

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

District¹

v.

Case No. 2018-0164

Student, by and through his Parents²

Leah Trinkala
Impartial Hearing Officer

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 5/148.02a et.seq.

PROCEDURAL BACKGROUND.

On August 29, 2018, the Petitioner (District) filed a due process complaint (Complaint) against the Parents.³ The Respondents are the parents (Parents) of a twelve year old son (Student) with a disability. The Student has been eligible for an IEP under the category of other health impairment. The District filed this Complaint to defend its reevaluation of the Student since the District denied the Parents' request for an independent educational evaluation (IEE).⁴ The Parents had objected to the District's reevaluation of the Student on the following grounds:

¹ Personally identifiable information is found in Appendix A.

² Personally identifiable information is found in Appendix A.

³ IHO Ex. 1.

⁴ IHO Ex. 1.

1. The evaluation report was incomplete because the report did not include a review of the records;
2. The evaluation ruled out the diagnosis of ADHD based on one test;
3. The evaluation did not include an evaluation by a speech therapist for pragmatic language;
4. The evaluation did not include an evaluation by a occupational therapist for fine motor deficits; and
5. The evaluation did not include an evaluation for keyboarding/typing.⁵

The District is represented by Teri Engler of Engler, Callaway, Baasten & Sraga, and LLC. The Parents proceeded pro se. On August 30, 2018, the Illinois State Board of Education (ISBE) reinstated the undersigned as the Independent Hearing Officer (IHO) in this case.⁶ On September 4, 2018, the undersigned issued a Preliminary, Order, Rights of Parties, Hearing Process Guidelines and a Standing Order.⁷ The Parents filed their answer to the Complaint on September 9, 2018.⁸

The first telephonic status conference call occurred on September 11, 2018.⁹ The parties agreed to hold a resolution meeting, however, the resolution meeting was delayed because the Assistant Superintendent was hospitalized.¹⁰ The Parents indicated the Response to the Complaint included a sufficiency challenge.¹¹ The Parents were instructed to refile the sufficiency challenge; the sufficiency challenge must be in a separate pleading.¹² The Parents, however, never filed a separate pleading.¹³ The District was granted leave to file a motion for summary judgment and the Parents were granted leave to file a motion to compel student records.¹⁴ The Motion for Summary Judgment was filed on September 14, 2018.¹⁵ The Parents were required to file a response to the

⁵ IHO Ex. 1. See also, SD 15-001 and SD 16-003.

⁶ IHO Ex.2.

⁷ IHO Ex. 4.

⁸ IHO Ex. 7.

⁹ IHO Ex.10.

¹⁰ IHO Ex. 10. Personally Identifiable Information is located in Appendix A.

¹¹ IHO Ex. 10.

¹² IHO Ex. 10.

¹³ IHO Ex. 11.

¹⁴ IHO Ex. 10. The Parents never filed a motion to compel student records.

¹⁵ IHO Ex. 12.

Motion for Summary Judgment by September 21, 2018.¹⁶ The Parents requested an extension to file a response to the Motion for Summary Judgment and an extension was granted until September 28, 2018.¹⁷

The second telephonic status conference call occurred on September 20, 2018.¹⁸ The parties scheduled the resolution meeting for September 26, 2018.¹⁹ The Prehearing Conference was set for October 9, 2018.²⁰ The parties requested a continuance of the 45-day timeline in order to hold the resolution meeting and to address the Motion for Summary Judgment. A continuance order was issued to extend the 45-day timeline²¹ The notice of the Prehearing Conference was issued on September 26, 2018.²²

The parties participated in the resolution session on September 26, 2018 and were unable to resolve this matter.²³ On October 7, 2018, the IHO issued the Interim Order on the Motion for Summary Judgment which denied the motion.²⁴ The District requested a correction of the dates in this Interim Order and requested a reconsideration of the decision.²⁵ The request for reconsideration was denied, however, the dates were corrected in the order.²⁶ A revised Interim Order was issued on October 8, 2018.²⁷

The prehearing disclosures from the District were received on October 8, 2018.²⁸ The Parents did not submit any disclosures. A Prehearing Conference commenced on October 9, 2018.²⁹ The Prehearing Conference was continued until November 12, 2018 in order for the Parents to prepare and submit their prehearing disclosures.³⁰ The

¹⁶ IHO Ex. 10.

¹⁷ IHO Ex. 14.

¹⁸ IHO Ex. 16.

¹⁹ IHO Ex. 16.

²⁰ IHO Ex. 16.

²¹ IHO Ex. 17.

²² IHO Ex. 18.

²³ IHO Ex. 20.

²⁴ IHO Ex. 21.

²⁵ IHO Ex. 21.

²⁶ IHO Ex. 22.

²⁷ IHO Ex. 23.

²⁸ IHO Ex. 26.

²⁹ IHO Ex. 26.

³⁰ IHO Ex. 26.

hearing was scheduled for January 8, 2019.³¹ The initial Prehearing Report and Order was issued on October 10, 2018.³²

On November 9, 2018, the District submitted amended prehearing disclosures and the parents submitted their initial prehearing disclosures.³³ The Parents filed a due process complaint on November 12, 2018 prior to the commencement of the Prehearing Conference on November 12, 2018.³⁴ At the conference, the Parents agreed to withdraw the due process complaint in order to not further delay the proceedings.³⁵ The Parents are seeking compensatory education and the outcome of this proceeding will determine if the Parents are entitled to an IEE. The Parents indicated they wanted to call the Student as a witness and the District objected. The District was granted leave to file a motion to strike the student as a witness.³⁶ The final Prehearing Report and Order was issued on November 12, 2018.³⁷ The parties submitted requested changes to the Prehearing Report and Order and these changes were considered and a Revised Prehearing Report and Order was issued on November 23, 2018.³⁸

On December 13, 2018, the District filed a motion in limine to strike the student as a witness (Motion in Limine) ³⁹ The Parents did not respond to emails to schedule a briefing schedule so the IHO issued a Scheduling Order on December 15, 2018 which required the Parents to file a response to the Motion in Limine by December 21, 2018.⁴⁰ On December 13, 2018, the District also indicated the location of the hearing needed to be changed because the Student's mother was banned from school property for one year on December 10, 2018.⁴¹ The location of the hearing was changed to the community room at a local police station and a Scheduling Order was issued on December 16, 2018.⁴²

³¹ IHO Ex. 26.

³² IHO Ex.27.

³³ IHO Ex. 27.

³⁴ IHO Ex. 28.

³⁵ IHO Ex. 29 and 30.

³⁶ IHO Ex. 29.

