievement in math and written language compared to his average intelligence." (SD 271).

The district sent the parent an IEP conference notice on August 14, 2008, notifying her that an IEP meeting would be held on August 25, 2008, to review the recent evaluations and to develop an IEP. (SD 401). Both the parent and student attended the IEP meeting, as did the district's attorney. (SD 404). The IEP team determined that the student has a specific learning disability that adversely impacts his performance in basic reading skills, reading comprehension, reading fluency, math calculation, math problem solving, and written expression. (SD 407, 408). Both the parent and student certified that they agreed with the conclusion that the student has a specific learning disability. (SD 408). The school psychologist's summary of the private evaluations is included as part of the August 14<sup>th</sup> IEP. (SD 409-411).

The IEP team also reviewed and considered a report from a private therapist, which the parent presented at the IEP meeting. (SD 412). The report is actually a letter addressed to the student's physician. The letter states that [REDACTED] has Anxiety Disorder Not Otherwise Specified, with no behavioral component. (SD 466-468). The team discussed the student's assistive technology needs, and the district agreed to provide audio textbook material, study guides and teachers' notes. The parent requested a computer reading program, which the district denied. (SD 414). The district also agreed to provide a laptop computer during the school day for word processing and technology to access printed material. Several medications and accommodations were developed to address the student's specific learning needs. (SD 439).

On March 26, 2009, the district filed a due process request to contest the parent's request for four IEEs at public expense. The parent, through her attorney, had requested that the district pay for evaluations in the following areas: central auditory processing, assistive technology, occupational therapy, and neuropsychological. The district asserted that the parent had not requested that it evaluate the student in these areas since the parties' previous dispute over evaluations in May 2008. (SD 21). The ISBE reinstated the undersigned as hearing officer on March 9, 2009, pursuant to 105 ILCS 14-8.02a(f). (SD 24).

The parties participated in mediation on April 22, 2009, utilizing the same mediator as in 2008 mediation. (SD 68). A mediation agreement was signed, which included three agreements. First, the parties agreed to convene an IEP meeting to consider the results of the three private evaluations that the parent had obtained and to develop an IEP for the 2009-10 school year. Next, district's counsel would provide

parent's counsel with information on a central auditory processing evaluation that would be conducted by EIU staff at public expense. After receiving the information on the proposed EIU evaluation, the parent would decide if she would accept the district's offer. Finally, district's counsel would provide parent's counsel with information on a FBA that would be conducted by a particular independent evaluator. The parent then would then decide if she would accept the district's offer on the FBA. The mediation agreement is signed by the parent and the district's attorney. (SD 69, 70). Several continuances in the due process proceedings were granted to allow the parties time to continue their settlement discussions. (SD 72-82). On August 21, 2009, parent's counsel notified this hearing officer that he had withdrawn his representation of the parent and had provided the parent with a list of parent attorneys. (SD 83).

#### Private Evaluations Obtained by the Parent in 2009

The student received a comprehensive neuropsychological evaluation, which included fifteen separate assessments and a clinical interview, on March 7 and 9, 2009. The evaluation was conducted to "clarify his diagnostic profile" and assist with educational planning. The evaluation determined that ■■■ intellectual functioning in the verbal domain is consistently within the average range. However, in the nonverbal domain, the student's scores ranged from average to borderline. (SD 281). Academic achievement testing revealed that the student's reading ability ranges from borderline to average. He has difficulty decoding and in reading fluency. Although ■■■ has the cognitive ability to comprehend what he reads, his comprehension is limited by his slow reading speed and errors in reading. The examiner opined that the student's reading deficits are consistent with a diagnosis of dyslexia. His ability to spell single words was in the borderline range, while his ability to write single sentences was in the low average range. Based on her assessment, the evaluator determined that ■■■ has a learning disability in written expression. (SD 282). The math assessment found that the student's math abilities are in the average range and are consistent with his cognitive ability. Due to his slow processing speed, the student's score in math fluency was only at the 2<sup>nd</sup> %tile. (SD 283). Several instruments were used to determine if ■■■ has attention deficit hyperactivity disorder ("ADHD"). While the results did not indicate a diagnosis of ADHD, the examiner opined that the student has variable attention and slow processing speed. (SD 284). Memory testing found that ■■■ has good recall for auditory information presented in a meaningful context. He has more difficulty learning non-meaningful information and needs repetition to reinforce these concepts. (SD 284). Based on her evaluation, the examiner determined that ■■■ has dyslexia and a disorder of written expression. (SD 287).

A private assistive technology evaluation of the student was conducted on April 11, 2009. As part of the evaluation, the examiner reviewed two IEPs, the 2007 and 2008 EIU evaluations, and the district's 2008 psychological evaluation. The student was given the Test of Written Language 3 ("TOWL-3"). All his subtest scores except two were in the significantly below average range. He scored in the low average range in contextual language and story construction. The examiner determined that the student has significant difficulty in reading, writing, and spelling. She made extensive

recommendations for AT devices to assist him in the academic environment. (SD 297-311).

