

Case Number: 2009-0228

Hearing Officer: Joseph P. Selbka

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

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Impartial Due Process Hearing Decision Cover Page

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District Name
Superintendent
Address
Represented by

Phone: 7735531000

Parent Name
Address
Represented by

Date and Timelines

Date of Written Request: 12/12/2008
Date of Pre-hearing Conf: 02/12/2009

Date of Hearing: 03/19/2009 to 3/31/2009
12:00:00 AM
Date of Decision: 5-4-09

Summary of Decision

The School District initiated a due process request contending that its evaluation of the Student was appropriate. The parties requested the IHO to determine whether the District's psychological evaluation, social-emotional evaluation, health evaluation, and speech-pathology evaluation, was appropriate and whether the District complied with the law by failing to conduct an occupational therapy evaluation and an assistive technology evaluation. The IHO found for that the District appropriately conducted a health, and speech-pathology evaluation, and that the District did not have to conduct an assistive technology evaluation to render the overall evaluation appropriate; but that the District's psychological and social-emotional evaluations were inappropriate and that the District's evaluation was inappropriate in that the District failed to provide an occupational therapy evaluation. Both parties were represented by Counsel.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) **ISBE CASE NO. 2009-0228**
)
) **Joseph P. Selbka**
) Impartial Due Process
) Hearing Officer

HEARING DECISION, OPINION AND ORDER

TO: Ms. Mary Long
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This matter comes before us pursuant to the hearing request of Student's mother, [REDACTED] ("Student's Parent"), on behalf of her son [REDACTED] ("Student") against [REDACTED] ("School District" or "District"). Student's Parent is represented by [REDACTED] and [REDACTED]. The School District is represented by [REDACTED]. The parties have agreed to extend the forty-five day deadline for hearing to allow for a hearing on March 19-31, 2009, and for an ultimate decision by May 11, 2009. We have jurisdiction to hear this matter pursuant to 105 ILCS 5/14-8.02(a) *et seq.* and 23 Ill.Admin.Code 226.000 *et seq.*

I. Procedural History

The School District filed a due process hearing complaint, through its attorney, on December 18, 2008, who has represented the District throughout the hearing. The hearing occurred at the [REDACTED] on March 19, 20, 23, 25, and 31 2009.

The Due Process Complaint claims that the evaluations provided by the District are appropriate. The Parents have responded by arguing that the evaluations conducted by the District were inappropriate and requested that the District pay for the following independent evaluations: (1) evaluation in the area of cognitive skills (by a neuropsychologist); (2) evaluation of academic skills; (3) occupational therapy and assistive technology evaluation; (4) evaluation of communication skills (by a speech pathologist).

A prehearing conference occurred on February 12, 2009.

II. Issues Identified and Remedies Requested

1) Whether the District failed to conduct an appropriate psychological evaluation (during Student's initial preplacement evaluation) of Student as required by IDEA. Student's Parent contends the psychological evaluation was flawed in the following ways:

(a) Student was tested without the aid of his corrective lenses and tested on two separate days, one day when Student had taken his ADHD medication and on one day when Student had not taken his ADHD medication. These two issues rendered the administration of the tests unreliable;

(b) The District failed to conduct assessments based upon observation in the classroom. This failure caused the District not to properly identify behavioral antecedents associated with Student's disabilities;

(c) The District failed to consider several subtests of the WISC IV in evaluating Student and determining whether Student has a learning disability and the exact nature of Student's disability;

(d) The District failed to consider Student's behaviors in the classroom as part of its psychological evaluation;

(e) The District failed to properly evaluate Student in regard to a suspected learning disability as required by federal regulations 34 CFR 300.307-311.

(f) The District failed to review existing evaluation data.

(2) Whether the District violated IDEA by failing to conduct an occupational therapy evaluation;

(3) Whether the District violated IDEA by failing to conduct an appropriate evaluation in regard to social/emotional and behavioral issues;

(4) Whether the District's speech pathology evaluations and psychological evaluations failed to appropriately evaluate Student's communication deficits;

(5) Whether the District violated IDEA by failing to conduct an assistive technology evaluation;

(6) Whether the District failed to assess Student in regard to suspected disabilities, to wit: sleep apnea, ADHD, learning disability, prior hearing loss, motor ticks, and vision problems.

Student's Parents request the following remedies: (1) that the School District's psychological(cognitive and academic) evaluation, social-emotional (behavioral) evaluation, and speech pathology (communication) evaluation be determined to be inappropriate; (2) that the School District's evaluation of Student be determined to be inappropriate because of the District's failure to conduct an occupational therapy evaluation and assistive technology evaluation; (3) that the District be ordered to pay for an independent psychological evaluation (cognitive and academic skills); social and behavioral skills evaluation; an independent occupational therapy evaluation; an

independent assistive technology evaluation; and independent speech-pathology (communications skills) evaluation¹ as a result of the District's failure to appropriately evaluate Student.

III. Findings of Fact

Fact's Leading up to Student's Evaluation by the District

1. Student is a third grader at [REDACTED] one of District's schools.
2. Student's Parents have been concerned with behavioral problems of Student for some time, especially in regard to his academic progress and ADHD (Tr. 273).
3. In 2007, some District personnel agreed with Parents as early as February, 2007 (PD-88; PD-103-PD-107). Student's teacher, [REDACTED] documented Student's behavioral problems regarding inattentiveness, difficulty to focus, and impulsivity in February and March, 2007. *Id.* Student failed reading and math and had chronic attendance problems during First and Second Grade (SD-67). Student also had disciplinary problems throughout First and Second Grade (SD-89- SD-95)
4. Student's Parents made requests to the school, and the matter was eventually referred to [REDACTED] (Tr. 273-274). [REDACTED] and other school district personnel held meetings with the parents in September and October, 2007 (Tr. 274). [REDACTED] with school personnel, conducted two "IAT" meetings to determine how to address Student's issues (Tr. 275). Student's Parent was told that she needed a diagnosis in regard to ADHD concerns (Tr. 274). Student's Parent obtained such a diagnosis in early 2008 and provided the diagnosis to the District (Tr. 279, SD-89).
5. [REDACTED] supervised creation of a domain sheet setting out the domains which need to be tested (Tr. 382-285). Marked domains indicate areas of concern (Tr. 285).
6. [REDACTED] gathered information from Student's teachers including his cumulative record which would show absences, tardies and grades (Tr. 296); the report card; medical records; and Student's registration (Tr. 296). [REDACTED] delivered these documents to the "Summer Assessment Team"(Tr. 570).
7. Student was evaluated by the District pursuant to Student's parent's request in 2007 and 2008 (Tr. 36, SD-73). A domain meeting occurred on June 4, 2008 (Tr. 40, SD-79). The following persons attended: Student's Parent, School Nurse, [REDACTED] speech language pathologist [REDACTED] and case manager [REDACTED] (SD-78). Because of the time of the year, Student was ultimately evaluated primarily by the District's [REDACTED] (Tr. 45). Summer assessment is where students come to be assessed for a full individual evaluation if such an evaluation cannot occur during the school year (Tr. 107).

