

Case Number: 2010-0209

Hearing Officer: Stacey Stutzman

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

MAR 16 2010
Special Education Services

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name
Superintendent
Address
Represented by

Phone:

Parent Name
Address
Represented by

Date and Timelines

Date of Written Request: 12/15/2009
Date of Pre-hearing Conf: 1/15/10 and
02/01/2010

Date of Hearing: 02/19/2010 and 3/4/2010 9:00
a.m.
Date of Decision: 3/13/10

Summary of Decision

District requested due process hearing upon its denial of Parent's request for IEE at public expense to obtain an order that its evaluation of Student, which consisted of assessments of intellectual ability and achievement by the school psychologist and a health assessment by the school nurse, was appropriate and adequate and that it therefore correctly denied Parent's request for IEE.

HELD: for Parent for assessments in all domains requested for the reason that District did not conduct an appropriate full and individual evaluation of Student.

ORDER: That District shall fund a comprehensive independent educational evaluation of Student to include (a) educational assessment of Student's reading, writing, and math skills; (b) psychological assessment of Student's cognition, behavior, and attention; (c) social/emotional assessment; (d) occupational therapy assessment; and (e) speech and language assessment

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2010-0209
)
) Stacey Stutzman
) Impartial Due Process
) Hearing Officer

DECISION AND ORDER

This matter is before the undersigned impartial hearing officer for a due process hearing concerning District's request for an Order that District's initial evaluation of Student was adequate and appropriate and that Parent therefore is not entitled to independent psychological, educational, speech/language, social/emotional, and occupational therapy assessments of Student at public expense. The hearing officer has jurisdiction to hear and decide this matter under *105 ILCS 5/14-.02a(g)(2008)*. The parties have been informed of their hearing rights under *23 ILAC 226.625(2007)* and *34 CFR 300.512(2006)*. The undersigned Hearing Officer has also advised the parties that there are and have been no conflicts which have prevented her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

District submitted a request for due process hearing to the Illinois State Board of Education on December 15, 2009, attaching Parent's request for independent evaluation of Student dated December 8, 2009. The hearing officer initially assigned to hear the matter was unavailable, and it was assigned to the undersigned on December 30, 2009. On January 4, 2010, Parent's attorney submitted her *Motion to Dismiss Based on Insufficiency of District's Due Process Complaint*. On January 5, 2010, an Order was entered finding District's request to be legally sufficient and denying Parent's motion. On January 5, 2010, Parent's attorney submitted *Parent's Response to District's Due Process Complaint*. Although Parent's attorney sought a waiver of the resolution session, District did not wish to waive it, and a resolution session, delayed due to District's winter break, was convened on January 15, 2010. It did not result in settlement.

The Pre-Hearing Conference in this matter was convened on January 15, 2010, the date established by the ISBE Special Education Database System (SEDS). However, due to a dispute that arose in the course of the conference as to the framing of the issue and allowable remedies, it was adjourned to permit the submission of legal briefs. An Order was entered on January 26, 2010 determining the issue and remedies in the case, and the Pre-Hearing Conference was reconvened and completed on February 1, 2010. The Pre-Hearing Conference Report dated February 1, 2010 is incorporated into the record as Hearing Officer Exhibit A.

The hearing was originally scheduled for January 29, 2010 by the ISBE SEDS. However, it was delayed due to the adjournment and reconvening of the Pre-Hearing Conference as noted above. As noted in the Pre-Hearing Conference Report, the parties were offered hearing dates beginning on February 15, 2010, and they selected February 19, 2010. The hearing proceeded as scheduled on February 19, 2010. However, it was not completed because Parent, a witness for both parties, did not appear due to a medical emergency. She advised her attorneys to proceed with the hearing without her, and all other witness testimony was completed on February 19. The parties then selected March 4, 2010 for completion of the hearing. The hearing was reconvened on March 4, 2010, Parent appeared and gave her testimony, and the hearing was completed. The decision in this matter is being issued within 10 days of completion of the

hearing. However, due to the postponements noted above, it is not being issued within 45 days of the initiation of the 45 day timeline.

