



The University of the State of New York

The State Education Department

State Review Officer

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No. 15-082

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the [REDACTED]

Appearances:

Cuddy Law Firm, PC, attorneys for petitioner, Jason H. Sterne, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Lisa R. Khandhar, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request for independent educational evaluations (IEEs) at public expense. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The nature of this appeal does not require a complete recitation of the student's educational history, and the parties' familiarity with such is presumed. Briefly, the student in this matter is classified with autism and was recommended for a 12-month school year program in a 12:1+1 special class placement in a State-approved nonpublic school for the 2014-15 school year (Parent Ex. D at pp. 1, 7-8, 10-11).¹ The CSE which developed the student's IEP for the 2014-15

¹ The student's eligibility for special education programs and services as a student with autism is not in dispute in this appeal (34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

school year also recommended that the student receive related services, including individual and group counseling and group speech-language therapy (*id.* at pp. 7, 11). A review of the hearing record reflects that the student exhibits deficits in the areas of cognition, reading, mathematics, receptive, expressive, and pragmatic language, and social/emotional functioning (Parent Exs. D at pp. 1-3, 11; J at pp. 1-5).

In a letter to the CSE dated November 3, 2014, the parent informed the district that it was not in compliance with its obligation to evaluate the student every three years (Parent Ex. G).² The parent notified the district that the student had recently experienced difficulty with regard to his academics, emotional development, and social behaviors, and that the nonpublic school had recently contacted the CSE to request a psychiatric evaluation for the student (*id.*). The parent requested that in addition to the requested psychiatric evaluation, the CSE conduct neuropsychological and speech-language evaluations, as well as a functional behavioral assessment (FBA) (*id.*). The parent indicated that if the district did not respond within 10 days, she would request IEEs at public expense (*id.*).

In response to the parent's request for evaluations, the district conducted a November 2014 classroom observation and a November 2014 educational evaluation, and arranged, through contract evaluators, November 2014 psychiatric and speech-language evaluations and a December 2014 neuropsychological evaluation (Dist. Exs. 1; 2; 4; 6; 7; *see* Tr. pp. 161, 163, 238). In a December 30, 2014 letter to the district, the parent notified the district of her disagreement with the findings of the evaluations and the district's failure to conduct certain evaluations (Parent Ex. H). The parent asserted that the district had "refused" to conduct a neuropsychological evaluation and indicated that it would not conduct an FBA (*id.* at p. 1). The parent requested that neuropsychological, speech-language, and FBA IEEs be conducted at public expense (*id.* at pp. 1-2). The parent specified the three private practitioners she proposed to conduct the evaluations, and requested that the district provide a translation of the results in her native language (*id.*).

A. Due Process Complaint Notices

In a January 5, 2015 due process complaint notice, the district requested an impartial hearing to defend the appropriateness of the November 2014 speech-language and December 2014 neuropsychological evaluations, and the district's determination that an FBA was not necessary (Answer Ex. 1).³ On February 3, 2015, the parent filed a due process complaint notice requesting an impartial hearing, seeking independent neuropsychological and speech-language evaluations and an independent FBA (Parent Ex. A). The parent also requested that the CSE reconvene after the independent evaluations were completed to develop a new IEP for the student (*id.* at pp. 6-7). By interim order dated February 4, 2015, an IHO consolidated the two due process complaint notices (Interim IHO Decision at p. 1).

² The one page typed letter has a hand written date of "11/3/14" in the upper right corner (Parent Ex. G). The district concedes the date of the letter and receipt of the letter.

³ The district's due process complaint notice was not included with the hearing record submitted to the Office of State Review but was submitted as an exhibit to the answer after written request made by staff of the Office of State Review. Although the district refers to this exhibit as additional evidence, State regulations provide that the hearing record "shall include" a copy of the due process complaint notice (8 NYCRR 200.5[j][vi][a]).

