

Case Number: 2014-0001

Hearing Officer: Deborah Frank Feinen

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 [REDACTED] Phone: [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Date and Timelines

Date of Written Request: 07/01/2013

Date of Hearing: 02/05/2014 to 02/06/2014

Date of Pre-hearing Conf: 10/16/2013

Date of Decision:

Summary of Decision

Pursuant to 34 CFR 300.502 Parent requested Independent Educational Evaluations of Student at public expense in the areas of psychology and social work. Also pursuant to that Section, the District filed a due process complaint to request a hearing to show that its evaluations were appropriate. The District requested that the IHO find that its evaluations were appropriate and deny the request for an Independent Educational Evaluation (hereinafter "IEE").

The record establishes that the psychological re-evaluation prepared by [REDACTED] and the social work re-evaluation by [REDACTED] meet the requirements of 34 CFR § 300.304-5 and are appropriate. Therefore the District prevails in this due process proceeding. Parent may still have an independent educational evaluation of the Student but not at public expense. (34 CFR § 300.502(b)(3)).

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2014-0001
)
) Deborah Frank Feinen
) Impartial Due Process
) Hearing Officer

FINAL DECISION AND ORDER

JURISDICTION

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the Illinois School Code, 105 ILCS 5/14-8.02a et seq., and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on August 6, 2013.

The Hearing in the above captioned matter took place on February 5 & 6, 2014 at [REDACTED] (hereinafter "School"). The Student [REDACTED] (hereinafter "Student") was represented by her Mother [REDACTED] (hereinafter "Parent") and the School District was represented by [REDACTED] and [REDACTED] of the [REDACTED]

PROCEDURAL BACKGROUND

The request for an Impartial Due Process Hearing was dated and submitted on July 1, 2013 and Impartial Hearing Officer Mary Schwartz was assigned to the case (2014-001) on July 2, 2013. The parties participated in an unsuccessful mediation on July 23, 2013.

IHO Schwartz had the case until August 6, 2013 when she took a medical leave of absence and the case was reassigned to the undersigned IHO. At the time of the re-assignment a pre-hearing conference was scheduled for August 8, 2013, this date was continued after the reassignment and the pre-hearing conference was set for September 4, 2013 in part to allow Parent additional time to meet with the school. At the time of the September 4, 2013 date the Parent again requested additional time and a pre-hearing conference was set for October 16, 2013. This pre-hearing was held and a written pre-hearing report was issued. The parties discussed hearing dates at the pre-hearing conference and later finalized the dates for February 5 & 6, 2014.

The five day disclosures were set to be exchanged on January 29, 2014 at 5:00 P.M. The District provided its disclosures but the Parent did not do so. Parent's disclosures were not provided until 1:54 A.M. on February 3, 2014. On February 3, 2014 the District waived in writing its right to receive the Parent's five day disclosures at least five business days prior to the hearing as provided for in 34 CFR 300.512 (a)(3). On this same day, Parent amended her

witness list that was previously provided to the District on February 3, 2014 at 1:54 A.M.. The amendment was with leave of the IHO who allowed Parent to update her witness list to include any witnesses also listed on the District's witness list provided in the District's five day disclosures. This was over the objection of the District. However, Parent had mistakenly understood that each witness listed by the District would be called as a witness at the hearing and that she did not need to independently list the witnesses herself. Parent also provided a written witness list at hearing. (IHO D 24).

The Hearing commenced as scheduled 10:00 A.M. on February 5, 2014 after being delayed because of the extremely snowy weather. The hearing went all day on February 5, 2014 and started again at 9:10 on February 6, 2014 and continued until approximately 5:15 on that day.

Parent Documents (hereinafter PD) 01-20 and the School District Document booklet (hereinafter SD) 0001-42 were admitted into evidence with the exception of PD 16 and SD 30-42 and 24 (which is blank). The IHO notes that Parent Documents were mislabeled. Each page had the actual page number and the total page numbers on the bottom the total number of pages provided by Parent was actually 20 however the documents were labeled showing 21 as the total number of pages. The IHO with consent of the parties has crossed out the number 21 on each page and written 20. In addition on PD 18 the parties agreed that the Parent's handwritten notes on the documents should be crossed out and not be part of the record. The IHO crossed these notes out on the official record version of these documents.

The IHO requested resumes or curriculum vitae for [REDACTED], and [REDACTED], and [REDACTED]. With the exception of [REDACTED], these have been provided and shared with both the parties and they are marked as IHO D and numbered consecutively. Finally, Parent was allowed to provide Doc. #1 as listed in her pre-hearing conference disclosures which consists of sixteen pages from the Evaluation Center for Learning Assessments (3/27, 4/01, and 4/6/2009) and Doc. #2 as listed in her pre-hearing conference disclosures which consists of 4 pages from the [REDACTED] (11/19/00) as they were excluded at the pre-hearing conference because of the District's representation that they were not part of what was reviewed to make the eligibility determination but the testimony indicated that they were reviewed. These documents are admitted into evidence. They are marked IHO D and numbered consecutively along with Parent's letter transmitting the same (these were also provided to the District).