In attendance at the hearing on February 19 and March 4, 2010 were [REDACTED], attorney for District, and [REDACTED] and [REDACTED], attorneys for Parent. Parent was in attendance at the hearing on March 4, 2010. The hearing was reported by [REDACTED], certified court reporter, of [REDACTED], (312) 263-0052. The following witnesses testified on behalf of both parties: [REDACTED] District School Psychologist; [REDACTED] District School-Based Problem Solving Coordinator; [REDACTED], Student's 3rd Grade Teacher; [REDACTED], District Case Manager; [REDACTED] District Social Worker; and Parent. [REDACTED] Student's 2nd Grade Teacher, and [REDACTED] Clinical Psychologist, also testified on behalf of Parent.

District included 142 pages of documents in its disclosure packet. Parent included 240 pages of documents in her disclosure packet. District documents, hereinafter preceded by a "D", which were used at hearing in this matter were: D1-2, 4-7, 10-21, 26-34, 36-44, 48-62, 65, 69, 103-104, and 128. Parent documents, hereinafter preceded by a P, used at hearing in this matter were P4-14, 29, 31, 37-38, 47-48, 65, 80, 89-90, 94, 114-115, 124-125, 132-134, 138-139, 178, 203, 205. The parties also stipulated to the admission of D15-20, D34, D128, P138, and P139.

At the close of evidence, District counsel submitted copies of *Jaccari J. v. Chicago Dist. 299*, 2010 WL 625332 (N.D. Ill. 2010) and *Krista P. v. Manhattan School District*, 255 F. Supp.2d 873 (N.D. Ill. 2003) for consideration in the decision of this matter. Parent's counsel submitted copies of *Oak Park & River Forest High School v. Kelly E.*, 21 F.Supp.2d 862(N.D. Ill. 1998), *Independent School Dist. No. 701 v. J.T.*, 45 IDELR 92(Dist. Minn. 2006), and *Hawaii v. Cari Rae S.*, 158 F.Supp.2d 1190(Dist. Hawaii 2001), and Illinois Standards for the School Psychologist, 23 ILAC sec. 23.130(eff. 6/19/2002).

Issue Presented

Whether District has conducted an appropriate full and individual evaluation of Student?

Findings of Fact

The material facts relevant to the issue in this cause, based upon the evidence introduced at hearing, are as follows: Student is an eight year old male in Grade 3 at a District elementary school. He missed 56 days of school in kindergarten, 41 days in first grade, and 22 days in second grade. He also has a record of tardiness, arriving to school up to 1 1/2 hours late at times. [REDACTED]; P132-133; D10) He has asthma. He was prescribed eyeglasses in October, 2008, but he does not always wear them and needs encouragement to wear them in the classroom.(Parent; D7, D17) He is nervous in front of a group and lacks confidence in large group environments. He is very polite and respectful and follows all rules. He is unsure of himself in speaking. [REDACTED]

Student does not bathe himself appropriately and does not converse appropriately when interacting with his same aged cousin. He does not stay on topic and goes off on another subject, like something isn't connecting. In 2008, [REDACTED] recommended 20 hours per week of tutoring for Student. Parent tried to help him at home herself in the summer of 2008. He always needs Parent's help with homework, and he gets frustrated and sometimes cries. When practicing for the ISAT, he had to write 7 paragraphs, and each paragraph he wrote said the same thing. He does explain well when he wants something. Parent kept Student at home for 41 days of school in first grade because of his asthma attacks. He had to be on a nebulizer every 4 hours and there was no nebulizer at school. Student's asthma was not addressed at school until this school year. (Parent)

In first grade, the 2007-08 school year, Student received Ds in Reading, Writing, and Math. (P133) In second grade, he received Fs in Reading and Written Language and a B in Math. [REDACTED]; P6) In third grade, he received Fs in Reading, Math, and Science and a C in writing in the first five weeks of school. He was absent 4 out of 25 days of school and tardy once during that time. [REDACTED]; P65)