In an amended due process complaint notice dated March 11, 2015, the parent asserted that the district failed to timely conduct a required evaluation of the student, and that once the district did evaluate the student, the evaluations were insufficiently comprehensive to assess the student's needs (Parent Ex. S at pp. 4-5). With regard to the December 2014 neuropsychological evaluation, the parent asserted that the district failed to provide her with a translator to assist her in answering questions (id. at p. 5). The parent further contended that the evaluation was not comprehensive because it did not include program recommendations and did not adequately address the student's needs relating to academics and transitional planning (id.). In addition, the parent argued that the student exhibited behavioral difficulties requiring an FBA to identify the functions of his behaviors so as to develop a plan to address them (id. at pp. 5-6). As a remedy, the parent requested that the district fund independent neuropsychological and speech-language evaluations, as well as an independent FBA, with specified providers the parent proposed to complete the evaluations, and upon completion of the evaluations, reconvene a CSE and develop a new IEP for the student (id. at pp. 6-8).

B. Impartial Hearing Officer Decision

An impartial hearing convened on February 25, 2015, and after three total days of hearing, concluded on May 4, 2015 (Tr. pp. 1-291). In a decision dated June 24, 2015, the IHO found that the November 2014 speech-language and December 2014 neuropsychological evaluations were appropriate but granted the parent's request for an FBA IEE (IHO Decision at pp. 9-10). The IHO noted that the district did not contest that it failed to timely evaluate the student and that while the remedy for that failure would be an IEE, she agreed with the district that if the speech-language and neuropsychological evaluations were sufficient, the parent was not entitled to IEEs at public expense (id.). With regard to the parent's contention that the evaluations were not appropriate because she was not provided the services of a translator, the IHO determined that the parent had the ability to comprehend conversations and questions, and to express herself to some extent in English (id.) However, the IHO noted that due to the specialized language contained in evaluations and IEPs, it was important for the parent to understand them "in precise and accurate detail," not just generally (id. at pp. 10-11).

With respect to the speech-language and neuropsychological evaluations, the IHO determined that, while the parent's preferred evaluators may have chosen different testing tools and evaluative instruments, the evaluations conducted by the contracted evaluators used a variety of tests and reported on the implications of the results of the tests in the educational environment, and that the evaluations were sufficient to accurately understand the student's specific strengths and deficits, as well as his educational needs and the strategies that would likely result in educational benefit (IHO Decision at p. 9). With respect to the parent's contention that the evaluations did not contain recommendations, the IHO noted that by district policy the contracted evaluators were not permitted to make recommendations and held that the omission of recommendations did not render the evaluations so deficient as to preclude the CSE from developing an appropriate program for the student (id.). Additionally, despite the absence of a translator or interpreter to assist the parent in responding to portions of the neuropsychological evaluation, the IHO held that this did not impact the "overall validity" of the evaluation (id. at p. 11). The IHO determined that the district should have conducted an FBA (id. at pp. 9-10).

As relief, the IHO ordered the district to fund an independent FBA by a provider of the parent's choice (IHO Decision at p. 11). The IHO also ordered that the district provide the parent with an interpreter at all CSE meetings and for all evaluations where the parent's input was required, and that the results of all evaluations and other documents be translated into the parent's native language (*id.*).

IV. Appeal for State-Level Review

The parent appeals, asserting that the IHO erred in determining that the contracted neuropsychological and speech-language evaluations were sufficient, and in denying her request for IEEs in those areas.

The district answers, asserting general admissions and denials, as well as asserting that the IHO properly found that the district's neuropsychological and speech-language evaluations were appropriate.⁴

V. Applicable Standards

A district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]). A CSE may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities (8 NYCRR 200.4[b][3]). Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see *Letter to Clarke*, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]).

The IDEA and State and federal regulations guarantee parents the right to obtain an IEE (see 20 U.S.C. § 1415[b][1]; 34 CFR 300.502; 8 NYCRR 200.5[g]), which is defined by State regulation as "an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). When a parent requests an IEE, the district must provide the parent with a list of independent

⁴ The district does not cross-appeal from the portions of the IHO decision ordering it to fund the costs of an FBA IEE and the translation of all documents into the parent's native language.

