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ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

SPECIAL EDUCATION  
SERVICES

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STUDENT<sup>1</sup>,

Student,

Case No: 2015-0031

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

  
School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**BACKGROUND**

The Student is a 14 year old, male currently in 8<sup>th</sup> grade. He qualifies for special education services under the disability categories of emotional disability (ED) and specific learning disability (SLD). The Student currently attends a private therapeutic day school (TDS). Prior to attending the private TDS, the Student attended a District school where he was placed in a self-contained special education classroom receiving specialized instruction and related services in the following areas: social work, language arts, independent functioning, speech/language, mathematics, social/emotional, biology and physical sciences, and social sciences. The Student also received

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<sup>1</sup> Personal identification information is provided in Appendix A.

consultative services in the following areas: social/emotional, health/medical, and speech/language. In addition, the Student also has a Behavior Intervention Plan (BIP).

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On July 22, 2014, the Parent filed a request for a Due Process Hearing alleging various substantive and procedural violations of IDEA. On July 25, 2014, a Hearing Officer was appointed by the Illinois State Board of Education. The District conducted triennial reevaluations of the Student in September 2014 and Eligibility and IEP meetings were held on October 9, 2014. Subsequently, the Parent filed a request seeking Independent Educational Evaluations (IEEs) in the following areas: Psychology, Speech-Language, Physical Therapy, Occupational Therapy, Nursing, Social Work, and Assistive Technology. The District filed a request for a Due Process Hearing on October 22, 2014. When the originally appointed Hearing Officer became unavailable, this Hearing Officer was appointed on December 1, 2014. The cases were consolidated and due to the extensive nature of the IEE request, the parties agreed to bi-furcate the hearing and address the issues of the requested IEEs in this separate hearing. This decision is the result of that hearing.

The Prehearing Conference was held over the course of three days and a total of nine (9) hours on February 6<sup>th</sup>, 10<sup>th</sup>, and 19<sup>th</sup> in order to identify the issues to be addressed, witness testimony to be presented, and documentary evidence to be introduced. This Hearing Officer issued a Prehearing Report and Order after the February 10<sup>th</sup> Prehearing Conference and a Second Prehearing Report and Order after the February 19<sup>th</sup> continuation of the Prehearing Conference. In the Second Prehearing Report and Order, a schedule of witness testimony and timing of that testimony was devised by this Hearing Officer and the parties in order to conclude the hearing within the scheduled three days. Parent's counsel sought to introduce one hundred sixty-seven (167) documents into evidence during the course of the hearing. Due to the extensive nature of

Parent's counsel's document list, it was decided that this Hearing Officer would rule on the objections to and admissibility of the documents as they arose during the course of the hearing.<sup>2</sup>

On February 23, 24, 26, 2015, a bi-furcated hearing on the issue of IEEs was commenced as scheduled. After the first day of hearing, as the hearing was not progressing as scheduled, this Hearing Officer, with input from the parties, scheduled witness time limits, sharing equally the time between the parties. Due to the number of witnesses, an additional day of hearing was added on February 25, 2015. The same instruction regarding witness time limits and sharing equally the time between the parties was reiterated. The parties were unable to complete the hearing within that time. An additional day of hearing was held on March 9, 2015 in order for the Parent's counsel to continue presentation of her case. Prior to that date, this Hearing Officer, with input from the parties, scheduled the time for each witness' testimony and stated that March 9<sup>th</sup> would be the final day of hearing. The parties were granted until March 13, 2015 at 5:00 p.m. to submit written closing arguments and the decision due date was set at March 23, 2015.

At the outset of this hearing, the parties and this hearing officer prepared a schedule for the witness testimony in order to ensure the completion of this hearing in a timely manner. When that plan did not work, this Hearing Officer set time limits on the witness testimony, with each side receiving an equal amount of time with each witness, warning the parties that the hearing must be completed in a timely manner within the week scheduled. Parent's counsel repeatedly disregarded this instruction and went over her allocated time thus necessitating additional hearing days. This Hearing Officer granted extensions of time on two occasions, adding two additional hearing dates,

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<sup>2</sup> It should be noted that, during the course of the hearing, additional documents, which had been previously requested by Parent's counsel, were located and produced by the District. Those documents were allowed, over the District's objection that including them for presentation during the hearing was a violation of the five day disclosure rule, as there was no other basis for their exclusion and the District could not identify in what respect this documentation would prejudice their case. These documents were admitted into evidence if they were used and testified to during the hearing.

in order to make every attempt to be fair to both parties. On the final day of hearing, this Hearing Officer expanded the timeframe for testimony allowing a full day of testimony. Parent's counsel exceeded her allotted time for cross examination of the District's final witness and then presented the testimony of one expert witness. Parent's second expert witness began her testimony at 2:30 p.m. and became unavailable at 3:30 p.m. Parent's counsel was therefore unable to complete the presentation of her case.

At the conclusion of the testimony on March 9<sup>th</sup>, Parent's counsel again requested additional time for presentation of her second expert witness' remaining testimony, over the District's objection. During the course of this hearing, Parent's counsel repeatedly disregarded this hearing officer's time schedule and exceeded her allocated examination and cross examination time with the District's witnesses who were also her witnesses, notwithstanding this Hearing Officer's warnings and efforts to track and manage the allocated time as previously discussed. The hearing was concluded on March 9<sup>th</sup> at 5:30 p.m. and the parties were given until 11:59 p.m. on March 13<sup>th</sup> for submission of closing briefs.<sup>3</sup>

The Parent opted for a closed hearing. Ms. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] represented the District. Ms. [REDACTED] of The Law Offices of [REDACTED], and Ms. [REDACTED], [REDACTED], represented the Parent. The Parent was present for the hearing and Spanish language interpretation services were provided by the District. The District presented the following witnesses: [REDACTED] – Psychologist; [REDACTED] – Psychologist; [REDACTED] – Social Worker; [REDACTED] – Assistive Technology Evaluator; [REDACTED] –

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<sup>3</sup> Both Parties submitted documents to this Hearing Officer with their closing briefs which had not been admitted into evidence during the hearing. Aside from case law provided, this Hearing Officer did not consider any documents submitted by the Parties that had not previously been admitted into evidence during the course of the hearing. In addition, documents submitted with closing briefs that were not admitted into evidence will not be made part of this record.

Occupational Therapist; [REDACTED] – Physical Therapist; [REDACTED] – Speech Language Pathologist; and [REDACTED] - Nurse. The Parent presented the following witnesses, in addition to the District witnesses: Dr. [REDACTED] – Psychologist and Dr. [REDACTED] – Psychologist/Social Worker. The District presented the following exhibits which were introduced into evidence: District Exhibits P. 1-373; 384-404; 411-462. The Parent presented the following exhibits which were introduced into evidence: Parent Exhibits #3-6; 10-13; 16-28; 31-33; 35-36; 40-42; 44; 46-47; 49; 54-56; 57 (P. 703-705; 710-720); 59; 62; 65-66; 68-70; 78-80; 127 (P. 1527-1530); 128 (P. 1538-1549); 160-161; 163; Letter Exhibits C & I. The Former Hearing Officer's exhibits were: FIHO Exhibits #3-16. The Hearing Officer's exhibits were: IHO Exhibits #1-25. Motions for Continuance were granted on the following dates August 20<sup>th</sup>, October 17<sup>th</sup>, December 9<sup>th</sup>, and December 26<sup>th</sup>, 2014 and February 13<sup>th</sup> and March 7<sup>th</sup>, 2015. Closing briefs were submitted by both parties.

### **ISSUES PRESENTED & RELIEF REQUESTED**

The issues raised by the Parent's counsel, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

Were the District conducted Psychological evaluation dated September 29, 2014, Speech-Language evaluation dated September 12, 2014, Physical Therapy evaluation dated October 9, 2014, Occupational Therapy evaluation dated September 30, 2014, Nursing evaluation dated September 25, 2014, Social Work evaluation dated September 26, 2014, and Assistive Technology evaluation dated August 18, 2014 "inappropriate" pursuant to IDEA 34 C.F.R. 300.304 and 34 C.F.R. 300.305? At all times herein, the IEP referred to is the Student's IEP dated October 9, 2014. More specifically:

(a) Psychological Evaluation dated September 29, 2014:

1) Did the Psychological Evaluation use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent, and specifically the Lindamood-Bell evaluation provided by the Student's Parent, to determine the content of the Student's IEP, specifically

regarding the Student's processing issues, and reading and math abilities in general, pursuant to 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), and 34 C.F.R. 300.305(a)(1)(i)?

2) Was the WISC-IV selected and administered so as not to be discriminatory on a racial or cultural basis pursuant to 34 C.F.R. 300.304(c)(1)(i)?

3) Were the assessments and other evaluation materials used by the psychologist to assess the Student provided and administered in the child's native language, Spanish, or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer pursuant to 34 C.F.R. 300.304(c)(1)(ii)?

4) Were the WISC-IV and BASC-2 administered by trained and knowledgeable personnel pursuant to 34 C.F.R. 300.304(c)(1)(iv)?

5) Were the WISC-IV and BASC-2 administered in accordance with any instructions provided by the producer of the assessments pursuant to 34 C.F.R. 300.304(c)(1)(v)?

6) Were the behavioral observation assessments used for the purpose for which the assessments or measures are valid and reliable pursuant to 34 C.F.R. 300.304(c)(1)(iii)?

7) Was the Student assessed by the psychologist in all areas related to the suspected disability, specifically, academic performance as it relates to math fluency, reading, writing, expressive and receptive language, as they appear on academic batteries, science, social studies, physical education, music, and art pursuant to 34 C.F.R. 300.304(c)(4)?

8) Was the Psychological Evaluation sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not commonly linked to the disability category, SLD, in which the child has been classified pursuant to 34 C.F.R. 300.304(c)(6)?

9) Did the psychologist and other qualified professional review existing evaluation data on the child, including current classroom-based, local, or State assessments, and classroom-based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii)?

The Parent requests that this Hearing Officer issue an Order finding that the Psychological Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Psychology, paid for at District expense. The District maintains that the Psychological Evaluation in question was appropriate in all areas pursuant to the requirements of IDEA.

(b) Speech-Language Evaluation dated September 12, 2014:

1) Did the Speech-Language Evaluation use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent, specifically the Parent's comments,

observations, and insights as well as the Lindamood-Bell assessment procured by the parent, to determine the content of the Student's IEP, specifically given the Student's language development, illiteracy, and specific learning disability pursuant to 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), and 34 C.F.R. 300.305(a)(1)(i)?

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2) Did the District ensure that the assessments and other evaluation materials used to assess the Student were selected and administered so as not to be discriminatory on a racial or cultural basis given that the Student is Spanish speaking pursuant to 34 C.F.R. 300.304(c)(1)(i)?

3) Did the District ensure that the Student was assessed in all areas related to the disability, including academic performance and communicative status, specifically in the areas of receptive and expressive language and listening comprehension pursuant to 34 C.F.R. 300.304(c)(4)?

4) Did the Speech-Language evaluator and other qualified professionals review the existing evaluation data on the Student, including current classroom-based, local, or State assessments, and classroom based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii)?

The Parent requests that this Hearing Officer issue an Order finding that the Speech-Language Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Speech-Language, paid for at District expense. The District maintains that the Speech-Language Evaluation in question was appropriate in all areas pursuant to the requirement of IDEA.

(c) Physical Therapy Evaluation dated October 9, 2014:

1) Did the Physical Therapy Evaluation use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, in determining the content of the Student's IEP, and specifically to determine abilities and accommodations with respect to the child's disability, pursuant to 34 C.F.R. 300.304(b)(1)(ii) and 34 C.F.R. 300.304(c)(7)?

2) Did the District ensure that the Physical Therapy Evaluation assessed the Student in all areas relating to the suspected disability including health and motor abilities pursuant to 34 C.F.R. 304(c)(4)?

The Parent requests that this Hearing Officer issue an Order finding that the Physical Therapy Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Physical Therapy, paid for at District expense. The District maintains that the Physical Therapy Evaluation in question was appropriate in all areas pursuant to the requirement of IDEA.

(d) Occupational Therapy Evaluation dated September 30, 2014:

1) Was the Occupational Therapy Evaluation used to assess the Student administered by trained and knowledgeable personnel pursuant to 34 C.F.R. 300.304(c)(1)(iv)?

2) Did the District ensure that the Occupational Therapy Evaluation assessed the Student in all areas relating to the suspected disability including health, motor abilities, adaptive skills and specifically activities of daily living skills and appropriate posture pursuant to 34 C.F.R. 300.304(c)(4)?

3) Did the District ensure that assessment tools and strategies were used that would provide relevant information that directly assists persons in determining the educational needs of the child pursuant to 34 C.F.R. 300.304(c)(7)?

The Parent requests that this Hearing Officer issue an Order finding that the Occupational Therapy Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Occupational Therapy, paid for at District expense. The District maintains that the Occupational Therapy Evaluation in question was appropriate in all areas pursuant to the requirement of IDEA.

(e) Nursing Evaluation dated September 25, 2014:

1) Did the Nursing Evaluation fail to use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, to determine the content of the IEP dated October 9, 2014 pursuant to the requirements of 34 C.F.R. 300.304(b)(1)(i) & (ii)?

The Parent requests that this Hearing Officer issue an Order finding that the Nursing Evaluation was inappropriate as it did not use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, to determine whether the Student was a child with a disability and the content of the Student's IEP dated October 9, 2014. The Parent is requesting that this Hearing Officer Order a comprehensive IEE in the area of Nursing, paid for at District expense. The District's position is that the Nursing Evaluation in question was appropriate pursuant to the requirements of IDEA.

(f) Social Work Evaluation dated September 26, 2014:

1) Did the Social Work Evaluation use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, in determining the content of the Student's IEP pursuant to 34 C.F.R. 300.304(b)(1)(ii)?

