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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

SPECIAL EDUCATION
SERVICES

█ a minor, by and through
His/her Parent(s),
Student

v.

Case No. 2017-0123

Mary Jo Strusz
Impartial Hearing Officer

█
District.

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 13-year-old female, in the seventh grade with a disability. On October 26, 2016, the Student's parents ("Parents or "Father" or Mother") filed a request with the █ School District █ ("District") for an Independent Educational Evaluation ("IEE") at public expense. On October 31, 2016, the District, through their attorney, Courtney Stillman ("Counsel"), filed a due process complaint ("DPC") seeking the appointment of an Impartial Hearing Officer ("IHO") and an order denying the Parent's request for an IEE. The Illinois State Board of Education ("ISBE") appointed the undersigned as the IHO on November 3, 2016. The IHO issued an initial status call letter, preliminary order, rights of parties related to hearing, hearing process guideline and standing order on November 7, 2016. The parents did not file a response. The parties participated in a resolution hearing on November 9, 2016. No agreement was reached.

On November 15, 2016 at 4:15 p.m., the IHO held a telephonic status conference with the Father and the District's Counsel, during which the parties agreed to set a telephone prehearing conference ("PHC") for December 28, 2016 at 10:00 a.m. The Father requested that all further correspondence be provided by email and USPS. IHO indicated that emails with attachments would be sent USPS but emails without attachments would not be mailed. The parties jointly requested a continuance of the 45-day decision timeline, to January 23, 2017, in order to accommodate the PHC date. On November 22, 2016, IHO issued the Status conference summary, Order, and Prehearing Conference notice which were sent to the District by email and to the Parents by USPS and email.

On December 19, 2016, the IHO sent an email reminder of the PHC to both parties requesting confirmation of their availability. On December 22, 2016, IHO sent another email to the parties indicating confirmation had not been received from the parents and advising the Parents that participation at the PHC was very important and to consult the notice of Procedural Safeguards for more information. IHO asked Counsel to attempt to contact the parents. Later that day, Counsel, sent an email, confirming that she had spoken to the Father who had indicated he did intend to participate in the PHC. Counsel stated that the parents had not received mail on this case and that receiving email was "sketchy".

On December 22, 2016, the District filed its PHC disclosures. On December 23, 2016, the Father sent an email request to Counsel and IHO requesting a postponement of the PHC until mid-January stating "as we are conferring with our counsel (lawyer)". IHO responded to the parties and requested a clarification about whether an attorney had been retained or whether Father was only seeking an attorney's advice. No response was received from either parent. On December 27, 2016, IHO emailed both parties that the PHC would convene as a telephonic status conference to reset the PHC date in accordance with the parents' request. At the Status Conference on December 28, 2016, the Parents failed to join the conference call. IHO continued

the status to January 6, 2017 to allow the parents the opportunity to participate in rescheduling the PHC. The District filed a motion requesting the continuance and the continuance order was sent by USPS and email to the Parent.

The recorded telephone Status Conference reconvened on January 6, 2017 at 12:00 p.m. Counsel was present, the Parents failed to join the conference call. On the record, the District made numerous attempts to contact the Father by email and by telephone (cell and home). An attempt was made to contact the Mother at her employer. Counsel and IHO remained on the telephone until 12:25 p.m., then the IHO continued the status call to 3:15 p.m. to determine if either parent would respond to the messages and to give them the opportunity to participate. Later that day, at 3:15 p.m., the recorded telephonic conference reconvened. Counsel confirmed that in the interim, neither parent had contacted her or the District. IHO set the PHC for January 17, 2017 at 9:00 a.m. Parent was given until January 15, 2017 to file the prehearing conference disclosure. A copy of the status conference summary, order and a second prehearing conference notice was sent by USPS on January 7, 2017 (with tracking confirmation of delivery) and email. USPS tracking confirmed delivery on January 9, 2017.

On January 17, 2017, a recorded PHC was held by telephone. The District was present, the Parents failed to appear. The District made several attempts to contact the Parents by cell phone, home phone. and through the Mother's employer, the District left messages requesting that the Parents' join the conference. An email was sent asking the parties to participate. There was no contact from either parent and the PHC proceeded *in absentia*. The hearing was scheduled for February 8, 2017 at the [REDACTED] School District offices. The District agreed to provide a court reporter. The District requested that the 45-day decision date be extended to March 15, 2017 to accommodate the hearing date and the request was granted. On January 17, the proposed prehearing conference report and order, along with an electronic recording of the conference was sent to the District and parent by email.

On January 21, 2017, IHO sent a letter to the Parents, (copy to the District), explaining the PHC Order and notifying the Parents of the hearing date/time and location and requesting the Parents' participation. This was sent by email, (with another copy of the PHC recording), and by USPS with tracking confirmation. The USPS confirmed delivery to the Parents on January 23, 2017.

The hearing began on February 8, 2017 at the District's offices. An official court reporter was provided by the District. The case was called at 1:05 p.m. (to allow the parent a 5-minute grace period in case of a late arrival). The District opted for a closed hearing. At the conclusion of the hearing, documents proffered were offered into evidence. IHO admitted the following exhibits: D1 (1-26); D2 (3-7); D3(1); D4 (1-30); D5 (1-15); D6(1-2); D7 (1-4); D8 (1-2); D9 (9-9); D10 (1); D11 (1-2); D12 (1-4); D13 (1-2); D14(3); D15 (1-4); D17 (1-8). Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not admitted into evidence and were not considered in the preparation of this final Determination and Order.

