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

[REDACTED]

Student,

Case No: 2014-0179  
Patricia Marino  
Impartial Hearing Officer

v.

[REDACTED]

School District

**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

This Impartial Hearing Officer (IHO) was appointed on October 10, 2013 and has jurisdiction over this matter pursuant to IDEA, 20 U.S.C. § 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**PROCEDURAL BACKGROUND**

Parent requested an Independent Educational Evaluation (IEE) at District expense as provided for under the Individuals with Disabilities Education Act (IDEA). 34 C.F.R. § 300.502(b)(1). In response, District filed a due process complaint (DPCN) on October 10, 2013, requesting a hearing to show its evaluation was appropriate. 34 C.F.F. § 300.502(b)(2)(i).

IDEA and its regulations, specifically 34 C.F.R. § 300.515 require a final decision be issued in an IDEA hearing not later than 45 days after receipt of a request for a hearing. The 45 day timeline for this case is December 2, 2013.

Pursuant to the Illinois School Code, a District must convene a resolution meeting with a parent when either the parent or the school district files a DPCN. 105 ILCS 5/14-8.02a(g)(20). When the District files a DPCN, a resolution session must be held within 15 calendar days of the date of the filing. 23 Ill. Admin. Code 226.75; 34 C.F.R. § 300.11.

## Resolution

On October 21, District filed a Motion to Compel Cooperation With Resolution Process, or in the Alternative, To Excuse District From Convening Resolution and Proceed to Hearing<sup>1</sup>. The District, in its motion cited eleven (11) examples of challenges to the resolution process, including:

- District's Director of Special Education, ██████████ sent Parent a letter<sup>2</sup> with proposed dates and times for a resolution session. Included in the letter was a request to "Please call me if this date is not convenient for you". In response, ██████████, Advocate, sent an e-mail to Mr. ██████████ stating the District was dictating time and place for resolution and was in violation of IDEA.
- Mr. ██████████ demanded the right to record the resolution session, with the District refusing.
- Mr. ██████████ was also demanding a neutral site for the resolution session.
- District stressed the need for a prompt resolution session, with the need to meet within 15 days of the date the due process hearing was initiated<sup>3</sup>. Mr. ██████████ argued days were to be counted as business days, rather than calendar days.<sup>4</sup>
- Parent insisted District was trying to dictate mediation. He based this belief on the following communication from Mr. ██████████

As you know, the resolution session must be held within 15 days of the date the DPCN is filed. For the resolution meeting, the District offers Monday, October 21 at noon, Tuesday, October 22 morning or afternoon, of Thursday, October 24 morning or afternoon. Please let me know as soon as possible which date you and (Parent) prefer. The resolution session will be held at District Offices. There is no requirement that a resolution session be held at a neutral location. Alternatively, the District will agree to mediation, instead of a resolution session. The District does not agree to tape recording the resolution session..."

This statement was used to cite the District's alleged demand for mediation.<sup>5</sup>

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<sup>1</sup> District Exhibit, D-27

<sup>2</sup> District Exhibit, D-27, p.12

<sup>3</sup> 34 C.F.R. § 300.510(a)(1)

<sup>4</sup> This was an incorrect interpretation of 5 ILCS 70/1.11. The statute states that timelines follow calendar days, with the exception of a final day that falls on a weekend or holiday.

<sup>5</sup> District Exhibit, D-27 pp. 22-23

Although the IHO repeatedly attempted to encourage resolution, e-mail was being exchanged that included highly volatile comments<sup>6</sup>. Instead of focusing on the issue before the IHO, namely the request for an IEE, conversation centered around the authority of Mr. [REDACTED] as Power of Attorney<sup>7</sup>, whether District could be forced to record the resolution session, and the District's alleged attempt to demand mediation.

The resolution process is designed to provide an environment in which Parents and Districts can try to resolve issues as a means of avoiding a costly and adversarial due process hearing. 34 C.F.R. § 300.510(a)(2). In this case, the very discussion related to resolution was intensifying the conflict and providing a forum for abuse. In granting District's Motion to Excuse the District from Convening Resolution and Proceed to Hearing, the IHO stated: "When the scheduling of resolution creates an acrimonious environment and exacerbates the situation, it is not functioning as intended under IDEA". The IHO ordered that resolution be waived and that parties go directly to the pre-hearing conference.<sup>8</sup>

### **Pre-Hearing Conference**

A Pre-Hearing Conference (PHC) was held on November 5, 2013. IHO informed Parties they were free to engage in settlement discussion if they so chose, absent the requirement for resolution. Parties agreed to reach out to each other, with the IHO advising them to not include her in any such communications.

It was agreed the due process hearing would be held on November 20-21, 2013 at District Office. Mr. [REDACTED] stated the hearing would be open.

As directed in the Notice of Pre-Hearing Conference and discussed during a status call, Parties were to share a proposed Witness List and Document List 24 hours prior to the PHC. District e-mailed a copy of the lists the day before the PHC, Parent did not submit either document. During the PHC, Parent was directed to provide the lists within 24 hours. District did not object to this extension. After 24 hours, Mr. [REDACTED] submitted a Witness list, although it was incomplete, as he was having difficulty reading names from IEP sign-in sheets. There was still no document list.

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<sup>6</sup> District Exhibit, D-27

<sup>7</sup> District insisted that Parent sign their Consent to Release Confidential Information form in order to release information to Mr. [REDACTED]. Advocate stated he had Power of Attorney (POA) and had full authority to represent Parent.

<sup>8</sup> IHO Exhibit #3, IHO-3

## Evidence

On November 7, 2013, two days after the PHC, Mr. [REDACTED] sent an e-mail<sup>9</sup> which included the names of all District employees from the sign-in sheets so Mr. [REDACTED] could prepare his witness list. There were seventeen (17) names listed. Mr. [REDACTED] included the position of each person, pointed out which witnesses were on the District's witness list, and indicated which witnesses were no longer with the District. There were three such individuals.

The IHO clearly explained to Mr. [REDACTED] that if he wanted to call any of the three former employees, it was Parent's responsibility to arrange for their appearance. IHO also explained the process for issuing subpoenas and sent a blank subpoena form to Mr. [REDACTED].<sup>10</sup> The Pre-Hearing Report and Order<sup>11</sup> stated that any requests for subpoenas should be submitted to the IHO by November 11, 2013.<sup>12</sup>

Although District provided the names of current and former employees to Parent on November 7, 2013, Mr. [REDACTED] subsequently sent three increasingly hostile and disrespectful e-mails<sup>13</sup>, demanding the very same names that had already been provided.

When Parent's document list was finally provided, it listed IEP's dating back to 2007, well beyond the 2 year statute of limitations.<sup>14</sup> Parent sought exception to the timeline, referring to 34 C.F.R. § 300.511(f), which negates the timeline if the LEA misled the Parent or withheld information from the parent that was required under this part to be provided.

The only issue before this IHO is the recent evaluation. Yet, the Parent continued to attempt to argue issues as to Free Appropriate Public Education (FAPE), over which this IHO has no jurisdiction. [REDACTED], Attorney for the District, repeatedly suggested to Mr. [REDACTED] that if he wanted to argue denial of FAPE, Parent would have to file her own DPCN. Parent did not choose to do so, yet continued to attempt to argue issues with no relevance to evaluation. While there may have been a valid exemption to the timeline under a denial of FAPE complaint, there can be no such exemption in a challenge to the appropriateness of the recent evaluation.

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<sup>9</sup> District Exhibit #25, D-25

<sup>10</sup> IHO Exhibit #5 IHO-5

<sup>11</sup> IHO Exhibit #2, IHO-2 (p. 3)

<sup>12</sup> No request for subpoenas was ever presented to IHO

<sup>13</sup> See Administrative Record

<sup>14</sup> 34 C.F.R. § 300.511(e).

In addition to the documents beyond the statute of limitations, the majority of documents Parent listed<sup>15</sup> were challenged by District,<sup>16</sup> based on relevance. As the IHO ruled documents inadmissible<sup>17</sup>, due to relevance, Mr. ██████ responded with a great deal of disrespect for Ms ██████ for the IHO, and in fact – for the due process proceedings.<sup>18</sup>

On November 12, 2013, District submitted its documents via Fed Ed. A copy was sent to the IHO and Parent. Mr. ██████ objected that Parent's document was sent to Parent's address, instead of that of Advocate. Mr. ██████ did not say the documents had not been received by Parent.