2) Were the assessments and other evaluation materials used to assess the Student selected and administered so as not to be discriminatory on a racial or cultural basis pursuant to 34 C.F.R. 300.304(c)(1)(i)?

3) Were the assessments and other evaluation materials used to assess the Student administered by trained and knowledgeable personnel pursuant to 34 C.F.R. 300.304(c)(1)(iv)?

4) Did the Social Worker and other qualified professionals review existing evaluation data on the Student including current classroom-based, local, or State assessments, and class-room based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii)?

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The Parent requests that this Hearing Officer issue an Order finding that the Social Work Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Social Work, paid for at District expense. The District maintains that the Social Work Evaluation in question was appropriate in all areas pursuant to the requirement of IDEA

(g) Assistive Technology Evaluation dated August 18, 2014:

1) Did the Assistive Technology Evaluation use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, in determining the content of the Student's IEP pursuant to 34 C.F.R. 300.304(b)(1)(ii)?

2) Were the assessment tools used for the purposes for which the assessments or measures are valid and reliable pursuant to 34 C.F.R. 300.304(c)(1)(iii)?

3) Were the assessments and other evaluation materials used to assess the Student administered by trained and knowledgeable personnel pursuant to 34 C.F.R. 300.304(c)(1)(iv)?

4) Did the Assistive Technology Evaluator and other qualified professionals review existing evaluation data on the child including current classroom-based, local, or State assessments, and classroom based observations pursuant to 34 C.F.R. 300.305(a)(1)(ii)?

The Parent requests that this Hearing Officer issue an Order finding that the Assistive Technology Evaluation was inappropriate as alleged above. The Parent further requests that this Hearing Officer Order a comprehensive IEE in the area of Assistive Technology, paid for at District expense. The District maintains that the Assistive Technology Evaluation in question was appropriate in all areas pursuant to the requirement of IDEA.

In summary, the Parent requests that this Hearing Officer issue an Order finding that the District's Psychological evaluation dated September 29, 2014, Speech-Language evaluation dated September 12, 2014, Physical Therapy evaluation dated October 9, 2014, Occupational Therapy evaluation dated September 30, 2014, Nursing evaluation dated September 25, 2014, Social Work evaluation dated September 26, 2014, and Assistive Technology evaluation dated August 18, 2014 are "inappropriate" thus entitling the Parent to Independent Educational Evaluations (IEEs) in

these areas at District expense. The District's position is that the evaluations in the aforementioned areas are appropriate and thus the Parent is not entitled to IEEs at District expense.

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### **FINDINGS OF FACT**

This Hearing Officer did not have the benefit of a transcript when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

#### **Psychological Evaluation**

1. Two District psychologists performed the Student's psychological evaluation.
2. PSY2 is a school psychologist with the District. She has been employed for three years in that role. Prior to her employment with the District, she worked for one year as a school psychologist with District [REDACTED]. Prior to that, she worked as a full year intern with District [REDACTED]. (Testimony of PSY2).
3. PSY2 graduated from [REDACTED] University with a Master's Degree in special education. She holds an Illinois type 73 license and a bilingual certification in Spanish. (Testimony of PSY2).
4. PSY2 performed several of the assessments with the Student because he was not cooperative with the other school psychologist, PSY1. She performed only the assessments and their scoring due to maternity leave. (Testimony of PSY2).

5. PSY2 administered the WISC-IV and the BASC-II in order to obtain a full scale IQ. She computer scored the WISC-IV answers. She shared these results with PSY1. (Testimony of PSY2; District Exhibit P. 325-328).
6. Prior to administering her assessments, she did a complete records review. (Testimony of PSY2).
7. PSY2 was familiar with the Student and knew that he required incentives in order to cooperate. Prior to administering her assessments, PSY2 spoke to several staff members who were familiar with the Student to determine which incentives would work and used those recommendations during the testing. (Testimony of PSY2).
8. PSY2 reported that the Student can be cooperative when he likes you and when testing material is not difficult. She used rewards to obtain his cooperation. She had difficulty differentiating between what the Student could not do and what he just gave up on. (Testimony of PSY2).
9. PSY2 provided the BASC-II to the Student, his Parent, and his prior special education teacher. His prior special education teacher had worked with him for several years and knew him well. His current special education teacher was new and not as familiar with the Student. (Testimony of PSY2).
10. PSY2 administered the BASC-II in English because the Student was most comfortable in English. She administered the WISC-IV in English but also provided Spanish translations when she thought it may assist him, as she is bilingual. She noted that the Student used Spanish very minimally. (Testimony of PSY2).
11. PSY2 stated that it is important to write down how a test is administered. She recorded the Student's answers but did not record when she used a Spanish translation to assist the

Student. She was satisfied that the Student understood her in both English and Spanish. However, she conceded that she did not know whether switching between the two languages confused the Student. Her failure to note the use of Spanish translation in the WISC-IV protocols did not invalidate the test results. (Testimony of PSY2).

12. PSY2 administered all of the ten (10) core subtests on the WISC-IV and believed that she obtained as much information from the Student as she was able. She spent forty-five (45) minutes in the morning and forty-five (45) minutes in the afternoon completing the core subtests with the Student. By afternoon, the Student was unwilling to continue. (Testimony of PSY2).

13. She did not feel that additional WISC-IV subtests should be administered as she did not see discrepancies in the index scores which would have prompted her to do further testing. She administered the WISC-IV core subtests and could have administered additional subtests but was not required to do so per the test instruction manual. Failure to administer additional subtests does not invalidate the test results obtained. (Testimony of PSY2).

14. She did not note any significant discrepancies in the Student's WISC-IV scores per WISC-IV manual protocol. The Student did not exhibit any behaviors which would make her question these scores. She did a cursory review of the changes in the Student's scores and noted that the Student's IQ had fallen and his verbal comprehension skills had changed significantly. (Testimony of PSY2).

15. She understood that the Student has a learning disability that effects all core areas. (Testimony of PSY2).

16. PSY2 was aware that the Student's prior special education teacher had administered the Vineland. She scored the Vineland and gave the form to teacher. In her opinion, the scores from the Vineland should be included in a full educational report. However, they were not as PSY1

was unaware of this assessment. The Student had an adaptive score of 59 on the Vineland and an IQ score of 71 on the WISC-IV. In her opinion, it was important for the IEP Team to have this information. The Student's WISC-IV score may have indicated an intellectual disability. (Testimony of PSY2).

17. PSY2 was not aware of any cautions regarding administration of the WISC-IV to bilingual students. She was aware of cautions with regard to administration of the test to students with language impairments. She was not aware of a language impairment for this Student. (Testimony of PSY2).

18. PSY2 scored the BASC-II. She did not consider the Student's prior special education teacher's ratings as being overly negative and therefore to be considered with caution. She believed that this teacher was an appropriate choice because he had known and worked with the Student for a significant period of time. (Testimony of PSY2).

19. The BASC-II scores indicate attention hyperactivity problems. PSY2 did not review this test in isolation for attention problems. (Testimony of PSY2; District Exhibit P. 327).

20. PSY1 is a Lead School Psychologist with the District. She has been employed by the District for ten (10) years. As a Lead Psychologist, she administers bilingual evaluations and leads professional development training for other District psychologists. She also supervises thirty-two (32), school psychologists and is a bilingual specialist. She has been a Lead Psychologist with the District for eight (8) years. There are two hundred twenty-nine (229) school psychologists in the District and six (6) Lead Psychologists. Prior to becoming a school psychologist, PSY1 was a first grade teacher for seven (7) years, and a special education teacher for three (3) years. (Testimony of PSY1).

21. PSY1 holds a Bachelor's Degree and a Master's Degree in bilingual special education. She holds a School Psychologist License and has a bilingual specialist certification. (Testimony of PSY1).

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22. PSY1 performed some of the Student's psychological evaluations, wrote the Psychological Re-Evaluation report, and was present at the IEP Team meeting on October 9, 2014. (Testimony of PSY1).

23. As part of her evaluation, PSY1 reviews the Student's academic history, previous evaluations, medical history, and language preference. She conducts classroom observations and administers educational evaluations, intelligence evaluations, behavioral evaluations. (Testimony of PSY1).

24. PSY1 reviewed the Student's academic history which she obtained from his student record file. She believed that his student records provided comprehensive information as they were over five hundred (500) pages in length. She performed classroom observations to see how the Student responded to his teacher and environment, and to observe his learning style. She observed the Student in two settings, a general education class and his special education classroom. She observed the Student in two settings to evaluate his behavior in both. (Testimony of PSY1; .District Exhibit P. 22-23).

25. She noted the Student's language and cultural background. Spanish was the language spoken at home. However, the Student was also proficient in English. She observed the Student in a general education English speaking classroom. She believed that it was important to know which language the Student learns best in and how it impacts his learning. She found the Student able to have conversations in both Spanish and English. The Student had no difficulty communicating with her in English. (Testimony of PSY1).

26. PSY1 also reviewed the Student's medical information because medical conditions may impact his ability to learn. The Student's medical information came from his Student records file and previous nurse reports. She noted the Student had mild hearing loss. He was also hospitalized in May 2014 and, at that time, was diagnosed with morbid obesity, hypertension, hypoventilation syndrome, obstructive sleep apnea and diabetes. He was required to use an oxygen tank twice daily. (Testimony of PSY1; District Exhibit P.23).

27. PSY1 also looked at the Student's social history. She noted that he had lived with his father until his father passed away in May 2014. After that, he was placed in the care of an aunt via DCFS while his mother sought stable housing. Based upon this information, she believed that depression might be an issue. (Testimony of PSY1;.District Exhibit P. 24).

28. PSY1 attempted to interview the Student at school on September 16, 2014 and was unable to do so. When questioned by her, the Student responded "you already know that" or "talk to my mom." She attempted to interview the Student again two days later on September 18<sup>th</sup>, as he said he would be more cooperative. However, again, he would not cooperate. She tried to interview him again one week later, on September 23<sup>rd</sup>, and the Student was still uncooperative. PSY1 tried to negotiate with him, teachers tried to bribe him, but he would not cooperate. (Testimony of PSY1).

29. PSY1 scored and analyzed BASC-2 data which included information from the Student's prior special education teacher, the Student, and the Parent. This was done to obtain an overall picture of the Student in different environments. Information from the teacher is important because it shows how he is viewed by the teacher and how he performs in class. Information from the Parent shows how the Student functions at home with friends and family and how he responds to them. (Testimony of PSY1).

30. The BASC-2 was used to assess the Student's behavior and emotional stability. His prior special education teacher reported Clinically Significant concerns in the areas of hyperactivity, aggression, conduct problem, depression, somatization, attention, leadership, adaptive and study skills. The Student reported Clinically Significant concerns in the areas of attitude toward school and teachers, depression, hyperactivity, attention problems, relationship with parents and interpersonal relations. PSY1 noted some significant concerns that require extreme vigilance and monitoring are that the Student often states that he "wants to die" and "wishes he as dead." These comments were shared with the IEP Team. (Testimony of PSY1; District Exhibit P. 31).

31. With respect to the BASC-2, the "f score" pertains to false positive responses and the same person giving inconsistent answers. PSY1 did not include the "f score" in her report but conceded that she should have included it and explained it. However, the consistency of the scores was acceptable and failing to report the "f score" did not invalidate the test results themselves. In addition, the scores of any one contributor were not be looked at in isolation. She analyzed additional data to see if the scores were supported. (Testimony of PSY1).

32. PSY1 noted previous evaluations in her report but not the scores because it is not considered best practice to do so. (Testimony of PSY1).

33. PSY1 administered the KTEA to assess the Student's academic skills. This test looks at reading, writing, reading comprehension, math concepts and math comprehension. The Student only responded to some tests – math concepts and application, math computation, phonological processing, and letter word recognition. The scores on this test needed to be viewed with caution due to the Student's uncooperative behavior and reluctance to participate in the assessment. She noted that the Student is a non-reader and was unable to respond to either reading comprehension

or written expression tasks when administration was attempted. (Testimony of PSY1; District Exhibit P. 24).

34. PSY1 attempted to administer the main subtests of the KTEA. She has experience administering the KTEA and all its subtests. She did not attempt other subtests because the Student did not respond. The Student was more resistant to subtests that required reading. She considered and attempted to administer subtests that did not require reading such as nonsense word decoding and math fluency but the Student did not respond. (Testimony of PSY1).

35. PSY2 administered the WISC-IV which assessed the Student's cognitive functioning. The Student received a Full Scale Index (FSIQ) of 71 classifying his cognitive functioning to be at the borderline range. This assessment measures intelligence, verbal comprehension, working memory, processing speed, and perceptual reasoning. (Testimony of PSY1; District Exhibit P.26).

36. The Student's Full Scale Index reflected a falling IQ score. This was possibly an indication of a gradual emotional disability. In addition, his WISC-IV verbal comprehension index fell by 22 points. This is common for students with ED and also common for students with LD who cannot access the curriculum. PSY1 did not know which explanation was the case for this Student as she did not know what instructional strategies were being used. She recommended intensive phonics instruction. It is up to the IEP team to decide the number of minutes. (Testimony of PSY1).

37. In PSY1's opinion, the WISC-IV was a valid instrument to be used for this Student given his age and language ability. He was not an English learner. He was proficient in both English and Spanish. PSY1 spoke to the Student in Spanish and he replied to her in English. There were no concerns noted by the Student's special education teacher about his English proficiency.

PSY1 was able to provide assessments to students in Spanish. However, this Student would not respond in either language. (Testimony of PSY1).