¹ The District and Student's Parent have consistently used slightly different terminology to refer to the various evaluation components. We have used the District terminology and connected it to Student's Parent's terminology in this issue section and in the final order.

The Medical Evaluation and Facts Related to the District's Decision Not to Conduct an Assistive Technology Evaluation

8. [REDACTED] testified for the District (Tr. 26). [REDACTED] is the current school nurse at [REDACTED] Student's school (Tr. 28). [REDACTED] determined whether Student's vision, health, or hearing had any impact or potential impact on Student (Tr. 41). In the initial report stemming from the domain meeting, [REDACTED] noted that Student had vision problems and was referred for glasses (Tr. 42); Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") (Tr. 42), and was taking medication for ADHD (SD-80); that Student had a history of issues with hearing tubes (Tr. 42) (See also SD-80). [REDACTED] reviewed the vision and hearing screenings conducted by the District and noted that Student had failed his vision screening and passed his hearing screening (SD-80, Tr. 42-43).

9. In April, 2008, [REDACTED] admitted receiving a diagnosis by [REDACTED] diagnosing Student with a learning disability, sleep apnea, and motor ticks (PD-32, Tr. 78).

10. [REDACTED] is a District school nurse who conducted a nurse report as part of the summer assessment team (Tr. 740). [REDACTED] is a registered nurse and is currently certified to serve as a school nurse (Tr. 741). The report is located at SD 55-58. In creating her report, [REDACTED] conducted a record review and interviewed Student's Parent (Tr. 740). As part of her report, [REDACTED] recommended nursing consultation services (Tr. 740). [REDACTED] findings were presented at the July 7, 2008, IEP meeting, and [REDACTED] findings were included in the IEP document (Tr. 741).

11. [REDACTED] noted Student's medical history and observed Student as part of preparing her report (SD-56). [REDACTED] noted that Student has tubes in his ears and has vision problems and that Student has been diagnosed with ADHD and prescribed adderall (SD-57). [REDACTED] also noted Student's Parent's observation that the adderall has become less effective over time (SD-56).

12. [REDACTED] also set out Student's various disabilities which had an effect on Student's school behaviors and a plan for nursing intervention for each disability (with the exception of sleep apnea)(SD-58). [REDACTED] also recommended school consultative nurse services because of Student's prescription for ADHD (SD-57, Tr. 46).

13. The IEP contains modifications and accommodations for nursing services including consultation with school staff, parents and physicians on the effectiveness of Student's medication and adverse effects therefore; and for the school nurse to work with the parents to obtain the results of a psychiatrist's input regarding medication management for Student (SD-26).

14. Student's vision and hearing issues in the class room have apparently been remedied by having glasses and tubes in his ears (Tr. 53-55).

15. [REDACTED] testified that there are currently no medical issues affecting Student (Tr. 56). [REDACTED] testified that motor ticks were not a relevant diagnosis as to providing Student special education and related services (Tr. 89, 102), and do not affect his motor skills (Tr. 89).

16. ██████ testified that she did not have the expertise to determine whether an audiology examination would be appropriate (Tr. 414).

The Evaluation of Student's Behaviors / Social-Emotional Evaluation

17. ██████ testified that there are some behavioral issues regarding Student's interactions with his classmates (Tr. 56). ██████ noted that, in regard to providing special education and related services related to ADHD, behavior is an issue which is often addressed (Tr. 64). Specifically, a special education teacher will provide input as to what kind of strategies can be implemented to help student with ADHD learn (Tr. 64).

18. In February, 2007, the District conducted an IAT meeting (a meeting to attempt to intervene and address problematic behaviors prior to a full special education evaluation (Tr. 60-61)) in response to Student's Parent's request (PD-88). Student's teacher, ██████ noted that Student could not stay focused, and when distracted Student acted out by talking, hitting people, or saying inappropriate things (PD-88).

19. Despite this written record, the domain sheet created at the domain meeting on June 4, 2008, stated that Student did not exhibit inappropriate social/emotional behaviors per teachers and documents (PD-23). However, in July, 2008, the District, through ██████ changed the social/emotional status to a relevant domain for evaluation (Tr. 581, 718-719).

20. During the 2008 evaluation, ██████ did not do a formal behavioral assessment or an adaptive functioning assessment (Tr. 200-202). ██████ believed that Student's behaviors were self-evident as stemming from his ADHD which was the basis of the special education referral (Tr. 202). ██████ obtained her theory from observing Student, from ██████ diagnosis, and from ██████ interview of Student's Parent (Tr. 203). However, ██████ had suspicions that Student's behavioral issues were not completely related or caused by ADHD (Tr. 209, 229-230). ██████ never made any determination as to whether Student's behaviors were completely a result of his ADHD (Tr. 209). ██████ surmised that Student was socially maladjusted (Tr. 211). ██████ admitted that language disorders could be the basis of behavioral issues (Tr. 229-231).

██████ testified that an adaptive behavior assessment is something an evaluator would request if they see social/emotional issues or cognitive impairment to determine what specific skills are deficient and what specific areas need remediation (Tr. 369). ██████ testified that the psychological assessment by ██████ could not provide a basis for distinguishing between social maladjustment and behavioral issues related to disability because there is no discussion of behavioral issues in school nor an assessment of Student's social/emotional status and functioning (Tr. 381-382).

██████ testified that it is professionally proper and necessary to go beyond the scope of the initial referral to fully assess Student if there is evidence of other suspected disability(ies) (Tr. 362).

21. ██████ testified that Student has strong and appropriate social skills (Tr. 372).

22. ██████ testified that Student's Parent provided important behavioral information regarding motivating her son on educational matters (Tr. 374).

23. ██████ admitted that social workers can do social assessments (Tr. 403) and that the goals in Student's IEP for social/emotional were well written and tailored to Student's specific needs (Tr. 391-392).