The IHO notes that at the end of the hearing she requested a copy of the Student's current Individualized Education Plan and the District objected stating it wasn't provided in the document disclosures and should not now be provided. The IHO allowed the objection and therefore a copy of the IEP is not part of this record.

The District called as witnesses: [REDACTED] the District's school psychologist, [REDACTED], District's LSCW and [REDACTED] the District's Specialized Services Administrator for [REDACTED]. The IHO found all these witnesses to be credible. The Parent called as witnesses: [REDACTED], school counselor at the School, [REDACTED], Student's current special education teacher, Herself, Student, and [REDACTED] MSW. The IHO found all these witnesses to be credible. The determination that a witness's testimony is credible means that the witness believed what s/he testified to at hearing, i.e., that the witness was presenting the facts as s/he believed them to be and was not lying. This differs from a determination that a particular witness's testimony is persuasive. J.P. v. County Sch. Bd. of Hanover County, Virginia, (108 LRP 8342 (4th Cir. 2008)). Witnesses will be referred to by their initials for the remainder of the opinion and order.

The district provided a court reporter throughout these proceedings. No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's written hearing notes, memory and digital recording device. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by parties' witnesses, the parties' closing arguments, and the hearing officer's independent research. This decision is issued within ten after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55) and (h).

ISSUE PRESENTED, RELIEF SOUGHT, AND BURDEN OF PROOF

Pursuant to 34 CFR 300.502 Parent requested Independent Educational Evaluations of Student at public expense in the areas of psychology and social work. Also pursuant to this Section, the District filed a due process complaint to request a hearing to show that its evaluations were appropriate. The District is requesting that the IHO find that its evaluations were appropriate and deny the request for an Independent Educational Evaluation (hereinafter "IEE").

The District has the burden of proof on whether it provided appropriate evaluations in the areas of psychology and social work.

FINDINGS OF FACT

Student is a thirteen year old Student at the School in [REDACTED]. She is now in eighth grade. Student has been at the School since second semester of her first grade year. Student has been receiving special education services since May 21 2004 when she was three. Student is described as respectful and eager to please and teacher interviews appearing in the evaluations at issue (SD 7-11 and 13-16) describe her as empathic and helpful as well as someone who listens to teachers and is able to get back on task when distracted. (SD 9 & 14). Student likes school and has friends at the school.

It is clear from the record that Parent has great concern for Student and has provided extra help for Student to be successful both in and out of the classroom. Among other things Student is receiving and has received outside of school: counseling services, psychiatric services, tutoring and has attended summer academic programs. Student also plays the violin and has recently taught herself a musical piece.

According to the social work evaluation done in March of 2013, early in the 2012-2013 school year there was a partial hospitalization of Student at [REDACTED] designed to help Student learn skills to control her anxiety. (SD 14). Additionally, that evaluation reports that in her IEP for the 2012-2013 school year Student was receiving 150 minutes per week of math inclusion services to address a primary diagnosis of OHI and a secondary SLD diagnosis. (SD 11). According to the social work evaluation of March 2013, this IEP also reflects a Student who is able to communicate appropriately for her age both orally and in writing and including with her peers. Student is also someone who is good at understanding social clues. Student is described as able to ask questions when she needs help.

Student was last evaluated for special education services in the spring of 2013 for her triennial review. In March and April of 2013 the social work and psychology evaluations which are at issue in this case took place. The IEP team met on April 10, 2013 (SD 17-23) for an eligibility determination and found that Student remained eligible for special education services under the category of OHI (other health impairment) but that she was no longer eligible under SLD (Specific Learning Disability) for math. According to witness testimony, Student continues to receive 150 minutes per week of special education services in her general education math class under her current IEP developed after the eligibility meeting held in April 2013.

Student has diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Post Traumatic Stress Disorder (PTSD) (which is in remission) (SD 7) (PD 17) and Anxiety (SD 16). Additionally, Student had a diagnosis of Fetal Alcohol Syndrome (FAS) at birth and previously had deficits in visual reasoning. (IHO D 17). However the deficits in visual reasoning were not evident when the Student was re-evaluated in 2007 and 2010 (SD 7). Student also has Asthma. The social work services evaluation and testimony established that Student takes Tenex and Sertraline. (SD 14). The psychological evaluation states that Student takes Concerta and Sertraline. (SD 11).

Parent believes that Student should be eligible for the category of SLD in math and that the Student's diagnosis of FASD (Fetal Alcohol Syndrome Disorder) should be included as a disability for student (presumably in the OHI disability category). At the time of the evaluations, the social work evaluation for the Student recommended that Student continue to receive social work services at school. (SD 15 & 18). Testimony established that Student is currently being provided consultative social work services through her IEP. Parent believes that Student needs direct services and should be eligible for the same.