evaluators from whom the parent can obtain an IEE, as well as the district's criteria applicable to IEEs should the parents wish to obtain evaluations from individuals who are not on the list (Educ. Law § 4402[3]; 34 CFR 300.502[a][2]; [e]; 8 NYCRR 200.5[g][1][i], [ii]; see Letter to Parker, 41 IDELR 155 [OSEP 2004]). From the list of independent evaluators, it is the parent, not the district, who has the right to choose the evaluator who will conduct the IEE (Wall Twp. Bd. of Educ. v. C.M., 534 F. Supp. 2d 487, 489-490 [D.N.J. 2008]; see Letter to Parker, 41 IDELR 155 [OSEP 2004]). Parents have the right to have an IEE conducted at public expense if the parent disagrees with an evaluation conducted by the district and requests that an IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]; see K.B. v Pearl River Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE [at public expense] is a disagreement with a specific evaluation conducted by the district"]). If a parent requests an IEE at public expense, the district must, without unnecessary delay, either ensure that an IEE is provided at public expense or initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). If a school district's evaluation is determined to be appropriate by an IHO, the parent may still obtain an IEE, although not at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]). Additionally, both federal and State regulations provide that "[a] parent is entitled to only one [IEE] at public expense each time the public agency conducts an evaluation with which the parent disagrees" (34 CFR 300.502[b][5]; 8 NYCRR 200.5[g][1]). The criteria under which a publicly-funded IEE is obtained, including the location of the evaluation and the qualifications of the independent evaluator, must be the same as the criteria the public agency uses when it initiates an evaluation (34 CFR 300.502[e][1]; 8 NYCRR 200.5[g][1][ii]; see Letter to Anonymous, 103 LRP 22731 [OSEP 2002]). If the district has a policy regarding reimbursement rates for IEEs, it may apply such policy to the amounts it reimburses the parent for the private evaluations (34 CFR 300.502[e][1]; see Individual Educational Evaluation, 71 Fed. Reg. 46689-90 [Aug. 14, 2006]). The district may also establish maximum allowable charges for specific tests to avoid unreasonable charges for IEEs (see Letter to Anonymous, 103 LRP 22731 [OSEP 2002]). When enforcing its criteria, the district must allow parents the opportunity to demonstrate that "unique circumstances" justify selection of an IEE evaluator who does not meet the district's criteria (Letter to Parker, 41 IDELR 155 [OSEP 2004]; Letter to Young, 39 IDELR 98 [OSEP 2003]; Letter to Anonymous, 103 LRP 22731 [OSEP 2002]; Individual Educational Evaluation, 71 Fed. Reg. 46689-90 [Aug. 14, 2006]).

VI. Discussion—Entitlement to an Independent Educational Evaluation at Public Expense

In her appeal, the parent asserts that the IHO erred in finding that the district's neuropsychological and speech-language evaluations were appropriate and denying the parent's request for a neuropsychological IEE and speech-language IEE at public expense.

The district argues that the parent is not entitled to an IEE at public expense, as the district paid for evaluations by private evaluators in the areas contested by the parent. The district asserts that since it paid outside contractors to conduct the speech-language and neuropsychological evaluations, the parent received the one IEE at public expense to which she was entitled in those areas. Initially, the district's argument is not entirely without basis, as an IEE is defined as an evaluation "conducted by a qualified examiner who is not employed by the

public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). However, while the evaluators who conducted the November 2014 speech-language and December 2014 psychological evaluations of the student were not technically "employed" by the district, an IEE is not simply an evaluation the district contracts to outside staff in lieu of an evaluation conducted by district staff: it is an evaluation that is independent of the district's control. In this case, after the parent requested that the district conduct neuropsychological and speech-language evaluations, the district permissibly contracted with outside agencies to conduct the evaluations (Parent Ex. G; Dist. Exs. 1; 2; 8). The parent thereafter objected to the district's evaluations or failure to conduct evaluations and requested IEEs (Parent Ex. H). The hearing record contains no indication that the district provided the parent with a list of independent evaluators from whom the parent could obtain an IEE or the district's criteria applicable to IEEs should the parent wish to obtain evaluations from individuals not on the list (Educ. Law § 4402[3]; 34 CFR 300.502[a][2]; [e]; 8 NYCRR 200.5[g][1][i], [ii]). Further, it is inconsistent with a parent's right to an IEE for the district to place restrictions on an IEE that the district does not place on its own evaluators (Letter to Petska, 35 IDELR 191 [OSEP 2001]). The hearing record reflects the district placed restrictions on what the evaluators could recommend in their written evaluation reports, without any evidence in the hearing record that the district placed the same restrictions on its evaluators (see Tr. pp. 173, 261).⁵ As noted above, once a parent has requested an IEE at public expense, the district must provide a list of independent evaluators and "it is the parent, not the district, who has the right to choose which evaluator on the list will conduct the IEE" (Letter to Parker, 41 IDELR 155 [OSEP 2004]; see Wall Twp. Bd. of Educ., 534 F. Supp. 2d at 489-490 ; Letter to Fields, 213 IDELR 259 [OSEP 1989] [stating that "[i]f the agency's list does not exhaust the number of persons minimally qualified to evaluate the unique needs of every child in the district, parents are free to select whomever they choose, so long as the evaluator(s) meet the agency's location, qualification, and reasonable cost criteria"]; see also Letter to Imber, 19 IDELR 352 [OSEP 1992]; Letter to Rambo, 16 IDELR 1078 [OSEP 1990]; Letter to Thorne, 16 IDELR 606 [OSEP 1990]).⁶ However, although the district's response to the parent's IEE request was arguably procedurally flawed in certain respects, the district evaluations at issue here, as discussed in detail below, were nonetheless adequate for purposes of assessing the student's needs.