24. During the 2008 evaluation, ██████ conducted the social-emotional assessment of the Student for the District (Tr. 709). ██████ holds a ██████ and a master's degree in social work (Tr. 707), and a bachelor's degree in sociology/psychology (Tr. 707). ██████ is a licensed clinical social worker and holds a school social work certificate from the State of Illinois and a supervising school social work certificate (Tr. 707). ██████ also holds a certificate from the Academy of Certified School Social Workers (Tr. 707). ██████ has been a school social worker for the District for 34 years (Tr. 708).

25. In assessing Student, ██████ interviewed the parents using a set of standardized questions to elicit information about Student's school, home and community performance (Tr. 711). ██████ also interviewed Student and reviewed Student's records from Student's school (Tr. 711). ██████ also consulted with the rest of the summer assessment team (Tr. 711). ██████ determined that Student exhibited behavior problems in the school which impact his performance an achievement (Tr. 715). These behaviors, stemming from ADHD often consisted of inattentiveness and impulsivity (Tr. 716). In addition, there were family stressors which were impacting Student (Tr. 716).

26. ██████ made a recommendation that the school social worker at Student's school follow up with Student's family (Tr. 716). ██████ also recommended the parents take parenting classes and counseling to learn about developmental issues associated with ADHD and how to use behavior modifications to modify Student's behaviors (Tr. 717). ██████ believes that she was able to assess Student in all relevant areas of social-emotional functioning (Tr. 719). ██████ shared her conclusions and recommendations at an IEP meeting for Student (Tr. 720). ██████ did not consult with Student's teachers (Tr. 726). ██████ admitted that getting information from teachers is a required part of completing a comprehensive social-emotional assessment (Tr. 725-726). ██████ was not able to ultimately determine the behavioral causes of Student's failures in school (Tr. 728). There is no evidence that ██████ took into account any health problem of Student other than ADHD in conducting her assessment (Tr. 728).

The Psychological Evaluation

27. Student was evaluated by District psychologist ██████ on June 23, 2008, and July 7, 2008 (SD 67, Tr. 105). ██████ has a master's degree in education and a master's degree in school psychology (Tr. 105). ██████ holds a certification to teach elementary school, early childhood, and a school psychology certification (Tr. 105). ██████ has been a school psychologist for the District for sixteen years (Tr. 105, 106). ██████ administered the District's psychological evaluation of Student (Tr. 106). ██████ conducted a cognitive evaluation and an academic evaluation as part of Student's psychological evaluation (Tr. 290-291).

28. [REDACTED] testified as an expert witness on behalf of Student's Parent (Tr. 321). [REDACTED] is an associate professor at the [REDACTED] where she teaches courses in school psychology (Tr. 322). [REDACTED] has a master's degree and a Ph.D. in school psychology (Tr. 322). She is a certified school psychologist and a licensed clinical psychologist (Tr. 322, 325). Prior to becoming a professor, [REDACTED] was a school psychologist for nine years in public schools in Illinois (Tr. 322). One of [REDACTED] specialties is in the area of assessment (Tr. 323). In forming her opinions, [REDACTED] reviewed the psychological report and the IEP as well as disciplinary reports, report cards, and reading scales (Tr. 370-371). [REDACTED] also met and interviewed Student and Student's Parent (Tr. 371-372).

29. School psychologists typically make educational diagnoses related to IDEA (Tr. 324). [REDACTED] is certified and licensed to make an educational diagnosis as well as a clinical diagnosis under the DSM-IV (Tr. 324). The main purpose of assessments is to formulate IEPs (Tr. 325). In order for an evaluation to be appropriate, the evaluation must assess anything that is related to the difficulties that the student is displaying (Tr. 326). An appropriate evaluation must also be nondiscriminatory (Tr. 326).

30. [REDACTED] testified that an appropriate evaluation should also assess a student's strengths and weaknesses in order to get a full picture of how the student is functioning (Tr. 327). Being able what students are able to do and not able to do allows an IEP team to develop goals for the IEP (Tr. 327).

31. [REDACTED] testified that criterion based assessments (tests based upon content derived from the classroom environment) are necessary to complete a comprehensive evaluation (Tr. 333, 334-336). A norm based assessment is a test based upon something not taught based upon a comparison with other students (Tr. 334).

32. [REDACTED] testified that a full evaluation/assessment is a full examination to create a refined definition of the source of a student's behaviors and the student's functioning level to understand what factors are impacting a student's learning (Tr. 328-329, 331-333, 339). [REDACTED] testified that in order to conduct a full evaluation/assessment, the evaluator needs to administer both norm-referenced tests and criterion-referenced tests (Tr. 339). A comprehensive evaluation should also contain observations of behavior in the classroom to determine how the child learns, problem-solve, and interact with peers (Tr. 339). A comprehensive evaluation should also include information about how the student interacts with his/her family and the student's history and academic and intellectual development (Tr. 340). A curriculum based assessment is a criterion referenced test- a test based upon the actual instruction given to the student at school (Tr. 346).

[REDACTED] testified that, in this case, [REDACTED] failed to interview Student's teachers and failed to observe Student in the classroom which would be required (Tr. 378-379). [REDACTED] further testified that ADHD affects each child differently, so there has to be a school environmental assessment- a determination of how the student functions in the school environment to properly develop special education services for the student (Tr. 380).

33. [REDACTED] does not recall if she reviewed the domain sheet created by the District's IEP Team in summer of 2008 prior to evaluating Student (Tr. 108).

34. [REDACTED] administered the comprehensive version of the Kaufmann Test of Educational Assessment ("K-TEA Comprehensive") to assess Student's level of academic achievement (Tr. 109-110). The K-TEA Comprehensive tests Student's reading levels as well as mathematic computation and math applications and reasoning (Tr. 109). [REDACTED] also interviewed Student and observed him during testing and also informally assessed Student in the hallway (Tr. 112). [REDACTED] spoke with Student's Parent and review Student's teacher's written referral and review Student's records (Tr. 112). [REDACTED] was not able to interview Student's teacher (Tr. 112).

[REDACTED] testified that the K-TEA Comprehensive should not be used as a sole determinant of academic achievement in an evaluation because the K-TEA cannot be used to determine why a student's academic achievement is at the level it is at (Tr. 347-348).