The District called the following witnesses: [REDACTED], Csp- School Psychologist at [REDACTED] Co-op (" [REDACTED]"); [REDACTED] CF-SLP-Speech Language Pathologist at [REDACTED]; [REDACTED] Special Education Teacher at [REDACTED]; [REDACTED] RN PEL, Certified School Nurse at [REDACTED]; [REDACTED], LSW, social worker at [REDACTED]; [REDACTED], Director of Special Services, [REDACTED] School District [REDACTED]. The hearing concluded at 2:45 p.m. and the Parents did not appear.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. IHO has considered all documents entered into evidence, testimony by

the witnesses, the District's closing argument, as well as independent research. This decision is issued within ten (10) days after the hearing's conclusion, as required by Illinois law.¹

ISSUE AND REMEDY REQUESTED

This IHO certified the following issue, at the PHC, for adjudication at the due process hearing:

Was the Student's triennial evaluation, comprehensive, appropriate, and sufficient to allow the District to develop an IEP for the Student which would provide a free appropriate public education in the least restrictive environment?

Parents' position: The letter requesting an IEE at public expense the Parents' asserted that the District's evaluation relied on insufficient testing and did not consider all of the Student's needs, they requested a functional behavioral assessment; psychological assessment and neuropsychological assessment.

District's position: The evaluations completed by [REDACTED] were appropriate and conducted in accordance and consistent with the IDEA and that no other evaluations of the Student were required.

REMEDY: An order denying the Parents' request for an IEE at public expense.

BURDEN OF PROOF

In a special education administrative hearing, the party seeking relief has the burden of proof.² The District is seeking a finding that its evaluation is appropriate and that the Parents' request for an Independent Educational Evaluation at public expense be denied. Therefore, District carries the burden of proof.

¹ 105 ILCS 5/14-8.02a(g55)(5)

² *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531, 163 L.Ed.2d 387 (2005).

FINDINGS OF FACT

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

1. The Student is a thirteen-year old female. She had been attending the PAL program at [REDACTED] and is currently attending [REDACTED] Junior High School.³ Her teacher described her as pleasant and soft spoken. ⁴ The school Psychologist described her as very cooperative and attentive student who likes to help out in the classroom.⁵
2. The Student has anxiety when faced with new tasks and is often afraid that she won't have the correct answers.⁶
3. The Student has a history of seizure disorder. In July, 2015 she started taking Keppra to control the seizure episodes. She sees a neurologist every 6 months. The last seizure occurred approximately June, 2016. The seizures are described as not tonic-clonic or (grand mal) in nature. ⁷
4. The Student has a history of receiving speech and language services targeting her language and fluency.⁸ At [REDACTED] the Student received 45 minutes of speech and language therapy each week. ⁹ She has been and continues to be eligible for services based on the identified disability of Speech or Language impairment.¹⁰ Her primary language is English.¹¹
5. The Student also receives occupational therapy and social work services. ¹²

³ Due Process Request dated October 31, 2016.

⁴ Testimony of [REDACTED], D8(1); D5-(14).

⁵ Testimony of [REDACTED], D5-(6 & 14).

⁶ Testimony of [REDACTED], D5-(2).

⁷ Testimony of [REDACTED], RN PEL, D6 (1-2).

⁸ Testimony of [REDACTED] CF-SLP, D7-(1).

⁹ Id.

¹⁰ Testimony of [REDACTED], D1-(9). D9-(6 -8).

¹¹ Testimony of [REDACTED], LSW, D4-(1).

¹² Testimony of [REDACTED], LSW D4-(2).

6. In preparation for the Student's triennial reevaluation, On September 6, 2016, [REDACTED] the [REDACTED] Psychologist, discussed comprehensive testing of the Student, with the Mother by telephone.¹³ The testing domains were discussed and agreed upon. The mother did not ask for any additional evaluations. ¹⁴
7. The Parent signed and returned the consent for reevaluation on September 12, 2016.¹⁵
8. After receiving the consent, the Student was evaluated in all domains which the mother and the IEP team agreed needed to be updated. ¹⁶
9. The psychological evaluation was conducted by [REDACTED] (" [REDACTED] ") M.A., CSP, [REDACTED] [REDACTED] currently holds an Illinois Type 73 license and is employed as a School Psychologist. In this position, [REDACTED] is responsible for completing the student evaluations for eligibility for special education services.¹⁷
10. [REDACTED] was aware that Student had anxiety issues. The testing was conducted over the span of four days to minimize the Student's anxiety, fatigue or boredom. [REDACTED] reviewed all of the Student's previous files and spoke with staff members. [REDACTED] intentionally did testing which did not involve timed subtest in order to keep Student's anxiety at bay ¹⁸ Sessions were kept short to prevent Student from becoming stressed. The Student was observed for behaviors in the classroom, interaction between Student and peers, and interaction between Student and teachers.¹⁹
11. The first test administered was the Kaufman Brief Intelligence Test (Kaufman) both verbal and nonverbal. [REDACTED] choose this test because the Wechsler Intelligence testing for children (Wechsler) is a timed test involving a stop-watch. During the testing,

¹³ Testimony of [REDACTED], D2-(3).