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38. In PSY1's opinion, the Student did not have an intellectual disability based upon his WISC-IV scores. Her training and experience caused her to look at his individual scores in individual areas. The Student had a Verbal Comprehension Index (VCI) of 65, a Perceptual Reasoning Index (PRI) of 79, a Working Memory Index (WMI) of 80, and a Processing Speed Index (PSI) of 85. These scores reflected some areas of significant weakness but not an intellectual disability. The two areas in which he received composite scores in the 80s were in the average range. The other three areas were below average. (Testimony of PSY1; District Exhibit p. 31).

39. The Student's WISC-IV scores led her to the conclusion that regression had occurred in several areas – perceptual reasoning and intelligence, both of which could be indications of emotional disability. She did not note any significant discrepancies in the scores as required by the WISC-IV manual because there were none. (Testimony of PSY1).

40. PSY1 made recommendations to the IEP Team as part of her report and shared her report at the IEP team meeting. She was also present at the Eligibility Meeting. She shared her report in both English and Spanish and went over the entire report with the Parent. The Parent did not voice any concerns. Based upon her report, the IEP Team determined the Student was eligible for services under the ED and SLD categories. (Testimony of PSY1; District Exhibit P. 31-32, 56, and 75).

41. The IEP Team used her report to generate the Student's IEP. Information from her report was used in the Academic Achievement portion of the IEP. It was also used to write goals for the Student. (District Exhibit P. 101, 109, 113, 117, 199, 125).

42. PSY1's report includes as much information as possible on the Student, his past history, present performance, academic performance, behavior, how he views himself, how he is viewed by his teachers and parents. Her report is comprehensive. (Testimony of PSY1).

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43. KTEA-3 scores reflected that the Student was at a 2.6 grade level for math computation and a 3.2 grade level for math concepts and applications. (Testimony of PSY1).

44. The Student was also eligible for special education services under the category of emotional disability (ED). (Testimony of PSY1).

45. The Student had had significant attendance problems. He had been absent 26 days in the 2012-2013 school year and 63.5 days in the 2013-2014 school year. He was not enrolled in school from February 17, 2014 to March 25, 2014. (District Exhibit P. 22).

46. It was difficult to determine whether the Student had a learning disability due to his inconsistent attendance at school. PSY1 was not able to determine whether the Student had dyslexia due to his inconsistent attendance. In addition, dyslexia is a medical condition diagnosis, not a school diagnosis. (Testimony of PSY1).

47. In PSY1's opinion, the disability label, ED and/or SLD, does not matter. What makes the difference is the services needed by the Student. (Testimony of PSY1).

48. PSY1 spoke to the Student's current special education teacher who confirmed that PSY1's testing results also reflected what she saw in the classroom. (Testimony of PSY1).

49. The Student's behavior is typical of a student with depression. (Testimony of PSY1).

50. Based upon the witnesses' demeanors, credentials, experience, knowledge, actions taken, and explanations as to why and how they took those actions, this Hearing Officer finds the testimony of PSY1 and PSY2 to be credible and persuasive.

51. The Parent presented testimony from Dr. G, an outside expert in psychology. Dr. G's education, experience, and credentials are contained in his curriculum vitae. (Student's Exhibit #163).

52. Dr. G had never met the Student or his Parent, did not evaluate the Student, and did not conduct any interviews with school staff or classroom observations. (Testimony of Dr. G).

53. Parent's counsel requested that Dr. G be considered an expert in the areas of psychology, social work, speech language pathology, occupational therapy, physical therapy, assistive technology, and nursing. Based upon Dr. G's education, experience, and credentials, this Hearing Officer finds that he is an expert solely in the field of psychology.<sup>4</sup>

54. In Dr. G's opinion, the psychological evaluation was insufficient. It failed to take into consideration ADHD symptomology and indications of an intellectual disability found in the Student's records. It also failed to compare the Student's results on the WISC-IV with those of a previously administered WISC-IV. However, the Student has never received a medical or educational diagnosis of ADHD. In addition, the documentary evidence Dr. G relied upon in asserting a possible intellectual disability was found in a medical report and appeared to be based upon observation alone as no quantitative information was present. (Testimony of Dr. G).

55. In Dr. G's opinion, the WISC-IV results were potentially flawed in that the scores should have been explained and, if language translations occurred during test administration, this should have been noted by the evaluator. As the extent of the Spanish-English translations is unknown, he stated the test results may or may not be valid. He further opined that the WISC-IV itself

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<sup>4</sup> During his testimony, Dr. G opined on the sufficiency of the District's evaluations in the areas of occupational therapy, assistive technology, social work, and speech language pathology. However, he admitted that he is not certified or licensed in any of these areas. In addition, Dr. G had never met the Student, did not perform any evaluations, did not conduct classroom observations, and did not conduct any interviews with school staff or the Parent. Based upon these facts and Dr. G's lack of the requisite credentials, this Hearing Officer found his testimony in these areas to be unpersuasive.

does not have a racial or cultural bias if the Student is proficient in English and he was unsure whether the Student in this case was proficient in English. (Testimony of Dr. G).

56. Dr. G. further criticized PSY1 for her inability to obtain cooperation from the Student after three separate attempts. (Testimony of Dr. G).

57. In Dr. G.'s opinion, the BASC-2 scores were of concern because the "f-scores" were not reported. However, Dr. G. based his opinion of the results of the BASC-2, in part, on the perception that the Student had a difficult relationship with one of the teachers whose input went into the BASC-2 results and whom he perceived as being overly negative in his evaluation. Other than Dr. G.'s perception, there was no testimony elicited at hearing to support this contention. (Testimony of Dr. G).

58. While this Hearing Officer found Dr. G.'s testimony to be credible, she found it to be unpersuasive. Dr. G had never met the Student, did not perform any evaluations, did not conduct classroom observations, and did not conduct any interviews with school staff or the Parent. The testimony of the District's evaluators PSY1 and 2 who interviewed the Student and his Parent, conducted classroom observations and interviews, along with reviewing the Student's medical and academic records, was found to be persuasive.

### **Speech Language Evaluation**

59. SLP has a graduate degree in Speech and Language Pathology. She is employed by the District and has been for the past twelve (12) years. Prior to her employment with the District, she worked for one year in a skilled nursing facility as a speech language pathologist. She is a licensed speech pathologist in Illinois with a certification in clinical competence, has an early intervention credential, and is a member of the American Speech and Hearing Association (ASHA). She serves in a leadership role with the District as a mentor for two new hires in her

field. She also has university interns that she supervises during clinical placements. She has served in this capacity for five (5) years. (Testimony of SLP.)

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60. SLP knows the Student, evaluated him for Speech Language services in September of 2014, and created the Speech Language report. (Testimony of SLP; District Exhibit P. 9).

61. As part of her evaluation process, she reviewed the Student's health history, performed classroom observations, interviewed the Student, conducted testing, and documented her results, findings, and recommendations in her report. She reviewed the last nursing report in preparation for her evaluation and noted that the Student was diagnosed with severe obesity, hypoventilation syndrome. She also noted that the Student had been on daytime oxygen, but was no longer at the time of her evaluation. She also reviewed the Student's hard records filed before testing which consisted of a hard document file kept at the school and online information. She noted the reason for the referral and the Student's current special education services which included goals for reading, writing, and social work. (Testimony of SLP.)

62. Prior to her evaluation, SLP spoke with the Student's classroom teacher because she sought to understand how he was communicating in the classroom. The teacher reported that she was able to understand him well. She further reported that the Student didn't talk much in class, however, his articulation was clear and the teacher was able to understand him without difficulty. (Testimony of SLP; District Exhibit P. 9).

63. Prior to her evaluation, she received information from the other clinicians. She spoke to PSY1 with regard to the Student's dominant language and learned that he was English dominant in the academic setting. She knew that the Student's paraprofessional spoke to him in both Spanish and English and that his primary classroom teacher spoke English. (Testimony of SLP.)

64. During her evaluation, SLP also spoke with the school social worker as he had worked with the Student for a long time, was very familiar with him and knew him well. The school social worker had no speech concerns with respect to this Student. He was able to communicate with the Student in the school setting without difficulty. (Testimony of SLP.)

65. SLP conducted all of her speech language testing in English as the Student is fluent in English and this is his language of instruction within the classroom setting. She reviewed a psychological evaluation conducted April 16, 2012 which reported that the Student was English dominant for academic purposes. (Testimony of SLP.)

66. SLP performed classroom observations on two separate occasions. She observed the Student on September 16, 2014 in his social studies classroom working on independent project. She observed the Student's classroom assistant trying to engage with him however, he would not engage. This observation was performed in the special education classroom. On September 26, 2014, she observed the Student in the general education setting, in gym. SLP wanted to see how the Student communicated in a small setting and also in a larger general education setting. On September 26<sup>th</sup>, she observed the Student talking to other students. He seemed to enjoy interaction and was playing goalie in the game. (Testimony of SLP.)

67. On September 12, 2014, SLP interviewed the Student to determine if the Student was able to look at her, ask questions, talk to her appropriately, and was able to understand her. The Student was very pleasant during the interview and reported that he preferred to speak to her in English. He spoke about himself and his family. He was able to maintain an appropriate conversation with her and she could understand him well. He was able to comprehend her in English and she did not need to speak to him in Spanish. The Student was attentive and cooperative during her evaluation. (Testimony of SLP.)

68. SLP performed an Oral Motor Assessment in which she determined the Student's strength, coordination, range of motion, and structure of his lips, teeth, tongue, velum, and palate were assessed to be within functional limits. (Testimony of SLP; District Exhibit P. 9).

69. SLP performed an informal Voice Assessment which revealed that the Student had a clear voice with no harshness, roughness, or breathiness. His voice was functional for educational purposes. (Testimony of SLP; District Exhibit P.9).

70. SLP performed an Articulation Assessment. During this assessment, it was revealed that the Student occasionally substituted "f" in place of "th". (Testimony of SLP.)

71. SLP performed two formal evaluations, the Peabody Picture Vocabulary Test (PPVT-III) and the Comprehensive Assessment of Spoken Language (CASTL). The PPVT is a receptive language test which measures the Student's ability to understand language. She administered the testing in a quiet office downstairs with just this Student. The Student received a standard score of 75. The average score is 100, with a standard deviation of 15. This Student's test results revealed that the Student has moderate deficits in receptive vocabulary. (District Exhibit P. 10).

72. The CASTL is a comprehensive assessment of four categories of language with subtests in each category. SLP administered the core subtests which were selected by the test creators, one subtest for each category of language. On the Semantic Synonym subtest, the Student scored 71 which suggested a moderate delayed range of his receptive vocabulary. The Student's receptive vocabulary result were consistent between the PPVT-III and the CASTL. In the Syntactic Grammatical Judgments subtest, the Student scored 80 which was a bit below the average range. This subtest requires that Student to listen to a sentence, understand if it is grammatically correct, and then fix the sentence. The Supralinguistic subtests assist in determining how the brain obtains language, thinks, and talks about it. There were two subtests

performed, Non-Literal Language and Meaning from Context. In Non-Literal Language, the Student scored 79 which was a bit below average range. In the Meaning from Context subtest, in which the Student is given an odd word has to come up with what its definition would be, the Student scored 91 which indicated that his ability was in the average range. In the Pragmatic section, which deals with social skills and the Student's ability to deal with social issues that arise, his score was 73, which indicates a moderate delay. All core subtests required by the test creators were performed. (Testimony of SLP: District Exhibit P. 10.)

73. SLP did not do any supplemental testing beyond the required core subtests because she had enough information. The subtests performed had provided her with information on every single piece of language as it related to this Student and his abilities. Based upon her evaluation and findings, SLP had enough information to qualify the Student for services and to assist in developing speech language goals for him. (Testimony of SLP.)

74. SLP's report describes her findings and explains the meaning of the scores in the report. SLP recommended speech language therapy for this Student in the academic setting. (Testimony of SLP; District Exhibit P.11.)

75. SLP was present at the IEP Team meeting held on October 9, 2014. At that meeting, she shared her report. An interpreter was present and the report was translated and explained to the Student's parent. (Testimony of SLP; District Exhibit p. 56).

76. At the IEP Team meeting, SLP's report was used to generate service minutes of speech language therapy in the academic setting and write goals for the Student. (District Exhibit P.

75).

77. Based upon SLP's evaluation, findings, and report, a pragmatic goal for social skills for the Student was developed. A vocabulary goal for the Student was developed in response to SLP's CASTL findings. (District Exhibit P. 129).

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78. SLP reported that the Student's Parent was present at the IEP Team meeting and she did not voice any speech language concerns or concerns with the SLP's evaluation and report.

(Testimony of SLP.)

79. SLP was provided with a copy of the Lindamood Bell report that the Student's parent had procured. She received the report at the IEP Team meeting and therefore did not have time to review it and speak with the evaluator to discuss findings before the meeting. She did not know the credentials of the evaluator of the Lindamood Bell report and would have liked to have known them. SLP had several concerns about this outside evaluation because it was incomplete. The Lindamood Bell report contained test scores and recommendations but no description of the evaluator's findings. This information was necessary to assist her in knowing what the report meant. SLP noted that the Detroit Test had a Standard Score of 8. This score is not possible and there was no description to assist her with understanding the report or what this meant. The report contained some description of some of the tests, but no description of how this Student performed on the test. (Testimony of SLP; District Exhibit P. 557-565).

80. SLP stated that the IEP Team considered this report and addressed the concerns raised by the report in Section 7 of the IEP. (Testimony of SLP; District Exhibit P. 79).

81. SLP placed her speech testing protocols in the loose leaf Student file the day after the IEP Team meeting. She was requested to provide those protocols two weeks before this hearing. She was unable to find the protocols at that time. SLP reviewed the Student's hard file twice and was unable to find the protocols. This does not invalidate the scores and report, even though the

protocols cannot be located at this time. Her report is comprehensive because she was able to assess the Student's needs, provide speech language service minutes, and formulate IEP speech language goals for the Student. (Testimony of SLP.)

