

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Student, ¹

Petitioner/Student,

v.

Case No. 2024 DP 0012

High School District,

Rhonda L. Walker

Respondent/District.

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.

BACKGROUND

On July 13, 2023, Parent requested an Independent Educational Evaluation (IEE) at public expense (IHO 1) On July 18, 2023, Petitioner ("District") filed a Due Process Complaint ("Complaint) (IHO Exhibit 1) Parent filed a response to the complaint on July 24, 2023. (IHO Exhibit 4)

This Hearing Officer was appointed on July 20, 2023. Parent filed a Notice of Insufficiency (IHO 9) on July 26, 2023 which was denied on July 30, 2023. (IHO 10) An initial status was conducted on August 2, 2023, after continuance at Parent's request. (IHO12)

¹ Personal identifying information for parties and witnesses is contained in Appendix A

On August 3, 2023, Parent filed a request for records. (IHO 13) The Request sought items which included cell phone records of a driver's education instructor, keylogger information, information released to website vendors, and PSAT testing information, stating the information may be sent on a thumb drive. (IHO 13) An order was entered August 9, 2023 which included a date by which the District was to tender documents to Parent and time thereafter for the Parent to file a Motion to Compel any outstanding documents. (IHO 15) Parent was cautioned that the IHO did not have jurisdiction over Family Educational Rights and Privacy Act (FERPA)² violations but could govern the production of documents relevant to the due process hearing. (IHO 15) The case was continued to August 31, 2023 for status. Parent did not file a Motion to Compel Documents. (IHO 61, email dated 8/24/23) In the interim, on August 11, 2024, Parent stated his intent to cease his participation in the proceedings. (See IHO 61, email dated August 11, 2023)

Parent did not participate in the status call on August 31, 2024. The IHO reached out to Parent on several dates including September 11 and 18, 2023; Parent did not respond. (See IHO 61, emails dated September 11 and 18, 2023)

Notice of Prehearing Conference was sent on September 20, 2023 scheduling the case for prehearing conference on October 6, 2024. (IHO 17) Parent did not participate in the Prehearing Conference. The Prehearing Report and Order issued, setting this matter for hearing November 27, 2023. (IHO 20)

After the Prehearing Report issued, Parent indicated by correspondence his intent to participate in the due process hearing. (IHO 22) Consequently, a status was scheduled for

² Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

November 20, 2023 by order dated November 19, 2023 (IHO 23). Parent did not participate in the November 20, 2023 status. (See, IHO 24) Given the short period of time between the IHO's order and scheduled status, and due to the impending hearing date, the hearing date was stricken and converted to a telephone status in order to allow Parent an opportunity to participate. (IHO 24) Parent did not participate in the November 27, 2024 status.

Thereafter, Parent was afforded two additional opportunities to participate in a Prehearing Conference on December 11, 2023 and January 8, 2024. (IHO 31, IHO 34) Parent did not participate on either date.^{3 4}

On January 13, 2024, an Amended Prehearing Report and Order was entered scheduling this matter for hearing on February 23, 2024. (IHO 44) The District had previously complied with the IHO's order regarding the submission of documents for hearing.

The parties did not participate in a resolution meeting or mediation. (See IHO 15) The current 45-day decision date is March 8, 2024.

The Due Process Hearing was held on February 23, 2024 on the Zoom platform.⁵ The District was represented by Stephanie Jones and Chas Griffin of Kriha Boucek. Parent did not

³ Parent has vacillated between expressing an intent to participate in the due process case and refusing to participate. (See, e.g. IHO 61 email dated 8/11/24, IHO 32, IHO 45, IHO 61, email dated 11/16/23) Parent stated on several occasions that he was not required to participate in a prehearing conference. (IHO 25, IHO 35, IHO 39)

⁴ Parent has not offered a reason that he has not participated in any telephone status after August 9, 2023 other than to say that he does not like talking on the phone with anyone he does not like and that he does not like the IHO or counsel for the District. (IHO 51f, 53c) Parent complains about the use of email which resulted in documents being sent to him by mail. Parent states he uses a friend's email out of necessity, but admits he has his own email address (IHO 22, IHO 61 email dated 11/18/23) and had made liberal use of email in sending all correspondence, often responding to IHO correspondence prior to him possibly receiving mail service.

⁵ Parent objected to any hearing by Zoom on various grounds including that it is private or that he does not have Zoom capabilities. (IHO 45) During a status of this matter held on August 2, 2023, Parent indicated that he could not participate in an in-person hearing at the District, at a library or at a police station. (IHO 61, email dated 7/30 23) (See, also e.g. IHO 53 stating Parent refusal to participate in a hearing in a government building due to privacy concerns and his belief that the District performs background checks on anyone who enters the campus. (IHO 48) Parent suggested a local car dealership but did not provide further information regarding his relationship to the

participate in the hearing. The District called two witnesses to testify. District Exhibits 1, 2, 3, 4, 6, 7 and 8 were admitted.

