

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

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District<sup>1</sup>

v.

Case No. 2023-0199

Student, by and through his Parent<sup>2</sup>

Leah Trinkala  
Impartial Hearing Officer

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION.**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S. C. §1400 et seq. and the Illinois School Code, 105 ILCS 5/148.02a et.seq.

**PROCEDURAL BACKGROUND.**

On April 12, 2023, the Petitioner (District) filed a due process complaint (Complaint) against the Parent.<sup>3</sup> The Respondent is the parent (Parent) of her twelve year old son (Student) with a disability.<sup>4</sup> The Student has been eligible for an IEP under the categories of Autism Spectrum Disorder (ASD) and Intellectual Disability (ID).<sup>5</sup> The District filed this Complaint to defend its reevaluation of the Student since the District denied the Parent's request for an independent educational evaluation (IEE).<sup>6</sup>

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<sup>1</sup> Personally identifiable information is found in Appendix A.

<sup>2</sup> Personally identifiable information is found in Appendix A.

<sup>3</sup> IHO Ex. 1.

<sup>4</sup> IHO Ex. 15.

<sup>5</sup> IHO Ex. 15.

<sup>6</sup> IHO Ex. 1.

The District was represented by Zaria Udeh, of Robbins Schwartz. The Parent proceeded pro se. On April 13, 2023, the Illinois State Board of Education (ISBE) appointed the undersigned as the Impartial Hearing Officer (IHO) in this case.<sup>7</sup> On April 16, 2023, the undersigned issued a Preliminary Order, Rights of Parties, Hearing Process Guidelines, and a Standing Order.<sup>8</sup> The Parent filed her Response to the Complaint on May 1, 2023.<sup>9</sup>

The first telephonic status conference call occurred on April 26, 2023.<sup>10</sup> The parties agreed to waive the resolution meeting and participate in mediation.<sup>11</sup> The parties needed to schedule a mediation session.<sup>12</sup>

The second telephonic status conference call occurred on May 9, 2023.<sup>13</sup> The parties requested additional time to complete mediation.<sup>14</sup> The Prehearing Conference was set for June 6, 2023.<sup>15</sup> The parties requested a continuance of the 45-day timeline and an extension was granted to August 1, 2023.<sup>16</sup> The parties participated in mediation on May 18, 2023 and were unable to resolve this dispute.<sup>17</sup> The notice of the Prehearing Conference was issued on May 21, 2023.<sup>18</sup>

The prehearing disclosures from the parties were received on June 5, 2023. The Parent submitted a document list; however, the Parent did not submit a witness list.<sup>19</sup> A Prehearing Conference was held on June 6, 2023.<sup>20</sup> The Parent explained she would not be calling any witnesses to testify at the hearing.<sup>21</sup> Hearing dates were set at this conference.<sup>22</sup> The Prehearing Report and Order was issued on June 8, 2023.<sup>23</sup> The parties submitted requested changes to the Prehearing Report and Order and these

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<sup>7</sup> IHO Ex.2.

<sup>8</sup> IHO Ex. 3.

<sup>9</sup> IHO Ex. 9.

<sup>10</sup> IHO Ex.10.

<sup>11</sup> IHO Ex. 8.

<sup>12</sup> IHO Ex. 8.

<sup>13</sup> IHO Ex 13.

<sup>14</sup> IHO Ex. 13.

<sup>15</sup> IHO Ex. 13.

<sup>16</sup> IHO Ex. 13.

<sup>17</sup> IHO EX. 12.

<sup>18</sup> IHO Ex. 13.

<sup>19</sup> IHO Ex. 14.

<sup>20</sup> IHO Ex. 15.

<sup>21</sup> IHO Ex. 15.

<sup>22</sup> IHO Ex. 15.

<sup>23</sup> IHO Ex.15.

changes were considered and a Revised Prehearing Report and Order was issued on June 18, 2023.<sup>24</sup>

On June 20, 2023, the Parent filed her own due process complaint against the District.<sup>25</sup>

On June 20, 2023, the Parent; however, failed to file her own 5-day business disclosures.<sup>26</sup> On June 21, 2023, the Parent was informed her 5-day business disclosures could still be exchanged with the District by 5 p.m. in order to allow the disclosures to be used during the second day of the hearing.<sup>27</sup> The Parent failed to exchange any disclosures by this second deadline.<sup>28</sup>

The last telephonic Status Conference transpired on June 21, 2023 to discuss the Parent's failure to file the 5-day business disclosures, the failure to prepare a joint exhibit book and the consolidation of the complaints.<sup>29</sup> The District had sent numerous emails to the Parent regarding the Joint Exhibit book and requested the Parent's response by July 19, 2023 or the District would just prepare its own exhibit book.<sup>30</sup> The Parent did not respond until after the deadline on July 20, 2023.<sup>31</sup> The IHO found the Parent did not cooperate with the District in working on the Joint Exhibit book and failed to file her own exhibit book by the required deadline.<sup>32</sup> The District also sought to consolidate the two complaints and to continue the scheduled hearing.<sup>33</sup> The Parent objected to a continuance of the scheduled hearing,<sup>34</sup> This IHO entered an order denying the consolidation of the complaints and precluding the Parent from introducing any exhibits at the hearing since the deadlines for the submission of the 5-day business disclosures had not been met.<sup>35</sup>

The hearing took place on June 27, 2023 and June 28, 2023 via the Zoom Platform. On June 26, 2023, the Parent submitted an email objection to the District's

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<sup>24</sup> IHO Ex. 17 and 18.

<sup>25</sup> IHO Ex. 19.

<sup>26</sup> IHO Ex. 19 and 20.

<sup>27</sup> IHO Ex. 19 and 20.

<sup>28</sup> IHO Ex. 20 and 21.

<sup>29</sup> IHO Ex. 20 and 21.

<sup>30</sup> IHO Ex. 20.

<sup>31</sup> IHO Ex. 20 and 21.

<sup>32</sup> IHO Ex. 21.

<sup>33</sup> IHO Ex. 20 and 21.

<sup>34</sup> IHO Ex. 20 and 21.

<sup>35</sup> IHO Ex. 21.

BCBA testifying at the hearing.<sup>36</sup> Prior to the commencement of the hearing, this IHO ruled on the unresolved objections to the BCBA being called to testify. The IHO ruled the testimony would be relevant to determine if a Functional Behavioral Analysis (FBA) should have been conducted as part of the Student's reevaluation because the Parent requested an independent FBA to be conducted as her relief.