On September 10, 2008, at the beginning of Student's second grade year, Parent requested a full case study evaluation of Student, citing his frustration with homework

assignments, difficulties remembering the number chart, lack of comprehension skills in reading, and memory of stories read to him, occasional inability to repeat a direct statement and repeating a statement or direction in reverse. In her request, Parent "implored" the Assistant Principal to give Student a test date before the first term advanced too far. (█████; Parent; D1-2; P124-125) District did not evaluate the Student as Parent requested at that time, but referred him for school based problem solving, which they mandated before doing a full individual evaluation of a student suspected of having a learning disability. (██████████; D65, 69, 103, 104; P80, 89, 90)

For 12 weeks during the first semester of second grade, Student was pulled out of class individually and in small groups for 30 minutes per week to work on math concepts, which he did on one occasion by adding 1's, and on reading fluency and comprehension. Although reading fluency for a second grader was expected to be 90 words per minute, Student began at 26 words per minute and progressed only to 31 words per minute by the end of the intervention period on January 6, 2009. When assessed for reading comprehension, he was easily distracted and did not follow along while reading. (█████; P94, 114, 115)

His second grade teacher referred Student for an initial evaluation on January 6, 2009, citing Student's difficulty with reading and noting his struggle with fluency, comprehension, and writing. She also noted that he participated in class sometimes, responding orally only when confident, and participating more in math. She had to break instructions down into small chunks for Student in her classroom. The request was approved. (█████; D4-5)

Parent signed consent for evaluation at a Domain meeting on January 14, 2009. Health, Vision, General Intelligence, and Academic Performance were noted to be relevant assessments on the Domain Sheet accompanying the consent. Hearing, Social/Emotional Status, and Communication Status were noted as not relevant. No notation was made as to Motor Abilities, and an occupational therapist was not in attendance at the Domain Meeting. The staff present at the meeting looked at what was going on when Student was at school and felt that Student did not have any behavior, speech, or motor problems that needed to be evaluated by the social worker, speech pathologist, or occupational therapist. (█████; Parent; D6-7)

Student was assessed by the school psychologist on March 25 and April 2, 2009. She reviewed the teacher referral, Student's cumulative card with his attendance and grades, and the School Based Problem Solving checklist and folder. She did not observe Student in his classroom or outside of the assessment arena. Her handwritten report is undated, but it references 22 days of absence for the 2008-09 school year as of June 12, 2009. The report provides a one paragraph *Academic History*, including Student's asthma, eyeglasses, his attendance record, then current grades, and difficulties with fluency and comprehension. It notes the referral reason as a "difficulty with reading." (█████; D10)

The psychologist administered the *Woodcock-McGrew-Werder Mini Battery of Achievement(MBA)* to obtain a current measure of academic functioning and reported the following scores in her report:

<u>Measure</u>	<u>G.E.</u>	<u>PR</u>	<u>SS</u>
<i>Basic Skills</i>	1.7	13	83
<i>Reading</i>	2.6	45	98
<i>Writing</i>	1.4	4	73
<i>Mathematics</i>	1.7	13	83
<i>Factual Knowledge</i>	1.2	16	85

(█████; D10-14) A one page summary of the aforesaid *MBA* was provided in the report indicating that Student's achievement was a year or more below grade level and in the low and low average ranges, with the exception of his performance in the average range on the reading subtest which measured letter and word identification, vocabulary and comprehension skills. (█████; D11) The psychologist cannot explain why Student would perform at grade level on this test while failing reading in school other than that this score is for one test on one day. (█████)

The psychologist also administered the *Reynolds Intellectual Assessment Scales (RIAS)* to assess Student's cognitive status. According to her testing, Student's overall, verbal, and

nonverbal intelligence is moderately below average with a Composite Intelligence Index (CIX) of 71, in the 3rd percentile; a Verbal Intelligence Index (VIX) of 70, in the 2nd percentile, and a Nonverbal Intelligence Index (NIX) of 79, in the 8th percentile. (P.F.; D12) She reported that Student's Composite Memory Index (CMX) of 96, in the 39th percentile, suggests that his ability to attend to stimulus, register in immediate memory and recall the stimulus is in the average range. She noted deficits in his spatial ability, his verbal analytical reasoning, and his nonverbal reasoning. She noted a weakness in his nonverbal memory. (████; D12)