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82. School based speech language services are different from those provided in the clinical setting. The school based services are intended to meet a Student's academic needs in order to enable the Student to access the curriculum. (Testimony of SLP.)

83. When asked if she performed the Mean Length of Utterance (MLU) test with this Student, SLP responded that she did not. The Mean Length of Utterance is not used with older children and there is existing research that supports that position. The MLU is not very helpful because older students can speak using a lot of words. (Testimony of SLP.)

84. SLP reported that the District has the Receptive Vocabulary – Expressive Vocabulary Test but she did not use it with this Student. She would have requested that assessment tool, if she had felt that it was needed. Based on her evaluation, SLP determined that the Student was impaired in the area of receptive vocabulary. She did not test the Student's expressive vocabulary but would have if she felt he had a "word find" issue. Student reported that he did not have a "word find" issue in English but had it in Spanish. SLP wrote an IEP goal that she believed was adequate to cover both impaired receptive and expressive language. (Testimony of SLP.)

85. SLP utilized both the PPVT-III and the CASTL antonym test. These tests gave her two receptive language scores to compare. As the results were consistent, this revealed that her testing results were valid. (Testimony of SLP.)

86. SLP did not see any need to test the Student in other CASTL subtest areas because she felt she had fully identified the Student's needs and had enough information to qualify the

Student for speech language services and write appropriate IEP goals. If she had felt that additional testing was needed, she would have consulted the CASTL manual and administered additional subtests. (Testimony of SLP.)

87. When asked by Parent's counsel on cross-examination to opine on the Student's reading skills, SLP deferred, stating that the District employs reading specialists and she felt this was beyond the scope of her expertise. (Testimony of SLP.)

88. Based upon this witness' demeanor, credentials, experience, knowledge, reluctance to give opinions on subject areas outside of her area of expertise, actions taken, and explanation as to why and how she took those actions, this Hearing Officer finds the testimony of SLP to be credible and persuasive.

89. Parent's counsel sought to qualify its psychology/social work expert witness, Dr. B., as an expert in the area of speech language pathology. Dr. B.'s curriculum vitae was provided. (Student Exhibit #161.)

90. This Hearing Officer initially believed that Dr. B. may have some important information in this area due to Dr. B's use of speech language protocols in psychological evaluations. However, Dr. B is not a certified speech language pathologist in Illinois and she is not licensed or certified to deliver speech services. She is not familiar with Illinois speech language protocols. She is familiar with the CASTL and is able to administer it as part of a neuropsychological evaluation. However, she has never administered the CASTL assessment. (Testimony of Dr. B.)

91. Dr. B opined that performance of the CASTL Core subtests was insufficient in this case and that the additional subtests should have also been performed in order to more specifically

identify the Student's language needs. She based this opinion on her review of the Student's records. (Testimony of Dr. B.)

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92. While this Hearing Officer found Dr. B.'s testimony to be credible, she found it to be unpersuasive. Dr. B did not evaluate the Student, did not conduct classroom observations, and did not conduct any interviews with school staff. The testimony of the District's evaluators who interviewed the Student and his Parent, conducted classroom observations and interviews, along with reviewing the Student's medical and academic records, was found to be persuasive.

#### **Physical Therapy Evaluation**

93. PT is employed as a physical therapist by CPS and has been for three years. She services the Student's school and several other schools. (Testimony of PT.)

94. PT has a Doctorate in Physical Therapy from Boston University. She is a licensed physical therapist in Illinois and is a member of the American Physical Therapy Association. (Testimony of PT.)

95. PT is familiar with this Student and conducted a full physical therapy evaluation on October 24, 2014. (Testimony of PT; District Exhibit P. 19).

96. For purposes of the physical therapy evaluation, PT looks at how the student gets around in the school environment. She specifically looks at how the Student gets around school, his ability to access his desk and materials. Clinical physical therapy is different. It looks at gross motor functioning and how it effects mobility. It is not limited by goals at school. Specifically, PT looks at classroom participation – how the Student sits at his desk, how he participates in physical education and other special classes such as music and art, how he functions in the lunch room and bathroom. (Testimony of PT.)

97. Prior to conducting her evaluation of this Student, PT reviewed the Student's school records and medical history. She reviewed the nursing report and looked at the Student's medical history and hospitalizations. She reviewed medical diagnoses and how they affect the Student's mobility in school. This Student was diagnosed with hypertension and obesity. Medical information assists her in deciding upon her formal testing. (Testimony of PT.)

98. PT reviewed the Student's peer interaction, i.e. how he moves about with other students. She observed the Student in the classroom and during transitions to recess and lunch. She observed the Student's ability to sit at his desk, access materials, move around the classroom, transition from chair to standing, pick up objects from floor, and transition from the floor to standing. The Student was able to sit upright in class both on a chair and on the floor. She did not note any tone or strength concerns which would warrant adaptive seating. The Student was able to perform all of these functions in the classroom and did not need physical therapy intervention. The Student was able to walk in hallways, negotiate around halls, stairs and other obstacles. (Testimony of PT.)

99. PT interviewed several staff members who were familiar with the Student. She interviewed the Student's physical education ("PE") teacher. The PE teacher indicated that the Student was participating well and was receiving curriculum modifications and accommodations as needed for safe and appropriate participation. The PE teacher indicated that he had no concerns regarding this Student. (Testimony of PT; District Exhibit P. 20.)

100. PT interviewed the school social worker. He and the Student were working together weekly after school work on interval circuit training. He reported that they were doing exercise sessions for approximately 20 minutes and sports outside for approximately 30 minutes. (Testimony of PT; District Exhibit P. 21.)

101. PT also performed several formal assessments. She performed the 6 minute walk test which is a standardized assessment to measure distance and endurance. The Student was able to walk 1098 feet at the time of the assessment. The norm for this Student's age is 2286 feet in 6 minutes. This Student's decreased endurance was likely due to obesity and his other medical conditions. She was slightly concerned about his endurance but stated that he was able to take rest breaks as needed. In addition, transitions in the school setting are not that long so the Student would not be expected to walk for such a long period of time. PT also performed the Timed Up and Down the Stairs assessment. She timed the Student while he walked from the bottom to the top of the stairs and back which took him 23.1 seconds. The norm for his age 8.8 seconds. However, she noted that when she was testing him, he was unwilling to participate. She further noted having seen him on previous occasions moving more quickly. (Testimony of PT; District Exhibit P. 20.)

102. PT noted that the Student traveled to and from school on his bicycle which was a distance of .6 miles each way. This was a significant daily distance and he was physically able to do it on a daily basis. (Testimony of PT.)

103. Based upon PT's observations and the reported observations of the Student's PE teacher, school social worker, and classroom, PT found that the Student was independently accessing the education environment through safe ambulation, stair negotiation, and obstacle negotiation. He demonstrated strong performance with gross motor skills and sports activities during recess, physical education, and extracurricular activities. Therefore, the Student did not need physical therapy in the school setting and no school based PT services were recommended. PT did recommend modifications and accommodations to physical education activities in order to

promote the Student's safe and appropriate participation secondary to decreased endurance.

(Testimony of PT; District Exhibit P. 21.)

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104. PT reported that a colleague presented her report at the IEP meeting. She spoke to colleague via email and in person regarding her report prior to the IEP Team meeting. Her findings were used to develop the Student's October 9, 2014 IEP. (Testimony of PT; District Exhibit P. 82, 90.)

105. PT was not aware of the Student suffering from any pain. She would not assess pain unless a child, teacher or parent reports it to her. The Student did not report any pain to her. She was not aware that the Student reported pain to the school nurse. If she knew a child experienced pain, she would investigate it further. During her evaluation, she asked the Student how he was doing (re: pain) and he did not report anything. The physical education teacher and school social worker did not report to her that the Student was experiencing any pain.

(Testimony of PT.)

106. PT's review of Student medical records reflected that his doctor indicated no precautions with respect to physical education. [REDACTED] good at advocating for himself with respect to rest breaks per PE. (Testimony of PT.)

107. Obesity does not automatically qualify a student for physical therapy services. The question to be answered is: Can the student access school setting? This Student was able to navigate the school environment. He could navigate stairs and the school building. Type II diabetes and hypertension does not automatically qualify a Student for physical therapy services.

(Testimony of PT.)

108. Based upon this witness' demeanor, credentials, experience, knowledge, actions taken, and explanations as to why and how she took those actions, this Hearing Officer finds the testimony of PT to be credible and persuasive.

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**Occupational Therapy Evaluation**

109. OT is employed by [REDACTED], a private rehabilitation facility. OT is a therapist contacted to work with the District. She follows all District rules and regulations in performing her duties. OT has worked in this capacity for 27 years. She works in a supervisory role managing occupational therapists working in the District and providing professional development training for new therapists in school based services. Her responsibilities include consultations with occupational therapist working in the District, providing direct and consultative occupational therapy services, and performing evaluations. Prior to her employment with the District, she was a pediatric occupational therapy supervisor in the hospital setting, specifically in the neonatal intensive care unit. (Testimony of OT.)

110. OT holds a Bachelor of Science degree in occupational therapy. She is a licensed occupational therapist in the State of Illinois and is certified in the USC Sensory Integration and Praxis Test. (Testimony of OT.)

111. As part of her role as a school based occupational therapist, she abides by legislation for schools. In her role, she looks primarily to find accommodations, collaborations, and modifications for students in the school environment. As part of her evaluations, she looks to see if a child can manage self-care in the school environment, respond to school routines, and transitions within the school environment. (Testimony of OT.)

112. OT knows the Student and was asked to perform an assessment because the Student was not meeting his school obligations, was unable to complete homework assignments, and was not achieving at expected levels academically. (Testimony of OT; District Exhibit P. 33.)

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113. OT conducted her evaluation on September 19, 2014. For her occupational therapy evaluations, she follows guidelines and best practice for school assessment this includes the following: reviewing student records, performing formal and informal assessments, conducting interviews, reviewing student medical records and medical diagnoses. (Testimony of OT.)

114. In this case, OT reviewed the Student's records in his educational file at school. She noted his medical information and that he had a history of medical concerns. She noted that the Student had been hospitalized in 2014 and was diagnosed with Intermittent Explosive Disorder, morbid obesity, hypertension, obstructive sleep apnea, and diabetes. She also noted that he had hypoxia and lower extremity swelling. (Testimony of OT.)

115. As part of her evaluation, OT interviewed the Student's special education classroom teacher because she wanted to see how he was functioning in current setting and how he was responding to current interventions. His teacher expressed concerns about completing work and following school routines. (Testimony of OT.)

116. OT observed the student in the classroom in the morning following him through the hall for transitions. She evaluated his sensory processing, movement, interaction with other students, and strategies used to get from place to place. She observed him interacting with other students and noted that he seemed to enjoy the experience, moved with the group, and followed cues from his paraprofessional aide. (Testimony of OT.)

117. OT observed the Student during a routine classroom assignment in which he was completing an LA assignment. As part of her assessment, she observed him with respect to self-

care, communication, ability to access the school environment and school materials. She also observed the Student getting into and out of his chair. The Student demonstrated organized movement skills. He was able to get materials from his desk and had coordination and dexterity to manage his materials. He was able to access the school environment without difficulty.

(Testimony of OT.)

118. The Student was able to perform self-help activities. He was able to get his shoes on and off, performing toileting independently, manage the lunch routine, obtain lunch items, and feed himself. He did need support to stay on task. (Testimony of OT; District Exhibit P. 34.)

119. OT evaluated the Student's underlying skills including strength, movement, tone, could he manage materials, could he sit upright, his posture, how he was performing writing of letters and numbers. She evaluated his ability to complete written work, copy from the board, copy from materials close by for written communication. She noted that the Student used a right handed mature grip with adequate pressure. (Testimony of OT.)

120. OT performed the McMasters Writing Assessment which provides a consistent way to look at near and far point copying. The Student was able to copy 6<sup>th</sup> grade work legibly completing 50 letters per min (46-91 words per minute is appropriate for a 6<sup>th</sup> grade student) which would meet the Student's needs at that time. When work was familiar, the Student's print legibility was not an area of concern. However, when working on a more difficulty task, his quality was poor. (Testimony of OT; District Exhibit P. 35.)

121. OT performed the Development Test of Visual Perception (DVPT-A) which looks at underlying skills for written communication and visual tasks used in school. The results were reliable with the exception of the Visual Closure subtest. The Student scored Superior in the Figure-Ground and Form Constancy indicating some underlying strengths for reading and math

at his academic level. The Student performed poorly on the Visual Closure subtest which measure's the Student's ability to complete a missing picture and may affect the student's ability to read. The results in this area were unreliable because once the Student had difficulty with one item, he worked quickly with poor attention failing all the remaining items. The Student scored average on the General Visual Perception indicating that many of his writing foundational skills are supporting his academic work. He scored average on Motor-Reduced Visual Perception and below average on Visual-Motor Integration, related to speed and reference to details. However, his skills did support his written work. OT also noted that she believed that the Student had the physical skills to write but putting his thoughts on paper was difficult for him. (Testimony of OT; District Exhibit P. 36.)

122. OT evaluated the Student's computer skills. Even though the Student was not familiar with the computer she used, he was able to manage it – find documents, locate programs, demonstrate touch pad and mouse skills, locate keys with vision and some familiarity. She performed the Ten Fast Fingers test and reported that the Student can type 10 words per minute. Seventeen words is the average for 5<sup>th</sup> -8<sup>th</sup> grade students. However, as the Student could not read the words provided in the test, this contributed to slower speeds. (Testimony of OT.)