³⁷ IHO Ex. 29.

³⁸ IHO Ex. 31 and 32.

³⁹ IHO Ex. 35.

⁴⁰ IHO Ex. 36 and 37.

⁴¹ IHO Ex. 36.

⁴² IHO Ex. 38.

The Parents never filed a response to the Motion in Limine or requested a continuance. An Interim Order: Striking of Student as a Witness was issued on December 27, 2018.⁴³ The Motion in Limine was granted, however, the IHO allowed this issue to be revisited at the hearing if the Parents can establish the Student's testimony would be relevant and material to the pending issue in this case.⁴⁴

The hearing took place on January 8, 2019 at the community room of a local police station.⁴⁵ The District provided its exhibit book to the IHO prior to the hearing on December 28, 2018. The Parents did not submit an exhibit book. Counsel Teri Engler represented the District at this hearing. The Parent appeared pro se.⁴⁶

Prior to the commencement of the hearing, the Parents' request for a due process hearing was addressed. On the afternoon of January 7, 2019, the Parents sent an email to the Superintendent of the District in order to file a due process complaint which contained last year's date and refiled their response to the District's Complaint.⁴⁷ The email cc'd the IHO.⁴⁸ The IHO ruled the proper procedures were for the District to file the Parents' due process complaint with the Illinois State Board of Education and this entity would then assign the complaint to a hearing officer. The current hearing would proceed as scheduled and this pending due process complaint would not be consolidated with the Complaint scheduled for hearing on January 8, 2019. These respective emails and request for a due process hearing were stricken from the record.

The District called three witnesses, the Assistant Superintendent, the Clinical Psychologist and the Director, to testify at the hearing.⁴⁹ The Parents did not call any witnesses and failed to disclose any witnesses. The Parent was afforded the opportunity to testify since the Parent previously indicated at the Prehearing Conference she would testify at the hearing. The Parent declined to testify at this proceeding.

Admitted into the record were the following District's exhibits: SD 1-001- SD 1-003, SD 2-001 – SD 2-007, SD 3-001 – SD 3-026, SD 4-001 – SD 4-005, SD 5-001 – SD

⁴³ IHO Ex. 40.

⁴⁴ IHO Ex. 40.

⁴⁵ Personally identifiable information is found in Appendix A.

⁴⁶ Only the student's mother appeared for the hearing. The student's father was on the District's witness list and did not appear. No explanation was provided for his failure to attend.

⁴⁷ IHO Ex. 44.

⁴⁸ IHO Ex. 44.

⁴⁹ Personally identifiable information is found in Appendix A.

5-002, SD 6-001 – SD 6-005, SD 7-001 – SD 7-006, SD 8-0010 SD 8-005, SD 9-001 – SD 9-017, SD 10-001 – SD 10-011, SD 11-001 – SD 11-008, SD 12-001 – 002, SD 13-001 – SD 13-062, SD 14-001 – SD 14-069, SD 15-001 – SD 15-004, SD 16-001 – SD 16-125, 17-001 – SD 17-025, , SD 21-001 – SD 21-004, SD 27-001 – SD 27-003, SD 28-001 – SD 016 and SD 29-001 to SD 29-003. The District provided courtesy copies of their case law and regulations to the IHO and the Parents.

The decision of the IHO is due within 10 calendar days of the conclusion of the hearing excluding Saturdays, Sundays and any state holidays.⁵⁰ As such, the IHO did not have the benefit of a transcript and one was not needed. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the parties' closing arguments, the parties' suggested case law and statutes, as well as the IHO's own independent research. This decision was issued within ten calendar days excluding Saturdays, Sundays and any state holidays of the conclusion of the hearing as required by Illinois law.⁵¹

ISSUES AND REQUESTED REMEDIES

The issues to be determined are as follows:

1. Whether the District's reevaluation of the Student completed by the District's consulting neuropsychologist in February, 2018 was appropriate?⁵²

The District's remedies are as follows:

1. Find that the Clinical Psychologist's reevaluation of the Student was appropriate and that the District is not required to conduct an IEE at the public expense.⁵³

⁵⁰ 105 ILCS 5/14-8.02a(g55)(5).

⁵¹ 105 ILCS 5/14-8.02a(g55)(5).

⁵² Personally identifiable information is in Appendix A.

⁵³ Personally identifiable information is in Appendix A.

2. Find that the Parent's latest request for multiple IEEs was wholly capricious and submitted for the improper purposes so that the District may pursue an action against the Parents in a court of competent jurisdiction for recovery of the District's attorneys' fees and costs incurred in this matter.⁵⁴

The Parents' remedies are as follows:

1. Find that the Clinical Psychologist's reevaluation of the Student was inappropriate and order an IEE to be conducted at the public expense.⁵⁵

FINDINGS OF FACT.

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

A. Prior Settlement Reached Between the Parties.

1. The Student is currently 12 years old and attends the seventh grade at a private day school.⁵⁶ The Student had been diagnosed with ADHD at the age of 4.⁵⁷ The Student has had an IEP since 2007.⁵⁸
2. The Student was due for a reevaluation in the fall of 2016.⁵⁹ The District experienced difficulties obtaining consent from the Parents. On, September 19,

⁵⁴ The District requested this IHO to determine the Parents' request for an IEE was wholly capricious and submitted for improper purposes. This IHO declines to make this ruling. The IHO has no authority to award attorney fees and the District needs to pursue its attorney fees in a court of competent jurisdiction. The District will have to prove in the appropriate forum the Parents' request for an IEE was for an improper purpose which is the standard for proving up attorney fees in a court of competent jurisdiction against a parent.

⁵⁵ Personally Identifiable Information is located in Appendix A.

⁵⁶ IHO Ex. 1.

⁵⁷ SD 13-002.

⁵⁸ Testimony of Assistant Superintendent.

⁵⁹ Testimony of Assistant Superintendent.