Parent did not send hard copies of documents, instead sending attachments<sup>19</sup> via e-mail. On November 13, 2013, one day after the 5 day requirement for exchange of documents, and being told a hard copy to District and IHO would be necessary, Mr. ██████ stated Parent could not afford to make copies. District agreed to make a copy for itself as well as for the IHO. Given the 800 pages of e-mailed documents, District suggested the IHO first review the documents to determine admissibility. The District then issued objections to a number of documents, all based on relevance. IHO then gave Parent an opportunity to respond but he chose not to. IHO's ruling on admissibility was submitted on November 17, 2013<sup>20</sup>

On November 13, 2013, the day after documents were to be exchanged, Parent requested a continuance<sup>21</sup>, stating issues "have arisen requiring resources that have taken away focus preparing for this date". He correctly stated that IHO had indicated during a status call that a continuance could be requested if necessary. However, in denying the request for a continuance, the IHO expressed concern that there was little effort to prepare for a challenge to the evaluation. Instead, the day before the PHC, when lists were due (and not submitted) Mr. ██████ sent a series of lengthy e-mail communications<sup>22</sup> related to issues the IHO deemed irrelevant and a distraction. Parent's focus was on resolution, power of attorney, and recorded meetings, with no discussion as to the relevant issue of evaluation. In denying Parent's request for a continuance, IHO expressed concern "that a continuance will result in the continued escalation of an increasingly unacceptable environment."<sup>23</sup>

On November 15, 3 days after District's documents were delivered, Parent began asking for verification of delivery. On November 12<sup>th</sup>, Mr. ██████ did not say

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<sup>15</sup> Parent Exhibit, P-1

<sup>16</sup> District Exhibit, D- 28

<sup>17</sup> IHO Exhibit, IHO-8(a)

<sup>18</sup> See Administrative Record

<sup>19</sup> Parent Exhibit, P-2

<sup>20</sup> IHO Exhibit #4, IHO-

<sup>21</sup> Parent Exhibit, P-3

<sup>22</sup> See Administrative Record

<sup>23</sup> IHO Exhibit, IHO-1

documents were not delivered to Parent's address. On November 13<sup>th</sup>, Mr. [REDACTED] did not say documents had not been delivered. On November 14<sup>th</sup> he did not say "Parent did not get the documents". On November 15<sup>th</sup>, Mr. [REDACTED] did not say "we still have not received the documents". Instead, he said he wanted verification of delivery. He did not want a tracking form – he was demanding a signature from Parent that she had received the document. On the tracking form that Ms. [REDACTED] sent the Parent and IHO on November 12, it clearly states the document had been delivered and that no signature was required. He was demanding proof<sup>24</sup> of something he knew did not exist.

In the meantime, Parent had not produced any documents for admission. District was not insisting on any deadlines and offered to copy any documents for use at the hearing. As [REDACTED] was suggesting, but not exactly saying, Parent had not received the District's documents,<sup>25</sup> the IHO sent an e-mail to the Parties, requesting District make another copy and provide it to Parent when he went to the District to copy Parent's documents. Mr. [REDACTED] replied "You have an interesting issue. The district did not accommodate your orders for disclosure. They offered a form but not proof of delivery and you made a formal decision you are not getting involved. We have not had an opportunity to examine their evidence and can not accept it. We will vehemently object to the LEA's evidence being accepted. Again this is a violation. We are not looking for a new ruling. We object to the evidence inclusion period".<sup>26</sup>

When Mr. [REDACTED] responded to IHO's request to make another copy of District's documents, at the same time they copied Parent's documents, he asked Mr. [REDACTED] what time he could be expected at the District Office so staff would be available. Mr. [REDACTED]'s response was "I don't work for you nor will I do your work for you. ..I am not going to drive and deliver records to validate your efforts to make evidence available. We objected. By law all evidence should be dismissed. This will make for an interesting decision."<sup>27</sup>

Mr. [REDACTED] indicated he would attend the hearing for the sole purpose of saying he complied with the regulatory requirements with clear intention of appealing the decision. On November 18, 2013 Parent sent a very long, scathing challenge<sup>28</sup> to the IHO, seeking only a final decision so that he could move forward with a federal judge.

Parent participated in the hearing but did not submit any evidence.

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<sup>24</sup> See Administrative Record

<sup>25</sup> See Administrative Record

<sup>26</sup> IHO Exhibit #6, IHO-6

<sup>27</sup> District Exhibit, D-28

<sup>28</sup> IHO Exhibit #7, IHO-7

At the end of the first of what was supposed to be a two day hearing, all witnesses had been called. Parent asked to return the next day so he would have time to review the District's documents<sup>29</sup> before his closing argument. Instead, it was agreed that Parent would have until 5:00 p.m. on November 21, 2013 to submit a written closing. District would then have until 5:00 p.m. on November 22, 2013 to respond.

Note: Despite the many challenging events leading up to the hearing, during the hearing process - the behavior of all parties was very respectful.

### **BACKGROUND**

Student is a 10 year old<sup>30</sup> male, currently in fourth (4<sup>th</sup>) grade. His disability has been determined to be Autism and he attends a District public school, where he participates in the general education environment less than 40% of the day in an instructional classroom. Student currently receives speech/language, counseling, and occupational therapy (OT)<sup>31</sup> as related services.

### **ISSUE**

The only issue to be considered is whether the District's evaluation was appropriate. As Parent did not file a DPCN, this IHO has no jurisdiction over any other issues.

### **RELIEF**

District requests two (2) determinations by the IHO:


1. A finding that the District Evaluation was appropriate, with denial of an IEE at public expense
2. A finding that Parent's request for an IEE was frivolous and resulted in excessive cost and litigation

### **BURDEN OF PROOF**

In a special education administrative hearing, the party seeking relief has the burden of proof. *Schaffer ex. rel Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531, 163

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<sup>29</sup> A second copy of District's documents was provided at the hearing.

<sup>30</sup> Will be 11 years old on 

<sup>31</sup> Consult only

L.Ed.2d 387 (2005). District is seeking relief, in a finding its evaluation is appropriate, thus denying Parent's request for an Independent Educational Evaluation at public expense. Therefore, District carries the burden of proof.

### HEARING

As the IHO does not have access to the transcript, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses, the parties' closing arguments<sup>32</sup> and their suggested case law, as well as independent research. This decision is issued within ten days after the hearing's conclusion, as required by law. 105 ILCS 5/14-8.02a(g55)(5)

#### District Witnesses

1. [REDACTED], School Psychologist
2. [REDACTED], Occupational Therapist
3. [REDACTED], Speech/Language Therapist
4. [REDACTED], Physical Therapist

#### Parent's Witnesses

1. [REDACTED], Special Education Teacher
2. Parent

In defending its evaluation, District began with testimony by [REDACTED] school psychologist. Ms. [REDACTED] described the process that began with what is referred to as a "domain meeting". Under IDEA, in determining ongoing eligibility, it is necessary for the IEP team to review existing data about the student and determine what, if any, additional information is necessary to determine either continuing eligibility or a change in eligibility.<sup>33</sup> In situations where there is no dispute about ongoing eligibility, and after reviewing existing information, Parent and District may agree that no further assessments are necessary for purposes of the triennial reevaluation.<sup>34</sup> Although there was no testimony that Parent or District questioned ongoing eligibility, a complete reevaluation was completed.

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<sup>32</sup> The hearing was closed at 5:00p.m., November 22, 2013. At 6:31 a.m., November 23, 2013 IHO received an e-mail from Ms. [REDACTED], forwarding an e-mail she received from Mr. [REDACTED], sent on November 22, 2013 at 9:09 p.m. The IHO will not include this in the record, nor consider it in arriving at a decision.

<sup>33</sup> 34 C.F.R. § 300.305

<sup>34</sup> 34 C.F.R. § 300.303(a)(2)

The domain page<sup>35</sup> lists eight (8) areas to be considered. Existing information is recorded and there is a box where the need for additional assessments is provided. This explains which assessments will be completed and there is a box which indicates who will be doing the testing.

At the domain meeting, conducted on March 19, 2012, Ms. [REDACTED] indicated she would be doing standardized academic achievement testing, an Autism rating scale for functional performance, a health history update, cognitive testing, and an adaptive rating scale and social developmental study to address social/emotional status.<sup>36 37</sup> She testified she discussed the standard assessments that would be used, clarifying that she would determine which cognitive and achievement tests she would use, based on Student's individual needs. In response, Parent stated her husband<sup>38</sup> would disagree with the testing results and will want an independent evaluation.<sup>39</sup>

Ms. [REDACTED] testified that she suggested the Stanford-Binet Intelligence Test for cognitive assessment. During the meeting, Mr. [REDACTED] requested the Woodcock-Johnson Test and Childhood Autism Rating Scale (CARS), as he wanted reading, math, and spelling tested. Ms. [REDACTED] agreed to include the tests requested by Mr. [REDACTED]. According to Ms. [REDACTED], Parent and Mr. [REDACTED] agreed to the testing she proposed, with Parent stating she trusted Ms. [REDACTED] and respected her ability.

Regarding other domains, Ms. [REDACTED] testified a speech/language assessment was agreed to, assessing receptive, expressive, and pragmatic skills. She also testified there were no motor or sensory concerns.<sup>40</sup> However, in response to Parent's request, it was agreed that both an Occupational Therapy and Physical Therapy Assessment would be done.

The psychologist testified that she went over the domain page 3 times with Student's mother<sup>41</sup> to ensure she understood what was being proposed. She also

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<sup>35</sup> District Exhibit #2, D-2

<sup>36</sup> The psychologist completed 5 of the 8 domains: Academic Achievement, Functional Performance, Cognitive Functioning, Health, and Social/Emotional Status

<sup>37</sup> Witness testified she holds both Type 10 certification (Special Education teacher) and Type 73 (School Counselor Certification), and has a Master's Degree in School Psychology. She has served as school psychologist in District for 6 years and served in the same capacity for a number of years in another district. She conducts approximately 40-50 evaluations a year. She was also a special education teacher.

<sup>38</sup> [REDACTED]

<sup>39</sup> District Exhibit #1, D-1, page 28

<sup>40</sup> Witness testified this was confirmed by notes taken by the [REDACTED] representative.

<sup>41</sup> Student's mother has a significant learning disability related to reading and concentration. The review was the psychologists' attempt to be sure Parent understood the content of the page and which areas would be tested.

tried to be sure Mr. [REDACTED], who was participating via phone<sup>42</sup>, also knew what they were proposing. After a 4 ½ hour meeting, Parent did not sign consent. She wanted to review it first.

Parent then returned an unsigned domain sheet, with an additional notation at the top, indicating a request for ADOS testing.<sup>43</sup> Although no one was disputing the eligibility of Autism, District agreed to conduct the ADOS.