The decision of the IHO is due within 10 calendar days of the conclusion of the hearing excluding Saturdays, Sundays, and any state holidays. 105 ILCS 5/14-8.02a(g55)(5) The IHO did not have the benefit of a transcript. This decision is based on the IHO's personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered the documents admitted into evidence, the testimony of the witnesses, the District's closing argument, the District's suggested case law and statutes, as well as the IHO's own independent research.

ISSUES AND REQUESTED REMEDIES

The following issue is in dispute for determination by the Hearing Officer:

1. Whether the District's January 22, 2022 evaluation was appropriate and in accordance with IDEA Regulations 34 C.F.R. §300.304 and 34 C.F.R. §300.305.
2. The District's requested remedies are as follows:
 - a. District requests the IHO to find the Parent's request for an IEE improper, maintaining that the District has completed a comprehensive evaluation of the Student which has resulted in successful support of the Student.
 - b. The District requests a finding that it is not required to provide an IEE at public expense.

business, if they would allow a hearing there and if the proposed location had a quiet area where a confidential hearing could be conducted. (IHO 61 email dated 8/1/23, IHO 49) Counsel for the district reached out to the dealership but did not hear from them. Parent filed a document in an email titled "Response to Motion regarding Location of Due Process." (IHO 48) An order was entered scheduling a final status on January 29, 2024 to address Parent concerns and determine a place and time for hearing where he could participate. Parent did not participate in the status. (IHO 50) Similarly, Parent has suggested various times for hearing stating he was unavailable until 4:00 p.m. (IHO 45,46) as well as 1030 a.m. (IHO53c). Ultimately, and because Parent refused to engage in discussions about a mutually agreeable time and place for hearing, the hearing was set to occur by Zoom with a call-in option provided to Parent.

FINDINGS OF FACT.

There were no stipulations of fact. The Hearing Officer has considered the testimony of the witnesses presented and the admitted evidence whether or not it is specifically referred to in the final decision. The Hearing Officer's Findings of Fact are as follows:

1. The student is 17 years old and is a high school junior.
2. Student is currently eligible for special education and related services under the category of Specific Learning Disabilities. She has a history of academic deficit in reading comprehension and math problem solving. (IHO Ex. 1).
3. Student is currently enrolled in a general education setting for all classes except one 55-minute class per day in Resource Study Skills (RSS). (Testimony of L.S.⁶) RSS is led by a special education teacher who provides interventions intended to assist Student with reading comprehension and study skills. (Testimony of L.S.)
4. A reevaluation of Student was conducted and a report dated January 27, 2022 issued. (IHO 2, Testimony of T.S.⁷, Testimony of L.S.) The District provided advance notice of the evaluation to Parent on three separate occasions. (Testimony of T.S., D2 at 222) Parent did not attend the meeting in order to review the evaluation results or to develop the student's IEP. (Testimony of T.S.) The record indicates that a District representative spoke with Parent at which time permission was given to conduct the evaluation without his presence. (D 2at 223) Parent's Concerns were are documented in that call as centering around the Student learning more independence and improving study habits. (D2 at 223)
5. The domain document lists only a review of the student's academic achievement as relevant for the evaluation teams. (Testimony of L.S., D2 at 245).
6. The School District administered the numerous assessments as part of the reevaluation. The IEP team reviewed all available documents from the time the Student was

⁶ L.S. has been employed by the District for the past seven years as a school psychologist. L.S. is also Coordinator of Special Services. L.S. holds a B.A. in psychology, a specialist degree in special education and is licensed in Illinois as an educator and as a nationally certified school psychologist.

⁷ T.S. is the Director of Special Education for the District and has worked for the District for four years. Prior to this position, L.S. worked for O'Fallon High School as a special education teacher and then a special education coordinator. L.S. holds a B.A. from Illinois State University as a behavioral specialist and an M.A. from McKendree University in special education with courses in directorial certification.

found to require special education services and which included a file review of the electronic IEP system, the Student's paper file, psychology evaluations and reports from teachers as well as her current services (Testimony of L.S).

7. The record review documented that Student was first evaluated prior to kindergarten and found eligible for special education services under the category of developmental delay (Testimony of L.S.) Student's eligibility was updated to Intellectual Disability in third grade. (Testimony of L.S.) In January, 2019, Student's eligibility for special education services was updated to Specific Learning Disability. (Testimony of L.S.)