Turning to the parent's contentions regarding the adequacy of the district's evaluation of the student, the hearing record shows that the CSE conducted a number of evaluations during November and December 2014 to determine the student's functioning levels, including an educational evaluation, a classroom observation, a speech-language evaluation, a psychiatric evaluation, and a neuropsychological evaluation (see Dist. Exs. 1, 2, 4, 6, 7).

⁵ The district chose not to offer its criteria for neuropsychological or speech-language evaluations into evidence. However, if the district "precludes it[s] own evaluators from making recommendations, it may preclude an independent evaluator from making a recommendation" (Letter to LoDolce, 50 IDELR 106 [OSEP 2007]).

⁶ Although not raised in this matter, the hearing record also does not indicate that the district provided the parent with prior written notice in her native language in conformity with federal and State regulations, either with respect to the evaluations it proposed to conduct of the student or its refusal to conduct an FBA (34 CFR 300.503; 8 NYCRR 200.5[a]). The hearing record also does not reflect that the district obtained written informed consent from the parent prior to evaluating the student (34 CFR 300.300; 8 NYCRR 200.5[b]).

The parent asserts that the speech-language and neuropsychological evaluations conducted by the district's contracted evaluators were not sufficiently comprehensive, arguing that some areas of deficit were not evaluated. Although the parent's claim relates to the thoroughness of the evaluations, she does not assert that the results of the evaluations were invalid or that the student's present levels of functioning, strengths, deficits, or needs were not accurately described in the evaluations. The district asserts that the assessments conducted were appropriate and sufficient to determine the student's needs and to create an IEP. A review of the hearing record supports the district's position.

A. Neuropsychological Evaluation

On appeal, the parent makes several assertions based on the testimony of her preferred evaluator and how the preferred evaluator would have conducted a neuropsychological evaluation of the student. At the onset, testimony regarding the manner in which the parent's preferred evaluator would have assessed the student is not relevant to the analysis of whether the district's evaluation of the student was appropriate. Nonetheless, a review of the hearing record demonstrates that the parent's assertions regarding the adequacy of the December 2014 neuropsychological evaluation are without merit.

The December 2014 neuropsychological evaluation was conducted by a licensed psychologist and certified school psychologist who had completed post-doctoral training in neuropsychology (Dist. Ex. 12 at pp. 1, 4, 7-8). A review of the report of the neuropsychological evaluation reveals that the evaluation included a variety of technically sound assessment tools and strategies to gather relevant information regarding the student's intelligence, academic performance, communication, motor abilities, and social/emotional status, and contained information provided by the parent (Dist. Ex. 1 at p. 1). The following assessment measures were administered: Stanford Binet Intelligence Scales-Fifth Edition (SB-5), Woodcock-Johnson III Tests of Achievement (WJ-III ACH) (selected subtests), Dean-Woodcock Neuropsychological Battery (DWNB), Trail Making Test (Form A and B), Beery-Buktenica Developmental Test of Visual-Motor Integration-Fifth Edition (full form) (Beery VMI), Gilliam Asperger's Disorder Scale, Conners Parent Rating Scale-Third Edition (Conners 3), Childhood Mania Rating Scale (parent version), behavioral observation, and parent and child interviews (*id.*). The evaluator acknowledged that she did not review prior psychoeducational or speech-language reports as part of her assessment of the student (Tr. pp. 237, 255-56).