The Parent also objected to the IHO having jurisdiction to hear this matter due to a Settlement Agreement (Agreement) reached in July, 2022 to resolve the Parent's appeal of a previous decision. As part of the Agreement, the District agreed to fund an FBA conducted by a BCBA at KGH Autism Services (KGH).<sup>37</sup> The Agreement also determined the Student's placement for the 2022-2023 school year.<sup>38</sup> This IHO found the Agreement did not restrict the IHO from hearing this matter. The Agreement settled claims arising before July 15, 2022.<sup>39</sup> The District's issue in this matter concerns a reevaluation which was completed in February 2023. Under the Agreement, the funding of a private FBA was contingent upon the Parent providing consent to this FBA and the Parent has not provided consent to the FBA as of the date of this hearing.<sup>40</sup>

The District called eight witnesses to testify. The Parent declined to testify at this proceeding. The Parent only made an opening and closing statement. The Parent refused to answer the District's questions even after the IHO ordered the Parent to answer the questions. The Parent failed to call any witnesses, did not cross examine any of the District's witnesses and did not disclose any exhibits.

Admitted into the record were the following District's exhibits: D.E. 1-2, D.E. 5, D.E. 7-9, D.E. 11, D.E. 13-15, D.E. 17-21, D.E. 24, D.E. 26-28, D.E. 30, D.E. 33-40, D.E. 42, D.E. 46-47, D.E. 53, and D.E. 56-62.<sup>41</sup> The District provided courtesy copies of their case law and regulations to the IHO and the Parent.<sup>42</sup>

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<sup>36</sup> IHO Ex. 24.

<sup>37</sup> IHO Ex. 26.

<sup>38</sup> IHO Ex. 26.

<sup>39</sup> IHO Ex. 26.

<sup>40</sup> IHO Ex. 26.

<sup>41</sup> All the exhibits admitted into evidence were used during the hearing and the witnesses' answered questions regarding all the admitted exhibits.

<sup>42</sup> IHO Ex. 27. The Parent submitted her written closing statement after the June 29, 2023 deadline. The written closing was accepted since the closing statement is not prejudicial. See, IHO Ex. 28.

The decision of the IHO is due within 10 calendar days of the conclusion of the hearing excluding Saturdays, Sundays, and any state holidays. <sup>43</sup> As such, the IHO did not have the benefit of a transcript. 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 carefully considered all the documents admitted into evidence and the testimony of the witnesses whether specifically referred to or cited when making her final determination. The IHO also considered the parties' closing arguments, the District's 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.<sup>44</sup>

### **ISSUE AND REQUESTED REMEDIES**

The District's issue to be determined is as follows:

- a. Whether the District's February 2023 reevaluation which encompassed a psychological evaluation, a speech/language evaluation, a social work evaluation, an occupational therapy evaluation, an assessment of adaptive physical education, and a social development study was appropriate in accordance with the IDEA Regulations 34 C.F.R. §300.304 and 34 C.F.R. §300.305?<sup>45</sup>

The District's remedies are as follows:

- a. District requests the IHO to find the Parent's request for an IEE improper as it is not necessary to identify the Student's educational needs, present levels of academic achievement, or functional performance as the District has already completed a comprehensive and accurate reevaluation of the Student. and seeks denial of all relief requested.<sup>46</sup>
- b. Find the District's reevaluation was appropriate and find the District is not required to fund an IEE at the public expense.<sup>47</sup>

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<sup>43</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>44</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>45</sup> IHO Ex. 15 and 18.

<sup>46</sup> IHO Ex. 15 and 18.

<sup>47</sup> IHO Ex. 15 and 18.

The Parent's remedies are as follows:

- a. Order the District to fund an independent education evaluation specifically a neuropsychological evaluation and an FBA.<sup>48</sup>

### **JOINT STIPULATIONS OF FACT.**

1. The Student was born on July 24, 2010.<sup>49</sup>
2. The Student attended N Middle School for 7<sup>th</sup> grade during the 2022-2023 school year.<sup>50</sup>

### **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. BACKGROUND.**

1. The Student is currently 12 years old and qualifies for special education and related services under the categories of ID and ASD.<sup>51</sup> The Student was initially identified with a development delay at the age of 3 due to below average cognitive, social-emotional, and adaptive development.<sup>52</sup> In third grade, the results of the standardized testing showed the Student had below average skills in reading, math, spelling, nonverbal cognitive functioning and social-emotional functioning.<sup>53</sup> A private neuropsychological evaluation was completed in October 2019 and the private evaluator found the Student met the criteria for ID and ASD.<sup>54</sup>

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<sup>48</sup> IHO Ex. 15 and 18.

<sup>49</sup> IHO Ex. 23.

<sup>50</sup> IHO Ex. 23. The parties also stipulated to the Parent's email address.

<sup>51</sup> D.E. 17, p. 157 and 158.

<sup>52</sup> D.E. 17, p. 157.

<sup>53</sup> D.E. 17, p. 157.

<sup>54</sup> D.E. 17, p. 158.

2. The Student was homeschooled for 6<sup>th</sup> grade during the 2021-2022 school year.<sup>55</sup> The Student returned to school for the 2022-2023 school year and was in 7<sup>th</sup> Grade at N Middle School. The Student was enrolled in the Structured Teaching Education Program (STEP) which is a highly structured classroom with low teacher-student ratio and has inclusion in some general education classes.<sup>56</sup> The Student received instruction in the core subjects in the self-contained classroom which includes reading, writing, math and social studies.<sup>57</sup> Speech and social work are integrated into the classroom.<sup>58</sup> The Student was eligible to receive related services in the areas of social work, speech/language services, adaptive physical education consult minutes and occupational therapy.<sup>59</sup> The Student was in an 8<sup>th</sup> grade physical education class (PE) for 40 minutes daily with peers and two paraprofessionals.<sup>60</sup>

#### **B. DOMAIN MEETINGS.**

3. The IEP team held a domain meeting on October 11, 2022 to discuss the three-year reevaluation of the Student.<sup>61</sup> The District ensured the Parent was able to provide informed consent. The Coordinator provided the Parent with a draft domain document three days before this meeting.<sup>62</sup> At this meeting the Parent was afforded an opportunity to ask questions and the IEP team reviewed the existing data concerning the Student's present levels of performance.<sup>63</sup> The Parent requested to view samples of the Student's work product and the Special Ed Teacher complied with this request.<sup>64</sup>
4. On October 18, 2023, the second domain meeting was held to review the domain document with the Parent.<sup>65</sup> At this meeting, the Parent was accompanied by an

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<sup>55</sup> D.E. 17, p. 158.

<sup>56</sup> D.E. 17, p.156 and Testimony of Special Ed Teacher.

<sup>57</sup> Testimony of Special Ed Teacher.

<sup>58</sup> Testimony of Special Ed Teacher.

<sup>59</sup> D. E. 7, p. 51.

<sup>60</sup> D.E. 21, p. 198.

<sup>61</sup> D.E. 5, p. 38. Testimony of Coordinator.