The student received an occupational therapy assessment on April 20, 2009. The report does not provide a formal diagnosis. It does, however, recommend services to help the student develop organizational strategies to manage papers, planner, and book bag and to develop a working homework system. The evaluator also recommended several accommodations and modifications. (SD 312-324).

On May 11, 2009, the student received a central auditory evaluation. After determining that [REDACTED] has normal hearing sensitivity in each ear, the audiologist administered seven assessments to evaluate the student's central auditory functioning. The evaluator determined that [REDACTED] auditory performance is within normal limits across all the tests with the exception of left ear on one test, the Dichotic Rhyme Test. However, the examiner noted that a "(s)ingle poor score within battery is common among the general population and not diagnostically significant for specific central auditory processing disorder." (SD 326). The examiner concluded that [REDACTED] has adequately developed central auditory processing skills for his age. *Id.*

#### *Parent's Formal Complaints to the ISBE and to the District*

On February 29, 2008, the parent filed a complaint with the ISBE pursuant to 34 C.F.R. §§300.151-300.153. (SD 111). The parent's complaint alleges numerous deficiencies in the student's IEP. (SD 112, 113). It also contains one allegation pertinent to the issue before this hearing officer: that the student had not been re-evaluated within the required timeline. (SD 113). The ISBE issued a letter of findings on May 6, 2008. Documentation showed that the student was first found IDEA eligible on April 15, 2002. His second eligibility determination meeting was held on April 15, 2005. Thus, the district's triennial evaluation and IEP meeting were due on April 15, 2008. The investigator found that the district had initiated the evaluation process on January 18, 2008, and had attempted to schedule a domain meeting on February 6, March 5, and April 1, 2008. However, the parent requested that the district reschedule each of these meetings. The district then conducted the meeting without the parent present, pursuant to 34 C.F.R. §300.322(d). As of April 23, 2008, the parent had not signed consent for the re-evaluation. Based on these facts, the investigator found that "(t)he district followed appropriate procedures to meet the three year reevaluation timeline, but was unable to meet it due to the lack of provision of parental consent." (SD 116, 117). The ISBE ordered the district to convene an IEP meeting "to determine eligibility and develop the IEP using existing data from current classroom-based, local, or State assessments, classroom-based observations, observations by teachers and related services providers and any other information available to the district at this time" by June 1, 2008. (SD 119, 120). On May 28, 2008, the ISBE extended the timeline in which the district was to complete this corrective action because the parties were engaged in a due process hearing regarding the student's special education evaluation and lack of parental consent. (SD 134, 135). The timeline was extended again, to November 1, 2008, after the parent gave consent for the re-evaluation. (SD 137, 138).

The ISBE then determined that the district had evaluated the student, considered the results of each evaluation as well as the results from several private evaluations, found the student eligible under the SLD category, and developed an IEP. Additionally, it was found that the evaluation results supported the team's eligibility determination. The ISBE closed the complaint on October 31, 2008. (SD 233-235).

In addition to the ISBE complaint, the parent filed numerous complaints with the district's Complaint Manager between August 14, 2008 and October 9, 2008. The complaints contain many different allegations: discrimination, misuse of authority for personal profit and gain, violations of both the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964, harassment, refusal to grant necessary accommodations, denial of the parent's repeated request to test the student in his specific disability, physical abuse by a school staff member, retaliation for filing a police report on an injury the student received at school, and harassment. (SD 140-149, 188-189, 203-206, 214-218, 220-223). The district conducted internal investigations on the complaints, which included interviewing witnesses to the alleged incidents and reviewing written documentation on the incidents, and determined that all the allegations contained in the complaints were unfounded. (SD 179-187, 190, 191, 217-218, 224-231).

### Conclusions of Law

The district contends that there is no factual or legal basis for the parent's request for reimbursement for the IEEs she has obtained. The facts underpinning the district's current due process complaint date back at least a year before the district's March 2009 complaint. These facts are crucial to the context of the current issue before this hearing officer and thus to this decision. In May 2008, the district filed its first due process complaint to contest the parent's request for an IEE at public expense. The student was in eighth grade at that time. ██████████ the district's middle school principal, testified that ██████████ had entered the district in seventh grade with a current IEP, which the district implemented. ██████████ was due for his triennial reevaluation in Spring 2008, with April 15<sup>th</sup> as the date by which the eligibility redetermination must be made. ██████████ testified that the district sent several notices to the parent scheduling a domain meeting to determine which evaluations were necessary. The parent cancelled each meeting at the last moment. After several failed attempts, the district convened the domain meeting on April 1, 2008. ██████████ testified that school personnel reviewed the results of the domain meeting and the parent's procedural safeguards with the parent on April 2, 2008.