¹⁴ Testimony of [REDACTED]

¹⁵ Testimony of [REDACTED], D3-(1).

¹⁶ Testimony of [REDACTED]

¹⁷ Testimony of [REDACTED]

¹⁸ Testimony of [REDACTED], D5-(6).

¹⁹ Testimony of [REDACTED], D5-(1).

Student remained focused and cooperative.²⁰ On the verbal subtest, the Student obtained an IQ score of 84, which falls in the Average range of intelligence.²¹ On the nonverbal subtest, the Student obtained an IQ score of 72, which places her in the below average range of intelligence.²² █████ concluded that Student's scores were comparable to previous scores obtained in earlier testing and that this indicates that the Student is performing at her capacity and reinforces intelligence levels.²³

12. The second test administered, the CTONI-2 is a nonverbal test of intelligence. Overall, the Student received a Full Scale IQ score of 70, which falls within the Poor range of ability.²⁴
13. █████ provided the autism spectrum rating scale to both the Student's Father and Teacher (she wanted all viewpoints).²⁵ The parent's rating show that the Student was in the average range, except for peer socialization, and that the teacher's score was only slightly elevated.²⁶
14. █████ stated that the Student has little opportunity to interact and make friends at SPEED due to her peer's being "very special". The Student predominately socializes with adults. The Student keeps feelings to herself and can't identify with others feelings. The Student does not speak in ways other children speak. Student is cooperative and likes to help her peers.
15. █████ concluded that the Student does not have autism.²⁷

²⁰ Testimony of █████, D5-(6).

²¹ Testimony of █████, D5-(2 & 6).

²² Testimony of █████, D5-(2 & 6).

²³ Testimony of █████, D5-(2 & 7).

²⁴ D5-(8).

²⁵ Testimony of █████, D5-(10)

²⁶ Testimony of █████, D5 (10-13).

²⁷ Testimony of █████. The Report for case Study, Psychological Evaluation concludes that the results from the ASRS teacher ratings put student total score in the slightly elevated score range indicating that she has symptoms directly related to the DSM-5 diagnostic criteria and is exhibiting many of the associated features characteristic of autism Spectrum Disorder, (D5-15), this is noted only for the record. This information does not go to the validity of the evaluation process and in the absence of evidence to the contrary was not considered.

16. [REDACTED] testified that she did not see any reason why a psychoneurological evaluation would be necessary. The psychological evaluation covered all the testing needed for the IEP and that the completed testing was sufficient to develop an individualized IEP.²⁸
17. [REDACTED] consistently followed all instructions for the testing provided by the producer. The tests administered were valid and consistent with previous testing and were not influenced by any cultural, racial or other bias.²⁹
18. On October 14, 2016, [REDACTED] codified her findings, in a Report for Case Study, Psychological Evaluation.³⁰ [REDACTED]'s report was sufficient and comprehensive enough to assist the IEP team in drafting an IEP for the Student.³¹ The IEP conference was held on October 26, 2016. [REDACTED] was present and her report was considered during the IEP Evaluation/Eligibility Review.³² The evaluation and IEP meeting were conducted within the 60-school day window after parent consent.³³
19. [REDACTED] performed the academic testing using the Peabody Individual Achievement Test-Revised (Piat-R), This was described as a general information test in reading and math.³⁴ The reading recognition score was 92 which was in the 30th percentile for twelve-year olds who took the test and that the combined reading and comprehension yielded a standard score of 88 and percentile rank of 21 meaning that Student scored the same as or better than 21 percent of the twelve- year olds who took the reading subtests.³⁵ The Student's math scores were borderline.³⁶ The

²⁸ [REDACTED] testimony.

²⁹ [REDACTED] i testimony.

³⁰ [REDACTED] i testimony, D5-(1-15).

³¹ [REDACTED] i testimony.

³² [REDACTED] i testimony, D9-(1-9).

³³ [REDACTED] i testimony. Various exhibits.

³⁴ [REDACTED] i testimony. D5-(3 & 9).

³⁵ [REDACTED] i testimony. D5-(9).

³⁶ Id.

Student's math performance yielded a standard score of 81 and a percentile rank of 10, meaning that her total test score is the same as or better than 10 percent of the twelve-year olds who took the subtests. ³⁷ [REDACTED] compared the results of the Piat-R to previous testing and found that the Student's scores were comparable to previous scores. [REDACTED] determined that the Student was performing at her capacity. [REDACTED] compared the Student's academic and cognitive skills, in reading and math, and determined that the student did have a visual processing problem which translated to a weakness in math. ³⁸

20. The Student's teacher, [REDACTED], BA, Social Work (1986), Professional Educator license (2010) and alternative certificate LDS-1 (2016) stated that she has been at [REDACTED] for 5 years and that she is a first-year teacher at [REDACTED]

21. [REDACTED] evaluated the Student in the domain of reading and math.³⁹ Her assessment consisted of observations, classroom experience, and formal testing using the Brigance Diagnostic Comprehensive Inventory of basic Skills Revised testing. ("Brigance")⁴⁰ [REDACTED] consistently followed all producer's instructions for the testing. The tests were valid and consistent with previous testing and were not influenced by any cultural, racial or other bias.⁴¹ The evaluation results show growth and gains between the 2013 and 2016 evaluation.⁴² The results were consistent with her classroom observations. She codified her findings in an Educational Assessment for Student October 2016.⁴³

³⁷ D5-(10).