The psychologist also testified that Parent refused to consent unless two conditions were agreed to:

1. Parent was insisting on the original, handwritten notes by the advocate from [REDACTED]<sup>44</sup>
2. Parent insisted on being in the room during all testing.

The witness testified that the Director of Special Education sent a letter to Parents, stating the District has no control over [REDACTED], and could not meet that demand. Additionally, the District did not agree to the second condition as "it may alter the validity of (Student's) assessment".<sup>45</sup> The letter also informed Parent that without written consent, they could not proceed with the reevaluation. Parent then sent a letter via e-mail<sup>46</sup> authorizing testing but stating they objected to the notes taken by both the District<sup>47</sup> and [REDACTED]. Objections were based on a number of allegations, including:

- requests for specific tests were ignored
- areas of concern mentioned by Parent were not properly documented by either the District or [REDACTED] advocate
- District made determination of which tests would be administered, disallowing Parents the right to choose
- Neither District's nor [REDACTED] notes reflected the concerns expressed by Parents or their Advocate
- Mr. [REDACTED] had requested the ADOS during the domain meeting but this is not reflected in the notes
- Academic levels reported by District do not reflect Student's level of functioning
- District refused to address functional performance in the home

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<sup>42</sup> At one point during the meeting, Mr. [REDACTED] accused the school of muting the phone so that he could not participate; however, Parent was sitting next to the phone and confirmed that no one had touched the phone. District Exhibit #1. D-1 page 30.

<sup>43</sup> Autism Diagnostic Observation Schedule

<sup>44</sup> [REDACTED] is a not-for-profit agency that attempts to meet a variety of needs of individuals with disabilities. They served as note taker for Parent.

<sup>45</sup> District Exhibit, D-3

<sup>46</sup> District Exhibit, D-4

<sup>47</sup> There were 17 pages of hand written notes for this meeting D-1, pp 15-31

As the consent form<sup>48</sup> was checked in two locations, indicating that Parent both denied consent and gave consent, further clarification was necessary.

When asked if she agreed with Parent's allegation that District had ignored Parent's requests, the school psychologist said "No. Everything they requested we did, including the ADOS, which was added at the top of the Domain page". Ms. [REDACTED] also testified the Parents included in their letter <sup>49</sup>"we reserve the right to outside independent evaluations" even before testing had begun.

Mr. [REDACTED] demanded all subtest scores, which was not a concern as they are usually provided; however, Parent also wanted grade levels. The psychologist testified that grade levels are not a good indicator and standard scores are the best way to report results.

On April 25, 2012, Mr. [REDACTED] sent an e-mail agreeing to the evaluation but alleging failure of meaningful parent participation. The main complaint was the determination by the psychologist as to which cognitive tests would be administered.

When asked under direct examination if she lists specific tests to be used on the domain page, Ms. [REDACTED] explained that she usually just indicates "cognitive testing". The reason is that she might need a second measure to gain more information and doesn't want to be limited. She also testified that she explains this at all domains.

### **Psychological Evaluation**

Due to the late consent, the psychologist was not able to complete testing prior to the end of the school year. Rather, it was completed during Extended School Year.<sup>50</sup>

ADOS testing was completed cooperatively with both the psychologist and speech/language therapist. Ms. [REDACTED] was trained to conduct all tests included in the Psychological Report.<sup>51</sup>

As part of the evaluation, Ms. [REDACTED] reviewed Student's file and previous tests. She conducted a Parent Interview to ascertain how Student is functioning in the home environment.<sup>52</sup> She also reviewed the results of an earlier evaluation.<sup>53</sup>

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<sup>48</sup> District Exhibit, D-5

<sup>49</sup> District Exhibit, D- 4

<sup>50</sup> Summer, 2012

<sup>51</sup> District Exhibit #7, D-7 (pp. 1-13), Conducted 4/26/12-6/25/13

<sup>52</sup> D-7, pp. 2-3

Behavioral observations<sup>54</sup> indicate how students respond during the testing sessions. In Student's case, he was constantly looking at the examiner for signs he was right. Ms. [REDACTED] stated she followed standard procedures and considers the assessment valid.

### Stanford-Binet Intelligence Scales - Fifth Edition

| <u>IQ Scores</u> | <u>Standard Score</u> | <u>Confidence Interval</u> | <u>Percentile</u> | <u>Range</u>            |
|------------------|-----------------------|----------------------------|-------------------|-------------------------|
| Non-verbal IQ    | 60                    | 57-67                      | 0.4               | Mildly Impaired/delayed |
| Verbal IQ        | 59                    | 56-66                      | 0.3               | Mildly Impaired/delayed |
| Full Scale IQ    | 58                    | 56-62                      | 0.3               | Mildly Impaired/delayed |

| <u>Factor Index Scores</u> | <u>Standard Score</u> | <u>Confidence Interval</u> | <u>Percentile</u> |
|----------------------------|-----------------------|----------------------------|-------------------|
| Fluid Reasoning            | 53                    | 51-65                      | 0.1               |
| Knowledge                  | 69                    | 65-77                      | 2                 |
| Quantitative Reasoning     | 75                    | 71-83                      | 5                 |
| Visual Spatial             | 56                    | 54-66                      | 0.2               |
| Working Memory             | 65                    | 61-75                      | 1                 |

| <u>Subtest Scores</u>  |   |                        |   |
|------------------------|---|------------------------|---|
| <u>Nonverbal</u>       |   | <u>Verbal</u>          |   |
| Fluid Reasoning        | 2 | Fluid Reasoning        | 2 |
| Knowledge              | 5 | Knowledge              | 4 |
| Quantitative Reasoning | 6 | Quantitative Reasoning | 5 |
| Visual Spatial         | 1 | Visual Spatial         | 4 |
| Working Memory         | 5 | Working Memory         | 3 |

### Woodcock-Johnson III - Tests of Achievement

| <u>CLUSTER/Test</u>        | <u>Standard Score</u> |
|----------------------------|-----------------------|
| BROAD READING              | 94 (92-96)            |
| BRIEF READING              | 95 (93-97)            |
| Letter-Word Identification | 102 (99-104)          |

<sup>53</sup> April 2009, District Exhibit, D-31

<sup>54</sup> D-7, page 4

|                          |               |
|--------------------------|---------------|
| Reading Fluency          | 95 (90-99)    |
| Passage Comprehension    | 86 (82-90)    |
|                          |               |
| BROAD MATH               | 80 (77-84)    |
| BRIEF MATH               | 78 (74-82)    |
| MATH CALCULATION SKILLS  | 106 (100-111) |
| Calculation              | 107 (100-115) |
| Math Fluency             | 100 (96-104)  |
| Applied Problems         | 64 (60-68)    |
|                          |               |
| BROAD WRITTEN LANGUAGE   | 87 (83-91)    |
| BRIEF WRITING            | 89 (86-92)    |
| WRITTEN EXPRESSION       | 82 (78-86)    |
| Spelling                 | 98 (95-102)   |
| Writing Fluency          | 93 (86-100)   |
| Writing Samples          | 77 (72-82)    |
|                          |               |
| ORAL LANGUAGE            | 64 (60-67)    |
| ORAL EXPRESSION          | 76 (70-82)    |
| LISTENING COMPREHENSION  | 53 (48-58)    |
| Story Recall             | 60 (48-72)    |
| Understanding Directions | 37 (31-43)    |
| Picture Vocabulary       | 86 (81-92)    |
| Oral Comprehension       | 77 (72-82)    |
|                          |               |
| ACADEMIC SKILLS          | 102 (99-105)  |
| ACADEMIC FLUENCY         | 93 (89-98)    |
| ACADEMIC APPLICATIONS    | 70 (67-73)    |
|                          |               |

### **Curriculum Based Measurement**

Curriculum Based Measurement reading probes were given Student in the Spring of 2012 to assess his skills in reading and math in relation to other 2<sup>nd</sup> grade students. In both reading and math scores he scored in the normative range at the 50<sup>th</sup> percentile. He had slightly higher scores on basic skills as compared to application skills. This is similar to the pattern of scores that Student achieved on the WJ-III Tests of Achievement.

## **Vineland Adaptive Behavior Scales, Second Edition**

This is a comprehensive assessment of personal social sufficiency for students within the school setting. Three broad domains are covered:

- Communication - measures how a student listens and pays attention, and how a student uses words to speak and write
- Daily Living Skills - evaluates a student's daily habits and hygiene, understanding about time, money, and math, and a student's ability to follow rules and routines.
- Socialization - measures how a student interacts with others, uses play and leisure time, and demonstrates responsibility and sensitivity to others.

This assessment was completed with a rating scale completed by Student's father (Parent interview) and teacher (teacher scale).

An Adaptive Behavior Composite assesses skills and behaviors that are needed for Student to take care of himself, to get along with others, and to handle the everyday demands of school and home. Student obtained a Composite score of 87 on the teacher scale, which placed him in the adequate range when compared to his same age peers. He scored 64 on the parent scale, which was in the low range and also significantly lower than Student's functioning as seen in the school setting.

## **Childhood Autism Rating Scales – Second Edition (CARS-2)**

These rating scales were completed by Student's parents and teacher. Scores provided by Student's teacher placed him in a very low level of autism related symptoms compared to those with a diagnosis of autism. Conversely, Parents scores are indicative of a very high level of autism related symptoms. These scores suggest that more autistic like behaviors are seen at home as compared to the school setting.

## **Autism Diagnostic Observation Schedule (ADOS)**

This test was administered by both the psychologist and speech/language therapist. The assessment evaluated communication, social interaction, and play or imaginative use of materials. Unstructured social settings were provided to determine how well Student was able to imitate and sustain a social interaction with minimal direction. More structured tasks were also provided to determine how Student responds to, and builds upon, specific social stimuli and demands. A language sample was taken for each setting.