8. The IEP team reviewed past interventions as is required for those students with specific learning disabilities. (Testimony of L.S., D2 at 250)

9. To assess the student's cognitive functioning, the School District relied upon file review and a review of the KSED Psychoeducational Evaluation Report from March 2012, a psychoeducational Evaluation Report from August 13, 2015 and psychological evaluation and scores reported in the January 25, 2019 evaluation of the Student. (Testimony of T.S., D2) Student's cognitive information disclosed that she was doing well. In assessing her specific learning disability, the prior testing did not disclose any concerns. (Testimony of T.S.) The student was found to be meeting previous reading and math goals while in general education. (Testimony of T.S.) Student was achieving a C+ or better in all classes. (Testimony of T.S.)

10. The District utilized IEP team discussion and file review, teacher verbal report, and progress reports to assess the student's academic achievement. It was determined that no additional data was needed as Student was performing well academically. (Testimony of L.S., T.S., D2)

11. To assess functional performance, the District relied upon IEP team discussion and file review, teacher verbal reports, and previous adaptive behavior ratings. (Testimony of T.S., D2)

12. Student's communication status was assessed by IEP team discussion and file review. (Testimony of T.S., D2)

13. For Student's health assessment and motor ability, the School District relied upon file review and a Parent report with the teacher over the phone. (Testimony of T.S., D2) In

assessing Student's hearing and vision, the School District relied upon a review of the results of exams administered in 2021. (Testimony of T.S., D2)

14. In reviewing Student's social emotional status, the District relied upon IEP team discussion, file review, and teacher verbal reports. (Testimony of T.S., D2)

15. The January 27, 2022 reevaluation concluded that Student continues to succeed in her current educational placement, achieving grades of C+ or higher in all her academic classes (Testimony of L.S., D2, D8) She continued to meet her math and reading goals in a general setting.(Testimony of L.S.; D2) Student's only supported setting is in a Resource Study Skills class. The IEP team continues to monitor her to ensure she uses her self-advocacy skills and study strategies in order to maintain her progress. (Testimony of L.S., D2) Student is clear that her post high school goals include going to college. (Testimony of T.S.)

16. On September 6, 2022, the School District held an IEP meeting at Parent's request. (Testimony of T.S., District 6 at 344). Parent participated by Zoom; his electronic signature was not received. (Testimony of T.S.) Parent requested the meeting because he wanted to change his daughter's schedule and discuss accommodations. A facilitator from the Illinois State Board of Education was present. (Testimony of T.S.) Parent did not raise any concerns about the January 27, 2022 evaluation prior to or at that meeting. (Testimony of T.S.) The Parental Concerns are set forth in the IEP as use of accommodations, teaching good study habits, stressing good punctuation and concern over the provision of driver's education. (D2 at 346) The IEP discloses that Student was successful academically with minimal support. (Testimony of T.S.) After that meeting, Parent emailed and asked that Student be moved to all supported special education classes. (Testimony of T.S., D9) The District declined, noting Student's academic success and the potential interruption to her learning schedule. (Testimony of T.S., D9)

17. Student is currently on track to graduate on time. (Testimony of T.S.) She currently has a 3.297 grade point average, and she is ranked 250th out of 604 students in her class. (Testimony of T.S.) The student does not need any additional assistance at this time. (Testimony of T.S., D8) Student's secondary transition plan indicates that she intends to attend college and to pursue a career in computer technology or literature, and that may require post-secondary education supports. (D2 at 225).

BURDEN OF PROOF

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). In Illinois the district is required to present evidence that the special education needs of a child have been identified and that the program and related services proposed to meet the child's needs are adequate, appropriate and available. 105 ILCS 5/14- 802(b) The District recognizes that it has the burden of proof in this matter. (IHO 62)

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA's procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982)

Rowley mandates an examination of whether the District has complied with its Procedural obligations. *Id.* The procedural obligations have been implemented to allow for the full participation of concerned parties, including parents, in the development and implementation of an IEP. *id.*

Here, Parent was provided notice of the reevaluation on three separate occasions in order to provide an opportunity for Participation. Parent declined to do so, specifically expressing that intent to a team member.

To meet its substantive obligation, a district "must offer an IEP reasonably calculated to enable the student to make progress in light of the student's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 1001; 69 IDELR 174 (2017)

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. 34

C.F.R. §300.303(b)(2) Parents have a right to an independent educational evaluation (IEE) at their own expense. 34 CFR §300.502(a) The parents also have a right to an IEE at public expense if the parents disagree with the school district’s evaluation unless the school district can show its evaluation was appropriate. 300 CFR § 502(b) If the school district's evaluation is shown to be inappropriate, the district shall pay for the independent educational evaluation or reimburse the parents for the cost of the evaluation. 23 Illinois Admin. Code § 226.180(b)(c)(f)

An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P v. Manhattan School District*, 38 IDELR 329 (N.D. Ill. 2003) Under the Illinois School Code, the District has a statutory duty to present evidence that the school 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. 105 ILCS 5/14-802a(g-55)

For the evaluation to be appropriate, the school district must assess the child in all areas of the “suspected disability.” 20 U.S.C. § 1414 (b)(3)(B) The school district is required to employ “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent”. 20 U.S.C. §1414(b)(2)(A) The school district cannot rely on any “single measure or assessment as the sole criterion” for determining whether the child has a disability and must employ “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors.” 20 U.S.C. § 1414(b)(2)(B) and (C)

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.”