<sup>62</sup> Testimony of Coordinator. D.E. p. 41

<sup>63</sup> Testimony of Coordinator and Special Ed Teacher. See, D.E. 5, p. 42.

<sup>64</sup> Testimony of Special Ed Teacher. See, D.E. 5, p. 42.

<sup>65</sup> Testimony of Coordinator.

attorney.<sup>66</sup> The IEP team reviewed the Student's last implemented IEP to discuss the services that were provided to the Student and the IEP team discussed the Parent moving forward with the FBA being conducted by KGH.<sup>67</sup> The IEP team also reviewed all the domain areas for the reevaluation.<sup>68</sup>

5. On November 11, 2022, the Parent informed the Coordinator she did not want the FBA to be included on the District's domain paperwork.<sup>69</sup> The Coordinator complied with this request and separated the paperwork.<sup>70</sup> The Parent later declined to consent to the FBA and Behavior Intervention Plan (BIP) for the Student because the Parent decided she did not want KGH to complete the FBA/BIP.<sup>71</sup> On November 15, 2022, the Parent consented for the reevaluation, via email, on November 15, 2022.<sup>72</sup> The Parent stated she would not complete any interviews for the reevaluation.<sup>73</sup>
6. The agreed upon domain areas for the Student's reevaluation included academic achievement, functional performance, cognitive functioning, communication status, health, motor abilities, and social/emotional status.<sup>74</sup>

### **C. REEVALUATION OF THE STUDENT.**

7. A comprehensive reevaluation of the Student was conducted during the 2022-2023 school year and was not controverted.<sup>75</sup> As part of the reevaluation, the Student's health history was reviewed, and the District requested the Parent participate in an interview regarding the Student's health history and the Parent

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<sup>66</sup> Testimony of Coordinator. D.E. 7, p. 51.

<sup>67</sup> Testimony of Coordinator. D.E.7, p. 59 & 60.

<sup>68</sup> Testimony of Coordinator. D.E. Ex. 24, p. 222 and D.E. 7, p. 60.

<sup>69</sup> Testimony of Coordinator. D. E.24, p. 221.

<sup>70</sup> Testimony of Coordinator. D. E.24, p. 221.

<sup>71</sup> Testimony of Coordinator.

<sup>72</sup> Testimony of Coordinator. D. E.24, p. 221 and D.E. 9, p. 69.

<sup>73</sup> D.E. 9, p. 69.

<sup>74</sup> D.E 9, p. 72-76.

<sup>75</sup> Testimony of Social Worker, Psychologist, Occupational Therapist, Coordinator and Speech Pathologist.

declined to be interviewed.<sup>76</sup> No concerns were found regarding the Student's health.<sup>77</sup>

8. The evaluation included testing of the Student's vision and hearing on February 15, 2023.<sup>78</sup> The Special Ed Teacher took the Student for the testing.<sup>79</sup> The Student passed the hearing test.<sup>80</sup> The Student did not pass the vision test.<sup>81</sup> The Special Ed Teacher did not have any concerns with the testing. The Special Ed Teacher explained the Student just needed some instruction for the reading and would ask for something to be repeated.<sup>82</sup> The Student never verbalized any concerns during the testing and is able to advocate for himself.<sup>83</sup> This is a general screening and the Parent did not have concerns about the Student's vision.<sup>84</sup> A referral letter was sent home for the Parent to follow up with the Student's vision.<sup>85</sup>
9. The record is devoid of any testimony concerning the Student's vision affecting any of the Student's testing for the reevaluation. The Social Worker indicated the team considers how the Student functions on a daily basis and explained the Student is able to read his iPad and see the board in the classroom.<sup>86</sup> The Psychologist confirmed the Student's vision did not impact her testing.<sup>87</sup> The Psychologist marked caution in her report since the Student did not pass the vision test; however, the results were not impacted.<sup>88</sup> The Student was engaged and cooperative, was able to see the materials and was able to accurately identify

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<sup>76</sup> Testimony of Social Worker. See, D.E. 9. P. 74.

<sup>77</sup> See D.E. 19, p. 180.

<sup>78</sup> Testimony of Social Worker. D.E. 19, p. 178.

<sup>79</sup> Testimony of Special Ed Teacher.

<sup>80</sup> D.E. 19, p. 180.

<sup>81</sup> D.E. 19, p. 180.

<sup>82</sup> Testimony of Special Ed Teacher.

<sup>83</sup> Testimony of Special Ed Teacher.

<sup>84</sup> Testimony of Social Worker.

<sup>85</sup> Testimony of Social Worker

<sup>86</sup> Testimony of Social Worker

<sup>87</sup> Testimony of Psychologist.

<sup>88</sup> Testimony of Psychologist.

the letters and numbers.<sup>89</sup> For one reading task the Student moved closer to the text to be more focused to answer the question rather than not seeing the test.<sup>90</sup>

10. The reevaluation included a speech/language assessment to test the Student's expressive, pragmatic, and receptive language.<sup>91</sup> The Student has been eligible for speech/language services to address these areas.<sup>92</sup> The assessment was completed by a qualified professional on December 22, 2022.<sup>93</sup> The Speech Pathologist has a B.S. degree in Special Education and a master's degree in speech, language and learning and holds a professional educator license in Illinois.<sup>94</sup>
11. The Speech Pathologist used several technically sound instruments to assess the Student's speech/language which included the Clinical Evaluation of Language Fundamentals -5<sup>th</sup> ed (CELF-5), ages 9-22, the Expressive Vocabulary Test -3<sup>rd</sup> ed (EVT-3), the Peabody Picture Vocabulary Test -5<sup>th</sup> ed. (PPVT-5), observations during testing and the Speech Pathologist's observations during the Student's therapy sessions.<sup>95</sup> The Speech Pathologist wanted to interview the Parent; however, the Parent refused.<sup>96</sup> The Speech Pathologist opined the testing was still complete without the Parent interview to determine the Student's needs for the coming year.<sup>97</sup>
12. The Speech Pathologist administered the CELF-5 to assess the Student's receptive and pragmatic language and administered the PPVE-5 and the EVE-3 to assess the Student's expressive language.<sup>98</sup> The Student scored below average on the CELF-5 test; except for the understanding of spoken paragraphs where the

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<sup>89</sup> Testimony of Pyschologist.

<sup>90</sup> Testimony of Psychologist.

<sup>91</sup> D.E. 8, p. 66.

<sup>92</sup> D.E. 20. P. 189.

<sup>93</sup> D.E. 20, p. 189.

<sup>94</sup> Testimony of Speech Pathologist. D.E. 57, p. 284-285.

<sup>95</sup> D.E. 20, p. 189-190.

<sup>96</sup> Testimony of Speech Pathologist.

<sup>97</sup> Testimony of Speech Pathologist.

<sup>98</sup> D.E. 20, p. 199.