2016 a domain meeting was held.⁶⁰ The Parent did not submit a current domain consent form; the Parent provided a domain consent form completed in 2015.⁶¹ The District requested the signature of the current domain form for 2016.⁶² On November 2, 2016, the Parent submitted the current domain form and later revoked consent.⁶³

3. During the summer of 2017, the Parent submitted consent for the reevaluation, however, the Parent recorded on the form that the form was signed under duress.⁶⁴ The District still attempted to complete the reevaluation and had further obstruction from the Parent concerning the school psychologist assigned to conduct the reevaluation. The Parent instructed the Student to not participate in the testing and the Parent requested a different evaluator.⁶⁵ Since consent was not obtained, the District filed a due process complaint on November 15, 2017 to override the Parent refusal to consent to the reevaluation.⁶⁶
4. On November 15, 2017, the Parents filed a cross complaint for a due process hearing in an email.⁶⁷ On November 17, 2017, the District filed a motion for insufficiency.⁶⁸ On November 21, 2018, IHO Strusz, previously appointed, issued an order which found the Parents complaint to be insufficient and dismissed the complaint without prejudice.⁶⁹
5. On November 21, 2017, the Parents filed an amended due process complaint and filed corrections to this complaint on November 29, 2017.⁷⁰ The Parents' corrected complaint alleged the District failed to evaluate the Student in all areas of suspected disabilities, failed to consider the private evaluations, failed to appropriately develop the student's IEPs, and failed to provide the Student with

⁶⁰ Testimony of Assistant Superintendent.

⁶¹ Testimony of Assistant Superintendent.

⁶² Testimony of Assistant Superintendent.

⁶³ Testimony of Assistant Superintendent.

⁶⁴ Testimony of Assistant Superintendent. SD 1-001.

⁶⁵ Testimony of Assistant Superintendent.

⁶⁶ Testimony of Assistant Superintendent. SD 2- 001- SD 2-007.

⁶⁷ Testimony of Assistant Superintendent. SD 4-001 – SD 4 -005.

⁶⁸ SD 5-001 – SD 5-002.

⁶⁹ Testimony of Assistant Superintendent. SD 6-001 – SD 6-0005.

⁷⁰ SD 7-001 – SD 7-006 and SD 8-001 – SD 8-005.

an appropriate program and placement ⁷¹

6. The parties participated in a resolution meeting on December 20, 2017.⁷² The parties reached a partial resolution at this meeting. The parties agreed the Clinical Psychologist and her team would complete the Student's reevaluation and the Clinical Psychologist and her team would determine the components to be completed and the battery of tests to be administered.⁷³ The Parent wanted the student records to be reviewed; however, the team would determine which records would be reviewed.⁷⁴
7. At this resolution meeting, the Parents provided consent and release for the student records for the reevaluation.⁷⁵ The Domain Form dated October 23, 2017 was part of this resolution meeting.⁷⁶ This Domain form provided the needed assessments for the Student were in the areas of academic achievement, functional performance, cognitive functioning, communication status, health, hearing/vision, motor abilities and social/emotional status.⁷⁷
8. On January 10, 2018, the parties participated in mediation and resolved the remaining issues. ⁷⁸ The parties agreed the Student would be placed at a private day school. ⁷⁹ The District agreed to convene the Student's IEP team after the Clinical Psychologist's evaluation is completed and make any revisions to the IEP as recommended by the Clinical Psychologist.⁸⁰ The Parents waived all claims against the District through January 10, 2018. ⁸¹ The Parents and the District agreed to withdraw their due process complaints.⁸² The parties withdrew their

⁷¹ SD 8-001 – SD 8-005.

⁷² SD 10-001.

⁷³ Personally Identifiable Information is located in Appendix A. SD 10-001 – SD 10-006. Testimony of Assistant Superintendent

⁷⁴ Testimony of Assistant Superintendent. SD 10-004

⁷⁵ SD 10-007. Testimony of Assistant Superintendent

⁷⁶ SD 10-003 – SD 10-011.

⁷⁷ SD 10-008 – SD 10-011.

⁷⁸ Testimony of Assistant Superintendent. SD 11-001 – SD 11-004.

⁷⁹ SD 11-003.

⁸⁰ SD 11-004. Personally Identifiable Information is located in Appendix A

⁸¹ SD 11-004.

⁸² SD 11-004.

complaints on January 11, 2018.⁸³

9. On January 11, 2018, the Parents alleged the mediation agreement was entered into under duress.⁸⁴ The Parents were informed the agreement is binding and action would have to be pursued in court.⁸⁵

B. Neuropsychological Evaluation.

1. The Clinical Psychologist and her team performed a neuropsychological evaluation in January, 2018.⁸⁶ The parties agreed upon this Clinical Psychologist and her team to conduct the reevaluation as part of their settlement agreement.⁸⁷ The Clinical Psychologist holds a master and doctorate degree in clinical psychology and has specialized training in pediatric and adult neuropsychology.⁸⁸ The Clinical Psychologist works more often with individual families than with school districts.⁸⁹ This is the first time the Clinical Psychologist consulted for this District.⁹⁰ The Clinical Psychologist had met the Student and his Parents previously for a consult.⁹¹ The Clinical Psychologist's qualifications were uncontroverted.⁹²
2. The Clinic Psychologist oversaw the testing performed by three pre-doctoral clinical psychologist and neuropsychological fellows and one post-doctoral clinical psychologist and neuropsychological fellow.⁹³ These team members have completed their course work and all have practical experience.⁹⁴ The Clinical Psychologist made sure the evaluation tools were proper and not biased and

⁸³ SD 11-008.

⁸⁴ SD 12-002.

⁸⁵ SD 12-001.

⁸⁶ Testimony of Clinical Psychologist. SD 13-001.

⁸⁷ SD 10-004.

⁸⁸ Testimony of Clinical Psychologist. SD 28-001.

⁸⁹ Testimony of Clinical Psychologist.

⁹⁰ Testimony of Assistant Superintendent and Clinical Psychologist.

⁹¹ Testimony of Clinical Psychologist.

⁹² Testimony of Assistant Superintendent and Director.

⁹³ Testimony of Clinical Psychologist.

⁹⁴ Testimony of Clinical Psychologist.

oversaw the scoring and findings of the evaluation.⁹⁵ The Clinical Psychologist and two pre-doctoral clinical psychologists and neuropsychology fellows completed the report.⁹⁶ There was no testimony offered to contradict the qualifications of the team. Moreover, the parties agreed to have the Clinical Psychologist and team perform this reevaluation.

3. The testing of the Student occurred on December 30, 2017, January 2, 2018, January 5, 2018, January 6, 2018, January 7, 2018 and January 14, 2018.⁹⁷ The Clinical Psychologist was unable to recall who performed which testing for the Student on these dates, however, the Clinical Psychologist's testimony was found to be credible and persuasive because the Clinical Psychologist was very knowledgeable concerning the Student's strengths and deficits and the findings resulting from the testing performed. The Clinical Psychologist also assisted with the report writing and observed the Student at the transition placement.⁹⁸ The Student was not observed at the current placement because the Parents requested the Student be observed at the transition placement agreed upon at mediation.⁹⁹ The Clinical Psychologist observed the Student at the transition placement in March, 2018.¹⁰⁰
4. The team completed a background of the Student.¹⁰¹ The Student was found to have current grades of Bs and Cs in his classes at the time of this reevaluation.¹⁰² The Parents had concerns regarding the Student's reading, writing and comprehension abilities, his misunderstanding of social cues and boundaries and his difficulties with his peers.¹⁰³

⁹⁵ Testimony of Clinical Psychologist.