20 U.S.C. §1414(b)(3)(A)(i)-(v)

The IDEA has additional requirements for reevaluations which encompasses a review of the existing evaluation data of the child including evaluations and information provided by the parents, classroom-based observations and observations by the student’s teachers and related service providers. 20 U.S.C. §1414 (c)(1)(A)(i)-(iii) Based upon this review, the IEP team needs to determine what additional data, if any, it needs to determine if the child continues to have a disability, 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 for special education and related services to enable the child to meet the measurable annual goals and to participate in the general education curriculum. 20 U.S.C. §1414(c)(1)(B)(i)-(v)

The “IDEA and its implementing regulations do not require the District to perform anew the full scope of testing properly included in a child's initial evaluation. Rather, in reevaluating the child, the IEP team is to review all existing evaluation data, including "current classroom-based assessments and observations," and information provided by the parents”. *Robert B. v. W. Chester Area Sch. Dist.*, 44 IDELR 123 (E.D.P.A. 2005) An evaluation need only comply with the IDEA and not a parent’s wish to have more assessments conducted. If a parent wishes to obtain additional information, the parent can seek a private evaluation but not at the public expense if the school district’s evaluation complies with the IDEA. *Great Valley School District*, 114 LRP 49527 (PSEA 2014)

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 where they offered sound explanations for their choices. See, e.g., *Belvidere CUSD #100*, 114 LRP 22690 (ISEA, 2013). *E.P. v. Howard County Public School System*, 72 IDELR 114 (4th 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).

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 reevaluation was conducted by trained and knowledgeable personnel. The Findings of Fact demonstrate that the reevaluation encompassed a full record review, records reviews, and teacher interviews. 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 was functioning at an elevated level in a general education classroom with the need for only one supported classroom to assist in study skills.

The Findings of Fact illustrate the reevaluation was comprehensive despite the Parent's lack of cooperation. Additionally, the results of the reevaluation were consistent with the results of the Student's prior testing and with the observations in the classroom. The Student was found eligible under the same category of specific learning disability and continued to be eligible for the same related services.

Parent has failed to rebut the appropriateness of the reevaluation. Parent's request for an IEE and his communications with the IHO indicate that his concerns are largely based on alleged violations of FERPA and other privacy concerns. (See IHO 6.7, 8, 13, 14, 16, 22, 25, 33, 37, 45, 47, 48) Parent has not indicated any substantive reason related to his daughter's disability as a basis for requesting an IEE. There is no indication in the record that the reevaluation report is incomplete, inaccurate or that additional testing was necessary to assess the Student to address the Student's individual needs. 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.

Student has showed a marked progression over the course of her academic career and by all accounts, appears to be thriving academically. She participates in general education other than a resource study skills class which is in a supported setting. Student has achieved grades which range from C+ to A with her grades predominantly in the A and B grade category and is college bound.

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 meet the Student's needs adequately and appropriately. 105 ILCS 5/14-8.02a(g-55). Overall, the reevaluation conducted by the District has met that burden in that the reevaluation was appropriate and comprehensive.

ORDER

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

1. The District has completed a comprehensive evaluation of the Student which has resulted in successful support of the Student.
2. The District is not required to provide an IEE at public expense.

Dated: March 8, 2024

Rhonda L. Walker

Rhonda L. Walker
Independent Hearing Officer

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NOTICE OF RIGHT TO REQUEST CLARIFICATION

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

EXHIBIT A

Minor Student	██████████
Attending School	██████████ High School District ██████
Minor Student's Parent/Petitioner's	██████████
District Representative	██████████ – Director of Special Education
Parent's Witnesses	Parent did not disclose witnesses or participate at hearing
District Witness	██████████ – Director of Special Education
District Witness	██████████ – school psychologist

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to ISBE and the parties, individually and by their attorneys, if any, by email and certified mail, return receipt requested directed to:

Ms. Stephanie Jones
Kriha Boucek
2 Trans Am Plaza Drive
Terrance, IL 60181
email: stephanie@krihaboucek.com

[REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

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

Rhonda L. Walker

Rhonda L. Walker
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]