³⁸ [REDACTED] testimony.

³⁹ [REDACTED] Testimony. D2-(5).

⁴⁰ [REDACTED] Testimony. D8-(2).

⁴¹ [REDACTED] Testimony.

⁴² [REDACTED] Testimony.

⁴³ D8-(1-2).

22. [REDACTED]'s report was sufficient and comprehensive enough to assist the IEP team in drafting an IEP for the Student.⁴⁴ [REDACTED] was present and her report was considered during the IEP Evaluation/Eligibility Review conference held on October 26, 2016.⁴⁵

23. The speech/language evaluation was conducted by [REDACTED] ([REDACTED]), CF-SLP, B.S in Communication Sciences and Disorders, (2014). The CF designation indicates that he is on a Clinical Fellowship and has a mentor. He has a Professional Educator License (2016) and a Speech Language Pathologist (non-teaching) certification (2016). He is qualified to screen, evaluate and treat students in the area of speech language pathology. [REDACTED] has provided weekly speech language therapy for the Student in addition to assisting with reading and comprehension.⁴⁶

24. [REDACTED] evaluated the Student in the domain of speech/language. The assessment consisted of personal observations and interactions with the Student, teacher input, file review, therapy progress and formal testing.⁴⁷ The assessment process took one day and one hour to complete.⁴⁸ Pajak codified his findings in a speech and language evaluation dated October 26, 2016⁴⁹

25. [REDACTED] assessed the Student using the Oral and Written Language Scales-Second edition (OWLS2), which were designed to help determine the existence of language delays and disabilities, and help guide eligibility for services and intervention planning.⁵⁰ The OWLS2 are comprehensive and give an overall view of a student's

⁴⁴ [REDACTED] testimony.

⁴⁵ [REDACTED] testimony. D9-(1).

⁴⁶ [REDACTED] testimony.

⁴⁷ [REDACTED] testimony. D7-(1).

⁴⁸ Id.

⁴⁹ [REDACTED] testimony. D7-(1-4).

⁵⁰ [REDACTED] testimony, D7-(1).

speech and language development.⁵¹ At the 2013 reevaluation, the Student was tested using the OWLS2.⁵²

26. The results of the OWLS2 testing showed that the Student tested better in 2016 than in 2013.⁵³ ██████ concluded that Student had met or exceeded all of the 2013 goals.⁵⁴ His report was sufficient to assist the team to understand the Student's ongoing needs and to develop an individualized IEP.

27. ██████ consistently followed all producer instructions for the testing. The tests were valid and consistent with previous testing and were not influenced by any cultural, racial or other bias.⁵⁵

28. ██████'s report was sufficient and comprehensive enough to assist the IEP team in drafting an IEP for the Student. ██████ was present and his report was considered during the IEP Evaluation/Eligibility Review conference held on October 26, 2016, he felt his report was sufficient to assist the team to understand the Student's ongoing needs and to develop an IEP that would provide a free appropriate public education in the least restrictive environment.⁵⁶

29. ██████ ("██████") RN, BS in Nursing (1986), school nurse, holds a BS in nursing. ██████ has a Professional Educator license (1999) and a School Nurse Endorsement (1999). ██████ completed the Student's health evaluation.⁵⁷

30. ██████ updated the Student's medical history, based on discussions with the Student's Father and ██████ to include the Student's seizure disorder and medication. The

⁵¹ Id.

⁵² ██████ testimony. D1-(6) ██████ explained that the 2013 evaluation (D1-6) shows that the testing used was OWLS 4, he explained that OWLS 4 does not exist and did not exist in 2013, and he speculated that this was a typographical error.

⁵³ D7-(2) and D1-(6).

⁵⁴ ██████ testimony.

⁵⁵ Id.

⁵⁶ ██████ testimony. D9-(2) (6-8)

⁵⁷ ██████ testimony.

Student's vision and hearing history were also updated. The Student already wears corrective glasses. The Student passed a hearing screening in May of 2016.⁵⁸ [REDACTED] did not note any other medical issues.

31. [REDACTED] completed a Health update.⁵⁹ [REDACTED]'s report was sufficient and comprehensive enough to assist the IEP team in drafting an IEP for the Student. [REDACTED] was present and her report was considered during the IEP Evaluation/Eligibility Review conference held on October 26, 2016.⁶⁰ [REDACTED]'s report was sufficient to assist the team to understand the Student's ongoing medical needs and to develop an IEP that would provide a free appropriate public education in the least restrictive environment.⁶¹

32. [REDACTED] ([REDACTED]), MA, social work (2011), holds a professional education license, a Type 73 certification for social work, and an Illinois Social work license. [REDACTED]'s responsibilities at [REDACTED] include group and individual counseling, adaptive behavior assessments, and behavioral planning. She provides transition services to students moving out of [REDACTED]. She provides positive behavioral intervention support.⁶²

33. [REDACTED] completed a social developmental study update for the Student on September 28, 2106.⁶³ The study's purpose was to assess cultural levels of function, ability levels, and to determine special education services.⁶⁴ [REDACTED] reviewed the existing records, conducted an interview with the Student's father, consulted with other professionals and observed the Student in her environment.⁶⁵

⁵⁸ [REDACTED] testimony. D6-(1-2).

⁵⁹ Id.