██████████ corroborated ██████████ testimony. ██████████ was associate director of ██████████, the cooperative that provides special education services to the district, during the relevant time period. ██████████ testified that when the parent came to the school on another matter on April 2<sup>nd</sup>, she held an informal meeting with the mother to review the recommendations developed at the domain meeting. The meeting lasted between 1½ and two hours. ██████████ testified that when she reviewed the content of the proposed evaluation with the mother, she emphasized that the domain sheet was a draft and that the team

wanted the mother's input. The mother requested that an audiological evaluation be added. [REDACTED] agreed to review the suggestion with the rest of the IEP team. The mother took the domain sheet home to review. [REDACTED] testified that the district never heard back from the parent as to whether she agreed with the recommendations and would consent to the evaluations.

The evidence shows that the parent did not provide consent for the reevaluation until June 11, 2008, when the parties participated in ISBE sponsored mediation. The parent's consent was specific: the only evaluations that the district could administer were the WIAT II, WISC-IV, and VMI-V, and a FBA, the last of which was to be completed during the first month of the 2008-09 school year. [REDACTED] testified that an audiological evaluation was not included because the parent would only consent to the four assessments memorialized in the agreement.

[REDACTED] has been the district's school psychologist for eight years. She has a bachelor's degree and master's degree in psychology. She has been a certified school psychologist since 1975. In her thirty years of practice as a school psychologist, she has given several thousand evaluations. [REDACTED] testified that she began her attempts to schedule the student's reevaluation in June 2008 but had difficulty connecting with the parent. The evaluation was eventually scheduled for July 15, 2008. [REDACTED] testified that she spent three hours evaluating the student. The evaluation was limited to the three assessment tools that the parent had agreed to during the mediation. [REDACTED] testified that in addition to testing [REDACTED] she also reviewed the private evaluations that the parent had obtained. She created a summary of those assessments, which is included with the August 25<sup>th</sup> IEP. She further testified that the IEP team considered a report from a social worker, [REDACTED] which the parent presented during the August 25<sup>th</sup> meeting.

[REDACTED] the special education coordinator for the district, testified that the IEP team discussed the student's assistive technology needs during the August 25<sup>th</sup> IEP meeting. The district provided a laptop computer with a word processing program for student during the school day and technology to help him access printed material. He testified that the parent has never requested that the district provide the four evaluations requested in her 2009 IEE request. He stated that the district is willing to provide to provide these evaluations and has qualified staff to do so. [REDACTED] further testified that although the district had agreed to provide an independent central auditory processing evaluation at public expense through staff at EIU, the parent arranged for the evaluation to be done by someone she had selected.

The district's evaluation, although restricted to the assessments to which the mother had consented, evaluated the student's cognitive functioning, academic achievement, and visual motor integration. The evidence shows that the district's evaluation used a variety of assessment tools - the WIAT-II, WISC-IV, and VMI-V - as required by law. 34 C.F.R. §300.304(b)(1). These assessment tools evaluated the student in the academic areas of deficit identified by school personnel and the parent: reading, math, written expression, and visual motor skills. 34 C.F.R. §300.304(c)(4).

Although teachers expressed concern that [REDACTED] had difficulty with organizational skills, staying on task, and working independently, the district was prohibited from assessment in these areas by the parent's limited consent. (SD 405).

A district must consider evaluations and information provided by a parent as part of its reevaluation of a student. 34 C.F.R. §300.305(a)(1)(i). The documentary and testimonial evidence shows that the school psychologist reviewed the private evaluations as part of her assessment and that the IEP team considered the private evaluations during the IEP meeting. Additionally, the evidence shows that the IEP team considered the private social worker's letter that the parent first provided during the IEP meeting. Despite the parent's assertions throughout the record that the district ignored her input and that of outside evaluators, the evidence shows otherwise. The district has met its obligation to consider evaluations and information provided by the parent.

A review of the results of those private evaluations supports a finding that the district conducted an appropriate evaluation. The February 2008 EIU evaluation diagnosed the student with moderate dyslexia. The examiner determined that oral language was an overall strength for the student and that his writing difficulties were related to his reading difficulties. The district's school psychologist also diagnosed [REDACTED] with dyslexia and opined that the dyslexia contributed to the student's significantly low achievement in math and written language. She further determined that the student has a visual processing deficit that makes paper and pencil tasks difficult. While the IEP nomenclature is specific learning disability, the evidence shows that the district assessed the student's specific learning disability as dyslexia, which also adversely impacted his math and written expression skills. As to the social worker's letter, two things are important to note. First, the social worker's conclusion that there are no behavioral aspects to the student's anxiety disorder was made solely on the basis of an interview with the student and a review of unspecified records. It did not include information directly from district staff. More importantly, the parent has expressly prohibited the district from assessing the student's emotional status and has lodged several complaints that the district is maligning the student by its concerns about his emotional/behavior status.