Student could not obtain a basal.<sup>99</sup> It is protocol to stop a test where the Student is unable to reach a basal and it would be unethical to continue the test.<sup>100</sup> The Student scored below average on pragmatic language; however, the Student did exhibit strength in greeting his peers and teachers and the Student is better able to remember details about someone when he develops a connection.<sup>101</sup> The Student was found to have a severe pragmatic disorder, a severe expressive language disorder and a severe receptive language disorder. No concerns were found with the Student's articulation, voice, or fluency.<sup>102</sup>

13. A psycho-educational assessment was completed as part of the reevaluation. This assessment was completed by a qualified professional. The Psychologist has a B.A. in Psychology and Sociology and a Master of Art in School Psychology.<sup>103</sup> The Psychologist holds a school psychology license and certifications to administer the ADOS and other testing for Autism.<sup>104</sup> The assessment used a variety of tools including prior evaluations, the administration of additional testing and observational data provided by the Student's current teachers.<sup>105</sup>

14. This assessment examined the Student's current level of educational functioning in the classroom environment. The Psychologist obtained information from the Student's current teachers as part of this assessment, received information regarding the Student's current level of functioning in Math, Reading and Writing and the Psychologist observed the Student in the classroom on 1/26/23 and 1/30/23.<sup>106</sup> The observations showed the supports and accommodations in place were working for the Student.<sup>107</sup> The Student benefited from using his headphones in class and from the prompts and encouragement from his teacher

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<sup>99</sup> Testimony of Speech Pathologist.

<sup>100</sup> Testimony of Speech Pathologist.

<sup>101</sup> D.E. 20, p. 192.

<sup>102</sup> Testimony of Speech Pathologist. D.E. 20, p. 193.

<sup>103</sup> Testimony of Psychologist. D.E. 56, p. 282.

<sup>104</sup> Testimony of Psychologist.

<sup>105</sup> Testimony of Psychologist.

<sup>106</sup> Testimony of Psychologist. DE 17, p. 160-161.

<sup>107</sup> Testimony of Psychologist.

to understand and complete tasks independently.<sup>108</sup> The Student was engaged in the classroom and had positive interactions with the staff.<sup>109</sup>

15. The Psychologist administered the Weschler Intelligence Scale for Children, 5<sup>th</sup> Ed (WISC-V) to assess the Student's cognitive abilities and administered the Kaufman Test of Educational Achievement, 3<sup>rd</sup> Edition (KTEA-3) to determine the Student's achievement levels in comparison to other seventh grade peers.<sup>110</sup> The results on these tests were consistent with previous evaluations.<sup>111</sup> Based on the testing, the Psychologist found the Student's cognitive skills were still very low compared to his age peers.<sup>112</sup> The test results showed the Student still needs the support provided for his disability because his score was still 2 standards below the deviation.<sup>113</sup> The testing showed some growth in the Student's reading.<sup>114</sup> On the KTEA-3, the Student demonstrated below average reading, math and writing skills compared to his peers.<sup>115</sup> The Student scores were within the 1<sup>st</sup> and 2<sup>nd</sup> grade level.<sup>116</sup>
  
16. The results of this testing were consistent with the Special Ed Teacher's observations of the Student in the classroom.<sup>117</sup> The Special Ed Teacher reported the Student is now able to read more higher-level 2<sup>nd</sup> grade text; however, comprehension is lower.<sup>118</sup> The Student is working on DRA level 14 (end of 1<sup>st</sup> grade) material in the group discussion and answered WH questions with 80% accuracy.<sup>119</sup> In math, the Student is working on second grade materials and is able to independently perform single digit addition and subtraction.<sup>120</sup> The Special Ed Teacher is qualified to assess the Student. The Special Ed Teacher has

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<sup>108</sup> Testimony of Psychologist. DE 17, p. 160-161.

<sup>109</sup> Testimony of Psychologist. DE 17, p. 160-161.

<sup>110</sup> Testimony of Psychologist. DE 17, p. 162-165.

<sup>111</sup> Testimony of Psychologist. DE 17, p. 168.

<sup>112</sup> DE 17, p. 162-165.

<sup>113</sup> Testimony of Psychologist.

<sup>114</sup> Testimony of Psychologist.

<sup>115</sup> DE 17, p. 162-165.

<sup>116</sup> Testimony of Psychologist.

<sup>117</sup> Testimony of Psychologist.

<sup>118</sup> Testimony of Special Ed Teacher. D. E. 17, p. 160

<sup>119</sup> Testimony of Special Ed Teacher. D.E. 17, p. 160.

<sup>120</sup> Testimony of Special Ed Teacher. D.E. 17, p.160.

been teaching for 15 years, has a B.A. in Psychology, a master's degree in special education and a Professional Educator License for Illinois.<sup>121</sup>

17. The Psychologist also assessed the Student's social-emotional functioning. The Behavior Assessment for Children, 3<sup>rd</sup> Edition (BACS-3) was completed by the Parent, the Special Ed Teacher and the Student's general education teacher.<sup>122</sup> The results of the tests showed the supports in place are enabling the Student to manage his social-emotional functioning.<sup>123</sup>
18. The reevaluation included testing of the Student's adaptive functioning. The previous assessments of the Student in 2013, 2015 and 2018 showed the Student's adaptive skills were below average and the IEP team wanted updated information regarding the Student's day to day functioning, communication, adherence to a routine and interactions with peers since the Student has ASD.<sup>124</sup> The Social Worker evaluated the Student and is a qualified professional in this area. The Social Worker has a B.A in Sociology, a master's degree in Sociology and a professional educator license.<sup>125</sup> The Social Worker also provides the Student's social work minutes and works on the Student's goals.<sup>126</sup>
19. The Social Worker used a variety of assessment tools and strategies to assess the Student's adaptive functioning and communication skills. The Social Worker conducted a Social and Development Study which included a review of the Student's health history, early development history, family relationships, family culture background, prior evaluation reports and a consideration of her own classroom observations.<sup>127</sup> The Special Ed Teacher completed the Vineland-3 Domain-Level Teacher Form (Vineland).<sup>128</sup> The Parent declined to complete the

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<sup>121</sup> Testimony of Special Ed Teacher. D.E. 60, p. 289.

<sup>122</sup> Testimony of Psychologist.

<sup>123</sup> Testimony of Psychologist.

<sup>124</sup> Testimony of Social Worker

<sup>125</sup> Testimony of Social Worker. D.E. 58, p. 286-287.

<sup>126</sup> Testimony of Social Worker

<sup>127</sup> D.E. 19, p. 178-180.

<sup>128</sup> D.E. 19, p. 184.