In April of 2013, the school psychologist [REDACTED] conducted the evaluation of Student. [REDACTED] is a licensed school psychologist with her masters in educational psychology from [REDACTED] (IHO D 1). [REDACTED] holds a type 73 license and a specialist degree in school psychology. In conducting her evaluation of the Student, [REDACTED] reviewed the prior records of the Student, interviewed teachers, interviewed the Student, interviewed Parent observed Student in the classroom, administered achievement tests and a behavior assessment. (SD 10). [REDACTED] also took into account Student's diagnoses outside of school when evaluating Student. (SD 7).

As part of her evaluation, [REDACTED] administered both the Wechsler Individual Achievement Test, Third Edition (hereinafter "WIATT-III") and the Behavior Assessment System for Children, Second Edition (hereinafter, "BASC-II"). The WIATT-III is designed to provide academic functioning results and the BASIC-II is designed to provide insight into Student's social-emotional functioning. [REDACTED] did not conduct a cognitive evaluation because three had previously been done and the Student fell in to the average range in those prior tests. (SD 27).

The WIATT-III scores from April of 2013 were as follows:

Subtest	Standard Score	Percentile Rank	Grade Equivalent
Receptive Vocabulary	99	47	NG
Reading Comprehension	92	30	3.6
Math Problem Solving	97	42	6.7
Sentence Composition	113	81	10.6
Sentence Combining	119	90	77
Sentence Building	105	63	57
Word Reading	111	77	10.5
Numerical Operations	86	18	5.0
Spelling	106	66	8.4

NG=Not Given
(SD 8).

The scores for this test have a mean standard score of 100 and a standard deviation of 15. [REDACTED] testified that scores in the 86-114 range are considered to be within normal limits. The WIATT-III scores show that Student has been progressing in all areas and has narrowed the gap

between herself and her comparable peers in all areas. Additionally, Student showed the most progress in math. In 2010, the testing for her psychological evaluation showed that she “established a ceiling” level (SD 28) on the math computation test, meaning that the tester stopped giving her the test because she had made so many errors in a row on the test. On the 2013 WIATT-III test Student scored in the average range for math problem solving and numerical operations.

Student’s language arts scores were not at issue in this case and therefore will not be discussed in these findings of fact.

Despite Student’s math scores in the average range, it was acknowledged in the psychological evaluation and in testimony that Student has issues with distractibility and focus in math. However, it was determined, that she is still able to be successful and that Student is meeting the standards of the curriculum for math.

Around the time of the triennial review, Parent raised concerns about Student needing a vision assessment. The District listened to Parent’s concerns and an ocular report was requested. Student was administered the Berry-Buktenika Visual Motor Integration Scales test which measured Student’s ability to see, process, and copy shapes and she scored in the average range which suggests minimal issues with visual motor integration processing. (SD 18). She did this without wearing her glasses. Based upon the ocular report it was determined that a vision assessment was not appropriate.

Parent further raised concerns about how Student’s FASD impacts her ability to learn and process specifically in math. However, Parent did not present the evaluators or the IEP team at the eligibility meeting with any current medical diagnosis relating to Student’s FASD. Parent raised concerns at hearing that Student be able to access the curriculum and that Student receive the necessary help to be successful in school and the future. Parent’s concerns center on math and Student’s anxiety and self-esteem.

Parent’s concern for Student and Student’s sister have caused her to obtain an endorsement in Math from [REDACTED] and a Masters in Science with a thesis on FASD. Parent is also a teacher. However, Parent is not a licensed psychologist or social worker nor is she licensed as a special education teacher. Parent and Student credibly testified that Student struggles with visual motor integration, meaning that among other things, lining up math problems can be difficult for Student. Parent also established that Student has a history of struggling with math and that Student has been getting tutoring outside of school for math since she was seven. An evaluation of Student done by the [REDACTED] in March and April of 2009 when student was 8 years old indicates “a mild learning disability in the area of math.” (IHO D 12).

Student has and does exhibit anxiety in math. Student has in the past, and may still currently, pick her skin when anxious. This occurs in relation to math and other times when she is anxious. (SD 13). Student can be easily distracted and may give up when she does not understand her work. She is also disorganized and has difficulty managing long term projects. (SD 14 and SD 9). These characteristics are consistent with Student's diagnosis of ADHD and may also be characteristic of her FASD.

█ conducted a classroom observation of the Student in math class and noted that Student was at times distracted (drew on her paper and started spelling words out loud) and put her head down on her desk. (SD 10). However, the record established that this was a hard day for many of the students in the class because of the material being covered.