⁶⁰ [REDACTED] testimony. D9-(2) (5).

⁶¹ Id.

⁶² [REDACTED] testimony.

⁶³ [REDACTED] testimony. D4 (1-3).

⁶⁴ [REDACTED] testimony. D2-(5).

⁶⁵ Id.

34. There are no significant cultural differences within the community that would impact the Student's learning. The Student is verbal and ambulatory.⁶⁶
35. [REDACTED]'s requested the Father and the [REDACTED] complete a Behavior Assessment System for Children, (BASC2) to assess Student's behavior and emotional state within the home and school environments. The BASC 2 was also given to the Student in the 2013 reevaluation. At the 2013 evaluation, quite a few at risk areas were noted.⁶⁷
36. The parent completed the BASC 2 and reported that there were no significant deficits. The Parent reported that in activities of daily living, the Student needed verbal reminders.⁶⁸ [REDACTED] reported that the Student showed a few areas of concern: withdrawal (doesn't interact with peers and plays mother role); and anxiety (might start crying about a wrong answer or mistake and has a fear of thunderstorms).⁶⁹
37. [REDACTED] compared the two assessments and found that the testing showed that the Student had matured and was able to handle emotions better. This determination was consistent with her observations. That [REDACTED]'s results alone were insufficient to determine the presence of a disability. In [REDACTED]'s opinion, the Student's deficits were not significant and that no further testing was required. [REDACTED] found that Student did not exhibit any behavior issues and that the Student did not need a Functional Behavior Analysis (FBA).⁷⁰
38. The results of [REDACTED]'s evaluation were valid and consistent with previous testing and was not influenced by any cultural, racial or other bias.
39. On October 26, 2016, an IEP Team meeting was held by the School District to discuss and review the reevaluation. At that meeting both Parents, the special education

⁶⁶ [REDACTED] testimony. D4 (1).

⁶⁷ [REDACTED] testimony. D1-(7) states that per parent report, Adaptive Behavior was at-risk in areas of Anxiety, somatization [sic] atypicality, attention problems and functional Communications.

⁶⁸ [REDACTED] testimony. D4-(2).

⁶⁹ [REDACTED] testimony. D4-(3).

⁷⁰ [REDACTED] testimony.

teacher, [REDACTED], Speech and language pathologist, [REDACTED] School Social Worker, [REDACTED] School Psychologist, [REDACTED] and the School Nurse, and [REDACTED] were present. Additionally, Dr. [REDACTED] (the LEA representative), an occupational therapist, the school principal and assistant principal were present. ⁷¹

40. Dr. [REDACTED], MSW, 1988, licensed in clinical social work, Dist. [REDACTED] Director of student services, in charge of instructional leadership, professional development, staff evaluations, homeless student education liaison, DDFD liaison and bully prevention leader was present at the IEP team meeting. She reviewed the [REDACTED] evaluations presented and she determined that they were sufficient to develop an IEP for the Student in accordance with IDEA and Illinois law. ⁷²

41. All of the IEP team members' evaluations were presented to the Parents, reviewed, and considered in the drafting of the Student's October 26, 2016 IEP. ⁷³

42. At the IEP meeting, [REDACTED] explained the results of her evaluations to the Parents. She did not remember the Parents asking questions or voicing any concerns. ⁷⁴

43. At the IEP meeting, [REDACTED] explained his evaluation/testing to the Parents and they had no questions or concerns. That the evaluation was accurate. [REDACTED] found the Student eligible for speech services weekly in the amount of 45 minutes per week. ⁷⁵

44. At the IEP meeting, [REDACTED] explained her evaluation to the Parents. They had no questions or concerns. ⁷⁶

45. At the IEP meeting, [REDACTED] presented her health update. The parent had no questions or concerns. ⁷⁷

⁷¹ D9-(1-9)

⁷² Dr. [REDACTED] testimony.

⁷³ Testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

⁷⁴ [REDACTED] testimony.

⁷⁵ [REDACTED] testimony. D7-(4).

⁷⁶ [REDACTED] testimony.

⁷⁷ [REDACTED] testimony.

46. At the IEP meeting, [REDACTED] presented her evaluation/testing to the Parents. She recalled the Parents' voicing a concern that the Student needs verbal reminders for daily activities. She advised the Parents that based on her observations and work with the Student that no behaviors that are harmful/disruptive were noted. There were no other questions or concerns posed by the Parents.⁷⁸
47. At the IEP meeting, the IEP team recommended that the Student move to a less restrictive program at [REDACTED] Junior High.⁷⁹
48. Dr. [REDACTED], MSW, 1988, licensed in clinical social work, Dist. [REDACTED] Director of student services, in charge of instructional leadership, professional development, staff evaluations, homeless student education liaison, DDFD liaison and bully prevention leader testified that she was present at the IEP team meeting. Dr. [REDACTED] reviewed the [REDACTED] evaluations presented and she determined that they were sufficient to develop an IEP for the Student in accordance with IDEA and Illinois law.⁸⁰
49. On October 26, 2016, following the IEP meeting, the Parent provided Dr. [REDACTED] with the Parents request for an IEE at public expenses in the areas of Functional Behavioral Assessment, Psychological Assessment (cognitive, behavior, Attentional) and Neuropsychological.⁸¹ The Father told her that he was having an outside evaluation done of the Student in December, 2016. Dr. [REDACTED] has had no further contact with either Parent.⁸²
50. The Student is currently attending classes.⁸³

CONCLUSIONS OF LAW

⁷⁸ [REDACTED] testimony.