⁹⁶ Testimony of Clinical Psychologist. SD 13-026.

⁹⁷ Testimony of Clinical Psychologist. SD 13-001.

⁹⁸ Testimony of Clinical Psychologist.

⁹⁹ Testimony of Clinical Psychologist.

¹⁰⁰ Testimony of Clinical Psychologist.

¹⁰¹ SD 13-002.

¹⁰² SD 13-002.

¹⁰³ SD 13-002.

5. A comprehension reevaluation was conducted and was not controverted.¹⁰⁴ The Clinic Psychologist and her team conducted interviews with the Parents and Student, conducted observations at the transition placement, reviewed 22 documents which included the Student's IEPs, prior evaluations conducted by the District and private evaluations obtained by the Parents.¹⁰⁵ The Assistant Superintendent confirmed that approximately 40 student records were submitted for review.¹⁰⁶ The team conducted baseline tests and reviewed the results of the tests to determine the Student's deficiencies.¹⁰⁷ The team conducted a battery of 32 tests.¹⁰⁸ As per the resolution agreement, the team determined the domain areas for the testing.¹⁰⁹ The Clinical Psychologist and her team were not bound by the domain forms completed by the IEP team; the Assistant Superintendent confirmed this understanding was correct.¹¹⁰
6. It is also undisputed that the reevaluation assessed the Student in all areas of his suspected disabilities. Testing was administered in the areas of intellectual functioning, academics, written language, phonological processing, articulation, language processing abilities, motor skills, auditory processing, memory, sensory processing, attention, executive function, adaptive behaviors, and social, emotional and behavioral functioning.¹¹¹ There was no testimony to contradict the tools used were proper and not biased in the administration of the testing in these areas and there was no testimony the testing was not administered in the Student's English language.
7. An assessment was completed of the Student's sensory processing.¹¹² Both Parents reported that the Student was bothered by sensory input more than other children and the mother reported the Student can be overwhelmed by sensory

¹⁰⁴ Testimony of Assistant Superintendent and Director.

¹⁰⁵ Testimony of Clinical Psychologist..

¹⁰⁶ Testimony of Assistant Superintendent.

¹⁰⁷ Testimony of Clinical Psychologist.

¹⁰⁸ Testimony of Clinical Psychologist. SD 13-003.

¹⁰⁹ Testimony of Clinical Psychologist and Assistant Superintendent.

¹¹⁰ Testimony of Clinical Psychologist and Assistant Superintendent.

¹¹¹ SD 13-003- SD 13-026.

¹¹² SD 13-010.

experience more than other children.¹¹³ The Student's teachers did not report any significant ratings concerning the Student's sensory processing.¹¹⁴

8. The Wechsler Intelligence Scale for Children (WICS-V) was administered to assess the Student's cognitive functioning.¹¹⁵ The Student scored in the average range for verbal reasoning, visual spatial abilities and processing speed.¹¹⁶ The Student scored in the upper average range for fluid reasoning and in the lower limits of the upper range for working memory.¹¹⁷ Overall, the Student performed in the normal to high average range and no additional testing was completed in this area since there were no significant discrepancies.¹¹⁸
9. The reevaluation included an assessment of the Student's phonological processing, articulation and language processing. The Comprehensive Test of Phonological Processing (CTOPP-2) was administered to the Student and the Student scored overall in the upper limits of the average range.¹¹⁹ The Goldman Fristoe Test of Articulation – Third Edition (GFTA-3) was also administered to the Student and the Student was found to have his working articulation of words intact at his expected age range.¹²⁰ The Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5) and the Comprehensive Assessment of Spoken Language (CASL – Pragmatic Judgment Subtest) were administered to the Student.¹²¹ These results showed the Student's language processing skills were intact and the Student's pragmatic language processing abilities fell in the average range.¹²²
10. The Wide Range Assessment of Memory and Learning (WRAML-2) was administered to the Student to assess the Student's fine motor skills and visual

¹¹³ SD 13-010. Testimony of Clinical Psychologist. See also, SD 13-033.

¹¹⁴ Testimony of Clinical Psychologist.

¹¹⁵ Testimony of Clinical Psychologist. SD 13-003.

¹¹⁶ SD 13-004. SD 13-028.

¹¹⁷ SD 13-004. SD 13-028.

¹¹⁸ Testimony of Clinical Psychologist.

¹¹⁹ SD 13-005 – SD 13-006.

¹²⁰ SD 13-006.

¹²¹ SD 13-006.

¹²² SD 13-006 – SD 13-007.

skills.¹²³ The Student was in upper limits of the high average range for visual motor, visual spatial and fine motor abilities.¹²⁴ The testimony is uncontroverted that the team was more qualified to administer these tests and follow publisher criteria than an occupational therapist. The Student's performance in this area showed the Student did not require an assessment for keyboarding and typing.¹²⁵

11. An assessment of auditory processing was performed which included the administration of the Test for Auditory Processing Disorders in Children (Scan-3 C) and the Test for Auditory Processing – Third Edition (TAPS-3) to the Student.¹²⁶ Overall, the Student tested in the average range for his auditory processing skills.¹²⁷ The Student, however, needs to be monitored on the Competing Words subset because the Student scores were borderline in this area.¹²⁸

12. An assessment of the Student's visual and verbal memory was also conducted with the use of the Wide Range Assessment of Memory and Learning – Second Edition (WRAML-2), the Rey Complex Figure Test (RCFT) and the Benton Visual Retention Test (BVRT).¹²⁹ The Student's overall memory abilities fell in the average range.¹³⁰ The tests did reveal the Student's inattention is likely due to internal distractors that interfere with his ability to sustain enough attention.¹³¹ This inattention appears to be caused by anxiety or obsessive thinking rather than from ADHD.¹³²

13. The team conducted additional tests to examine the Student's attention to determine if the lack of attention was due to anxiety or obsessive thinking. Subjective questionnaires were completed by the Parents and the Student's

¹²³ Testimony of Clinical Psychologist. SD 13-007.

¹²⁴ Testimony of Clinical Psychologist. SD 13-007 and SD 13-030.

¹²⁵ Testimony of Clinical Psychologist.

¹²⁶ SD 13-007.

¹²⁷ SD 13-007 – SD 13-008. See also, SD 13-031.