Vineland and believed her completion of the BASC was comprehensive enough.<sup>129</sup> The Social Worker looked at the results of the Vineland completed by the Parent in 2018 since the Parent refused to complete the Vineland for this reevaluation.<sup>130</sup> The test results were similar to the previous assessments. The test results showed the Student's overall level of adaptive functioning and communication standard scores were in the 2<sup>nd</sup> percentile which is in the low range.<sup>131</sup> For the Socialization domain, the Student scored a standard score of 58 which is in the less than 1<sup>st</sup> percentile.<sup>132</sup> The Maladaptive Behavior domain showed the Student received a v-scale score of 23 for Internalizing which is in the clinically significant range and received a v-scale of 20 for Externalizing behaviors which is in the elevated range.<sup>133</sup> The Social Worker concluded there were no critical items indicated and therefore additional testing was not required of the Student's behaviors.<sup>134</sup>

20. The Social Worker also assessed the Student's social-emotional skills to determine if the Student needed additional support in this area. The Special Ed Teacher and the Parent completed the Social Skills Improvement System Social-Emotional Learning Edition (SSIS SEL).<sup>135</sup> The Special Education Teacher rated the Student as average on all of the competencies which indicated the Student is performing average in the classroom as the other students.<sup>136</sup> The Parent rated the Student as well below average in all of these competencies; however, the Parent is assessing the Student outside of the classroom and in a less structured environment.<sup>137</sup> The Social Worker concluded the Student is benefitting from being in a smaller classroom with a special education teacher and paraprofessional support with a highly structured and routine classroom.<sup>138</sup>

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<sup>129</sup> Testimony of Social Worker

<sup>130</sup> Testimony of Social Worker

<sup>131</sup> D.E. 19, p. 184.

<sup>132</sup> D.E. 19, p. 184.0

<sup>133</sup> D.E. 19, p. 184.

<sup>134</sup> D.E. 19, p. 184. Testimony of Social Worker.

<sup>135</sup> Testimony of Social Worker.

<sup>136</sup> Testimony of Social Worker. D.E. 19, p. 185.

<sup>137</sup> Testimony of Social Worker.

<sup>138</sup> D.E. 19, p. 187.

21. The reevaluation of the Student also included an assessment of the Student's visual motor integration skills, handwriting, keyboarding, sensory processing skills and functional skills.<sup>139</sup> This assessment was completed by a qualified professional. The OT has a master's degree in occupational therapy and is a licensed occupational therapist in Illinois.<sup>140</sup> The OT's assessment included a variety of assessment tools and employed technically sound instruments. The OT reviewed the Student's file, the Student's prior evaluation, a teacher interview and the OT observed and tested the Student on 2/3/23 and 2/8/23.<sup>141</sup> The OT administered the Beery-Buktenica Developmental test of Visual-Motor Integration, 6<sup>th</sup> edition (VMI) full format and the portions of the DeCoste Writing Protocol.<sup>142</sup> The Student's teacher completed the Sensory Profile, School Companion-2.<sup>143</sup>

22. Based upon the OT assessment, the Student's scores on the VMI and the motor coordination were too low to obtain a standard score.<sup>144</sup> The OT opined the low scoring was not an accurate picture of the Student's ability.<sup>145</sup> The Student did not like the handwriting portion because the Student prefers not to use a pencil and paper and was unwilling to complete this portion of the test.<sup>146</sup> The Student's score on visual perception was in the below average range.<sup>147</sup> The Student was found to be able to function in the school environment which included putting on his outerwear and shoes, accessing his locker and backpack, navigating to the cafeteria and managing his materials in the classroom.<sup>148</sup> The Student was found to have strengths in the use of technology and in the following of directions with some adult prompting to work through difficult activities.<sup>149</sup> The Student had

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<sup>139</sup> Testimony of OT. D.E 8, p. 67.

<sup>140</sup> Testimony of OT. D.E.59, p. 288.

<sup>141</sup> D.E. 18, p. 170.

<sup>142</sup> Testimony of OT. D.E. 18, p. 171.

<sup>143</sup> Testimony of OT. D.E. 18, p. 173.

<sup>144</sup> Testimony of OT. D.E. 18, p. 171.

<sup>145</sup> Testimony of OT.

<sup>146</sup> Testimony of OT.

<sup>147</sup> Testimony of OT.

<sup>148</sup> Testimony of OT. D.E. 18, p. 172.

<sup>149</sup> Testimony of OT. D.E. 18, p. 175.

deficits in keyboarding, handwriting, visual perception/integration and motor coordinator.<sup>150</sup> The Student possessed some weaknesses in sensory processing.<sup>151</sup>

23. As part of the reevaluation, an Adapted Physical Education (A.PE) evaluation was conducted to establish the Student's current levels of functioning. The testing was administered by a qualified professional. The PE Specialist has a master's degree in adaptive PE and is certified nationally as an adaptive PE instructor.<sup>152</sup> The PE Specialist has a professional educator license and has endorsements in PE and general administration.<sup>153</sup> The Student was assessed in the areas of locomotor, gross motor skills, physical fitness, ability to transition and team building skills.<sup>154</sup> The assessment used technically sound instruments. The assessment included observations in the Student's PE class by the PE Specialist and her assistant on 12/16/22 and 1/20/23 and from interviews with the general education PE teacher.<sup>155</sup> Based upon the testing completed, the Student demonstrated his ability to participate in PE fully and actively.<sup>156</sup> Based upon the completed assessments, the PE Specialist recommended the Student continue to receive the same services for PE.<sup>157</sup>

24. An FBA was not required to be conducted as part of the reevaluation because the Student's behaviors were not interfering with the Student accessing his education. In the opinion of the BCBA, an FBA is not required. The BCBA is qualified to give an expert opinion due to her fifteen years of experience as a BCBA and as a School Psychologist.<sup>158</sup> The BCBA has a Master's degree in Educational Psychology, a B.S. in the areas of special education and child development and is Board Certified for Behavior Analysis.<sup>159</sup> Based upon a review of the Student's IEPs, eligibility documents, progress reports, the Student does

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<sup>150</sup> D.E. 18, p. 175.

<sup>151</sup> D.E. 18, p. 175.

<sup>152</sup> Testimony of PE Specialist.

<sup>153</sup> Testimony of PE Specialist. D.E. 61, p. 291 and 292.

<sup>154</sup> Testimony of PE Specialist. D.E. 21, p.

<sup>155</sup> Testimony of PE Specialist. D.E. 21, p. 198.

<sup>156</sup> Testimony of PE Specialist. D.E. 21, p. 200.

<sup>157</sup> Testimony of PE Specialist.

<sup>158</sup> Testimony of BCBA.