In addition to conducting an evaluation relating to academics, the psychological evaluation at issue dated April, 3 2013 examined Student's social emotional functioning. As part of the evaluation, Student, Parent, and her teachers were administered the BASC-II. Although test results varied based on who answered the questions (teachers, Student or Parent) overall the assessment rated Student as being in the typical range for her peers. The exceptions were Parent's ratings which showed Parent observes the same behaviors as the former special education teacher, who also rated the Student, but to a more marked degree. Parent saw more anxiety and depression and reported more significant attention and hyperactivity issues. (SD 11). The former special education teacher did note these issues but his ratings were ultimately in the mild to moderate range while Parent's were in the somewhat elevated range. (SD 10-11).

The overall social emotional functioning test results showed reduced self-competency, behaviors associated with anxiety and depression, as well as problems with distractibility. (SD 7-12). There was a concern from █ that Student may be doing too much and that this is impacting on her social emotional health. █ expressed concern that there is a need to wean Student from services that she doesn't need as she may over identify with being disabled and should be encouraged to move toward more independence.

A social work evaluation was done on March 22, 2013 by █. █ is a Licensed Clinical Social Worker who is credentialed in Illinois as a Social Worker, Developmental Therapist, Interventionist and Evaluator. (IHO D 2). █ has her Masters in Social Work from the University of Illinois at Chicago and her type 73 endorsement. In evaluating student and preparing her report, █ reviewed historical records for Student including outside evaluations, interviewed teachers, interviewed the parent, was in touch with Student's outside therapist █ and considered her input, and interviewed the Student.

█ also administered the strengths and difficulties questionnaire to two of Student's teachers (math and language arts) and Parent as part of her evaluation. The strengths and difficulties tool asked Parent and teachers to rate behaviors such as overall stress, emotional stress, behavioral difficulties, hyperactivity and attentional difficulties, difficulties getting along

with other children and kind and helpful behavior. The report is scored via computer. Student scored close to average or slightly raised in all domains.

Two of Student's teachers (math and language arts) rated her as follows:

Overall stress-scored between 5-13 which indicates average to slightly raised

Emotional distress-0-3 which indicates close to average

Behavioral difficulties 0-1 which indicates close to average

Hyperactivity and attentional difficulties 4-7 close to average to slightly raised

Difficulties getting along with other children 1-2 close to average

Kind and helpful behavior 1-2 close to average

Score for impact of difficulties on Student's life-close to average

(SD 14)

█ also interviewed Student's math teacher and found that although Student can be easily distracted that "she listens to her teachers and does a good job of getting back on task." (SD 14). The math teacher further reported that Student is capable of working on any math problem with one to one help. (SD 14). The teachers interviewed for the evaluation did not report any need for counselors and didn't report any concerns that were interfering with Student accessing the curriculum.

On the Strengths and Difficulties Questionnaire Parent rated Student as follows:

Overall stress- 36 Very High

Emotional Stress 10 Very High

Behavioral Difficulties 9 Very High

Hyperactivity and Attentional Difficulties 10 Very High

Difficulties getting along with other children 7 Very High

Kind and Helpful Behavior 6 Low

Score for Impact of Difficulties on Student's life- 10 Very High

(SD 15)

█ also interviewed Parent who raised issues of Student being insulted at school and this causing Student to then shut down. (SD 14). Parent also expressed concerns for Student's functioning at home. Parent's ratings are higher than the teachers' ratings and show Student being high in all domains except for kind and helpful behavior.

█ also interviewed Student. When answering questions of the evaluator █ reported Student to have good eye contact and to be truthful. She further reported that although Student expressed that some students do pick on her Student was unable to report what the students say that makes her feel like they are bullying her. Student has four close friends in her classroom and enjoys socializing with them in school. (SD 15). Student admitted to feeling frustrated about completing homework and school projects. However, Student did not raise any specific social emotional concerns. Student further reported feeling comfortable in math class and denied any feelings of frustration in that class. (SD 15). The record also establishes from testimony from both M.M. and █ that Student does not have a problem seeking help when needed in math.

Student's own testimony was that she likes it at her school. Student stated that she feels like she learns like other students in math and that she and the other students experience the same difficulties in math. She later stated she thought on a scale that she would be a 4 in grasping math and other Students would be a 5. Student also testified that math is the school subject for which she gets the most help.

Student is and was seeing an outside therapist, █. █ has a Masters in Social Work. █ testified that she spoke to █ and her report shows that she reviewed a letter from █ as part of her evaluation of the Student. (SD 14). █ further testified that she took into account █'s recommendation as part of the information she reviewed for the evaluation. █ noted that █ recommended that Student would benefit from social work and other support services at school. (SD 14). █ also elaborated that she believed that the primary focus of Student's outside therapy at the time she was evaluating Student was the relationship between Parent and Student and was not school related. █ also noted that the outside therapy was not school initiated.