⁷⁹ Various testimony.

⁸⁰ Dr. [REDACTED] testimony.

⁸¹ Id.

⁸² Id.

⁸³ Dr. [REDACTED] testimony.

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:

The purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."⁸⁴ Evaluations are necessary to determine whether a Student has a disability, as well as the type and extent of the Student's need for services. The IDEA requirements for evaluations are set forth at 34 C.F.R. §§300.304-300.311. A District must conduct evaluations that ensure a child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.⁸⁵ Evaluations must be comprehensive. Evaluations are required to assist IEP program teams to properly plan for the special education and related services that a student needs.

The IDEA differentiates between initial evaluations⁸⁶ and reevaluations of services for students already receiving services⁸⁷. The IDEA requires a triennial reevaluation, unless the Parent and public agency agree otherwise.⁸⁸ The Illinois School Code 23 IAC §226.120 states that procedures for the completion of reevaluations of children for whom special education and related services are currently being provided shall conform to the requirements of 34 CFR §§ 300.303-300.306 and 300.309. In conducting a reevaluation, the IEP Team must determine whether any additions or modifications to special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child.⁸⁹

Districts may meet their evaluation requirements by providing the assessments from

⁸⁴ Bd of Educ. v. Rowley, 458 U.S. 176, 179-91 (1982).

⁸⁵ 34 C.F.R. §§300.304 (c)(4)

⁸⁶ 34 C.F.R. § 300.301

⁸⁷ 34 C.F.R. § 300.303

⁸⁸ 34 C.F.R. § 300.303(b)(2)

⁸⁹ 34 C.F.R. § 300.305 (a)(2)(iv)

their own evaluators or securing them from qualified outside evaluators.⁹⁰ The District must obtain informed consent prior to conducting any reevaluation of the student.⁹¹ The State mandated timeline in Illinois for the reevaluation to take place is no later than 60 school days following the date the parent signs the written consent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed.⁹² When completing the evaluation, the evaluator must conform to the procedural requirements set out in the IDEA regulations at 34 C.F.R. §§300.304-300.311.

If the parent disagrees with an evaluation obtained by the public agency, a parent has the right to an independent education evaluation (IEE) paid for at public expense.⁹³ The 2006 IDEA regulations limited the parents to only one IEE at public expense each time the school district conducts an evaluation with which a parent disagreed.⁹⁴ In Illinois, that request must be in writing to the local school district superintendent.⁹⁵ If the parent requests an IEE at public expense, the public agency must, without unnecessary delay either file a due process complaint to request a hearing to show that its evaluation is appropriate or provide the IEE.⁹⁶

DISCUSSION

An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F. Supp. 2d 873,887 (N.D. Ill 2003).

The Parents request for an IEE at public expense was in writing to the School District, it was not specifically directed to the Superintendent, however, its delivery to the District offices

⁹⁰ 34 C.F.R §300.306

⁹¹ 34 C.F.R §300.301(a)(1)(i)

⁹² 23 IAC §226.110(d)

⁹³ 34 C.F.R. § 300.502 (b)

⁹⁴ 34 C.F.R. § 300.502.

⁹⁵ 23 Ill. Admin. Code §226.180(a)

⁹⁶ 34 C.F.R. § 300.502 (b)(2)

was sufficient to put the Superintendent on notice that the request had been filed and cause the District to file the DPC. The DPC was filed, without unnecessary delay, five (5) days after the receipt of the Parents IEE request. The IEE request asked for three (3) different evaluations of the Student. Under the IDEA, the Parents are only entitled to request one evaluation. Since the Parents did not participate in the due process hearing, their preference cannot be determined.

The Evaluation procedures provided in 34 C.F.R. §300.304 (a) states that the public agency must provide notice to the Parents that describes any evaluation procedures the agency proposes to conduct. The domain meeting for this Student was conducted by [REDACTED] by telephone with the mother. [REDACTED]'s uncontradicted testimony is that she explained the evaluation procedures and the domains for proposed testing. [REDACTED] also explained that Motor skills domain would not be tested. The regulations indicate that a School District is not required to complete additional evaluations or assessments, where a team deems them unnecessary, unless a parent requests those assessments. No evidence was presented to suggest that either parent explicitly requested additional assessments or evaluations be conducted. In fact, the evidence presented was that the mother did not voice any concerns about the reevaluation process or the proposed domains to be tested and following this meeting the signed parental consent was returned to the District.

34 C.F.R. §300.304 (b) provides "that in conducting the evaluation, the public agency must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the children; (2) 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; (3) use technically sound instruments that may access the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors." In addition, the District must ensure that the assessments and other evaluations 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; and 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 sought or an intern working under the direct supervision of a qualified professional, including a master's or doctoral degree candidate.⁹⁷ These standards must be applied for each domain in which the student was tested.