¹²⁸ SD 13-007.

¹²⁹ SD 13-008 – SD 13-010. See also, SD 13-032.

¹³⁰ SD 13-008 – SD 13-010. See also, SD 13-032.

¹³¹ Testimony of Clinical Psychologist. SD 13-010.

¹³² Testimony of Clinical Psychologist.

teachers through the use of the ADHD rating scale IV.¹³³ Both of the Parents reported significant difficulties with hyperactivity of the Student.¹³⁴ Seven teachers completed the ADHD rating scale IV and five of the teachers recorded the Student had moderate difficulties with hyperactivity; one teacher reported minimal difficulty with hyperactivity and one teacher reported clinically significant difficulty with hyperactivity.¹³⁵ Three of the teachers reported the Student had clinically significant difficulties with inattention; two of the teachers reported moderate difficulty with inattention; and two of the teachers reported minimal difficulty with inattention.¹³⁶

14. Furthering testing of the Student showed the Student struggles with attention. On the Brown ADD Scale, the Student reported clinically significant levels of procrastination and lack of self-initiation and reported clinical impairments in his capacity for sustained effort and difficulty with working memory and difficulty sustaining and focusing attention.¹³⁷ The Multidimensional Anxiety Scale for Children – Second Edition (MASC-2) completed by the Student showed the Student has difficulties with his anxiety. The Student's T-scores for social anxiety were 60; 64 for physical symptoms, 65 for panic and 60 for tense/restlessness.¹³⁸ The scores were consistent with clinical levels of anxiety.¹³⁹
15. Objective testing also demonstrated the Student has difficulty with attention and this is not related to the student's neurological functioning. The Student completed the Conners' Continuous Performance Test - Second Edition (CPT-2, V. 5).¹⁴⁰ This test showed the Student's profile better reflects the profile of an individual who does not have ADHD and showed the Student has no current neurological visual attention problems.¹⁴¹ The Student also completed the Test of

¹³³ SD 13-010. Testimony of Clinical Psychologist.

¹³⁴ Testimony of Clinical Psychologist. SD 13-010. See also, SD 13-033 – SD 13-034.

¹³⁵ Testimony of Clinical Psychologist. SD 13-011. See also, SD 13-034 – SD 13-035.

¹³⁶ Testimony of Clinical Psychologist. SD 13-011. See also SD 13-034 - SD 13-035.

¹³⁷ SD 13-011. SD 13-035.

¹³⁸ SD 13-016. SD 13-044.

¹³⁹ Testimony of Clinical Psychologist.

¹⁴⁰ SD 13-011. See also, SD 13-035.

¹⁴¹ Testimony of Clinical Psychologist. SD 13-011.

Everyday Attention for Children (TEA-ch).¹⁴² From these two tests, the evaluators concluded the Student does not have difficulties with neurological visual inattention.¹⁴³ The evaluators concluded the ADHD Rating Scale and Brown ADD Scale reveal clinically significant symptoms of inattention and impulsivity and believe this is caused by anxiety and obsessive thought patterns.¹⁴⁴ The Parent even noted in her cross examination of the Clinical Psychologist that the Student obsesses over the bible. The Clinical Psychologist explained that inattention can be secondary to other conditions and ADHD is not always the root cause.¹⁴⁵

16. Further testing of the Student's executive functioning also confirmed the Student's deficits are not due to deficits in neurological functioning. The Student, the Parents and the teachers completed the Behavior Rating Inventory of Executive Function (BRIEF) which is a subjective test.¹⁴⁶ On the BRIEF, the Student reported he was at-risk in this ability to control impulses and to stop engaging in a behavior.¹⁴⁷ The Student also reported clinical impairments in his ability to self-monitor and on his working memory abilities.¹⁴⁸ The Parents and four of the teachers reported the Student exhibited at-risk and clinically significant executive functioning impairments.¹⁴⁹ Two teachers reported no at-risk or clinically significant impairments.¹⁵⁰ The Student also completed subtests from the Dells-Kaplan Executive Function System (D-KEFS), an objective test, which assesses executive functioning, cognitive shifting, sustained attention, planning, motor coordination, sequencing and verbal context.¹⁵¹ The evaluator found the Student performed generally in the average range to the high average on this test.¹⁵² Based on these assessments, the evaluator concluded the Student's

¹⁴² SD 13-011 – SD 13-012.

¹⁴³ SD 13-012. SD 13-036.

¹⁴⁴ Testimony of Clinical Psychologist. SD 13-012.

¹⁴⁵ Testimony of Clinical Psychologist.

¹⁴⁶ Testimony of Clinical Psychologist. SD 13-012 – SD 13-014. See also, SD 13-036 – SD 13-039.

¹⁴⁷ SD 13-012.

¹⁴⁸ SD 13-012. SD 13-036.

¹⁴⁹ SD 13-013 – SD 13-014. See also, SD 13-037 – SD 13-039.

¹⁵⁰ SD 13-013.

¹⁵¹ Testimony of Clinical Psychologist. SD 13-014. SD 13-040.

¹⁵² Testimony of Clinical Psychologist. SD 13-014.

executive functioning deficits is occurring secondary to emotional reactivity, internal distracters such as anxiety and concluded generally the Student's executive functioning is intact.¹⁵³ The Student's working memory is high functioning; however, anxiety is causing the discrepancies.¹⁵⁴The Clinical Psychologist and her team also found no evidence of neurological ADHD. ¹⁵⁵

17. The team delved even further in evaluating the Student by assessing the Student's behaviors which included but not limited to an assessment of atypical behaviors and adaptive behaviors. The teachers completed the Adaptive Behavior Assessment System – 3rd edition (ABAS-3) and the results showed the Student has difficulties with communication, functional academics and self-direction skill areas.¹⁵⁶ The results shows the Student had adequate leisure, social, self care and community skills.¹⁵⁷

18. A comprehensive assessment was also completed to examine the Student's social, emotional and behavioral functioning.¹⁵⁸ These assessments were conducted due to other evaluations which addressed concerns with the Student's behaviors and the Parents had raised concerns with the Student's behavior as well. The Clinical Psychologist indicated the prior evaluations of the Student addressed the Student's behavior and the District concluded the Student had ADHD. ¹⁵⁹

19. Testing was also administered in this area to determine if the Student has Autism. The Student's prior evaluations had indicated the Student exhibited some symptoms of Autism.¹⁶⁰ Testing was administered to the Student's seven teachers. The Autism Spectrum Rating Scales (ASRS) completed by the teachers showed the Student exhibited some symptoms for Autism because the teachers had reported clinical levels of difficulty with inattention, peer socialization, self-

¹⁵³ Testimony of Clinical Psychologist. SD 13-015.