█ established that Student does talk with her about peer relationships at school. She further confirmed Student's anxiety. █'s recommendation at hearing was that Student receives direct social work services at a minimum of 40 minutes per week to help with self-esteem and other struggles. █ raised concerns about not being able to observe and/or access Student during the school day. However these concerns are not at issue in this due process proceeding.

Ultimately, the social work evaluation recommends that Student continue to receive social work services in part because Student reports being frustrated with the amount of school work and would benefit from skills to calm her down. At the eligibility meeting on April 10,

2013, based upon her evaluation, [REDACTED] recommended consultative services to the IEP team. The need for direct services was raised by Parent and considered by the team, but rejected. Direct services were rejected because the IEP team felt that it was better for Student not to interrupt her day with direct services. The team felt that consultative services when needed allowed Student to be successful and access the curriculum. Although consultative services are included in Student's IEP, Student has not sought out [REDACTED] for consultative services during this school year.

The record establishes that [REDACTED] the Student's current case manager and school counselor was not present at the eligibility meeting on April 10, 2013. It further establishes that she did meet with Student and Student's former math teacher once last year to discuss a social situation. [REDACTED] could not recall the specifics of the situation.

The psychologist recommended to the IEP team in her report and at the eligibility meeting that Student continue to be eligible for Special Education Services under the OHI (ADHD) category. She also recommended to the IEP team that accommodations designed to help with symptoms of ADHD be established specifically for distractibility, homework, deadlines, and organization, with major problems being broken down. She also noted that weakness in math does not automatically mean that Student has a SLD. (SD 11). She recommended that the IEP team scrutinize more closely the SLD eligibility for Student and consider removal of this classification. She also noted concern that Student may be over identifying with her disabilities and recommended promoting self-competence and independence. (SD 11).

The IEP team which consisted of, Student's then current case manager, [REDACTED], the Student's then current Special Education Teacher, the Student's then current General Education Teacher, [REDACTED], Parent, the School Nurse, an Occupational Therapist, and [REDACTED] met for an eligibility meeting on April 10, 2013. (SD 17). They discussed Student's special education eligibility. The team reviewed all information and the team determined that with respect to the Student qualifying for special education services under the category of SLD that she no longer was eligible under this category. The reason for this decision was the Student's progress and the fact that the interventions in place currently were working. The testimony established that the team further determined that the Student did continue to qualify for special education services under the OHI (ADHD) category and her IEP as written provides for 150 minutes of math inclusion services per week (the same as her prior IEP). The testimony also established that the current IEP provides for consultative social work services.

CONCLUSIONS OF LAW

DISCUSSION OF LAW

A Parent has the right to obtain an independent educational evaluation of her child at public expense in accordance with 23 ILAC 226.180 and 34 CFR 300.502 if she disagrees with

the District's evaluation and requests in writing an independent educational evaluation. When this occurs, the District may either fund the evaluation or file a due process complaint to defend the appropriateness of its evaluations. In this case, the Parent requested IEEs on or about June 26, 2014 and the District on July 1, 2013 filed a due process complaint.

The IDEA identifies 13 disabilities as the basis for eligibility for special education, including, other health impairment and specific learning disability. 23 ILAC 226.75; 34 CFR 300.8. These categories are not medical diagnoses but instead are categories of eligibility for special education.

During an evaluation of a Student, a district must use a variety of assessment tools and strategies to gather "relevant functional, developmental, and academic information", for a Student, including information provided by the parent, to assist the district in making an eligibility determination and developing the Student's IEP. 34 CFR §300.304(b)(1)(ii). The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs. 34 CFR 304(c)(6). Additionally, after the evaluation, a determination of eligibility for special education is made and if the Student is eligible, an IEP is developed.

Additional procedures are required in the evaluation and determination of eligibility of a child in the category of specific learning disability (SLD), including observation of the child in the classroom and specific documentation for the eligibility determination. 23 ILAC 226.130; 34 CFR 300.307-.311. The District may determine that child has a specific learning disability as defined in 34 CFR Sec. 300.8(c)(10) if "the child does not achieve adequately for the child's age...or the child exhibits a pattern of strengths and weaknesses in performance or achievement or both and the weaknesses are not a result of other factors." Id.

**PARENT'S CONCERN THAT UNDER THE CURRENT PSYCHOLOGICAL
EVALUATION STUDENT WAS FOUND TO NO LONGER BE ELIGIBLIE FOR
SPECIAL EDUCATION SERVICES UNDER THE SLD CATEGORY AND THAT
STUDENT'S FASD WAS NOT ADDRESSED**

Although Student continues to be eligible for special education services under the OHI category and is receiving services through an IEP, Parent is essentially arguing that Student's FASD, visual processing issues, and history of struggling in math establish that Student should be eligible for special education under the SLD category for math as she was prior to this most recent review. Therefore, Parent argues, the psychological evaluation performed by the District is not appropriate because it did not properly identify and take into account these issues raised by Parent and did not find the Student eligible for special education in the SLD category.