In the area of **Communication**, Student scores indicate that he experiences some difficulties when compared to typical same-age peers. In the area of **Reciprocal Social Interaction** Student demonstrated limited initiations of social interactions and overall lacked the naturalness and ease compared to a typical student. Finally,

the evaluators examined **Stereotyped Behaviors and Restricted Interests**. Student did not demonstrate any unusual sensory or compulsive behaviors or excessive interest in a specific topic.

With an overall score of 19, Student is demonstrating behaviors that are typically seen by individuals who have been diagnosed with Autism.

### Summary

Student achieved scores within the low range with verbal and nonverbal abilities appearing to be equally developed overall. Academic standardized testing yielded results that basic skills were in the average range while application scores were within the low average range, as applying skills seems to be more difficult for Student in comparison to rote skills.

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Under direct-examination, Ms [REDACTED] provided an overview of the evaluation, stating that Student did very well with rote skills but struggled with application in each area. Behaviors indicative of Autism are minimal at school but more significant at home.

On July 17, 2012 the IEP team met to review the findings of the assessments. Although Mr. [REDACTED] claimed he did not receive the reports prior to the meeting,<sup>55</sup> as he had specifically requested, Ms [REDACTED] testified she sent them to him 5 days prior to the meeting. At the meeting, due to mother's difficulty with reading, Ms [REDACTED] testified that she slowly read the entire report to her. She used a visual bell curve to show Parent, for comparison purposes. She reviewed all subtests. Her report took 1 hour and 40 minutes to present. After 3 hours and 10 minutes, the IEP ended without completion.

The IEP meeting reconvened on August 3, 2012.<sup>56</sup> This meeting lasted 3 hours and 15 minutes. In addition to the completion of the IEP, another Consent for Reevaluation (domain)<sup>57</sup> was completed, with Parent requesting three additional evaluations:

- a functional checklist (due to inconsistency between behavior at home and at school)
- an Assistive Technology Evaluation (to promote better communication)
- a Sensory Profile (to address inconsistencies with sensory and functional skills)

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<sup>55</sup> District Exhibit #9, D-9, p.6

<sup>56</sup> District Exhibit #10, D-10 pp 1-23

<sup>57</sup> District Exhibit #11, D-11 pp. 1-2

On November 12, 2012, Mr. ██████ sent an e-mail<sup>58</sup> regarding, among other things, a demand for raw scores.

On November 19, 2012 the IEP team met to review additional evaluations as determined at the August 3, 2012 meeting.<sup>59</sup> As requested by Parent, the psychologist had completed a Brigance: Inventory of Early Development II.<sup>60</sup> The witness reported the Brigance measures 6 areas, with very specific, detailed information related to skills. She stated that what she found was consistent with classroom setting reports.

The Assistive Technology Assessment<sup>61</sup> was completed by the Illinois Assistive Technology Program. Ms. ██████ stated the AT Evaluation was consistent with what Student's teachers report.

Ms. ██████ was asked if there were any concerns expressed by staff that would warrant a Functional Analysis of Behavior. She responded "no". She was also asked by counsel if she was aware of the 80 missing subtests, as alleged by Mr. ██████. She responded there were no missing subtests – that all reports had been included. An e-mail,<sup>62</sup> was sent to Ms. ██████, requested an IEE. The psychologist testified that a request for an IEE must be sent to the Superintendent. A second request for an IEE was also sent to Ms. ██████.<sup>63</sup>

Under cross-examination, Ms. ██████ was asked which evaluations Mr. ██████ had requested that were not done. The witness testified that all requested assessments had been completed. This included the Woodcock-Johnson, CARS, ADOS, AT, Sensory Profile, Functional Checklist,<sup>64</sup> PT, and OT.

Mr. ██████ asked the witness why she did not consider the Weschsler Intelligence Scale for Children (WISC). She responded that the WISC is too verbal for Student. She chose the Stanford-Binet because it was more hands on and visual. The WISC was not appropriate for Student as it would not have provided adequate information.

When asked which assessments provided subtests, she explained that when results are reported, subtests are printed with lower case letters. Asked if she was positive that she had provided subtest scores prior to the IEP meeting, the witness stated she was sure. She added that what Mr. Webb was asking for were raw

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<sup>58</sup> District Exhibit #12, D-12 p.3

<sup>59</sup> District Exhibit #13, D-13

<sup>60</sup> District Exhibit #14, D-14

<sup>61</sup> District Exhibit #15, D-15

<sup>62</sup> District Exhibit #16, D-16

<sup>63</sup> District Exhibit #17, D-17

<sup>64</sup> Ms. ██████ administered the Brigance in response to Parent's request for a Functional Checklist

scores, something entirely different. Raw scores indicate which items were answered incorrectly.

Mr. [REDACTED] asked the psychologist why the IEP team did not select the tests to be administered. She stated that is her area of expertise and she has to select the assessment she believes is more valid.

Ms [REDACTED] was asked about the validity of Student's reading scores. She responded that the scores were consistent with what the teacher reports seeing in the classroom. According to the Woodcock-Johnson, word recognition and fluency are higher than the application skills.

Mr. [REDACTED] asked if each IEP reviewed Present Levels of Performance. There was discussion related to the disagreement between school and Parent related to the appropriate levels of Student. When asked how AIMS Web<sup>65</sup> is used to evaluate, the witness stated it shows how Student compares with grade level peers. There are grade level benchmarks and weekly monitoring.

Under redirect questioning, Ms [REDACTED] stated parents had input and all necessary information had been provided. She also testified that Parent was not qualified to determine which assessments should be used.

### **Occupational Therapy Evaluation**

[REDACTED], Occupational Therapist (OT), is a Master's level certified OT with 14 years experience with the Northwestern Illinois Cooperative. She conducts approximately 28-30 OT evaluations per year. Prior to the OT evaluation,<sup>66</sup> Ms Wallace received a memo from her supervisor, informing her that Parents refused to sign a release allowing the either the OT or PT to talk to Students' physician.<sup>67</sup> They did sign a one way release, allowing therapists to send information but not receive information. In describing the evaluation, Ms [REDACTED] stated she went to Student's home (during the summer) for a clinical observation. During summer school, she conducted the Bruinicks-Oseretsky Test of Motor Proficiency, second edition (BOT-2).<sup>68</sup>

| <b>Subtest</b>       | <b>Subtest Scale Score</b> | <b>Descriptive Category</b> |
|----------------------|----------------------------|-----------------------------|
| Fine Motor Precision | 8                          | Below Average               |

<sup>65</sup> District Exhibit #18, D-18

<sup>66</sup> District Exhibit #19, D-19

<sup>67</sup> Typically, a release is signed, allowing both the OT and PT to contact the student's physician. This is to be sure there are no contraindications to therapy.

<sup>68</sup> District Exhibit #21, D-21

|                         |    |                    |
|-------------------------|----|--------------------|
| Fine Motor Integration  | 10 | Below Average      |
| Manual Dexterity        | 11 | Average            |
| Upper Limb Coordination | 5  | Well below average |
| Bilateral Coordination  | 8  | Below Average      |
| Balance                 | 6  | Below Average      |
| Running Speed & Agility | 6  | Below Average      |
| Strength                | 6  | Below Average      |

| Composite                    | Standard Score | Percentile Rank |
|------------------------------|----------------|-----------------|
| Fine Manual Control          | 38             | 12%             |
| Manual Coordination          | 33             | 5%              |
| Body Coordination            | 32             | 4%              |
| Strength and Agility         | 28             | 1%              |
| <i>Total Motor Composite</i> | 30             | 2%              |

Ms [REDACTED] testified that she considered the evaluation a valid assessment. He had a very strong ability for grasp and manipulation. For the BOT-2, both the OT and PT are involved with the assessment. He quickly formed all letters and scored in the average range in manual dexterity and below average in copying and cutting. In general, the OT looks at functional needs and the ability of Student to be able to meet school related tasks.

Student was able to work very quickly and neatly when completing a math worksheet<sup>69</sup>. This was impressive because not only was Student able to form neat letters, he was able to do so while engaged in the cognitive challenge of a multiplication worksheet.

At the IEP meeting on July 17, 2012<sup>70</sup> Ms [REDACTED] discussed shoe tying, which is not a therapeutic use of time within the school setting. Most of the concerns expressed by Parent are related to activities in the home, rather than school. However, it was agreed to provide consult minutes to Student.

Ms [REDACTED] also completed a comprehensive Sensory Processing Measure and School Function Assessment.<sup>71</sup>The assessment has the following sub-categories:

- social participation
- vision
- hearing
- touch

<sup>69</sup> District Exhibit #21, D-21 p.11

<sup>70</sup> District Exhibit #9, D-9 (pp.11-12)

<sup>71</sup> District Exhibit #22, D-22

- taste and smell
- body awareness
- balance and motion
- planning and ideas

Test results indicate Student functions within the typical range throughout his school day. "He has been observed to manage the sensory stimuli of his school environment without any observed signs of distress or dysfunction. He is capable of producing fully appropriate responses to external sensory input, which is a hallmark of intact sensory processing ability".

Student's performance was typical across every domain. Strengths were noted in fine motor, school-related self-help, eating, drinking, and hygiene.

Under cross-examination, Ms. [REDACTED] explained that background information is helpful but not always available. She also stated that the BOT-2 is designed so that the OT and PT complete the assessment jointly. The OT does 4 subtests, related to fine motor skills.