¹⁵⁴ Testimony of Clinical Psychologist.

¹⁵⁵ Testimony of Clinical Psychologist.

¹⁵⁶ SD 13-015 – SD 13-016. See also, SD 13-041 – SD 13-043.

¹⁵⁷ SD 13-016.

¹⁵⁸ Testimony of Clinical Psychologist. SD 13-016.

¹⁵⁹ Testimony of Clinical Psychologist,

¹⁶⁰ Testimony of Clinical Psychologist.

regulation, social communication and use of atypical language.¹⁶¹ The Parents failed to complete the ASRS for the team.¹⁶² In the Clinical Psychologist's opinion, one cannot make a determination if a child has Autism just based on the ASRS.¹⁶³

20. Therefore, the team also administered the Gilliam Asperger's Disorder Scale (GADS) to these teachers.¹⁶⁴ The team did not conduct the Gilliam Autism Rating Scale (GARS). In the Clinical Psychologist's opinion, the GADS has better measures than GARS.¹⁶⁵ There was no testimony offered to refute the Clinical Psychologist's opinion. These results showed two teachers reported the Student did not possess any at-risk or clinically significant symptoms.¹⁶⁶ The total scores for two teachers showed the Student falls in the high/probable range for evidencing a Social-Developmental Disorder; the total scores for one teacher shows a low/probable range; and, the other teacher's total scores shows the Student is borderline.¹⁶⁷ The team concluded, based on these results, the Student has difficulties with social pragmatic skills, social interaction and social cognitive skills.¹⁶⁸

21. As part of this assessment, the team administered testing to the Student. The Student completed the Children's Depression Inventory – Section Edition (CDI-2) and scored high on the Children's Depression Inventory which the team concluded was consistent with clinical levels of depression.¹⁶⁹ The Student also completed the Test of Problem Solving – Third Edition (TOPS-3).¹⁷⁰ Based on the results of this test, the team concluded the Student has average social reasoning, sequencing, and predicting abilities and has objective deficits in the areas of

¹⁶¹ Testimony of Clinical Psychologist. SD 13-019. SD 13-054 – SD 13-057.

¹⁶² Testimony of Clinical Psychologist. SD 13-060 – SD 13-061.

¹⁶³ Testimony of Clinical Psychologist.

¹⁶⁴ Testimony of Clinical Psychologist.

¹⁶⁵ Testimony of Clinical Psychologist.

¹⁶⁶ SD 13-020 – SD 13-021.

¹⁶⁷ SD 13 -020 – SD 13-021.

¹⁶⁸ SD 13-021.

¹⁶⁹ Testimony of Clinical Psychologist. SD 13-16. SD13-044.

¹⁷⁰ SD 13-021. SD 13-061,

social problem abilities, answering social questions framed in the negative and making social inferences.¹⁷¹

22. The Autism Diagnostic Observation Schedule – Second Edition, Module 3 (ADOS-2) was also administered to the Student.¹⁷² The team concluded on this test that the Student falls under the diagnosis of Pervasive Developmental Disorder Unspecified.¹⁷³ The team found the Student has a high probability of evidencing an Autism Spectrum Disorder because the Student fails to engage in social activities in an age appropriate manner.¹⁷⁴ The team found that the Student desires social relationships and is not socially isolative which supports the diagnosis of Pervasive Developmental Disorder Unspecified.¹⁷⁵
23. The Student also completed the Affect Recognition subtest on a Developmental Neuropsychological Assessment – Second Edition (NEPSY-II).¹⁷⁶ The Student scored overall in the average range for overall affect recognition abilities.¹⁷⁷ The Student’s recognition of fear and anger, however, were below the expectations for his age group.¹⁷⁸
24. The teachers, Student and the parents completed the Behavior Assessment System for Children – Third Edition (BASC-3).¹⁷⁹ The team concluded the results of these subjective tests showed the Student is at-risk and has clinical difficulties in the areas of social skills, functional communication skills, study skills, social withdrawal, atypicality, inattention, hyperactivity and depression.¹⁸⁰
25. Further questionnaires were provided to the Student’s teachers and these results showed the Student exhibited issues with social interaction. The teachers

¹⁷¹ SD 13-021 – SD 13-022.

¹⁷² SD 13-022. SD 13-061.

¹⁷³ SD 13-022.

¹⁷⁴ SD 13-022.

¹⁷⁵ SD 13-022.

¹⁷⁶ SD 13-022. SD 13-062.

¹⁷⁷ SD 13-022,

¹⁷⁸ SD 13-022.

¹⁷⁹ SD 13-016 – SD 13-018. SD 13-045 – SD 13-052.

¹⁸⁰ SD 13-018.

completed the Pediatric Rating Scale (PBRs) which measures bipolar mood symptoms.¹⁸¹Based on the test results, the team concluded this test shows the Student was at risk and clinically significant in inattention, social interaction, atypicality and difficulties with affect.¹⁸² The teachers completed the Social Responsiveness Scale – Second Edition (SRS-2).¹⁸³ Based on these test results, the Student was found to have difficulties with social cognition, social motivation and social communication.¹⁸⁴

26. From this reevaluation, the Student still remained eligible for special education services under the primary category of other health impairment. Based on all of the testing completed under social, emotional and behavioral functioning and the observations of the Student and the reports completed by the Parents, the team concluded the Student has an Anxiety Disorder Unspecified because the Student exhibited significant levels of anxiety.¹⁸⁵ The Student was also diagnosed with Major Depressive Disorder due to the results of the ADOS-2, ASRS, GADS, SRS-2 and TOPS-3.¹⁸⁶ Lastly, the team concluded the Student meets the criteria for Pervasive Developmental Disorder Unspecified based upon the observations of the Student, objective test results and questionnaires completed by the Parents.¹⁸⁷ This IHO finds based upon on all of the testing administered for this reevaluation the Clinical Psychologist and her team conducted a thorough assessment of the Student before making a determination the Student does not suffer from ADHD.

27. Based on the revaluation, the Student was also found eligible for an IEP under a secondary category of written expression.¹⁸⁸ The Woodcock-Johnson Tests (WJ-IV: B) and the Test of Written Language (TOWL-4) were conducted to assess the

¹⁸¹ SD 13-018. SD 13-052 – SD 13-054.

¹⁸² SD 13-018.

¹⁸³ SD 13-020. SD 13-058 – SD 13-60.

¹⁸⁴ SD 13-020.