35. [REDACTED] knew that Student had vision problems at the time of administration of the K-TEA Comprehensive (Tr. 114), but did not note that she had any concerns about Student being unable to see any of the test materials (Tr. 116, 131). If there were any such problems, it would be noted in the report (Tr. 116). [REDACTED] agreed that vision problems shouldn't impact Student's performance on the K-TEA Comprehensive (Tr. 390-391). [REDACTED] also agreed that Student's vision problems should not have hindered Student's ability to take the K-TEA Comprehensive because of the font size of the test.

36. [REDACTED] found that Student is in the first percentile for academic achievement overall which would indicate that 99% of children at Student's age level demonstrate a higher level of achievement than Student (Tr. 118-119). [REDACTED] found that Student struggles across the board (Tr. 119).

37. A second school psychologist, [REDACTED] administered the WISC IV (Tr. 120). The WISC IV is a measure of cognitive potential (Tr. 121). [REDACTED] interpreted Student's WISC IV results as falling within the borderline range (Tr. 123). The District presented no direct evidence that the WISC IV was properly administered (Tr. 196-197). The WISC IV has four indices with each index comprised of subtests (Tr. 363-364).

38. [REDACTED] further compared Student's scores on the K-TEA Comprehensive and WISC IV and noted that Student is learning academic skills at a rate consistent with his cognitive ability (Tr. 123).

[REDACTED] testified that it is not the best practice to use the severe discrepancy model using two scores on standardized tests (Tr. 366). Moreover, [REDACTED] testified that it is never appropriate to use full scale IQ scores alone to determine eligibility for special education (Tr. 367). Rather, in conjunction with the composite IQ score, the psychologist should carefully review various subtests as well as supplementing the IQ test with curriculum based assessments and a review of the student's history (Tr. 368-369). [REDACTED] testified that the WISC IV is biased on the basis of race and is not sensitive to students who have cognitive impairments (Tr. 367). [REDACTED] also noted that Student's Parent has been

diagnosed with a learning disability which is important because learning disabilities tend to run in families (Tr. 375). [REDACTED] ultimately concluded that if the District chose to use the severe discrepancy model, then there had to be a discussion about how the WISC IV scores were derived prior to concluding that Student did not have a learning disability (Tr. 378), and that, from the information gathered by [REDACTED] it was not possible to determine whether Student had a learning disability (Tr. 383).

39. [REDACTED] noted that Student was not on his medication for ADHD (adderall) on the date he took the K-TEA Comprehensive (Tr. 124-125). [REDACTED] noted that Student had difficulty maintaining focus (Tr. 125). Student required redirection of his attention to tasks frequently (Tr. 125). Student was impulsive and had to be cued to attend to details (Tr. 125). Student had difficulty organizing work, and Student was constantly moving in his seat (Tr. 125). Student had a significant inability to govern his body or follow acceptable rules (Tr. 126). When Student was in a less structured setting (like walking down a hallway), Student was spinning his body in circles and putting his body over a glass half-wall (Tr. 126). Student was unable to comply with boundaries for proper stair behavior even after significant rehearsal (Tr. 126-127).

40. In light of Student's behaviors [REDACTED] compensated for Student's behavior by re-cueing Student; allowing Student to take frequent work breaks and rest breaks; and redirecting Student's attention (Tr. 127). [REDACTED] testified that these accommodations insured the K-TEA Comprehensive results were reliable (Tr. 127-128). [REDACTED] also conducted some informal academic assessment to confirm the results of the K-TEA Comprehensive (Tr. 128-129). [REDACTED] accommodation of Student is not a violation of the protocols of the K-TEA Comprehensive (Tr. 129).

41. [REDACTED] also noted some relative strengths from the subtests of the WISC IV- Student's perceptual organization index and processing speed (Tr. 131-132). The WISC IV subtests are useful for determining a student's relative strengths and weaknesses (Tr. 363-364).

[REDACTED] testified that the report did not adequately assess Student's strengths as the report did not state how Student processed information and learned (Tr. 382-383). [REDACTED] also testified that [REDACTED] failed to adequately and thoroughly assess Student's potential (Tr. 383) and failed to adequately and thoroughly assess Student's level of academic achievement (Tr. 383). TT, the District's speech pathologist noted that Student might have a processing difficulty and that the school psychologist had to address the issue of processing disability in her evaluation (Tr. 508-509)

42. [REDACTED] testified that Student's WISC IV results combined with the K-TEA Comprehensive results gave a full and accurate picture as to Student's functioning in July, 2008 (Tr. 134). [REDACTED] chose not to administer a subtest regarding spelling as Student was not functioning at a level where that subtest would give any more information to [REDACTED] in regard to Student's academic achievement level (Tr. 134).

[REDACTED] testified that the four indices of the WISC IV must be interpreted to obtain a full picture of Student's intelligence, and that it is not appropriate to use the full scale IQ score alone in order to determine the presence of a learning disability (Tr. 363-364).

43. [REDACTED] did not give subtests that look at phonemic awareness, nonsense word decoding, written expression, and spelling which help plan interventions for a struggling reader (Tr. 135). [REDACTED] believed that the subtests would not have provided useful information given Student's level of academic performance (Tr.168-169). [REDACTED] believed that she could discern Student's reading level (knowledge of phonemic awareness and phonics) from the tests administered and record review (Tr. 171-175). [REDACTED] noted as part of her report that Student is a nonreader (Tr. 139). [REDACTED] testified that a teacher is going to understand Student's reading level- that Student is doing fairly well at identifying both initial and final sounds for words that have consonant-vowel-consonant pattern (Tr. 177). [REDACTED] further testified that Student's teachers are going to have to focus their intervention on the vowel sounds and build upon Student's skills (Tr. 177). Student consistently is able to identify consonant sounds, but cannot identify vowel sounds for long or short vowels (Tr. 178).

44. [REDACTED] never attempted to determine how Student's ADHD manifested itself in the classroom (Tr. 204). The District had observation based assessments of Student in the classroom available, See PD103-106, but they were apparently never used. The District also had records regarding previous interventions, but [REDACTED] did not use them during her evaluation or speak to any of Student's former teachers (Tr. 187-189).

[REDACTED] testified that reviewing information regarding previous interventions and Student's responses to the interventions and Student's information generally would give essential information on how Student learns (Tr. 352-356). Conversely, using one data point is not going to lead to a comprehensive and accurate assessment (Tr. 358-359).

45. [REDACTED] is not aware as to which subtests were administered with the WISC IV or why [REDACTED] chose not to administer the subtests associated with the WISC IV which he did not use (Tr. 136-137).