The meeting to review the sensory processing measure was on November 19, 2012.<sup>72</sup> Ms. [REDACTED] stated she was unable to complete giving her report because the meeting was stopped when Mr. [REDACTED] stated the environment was hostile and threatening. Apparently, discussion about the meaning of the word "typical" led to negative interactions. When questioned what was meant by "typical", Ms. [REDACTED] stated a typical student is a student who does not have an IEP. Ms. [REDACTED] also said the District did not consider a sensory profile necessary and the test results confirmed that analysis.

### **Speech/Language Evaluation**

[REDACTED], the Speech/Language Therapist testifying for the District did not conduct the assessment. The evaluator is no longer with the District. Mr. [REDACTED] objected to both the testimony and report, since there would be no opportunity for him to cross-examine. The IHO ruled that the evaluation<sup>73</sup> would be admitted but the witness would be very limited in her testimony. She could describe the various parts of the test but could not make any inferences or report on Student's performance. Thus, the evidence is limited to the fact a speech/language assessment was done.

The assessment included:

- Peabody Picture Vocabulary Test, Fourth Edition (PPVT-4)
- Expressive Vocabulary Test, Second Edition (EVT-2)

<sup>72</sup> District Exhibit #D13, D-13

<sup>73</sup> District Exhibit #23, D-23

- Language Processing Test-Elementary (LPT-3)
- Test of Language Development – Primary: Fourth Edition (TOLD-P:4)
- Comprehensive Assessment of Spoken Language (CASL)
- Autism Diagnostic Observation Schedule (ADOS)

### **Physical Therapy Evaluation**

The physical therapist who completed the evaluation is also no longer with the District. Advocate objected to the report and the testimony of the current PT. The report<sup>74</sup> was already admitted, as the evaluation was conducted jointly with the OT.

██████████, PT, testified that test results show a decrease in core strength and age appropriate balance and coordination. However, Student is able to independently and safely perform many of the tasks required of him at school. Student navigates the school environment well. His gait has mild deviations. With prolonged activity, Student may become fatigued; however, is very motivated to participate in P.E. and completes all tasks at a level consistent with his peers.

### **Parent Witnesses**

██████████ Student's Special Education Teacher was called by Parent. Mr. ██████████ asked Ms Neff about the IEP meeting on November 19, 2013. He asked about the District's position on testing. The teacher could not recall the discussion. Mr. ██████████ attempted to elicit specific information about this meeting but the witness could not recall.

Parent testified over the objection of District, as Parent was not on the witness list. As Mr. ██████████ was not prepared with witnesses (or documents), the IHO wanted to provide Parent the opportunity to express her concerns and issues regarding the District's evaluation.

Parent testified about the IEP (domain) meeting<sup>75</sup> held on March 19, 2012. She stated that she did not agree with the reports from the school as they relate to Student's reading ability. She expressed frustration because the school reported her son could read at a higher level than what she was seeing at home. While the school said "he can do this" that is not what she experienced at home. She wanted to see grade levels in the reports but they were not provided.

Parent also testified that she requested a Functional Behavioral Assessment (FBA). She requested this several times, but each time the District said he was

<sup>74</sup> BOT-2, District Exhibit #21, D-21

<sup>75</sup> District Exhibit #1, D-1

meeting goals, making the FBA unnecessary. She also wanted an evaluation to address who, what, when, where, questions.

Mr. [REDACTED] then asked a number of questions related to very specific items:

- Did the evaluation tell you if he could he multiply 2x4?
- Did the evaluation tell you what money he could recognize?
- Did the evaluation tell you what coin value he could recognize up to 10?
- Did the evaluation tell you if he could make change?
- Did the evaluation give you a clear idea as to grade level for reading?
- Did the evaluation give you Present Levels of Performance for on-task behavior?
- Did the evaluation tell you how the environment impacts him?
- Did the evaluation tell you how many numbers he can recognize?
- Did the evaluation tell you if he understands present and past tense?
- Did the evaluation tell you if he could use pronouns in sentences?
- Did the evaluation give you a clear understanding of social skills and interactions with peers?

Parent responded “no” to each of these questions. At this point the IHO interrupted and suggested Mr. [REDACTED] could ask an endless number of very specific questions and the advocate responded “We’ve been asking for responses to 2 million questions, that’s why we’re in due process”.

Parent testified that the evaluation did not answer her questions. In spelling, although he can spell isolated words, he can’t read those words in a sentence.

Regarding sensory issues, Parent testified that Student reacts negatively to a number of things the OT does not see at school. She provided the example of Student not being able to tolerate clothes that are on backwards. She believes that school staff do not recognize the sensory issues that are prevalent in the home.

With reading, Student can read the words of a story but he can’t tell Parent what happened in the story – he can only name the people in the story. This is something she keeps asking and does not feel she gets an adequate response.

Parent stated the evaluation failed to shed any light on what Student can do. Particularly upsetting to Parent was the District’s position that Student did not present with any significant behavioral problems in the school setting. At home he had difficulty with dressing, zipping his coat, brushing his hair, bathing, and hygiene in the washroom. He does not seem to have fear and goes outside and demonstrates unsafe behavior (does not look for stoplight). She stated “he will be 10 and acts like he is 5”. The FBA was denied because the school did not see these behaviors.

As evidence of unsafe behavior, Parent described a problem on the school bus, when Student was hit but failed to tell anyone. She said he frequently keeps things to himself and does not report unsafe behavior that could put him at risk. The

District responded to problems on the bus by assigning a bus aide but Parent wanted an FBA to address this.

Under cross-examination, and in response to Parent's concern that grade levels were not reported, District referred Parent to Students Present Levels of Academic Performance as documented in the IEP dated March 19, 2012<sup>76</sup>. Reading level was reported at 3<sup>rd</sup> grade, sight word identification at 3<sup>rd</sup> grade level, and 2<sup>nd</sup> grade level for spelling. Although the document clearly states a grade level, Parent added that "what I do with (Student) doesn't match what the teacher says he can do". She doesn't agree with the grade levels reported and says the District hasn't proven to her that he can do what they say he can do. The discussion as to grade level was recorded<sup>77</sup> during the notes of this meeting. The [REDACTED] representative wondered if the discrepancy could be the result of Student being burned out or tired at the end of the school day.

District also asked about the Brigance,<sup>78</sup> which reported Student was making nice progress in comparison to last year and able to consistently speak in sentences of 8 words or more. While this was reported, Parent questions the validity of the test results.

Parent stated that the math tests don't tell her what she wants to know - she doesn't know where Student is functioning. When asked which test would provide that information, Parent responded "That's my job to find out".

Parent disagrees with the Sensory Processing Assessment.

Finally, regarding the request for an FBA to address problems on the bus, Parent acknowledged that bus concerns were addressed<sup>79</sup> at the IEP on August 3, 2012. Based on Parent's concerns, a bus aide was assigned.

Once again, the District referred Parent to the Brigance<sup>80</sup> assessment. Many of the questions that Parent stated were left unanswered (during Direct testimony) were reported in this assessment.

However, under redirect testimony, Parent said there was no data to back this up, no clarification as to the meaning of "consistently" and that the information was false. While the report says "He could identify coins and dollar bills and their value and could tell time to the ¼ hour", Parent stated it doesn't tell how successfully.

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<sup>76</sup> District Exhibit #1, D-1 (p.2)

<sup>77</sup> District Exhibit #1, D-1 (p.16)

<sup>78</sup> District Exhibit #14, D-14 (p.2)

<sup>79</sup> District Exhibit #10, D-10 (p.22).

<sup>80</sup> District Exhibit #14, D-14

Parent was also critical of the reappearance of "old words". Saying she keeps seeing old words, Parent had no knowledge of the 89 new words reported.

Finally, Parent stated she was given no data to substantiate claims of Student progress and was not provided Present Levels of Performance in the evaluation.

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is a 10 year old male, with an identified disability of Autism.
2. Parent has a learning disability which negatively impacts her reading ability and requires accommodations so that she can advocate on behalf of her son.
3. Parent has an Advocate, who has Power of Attorney (POA) and represents her at all IEP meetings, either in person or via phone conferencing.
4. Parent requested an Independent Educational Evaluation (IEE) at public expense.
5. District filed a DPCN in response to Parent's request, seeking a finding that its evaluation is appropriate, thus denying the IEE at public expense.
6. Parent did not file a DPCN alleging denial of FAPE. On at least two occasions, District advised Parent that if they wanted to bring up FAPE related accusations, they should file their own DPCN. Parent chose not to do so. However, Parent repeatedly claimed denial of due process rights when IHO limited discussion to IEE, the only claim over which she has jurisdiction.
7. The relationship between Mr. [REDACTED], Advocate, and District has been particularly contentious, with a great deal of involvement with the District attorney.
8. IEP meetings have been very long and sometimes volatile. District attorney attends most, if not all, meetings.
9. Each party believes the other is disrespectful.
10. Advocate demands recognition as POA. He accuses the District's attorney of felonious behavior for failing to recognize his status as POA. He resents District's requirement that Parent sign consent for release of confidential information, which he says is unnecessary, as he has POA.