¹⁸⁵ SD 13-022. Testimony of Clinical Psychologist.

¹⁸⁶ SD 13-022. Testimony of Clinical Psychologist.

¹⁸⁷ SD 13-022. Testimony of Clinical Psychologist.

¹⁸⁸ Testimony of Clinical Psychologist. SD 13-004 – SD 13-005. SD 13-029.

Student's academic achievement.¹⁸⁹ The Student scored overall in the average range, however, the Student's math abilities were in the upper limits of the average range except for math fluency.¹⁹⁰ The Student performed weak in spelling and written expression.¹⁹¹ Based on these tests, the Student was found to have a learning disability in written expression.¹⁹² The Student was not previously found eligible for an IEP in this area. This testing did address the Parents concern concerning the Students reading, writing and written expression.

28. The team made recommendations for the Student as a result of this reevaluation. To address the Student's anxiety and depression, the Student was referred to participate in psychotherapy and receive a medication evaluation.¹⁹³ For the diagnosis of a Disorder of Written Expression, the team suggested the Student receive 1:1 direct instruction and provided suggested writing programs for the Student to access.¹⁹⁴ Lastly, the team recommended accommodations to be continued or implemented into the Student's current school programming.¹⁹⁵

C. Review of Neuropsychological Evaluation.

1. The Clinical Psychologist reviewed the results of this evaluation with the Parents on February 13, 2018 and February 15, 2018.¹⁹⁶
2. The results of the Neuropsychological Evaluation were also reviewed by the IEP team on March 22, 2018.¹⁹⁷ The Parents, the Director and the Assistant Superintendent were among the individuals in attendance.¹⁹⁸

¹⁸⁹ Testimony of Clinical Psychologist.

¹⁹⁰ Testimony of Clinical Psychologist. SD 13-004 – SD 13-005. SD 13-029.

¹⁹¹ Testimony of Clinical Psychologist. SD 13-004 – SD 13-005.

¹⁹² Testimony of Clinical Psychologist. SD 13-005.

¹⁹³ SD 13-023.

¹⁹⁴ SD 13-025.

¹⁹⁵ SD 13-024 – SD 13-25.

¹⁹⁶ Testimony of Clinical Psychologist. SD 13-001.

¹⁹⁷ SD 14-002. Testimony of Assistant Superintendent. .

¹⁹⁸ SD 14-002.

3. The IEP team found the Student was still eligible for an IEP and to receive special education services. The IEP team added a specific learning disability in written expression as the Student's secondary category for eligibility.¹⁹⁹ The Student still qualified for an IEP under the primary category of other health impairment.²⁰⁰ The diagnosis of anxiety disorder, major depression and pervasive developmental disorder were noted under this category.²⁰¹ No other revisions were made to the Student's IEP.²⁰²

4. The Director who holds a bachelor's degree in psychology, masters in school psychology and a doctorate in communication sciences and disorders reviewed the neuropsychological evaluation at this IEP meeting.²⁰³ The Director found the evaluation was comprehensive due to the variety of tests conducted in all areas.²⁰⁴ The Director indicated this is more comprehensive than the evaluations conducted at her school.²⁰⁵ The Director found the assessments were normed appropriately and the testing was conducted in the Student's language.²⁰⁶ The Director corroborated the Clinical Psychologist's testimony that the GADS test was more appropriate than the GARS test in this case. The Director explained the GADS is normally administered to higher functioning students like the Student and GARS is administered to lower functioning student.²⁰⁷ There was no testimony offered to contradict the qualifications of the Director or to dispute the Director's testimony.

5. In the Assistant Superintendent's opinion the evaluation was complete and indicated more testing would have been completed if this evaluation was not comprehensive.²⁰⁸ The Assistant Superintendent also found the Clinical Psychologist was qualified to make determinations regarding fine motor skills

¹⁹⁹ SD 14-004.

²⁰⁰ SD 14-004.

²⁰¹ SD 14-004.

²⁰² Testimony of Director.

²⁰³ SD 29-001. Testimony of Director.

²⁰⁴ Testimony of Director.

²⁰⁵ Testimony of Director.

²⁰⁶ Testimony of Director.

²⁰⁷ Testimony of Director.

²⁰⁸ Testimony of Assistant Superintendent.

and pragmatic language and explained these items were imbedded in other assessments.²⁰⁹ There was no testimony offered to contradict the opinions of the Assistant Superintendent regarding the comprehensiveness of the evaluation.

6. An assistive technology evaluation was completed in 2017 and reviewed by the Clinical Psychologist.²¹⁰

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUE

Based upon the above Findings of Fact, the arguments and suggested legal authority provided by counsel as well as the undersigned's own legal research, the undersigned's Conclusion of Law and Discussion of the Issue is as follows.

Under the IDEA, a school district is required to conduct a reevaluation at least once every three years unless the parent and school district agree a reevaluation is not necessary.²¹¹ Parents have a right to an independent educational evaluation (IEE) at their own expense.²¹² The parents also have a right to one IEE at public expense if the parents disagree with the school district's evaluation unless the school district can show its evaluation was appropriate.²¹³

The District has the burden to prove the appropriateness of the reevaluation.²¹⁴ An appropriate evaluation is one which complies with the pertinent federal and state regulations.²¹⁵ Under the Illinois School Code, the District has a statutory duty to present evidence that the District appropriately identified the Student's special education needs and proposed a special education program and related services to adequately and appropriately meet the Student's needs.²¹⁶

²⁰⁹ Testimony of Assistant Superintendent.

²¹⁰ Testimony of Assistant Superintendent.

²¹¹ 34 C.F.R. §300.303(b)(2).

²¹² 34 CFR § 300.502(a).

²¹³ 34 CFR § 300.502(b).

²¹⁴ 105 ILCS 5/14-8.02b.

²¹⁵ *Krista P. v. Manhattan School District*, 38 IDELR 329 (N. D. Ill. 2003).

²¹⁶ 105 ILCS 5/14-8.02a(g-55).

For the evaluation to be appropriate, the school district must assess the child in all areas of the “suspected disability.”²¹⁷ For the evaluation, the school district is required to use “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent” to determine if the child has a disability.²¹⁸ The school district cannot use any “single measure or assessment as the sole criterion” for determining whether the child has a disability.²¹⁹ The school district must use “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors.”²²⁰

Moreover, the school district must ensure that the assessments and the other evaluation materials used meet the following criteria:

- “(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) 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;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.”²²¹

The 7th Circuit has upheld a school district’s evaluation where the evaluators were found to be competent, well trained and performed comprehensive evaluations.²²² The 4th Circuit has held a parent is not entitled to an IEE by only challenging the evaluator’s findings and could not show the evaluator’s methodologies were flawed. The

²¹⁷ 20 U.S.C. § 1414(b)(3)(B).