[REDACTED] testified that any interpretation of Student's strengths and weaknesses should have contained a detailed discussion of Student's performance on each of the indices and subtest scores (Tr. 377).

46. [REDACTED] completed a Learning Environment Assessment and Learning Disabilities Observation Report on or about May 23, 2008 (Tr. 557-558). There is no evidence [REDACTED] or anyone else on the summer assessment team or IEP Team actually reviewed the document in evaluating Student's disability or the extent of Student's disabilities. [REDACTED] does not recall whether Student's teachers completed any curriculum based assessments (assessments to be completed by teachers)(Tr. 560-561). [REDACTED] does not recall speaking to any of Student's teachers (Tr. 561).

The Speech Pathology Evaluation

47. [REDACTED] conducted a speech pathology evaluation of Student for the District (Tr. 235-236). [REDACTED] has a master's degree and a bachelor's degree in speech pathology (Tr. 234). [REDACTED] has a Type 73 professional certification (Tr. 235). [REDACTED] has been a school speech pathologist for twenty years, nineteen of them for the District (Tr. 235).

48. [REDACTED] completed a speech language assessment summary on July 7, 2008 (Tr. 237). As part of her evaluation, [REDACTED] administered the OWLS Test (Tr. 240). The OWLS Test is a language evaluation test which tests comprehension and expressive language (Tr. 241). There are three scores associated with the OWLS Test- one for oral expression, one for listening comprehension, and an oral composite (Tr. 241-242). Student scored a bit low on the OWLS Test across the board (Tr. 243). In interpreting the OWLS Test results [REDACTED] noted that language skills proved to be below average and that Student had a difficulty either processing or comprehending language (Tr. 244). [REDACTED] also noted that Student had a problem with some grammatical forms (Tr. 244). [REDACTED] agreed that Student has a slight speech articulation issue (Tr. 373).

49. [REDACTED] also administered the Fisher-Logemann Test of Articulation and Comprehension Skills (Tr. 245). The Fisher-Logemann Test consisted of showing Student pictures and having him name the pictures (Tr. 245). [REDACTED] noted that as a result of her administration of Fisher-Logemann, she learned that Student articulated a ST sound for an SK sound (Tr. 245-246).

50. [REDACTED] testified that her assessment was complete and appropriate because she tested comprehension, expression, and articulation (Tr. 25).

51. [REDACTED] further explained that Student clearing had difficulty comprehending language (Tr. 508), but there could have been a disability related to processing as well (Tr. 508).

52. [REDACTED] testified that Student should have been assessed as to his oral expression skills, specifically the difficulties in processing language—whether there is a problem with expressive language, receptive language, or an auditory processing disorder (Tr. 376). [REDACTED] further testified that a learning disability could not be ruled out without determining Student's abilities as to oral expression and language processing (Tr. 383-385). [REDACTED] testified that in order to get an accurate picture of Student's strengths, weaknesses, and skills, the District would have had to conduct additional testing in expressive language processing (Tr. 413).

Facts Related to the Decision not to Conduct an Occupational Therapy Evaluation

53. At the domain meeting on June 4, 2008, the IEP team did not list occupational therapy as a concern because there was no concern with Student's fine motor skills (Tr. 284-286). [REDACTED] also testified that for the district to conduct an occupational therapy assessment for any other reason, there would have to be a doctor's prescription or a medical referral or a medical script (Tr. 288, 550-551). In 2007, Student's Parent gave a medical referral to the District requesting an occupational therapy evaluation (Tr. 681-682, PD-87).

54. During the psychological evaluation, [REDACTED] noticed that Student had some difficulty when printing, using proper spacing between words, and the fact that he does not use the correct sequence of strokes to form letters and numbers (Tr. 132). [REDACTED] was unsure as to the cause of Student's problems with making letters and numbers, but speculated that it may have something to do with his attendance (Tr. 132-133).

55. ██████ did not conduct a visual motor integration assessment (Tr. 212). ██████ noticed that Student had difficulty organizing his work (Tr. 212-214). ██████ admitted the nature of Student's disabilities in regard to organizing work could stem from visual motor integration issues (Tr. 214-215, 227-228).

56. ██████ testified that problems with executive functioning (organizing math and reading information) are part of the diagnosis of ADHD (Tr. 410-411). ██████ could not testify as to whether Student should have been evaluated as to sensory motor integration issues or executive functioning by an occupational therapist (Tr. 411).

The IEP Team's Ultimate Finding

57. ██████ shared her findings regarding the psychological evaluation with the IEP team at the IEP meeting on July 7, 2008 (Tr. 138). ██████ and one of Student's teachers was at the IEP meeting (SD-45). At the IEP meeting, ██████ had concerns about Student's attendance, Student's vision issues, and concerns regarding Student's sleeping pattern (Tr. 142). ██████ did not find that Student had a learning disability pursuant to the severe discrepancy model (Tr. 143-144). ██████ admitted that there are other ways to determine whether Student has a learning disability (Tr. 145).

58. The IEP Team ultimately found on July 22, 2008, that Student had a disability of "Other Health Impaired" ("OHI") (Tr. 140, 300, SD-16, SD-21). This finding is related to Student's diagnosis of ADHD and his inability to maintain vigor and alertness and attention sufficiently to learn new academic skills (Tr. 140, 300).

59. The IEP Team also ultimately found that Student had a disability of "Speech Language Impairment" SPL (Tr. 257, SD-16, SD-21).

60. ██████ believed that Student's IEP was impacted by Student's inadequate evaluation (Tr. 391, 397-400). Specifically, ██████ believed that the IEP Team was unable to properly determine IEP goals (with the exception of social/emotional skills) (Tr. 391-392). The IEP goals are not written for Student's specific needs (Tr. 393, 397-400). ██████ connected the IEP Team's inability to set out proper goals for Student to the inadequacy of the psychological evaluation (Tr. 406-407).

Inferences Drawn from the Facts Received at Hearing and Credibility Findings

i. The Medical Evaluation and Decision not to Conduct an Assistive Technology Evaluation

61. We make an inference that Student was appropriately evaluated by the nursing staff. We find that ██████ properly excluded motor ticks as a possible area of disability because the behaviors associated with motor ticks are unrelated to any disability set out in IDEA and because there is no evidence the motor ticks affect Student's education in any way. We base our inference on the testimony of ██████ See Facts, #15.