The question remains whether the 2009 independent evaluations significantly add anything to the picture. The comprehensive neuropsychological evaluation determined that the student has dyslexia and a learning disorder in written expression. The evaluation also found the student's performance in math fluency was affected by his slow processing speed. The assistive technology evaluator found that the student has significant difficulty in reading, writing, and spelling. The deficits identified in the two foregoing evaluations are also noted in the district's evaluation. The private occupational therapy evaluation did not give a diagnosis but did report that the student has organizational problems. District staff also reported concerns about the student's lack of organization and difficulty focusing on tasks; however, the parent did not consent to the district's specifically evaluating the student in this area. Finally, the central auditory processing evaluation determined that the student does not have a central auditory processing disorder. His functioning is within normal limits. While all the

evaluations recently obtained by the parent contain educational recommendations, those are not considered in this decision as the only issue before this hearing officer is whether the district's evaluation was appropriate. The evidence supports a finding that it was.

In support of its assertion that there is no legal basis for the parent's request for reimbursement, the district points to several federal and state statutes and regulations and to *Andress v. Cleveland Independent School District*, 22 IDELR 1134 (5<sup>th</sup> Cir. 1995). A parent of a child with a disability has a right to an IEE at public expense if the parent disagrees with an evaluation obtained by the district, subject either to the district's agreement to provide the IEE or to a finding at a due process hearing that the district's evaluation of the student was not appropriate. 34 C.F.R. §300.502(b); 105 ILCS 5/14-8.02(b); 23 Ill. Adm. Code §226.180(a). The district argues that the condition precedent - disagreement with an evaluation obtained by the district - has not been fulfilled in this instance. According to the district, because the parent's limited consent in 2008 prevented it from conducting the evaluations for which she now seeks reimbursement, she cannot claim disagreement with an evaluation whose very parameters she chose to limit. The district also contends that the parent pursued the recent private evaluations for litigation purposes, pursuant to 34 C.F.R. §300.502(c)(2), rather than out of disagreement with the district's evaluation. The evidence for this assertion, according to the district, is twofold. First is the fact that at the time the parties agreed to state mediation, the parent had not only selected the private evaluators, but some of the testing had already been done. Second is an email sent on behalf of the parent to her attorney, stating that the IEEs were suggested by the attorney in preparation for the hearing. (SD 251). Given the unique facts of this case, the undersigned finds that the parent may not now claim that she disagreed with the district's evaluation when she has thwarted the district's efforts to secure her input on evaluations, obtain consent, and evaluate the student in a timely manner and then limited the district to four specific assessment tools. The parent has not established the requisite disagreement and thus there is no legal basis for her request for reimbursement.

The final question is whether the *Andress* holding applies in this case. In *Andress*, the parents refused to allow the district to reevaluate their son to determine his continuing IDEA eligibility and instead obtained private evaluations, which the district rejected. The court held that there is no exception to the rule that a district has the right to test the student itself in order to reevaluate a student for eligibility. *Id.* The facts herein are somewhat different, as this parent consented only to particular evaluations rather than refusing outright to allow reevaluation. The evidence shows that the parent has actively thwarted the district's efforts to evaluate the student and has repeatedly insisted that only non-district evaluators may evaluate this student. However, the IDEA and the Illinois School Code clearly require that the *district* must evaluate the student in the first instance. While a parent may present private evaluations to the IEP team for their consideration and may request an IEE at public expense when the parent disagrees with a district's evaluation, the process starts with the district's evaluation. The undersigned finds that the parent did not let the district conduct the evaluations for

which she now requests reimbursement; thus, she is not entitled to reimbursement for the four independent evaluations.

**IT IS ORDERED THAT:** The district has appropriately evaluated the student. The parent's request for reimbursement for the four private evaluations she obtained is denied.

#### **Right to Request Clarification**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

#### **Right to File Civil Action**

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

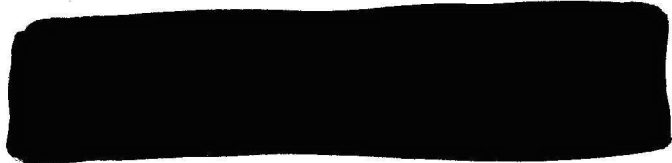
ISSUED: October 3, 2009



Mary Schwartz  
Impartial Hearing Officer

**CERTIFICATE OF DELIVERY BY MAIL**

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by certified mail from Chicago, Illinois, and directed to:



Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001

before 3:00 p.m. on October 3, 2009.

A handwritten signature in black ink, appearing to read 'Mary Schwartz', written over a horizontal line.

Mary Schwartz  
Impartial Hearing Officer  
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