123. Based upon her evaluation, OT was able to make recommendations to increase the Student's ability to complete work. She recommended strategies for the Student to assist in keeping his place when working such as a highlighter and place savers. She also recommended use of Co-Writer or word prediction software on a classroom computer. Keyboarding practice on a regular basis 3-5 days per week on a structured keyboard program. Regular use of Co-Writer and Write Out loud on the classroom computer. (Testimony of OT; District Exhibit P. 35.)

124. The Sensory Profile School Companion was completed by the Student's current special education teacher. OT did not request this information of the Student's former teacher because she was interested in knowing how the Student responded in his current setting. The Student's performance on this was characterized as Typical Performance in all areas, except for response to auditory input which was a Probable Difference. The teacher noted that the Student is distracted by noises but frequently produces noises. The Student refused to participate in the Adolescent Sensory Profile self-questionnaire and OT could not complete it. When she read the questions to the Student, they did not make sense to him so he became anxious and upset and refused to answer. OT tried questions in each of the areas of this assessment. Based upon this, she determined that this would be an inappropriate assessment for this Student. The questions were very out of context and had no meaning for the Student. In addition, the Sensory Profile School Companion is not considered as standardized for this Student due to his age. It was used to provide general information on how his sensory processing may support or interfere with functional performance and to obtain additional information that may assist in determining the Student's need for services. This instrument was utilized because the Student was unable to complete the Adolescent Sensory Profile. (Testimony of OT; District Exhibit P. 36.)

125. OT noted as part of her evaluation that the Student had inadequate attention, moved around in his seat, looked around the room, and talked to others. Based upon these observations, she recommended movement breaks, less distracting quieter areas for work, additional seating options, and a stronger behavior reinforcement program, increased personal space and increased personal space. (Testimony of OT.)

126. OT made recommendations as part of report that could be included in the Student's behavioral plan. (Testimony of OT.)

127. OT spoke to the Student in English. He understood English, followed directions read to him in English. OT did not believe the Student was unable to understand her based upon language. (Testimony of OT.)

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128. OT attended the eligibility meeting and shared her report at meeting. Based upon her evaluation, she found the Student was not eligible for occupational therapy services. However, she provided suggestions to the IEP Team and basic recommendations for an FBA. The IEP Team used her report to develop the Student's IEP. (Testimony of OT.)

129. Based upon this witness' demeanor, credentials, experience, knowledge, actions taken, and explanation as to why and how she took those actions, this Hearing Officer finds the testimony of OT to be credible and persuasive.

130. Parent's expert witness, Dr. G, opined on OT's analysis of the Student's scores on the Visual Closure subtest of the DVPT-A stating the information provided required further testing to determine the Student's visual perception, visual tracking, and visual memory skills.

131. Dr. G did not meet or evaluate the Student. He did not conduct any interviews with teachers or other school personnel, and he did not conduct any classroom observations. (Testimony of Dr. G).

132. Dr. G's curriculum vitae was provided. (Student Exhibit #163).

133. Dr. G does not possess any licenses, certification or specific work experience in the field of occupational therapy. (Student's Exhibit #163).

134. This Hearing Officer finds that Dr. G does not qualify as an expert in the field of school based occupational therapy.

135. This Hearing Officer finds Dr. G's testimony credible but unpersuasive, as he does not possess the requisite credentials to qualify as an expert in school based occupational therapy.

### Nursing Evaluation

136. SN is the school nurse. She has been employed in that role for the District for 21 years.

Prior to that, she was employed as a nurse assigned to the neuroscience unit at [REDACTED]

[REDACTED]. (Testimony of SN.)

137. SN is a certified school nurse. She is a member of the National Association of School Nurses and of the Illinois Chapter of Sigma Theta Tau International Honor Society of Nursing. (Testimony of SN.)

138. As a school nurse, her duties include medication compliance, recording of immunizations and physical exams, first aid, sending out paper work to obtain data on physical ailments, evaluations of students, and the medical part of IEPs for students that qualify. A school nurse reviews the Student's health and the impact it has on education. (Testimony of SN.)

139. SN evaluated the Student on September 25, 2014. As part of her evaluation, she reviewed the Student's school and health records and interviewed the Student, his Parent, and several teachers who had frequent contact with the Student. She also reviewed his attendance records and noted them in her report due to his history of poor attendance. Poor attendance can sometimes be an indication of health issues. (Testimony of SN; District Exhibit P. 16.)

140. SN noted that the Student had been losing weight and his daily oxygen had been discontinued. She also noted that his physician placed no restrictions on school activities. (Testimony of SN; District Exhibit P. 17.)

141. SN reviewed outside records that pertain to health. (Testimony of SN.)

142. SN interviewed the Student's Parent. She speaks to parents in order to obtain information about how the Student is functioning at home. She spoke to his mother through an interpreter. The Parent reported that the Student was diagnosed with hypertension at age 12 and

with type 2 diabetes at age 14. The Parent did not bring his list of current medications but stated that he was taking 3 separate medications. She reported that the Student had been hospitalized twice within the last year. She further reported that the Student's weight loss was not due to any specific diet, just portion control. (Testimony of SN; District Exhibit P. 17.)

143. SN requested the Student's list of medications from his Parent twice. She requested them with the assistance of an interpreter before the meeting and then on one other occasion. She did not receive the list of medications. SN needs to know about the medications a student is taking in case they have side effects that may impact the Student during school. (Testimony of SN.)

144. SN spoke to the Student as part of her evaluation. He advised that he was no longer on daily oxygen and wanted to participate in physical education activities at school. He also advised that he was taking 2 medications but did not know what they were. He also reported that he no longer had a bike but liked to ride his bike. (Testimony of SN.)

145. The Student passed recent vision and hearing screenings although SN did not perform those. (Testimony of SN; District Exhibit P. 17.)

146. SN also spoke to the school social worker who had a close relationship with the Student and the physical education teacher. As the Student no longer required daily oxygen use at school, he wanted to engage more in the school environment and physical activities with the social worker and physical education teacher. They did not observe any health concerns with this Student. However, SN raised her concerns to them. Subsequently, SN received documentation from the Student's physician which allowed him to participate in school physical activities without restriction. (Testimony of SN.)

147. SN was present for most of the eligibility and IEP meeting on October 9, 2014. She shared her report in English at that meeting. The Parent was present, as was an interpreter. The Parent did not have any questions or concerns at that time. (Testimony of SN.)

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148. The IEP Team used SN's report to generate the IEP. Information from her report is found in the medical concerns section of the IEP. Her report was also used by the IEP Team to develop the accommodations and modifications section of the IEP. She recommended consultative services with the school nurse to discuss health history and any current medical conditions. (Testimony of SN.)

149. SN tried to obtain additional current medical documentation from the Student's medical providers and from DCFS. She made several phone calls to medical providers and DCFS in spring 2014. However, her phone calls were not returned. She also attempted to obtain information about the Student's hospitalizations in 2014. She attempted contact via phone and email, and faxed forms to the hospital to have them complete and return. She spoke to the Parent and the Student about her need for current medical information. However, none was provided other than the medical form from his physician that released him for unrestricted activity at school. (Testimony of SN; District Exhibit P. 157-158.)

150. In her review of the Student's records, she noted that he had some hearing issues. However, he passed his hearing screening in 2013. Based upon that, she did not follow up any further. His previous hearing difficulties were related to ear wax impaction. As the Student passed his hearing screening, SN presumed that the issue was resolved or being treated. (Testimony of SN.)

151. SN was not aware of the Student's suspected middle ear dysfunction because she was not present for the audiologist's report. (Testimony of SN.)

152. The District Psychologist's May 1, 2009 report noted that the Conners' rating scales indicated criteria associated with attention deficit hyperactivity disorder (ADHD) and stated that the Parent may wish to follow up with a doctor regarding those findings. (Student Exhibit #80, P. 978.)

153. SN noted in her report of May 12, 2009, that the Student should be monitored for increased distractedness and inattention. However, this was due to poor attention issues caused by ear wax impaction which was also noted in her report. (Student Exhibit #79, P. 975.)

154. ADHD was not an area of suspected disability at the time of her 2014 evaluation and report. If she had believed that it was an area of suspected disability, she would have inquired further with the Parent and discussed the issue with the other members of the IEP Team. (Testimony of SN.)

155. Asthma was not an area of suspected disability. The Student did not have a medical diagnosis of asthma. The Student had been prescribed and taking albuterol in the Fall 2014. Based upon her interpretation of the doctor's report, the albuterol was not indicated for asthma. It was indicated for acute bronchitis. She did not receive and statements or information about the Student having asthma from any source. The Student complained of shortness of breath. However, it was in conjunction with going up and down stairs and, as long as he could sit down, it would resolve itself. This was not consistent with exercise induced asthma. (Testimony of SN.)

156. The Student had been obese all his life. He was diagnosed with morbid obesity and diabetes during a hospitalization in spring 2014. SN planned to follow up during her consultation with the Student with regard to the issue of diabetes. In spring 2014, SN set goals for the Student with regard to reading food labels. She knew that he struggled with reading.

However, the Student was willing to try to read food labels. She also spoke to the Student to find out if he brought lunch from home or ate school lunches. He was eating school lunches which were based upon USDA regulations. This was a healthier option for the Student.

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(Testimony of SN.)

157. SN did not know about the comments the Student had made on the BASC-2 regarding his feelings that he “wants to die” and “wishes he was dead.” This information would have been relevant to her evaluation and she would have used the information to make referrals to appropriate providers for assistance. (District Exhibit P. 31.)

158. SN was not aware that medical providers believed that the Student had an intellectual disability. She had never seen the medical documentation provided by Parent’s counsel at hearing which notes a DSM-IV diagnosis of mental retardation, severity unspecified. (Student’s Exhibit #57 P. 710-711.)

159. Based upon this witness’ demeanor, credentials, experience, knowledge, actions taken, and explanation as to why and how she took those actions, this Hearing Officer finds the testimony of SLP to be credible and persuasive.

#### **Social Work Evaluation**

160. SW is a lead social worker with the District. She has been employed with the District for eighteen (18) years as a school social worker. She is a lead social worker which means that she provides guidance to other social workers. The District has six (6) lead social workers and three hundred (300) social workers. (Testimony of SW.)

161. SW is a member of the School Social Work Association of America (SSWAA). She also holds a Bachelor's Degree and a Master's Degree in Social Work and an Illinois type 73 license.

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(Testimony of SW.)

162. SW is familiar with the Student and she completed the social work assessment. She was asked to complete the assessment because she is a lead social worker and she is fluent in Spanish. The Student's parent speaks only Spanish. She was aware of the reasons for the Student's referral for assessment (Testimony of SW; District Exhibit P. 12.)

163. As part of her social work assessment, SW reviewed the Student's school and medical records, interviewed his current and former special education teachers, interviewed the school social worker who worked closely with the Student, interviewed the Student, interviewed the Parent, and performed classroom observations. (Testimony of SW; District Exhibit P. 13-14.)

164. As part of her assessment, SW reviewed the Student's hard file at the school. She reviewed his records from Preschool to the present. From her review, she knew that the Student was struggling in school and had received special education services since 2<sup>nd</sup> grade. He had been absent from school for 70 days in the prior school years due to the illness and death of his father. (Testimony of SW.)

165. As part of her assessment, SW reviewed the Student's medical information provided by the Parent. He was hospitalized in November 2013 and was given a diagnosis of intermittent explosive disorder. He was also diagnosed with hypertension, obesity, metabolic syndrome, hypovitaminosis, sleep apnea, and Type 2 diabetes. The Student also has mild hearing loss. (Testimony of SW; District Exhibit P. 12.)

166. As part of her assessment, SW spoke with the Student's current and previous special education teachers. She also interviewed the school social worker who knew the Student well.

She provided the Strengths and Difficulties Questionnaire (SDQ) to both the Student's current and former special education teachers. The Student's current teacher was a new teacher for this Student. Both teachers completed the questionnaire. SW scored the questionnaires using an internet scoring tool. The Student's current teacher's questionnaire yielded a total difficulties scale score of 11, which falls in the close to average range. However, the Student's former special education teacher's questionnaire yielded a difficulties scale score of 27 which falls in the very high range. Areas of concern were lack of consideration for other's feelings, lack of sharing with others, disruptive behavior, failure to follow adult requests, poor attention, and poor work completion. (Testimony of SW; District Exhibit P. 13.)

167. The Student's former special education teacher reported that the Student has difficulty focusing, poor school work completion, poor motivation, engaged in negative attention seeking behavior, was very disruptive in class most days. He further noted that incentives were inconsistent and would only work for a day or two. When work became too challenging for the Student, he would shut down and refused to put forth further effort. (District's Exhibit P. 13.)

168. SW interviewed the Student's Parent on September 24, 2014. It was important to interview the Parent so the Parent can be part of the IEP Team. The Parent shared her concerns about the Student's poor academic success. She felt that he needed to be a better reader and that he was not prepared for high school. The Parent was concerned that the Student was frustrated and not able to verbalize his frustration. She further indicated that she struggles with the Student as he is not compliant at home. The Parent struggles with the Student with respect to his hygiene as he does not like to bathe. The Student is also challenging if the Parent cannot buy him what he wants at the store and has kicked her car. Spanish is spoken at home. SW spoke to the Parent in Spanish. SW learned that the family receives social security benefits, WIC, and the LINK

medical card. SW spent approximately one hour interviewing the Parent. (Testimony of SW; District's Exhibit P. 13.)

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169. SW determined that the Student's current and former special education teachers and his Parent were reliable reporters for purposes of her findings and recommendations. (Testimony of SW.)

170. SW's role as the school social worker is to assist parents with referrals to ensure they obtain all financial services and assistance for which they may be eligible. (Testimony of SW.)