62. We make an inference that vision and hearing problems properly evaluated and ruled out as suspected areas of disability. We base this inference on the fact that Student

is not observed as having visual or hearing issues due to ear tubes and glasses. See Facts, #14.

63. We make an inference that no disability or suspected disability was present which would require an assistive technology evaluation. We base this inference on the lack of any testimony to the contrary.

ii. The Social-Emotional Evaluation and Evaluation of Student's Behaviors

64. We make a credibility finding that Student's behaviors in the classroom were never evaluated by observation or interviewing teachers. We base this finding based upon [REDACTED] admission that she neither spoke to Student's teachers nor observed Student in the classroom and the lack of any other evidence to the contrary. We also base this credibility finding on the fact that, although [REDACTED] and [REDACTED] observed and assessed Student in the classroom, there is no evidence anyone actually used [REDACTED] or [REDACTED] observations in evaluating Student. See Facts, #6, 25, 26, 44, 46.

65. We make the inference that Student's behavior was not comprehensively evaluated because Student's behaviors in the classroom were not evaluated at all. We make this inference based upon the fact that [REDACTED] admitted that obtaining information from teachers as to behavior in the classroom is a required part of completing a comprehensive social-emotional assessment. See Facts, #26.

66. We make the inference that the shortcomings in the social-emotional evaluation substantially affected Student's evaluation and the IEP Team's ability to address Student's needs for special education and related services. We base this inference on the fact that [REDACTED] testified that assessing Student's behaviors in the classroom is essential to a social-emotional evaluation, and [REDACTED] testimony that Student has behavioral issues in the classroom. See Facts, ## 17, 26.

67. We make the inference that other aspects of the social-emotional evaluation of Student's behaviors were appropriate. We base this inference on [REDACTED] testimony of what she did and that she believed the assessments provided were appropriate, and [REDACTED] testimony that the social-emotional goals in Student's IEP were both clearly and properly formed. See Facts, ##23-26.

68. We make an inference that [REDACTED] testimony that Student's behaviors were caused by social maladjustment was based upon unsupported speculation and intuition. We base this inference on the fact that [REDACTED] did not base her determination on any formal assessment and that [REDACTED] simply asserted Student's behaviors were caused by social maladjustment without any supporting evidence to that effect. We also base our inference on [REDACTED] testimony stating that no test performed by [REDACTED] could have determined whether Student's behaviors were caused by socially maladjustment. See Facts, #20.

We make an inference that the social-emotional assessment should have contained a formal behavior assessment to determine the source of Student's behavioral problems (behavioral antecedents). We base this inference on the fact that [REDACTED] had suspicions regarding the source of Student's behaviors, but failed to assess them and [REDACTED]

testimony that a formal behavior assessment would be necessary to determine the source of Student's behavioral issues. See Facts, #20.

We make a further inference that determining the source of Student's behaviors is essential to determining Student's needs for special education and related services. We base this inference on the fact that different disabilities require different types of accommodations, modifications, and services and that different behavioral antecedents are accommodated in different ways in the classroom.

iii. The Psychological Evaluation

69. We make the inference that [REDACTED] speech pathology evaluation revealed a possible area of disability—namely, a processing disability. See Facts, #41, 51

70. We make the inference that [REDACTED] prescription revealed a possible area of disability- disabilities associated with sleep apnea. See Facts, #9.

71. We make a credibility finding that [REDACTED] did not use any observation- based assessments of Student in the classroom or curriculum based assessments. We base our credibility finding on [REDACTED] testimony that she only used norm based tests and informal assessments, and the lack of any evidence that any District personnel used [REDACTED] or [REDACTED] classroom observation based assessments to evaluate Student. See Facts, ##34, 40, 42-44

72. We make the inference that the use of informal assessments as a basis of ruling in or out disabilities is not a valid use of informal assessments, and any hypothesis derived through informal assessments must be confirmed or disproved by some type of formal assessment which has been demonstrated as a valid way of assessing the causes of behavior. We base this inference on the fact that informal, untested assessments can too often be based upon intuition (which is often unreliable). We further make an inference that [REDACTED] used only one valid assessment as part of her psychological evaluation- a comparison of the K-TEA Comprehensive and the WISC-IV, the "severe discrepancy model." We base this inference on [REDACTED] testimony that she used the administration of the two tests and informal assessments to evaluate Student. See Facts, #40, 42-44.

73. We make an inference that using the severe discrepancy model by comparing the K-TEA Comprehensive and the WISC IV as the sole assessment for a learning disability is discriminatory in that an IQ test which measures students' potential is biased against [REDACTED]. We base this inference on [REDACTED] testimony to this effect, and make a credibility finding in favor of [REDACTED] on this matter. We base our credibility finding on the lack of any evidence to the contrary. See Facts, #38.

74. We make an inference that [REDACTED] failed to assess Student in all areas of educational need in that [REDACTED] did not assess Student for suspected disabilities related to processing information and sleep apnea. See Facts, #69, 70.

75. We make an inference that assessing Student without his glasses during administration of the K-TEA Comprehensive Examination did not affect his ability to take the test. We base this inference on the testimony of [REDACTED] that she did not note any

vision related issues and [REDACTED] testimony that a failure to wear glasses shouldn't affect the administration of the test. See Facts, ##39-40.

76. We make an inference that Student was sufficiently accommodated by [REDACTED] so as not to affect Student's scores on the K-TEA Comprehensive. We make a credibility finding in favor of [REDACTED] and her testimony that she properly accommodated Student. We base our credibility finding on the fact that she was the only person who testified based upon personal knowledge as to the administration of the K-TEA Comprehensive. See Facts, #35.

77. We find that the District presented no evidence that the WISC-IV was properly administered or that any subtests were administered. See Facts, #37. From the fact that no subtests were administered, we draw the inference that the WISC IV was administered solely to determine Student's intelligence quotient and not to assess Student's needs.

78. We make a further inference that the District's failings in administering the psychological evaluation prevented the District from properly assessing Student's needs for special education and related services. We base this inference on the fact that the psychological evaluation failed to assess the nature of Student's disabilities and the extent of Student's disabilities and Student's strengths and weaknesses.