Contrary to the parent's claim that the neuropsychological evaluation report lacked information regarding family history and a review of records, the report included information from the parent and the student regarding the student's then-current placement, the student's progress and behavior, as well as information concerning the student's family composition and medical needs (Dist. Ex. 1 at pp. 1-2).⁷ The evaluator testified that an extensive interview was conducted with the parent which lasted at least an hour (Tr. pp. 243-44).

⁷ As part of the evaluation process, the district also conducted a psychiatric evaluation, an educational evaluation, and a physical examination of the student, which provided additional information to the CSE regarding the student's family, medical, and educational history (see generally Dist. Exs. 4; 5; 7).

With respect to the parent's claim that a nonverbal intelligence test should have been administered due to the student's language delays, it is noted that the student scored significantly higher on verbal subtests (verbal IQ 87) than he did on nonverbal subtests (nonverbal IQ 66) on the SB-5 (Dist. Ex. 1 at p. 2). According to the evaluator, the results of testing indicated that the student demonstrated "far greater verbal skills than non-verbal ones" (*id.*). The evaluator reported that there was a significant discrepancy between the student's nonverbal IQ, which fell in the mildly delayed range, and his verbal IQ, which fell in the low average range (*id.* at p. 6). She further reported that the significant discrepancy between the student's verbal and nonverbal IQ results rendered the student's full scale IQ less meaningful for interpretation (*id.* at p. 2). In addition to the student's performance on the SB-5, the evaluator observed that the student demonstrated poor critical thinking and manipulation of information for processing and recall, and although he made adequate eye contact and engaged in meaningful conversation, he also "jumped in" and answered all questions posed to his mother (*id.*). Thus, while the hearing record shows that the student demonstrated language difficulties, it does not show that his language needs were such that his intelligence could only be assessed with a nonverbal intelligence test.

Next, the parent argues that the neuropsychological evaluation should have included language testing—however, contrary to this assertion, the evaluation included verbal subtests from the SB-5 measuring inductive and deductive reasoning, cause and effect, and absurd relationships and classification of objects; applying knowledge of concepts and language to identify increasingly difficult words; solving increasingly difficult mathematical tasks involving numerical concepts and word problems; and verbally recalling words and sentences (Dist. Ex. 1 at pp. 2-3). The neuropsychological evaluation also included a measure of expressive speech from the DWNB to identify speech production difficulties caused by lack of coordination or musculature impairments (*id.* at p. 5). In addition, and as described in more detail below, a speech-language evaluation of the student was conducted in November 2014 (*see* Dist. Ex. 2).

Turning to the parent's claim that the neuropsychological evaluation failed to assess the student's verbal and visual memory and executive functioning, this claim also lacks merit. The neuropsychological evaluation included the administration of the SB-5 working memory domain which is comprised of both nonverbal and verbal subtests, the WJ-III ACH story recall subtest, and the Conners 3 executive functioning subtest (Dist. Ex. 1 at pp. 2, 3, 5). The evaluator reported that the student "sustained attention and focus while solving problem abstract visual patterns" and, as noted above, "demonstrated poor critical thinking and manipulation of information for processing and recall" (*id.* at p. 2). In addition, the evaluator found a significant discrepancy between the student's nonverbal and verbal working memory subtest scales (*id.* at p. 3).

With respect to the parent's claim regarding insufficient assessment of the student's social/emotional functioning, the evaluator interviewed the student and the parent, reported on behavioral observations, and administered the following rating scales: Gilliam Asperger's Disorder Scale, Conners 3, and Childhood Mania Rating Scale (parent version) (Dist. Ex. 1 at pp. 1, 2, 5, 6). Assessment results indicated elevated scores in mania, inattention, hyperactivity/impulsivity, learning problems, executive functioning, aggression, and peer relations, as well as a high probability of Asperger's Disorder (*id.* at p. 6). Although the parent argues that the rating scales cannot be relied upon because they were conducted in English rather

than in her native language, she testified that she completed the rating scales with the assistance of a relative who translated for her (Tr. pp. 276-77).⁸ The evaluator testified that the parent was interviewed in English for at least an hour as part of the evaluation, and when rating scales were administered, assistance was offered to answer or clarify any questions regarding test items (Tr. pp. 243-44, 258). Moreover, the results of the social/emotional assessment portion of the neuropsychological evaluation are consistent with other evaluation reports, which also revealed learning problems, difficulty sustaining attention, restlessness, difficulty with peer interactions, and a diagnosis of an autism spectrum disorder (compare Dist. Ex. 1, with Dist. Exs. 4; 7).⁹

With respect to the parents' claim regarding the lack of recommendations in the December 2014 neuropsychological report, the evaluator recommended evaluations in the areas of speech and occupational therapy (Dist. Ex. 1 at p. 6). The evaluator testified that she was "not allowed to make recommendations beyond just the classroom or—recommendation[s] that the school would take over, not necessarily myself" (Tr. p. 261).