171. SW interviewed the Student on Sept 24, 2014. She first attempted to interview him on Sept 19<sup>th</sup> but he refused, as he was too tired from his meetings with other clinicians. SW spoke to the Student in English, as he is proficient in English, and did not encounter any language barriers with student. The purpose of her interview was to find out what concerns the Student had and what his perspective was. SW noted that the Student was resistant to speaking with her at first, and she received many "I don't know" responses to her questions. However, she continued to prompt him. She spoke with the Student for thirty (30) minutes, informally in the hall for fifteen (15) minutes before the formal fifteen (15) minute interview. (Testimony of SW.)

172. SW observed the Student on Sept 19, 2014 in his special education class during math. She observed that he was off task, calling out and talking to other students and making noises throughout the entire time. He never completed his written assignment even after being redirected several times by his paraprofessional aide. He was non-compliant, finished two (2) out of five (5) questions and decided that he was done working. (Testimony of SW; District Exhibit P. 14.)

173. In SW's opinion, it was important to understand the Student's learning environment and his strengths. She also looked at living skills and adaptive behaviors to see where the Student was at in his home and community, as well as school environment. (Testimony of SW.)

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174. Based upon her evaluation, SW obtained enough information to make recommendations for services and supports. She recommended that social-emotional accommodations be implemented throughout the day, including but not limited to, verbal praise when appropriate; recognize and reinforce successes; utilize check-in and check-out to monitor attendance; create a list of incentives with the Student's participation; encourage the Student to think positively about the future and assist in setting attainable short-term goals so the Student can experience successes; provide the Student with leadership roles with specific responsibilities when possible to build positive social interactions with peers. Social work services were recommended in order to address concerns with self-esteem and motivation towards academic success. She recommended that social work minutes be increased and that direct and indirect consultative services be provided. SW noted that the Student was experiencing issues of grief and loss as a result of the death of his father. If the Parent chose to pursue outside counseling services, SW would provide recommendations to professionals in the community. (Testimony of SW; District Exhibit P. 15.)

175. The IEP Team used SW's report to develop social-emotional goals for the Student to be implemented by the special education teacher. (Testimony of SW; District Exhibit P. 127.)

176. SW's report was comprehensive. Her assessment was used to determine eligibility and to write appropriate IEP goals for the Student. (Testimony of SW.)

177. SW shared her report at the Eligibility Meeting. She shared her report in Spanish and the IEP Team had her written report as well. No questions were asked. The Parent indicated that

she agreed with the report and did not note any concerns. The Parent was represented by legal counsel at that time. SW was present for the IEP Team Meeting and her report was used to determine accommodations and modifications. SW also assisted with development of a behavior plan for the Student which included all areas of the academic setting and outside family information. The FBA was developed from information in her assessment along with anecdotal evidence. SW is trained to complete FBAs and in her opinion, the FBA developed was adequate to meet the Student's needs. (Testimony of SW; District Exhibit P. 147.)

178. SW met with the Parent but did not go to the Student's home. In general, she does not go to the homes of students and it is not required of school social workers to do so. She believed the Student's Parent to be a reliable reporter without SW having to visit the home. (Testimony of SW; Student's Exhibit #128 P. 1538-1549.)

179. SW knew that homework was not completed by the Student on a consistent basis. SW knew that the Student was reading at the pre-primer level. SW did not interview the Student's other siblings due to confidentiality issues. She did not review the educational level of the Parent. SW knew that there was a DCFS history with the Student but she did not speak to DCFS about its investigation as the case had been closed. (Testimony of SW.)

180. As a member of the IEP team, it is SW's job to make sure the Student receives the social work services that he needs. It is also her role to advocate for the Student's needs. It was an IEP Team decision to determine that the Student had an Emotional Disorder. She agreed with that determination due to the Student's history of poor motivation, behavioral concerns, and trauma from the loss of his father. (Testimony of SW.)

181. Based upon this witness' demeanor, credentials, experience, knowledge, actions taken, and explanation as to why and how she took those actions, this Hearing Officer finds the testimony of SW to be credible and persuasive.

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**Assistive Technology Evaluation**

182. AT is an Assistive Technology Teacher for CPS and works on a consultative basis to assist in determining the appropriate technology to meet a student's needs. (Testimony of AT).

181. Her evaluations consist of a consultation with the student's teacher and parent, classroom observations, and trial of the technology with the Student. She then makes recommendations to the IEP team based upon her findings. (Testimony of AT).

182. She has served in her current position for 8 years. Prior to that she was a teacher at CPS for 4 years. (Testimony of AT).

183. She holds a Bachelor of Arts degree in special education with an emphasis on behavioral disorders and mild to moderate cognitive disabilities, a Master's Degree and an Assistive Technology certification from Rehabilitation Engineering Society of North America (RESNA). She also holds a special education teaching certificate and has a LBSI certification from the State of Illinois. (Testimony of AT).

184. AT was the individual who administered the Assistive Technology evaluation of the Student. Based upon the school district's referral, the Student's areas of need were identified as follows: reading comprehension, language usage, written expression, access to curriculum via complex text and reading expression. (Testimony of AT; District Exhibit P. 45).

185. She conducted her evaluation on September 24, 2014 which consisted of interviews with the Parent, the Student's special education teacher, and classroom observations. She trialed

various assistive technology supports with the Student using computers that he was familiar with at the school. (Testimony of AT; District Exhibit P. 48-54).

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186. One consideration when determining the assistive technology needs of a student is how independent that student can be when utilizing the technology. She tried the speaking dictionary due to the Student's low reading level. She found that with practice the Student was able to find words, listen to them, and understand them. She further found that the Student was motivated to use this technology. Based upon this, the speaking dictionary was appropriate and its use was recommended. (Testimony of AT; District Exhibit P. 48-54).

187. There are no standardized protocols for assistive technology in Illinois. Therefore, she used the protocol comprised by the Georgia Project. The philosophy of assistive technology is to try a support, see how it works for a student then add, eliminate, or modify accordingly. She followed this philosophy for the Student's assessment. (Testimony of AT; District Exhibit P. 384-404).

188. AT also utilized the Protocols for Accommodations and Reading (PAR). She uses this tool for the reading portion of the Georgia Project. It is research based and is used to determine if a student needs a real voice or a computerized voice to understand different concepts. PAR provides leveled reading tasks to help identify a student's needs. (Testimony of AT).

189. AT also tried the portable word processor with auditory feedback. She tried this technology to see if auditory feedback would assist the Student in writing sentences more independently. However, she found that this technology did not seem to increase his ability to do work independently. He required adult assistance to prompt him with this technology. The Student had difficulty with the "th" sound blend and did best when using a paper-based

performance aid that paired a letter with an image of a word that uses that sound. Pictures assisted the Student with the sound blend. (Testimony of AT).

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190. AT also trialed word prediction software programs on the computer, specifically Cowriter and Write Outloud. These software programs provide word banks and word prediction. A student can see and hear words in order to select which one to use. This software program worked better for Student and appeared to increase his independence slightly. It functioned like a graphic organizer and provided multiple supports. She recommended use of this technology for the Student. (Testimony of AT; District Exhibit P. 50-51.)

191. AT also trialed text to speech software via a talking word processor believing that if the Student could just hear information being read to him, he could he access age appropriate curriculum. The Student was not able to do this. After the Student listened to a 109 word passage written at his reported comprehension level, he was unable to answer main idea and factual questions correctly. When the same passage was read out loud by the evaluator and chunked into 1-2 sentences at a time, the Student was able to answer one out of five factual questions correctly. The use of text to speech software did not appear to increase his ability to comprehend text. . AT believed that text to voice software would not work for this Student without modifications as he needed chunking of information and visual supports. Therefore, she did not recommend use of this technology for this Student. (Testimony of AT; District Exhibit P. 50-51.)

192. As part of her evaluation, AT spoke to the Student's special education classroom teacher, performed classroom observations, interviewed the social worker who assessed the Student, interviewed the Student's Mother, spoke to the Student's classroom assistant, and reviewed the hard copy file of the Student's records. (Testimony of AT; District Exhibit P. 48-54.)

193. Based upon her findings, AT recommended the use of desk top and lap top computers. She recommended use of the speaking dictionary because the Student was motivated to use the technology and it allowed him access to letters and their phonemic sounds, and provided the Student with more independence to decode words. She further found that the speaking dictionary could help with misspelling as it used images to assist with recall of sounds. She also recommended the Student's use of word prediction software on the computer such as Cowriter and Write Outloud. (Testimony of AT; District Exhibit P. 51-54.)

194. AT spoke with the Student's Mother on Sept. 24<sup>th</sup>. She showed her the devices and her software recommendations. The social worker assisted in interpretation as the Student's Mother does not speak English. The Student's Mother did not express any concerns at that time and seemed to be in agreement with the recommendations. She further provided the Student's Mother with her contact information. (Testimony of AT.)

195. AT provided her report and recommendations to the IEP Team to assist them in writing goals for the Student and determining appropriate supports. She was not present at the October 9, 2014 IEP meeting as her report was self-explanatory and she does not participate in eligibility decisions. She believed that her report was sufficiently comprehensive as she tried a variety of devices to determine what the Student was comfortable using and what devices provided an educational benefit. The recommendation were reflected in the Student's October 9, 2014 IEP. (Testimony of AT; District Exhibit P. 86).

196. As part of her interview with the Student's special education teacher, AT learned that while the Student's cognitive ability was determined to be at grade level 1.9, his classroom teacher used Reading A to Z at the pre-K level. She testified that it was important to know a Student's reading level in order to determine what his independence level would be with the

assistive technology devices and in order to compare it to what is expected at the Student's current grade level. She took this into consideration when evaluating the Student. (Testimony of AT; District Exhibit P. 50.)

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197. The technology trialed by AT assumed that the Student was able to decode and encode words somewhat. AT recommended use of Simon Sounds It Out because it assists with decoding and encoding, and uses pictures and sounds given to a student multiple times. The Student understood how to use program and it provided multiple supports. Classroom teachers determine how much to use this intervention, as it is a short term intervention to assist with decoding and encoding. AT believed that using this on a daily basis with other technology recommendations would assist in elevating the Student's reading level. (Testimony of AT.)

198. Assistive Technology interventions can be used by students at home. However, AT recommends that interventions are trialed at school to find out if they are effective. If they are, then the IEP Team will decide whether the technology interventions should be taken home. (Testimony of AT.)

199. AT and the classroom teachers track the recommended technology interventions and when they stop providing increased student progress, other interventions are tried. AT believes that assistive technology devices should support a student in development of specific skills, not take over those skills. She works closely with the Student's classroom teacher to use or remove technology devices based upon the supports an individual student needs. AT devices are not used for student instruction. They are used to assist the student to utilize and access the curriculum. (Testimony of AT.)

200. AT was not asked to evaluate the Student for math interventions, as it was not part of the District's referral. She testified that she was aware that low tech interventions were used to

assist the Student, such as having math word problems read aloud to him, visual cues, use of a calculator, number line, chart, and graphic organizer. (Testimony of AT.)

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201. AT was questioned about the use of voice to text or dictation software by the Student.

Indications for use of this technology would look at the following: Fluency and articulation of speech and written expression – Can the Student formulate a sentence? Can they clearly articulate a sentence/ideas? Is the student incapable of writing what they can say verbally? It was not evident that this Student was able to say more than he could write. This Student uses one word to three to four word utterances in his speech. During her evaluation, AT found that it took many prompts to get the Student to say things. Therefore, in her opinion, software such as Cowriter was more beneficial for this Student. Cowriter allowed the Student to speak and visualize at the same time and that provided more assistance than just dictation software. In her opinion, with the consistent use of this technology, the correct supports, and consistent attendance that this Student would be able to write several sentences independently within a year. (Testimony of AT).

202. AT considered voice to text software for this Student but did not believe that it was viable due to his very limited expressive language abilities. (Testimony of AT; District Exhibit P. 51.)

203. During the evaluation, AT evaluated the difference between the human voice and computer voice with this Student as she was aware that he had middle ear dysfunction. The talking word processor has both female and male voices. She found that the Student understood individual words. He had more difficulty at the sentence level and could not understand at the paragraph level. She used software with both male and female voices to passages for the Student. (Testimony of AT).

204. AT reviewed draft forms of the speech and language and social work evaluations prior to her evaluation. (Testimony of AT).

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205. Based upon AT's findings, she believed that this Student needs pictures with beginning sounds to assist him with word prediction and that word prediction software would assist with his independence. She often uses this technology with bilingual students to assist them with pulling out sounds. (Testimony of AT).

206. In her opinion book share was not an appropriate intervention for this Student as he cannot understand grade level material when it is read to him. Classroom teachers need to modify assistive technology interventions based upon the Student's level of comprehension. Book share just reads out loud to a student and the complexity of text would need to be altered.

207. She was aware from the Student's prior IEP what accommodations were currently being used. (Testimony of AT).

208. Based upon this witness' demeanor, credentials, experience, knowledge, actions taken, and explanation as to why and how she took those actions, this Hearing Officer finds the testimony of AT to be credible and persuasive.

209. Dyslexia is a medical diagnosis. The Student did not receive a medical diagnosis of dyslexia. (Testimony of PSY1.)

210. Attention Deficit Hyper-Activity Disorder (ADHD) is a medical diagnosis. The Student did not have a medical diagnosis of ADHD. (Testimony of PSY1.) While the Student's 2009 Psychological Evaluation Report indicated evidence of suspected ADHD, this Hearing Officer finds this, five (5) year old information, to be unreliable.

## 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:

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### Burden of Proof

With respect to the District's request for a due process hearing in response to the Parent's request for an IEE, the District has the burden of proof for the appropriateness of its evaluations. 105 ILCS 5/14-8.02(b); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7<sup>th</sup> Cir. 1994).