The school psychologist also administered the *Wechsler Intelligence Scale for Children (WISC-IV-PSI)*, *Beery-Buktenica Developmental Test of Visual Motor Integration (VMI)*, and *Peabody Picture Vocabulary Test (PPVT)* and set forth his scores on those assessments in her report. He scored in the low range in the assessment of his visual motor integration skills, standard score 76, percentile rank of 5, and age equivalent of 5 years, 6 months. On the *PPVT*, administered to assess his receptive vocabulary skills, he scored in the low average range, standard score of 94, percentile rank of 34, age equivalent of 7 years, 3 months. On the *Processing Speed Index (PSI)* subtest from the *WISC-IV*, a measure of speed of mental and graphomotor processing, he demonstrated average ability on tasks requiring short term visual memory, visual motor coordination, and visual perception, with a composite score of 94, 34th percentile when compared to same age peers. (████; D13)

The school psychologist did not include any conclusions or recommendations in her report based upon her testing for the reason that it is the responsibility of the team to determine eligibility. (████) The report does not interpret or explain any relationship between the scores and Student's performance or expected performance in school or otherwise as to assist Parent in understanding the test scores or staff to identify a disability or program for his educational needs. (████; P10-14)

Student's health was assessed by the school nurse, whose report is dated 4/14/09. According to her report, the reason for referral for the evaluation was "difficulties with homework assignments, reading and math skills, following instructions." The nurse obtained a *Health History*, including perinatal and developmental history, from Parent, noting that Student was delivered with the umbilical cord around his neck and that he has suffered from respiratory problems, including asthma, since 3 months of age. In her assessment and observation of Student, the nurse noted slightly below average height and weight and also that he was "somewhat shy, soft spoken, and maintain(ed) fleeting eye contact". He was not wearing his glasses, although they had been prescribed at least since his vision screening of October 8, 2008, and was not knowledgeable about a nebulizer or a rescue inhaler, which he did not have at school, for his asthma. He did pass the hearing screening on October 8, 2008. The assessment also noted Student's prescribed medications for asthma, his poor attendance records since kindergarten, and his "difficulty functioning at expected grade level." She did note that he "interacted well with peers, teacher, and school staff." (D15-18)

An initial eligibility conference was to be convened on April 15, 2009, with the Case Manager, Special Ed Teacher, Student's Second Grade Teacher, School Psychologist, School Nurse, and Parent, and "others", but it was cancelled per directives from District's attorney. (SD21)

An eligibility conference was convened on September 11, 2009. The Case Manager, █████, Special Ed Teacher, Student's Third Grade Teacher, █████, his Second Grade Teacher, █████, the School Psychologist, █████, the School Nurse, the School Based Problem Solving provider, █████, the School Social Worker, █████, Parent, and District counsel were present. (D26) In a *School Nurse Service Eligibility Worksheet* dated 9/11/09 and signed by the School Nurse that date, it is stated that the Student "does have a health condition, illness, health impairment, and/or special physical needs that interfere with the ability to participate and benefit from the educational program." (D34)

The *Summary of Assessments* on the eligibility determination document for the September 11, 2009 conference includes 1) Health, noting only that a vision screening on 10/22/08 resulted in "Glasses Checked (Scratches)"; 2) Academic Performance, which lists

Student's scores on the *Woodcock-McGrew-Werder Mini Battery of Achievement (MBA)*; and 3) General Intelligence, which recites the scores on the *RIAS* and states as follows:

Deficits were noted in nonverbal reasoning, verbal analytical reasoning and verbal reasoning. A weakness emerged in visual memory. In the area of Processing Speed (WISC-IV), (Student) performed overall in the Average range (94-34th percentile). (Student's) visual motor integration skills were scored in the Low range (SS=76;%=5). His receptive vocabulary skills were assessed in the Average(low) range (SS=94;%=34; A.E.=7-3).