11. Advocate has a long-standing feud with District over his demand that meetings be recorded.
12. While there is only one issue to be addressed (the request for an IEE), there have been a number of highly charged issues that have interfered with the process.
13. The resolution process was the source of a great deal of confrontation for a number of reasons:
  - Advocate insisted on a neutral setting
  - Advocate insisted the resolution session be recorded and District refused
  - Advocate incorrectly interpreted the statute related to counting days for timeline purposes
  - Advocate misinterpreted letter from Special Education Director, believing Director was trying to demand mediation instead of resolution.
  - Advocate did not want to engage in mediation because he did not want the District Attorney to participate
  - Argument regarding resolution was extremely counterproductive. The goal of resolution is to lessen an adversarial relationship between Parent and District. However, in this instance, resolution became a distraction and impediment to due process.
  - District asked IHO to waive the resolution requirement.
  - Advocate was highly opposed to District's request.
  - When IHO ordered resolution be waived, Advocate expressed outrage and engaged in continuous dialogue about appeals.
14. IHO encouraged Parties to attempt settlement discussions, absent the requirement.
15. The IHO considered multiple and lengthy communications from Advocate related to resolution, recorded meetings, POA, and interpretation of law as a distraction from the issue of an IEE, and appealed to Advocate to focus on Student and his evaluation.
16. The evaluation process began with a domain meeting on 3/19/12. The purpose was to review the 8 areas to be considered and decide what additional evaluation would be necessary to determine ongoing eligibility. The psychologist testified she carefully went over the domain page with Parent 3 times to be sure she understood it. Advocate participated via phone. After 4 ½ hours, the meeting ended without consent from Parent as to which assessments would be completed.
17. Five of the eight domains would be completed by the school psychologist. This included:
  - \* A health history, over which there was no dispute. Student is Diagnosed with Autism, takes medication and is an inconsistent eater.

- For academic testing, the psychologist stated she would complete Standardized Academic Testing.
- For Functional Performance, psychologist listed an Autism Rating Scale
- For Cognitive Functioning, psychologist stated "Cognitive Testing"
- For Social/Emotional Status, psychologist stated she would do a social/developmental study and have Adaptive Rating Scales completed.

18. Hearing and vision screens were completed (he passed both)
19. Communication Status was completed by the Speech/Language Therapist. Listed for additional evaluation were Receptive, Expressive, and Pragmatics
20. The eighth domain is Motor Abilities. Although school staff did not believe there were Occupational Therapy (OT) or Physical Therapy (PT) needs, the assessments were agreed to based on Parent request. An OT and PT would complete the assessments. No specific tests were listed.
22. During the domain meeting, before any testing had begun, Parent indicated her husband would disagree with testing results and want an independent evaluation.<sup>81</sup>
21. Advocate wanted input as to which tests would be administered. He requested the Woodcock-Johnson Test, CARS (Autism Rating Scale), and ADOS (Autism Diagnostic Assessment). All three requests were agreed to.
22. The psychologist administered the Stanford-Binet Intelligence Scales, with a reported full-scale intelligence of 58, (confidence interval of 56-62). Although he acknowledged he had no background in psychological testing, Advocate questioned why the psychologist did not use the Wechsler Intelligence Scale for Children (WISC). She testified that she chose the Stanford-Binet because it was more appropriate for Student.
23. Advocate stated the IEP team should collectively determine which tests would be used, as this is an IEP team decision. The psychologist disagreed and stated she used her professional judgment in selecting which tests she would administer. Her decisions are based on, among other things, the learning style of the student being tested. She did not think it appropriate for non-psychologists to be determining which psychological tests would be used.
24. For Academic testing, Advocate had requested the Woodcock-Johnson. As psychologist did not disagree with this request, she administered the Woodcock-Johnson-III.

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<sup>81</sup> D-1, p. 28

25. A major source of contention relates to Student's levels of performance. Test Scores, including those received by the (Parent requested) Woodcock-Johnson Test, are much higher than Parent considers accurate. However, similar results were found in the Curriculum Based Measurement (CBM) tests given in the spring of 2012, as well as Progress Monitoring from AIMS Web<sup>82</sup>. Finally, teacher reports indicate agreement with test results.

Parent requested Childhood Autism Rating Scales, scores by Student's teacher placed him in a very low level of autism related symptoms, while scores provided by Parent are indicative of a very high level of autism. The scores suggest that more autistic like behaviors are seen at home as compared to the school setting.

26. In the Parent requested ADOS (Autism Diagnostic Observation), Student demonstrated behaviors typically seen by individuals diagnosed with Autism. He did not demonstrate any unusual sensory or compulsive behaviors or excessive interest in a specific topic.

27. The psychologist's reports indicate that Student performs within the low range, with verbal and nonverbal abilities equally developed overall. Academic standardized testing yielded results that basic skills were in the average range while application scores within the low average range, as applying skills seem to be more difficult for Student in comparison to rote skills. This is not unlike the characterization by Parent.

28. The Occupational Therapist testified that Parent refused to sign consent allowing her or the Physical Therapist to communicate with the Student's physician. Instead, they were given one-way consent, allowing them to send the physician information but not receive any. The purpose of the request is to alert the OT/PT about any medical conditions that would counter-indicate any therapy or assessments. However, the OT and PT were able to proceed with testing.

The BOT-2 was administered jointly with the OT/PT, as designed by the test. Test results for the OT indicated Student's performance was typical across every domain. Strengths were noted in fine motor, school-related self-help, eating, drinking, and hygiene. Most of the concerns expressed by Parent were related to activities in the home, rather than school. Although there was no finding of OT need, the IEP team agreed to consult minutes for Student.

29. The PT who conducted the evaluation with the OT is no longer with the District and was not available for testimony. IHO sustained Parent's objection to testimony by the current PT, who did not perform the BOT-2. The report

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<sup>82</sup> D-18

was allowed, as it was already introduced by the OT. Testing indicated Student completes all tasks at a level consistent with peers.

30. The Speech/Language Therapist who conducted the tests is also no longer with the District. Parent objected to both testimony by the current speech/language therapist, who is providing service to Student, as well as the report. The IHO ruled that the report would be allowed but that testimony by the speech/language therapist would be very limited. Parent had not expressed any concerns regarding the speech/language assessment during the eligibility meeting on July 17, 2012. Five comprehensive tests were administered.<sup>83</sup>

31. The results from all the evaluations<sup>84</sup>, as agreed upon during the domain meeting, were reviewed during the eligibility IEP meeting held 7/17/12. This meeting lasted 3 hours and 10 minutes and included 7 handwritten pages of notes. The meeting ended at 4:20 p.m. without being completed.

32. On August 3, 2012 the meeting reconvened, but at a neutral location in response to Parent's request. In addition to the completion of the IEP from 7/17/12, Parent was now asking for three (3) additional evaluations.

- a functional checklist
- an Assistive Technology Evaluation
- a Sensory Profile

A new domain page was completed and Parent signed Consent for Reevaluation, to allow the additional testing. The meeting lasted 3 hours and 15 minutes.

33. On November 19, 2012 the IEP team met again to review the three assessments requested by Parent on August 3, 2012.

- 1) Brigance: Inventory of Early Development<sup>85</sup> was completed in response to Parent's request for a functional checklist. This instrument provided very detailed, specific information and the results were consistent with earlier assessments and teacher reports.
- 2) Assistive Technology Evaluation<sup>86</sup> – this was conducted by the Illinois Assistive Technology Program, an independent entity. The psychologist reported the results were consistent with teacher's reports.
- 3) Sensory Profile<sup>87</sup> – this assessment was completed by the OT and found Student to be functioning within the typical range throughout his school day and has "intact sensory processing ability".

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<sup>83</sup> D-23

<sup>84</sup> This includes the ADOS, which was added by Parent.

<sup>85</sup> D-14, Psychological Report

<sup>86</sup> D-15, Assistive Technology Evaluation

This meeting became adversarial with Mr. [REDACTED] continuing to argue. Staff left the room, mother signed consent to allow District to send all reports to Mr. [REDACTED], and Parent and Mr. [REDACTED] left. The IEP team completed the meeting.

34. Advocate points to the completion of the IEP meeting on 11/19/12, without the Parent present, as proof of failure to provide parent participation. Advocate also believes that psychologist's determination as to which tests would be administered provides further proof of failure to provide meaningful participation.<sup>88</sup>
35. In addition to the evaluations completed, Parent also testified that she requested a Functional Behavioral Assessment (FBA). District told Parent an FBA was unnecessary, as Student was meeting his goals.
36. District witnesses reported that Student's behavior at school was appropriate and there was no need for an FBA.

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#### **Closing Argument - District**

District maintains Parent's request for an IEE was frivolous and requested for an improper purpose. The litigation was elongated and costs increased due to the time required to respond to issues outside the scope of the hearing. Litigation was also prolonged and more expensive because of the continual e-mails about resolution sessions, releases, and other irrelevant items. "Just as the parent determined before the evaluation was even done that he would disagree with it, Mr. [REDACTED] determined before the hearing that he will be filing an appeal. These stated intentions are clearly improper".<sup>89</sup>

Ms. [REDACTED] cites *Parenteau v. Prescott Unified School District*, 53 IDELR 3 (D.D.C. 2011) where the Court indicated parent's case was frivolous because the District had already provided everything the parents requested. The Court indicated that anger, without a proper purpose, was an indication that the parents' issues were based on an improper purpose. Ms. [REDACTED] focuses on communications from Mr. [REDACTED]<sup>90</sup> that indicate anger, threats, and motivations that are clearly an improper purpose to request an IEE and have nothing to do with Student's education.

Ms. [REDACTED] states that, although parental participation is not an issue in this hearing, limited to the issue of evaluation, District spent hours and hours of time

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<sup>87</sup> D-22, Sensory Profile

<sup>88</sup> D-6, e-mail to Ms. [REDACTED] from Mr. [REDACTED]

<sup>89</sup> District Exhibit, D-29

<sup>90</sup> District Exhibit, D-30

attempting to explain the evaluation to the parent. Ms. [REDACTED] addresses the meeting in which Mr. [REDACTED] and Parent left before the meeting ended. Mr. [REDACTED] had become argumentative and rude. Staff, citing a hostile environment, asked Mr. [REDACTED] to leave. When he refused, school staff moved to another room.