Rather, we make a further inference that the District simply assumed ADHD was the sole source of Student's disabilities, and then acted from that assumption. We base this inference on repeated testimony by District personnel that the referral arose only from Student's ADHD.

iv. The Speech Pathology Evaluation

79. We make the inference that the speech pathology evaluation was comprehensive in that it covered all suspected areas of disability- oral expression, comprehension, and articulation. We find that suspected processing disorders should have been assessed as part of the psychological evaluation. We make this inference based upon the testimony of [REDACTED] and the lack of any opinion to the contrary. See Facts, #50.

v. The Decision not to Conduct an Occupational Therapy Evaluation

80. We make an inference that disabilities associated with visual-motor integration skills, sensory processing, and executive functioning should have been evaluated as a suspected area of disability. We base this inference on the fact that [REDACTED] admitted that Student might have visual-motor integration issues, but failed to refer Student for any assessment. We also base this inference on [REDACTED] admission that occupational therapy assessments should be conducted upon receipt of a medical referral, and that [REDACTED] requested an occupational therapy assessment for Student. Finally, we base our inference on the testimony of [REDACTED]. See Facts, #53-56. We find that the District's failure to conduct an occupational therapy assessment substantively caused the District to fail to evaluate the nature and extent of Student's disabilities.

IV. Conclusions of Law

Burden of Proof and The Authority of The Hearing Officer

81. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* (“IDEA”) and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a “cooperative federalism.” *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Thus, compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

82. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). In this case, the School District filed the due process complaint, and therefore, the ultimate burden is on the School District. The School District must prove its case by a preponderance of the evidence.

83. In determining whether an evaluation is proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002)(like Wisconsin ALJ’s, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).

84. Under federal administrative law, hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission*, 253 F.3d 960, 966 (7th Cir. 2001). Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7th Cir. 2005).

Moreover, hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Inferences must also be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support our inferences and conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart, supra.*

Similarly, to the extent we rely upon expert opinions, the expert opinions must be inferred ultimately from facts in the record. *Mid- State Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7th Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

Illinois law imposes an even more stringent standard on administrative hearings. In addition to the substantial evidence standard, Illinois law requires that administrative decisions be supported by "competent evidence." Competent evidence is either: (1) evidence which would be admissible in a trial; or (2) inadmissible evidence of such a character which responsible persons are accustomed to rely upon said evidence in serious affairs (which we can only rely upon if admissible evidence is unavailable). *Starkey v. Civil Service Commission of the State of Illinois*, 105 Ill.App.3d 904, 910 (1st Dist. 1983) *rev'd on other grounds* 97 Ill.2d 91(1983).

85. Illinois law also requires the trier-of- fact in administrative adjudications to accept uncontradicted factual testimony as true. *Crabtree v. Illinois Department of Agriculture, Division of Agricultural Industry Regulation*, 128 Ill.2d 510, 518 (1989). Thus, for us to disregard factual testimony, it must be contradicted by positive testimony or circumstances, the witness proffering the testimony must be impeached, or the testimony must be inherently improbable. *Bucktown Partners v. Johnson*, 119 Ill.App.3d 346, 351 (1st Dist. 1983).

Standards for Determining Whether the District Complied with the Law in Evaluating the Student

86. The District has the responsibility to conduct a full and individual initial evaluation in accordance with pertinent regulations before the provision of special education and related services. 34 CFR 300.301(a). The District has the burden of showing that its evaluation was "appropriate." *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7th Cir. 1994). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F.Supp.2d 873, 887 (N.D.Ill. 2003)(federal and state regulations "provide the minimum requirements for an evaluation").

87. An evaluation must assess a student in all areas related to the suspected disability, 34 CFR 300.304(c)(4); and be sufficiently comprehensive to identify all of the Student's special education and related services needs, whether or not linked to the disability category(ies) in which the child has been classified. 34 CFR 300.304(c)(6).

The District's evaluation must be "comprehensive" to be appropriate. 34 CFR 300.304(c)(6). This means that the District must evaluate: (1) all areas of disability or suspected disability; (2) to the extent necessary to identify the needs of the child to special education and related services. 34 CFR 300.305(a)(2)(i)(A). As part of determining the nature and extent of the special education services and related services a child needs, the School District must determine the extent of the student's disability. *In Re Yuba City (CA) Unified School District*, 22 IDELR 1148 at 4 (OCR 1995)(in determining whether evaluation under Section 504 complaint was adequate, School District failed to properly evaluate Student by not determining the extent of the disability- Section 504 evaluation standards are essentially the same as evaluation standards under IDEA see e.g. 34 CFR 104.35). The District must determine the cause of Student's behaviors to the extent necessary to classify Student's disability(ies) as defined by IDEA and provide Student with special education and related services. 34 CFR 300.301(c)(2).

The District must conduct assessments necessary to allow the IEP Team to properly determine the content of Student's IEP. 34 CFR 300.304(b)(1)(ii), 304(b)(7).

88. In evaluating a student, the district must also consider: (1) the present needs of the child; (2) whether the child needs special education and related services; and (3) whether any modifications or accommodations are required. 34 CFR 300.305(a)(2)(i)(B)(i-iv).

89. During an evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. 34 CFR 304(b)(1). Moreover, a school district must properly administer tests it does use to evaluate students. 34 CFR 300.304(b)(3),(c)(iii), (c)(iv). The District is not allowed to use any single measure or assessment as the sole criterion for whether a student has a disability. 34 CFR 300.304(b)(2).

In addition, during an evaluation, the District must review existing evaluation data on the child, evaluations and information provided by the parents; current classroom based assessments and classroom based observations; and teacher and service provider observations. 34 CFR 300.305(a)(1)(i-iii). The School District must then determine what additional data, if any, is needed to determine whether the child has a disability; the needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services and whether additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP. 34 CFR 300.305(b).

90. The District must also choose assessments which are selected and administered so as not be discriminatory on a racial or cultural basis. 34 CFR 300.304(c)(1)(i). The assessments must be provided in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer. 34 CFR 300.304(c)(1)(ii), (c)(3). The assessments must be administered by trained and knowledgeable personnel; used for the purposes for which the assessments are valid; and are administered in accordance with any instructions provided by the producer of the assessments. 34 CFR 300.304(c)(1)(iii-v).

91. The District must administer assessments which assess specific areas of educational need and not merely to provide a single general intelligence quotient. 34 CFR 300.304(c)(2).

92. Although the School District must evaluate properly and according to the OSEP regulations, we are entitled to make a finding against the District only if the procedural inadequacies impeded the Student's right to a free appropriate public education or denied the student some educational benefit. 20 U.S.C.A. 1415(f)(E)(ii)(I-III); *Capistrano Unified School District*, 108 LRP 40490 at 29 (Cal. State Educational Agency, 2008).