(D28)

Student was determined "not eligible" for special education and related services at the meeting on September 11, 2010 because his academic difficulties were attributed to the lack of appropriate reading and math instruction, and no disability was identified. (D29-31)

On December 7, 2009, The School Psychologist, P.F., administered the *Kaufman Test of Educational Achievement-Brief Form (K-TEA II)*. In a report dated 12/11/09, she reported as follows under the heading of "Educational Evaluation/Curriculum Based Assessment" and again under the heading of "Summary and Conclusions":

On December 7, 2009 (Student) was administered the Kaufman Test of Educational Achievement-Brief Form(K-TEA II) in order to gain a current measure of academic functioning. (Student) obtained an Achievement Composite of 81 and a percentile rank of 10-Below Average range. On the Reading subtest (involves letter/word recognition and comprehension), (Student) earned a standard score of 93, percentile rank of 32 and a corresponding grade equivalent of 2.4(Average range). On the Mathematics subtest(apply math principles to real-life situations and write solutions to math problems), Student performed in the Average range with a standard score of 87, percentile rank of 19 and a grade equivalent of 2.2. In the area of Writing (includes adding punctuation, capitalization, filling in missing words, completing sentences and writing original sentences), (Student) demonstrated Below Average skills with a standard score of 75, percentile rank of 5 and a corresponding grade equivalent of 1.3.

(D38-39)

On December 11, 2009, Parent signed a *Consent for Initial Evaluation*, apparently for the December 7 testing that had already been done at that point. (D36) Pursuant to an *Assessment Plan* dated 12/11/09, under the Domain of Academic Performance, a brief assessment of achievement was to be administered by the psychologist to "reconsider eligibility." No other domains listed on the plan, including Social/Emotional Status, Communication Status, or Motor Abilities, are checked as being relevant. (D37)

An eligibility determination conference was convened on December 11, 2009. Present were the Case Manager, [REDACTED] the Special Education Teacher, Student's Third Grade Teacher, [REDACTED] the School Psychologist, [REDACTED] the School-based Problem Solving provider, [REDACTED] and Parent. (D40) The Summary of Assessments consisted of the scores from the Achievement testing done by the psychologist in April 2009 and repetition of the paragraph above summarizing scores on the *K-TEA II* administered on December 7, 2009. Student was determined eligible for special education and related services as "learning disabled" at the 12/11/09 meeting. His instruction in reading and math was deemed adequate, and his learning difficulties were not deemed to be attributable to a visual, hearing, motor, cognitive, or emotional disability nor to cultural factors or environmental or economic disadvantage. Special Education Instructional Needs were noted in reading comprehension, mathematical calculation, mathematical problem solving, and written expression but not for basic reading skills, oral expression, listening comprehension, or reading fluency skills. A severe discrepancy was said to exist between achievement and ability (D42-43)

An IEP was written after the eligibility conference and included the eligibility team members and the Math Teacher. The Present Levels of Academic Achievement in the IEP were

based upon *NWEA* testing, which is school and classroom achievement testing, done in September of 2009 in which he scored in the 1 percentile for reading fluency and comprehension and math. No standardized test results were provided for his writing goal. Rather, there is a statement saying that he "writes at a second grade level." He is described as a "fluent reader with strong spelling and phonics skills" who needs improvement in his ability to understand material. The IEP provides for 160 minutes per week of special education in language arts and math, 15 minutes per week of special ed to general ed teacher consultation, and 15 minutes per month nurse to general ed teacher consultation. (D48-62) The Student's teacher had concerns about Student's low voice, and the IEP includes the following statement under the heading of "Communication Needs": "(Student) needs to improve confidence in whole group and one on one conversation. He speaks in a quiet tone. He needs to ask questions if information is not understood." (P48)

The School Social Worker who appeared for the eligibility determination conference that did not go forward on September 11, 2009 was not in attendance at the eligibility determination conference on December 11, 2009. She was on sabbatical in the 2008-09 school year and did not return to work until September 9, 2009. As a school social worker, she feels that a child's failure to attend school is a concern. She has not met Student. (S.R.)

is a clinical psychologist who was employed as a school psychologist for 30 years in other school districts. She has experience in evaluating students for special education and developing IEPs. She is qualified to diagnose emotional disorders, specific learning disabilities, and cognitive impairments. She assesses children and provides therapy in her current practice. She met with Student and his Mother for 1 to 1 ½ hours on February 15, 2010, and she has reviewed the Parent's request for case study evaluation and the school psychologist's report of evaluation, but has not performed an evaluation of Student at this time. Student has advised her that math and reading are frustrating for him. He has difficulty with his memory, and he hasn't mastered simple addition. He does not know his math facts. He cannot sequence his ideas. He has difficulty communicating his ideas, which causes concerns regarding his speech and language abilities.