### Closing Argument - Parent

Mr. [REDACTED] maintains that since it was District that filed the DPCN, and Parent has a right to defend herself 34 C.F.R. § 300.511, there should be no finding of a frivolous action. Mr. [REDACTED] stated "We find it objectionable in the extreme for the LEA attorney to bring up charges of frivolous in a case they themselves generated". He also states that a finding of "frivolous takes extraordinary measures".<sup>91</sup>

Mr. [REDACTED] claims Parent has a right under 20 U.S.C. 1415 procedural safeguards to respond and defend in cases in which their actions are challenged.

Regarding District's reference to Mr. [REDACTED]'s perseveration on the issue of resolution, Mr. [REDACTED] describes resolution as a mandatory component and therefore "can not be frivolous to argue its viability". As the Parent relied almost entirely on evidence and witnesses presented by District, Mr. [REDACTED] believes it would have been impossible to do so if his case was frivolous.

Mr. [REDACTED] refers to the District's Motion to Dismiss, but the IHO is unsure to what he is referring.

Regarding the evaluation, Mr. [REDACTED] makes the following allegations:

- \* many of the components of evaluation fall within 34 C.F.R. §300.301-311. He believes he was unfairly denied the opportunity to discuss IEP's, goals, and relevant data. Mr. [REDACTED] maintains he should have been able to bring into evidence IEP's for purpose of the evaluation. He cites 34 C.F.R. § 300.304(b)(1)(ii) as authority that an IEP should be used to determine] eligibility.
- Mr. [REDACTED] discussed concern about the use of AIMS Web, but the IHO is not able to describe what his objection was
- He refers to clarification over the use of the word "average".
- Mr. [REDACTED] refers to violation of parental participation.
- When the Director believed there was a hostile environment, Mr. [REDACTED] was either asked to leave or the school staff moved to a different location. As the meeting continued without either the presence of Parent or Mr. [REDACTED], he sees this as evidence of denial of parental participation as articulated in *Doug C. v. Hawaii Department of Education*, NO. 12-15079 June, 2013

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<sup>91</sup> Parent Exhibit, P-4

- Mr. [REDACTED] states that the entire evaluation should be dismissed due to the fact Parent was not present for the entire period of time.
- Mr. [REDACTED] objects to the psychologist's refusal to allow parent to sit in on the evaluation.
- Mr. [REDACTED] objects to the psychologist selecting which tests she will administer and believes the IEP team should make that decision collectively.
- Mr. [REDACTED] argues the issue of direct services for OT<sup>92</sup>
- Mr. [REDACTED] states there were no definitive levels of performance provided by the evaluation.
- Mr. [REDACTED] argues that, since his request for an FBA was denied, Parent should be entitled to an IEE
- *Amanda v. Clark County School District*, No. 99-17157 is cited by Mr. [REDACTED] as it pertains to the right of Parents to examine school records.
- Mr. [REDACTED] argued that the District was required to test in all areas of suspected disability.<sup>93</sup> Student has Autism and Parent presented no evidence that there was any other suspected disability.

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

IDEA requires a triennial reevaluation, unless the Parent and public agency agree otherwise.<sup>94</sup> In keeping within the procedural requirements related to reevaluation,<sup>95</sup> District and Parent met for the purpose of reviewing the areas to be assessed<sup>96</sup> at what is referred to as a "domain" meeting. During the meeting, the IEP team, which included District staff, Parents, and Parents' Advocate, reviewed existing data and determined what additional data was necessary for continued eligibility. The meeting was long and contentious, with Parents and Advocate challenging which tests should be administered. After 4 ½ hours the meeting ended without Parent agreeing to sign consent for the evaluation.

One of the purposes of the reevaluation is to determine present levels of performance (PLOP). Parent continuously stated district has not provided present levels of performance. In actuality, the District has clearly presented such

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<sup>92</sup> This is clearly a FAPE issue and out of the jurisdiction of this IHO

<sup>93</sup> 20 USC 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4)

<sup>94</sup> 34 C.F.R. § 300.303(b)(2)

<sup>95</sup> 34 C.F.R. § 300.304, 34 C.F.R. § 300.305

<sup>96</sup> 34 C.F.R. § 300.304(c)(4)

information in all relevant areas. It wasn't that the PLOP was not provided, it was that Parent did not agree with the results.

As the District filed the DPCN, it has the burden of proof<sup>97</sup> that its evaluation is appropriate. By any reasonable measure, the evaluation was comprehensive, relevant, consistent, and appropriate. There is no question District met its burden of proof.

The District complied with all procedural requirements related to reevaluation, consistent with 34 C.F.R. §§ 300.303-306. The evaluation was "based on a variety of assessment tools, including interviews with and observations of (Student), conversations with his parents, teacher reports, and review of (Student's) educational records and all previous evaluations by the District and private evaluators...The school psychologist who conducted the evaluation was appropriately credentialed and trained in the administration of the specific instruments and methods relied upon", a standard described in 51 IDELR 100, *Blake B. v. Council Rock School District*.

District spent a great deal of time reviewing Student's current status and determining which additional evaluations would be completed. Throughout this process, they met with Parent and Advocate, agreeing to Parent's request to test in areas District did not believe were necessary. They conducted PT and OT evaluations, although there was no indication of the need for either. Test results confirmed the District's position. They conducted two Autism rating scales at Parent's request, although, at no time, did anyone question eligibility under the category of Autism.

The highly qualified, experienced school psychologist completed cognitive, functional, academic, and social assessments of Student. The Master's level, certified O.T. with fourteen (14) years of experience, conducted the O.T. assessment in conjunction with the P.T., therapist who has a doctorate in Physical Therapy. The Speech/Language therapist who conducted the assessment is a nationally certified<sup>98</sup> speech/language therapist. The Assistive Technology Assessment was conducted by an independent AT agency.

There was no evidence or testimony to challenge the test results, other than Parent's testimony that she didn't think it was accurate, based on what she observed at home. However, test results were supported by previous CBM scores, as well as classroom teacher's informal assessments and observations.

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<sup>97</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531

<sup>98</sup> The American Speech-Language-Hearing Association (ASHA) provides Certification of Clinical Competence (CCC), requiring high standards and ongoing training.

Other than Parent, Mr. [REDACTED] called only one witness, Student's classroom teacher. Her testimony lasted less than 5 minutes, as Mr. [REDACTED]'s only questions had to do with whether she remembered details about a contentious meeting. She did not recall the details and there were no further questions.

Mr. [REDACTED] did not ask if the teacher agreed with the test results and reported levels of performance, if they were indicative of her observations as Student's teacher. He did not ask if she could explain why Parent sees different results in the home. Student's performance in his classroom was not important. Rather, Mr. [REDACTED] being asked to leave a meeting was his concern.

When the initial evaluations were complete and the IEP team met to certify ongoing eligibility, as required under 34 C.F.R. § 300.306, Parent demanded additional assessments. District willingly agreed, had Parent sign consent for a reevaluation, and began the proceeding yet again.

Finally, when Parent insisted on a Functional Behavioral Assessment (FBA) District said "no". Included in IDEA regulations under "Disciplinary Procedures", 34 C.F.R. § 300.530 the purpose of an FBA is "designed to address the behavior violation so that it does not recur" 34 C.F.R. § 300.530(d)(ii). District evidence and testimony described a happy, well-behaved student for whom an FBA was not indicated.

Long before any testing had begun, Parent was indicating the demand for an IEE.<sup>99</sup> As District is requesting a finding that the request for an IEE was frivolous, it is necessary to consider all possibilities to dismiss such an allegation. After hearing testimony at the hearing and trying to ascertain the basis for the request for an IEE, the hearing officer asked Mr. [REDACTED] what testing he was seeking that the District had not done. When he did not answer the question, it was posed a second time. He then took out a book and began reading names of tests of which he seemingly had little knowledge.

It is clear that the District will prevail in its defense of its evaluation as appropriate, thus denying an IEE at public expense. The IEP team tested in all areas, including areas that were not relevant, at Parent's request. The tests were comprehensive and thorough, providing a clear understanding of Student's strengths and needs. It was the type of evaluation that would allow the IEP team to develop a highly appropriate IEP. The IEP team met every one of the procedural guidelines established in 34 C.F.R. § 300.304.

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<sup>99</sup> Finding of Fact #22. During domain meeting, before any testing had begun, Parent indicated her husband would disagree with testing and want an independent evaluation.

District's evaluation far exceeded the Court's standard of being "appropriate".<sup>100</sup> Influencing the determination of the IHO that Mr. [REDACTED]'s actions were frivolous, is the very quality of the evaluation. The Court in *Doe Doe v. Board of Education Tullahoma City Schools*, 9F.3d 455 87 Ed. Law Rep 354, 3 ADD 505 (6<sup>th</sup> Cir. 1993) uses the analogy of IDEA requiring a Chevrolet level of service, rather than a Cadillac. In this case, District did indeed provide the Cadillac.

Mr. [REDACTED] misunderstands the regulations to which he refers. He cites 34 C.F.R. § 300.304(b)(1)(ii), which states "The content of the child's IEP, including information related to enabling the child to...." to argue that the IEP, including goals, should be part of the evaluation. While he believes this indicates goals should be used to drive the evaluation, the reverse is true. Before the section Mr. [REDACTED] cites is the following: "In conducting the evaluation, the public agency must...use a variety of assessment tools and strategies...**that may assist in determining** the content of the child's IEP..."