93. A school psychologist is charged with, among other things, consulting with other staff members in planning school programs to meet the needs of children as indicated by assessments. 34 CFR 300.34(c)(10)(iv).

Conclusions of Law Associated with the Appropriateness of the Evaluation of Student's Suspected Learning Disability

94. There are additional requirements for evaluating students suspected of having a specific learning disability. 34 CFR 300.307-310. The additional requirements relevant to this case are set out below.

95. The determination of whether a student has a specific learning disability must be made by the child's parents and a team of qualified professionals including the student's regular teachers and a person qualified to conduct individual diagnostic examinations such as a school psychologist. 34 CFR 300.308. The group may determine that the student has a specific learning disability if the student is not achieving adequately; is not making progress in response to research based interventions; or the child exhibits a pattern of strengths and weaknesses which indicate the existence of a specific learning disability. 34 CFR 300.309. The school district must ensure that a student is observed in the learning environment to document academic performance and behavior in the areas of difficulty and use the observed information to determine whether the student has a specific learning disability and the extent of that disability. 34 CFR 300.310.

96. Illinois allows the use of the severe discrepancy model to determine if a student has a specific learning disability. 23 Ill.Admin. Code 226.130(d). The severe discrepancy model determines the existence of a learning disability by determining whether there is a severe discrepancy between the student's cognitive abilities and the student's academic achievement.

Conclusions of Law Associated with the Decision Not to Conduct an Occupational Therapy Evaluation

97. Occupational therapy is one of the related services which a school district must provide to students with disability if appropriate. 34 CFR 300.34(a). Occupational therapy includes services which: (1) improve, develop, or restore functions impaired through illness; (2) improve the ability to perform tasks for independent functioning; and (3) using early interventions to prevent further impairment or loss of function. 34 CFR 300.34(c)(6).

V. Application of Law to Fact

98. We find that the health evaluation was appropriate and that there was no need to conduct an assistive technology evaluation because none of Student's suspected disability or disability might require assistive technology. See Facts, ##8-16, 61-63

99. We find that the social-emotional evaluation was inappropriate in that it was not comprehensive as the District failed to evaluate Student's behaviors in the classroom and failed to conduct a formal behavior assessment to determine the source of Student's behavioral issues. We further find that the District improperly assumed that Student's behaviors were caused solely by ADHD and social maladjustment without evaluating the cause and extent of Student's disabilities in regard to behavioral issues. We find that this is a substantive failing by the District which prevented the District from fully evaluating

Student's disabilities and the extent of Student's disabilities, and therefore affected Student's rights to FAPE. See Facts, ##17, 20, 26, 46, 64-68

100. We find that the psychological evaluation was inappropriate for the following reasons: (1) the District failed to use observation based assessments in its psychological evaluation; (2) the District failed to use curriculum based assessments in its psychological evaluation; (3) the District failed to use valid assessments in evaluating Student by using informal assessments; (4) the District failed to prove that the WISC IV was properly administered and therefore failed to meet its burden of proof that this aspect of the psychological evaluation was appropriate; (5) the District failed to prove that the WISC IV was used for a purpose other than obtaining a general intelligence quotient and therefore failed to meet its burden of proof in regard to this aspect of the psychological evaluation; (6) the District used only one valid assessment to rule out a learning disorder, the severe discrepancy model, in violation of federal regulations, thus rendering the psychological evaluation inappropriate; (7) the District failed to completely evaluate Student's suspected disability in processing information and the extent thereof, thereby rendering the psychological evaluation inappropriate; (8) the District failed to evaluate the psychological and behavioral effects of sleep apnea to determine Student's disability and extent thereof, thereby rendering this aspect of the psychological evaluation inappropriate; and (9) the District evaluated Student for a learning disability in a discriminatory manner by using the severe discrepancy model alone without curriculum based assessments.² We find that the shortcomings of the District were substantive violations which may have affected the validity of the results of the evaluation; prevented the District from fully evaluating Student's disabilities and the extent of Student's disabilities; preventing the District from determining Student's individual strengths and weaknesses; and therefore affected Student's rights to FAPE. See Facts, ##27-46, 51, 69-74, 77.

101. We find that the speech pathology evaluation was comprehensive and thus appropriate. See Facts, ## 47-52, 78.

102. We find that the District's decision not to conduct an occupational therapy evaluation rendered the District's evaluation inappropriate as the District failed to determine the extent of Student's disabilities and Student's needs in the area of vision-motor integration issues, sensory processing issues, and executive functioning. See Facts, ## 53-56, 79. We find that the shortcomings of the District were substantive violations of IDEA and prevented the District from fully evaluating Student's disabilities and the extent of Student's disabilities; and therefore affected Student's rights to FAPE.

VI. Order

As to the speech pathology evaluation (communication skills) and health evaluation, we find that the District's evaluation was appropriate, and that the District need not take any

² The regulations require the District to use classroom based observation and curriculum based assessments during some aspect of the evaluation. Because, in this case, classroom based and curriculum based assessments are most important to the social-emotional and psychological evaluations, we find those aspects of the evaluation to be inappropriate based on the District's failure to use classroom based observations of Student and curriculum based observations of Student.

further action in regard to the those evaluations. We find the District does not need to conduct an assistive technology evaluation and the District need take no further action as to that portion of Student's Complaint³. As to the District's failure to have an occupational therapist evaluate Student, we find that the District failed to appropriately evaluate Student by failing to conduct an occupational therapy evaluation. As to the District's psychological and social-emotional evaluations, we find the District failed to appropriately evaluate Student in these areas. We therefore order the District to pay for an independent educational evaluation in the areas of: (1) occupational therapy (including visual-motor integration, executive functions, and sensory processing); (2) psychological (cognitive and academic); and (3) social-emotional (social and behavioral skills). The District shall provide proof of compliance with this order to the Illinois State Board of Education, Compliance Division, by August 6, 2009.

VII. Right to Request Clarification

Section 14-8.02(a(h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A 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 parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.


VIII. Finality of Decision

This decision shall be binding upon all parties.

IX. Right to File Civil Action

Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

³ This order should not be construed to foreclose Student's right to additional speech pathology or assistive technology evaluations if the independent evaluations required as part of this order create a duty to further evaluate Student.



Joseph P. Selbka
Impartial Due Process Hearing
Officer

Date: 5-4-09

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