<sup>159</sup> Testimony of BCBA. D.E. 62, p. 295 and 296.

not exhibit any behaviors that are interfering with the Student accessing his education or interfering with the learning of the other students in his classroom.<sup>160</sup> The BCBA opined the Present Levels of Academic, Developmental and Functional Performance, the classroom observations and the results on the Sel Test demonstrate the Student is easily motivated and can be redirected and there are no reported behavioral problems.<sup>161</sup> The Student is able to work on modified tasks and complete tasks with prompts.<sup>162</sup> The Student can attend group activities with prompts and will use his noise-canceling headphones.<sup>163</sup> The Student had made progress as of October 2022 with regulating his frustrations and his behaviors were not impeding his learning so there was nothing reported that indicated the District needed to delve deeper into this area for the reevaluation.<sup>164</sup> The Eligibility Determination for ID does not have check marks for safety or self-care as concerns for this Student.<sup>165</sup> If these items had been checked than an FBA would have been necessary.<sup>166</sup> The BCBA also opined that for the eligibility determination for ASD, the items checked for eligibility are typical for a student with ASD and do not warrant an FBA.<sup>167</sup>

25. The record is devoid of any testimony that the completed testing for the Student's reevaluation was not conducted in the Student's native language (English), was administered or selected to be discriminatory on a racial or cultural bias and was not administered in accordance with any instructions provided by the producer of the assessments.

26. The record is devoid of any testimony that a private independent neuropsychological evaluation is necessary to obtain additional information to assess the Student. An independent neuropsychological evaluation would address the same areas which would include a full cognitive, academic assessment, social

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<sup>160</sup> Testimony of BCBA.

<sup>161</sup> Testimony of BCBA. See also, D.E. 1, p. 1 and 2. D.E. 9, p. 72.

<sup>162</sup> Testimony of BCBA. See also, D.E. 1, p. 1 and 2. D.E. 9, p. 72

<sup>163</sup> Testimony of BCBA, D.E. 1, p. 2. D.E. 9, p. 72

<sup>164</sup> Testimony of BCBA. See also, D.E. 1, p. 3. D.E. 9, p. 72

<sup>165</sup> Testimony of BCBA. See, D.E. 15, p. 110.

<sup>166</sup> Testimony of BCBA. See, D.E. 15, p. 110.

<sup>167</sup> Testimony of BCBA. See, D.E. 15, p. 109.

skills, and behavior.<sup>168</sup> The Psychologist explained that these areas are similar to the areas the reevaluation assessed, would use similar testing such as the Weschler and the BASC and would not provide any additional information to assess and identify the needs of the Student.<sup>169</sup>

#### **D. ELGIBILITY MEETINGS.**

27. Prior to the first eligibility meeting, the draft evaluation reports were provided to the Parent for her review and the Parent did not respond to the service providers.<sup>170</sup> The speech/language draft report was sent, via a pdf, and also placed in the Student's backpack on February 13, 2023.<sup>171</sup> The Speech Pathologist sent the Parent three emails to discuss the results of the evaluation and the Parent never responded.<sup>172</sup> On February 17, 2023, the draft occupational therapy report was sent to the Parent, via email, and the OT offered to meet with the Parent prior to this meeting.<sup>173</sup> On February 20, 2023, the Social Worker emailed the Social Development Study and Social Work draft report to the Parent.<sup>174</sup> On February 21, 2023, the Psychologist sent the draft of the psychological evaluation report to the Parent, via email.<sup>175</sup> The Coordinator explained the draft reports would be very similar to the finalized reports because only minor changes are made to the reports.<sup>176</sup>

28. The first eligibility meeting took place on February 24, 2023. A trained ISBE IEP facilitator (Facilitator) attended this meeting per the Parent's request.<sup>177</sup> The IEP team reviewed the Social Worker's reports, the Speech/Language Evaluation and the Occupational Therapy evaluation.<sup>178</sup> The meeting was continued because the

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<sup>168</sup> Testimony of Psychologist.

<sup>169</sup> Testimony of Psychologist.

<sup>170</sup> Testimony of Coordinator. D. E. 24, p. 221.

<sup>171</sup> Testimony of Speech Pathologist. D.E. 24, p. 221.

<sup>172</sup> Testimony of Speech Pathologist. D. E.24, p. 221.

<sup>173</sup> Testimony of OT, D.E. 24, p. 221.

<sup>174</sup> Testimony of Social Worker. D.E. 24, p. 221.

<sup>175</sup> Testimony of Psychologist. D.E. 24, p. 221.

<sup>176</sup> Testimony of Coordinator.

<sup>177</sup> Testimony of Coordinator. D.E. 24, p. 222 and 221.

<sup>178</sup> D. E. 24, p. 222.

Parent wanted more time to review the reports.<sup>179</sup> The hard copies of the reports and the draft IEP were sent home in the Student's backpack on February 24, 2023 and on February 26, 2023 the draft IEP was sent to the Parent, via email, in a PDF format.<sup>180</sup>

29. The second eligibility meeting convened on February 27, 2023.<sup>181</sup> A different Facilitator attended this meeting because the Parent did not like the first Facilitator.<sup>182</sup> The IEP team reviewed the A.PE and the psychological evaluation.<sup>183</sup> The IEP team determined the Student was still eligible for services under ASD.<sup>184</sup> The Parent refused to continue with the meeting and stated she had more questions about the reports.<sup>185</sup> The Facilitator instructed the Parent to provide a list of questions for the IEP team to respond to prior to the scheduling of the next meeting.<sup>186</sup> The Coordinator provided the Parent with a form to use to prepare her questions.<sup>187</sup> The Parent never provided any questions despite the Coordinator reaching out to the Parent.<sup>188</sup>

30. On March 29, 2023, the third and final eligibility meeting was held.<sup>189</sup> The Parent was present for this meeting and the Facilitator. At this meeting, the IEP team determined the Student still qualified for special education and related services under the eligibility category of ID.<sup>190</sup> The Student was also still found eligible to receive related services for speech/language services, occupational therapy, social work services and an A.PE consult.<sup>191</sup> The Parent left this meeting early and did not stay to attend the IEP meeting.<sup>192</sup>

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<sup>179</sup> Testimony of Coordinator.

<sup>180</sup> D.E. 24, p. 222.

<sup>181</sup> Testimony of Coordinator. D.E. 24, p. 222.

<sup>182</sup><sup>182</sup> Testimony of Coordinator.

<sup>183</sup> D.E. 24, p. 222.

<sup>184</sup> D.E. 24, p. 222 and D.E. 5, p. 109.

<sup>185</sup> Testimony of Coordinator. D.E. 24, p. 222.

<sup>186</sup> Testimony of Coordinator. D.E. 24, p. 222.

<sup>187</sup> Testimony of Coordinator. D.E. 24, p. 222.

<sup>188</sup> Testimony of Coordinator.

<sup>189</sup> Testimony of Coordinator. D.E. 24, p. 223.

<sup>190</sup> D.E. 20, p. 110.

<sup>191</sup> D.E. 20, p. 144.