Parent convincingly testified about research she had reviewed regarding FASD in obtaining her Masters of Science degree. Parent explained that commonly individuals with FASD have mental processing disorders, exhibit ADHD like symptoms, and have difficulties

with math calculations. Parent also testified credibly that in her experience Student has struggled with visual motor integration and that lining up math problems is difficult for Student. She also explained and that Student has shown problems with retention of information particularly when using long term memory. However, the evidence also shows that Parent is not a licensed psychologist, social worker, or special education teacher. Additionally, Parent did not provide the District with any current medical documentation regarding Student's FASD diagnosis prior to the evaluations and eligibility meeting.

Despite Parent's well placed concerns and research, the record in this case establishes that the Student is achieving adequately for her age in math and that she scored in the average range on the WIATT-III test in 2013 for both math problem solving and numerical operations. [REDACTED] was questioned at hearing about the numerical operations standard score of 86 which is on the low end of the average range. [REDACTED] admitted that the score caused her to, "take pause." However, she explained that in further reviewing the score that this score is almost always low because students rely on calculators in class and they are not allowed to use them for the test. Additionally it was her position that this was not a score indicative of a disability but instead it showed that Student skipped questions that tested material that she was not familiar with as opposed to missing questions because of an inability to properly process them. It is noted that Student received a standard score of 97 on the Math Problem Solving category also falling within the average range and that Student had an overall performance in the average range for her peers. (SD 8). Testimony also established that Student was able to receive instruction in the same way as her peers in math and that she was willing and able to ask for help when she needed it.

The WIATT-III test grade equivalency scores generally do not show Student at grade level. However, [REDACTED] testified that they are general guidelines and should not be given much weight. It was her opinion that the standard scores should really be the focus when looking at the testing. Testimony by [REDACTED] established that the grade equivalency scores fluctuate a lot even when the standard score does not. For example a student getting 20 out of 23 questions correct versus a student getting 22 out of 23 questions correct would have very minor differences in a raw score as reflected in the standard score but may have significantly different grade equivalency scores.

The Student's current special education teacher [REDACTED] testified that on her last report card Student received a "C" in math and that in the first quarter she had an "AB." Although there was testimony and documentary evidence that Student is distractible and fidgets in math class, there was also evidence that the Student is able to identify where is she getting confused in math (such as a particular step in a problem) and ask for help. The record further established that Student meets the standard of the curriculum and is showing success in math. Student herself confirmed that although math is difficult for her that she had support from her special education teacher

who would help her when needed. It is noted that [REDACTED] was not present for the eligibility meeting and did not teach Student during the last school year.

Student's current achievements in math have been hard fought. Student receives outside tutoring, math minutes through her IEP, and has attended summer programs. The eligibility determination notes that "Significant gains have [sic] made in this area since the time of [Student's] last evaluation three years ago." (SD 18) Testimony also supports the fact that Student has worked hard in this area.

Two separate witnesses [REDACTED] and [REDACTED] testified that although in their experience a learning disability doesn't go away that it is possible for student to improve and it is hoped for that they will. Specifically, educators hope that students will learn coping mechanisms and skills that will allow them to be successful. At least one witness noted that disability categories may change because a student has learned to be successful. This testimony was persuasive especially given Student's evaluation test scores which have improved over the years.

The IHO notes that although the Parent raised the issue of vision and visual processing that she did not challenge the District's evaluation or lack thereof relating to a vision assessment. The record also reflects that the District listened to Parent's concern about visual processing and addressed it.

In determining Student's eligibility categories on April 10, 2013 the IEP team was presented with, the most recent evaluations, Student's health, academic performance, social emotional performance, motor abilities, and discussed all of these areas. Additionally, the team used the eligibility determination tool relating to specific learning disabilities (SD 17-20), in order to determine whether or not Student qualified for special education services under the category of SLD.

[REDACTED] testified that she recommended the consideration of the removal of the SLD category and reviewed her report for the IEP team. [REDACTED] also testified that the team gave significant weight to the Student's special education teacher (who is no longer at the school) who explained that the Student is able to receive instruction in the same way as other students and that instruction was not modified or adapted for the Student.

In reviewing and discussing eligibility for the Student, the IEP team determined at the eligibility meeting that Student no longer met the criteria for having a specific learning disability. The District may determine that child has a specific learning disability as defined in 34 CFR Sec. 300.8(c)(10) if "the child does not achieve adequately for the child's age...or the child exhibits a pattern of strengths and weaknesses in performance or achievement or both and the weaknesses are not a result of other factors." In this case the District's determination was appropriate as the Student did not qualify for special education services under the SLD category as defined in 34 CFR Sec. 300.8(c)(10).