The psychological assessment performed by is a limited evaluation and constitutes a screening assessment and not a full evaluation. It presents a confusing picture of Student, with many inconsistencies resulting in the need for further assessment. More in depth assessment of Student's language processing is needed. It is not known whether he is seeing accurately. His scores are low and borderline and no standard errors of measurement have been provided, resulting in concern as to how stable the scores are. An adaptive behavior assessment needs to be done. There is a question as to whether Student is cognitively impaired, in which case slower achievement is to be expected, or whether he has average intelligence and a language processing deficit. Furthermore, the school psychologist did not observe Student in his classroom. She did not describe the conditions of testing or state her level of confidence in the validity and reliability of the test results. She did not report whether or not she interviewed the Student or whether he wore his glasses for testing. Rather, she globally reported test scores. She provided no explanation as to why his reading was average in her testing, while his poor reading was a cause of Parent and teacher concern, and while his intelligence was found to be below average. It is difficult to determine from the psychological assessment whether or not Student needs special education. It indicates that he might need speech and language therapy.

Conclusions of Law

The burden of persuasion is on the District as the party seeking relief in this matter to show that its evaluation of Student was adequate and appropriate and that it therefore correctly refused Parent's request for an independent evaluation at public expense. *Schaffer v. Weast*, 546 U.S. 49(2005) The District has not met its burden. The preponderance of the evidence supports Parent's position that District did not perform a full and individual evaluation of Student as required by Illinois law and the *IDEA* and that she is entitled to have a comprehensive evaluation performed independent of the District and at District expense.

No child shall be eligible for special education without a carefully completed case study, currently defined as a full and individual evaluation (FIE), fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists. If a parent disagrees with the school district's evaluation of her child, she has the right to request an independent educational evaluation at public expense. An IEE, or a private evaluation, as it is known, provides a parent with the opportunity to obtain her own evaluation of her child to counteract the evaluation obtained by a district when she suspects that the district's evaluation has not discerned the true identification or nature of a student's disabilities and/or his resulting needs. The school district has the option of initiating an impartial due process hearing within 5 days of parent's request to show that its evaluation is appropriate if it chooses to stand by its evaluation rather than fund the requested IEE. *20 USC 1414(a)(2004); 105 ILCS 5/14-8.02(b)(2008); 23 ILAC 226.180(2007); 34 CFR 300.502(2006)*

The IDEA identifies 13 disabilities as the basis for eligibility for special education, including, inter alia, cognitive disability, other health impairment, specific learning disability, and speech or language impairment. *23 ILAC 226.75(2007); 34 CFR 300.8(2006)* It also identifies a number of related services that are to be provided if necessary to allow a child in need of special education to benefit from special education, including transportation, and other supportive services, such as speech-language pathology, audiology, psychological, occupational therapy, early identification and evaluation of disabilities in children, and counseling services, inter alia. *23 ILAC 226.75(2007); 34 CFR 300.34(2006)*

A full and individual evaluation is one that provides for the assessment of a child in all areas of suspected disability and which uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child has one or more of the qualifying disabilities under the IDEA and also to provide the appropriate educational programming for the child in the event that he is eligible for special education and related services. In identifying the assessments to be used in a completing a full and individual evaluation, the relevant aspects, or domains, of a child's functioning or performance include health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities. *20 USC 1414(b)(2004); 23 ILAC 226.110(2007); 34 CFR 300.15, .304, .305(2006)* Additional procedures are required in the determination of eligibility of a child in the category of specific learning disability, including observation of the child in the classroom and specific documentation for the eligibility determination. *23 ILAC 226.130(2007); 34 CFR 300.307-.311(2006)*