<sup>192</sup> Testimony of Coordinator.

31. The testimony of the BCBA, the OT, the Special Ed Teacher, the Social Worker, the PE Specialist, the Speech Pathologist, the Coordinator, and the Psychologist were uncontroverted at the hearing. The District's witnesses offered consistent testimony among each other and were found to be credible and persuasive. The Parent offered no testimony at this hearing to support her request for an independent FBA and an independent neuropsychological evaluation to be funded by the District.

### **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.<sup>193</sup> Parents have a right to an independent educational evaluation (IEE) at their own expense.<sup>194</sup> 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.<sup>195</sup>

The District has the burden to prove the appropriateness of the reevaluation.<sup>196</sup> An appropriate evaluation is one which complies with the pertinent federal and state regulations.<sup>197</sup> 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.<sup>198</sup>

For the evaluation to be appropriate, the school district must assess the child in all areas of the "suspected disability."<sup>199</sup> For the evaluation, the school district is

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<sup>193</sup> 34 C.F.R. §300.303(b)(2).

<sup>194</sup> 34 CFR § 300.502(a).

<sup>195</sup> 34 CFR § 300.502(b).

<sup>196</sup> 105 ILCS 5/14-8.02b.

<sup>197</sup> *Krista P. v. Manhattan School District*, 38 IDELR 329 (N. D. Ill. 2003).

<sup>198</sup> 105 ILCS 5/14-8.02a(g-55).

<sup>199</sup> 20 U.S.C. § 1414(b)(3)(B).

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.<sup>200</sup> The school district cannot use any “single measure or assessment as the sole criterion” for determining whether the child has a disability.<sup>201</sup> 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.”<sup>202</sup>

Moreover, under the IDEA, a 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.”<sup>203</sup>

The IDEA has additional requirements for reevaluations which encompasses a review of the existing evaluation data on the child including evaluations and information provided by the parents, classroom-based observations and observations by the student’s teachers and related service providers.<sup>204</sup> Based upon this review, the IEP team needs to determine what additional data, if any, is needed to determine if the child continues to have such a disability and such educational needs, the present levels of academic achievement, whether the child continues to need special education and related services and whether any modifications or additional are needed to the special

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<sup>200</sup> 20 U.S.C. § 1414(b)(2)(A).

<sup>201</sup> 20 U.S.C. § 1414(b)(2)(B).

<sup>202</sup> 20 U.S.C. § 1414(b)(2)(C).

<sup>203</sup> 20 U.S.C. § 1414(b)(3)(A)(i)-(v).

<sup>204</sup> 20 U.S.C. § 1414(c)(1)(A)(i)-(iii).

education and related services to enable the child to meet the measurable annual goals and to participate in the general education curriculum.<sup>205</sup> For a reevaluation, an IEP team is not required “to perform anew the full scope of testing properly included in a child’s initial evaluation.”<sup>206</sup>

An evaluation only needs to comply with the IDEA and not a parent’s wish to have more assessments conducted. In *Great Valley School District*, 114 LRP 49527 (PSEA 2014), the hearing officer found the school district’s evaluation complied with the requirements under the IDEA and explained whether the evaluation is conducted by a school district or a private practitioner there are always additional tests that could have been chosen. The hearing officer further iterated that if a parent wishes to obtain additional information the parent can seek a private evaluation but not at the public expense since the school district’s evaluation complied with the IDEA.<sup>207</sup>

Additionally, the Courts have found the requests for particular assessments reflects nothing more than a professional disagreement over which evaluations are more appropriate. In *Heather H. v. Nw. Indep. Sch. Dist.*, 529 F. Supp.3d 636 (E.D. Tex. 2021) aff’d 21-40316 2022 WL 180071 (5<sup>th</sup> Cir., June 2, 2022), the parent argued the evaluation lacked sufficient data and the school district should have again performed the ADOS-2 and should not have chosen to administer the CARS-2 assessment. The Court held the record reflected this was nothing more than a professional disagreement about which evaluations are most appropriate.<sup>208</sup>

The Courts and hearing officers have routinely found school districts’ evaluations to be appropriate where the evaluations were 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.<sup>209</sup> The 7<sup>th</sup> Circuit has upheld a school district’s evaluation where the evaluators were found to be competent,

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<sup>205</sup> 20 U.S.C. §1414(c)(1)(B)(i)-(iv).

<sup>206</sup> *Robert B. v. W. Chester Area Sch. Dist.*, 44 IDELR 123 (E.D.P.A. 2005).

<sup>207</sup> *Great Valley School District*, 114 LRP 49527 (PSEA 2014).

<sup>208</sup> *Heather H. v. Nw. Indep. Sch. Dist.*, 529 F. Supp.3d 636, 651 (E.D. Tex. 2021), aff’d 21-4036 2022 WL 180071 (5<sup>th</sup> Cir. June 2, 2022).

<sup>209</sup> *Belvidere CUSD #100*, 114 LRP 22690 (ISEA, 2013). *E.P. v. Howard County Public School System*, 72 IDELR 114 (4<sup>th</sup> Cir. 2018). See also, *Blake B. v. Council Rock Sch. Dist.*, 51 IDELR 100 (B.D. Pa. 2008), *Vernon Bd. Of Education*, 121 LRP 36211 (CSEA, 2021).

well trained and performed comprehensive evaluations.<sup>210</sup> The 4<sup>th</sup> 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.<sup>211</sup>

Under the IDEA, FBAs, and BIPs are not required components of a child's IEP.<sup>212</sup> In developing an IEP, the IDEA requires an IEP team to address behavior management when a child's behavior is interfering with the child's ability to benefit from his/her educational programming. The IEP team must consider whether a child needs the use of "positive behavioral interventions and supports" when a child's behavior impedes the student's learning or that of others.<sup>213</sup> The failure to conduct an FBA does not render an IEP procedurally inadequate if the IEP considers behavioral strategies.<sup>214</sup> The Courts have deferred to the school staff to make the determination that an FBA is necessary. In *L.G. & E.G., v. Wissahickon School District*, 55 IDELR 280 (E.D. Pa. 2011), the Court held the child's teachers are in the best position to determine whether the child's behavioral issues prevented the student from receiving a meaningful education benefit. Additionally, under the IDEA, parental consent is required for an FBA to be performed.<sup>215</sup>

In the instant case, the District's reevaluation of the Student 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.<sup>216</sup> The testing was administered in the Student's language and not administered in a discriminatory or biased fashion.<sup>217</sup> The Findings of Fact establish the Student's vision did not impact the testing results.<sup>218</sup> The evaluation, also, did not rely on any single measure or assessment as the sole criterion. The Findings of Fact show the reevaluation encompassed the administering of testing

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<sup>210</sup> *B. G. v. Bd. of Ed. Of City of Chicago*, 72 IDELR 231 (7<sup>th</sup> Cir. 2018). (The psychologist's failure to explain certain scores on one assessment not her failure to consider the results of a behavioral rating scale invalidated the district's reevaluation.)