The IEP team did find the Student eligible in the category of OHI and specific recommendations for services designed to help with her symptoms of ADHD (distractibility and organization) were made for incorporation in the Student's IEP. According to testimony by [REDACTED] these included, breaking down major problems, preferential seating, and cueing Student back to a task. Additionally, Student was provided 150 minutes per week of math inclusion services.

The school psychologist [REDACTED] testified that for her evaluation of the Student she reviewed historical records regarding the Student, interviewed teachers, interviewed the Student and the parent, observed the Student in the classroom, administered the WIATT-III and the BASC-II. The report prepared by the school psychologist [REDACTED] and her testimony establish that she also took into account Student's medical diagnoses presented by Parent including FASD. Her report confirms her testimony (SD7-12). [REDACTED] testified that she looked at many pieces of information and used them to create her report and to make her findings. This hearing officer finds [REDACTED] not only credible but also persuasive.

This IHO finds that the psychological evaluation is appropriate with respect to academic functioning of the Student.

PARENT'S CONCERN ABOUT EVALUATIONS
NOT RECOMMENDING DIRECT SOCIAL WORK SERVICES

In addition to looking at academic functioning [REDACTED], the school psychologist looked at Student's social-emotional functioning. She testified and her report confirms that she did this because of the Student's outside diagnoses and Parent's concerns that were raised relating to Student's self-esteem and self-competence. (SD 11). [REDACTED] found through her testing and interviews as well as observation of the Student in class that Student may be exhibiting elevated levels of behaviors associated with anxiety and depression as well as problems with attention and hyperactivity.

[REDACTED] noted that Student's testing responses to the BASC-II were typical of those for others her age and fell into the normal range but that some reduced self-competency was detected which was supported by teacher and Parent interviews. [REDACTED] opined that the array of services provided to Student while helpful, may have also been harmful to Student as they may have encouraged her to over identify with her disabilities. [REDACTED] recommended that Student be weaned from services that are not "paramount" to her current success and that she be encouraged toward more independence. [REDACTED] also testified that since Parent's BASC-II results showed more significant concerns about Student's social-emotional functioning that it may be that Parent is more tuned in to Student or that the issues are not apparent to the same degree at school as they are at home.

[REDACTED] the school social worker performed a social work evaluation of Student on March 22, 2013. Parent is requesting an IEE in the area of social work and District was defending the

appropriateness of its evaluation. Parent's key argument is that Student should be receiving direct social work services rather than consultative services. This Hearing Officer has inferred from the evidence presented at hearing that the fact that neither the psychologist nor the social worker recommended direct social work services means from Parent's perspective that their evaluations were not appropriate. Thus, the social-emotional testing and the results and recommendations in the psychological evaluation are also at issue. Parent supported her position with her own testimony, the Student's testimony and that of [REDACTED] who testified that Student would benefit most from direct social work services.

[REDACTED] testified convincingly that she considered Parent's request for direct services but recommended consultative services because they are less disruptive to the Student's academic day and consultative services allowed Student to be successful. [REDACTED]'s position was that Student was able to access supports already in place and able to express when she needed supports. Consultative supports were recommended to help decrease anxiety and frustration as needed rather than pulling the Student from class for direct services.

In re-evaluating Student, [REDACTED] reviewed the Student's historical record, performed Parent, Student, and Teacher interviews and administered the strength and difficulties questionnaire, she also talked with Student's outside therapist [REDACTED]. [REDACTED] testified that she felt her report "considered the Student's social and emotional functioning within the school setting." [REDACTED]'s recommendation to the IEP team was that Student benefited from math help and that these supports should continue. She further recommended that if Student was feeling overwhelmed and/or anxious that the supports currently in place could be utilized.

This IHO finds that the District's psychological evaluation, in the area of Student's social-emotional functioning, as well as the social work evaluation were appropriate.

Parent did not challenge all the evaluations done as part of the triennial review and although Parent presented evidence regarding Student's FASD and visual processing issues there was evidence at hearing that Student was assessed in all areas related to her suspected disabilities.

With respect to the FASD diagnosis, [REDACTED] testified that it was taken into consideration despite the fact that the District did not have current medical information regarding Student's diagnosis. [REDACTED] and [REDACTED] further testified that it was a part of the total picture that they looked at in making an eligibility determination. FASD is a medical diagnosis it is not a disability category. [REDACTED] specifically explained that regardless of the Student's actual medical diagnosis that her recommendations would remain the same based upon her evaluation and the perceived needs of the Student. She further testified that even if she had a current diagnosis of FASD for the Student that she would not have used a specific assessment tool relating to FASD.

█████ testified persuasively that Student having a medical diagnosis of FASD would not have changed her evaluation report. She explained that she looked at the domains regardless of FASD and there is no specific tool she would have utilized that would have changed her report. She further elaborated that an outside medical diagnosis is not enough to qualify a student for special education. Specifically, this IHO finds that despite not having current medical information about the Student's FASD medical diagnosis that the District took into consideration Student's FASD diagnosis as part of her evaluation and eligibility determination.