In this case, the documentary evidence introduced at hearing shows that the District's initial evaluation of Student consisted of the scores reported by the school psychologist on intellectual and achievement testing she administered on March 25 and April 2, 2009 and some achievement testing repeated on December 7, 2009 and the health assessment completed by the school nurse on April 14, 2009. The psych assessment is confusing, to say the least. The psychologist did not write her report of evaluation, consisting only of test scores, until sometime after June 12, 2009. She did not observe the Student in the classroom. She reviewed his grades, attendance, and the teacher referral, which she considered to be a referral based on his reading difficulties, and his School Based Problem Solving Checklist and folder. His IQ scores of 70 were borderline without any provision of measure of error. There was no interpretation of what his test scores mean in terms of his ability to do his schoolwork and receive an education. He was determined not eligible for special education based on the psychologist's evaluation on September 11, 2009, even though the nurse determined that Student's health interfered with his ability to be educated. And, yet, after the performance of additional achievement tests performed on December 7, 2009, which the psychologist testified she felt were consistent with the tests she performed in April for which Parent was asked to sign consent on December 11, 2009, Student was identified as "learning disabled" based on a "discrepancy." Nowhere in the record is the discrepancy identified or explained, not in a report, not in the documentation of the December 11, 2009 eligibility conference. Her testing indicated a below average IQ, which depending on measure of error, could, in conjunction with further assessment, indicate a cognitive disability, or

he may have higher intelligence with a language or other processing disorder. His grades in reading and writing were below average. Reading achievement testing she performed was "average". His school based problem solving provider showed his reading fluency as 31 words per minute when a second grader should have had fluency at 90 words per minute. His IEP says he is "a fluent reader." The psychologist did not provide the Parent with any understandable interpretation of her data, nor did she provide any cogent conclusions or recommendations to Parent and staff in her report based upon her test scores as related to Student's failure in school. It appears that the psychologist's report of global scores was so confusing that the eligibility team could not even decide if Student had a disability based upon it, and yet it was used as the sole basis of denying eligibility in September, even though the nurse felt at that time that Student's health interfered with his education. Then eligibility was conferred in December for a learning disability without further explanation.

The District has focused a great deal on Student's poor attendance record. Nevertheless, it did not consider a social/emotional assessment relevant to a full and individual evaluation of Student. The current school social worker testified at hearing that she would want to investigate a child's failure to attend school. The questioning and testimony elicited at hearing indicates that a social/emotional assessment would only be relevant to District if a child was exhibiting some type of bad behavior in school or not interacting "appropriately" with peers and adults. However, Student is a child who was not coming to school a great deal of the time and was coming to school up to an hour and one half late at times when he did attend. His reluctance to participate in class, his quiet demeanor, his lack of confidence, and his fleeting eye contact were noted but not deemed worthy of further investigation. Apparently, Student would have to act out and misbehave in class to be considered in need of a social/emotional assessment. What is more troubling is that, according to the evidence in this matter, Parent was not interviewed as part of Student's evaluation by anyone other than the school nurse who needed Student's medical history. Parent's input is absolutely necessary to an appropriate FIE. Contrary to District's position, Student's home environment is relevant to his educational performance, and a social/emotional assessment is crucial to identifying Student's disability, or lack thereof, and the programming that might be needed to address it.

It was also apparent from the questioning and responses at hearing, that District did not consider Student's communication status relevant in conducting the evaluation because they view the domain as encompassing "speech" and felt that since he could talk, albeit quietly, and hear, although his teacher had to break instruction into small "chunks" for him, someone at the Domain meeting decided that his communication status was fine. However, Parent testified that Student does not engage in conversation appropriately, his teachers testified that he speaks very quietly and does not participate well in class, and, more importantly, there is the possibility of a language processing disorder. It is evident that any FIE of this Student must include evaluation of his communication status by a qualified speech and language pathologist.