### Standards for Evaluations

A parent has the right to an independent educational evaluation (IEE) paid for at public expense if the District is unable to show that its evaluation is appropriate. 34 C.F.R. 300.502(b)(2)(i). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F. Supp. 2d873, 887 (N.D. Ill. 2003).

An evaluation must assess a student in all areas related to the suspected disability, and be sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not linked to the disability category in which the child has been classified. 34 C.F.R. §300.304(c). When conducting an evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. 34 C.F.R. §300.304(b)(1). The evaluation process must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 C.F.R. §300.304(b)(2). The evaluator must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R.

§300.304(b)(3). In addition, the District must ensure that the assessments and other evaluation criteria are selected and administered so as not to be discriminatory on a racial or cultural basis; are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; are used for the purposes for which the assessments or measures are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of such assessments.

34 C.F.R. §300.304(c). The Illinois School Code identifies a “qualified professional” as an individual who holds credentials to evaluate the child in the domain or domains for which an evaluation is being sought. 105 ILCS 5/14-8.02(g-5). In addition, the Illinois School Code sets the standard of “a carefully completed case study.” 105 ILCS 5/14-8.02(6).

#### **Psychological Evaluation**

Evaluations must be administered by “trained and knowledgeable personnel,” pursuant to 34 C.F.R. 300.304(c)(1)(iv). Two school psychologists performed the testing and evaluations of the Student. PSY2 administered the WISC-IV and BASC-2 as she was familiar with the Student and PSY1 was unable to obtain the Student’s cooperation for testing after attempting to do so on three (3) separate occasions. (FF# 4-5, 28.) PSY1 performed additional testing, classroom observations, completed the Psychological Re-Evaluation Report, and attended the IEP Team meeting on October 9, 2014. (FF# 22-24.) Based upon my findings above (FF# 20-21, 34, and 2-3), PSY1 and PSY2 were well trained, very knowledgeable, and possessed the requisite credentials to conduct the evaluations of this Student. Based upon their education, training, and experience, this Hearing Officer finds PSY1 and PSY2 to be “trained and knowledgeable personnel” within the meaning of 34 C.F.R. §300.304(c).

In conducting the evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP, including evaluations provided by the parents of the child, current classroom based observations, and tools that provide information which assist in determining the educational needs of the child. 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), 34 C.F.R. 300.305(a)(1)(i), and 34 C.F.R. 300.305(a)(1)(ii). The assessments administered must be administered for the purpose for which they are valid and reliable. 34 C.F.R. 300.304(c)(1)(iii). Based upon my findings above (FF#6, 23-24, 26-28, and 48), the psychologists used a variety of assessment tools and strategies to gather appropriate data about the Student. My findings (FF# 5, 30, and 33) reveal that the tests administered provided information on the Student's overall intelligence and cognitive functioning, behavior and emotional stability, and academic skills. Each of these tests was administered for the purpose for which it is valid and reliable in compliance with 34 C.F.R. 300.304(c)(1)(iii). (FF# 5, 30, 33.)

PSY2 was aware that the Student's prior special education teacher had administered the Vineland and, in her opinion, it should have been included in the Student's Psychological Re-Evaluation Report. However, it appears that PSY1, the report's creator was unaware of this information. (FF# 16.) This Hearing Officer does not believe that 34 C.F.R. 300.304(b)(1)(ii) requires every possible assessment tool to be completed or that every assessment performed must be included in the final evaluation report in order for the evaluation itself to be appropriate. This Hearing Officer finds that failure to include the results of the Vineland in the Psychological Re-Evaluation Report does not render the evaluation inappropriate. Parent's counsel contends that the Lindamood-Bell assessment procured by the Parent was not considered by PSY1 in her evaluation. However, the Lindamood-Bell assessment was not presented to school personnel until

the IEP Team meeting (FF#79-80.) This occurred after PSY1 had completed her report. The Lindamood-Bell assessment was considered by the IEP Team, of which PSY1 is a member, at the meeting. (FF# 80.) Based upon the testimony and documentary evidence presented, this Hearing Officer finds that a variety of assessment tools and strategies were used in evaluating the Student, in compliance with 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), 34 C.F.R. 300.305(a)(1)(i), and 34 C.F.R. 300.305(a)(1)(ii).

Assessments and other evaluation materials used to assess a child must be administered in the child's native language or other mode of communication and in the form most likely to yield accurate information unless it is clearly not feasible to do so. 34 C.F.R. 300.304(c)(1)(ii). All assessments were administered to the Student in English with PSY2 using a minimal amount of Spanish during the WISC-IV. (FF #10.) Both PSY1 and PSY2 were bilingual and could communicate with the Student in either English or Spanish. (FF# 3, 21.) However, both determined, based upon records review and interaction with the Student, that the Student was most comfortable communicating in English. (FF# 10, 25, 37.) This was corroborated by SLP, AT, OT, PT, and SW. Based upon this, the assessments and evaluation materials used to assess the Student were provided and administered in the form most likely to yield accurate information pursuant to and in compliance with 34 C.F.R. 300.304(c)(1)(ii).

Assessments must be selected and administered so as not to be discriminatory on a racial or cultural basis. 34 C.F.R. 300.304(c)(1)(i). The WISC-IV was administered by PSY2 and its results interpreted and documented by PSY1. (FF# 5, 36-37.) My findings above (FF# 17, 25, 37) reveal that PSY1 and PSY2 were aware of cautions regarding administration of the WISC-IV to English language learners. However, both had determined that this Student was proficient in English and the WISC-IV was a valid instrument to be used for this Student given his age and

language ability. Based upon this, the WISC-IV was selected and administered so as not to be discriminatory on a racial or cultural basis pursuant to and in compliance with 34 C.F.R.

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300.304(c)(1)(i).

Assessments must be administered in accordance with any instructions provided by the producer of the assessments, assess the student in all areas of suspected disability, and be sufficiently comprehensive to identify all of the child's special education and related service needs. 34 C.F.R. 300.304(c)(1)(v), 34 C.F.R. 300.304(c)(4), and 34 C.F.R. 300.304(c)(6) Based upon my findings above (FF# 12-14), PSY2 administered all of the ten (10) core subtests on the WISC-IV instrument in compliance with the test instruction manual, believed that she had obtained sufficient information, and determined that administration of additional subtests was not warranted. PSY2 provided minimal Spanish translation to the Student during the assessment and did not note this in the WISC-IV protocols. She conceded that this should have been done. However, it did not invalidate the assessment results. (FF# 11.)

Parent's counsel argues that PSY1's report fails to compare current WISC-IV scores with those done previously. However, PSY1 did review and consider the Student's prior WISC-IV scores and based upon the comparison between current and previous scores, noted that the Student had regressed in several areas which lead her to the conclusions that the Student had an emotional disability (ED). (FF# 35-39.) Parent's counsel further argues that the Student's WISC-IV scores reveal an intellectual disability which the District failed to consider. However, PSY1's interpretation of the scores reflected significant weakness in some areas, but not an intellectual disability. (FF# 38-39.)

The BASC-2 was administered by PSY2 and its results interpreted and documented by PSY1. (FF# 9-10; 29.) While PSY1 conceded that the "f score", which pertains to false positive

responses and the same individual giving inconsistent answers, was not included in her report. The “f score” should have been included in PSY1’s report and explained. However, the consistency of the Student’s scores was acceptable and failing to report the “f score” did not invalidate the test results themselves. (FF# 9-10; 18-19; 29-32.)

PSY1 attempted to administer the main subtests of the KTEA-3. However, she was unable to obtain information in all subtest areas because the Student was uncooperative. She noted in her report that these scores needed to be viewed with caution due to the Student’s uncooperative behavior and reluctance to participate in the assessment. (FF# 33-34.) Parent’s expert witness, Dr. G takes issue with PSY1’s inability to elicit cooperation from the Student. However, PSY1 attempted to obtain cooperation from the Student on three (3) separate occasions over the course of two weeks. (FF# 28.) Dr. G’s testimony is unpersuasive, as he never met or evaluated the Student. (FF# 52.)

Parent’s counsel further takes issue with the District psychologists’ failure to identify and evaluate the Student in areas of suspected disability including intellectual disability (ID), dyslexia, and ADHD. However, this Hearing Officer finds that is not the case. As indicated above, PSY1 did consider ID but based upon assessment data, did not believe that to be present with this Student. In addition, an ID determination is an IEP Team decision, not the decision of one clinician. (FF# 38-39.) With respect to dyslexia, that is a medical diagnosis, not an educational diagnosis. The Student was labeled at SLD but PSY1 found it difficult to determine whether the Student had a learning disability due to his inconsistent attendance. In addition, PSY1 did not believe that the Student’s “label” mattered, she was assessing the Student based upon his educational needs, not based upon his special education services label. (FF#45-47.)

PSY1 and PSY2 concede that mistakes were made during the course of the evaluation process, specifically failure to consider the results of the Vineland administered by the Student's former special education teacher, failure of PSY2 to note in the WISC-IV protocols the specifics of when she used a Spanish translation in an attempt to ensure the Student's understanding, and failure of PSY1 to include the BASC-2 "f scores" in her report and explain them. (FF# 11, 16, 31.) However, both PSY1 and PSY2 contend that these errors do not invalidate the assessment results themselves thus rendering the District's Psychological Re-Evaluation inappropriate. (FF#16, 31.) This Hearing Officer found the testimony of these witnesses to be credible and persuasive (FF# 50) and agrees with their conclusions. While Parent presented the expert witness testimony of Dr. G which attempted to opine to the contrary, Dr. G was unable to definitively state that these errors rendered the results of the assessments invalid. (FF# 55, 57.) Based upon the above, the Hearing Officer finds that the District's Psychological Evaluation complied with the requirements of 34 C.F.R. 300.304(c)(1)(v), 34 C.F.R. 300.304(c)(4), and 34 C.F.R. 300.304(c)(6).

The testimony of PSY1 and PSY2 was credible and persuasive. Based upon the testimony those two District psychologists, and the Psychological Re-Evaluation report, this Hearing Officer finds that the District Psychological Evaluation is appropriate in all areas.

#### **Speech Language Evaluation**

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). Based upon my findings above (FF# 59), SLP was well trained, very knowledgeable, and possessed the requisite credentials to conduct the evaluations of this Student. She also refused to opine on issues that were outside of her area of expertise. Based upon her education, training, and experience, this Hearing Officer finds SLP to be trained and knowledgeable within the meaning of 34 C.F.R. §300.304(c).

Evaluators must review existing evaluation data including current classroom-based local or State assessments, and classroom based observations. 34 C.F.R. 300.305(a)(1)(ii). My findings above (FF 61-67) illustrate SLP's extensive review of the requisite existing evaluation data in compliance with 34 C.F.R. 300.305(a)(1)(ii).

In conducting the evaluation, the evaluator must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP including evaluations provided by the parents of the child, and current classroom based observations. 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), 34 C.F.R. 300.305(a)(1)(i). During the course of her evaluation, SLP used a variety of assessment tools in order to gather data about the Student and provide a comprehensive assessment of his needs per my findings (FF# 68-72) above. She also reviewed the Lindamood-Bell assessment procured by the Student's Parent and thoughtfully articulated her concerns that this tool was incomplete because it failed to provide any descriptions of the evaluator's findings which would have assisted her in understanding the results and their meaning. (FF #79). Parent's Counsel challenged the comprehensive nature of the CASTL because SLP administered the CASTL Core subtests and not the supplemental subtests. However, SLP stated that only the Core subtests are required to be administered by the test creators in addition, the Core subtests provided her with information on every facet of language as it related to this Student and his abilities. She also noted that his receptive vocabulary results were consistent between the CASTL and PPVT-III. Based upon this information, she was able to qualify the Student for speech language services and develop IEP goals for him. (FF#73-77). In her opinion, additional subtests were not necessary because she was able to fully identify the Student's needs with the Core subtests. (FF #73, 86).

This was in compliance with 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7) and 34 C.F.R. 300.305(a)(1)(i).

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When performing assessments and evaluations, the District must ensure that materials used to assess the Student are not discriminatory on a racial or cultural basis. 34 C.F.R. 300.304(c)(1)(i). Per my findings above (FF# 63 and 67), SLP determined that the Student's primary language of communication in the school setting was English and she conducted her evaluations in English. This was corroborated by the Student's academic records and other clinicians, specifically, OT, PT, AT, SN, and SW. Based upon this, SLP complied with 34 C.F.R. 300.304(c)(1)(i).

The testimony of SLP was credible and persuasive. Based upon the testimony of SLP and her Speech Language Evaluation report, this Hearing Officer finds that the District Speech Language Evaluation is appropriate in all areas.

#### **Physical Therapy Evaluation**

In conducting the evaluation, the evaluator must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP and must select tools that provide information which assists in determining the educational needs of the child. 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7). In addition, the child must be evaluated in all areas related to the suspected disability including health and motor abilities. 34 C.F.R. 300.304(c)(4). Based upon my findings above (FF# 96-101), PT used a variety of informal and formal assessment tools to gather relevant information about this Student and assist in determining his educational needs. Per my findings (FF# 96, 106-107), she evaluated the Student in all areas of suspected disability. Based upon the information PT obtained during her evaluation, she created her report and recommendations. She determined that the Student was able to access the school environment and had no physical

limitations which would impede that access. PT did not believe that the Student required physical therapy services. Her report was presented at the Eligibility and IEP Team meetings and her findings were used to create the October 9, 2014 IEP. (FF #103-104).

Based upon the credible and persuasive testimony of PT and the documentary evidence presented, this Hearing Officer finds that PT's evaluation complied with 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7), and 34 C.F.R. 304(c)(4). This Hearing Officer further finds that the District Physical Therapy Evaluation is appropriate in all areas.