█████ elaborated that a diagnosis alone does not make a student eligible for special education services but that there needs to be evidence of how the student achieves academically and in school settings to qualify a student for special education services. I find this evidence persuasive. A medical diagnosis doesn't drive creation of an IEP, or eligibility for that matter. The District must take into account the characteristics exhibited by the Student and make an eligibility determination craft an IEP, and deliver services tailored to Student.

CONCLUSION

In evaluating all the evidence in this case it is clear that Parent wants what is best for her Student and has invested her love, time, and money in making sure Student has access to services both in and outside of school that are necessary to be successful. However, in this case, the District has shown by a preponderance of the evidence that it has conducted the evaluations at issue in accordance with 34 CFR Sec. 300.304-5 and that its evaluations are appropriate.

As required by law, a variety of assessment tools and strategies that were technically sound were utilized to gather relevant functional, developmental, and academic information about the child, including information provided by the Parent. These are described in the facts and discussion above and include review of prior records of the Student, interviews with teachers, interviews with the Student, interviews with the Parent, observation of Student in the classroom, achievement tests, a behavior assessment review, and a strength and weakness questionnaire. The record establishes, and this IHO finds, that these resulted in evaluation reports that assisted the IEP team in determining Student's eligibility and informed the content of her IEP in a way that allows Student to access the curriculum.

This IHO finds that the record also establishes that the evaluators and members of the IEP team who determined eligibility did not rely upon any single measure or assessment as the sole criterion for determining Student's eligibility or disability category. Additionally, this IHO finds that no evidence was presented of a racial or cultural bias in testing and no evidence was presented that the Student is not a native English speaker. I note that no accommodations were made at the hearing for Student during her testimony with respect to translators nor were any requested.

This IHO further finds that the assessments utilized by the evaluators were valid and reliable and were administered by trained and knowledgeable personnel. There was no evidence presented by Parent that the assessments were not administered correctly nor was persuasive evidence presented that the assessments were not valid. The evaluators testified to their credentials and provided resumes and their credentials are outlined above. Additionally, even though Parent during cross examination established that [REDACTED] may not be an expert in FASD she did testify to having some knowledge in that area. The evaluators testimony, resumes, and reports make clear that they are trained and knowledgeable personnel and I find that the evidence as described above establishes that they administered the tests correctly and were trained and knowledgeable.

Thus, based upon the findings of fact and conclusions of law contained herein, I find that the District's evaluations in the areas of psychology and social work are appropriate and deny the Parent's request for IEEs in those areas.

ORDER

The record establishes that the psychological evaluation prepared by [REDACTED], dated April 3, 2013 and the social work evaluation prepared by [REDACTED], and dated March 22, 2013 meet the requirements of 34 CFR § 300.304-5 and are appropriate. Therefore the District prevails in this due process proceeding. Parent may still have an independent educational evaluation of the Student but not at public expense. (34 CFR § 300.502(b)(3)).

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. 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

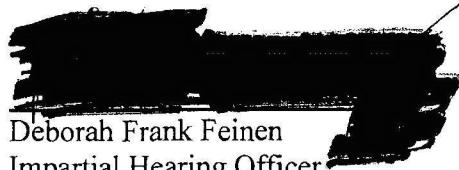
This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14.8.02a(i), that civil

action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14.8.02a(h)).

IT IS SO ORDERED.

Dated: February 14, 2014



Deborah Frank Feinen
Impartial Hearing Officer
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217-367-2500 (voice)
217-367-2555 (fax)
hofeinen@gmail.com

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

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B.O'M

FEB 19 2014

STUDENT,

V.

CASE NO: 2014-001 SPECIAL EDUCATION
DEBORAH FRANK FEINEN SERVICES
IMPARTIAL HEARING OFFICER

CITY OF CHICAGO SD 299

DISTRICT.

CERTIFICATE OF SERVICE

I, the undersigned Impartial Hearing Officer, certify that on the 14th day of February, 2014, a copy of the Final Decision and Order was served upon:

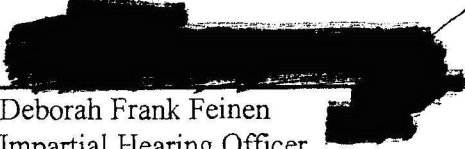
Ms. Anne O' Malley
3417 N. Keeler
Chicago, IL 60641

Jeremy Duffy, Esq.
Due Process and Mediation-CPS
125 S. Clark Street 8th Floor
Chicago, IL 60603

Mary Long/Andrew C. Eulass
ISBE
100 North First Street
Springfield, IL 62777-0001

by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, and legibly addressed to the above-named addressees at the above addresses. It is noted that it was sent via certified mail to Parent and District.

Dated: Feburary 14, 2014


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