Parent testified that she didn't believe the test results<sup>101</sup>. She saw performance and behavior at home that was not consistent with what was reported by the school. Her significant learning disability likely causes her great concern about her son's academic success. It was painful to watch her struggle with her reading or difficulty retrieving words during the hearing. As misguided as her assessment of the test results might be, there would be no finding that her request for an IEE was frivolous.

However, it is the behavior, motive, and intent of the Advocate that causes this IHO grave concern. Mr. [REDACTED] has been advising Parent throughout this process. He stated that his "clients" sign Power of Attorney so he can represent them. He then accuses the District's attorney of felonious behavior for requiring Parent to also sign the District release for exchange of confidential information. The level of control over his "clients" interferes with their relationship with the District and the ability to enjoy the very "parental participation" that is the bedrock of IDEA. See 20 U.S.C. § 1414(d)(1)(B)(i) requiring the inclusion of parents on the IEP team; 34 C.F.R. § 300.321(a)(1), requiring parents "to participate in meetings with respect to identification, evaluation, and educational placement of the child".

Mr. [REDACTED] frequently refers to the highly parent friendly ruling in *Doug C. v. State of Hawaii Dep't of Educ.*, No. 12-15079, 113 LRP 25045 (9<sup>th</sup> Cir. 06/13/13). However, the decision in *Doug C* cites *Schaffer v. Weast*, 546 U.S. 49, 53 (2005) "The

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<sup>100</sup> *Board of Educ. V. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)

<sup>101</sup> The Court in *Blake B. v. Council Rock School District*, 51 IDELR 100 ruled that "while the parents disagreed with the results of the evaluations, there was no evidence that the evaluations were inappropriate".

Similarly, the court in *Bridges Public Charter School District*, 57 IDELR 3 (D.D.C. 2011) found that the parent's complaint was frivolous where the district had reviewed the goals and parent continued to argue the level of detail.

core of the IDEA...is the cooperative process that it establishes between parent and schools". If Mr. [REDACTED] had allowed for this level of cooperation between Parent and District, Parent might have been able to understand the discrepancy between what she saw in the home versus her son's performance in school. Parent needed to work with the District to help her understand successful interventions. She did not need to demand an endless number of tests, all of which consistently provided the same results (with which Parent disagreed). Problems with Mr. [REDACTED]'s involvement are also seen in the refusal to provide a script from Student's doctor to the OT/PT. The purpose of the script is to alert the PT/OT of any physical concerns that might compromise a student's health during an evaluation.<sup>102</sup> Yet, under Mr. [REDACTED]'s guidance, Parent refused to provide for such communication between physician and therapists. The voluminous notes taken at each of the IEP meetings indicate little relevant discussion that would promote parental participation and understanding. Argument over the definition of "typical" intensified to the point of necessitating a request that Mr. [REDACTED] leave the meeting.<sup>103</sup>

Advocate's involvement has resulted in great financial burden to the District. His demeanor, demands, and continuous threats of legal action have resulted in the District decision to have legal representation at all IEP meetings - meetings which typically last at least three hours. Demands for unnecessary evaluations add to the cost. These are dollars that could be used to provide additional support to the District's Department of Special Education. "All children suffer when the schools' coffers are diminished on account of expensive, needless litigation", *Aguirre v. Los Angeles Unif. Sch. Dist.*, 461 F.3d 1114, 1120 (9<sup>th</sup> Cir. 2006)

Advocate was sending insulting, threatening e-mail to the Director of Special Education and the District's attorney.<sup>104</sup> His behavior was provocative and threatening.<sup>105</sup> He expressed contempt and anger. A reasonable person does not insult, threaten, and disrespect a party you intend to sit down with and convince of your position. At the same time, his e-mails expressed a misunderstanding and misinterpretation of both communications and the law. The IHO was both stunned and concerned about the legal cost to the District related to the issue of resolution. The IDEA promotes the use of resolution to so that Parents and Districts can try to resolve issues as a means of avoiding costly and adversarial due process hearing. 34 C.F.R. § 300.510(a)(2). Stating: "When the scheduling of resolution creates an acrimonious environment and exacerbates the situation, it is not functioning as intended under IDEA", the IHO issued an Order to Excuse the District From Convening Resolution and Proceed to Hearing<sup>106</sup>. At the same time, the IHO encouraged the parties to attempt resolution, absent the mandate. The Advocate's response was a blistering attack on the IHO.

<sup>102</sup> See Findings of Fact #28

<sup>103</sup> See Findings of Fact #33

<sup>104</sup> See pp. 2-3 of this Decision

<sup>105</sup> IHO Exhibit, IHO -8

<sup>106</sup> IHO Exhibit, IHO-3

On November 19, 2013 the District Attorney sent an e-mail<sup>107</sup> to the IHO, requesting "a finding that Mr. [REDACTED]'s perseverance on a resolution "meeting" continues to elongate the process and increase the cost of litigation. Mr. [REDACTED] has made absolutely no offer of resolution or settlement to the District. He clearly is not really interested in resolving this matter. This is about Mr. [REDACTED]'s attempting to enforce his own agendas about tape recording meetings and meeting with the District without its counsel present. This sadly has nothing to do with (Student's) education. It is frivolous and continued by Mr. [REDACTED] for improper purposes".

In determining whether a complaint under IDEA is frivolous, the 11<sup>th</sup> Circuit stated that in making a determination it is necessary to find the case is so lacking in arguable merit as to be groundless or without foundation. *Sullivan v. Sch. Bd. Of Pinellas County*, 773 F.2d, 1189 (11<sup>th</sup> Cir. 1985). The IHO finds that the demand for an IEE, after the District had completed a comprehensive evaluation, for which Parent provided no meaningful level of challenge, clearly meets the 11<sup>th</sup> Circuit's determination of "frivolous".

The pattern of unending and unnecessary demands is clear:

1. A domain meeting was held on 3/19/12 to determine which assessments would be done. Parents requested specific tests and their requests were honored. Meeting lasted 4 ½ hours with Parent refusing to sign consent.
2. Parent's returned domain page (unsigned) after having written at the top of the page the name of another test they wanted done. District agreed.
3. IEP team met on 7/17/12 to review the test results and sign consent for eligibility for another three years. 34 C.F.R. § 300.303(b)(2). The meeting lasted 3 hours and 10 minutes and ended without Parent's agreeing.
3. On 8/03/12 the IEP team reconvened. Instead of signing consent, Parent was now asking for three more tests. A new domain page was completed. This meeting lasted 3 hours and 15 minutes.
4. On 11/19/12 the IEP team met again to review the 3 tests requested by Parent on 8/03/12. However, now the Parent was asking for a Functional Behavioral Assessment, an assessment designed to prevent expulsion for students with significant behavioral problems. This test had zero relevance to Student. The District said "no". This was the meeting where Mr. [REDACTED] was asked to leave due to what the District described as a "hostile environment".

At all of the above meetings, the District felt the need to have their attorney in attendance.

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<sup>107</sup> D Exhibit, D-26

The arguments made by Mr. [REDACTED], who admitted he has no knowledge or expertise in psychology or testing, have little do with the intent of IDEA.

- he wanted to determine which psychological tests should be administered
- he wanted Parent to sit in and observe psychological testing.
- he wanted the psychologist to specify in advance which tests she would administer, thus limiting her options if during testing she believed another assessment be more appropriate

Throughout the due process proceedings, the IHO found it necessary to remind Mr. [REDACTED] that this was about Student, not Mr. [REDACTED]. To say that it was a game diminishes the significance of what was occurring.

The IHO also made a finding regarding credibility. Mr. [REDACTED] claimed that Parent did not receive the District's documents on November 12, 2013. His words, actions, and responses were inconsistent with an advocate diligently preparing for a due process hearing. Additionally, The IHO considered the testimony of the psychologist, who stated Mr. [REDACTED] had falsely claimed she had not sent him test results 5 days prior to the IEP. The IHO viewed this as a pattern of dishonesty.

It is important to discuss who the Student is – a well behaved student with Autism, who has a mild cognitive impairment. The purpose of a triennial reevaluation is to determine ongoing eligibility. No one questioned the eligibility category of Autism. The school staff had few concerns about Student: he was making good progress, doing well socially and presented as a happy, well-behaved student. In one of his many complaints, Mr. [REDACTED] stated the District failed to consider all possible areas of eligibility. He never suggested what areas he thought should be considered. The IHO increasingly believed the many demands made of the District had little to do with Student.

The IHO does not suggest she has any idea as to the purpose of Mr. [REDACTED]'s behavior but he has clearly engaged in frivolous criticism and demands of District, at great financial cost, *Aguirre v. Los Angeles Unif. Sch. Dist.*, 461 F.3d 1114, 1120 (9<sup>th</sup> Cir. 2006)

The IHO does not believe Mr. [REDACTED]'s actions are the result of legitimate, even if misguided, concern. Rather, his behavior is indicative of the anger, without a proper purpose described by the Court in *Parenteau v. Prescott Unified School District*, 53 IDELR 3 (D.D.C. 2011) in determining whether Parent's action was frivolous.

This IHO finds that the actions of Parent's advocate were frivolous and resulted in excessive cost and litigation, and seriously compromised the cooperative relationship between Parent and District.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

**District's evaluation was appropriate and Parent's request for an Independent Educational Evaluation at public expense was frivolous and is hereby denied.**

In accordance with 105 ILCS 5/14-8.02a(h), within twenty (20) school days of receipt of this Order, the District shall submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, IL 62777-0001


**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request 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.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: December 2, 2013

  
Patricia Marino  
Impartial Hearing Officer  
1515 Ashland Avenue  
River Forest, IL 60305  
(708) 488-1063