### **Occupational Therapy Evaluation**

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). Based upon my findings (FF #109-110) above, OT was well trained, very experienced, and possessed the requisite credentials to conduct her evaluations of the Student. Based upon her education, experience, and credentials, OT is "trained and knowledgeable personnel" in compliance with 34 C.F.R. 300.304(c)(1)(iv).

In conducting the evaluation, the evaluator must use a variety of assessment tools and strategies and must select tools that provide information which assists in determining the educational needs of the child. 34 C.F.R. 300.304(c)(7). In addition, the child must be evaluated in all areas related to the suspected disability including health and motor abilities. 34 C.F.R. 300.304(c)(4). My findings (FF# 111-119, 121-123, and 125) above illustrate the actions OT performed during the course of her evaluation, and the formal and informal assessment she utilized and why she utilized them. In addition, my findings (FF#117-119) reveal OT evaluated the Student in all areas of suspected disability including health, motor skills, functional strength, and self-help activities. OT's evaluation complied with 34 C.F.R. 300.304(c)(7) and 34 C.F.R. 300.304(c)(4). Based upon her evaluation and findings, the Student did not require direct

occupational therapy services. However, she made recommendations for accommodations and modifications that the IEP Team used to develop the Student's IEP and FBA and those recommendations, along with her findings, were contained in her report (FF # 123-128).

While Parent's counsel took issue with OT's use of the Sensory Profile School Companion because it was not considered a standardized assessment for this Student's age group, OT credibly testified that she had attempted to use the standardized Adolescent Sensory Profile self-questionnaire. However, when the questions on this assessment were presented to the Student, he became upset, anxious, and refused to answer. Rather than obtain no information, OT asked the Student's current special education teacher to complete the Sensory Profile School Companion in order to obtain some information about the Student. OT noted the usage of this non-standardized instrument in her evaluation report. (FF #124). "The fact that some . . . testing was administered in a non-standardized manner is not outcome determinative so long as the conditions are properly noted." *John M. v. Board of Education of Evanston Community Consolidated School District 65*, No. 01 C 1052, 2002 WL 1343560 (N.D. Ill. June 18, 2002), *see* 34 C.F.R. 300.532(c)(2).

Parent's expert, Dr. G, took issue with OT's analysis of the Student's scores on the Visual Closure subtest of the DVPT-A. OT found the scores in that area to be unreliable, as the Student, after having difficulty with one item, exhibited poor attention and worked quickly through the remaining items. (FF # 121). Based upon this, Dr. G believed further testing was required to determine the Student's visual perception, visual tracking, and visual memory skills. While Dr. G may have some familiarity with school based occupational therapy services, he has not been qualified as an expert in this area and his opinion, while credible, is unpersuasive. (FF 130-135). Based upon OT's demeanor, credentials, education, experience and knowledge, this

Hearing Officer found the testimony of OT to be credible and persuasive. (FF #135). Based upon this Hearing Officer's findings of fact and the above analysis, OT's evaluation complied with 34 C.F.R. 300.304(c)(4), 34 C.F.R. 300.304(c)(7). The District's Occupational Therapy Evaluation is appropriate in all areas.

### **Nursing Evaluation**

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). Based upon my findings (FF# 136-137) above SN is well trained, certified, and very knowledgeable and experienced. Based upon her education, training, and experience, this Hearing Officer finds SN to be trained and knowledgeable within the meaning of 34 C.F.R. §300.304(c).

In conducting the evaluation, the evaluator must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining whether the child is a child with a disability, and the content of the IEP, including evaluations provided by the parents of the child, and current classroom based observations. 34 C.F.R. 300.304(b)(1)(i) & (ii). My findings (FF #139, 141-142, 144, 146) above reflect the actions that SN undertook as part of her evaluation. My findings (FF# 143, 148-149) reflect the difficulty SN experienced in attempting to obtain medical records and information about medications the Student was taking from outside sources, the Student and his Parent. Despite these difficulties, the IEP Team used SN's report to generate the IEP. Information from her report is found in the medical concerns section of the IEP. Her report was also used by the IEP Team to develop the accommodations and modifications section of the IEP. She recommended consultative services with the school nurse to discuss health history and any current medical conditions. (FF # 148).

While Parent's counsel argued that SN failed to gather information in the areas of ADHD, asthma, obesity, and hearing thus rendering her evaluation inappropriate. This Hearing Officer finds otherwise. First, this Hearing Officer found that the Student had not received a medical or educational diagnosis of ADHD. (FF # 210, 154). Second, in her review of the Student's hospital records, she noted that he had been treated with albuterol but stated that, in her opinion, the albuterol was indicated for acute bronchitis, not asthma. (FF # 155). SN testified that she was aware that the Student was obese and had taken that into consideration in her recommendations for consultative services. (FF # 156). She was also aware that the Student had experienced hearing difficulties in the past. However, he had passed recent hearing screenings. SN was also aware that the Student was being evaluated by an audiologist. (FF #150-151). The audiologist's evaluation is not at issue as part of these proceedings.

Based upon the credible and persuasive testimony of SN and the documentary evidence presented, this Hearing Officer finds that SN's evaluation complied with 34 C.F.R. 300.304(b)(1)(i) & (ii). This Hearing Officer further finds that the District Nursing Evaluation is appropriate in all areas.

#### **Social Work Evaluation**

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). Based upon my findings (FF# 160-161) above, SW well-trained, very knowledgeable, experienced and appropriately credentialed. In addition, she is one of six (6) lead social workers in a District which employs three hundred (300) social workers. Based upon her education, credentials, experience, and position within the District, SW qualifies as "trained and knowledgeable personnel" pursuant to 34 C.F.R. 300-304(c)(1)(iv).

In conducting the evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP including information provided by the parents of the child and current classroom based observations. 34 C.F.R. 300.304(b)(1)(ii) and 34 C.F.R. 300.305(a)(1)(ii). In addition, assessments must be selected and administered so as not to be discriminatory on a racial or cultural basis. 34 C.F.R. 300.304(c)(1)(i). My findings (FF# 162-165 and 179) above detail the assessment tools and strategies used by SW.

On September 24, 2014, SW interviewed the Parent. She communicated with the Parent in Spanish. From this interview, SW was able to obtain information regarding the Parent's academic and behavioral concerns, the Student's family life, and the family's socio-economic status. (FF# 168.) SW also interviewed the Student's current and former special education teachers and provided them with the Strengths and Difficulties Questionnaire (SDQ). This instrument is a behavioral screening tool used to identify the Student's strengths and challenges within the academic setting. She obtained information on the Student's academic skills, living skills, and adaptive behaviors. (FF #166-167; 173.) The Parent and both teachers were reliable reporters and SW reviewed, considered, and noted the information she obtained in her report. She also used this information to formulate her recommendations to the IEP Team. (FF# 169.)

SW successfully interviewed the Student on September 24<sup>th</sup> to obtain information regarding his perspective and concerns. While she would have been able to communicate with the Student in Spanish, they spoke in English and the Student was proficient in English. (FF# 171). SW also observed the Student in the classroom. Through her observations, SW was able to obtain information regarding the Student's academic skills and adaptive behaviors. (FF#172.) She documented her observations and used that information to formulate her recommendations

to the IEP Team. (FF#172-173.) SW was able to use the information she obtained during her assessment to assist the IEP Team in determining the Student's eligibility for services and writing the Student's IEP. (FF#175-177; 180.)

Parent's counsel argues that the social work assessment is insufficient because SW failed to perform a home visit and adequately assess the home-school connection. However, the District is not required to assess the Student in his home environment, as the purpose of the school social work assessment is to determine the student's abilities and needs within the educational setting. While the Illinois State Board of Education's Recommended Practices & Procedures Manual for School Social Work states that "the home visit is an important element in assessing the Student's environment", such a practice is not mandated. (FF# 178.)

Based upon the credible and persuasive testimony of SW and the documentary evidence presented at hearing, SW used the requisite variety of assessment tools including Parent, Student, teacher, and school social worker interviews; school and medical records reviews; classroom observations; and formal assessment tools (such as the SDQ) in order to assist the IEP Team in determining the content of the Student's October 9, 2014 IEP. This is in compliance with 34 C.F.R. 300.304(b)(1)(ii) and 34 C.F.R. 300.305(a)(1)(ii). Assessment tools and evaluations were available to assess the Student in Spanish, had that been necessary, however the Student was proficient in English. Therefore, they were not selected and administered so as to be discriminatory on a racial or cultural bases in compliance with 34 C.F.R. 300.304(c)(1)(i). This Hearing Officer finds that the District Social Work Evaluation was appropriate.

#### **Assistive Technology Evaluation**

Evaluations must be administered by "trained and knowledgeable personnel," pursuant to 34 C.F.R. 300.304(c)(1)(iv). Based upon my findings (FF# 182-186) above, AT is well trained,

very knowledgeable, and appropriately credentialed as an Assistive Technology Evaluator. Based upon her education, experience, and credentials, AT is “trained and knowledgeable personnel” in compliance with 34 C.F.R. 300.304(c)(1)(iv).

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In conducting the evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining the content of the IEP including evaluations provided by the parents of the child and current classroom based observations. 34 C.F.R. 300.304(b)(1)(ii), 34 C.F.R. 300.304(c)(7) and 34 C.F.R. 300.305(a)(1)(ii). My findings (FF# 192) above detail the actions that AT performed to gather relevant data about the Student. In addition, AT worked with the Student directly and trialed various assistive technology supports using computers he was familiar with at the school. (FF #192). AT was aware of the Student’s current reading level and took this information into consideration when selecting the supports to be trialed as part of her assistive technology evaluation. (FF #196). Based upon this, AT’s evaluation complied with the requirements of 34 C.F.R. 300.305(a)(1)(ii) and 34 C.F.R. 300.304(c)(7).

The assessments administered must be administered for the purpose for which they are valid and reliable. 34 C.F.R. 300.304(c)(1)(iii). There are no standardized protocols for assistive technology in Illinois. Therefore, AT used the protocol comprised by the Georgia Project. The philosophy of assistive technology is to try a support, see how it works for a student then add, eliminate, or modify accordingly. She followed this philosophy for the Student's assessment. AT also utilized the Protocols for Accommodations and Reading (PAR). She uses this tool for the reading portion of the Georgia Project. It is research based and is used to determine if a student needs a real voice or a computerized voice to understand different concepts. PAR provides leveled reading tasks to help identify a student’s needs. (FF #187-188). AT trialed

various assistive technology supports with the Student including the speaking dictionary, portable word processor with auditory feedback, word prediction software, specifically Cowriter and Write Outloud, text to speech software, voice to text (dictation) software, and phonics software. (FF #189). She recommended use of the speaking dictionary, phonics software, portable word processor with auditory feedback, word prediction software, and text to speech software. (FF#193). She did not recommend voice to text (dictation) software and book share based upon the Student's abilities and individual needs. (FF #202, 206). AT documented her assistive technology findings and recommendations in her report. She shared her findings, report and recommendations with the Student's Parent. Her report was provided to the IEP Team and was utilized by them when writing the Student's IEP. Based upon the above, AT used a variety of assessment tools to gather data and those tools were used for the purposes for which they were valid and reliable in compliance with 34 C.F.R. §300.304(b)(1)(ii) and 34 C.F.R. §300.304(c)(1)(iii). This Hearing Officer further finds that AT's evaluation was appropriate in all areas.

### **CONCLUSION**

Based upon a preponderance of the evidence, the following District evaluations are determined to be appropriate within the meaning of 34 C.F.R. 300.304(c):

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Psychological Evaluation dated September 29, 2014;  
Speech Language Evaluation dated September 12, 2014;  
Physical Therapy Evaluation dated October 9, 2014;  
Occupational Therapy Evaluation dated September 30, 2014;  
Nursing Evaluation dated September 25, 2014;  
Social Work Evaluation dated September 26, 2014; and  
Assistive Technology Evaluation dated August 18, 2014.

Therefore, the Parent is not entitled to an IEE paid for at District expense in any of the above areas.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: the Parent's request for IEE's in the areas of Psychology, Speech Language, Physical Therapy, Occupational Therapy, Nursing, Social Work, and Assistive Technology is denied.

### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 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 the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL

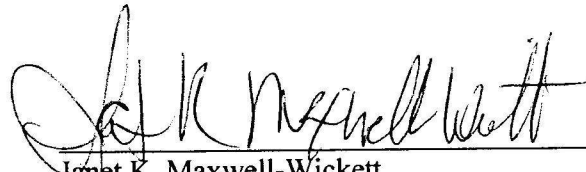
62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

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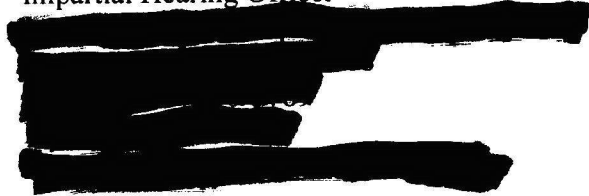
**NOTICE OF RIGHT TO APPEAL**

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: March 23, 2015



Janet K. Maxwell-Wickett,  
Impartial Hearing Officer



**APPENDIX A**

[REDACTED] v. [REDACTED]

Case No: 2015-0031

Child	[REDACTED]
Attending School	[REDACTED]
Child's Parent(s) (Mother)/Petitioner	[REDACTED]
Witnesses:	
Assistive Technology Evaluator (AT)	[REDACTED]
Speech Language Evaluator (SLP)	[REDACTED]
Social Worker (SW)	[REDACTED]
Physical Therapist (PT)	[REDACTED]
School Nurse (SN)	[REDACTED]
Occupational Therapist (OT)	[REDACTED]
Psychologist (PSY2)	[REDACTED]
Psychologist (PSY1)	[REDACTED]
Parent's Expert (Dr. G)	[REDACTED]
Parent's Expert (Dr. B)	[REDACTED]