Psychological testing: ██████ presented sufficient credible credentials to establish that she is a licensed school psychologist; that she reviewed the Student's previous evaluations and IEP, discussed the Student with the Parent and Teacher and was sufficiently familiar with the Student that she could obtain her cooperation in testing. ██████ testified that she performed the Kaufman Test, she chose this test specifically because she believed the Wechsler Intelligence testing, a timed test on which the previous IEP was based, would be too stressful for the Student. ██████'s testing was not influenced by any cultural, racial or other bias; and Laski followed all instructions provided by the producer of the assessment. ██████ was very considerate of the student's anxiety issues and took the steps she considered necessary to obtain the best possible testing situation for the Student. ██████ used a variety of assessment tools and strategies which were consistent with and comparable to previous testing. Additionally, ██████ considered the input of the Parents and the Teacher in completing her evaluations. In ██████'s considered opinion, no further testing of the student was required and she had obtained sufficient

⁹⁷ 105 ILCS 5/14-8.02(g-5).

information to complete her evaluation and assist the IEP team in developing an IEP for this student which would provide FAPE in the LRE. Based upon the evidence presented and the testimony of [REDACTED], I find that [REDACTED] qualifies as trained and knowledgeable personnel, that that the testing provided was not discriminatory on a racial or cultural basis, that language was not an issue in testing, that the testing used was valid and reliable, and that [REDACTED] followed the producer instructions in administering the testing. Therefore, the requirements of 34 C.F.R §300.304(c) have been met. [REDACTED]'s testimony regarding her consideration in choice of testing for the Student was well thought out and credible. [REDACTED] used a variety of assessment tools and strategies and her use of these tests is found to be technically sound in accordance with 34 C.F.R. § 300.304 (b)(1)(ii). Her report was provided to the IEP Team and was utilized by the IEP team when drafting the Student's IEP.

Based upon the conclusions of law, the credible testimony of [REDACTED], and the Psychological Evaluation, it is found that the District Psychological Evaluation was conducted timely and is appropriate in all areas.

Academic Testing: [REDACTED] also testified that she performed the Piat-R testing. The testing Laski administered was not influenced by any cultural, racial or other bias. [REDACTED] followed all instructions provided by the producer of the assessment. [REDACTED]'s report was provided to the IEP Team and was utilized by the IEP team when drafting the Student's IEP. Therefore, for this testing, it is found that, the requirements of 34 C.F.R §300.304(c) have been met.

The Student's Teacher, [REDACTED], presented sufficient credible credentials to establish that she is a licensed professional educator. [REDACTED] sufficiently familiar with the Student that she could obtain her cooperation in testing. [REDACTED]'s assessment consisted of her classroom observations, experience and formal testing using Brigance. The tests [REDACTED] administered were

not influenced by any cultural, racial or other bias. ██████ followed all instructions provided by the producer of the assessment. ██████ completed five sub tests, (word recognition, grade placement, reading comprehension, writing, math, grade placement and numbers), with the Student. ██████ concluded that the testing results showed that the Student demonstrated growth and gains in the areas tested and that those results were consistent with ██████'s observations as the Student's Teacher and in comparison, to the 2013 Brigance testing. Based upon the evidence presented and the testimony of ██████, I find that ██████ is a trained and knowledgeable personnel, that that the testing provided was not discriminatory on a racial or cultural basis, that language was not an issue in testing, that the testing used was valid and reliable, and that ██████ followed the producer instructions in administering the testing. ██████'s report was provided to the IEP Team and was utilized by the team when drafting the Student's IEP. Therefore, for this testing, the requirements of 34 C.F.R §300.304(c) have been met.

The psychologist and Teacher used two different methods to analyze the academic potential of the Student. Together they used a variety of assessment tools and strategies and their use of these tests is found to be technically sound in accordance with 34 C.F.R. § 300.304 (b)(1)(ii).

Based upon the conclusions of law, the credible testimony of ██████ and ██████, the analysis of the Student and the Academic Evaluations presented by ██████ and ██████, it is found that the District Academic Evaluation was conducted timely and is appropriate in all areas.

Speech Language Evaluation: ██████ presented sufficient credible credentials to establish that he is a professional educator, and a speech language pathologist. ██████'s evaluation consisted of his observations of the Student, teacher input, file review, therapy progress, and formal testing. ██████ believed Student put forth her best efforts throughout the

assessment. [REDACTED] testified that only one formal assessment was completed the OWLS 2. This testing was consistent with the 2013 testing, which was also the OWLS 2 and provided him with a point of comparison. The testing [REDACTED] administered was not influenced by any cultural, racial or other bias; and that he followed all instructions provided by the producer of the assessment. He used a variety of assessment tools and strategies which were consistent with and comparable to previous testing. Based upon the evidence presented and the testimony of [REDACTED], I find that [REDACTED] qualifies as a trained and knowledgeable personnel. The testing provided was not discriminatory on a racial or cultural basis, that language was not an issue in testing, that the testing used was valid and reliable, and that [REDACTED] followed the producer instructions in administering the testing. Therefore, the requirements of 34 C.F.R §300.304(c) have been met.

[REDACTED]'s testimony regarding his testing of the Student was well thought out and credible. He carefully reviewed the previous testing, noting the error on the identification of the test provided in 2013. He used a variety of assessment tools and strategies and his use of these tests is found to be technically sound. His report was provided to the IEP Team and the IEP team utilized it when they drafted the Student's IEP.

Based upon the conclusions of law, [REDACTED]'s credible testimony and the Speech Language Evaluation, it is found that the District's Speech Language Evaluation was conducted timely and is appropriate in all areas.