Finally, in regard to Parent's request for an occupational therapy assessment as part of a full evaluation of Student, the evidence reveals that Student was receiving Fs in writing and in written expression in first and second grade. Also, his second grade teacher included writing as a concern when she completed her referral for evaluation. Since there is no documentation of administering any type of adaptive behavior scales or of any type of formal interviews with parent or staff, there is no indication that the failing grades or the teacher's concern was not fine motor, visual, or perceptually related. And the testimony elicited by District counsel from staff at hearing, to the effect that there were no fine motor related concerns, as is the repeated summarily provided testimony that there were no speech or behavior concerns, is suspect. In spite of the failing grades and teacher concerns, an occupational therapist was not invited to the Domain meeting on January 14, 2009, which was used to determine the assessments to be performed as part of the initial evaluation. District suggests that Parent shouldn't have signed consent if she wanted assessments other than those the District listed on its Domain sheet. However, Student had been failing in first and second grade, this Parent had been attempting to have her child evaluated since the beginning the 2008-09 school year, and, had she not signed the consent form presented to her on January 14, 2009, there could have been no assessment whatsoever. The

Parent had to wait until the District completed its evaluation and presented its report of evaluation to her before she could seek an IEE at public expense.

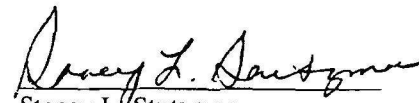
The two decisions rendered by the Northern District of Illinois and cited by District in this matter, *Jaccari J.* and *Krista P.*, are not persuasive of District's position, given the facts in this case, that its decision "not to test" Student in certain domains prevents Parent from seeking assessments in those domains and that District was correct in doing only intellectual, academic, and health assessments because it was only required to test in areas of "suspected" disability. Rather, the preponderance of the evidence supports Parent's position that the District's initial evaluation was not, and was not even designed to be, sufficiently comprehensive to identify all of Student's needs. The assessment tools and strategies comprising the District's evaluation were not sufficient to directly assist in the determination of Student's educational needs, and the evaluation was therefore not in compliance with the requirements of 34 CFR 300.304(c)(6) and (7).

The case law submitted by Parent in the *J.T.* and *Cari Rae S.* cases are not precedential in this matter but are instructive, and the *Kelly E.* case is supportive of Parent's contention that the District should have heeded the warning signs that were present in designing and executing its initial evaluation of Student in order to not only identify the presence, nature, and extent of any qualifying disability but also to determine his educational needs adequately and appropriately. The *Standards for the School Psychologist* in the Illinois Regulations to the Illinois School Code are acknowledged as supporting Parent's position that the evaluation of the Student in this case should have included environmental data and that the psychologist's report should have articulated assessment findings in a manner that is understandable for the intended audience, including Parent, and should have addressed all referral questions appropriately and provided guidance for interventions. Even without those standards, however, as discussed above, the District's evaluation consisting only of the psychologist's test scores and the health assessment was not sufficiently comprehensive to identify Student's possible disabilities and educational needs. It resulted in the provision of inconsistent and confusing information for the determination of eligibility and programming for Student. The appropriate remedy is for qualified professionals to conduct a full and individual evaluation of Student independent of the District and to report appropriately on their findings to allow the use of those findings in determining eligibility and programming to address Student's unique needs.

IT IS THEREFORE ORDERED:

1. That District shall fund a comprehensive independent educational evaluation of Student, including interviews with staff and classroom observation of Student, and preparation of reports of evaluation, to include (a) educational assessment of Student's reading, writing, and math skills; (b) psychological assessment of Student's cognition, behavior, and attention; (c) social/emotional assessment; (d) occupational therapy assessment; and (e) speech and language assessment; and
2. That District shall provide proof of compliance with the above order to the Illinois State Board of Education Program Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 on or before April 19, 2010.

DATED: March 13, 2010


Stacey L. Stutzman
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

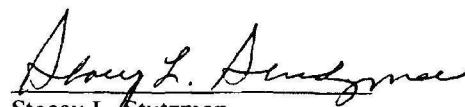
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a 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 A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is 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 the decision of the impartial due process hearing officer is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent and Parent's counsel, District and its counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on March 13, 2010 before 5:00 p.m.


Stacey L. Stutzman
Impartial Hearing Officer