²¹⁸ 20 U.S.C. § 1414(b)(2)(A).

²¹⁹ 20 U.S.C. § 1414(b)(2)(B).

²²⁰ 20 U.S.C. § 1414(b)(2)(C).

²²¹ 20 U.S.C. § 1414(b)(3)(A)(i)-(v).

²²² *B. G. v. Bd. of Ed. Of City of Chicago*, 72 IDELR 231 (7th Cir. 2018).

Courts and hearing officers have found the District's evaluation to be appropriate where the evaluation was based on a variety of assessment tools, including interviews and observations, a review of the child's records and prior evaluations, and offered sound explanations for their choices.²²³

In the instant case, the reevaluation met the requirements set forth under federal and state law. The Findings of Fact unequivocally show the testing was administered by trained and knowledgeable personnel and the team was mutually agreed upon by the parties.²²⁴ The District ensured the Parents agreed with the selected evaluators because difficulties had existed in finding a mutually agreeable evaluator to conduct the Student's reevaluation. The testing was administered in the Student's language and not administered in a discriminatory or biased fashion.²²⁵ The evaluation did not rely on any single measure or assessment as the sole criteria.²²⁶ The Findings of Fact show the team reviewed prior evaluations, conducted interviews and observations and offered sound explanations for the 32 tests administered and for the assessments conducted in thirteen areas from academics to behavioral functioning.²²⁷

The evaluation also assessed the Student in all areas of his suspected disability.²²⁸ Prior evaluations were indicative of concerns with the Student's behavior and showed the Student had been previously diagnosed with ADHD.²²⁹ A comprehensive evaluation was conducted here to further determine whether ADHD was actually the root cause of the Student's deficits and to further evaluate whether the Student had an autism spectrum disorder since prior testing showed symptoms of Autism.²³⁰ From a variety of assessments, the Findings of Fact show the Student was found to not have ADHD and found to have an Anxiety Disorder Unspecified, Major Depressive Disorder and Pervasive Developmental Disorder Unspecified.²³¹ The District's two witnesses

²²³ *Belvidere CUSD #100*, 114 LRP 22690 (ISEA, 2013). *E.P. v. Howard County Public School System*, 72 IDELR 114 (4th Cir. 2018).

²²⁴ FOF #A6, B1, B2, and C4.

²²⁵ FOF #B6 and C4.

²²⁶ FOF #B5, B6 and C4.

²²⁷ FOF #B5, B6, B8-B26.

²²⁸ FOF #B6, C4 and C5.

²²⁹ FOF #B18 and B19.

²³⁰ FOF #B15 – B25.

²³¹ FOF #B26.

confirmed the completed reevaluation was complete.²³² The Parents did not present any evidence to demonstrate this evaluation was not comprehensive and did not provide any evidence to contradict the findings of the Clinical Psychologist and her team. The Findings of Fact are dispositive that the evaluation also identified the needs of the Student for special education and maintained the Student's primary eligibility under Other Health Impairment.²³³ The evaluation also added a secondary category for eligibility under Written Expression.²³⁴ The evaluation report proposed accommodations for the Student in the classroom and recommended counseling to address the Student's anxiety and depression.²³⁵

Additionally, the Parents had raised five grounds for challenging the District's evaluation. First, the Parents alleged the reevaluation did not include a review of the student records. The Findings of Fact are dispositive that the Clinical Psychologist reviewed the Student's previous evaluation reports and reviewed the Student's IEPs.²³⁶ Second, the Parents contend the evaluation ruled out the Student's diagnosis of ADHD based upon one test (CPT-2). The Findings of Fact clearly supports this diagnosis was not ruled out by just one test.²³⁷ Numerous assessments and tests were administered to reach this conclusion.²³⁸ The Parents also failed to demonstrate the underlying evaluation results and methodologies were flawed. Third, the Parents contend the evaluation should have consisted of an evaluation by a speech therapist for pragmatic language. The Findings of Fact show the evaluation did include an assessment for pragmatic language and the Assistant Superintendent confirmed the Clinical Psychologist was qualified to conduct this assessment.²³⁹ Fourth, the Parents iterate the evaluation did not include an evaluation by an occupational therapist for fine motor deficits. The Findings of Fact demonstrate this evaluation did in fact include an assessment of fine motor skills and the team was more qualified to conduct this

²³² FOF #C4 and C5.

²³³ FOF #B26, B28 and C3.

²³⁴ FOF #B27 and C3.

²³⁵ FOF #B28.

²³⁶ FOF #B5.

²³⁷ FOF #B12- B26.

²³⁸ FOF #B12- B26.

²³⁹ FOF #B9 and C5.

evaluation than an Occupational Therapist.²⁴⁰ Fifth, the Parents iterated an evaluation should have been conducted for keyboarding and typing. The Findings of Fact show an assistive technology was completed in 2017 and reviewed by the Clinical Psychologist.²⁴¹ The Clinical Psychologist found another evaluation was not required at this time.²⁴² The Parents did not offer any evidence to support this contention that an assistive technology evaluation was required for the Student. Overall, the IHO finds the reevaluation of the Student was appropriate and comprehensive.

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

1. The reevaluation of the Student was comprehensive and appropriate and the District is not required to conduct an IEE at the public expense.

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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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

²⁴⁰ FOF #/B10 and C5.

²⁴¹ FOF #C6.

²⁴² FOF #B10.

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: January 22, 2019

Leah Trinkala
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPENDIX A

Lake Zurich CUSD 95 v. Student Treyton Yelverton
ISBE Case No. 2018-0164

Child/Student	[REDACTED]
Location of the Hearing	[REDACTED]
	[REDACTED]
	[REDACTED]
Child's Parents/Petitioners	[REDACTED]
	[REDACTED]
Assistant Superintendent	[REDACTED]
Clinical Psychologist	[REDACTED], Consulting Neuropsychologist
Director	[REDACTED] of [REDACTED]
Transition Placement	[REDACTED]
Private Day School	[REDACTED]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Ms. Teri Engler, Esq.
Engler, Callaway, Baasten & Sraga, LLC

[REDACTED]
[REDACTED]
[REDACTED]

and

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

and

Andy Eulass
Due Process Coordinator
Illinois State Board of Education
100 N. First Street
Springfield, IL 62777-0001
Electronic Mail: aeulass@isbe.net

On January 22, 2019

Leah M. Trinkala
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]