<sup>211</sup> *E. P. v. Howard County Public School System*, 72 IDELR 114 (4<sup>th</sup> Cir. 2018).

<sup>212</sup> 34 C.R.R. 300.230. 71 Fed. Reg. 46,629 (2006).

<sup>213</sup> 34 C.F.R. §300.324(a)(2)(i).

<sup>214</sup> *W. S. and K M. v. Nyack Union Free Sch. Dist.*, 56 IDELR 210 (S.D.N.Y. 2011).

<sup>215</sup> See, *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007).

<sup>216</sup> FOF 3, 4, 6, 10, 13, 16, 18, 21 & 23.

<sup>217</sup> FOF 25.

<sup>218</sup> FOF 8-9.

for the Student, classroom observations, records reviews, and teacher interviews.<sup>219</sup> The IEP team complied with the IDEA's criteria for reevaluations by reviewing the student's records and prior evaluation data, determining whether the Student continued to qualify for special education and related services and determining whether any additional modifications were needed.<sup>220</sup>

The reevaluation was comprehensive because the IEP team assessed the Student in all areas of his suspected disability. The Student was previously found to have below average cognitive, social-emotional functioning and adaptive development and found to possess below average skills in reading and math.<sup>221</sup> The reevaluation assessed these areas and obtained updated data on the Student's present level of performance in these areas.<sup>222</sup> The IEP team also assessed the Student's functional performance, his expressive, pragmatic, and receptive language, motor skills, visual motor integration skills, handwriting, keyboarding, and sensory processing skills.<sup>223</sup> The Findings of Fact illustrate the reevaluation was comprehensive despite the Parent's lack of cooperation and participation in some of the requested testing for the reevaluation and confirm a private neuropsychologist evaluation is not necessary to obtain additional information to assess the Student's needs.<sup>224</sup> Additionally, the results of the reevaluation were consistent with the results of the Student's prior testing and with the observations in the classroom.<sup>225</sup> The Student was found eligible under the same categories of ID and ASD and continued to be eligible for the same related services.<sup>226</sup> Moreover, the IEP team determined which areas the Student still needed supports and modifications in the classroom to improve on his deficits and determined the Student's current placement in a small, structured environment was enabling the Student to access his education.<sup>227</sup>

The Parent requests an IEE because she disagreed with the results of the reevaluation and indicated the reevaluation reports were incomplete. The record is devoid of any evidence that the reevaluation results were inaccurate or that additional

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<sup>219</sup> FOF 11-17, 19, 20, 21 &24.

<sup>220</sup> FOF 3, 4, 10, 12, 15, 17, 19-23.

<sup>221</sup> FOF 1.

<sup>222</sup> FOF 6, 14-16, 18-20, &23.

<sup>223</sup> FOF 10-12, 21 &23.

<sup>224</sup> FOF 5, 7, 11, 19 &26.

<sup>225</sup> FOF 15, 16, 18 &19.

<sup>226</sup> FOF 11, 29-30.

<sup>227</sup> FOF 12, 14-16, 17, 19-20, 22, 23 & 30.

testing was necessary to assess the Student to address his individual needs.<sup>228</sup> The Parent never testified or offered any evidence to show the results were incorrect. Moreover, the results of the reevaluation were consistent with the Student's previous testing.<sup>229</sup> The case law also clearly indicates a parent's disagreement with the evaluation results does not warrant an IEE. The Finding of Fact also unequivocally demonstrate that the Parent received the reports from the reevaluation and the IEP team reached out to the Parent to ensure she understood the reports and even encouraged the Parent to ask questions.<sup>230</sup> The Coordinator took the time to create a form for the Parent to use to compose her questions and the IEP team held three eligibility meetings to accommodate the Parent and to ensure she understood the results of the reevaluation.<sup>231</sup> Overall, the reevaluation conducted by the District was appropriate and comprehensive.

Next, the Parent requested an independent FBA and has not presented any evidence to support the need for an FBA. The Findings of Fact overwhelming establish that an FBA is unnecessary to assess the behavioral needs of the Student and the case law clearly confirms that the school staff is in the best position to determine whether an FBA is necessary.<sup>232</sup> The classroom observations and the testing of the Student established the Student has not exhibited any behaviors that were interfering with the other students in his class from accessing their education and there was no evidence that the Student's behavior was impacting his access to his education.<sup>233</sup> The Psychologist, the Social Worker, the Special Ed Teacher and the BCBA agreed that the supports and the accommodations in the classroom were working in the classroom and the staff members were able to redirect and regulate the Student's frustrations in the classroom.<sup>234</sup> None of the findings from the comprehensive reevaluation warrant the District to delve deeper into the Student's behavior in the school environment.<sup>235</sup> More importantly, the District had agreed to fund a private FBA and the Parent refused to

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<sup>228</sup> FOF 11, 19, 24-26.

<sup>229</sup> FOF 15 & 18.

<sup>230</sup> FOF 27-29.

<sup>231</sup> FOF 27-29.

<sup>232</sup> FOF 19 & 24.

<sup>233</sup> FOF 14, 17, 19 & 24.

<sup>234</sup> FOF 14, 17, 19 & 24.

<sup>235</sup> FOF 17, 19 & 24.

consent to the FBA.<sup>236</sup> The private FBA could have been conducted prior to the District bringing forth its complaint if the Parent had provided consent for the FBA. Based on the foregoing, the Parent's request for an independent FBA is hereby denied.

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.
2. All the relief sought by the Parent is hereby denied.

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

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification 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 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: July 11, 2023

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<sup>236</sup> FOF 4 &5.

Leah Trinkala  
 Impartial Hearing Officer

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

**APPENDIX A**

[REDACTED] CCSD [REDACTED] v. Student [REDACTED]  
 ISBE Case No. 2023-0199

Child/Student	[REDACTED]
Location of the Hearing	Remote Hearing
N Middle School	[REDACTED] – Student’s current placement
Child’s Parent/Mom	[REDACTED]
Coordinator	[REDACTED] – Coordinator of Individualized Education Services
Director of Special Ed	[REDACTED]
OT	[REDACTED] – School Occupational Therapist
BCBA	[REDACTED] – BCBA & School Psychologist
Special Ed Teacher	[REDACTED]
Social Worker	[REDACTED]
Speech Pathologist	[REDACTED]
School Psychologist	[REDACTED]
PE Specialist	[REDACTED] – Adaptive PE Specialist

**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. Zaria Udeh, Esq.  
Robbins Schwartz

[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 July 11, 2023

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Leah M. Trinkala  
Impartial Hearing Officer

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