Health Evaluation: [REDACTED] presented sufficient credible credentials to establish that she is a registered nurse, with a professional educator license and a school nurse endorsement. [REDACTED] reviewed the hearing testing from May, 2016 and found the test to be proper and determined that no additional hearing evaluations would be necessary. [REDACTED] based assessment on her observations of the Student, teacher and parent input, and file review. I find

that [REDACTED] qualifies as a trained and knowledgeable personnel within the meaning of 34 C.F.R. §300.304(c). In [REDACTED]'s opinion, no additional health testing was necessary. [REDACTED]'s testimony regarding her observation of the Student was well thought out and credible based on her experience. [REDACTED]'s report was provided to the IEP Team and was utilized by the team when drafting the Student's IEP.

Based upon, the conclusions of law, the credible testimony of [REDACTED] and the health update, it is found that the District's health evaluation was conducted timely and is appropriate.

Social Developmental Evaluation: [REDACTED] presented sufficient credible credentials to establish that she is a professional educator, with a School Social Worker endorsement from ISBE. [REDACTED]'s evaluation consisted of her observations of the Student in the classroom, consultation with professionals, and Parent interview. She requested the Parent and the Teacher complete the BASC2. [REDACTED] compared the Parent and Teacher results with prior testing and ascertained that that Student's deficits were not significant and that no further testing was required. She found that Student did not exhibit any behavior issues and that the Student did not need a Functional Behavior Analysis (FBA).

Based upon the evidence presented and the testimony of [REDACTED], I find that [REDACTED] qualifies and is a trained and knowledgeable personnel, that that the testing provided was not discriminatory on a racial or cultural basis, that language was not an issue in the parent completing BASC2, that the testing used was valid and reliable, and that [REDACTED] followed the producer instructions in requesting the Parent and Teacher complete the assessment. The testing provided was not discriminatory on a racial or cultural basis, that language was not an issue in testing. [REDACTED] followed all the producer instructions in administering the testing. The requirements of 34 C.F.R §300.304(c) have been met.

█'s testimony regarding her assessment of the Student was well thought out and credible. She used a variety of assessment tools and strategies and her use of these assessments is found to be technically sound. █'s report was provided to the IEP Team and was utilized by the IEP team when drafting the Student's IEP.

Based upon the conclusions of law, the credible testimony of █ testimony and the social development study update, it is found that the District's social developmental evaluation was conducted timely and is appropriate in all areas.

To summarize, I have reviewed the evaluation procedures contained in the 2006 IDEA regulations, as previously cited. After considering the evidence submitted, the testimony of the District's witnesses and arguments of Counsel I find that the evaluators used a variety of assessment tools and strategies to gather relevant function, development and academic information about the Student, including information provided by the Parents, to assist in determining whether the Student is a Student with a disability and the content of the Student's individualized IEP. The evaluators did not use any single measurement or assessment as the sole criteria for determining whether the Student is a child with a disability and for determining the program that would provide the Student with a free appropriate public education in the least restrictive environment. The evaluators used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The evaluation materials that were selected and administered were not discriminatory on a racial or cultural basis. The evaluations and assessments were provided and administered in the Parents' and Student's native language. The evaluations were administered by trained and knowledgeable personnel who followed all producer instructions and where applicable provided those instructions to the Parent. The assessments or evaluations were used for the purposes for which they are valid and reliable. The assessments or evaluations used were chosen by the evaluators in consideration of the Student's needs and anxieties. They

were not chosen to provide a single general intelligence quotient. The Student was assessed in all areas of suspected disability. The evaluations were sufficiently comprehensive to identify all of the Student's special education and related service needs. The evaluations were used by the IEP team in drafting the Student's IEP on October 26, 2016.

CONCLUSION

Based upon a preponderance of the evidence, I find that the District has prevailed in its defense of its reevaluation of the Student as appropriate within the meaning of 34 C.F.R. §§ 300.303-300.311 and the Illinois Code.

I, therefore denying the Parents' request for an IEE at public expense. The IEP team tested in all relevant areas, with the parent's consent. The tests were comprehensive and thorough, providing a clear understanding of Student's strengths and needs. It was the type of evaluation that would allow the IEP team to develop a highly appropriate IEP.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: The Parents' request for an IEE is denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

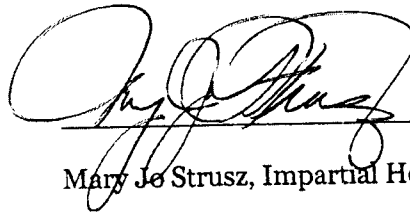
Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and 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.

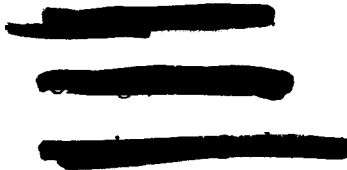
NOTICE OF RIGHT TO APPEAL

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: February 17, 2017



Mary Jo Strusz, Impartial Hearing Officer



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

█, a minor, by and through
His/her Parent(s),
Student

v.

Case No. 2017-0123

█ School District █
District.

Mary Jo Strusz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

I, Mary Jo Strusz, certify that on February 17, 2017, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

Sent Electronically Via Email

Sent via United States Mail Certified

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Sent via United States Mail Certified

Sent Electronically via Email

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ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically Via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: February 17, 2017

Mary Jo Strusz
Impartial Hearing Officer

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