Based on the foregoing, the evidence in the hearing record demonstrates that the December 2014 neuropsychological evaluation, along with the results of additional district testing, was appropriate and sufficient to determine the student's strengths and deficits with respect to intellectual, language, memory, and social/emotional functioning, in order to develop the student's IEP.

B. Speech-Language Evaluation

On appeal, the parent makes several assertions based on the testimony of her preferred evaluator and how the preferred evaluator would have conducted a speech-language evaluation of the student. Again, testimony regarding the manner in which the parent's preferred evaluator would have assessed the student's speech-language needs is not relevant to the analysis of whether the district's evaluation of the student was appropriate. Nonetheless, a review of the hearing record demonstrates that the parent's assertions regarding the adequacy of the district's speech-language evaluation are without merit.

The parent asserts that the district's speech-language evaluator should have administered the Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5) in order to assess the

⁸ The parent testified that the neuropsychologist asked her if she was able to read "the test" and she indicated that she would be able to understand some, but not all of it, because English was her second language (Tr. p. 275). According to the parent, the evaluator indicated that she would assist the parent with the form; however, later when she informed the evaluator that she did not understand all of it, the evaluator told the parent to take the form home to complete (id.). The parent testified that the evaluator told her that not filling out the form would prevent the test from being completed (see Tr. pp. 275-76). The parent attempted to fill out the form at home, but could not, because the person that she thought would help her was not available (Tr. p. 276). The parent reported that she called the district and was advised to have her lawyer help her fill out the form (id.). The parent explained that she eventually called her cousin, who explained the form and helped her fill it out over the phone (Tr. pp. 276-77).

⁹ The November 2014 psychiatric evaluation report also provided additional information to the CSE regarding the student's social/emotional functioning, including diagnoses of an autism spectrum disorder, a depressive disorder, an anxiety disorder, and the presence of obsessive compulsive traits (Dist. Ex. 4 at pp. 4-5).

student's "receptive expressive language skills, working memory skills, and reading and writing comprehension skills." The parent further asserts that the district's speech-language evaluator failed to assess the student's memory and comprehension skills, which were essential for a student of this age. In addition, the parent claims that her preferred evaluator would have conducted an auditory processing screening of the student, which would help determine if the student's language deficits stemmed from difficulty with auditory processing. Lastly, the parent states that the preferred evaluator would have included frequency recommendations in her evaluation and designated whether speech-language therapy should have been provided to the student individually or in a group.

The speech-language pathologist who assessed the student in November 2014 testified that she was a New York State-licensed speech language pathologist and had worked in the field of speech-language therapy for over twenty years (see Tr. pp. 161-62). According to the speech-language pathologist, for the district evaluation she spent approximately one and a half hours evaluating the student in his home in November 2014 (Tr. pp. 163-65). She reported that she administered the Comprehensive Assessment of Spoken Language (CASL) to the student, which was primarily an oral test that did not involve writing (Tr. p. 165). The speech-language pathologist explained that she selected the CASL because it captured the skills adolescents need to function within the classroom environment (Tr. p. 170). She acknowledged that there were other tests that she could have given that determine whether a student requires speech-language services, but that she tended to use the CASL because it had "such a variety of tests that you can pull from to evaluate children" (Tr. p. 171). The CASL is comprised of subtests that assess word knowledge, grammatical judgment, comprehension of nonliteral language, word meaning, and pragmatic judgment (Dist. Ex. 2 at pp. 1-3). The speech-language pathologist testified that she was familiar with the CELF, but had not administered it in a "number of years" (Tr. pp. 171-72). She acknowledged that she did not review any of the student's prior IEPs, psychoeducational evaluations or speech-language evaluations as part of her assessment of the student (Tr. p. 177).

The evaluator opined that, at the time of testing, the student did not require an audiological evaluation because he was able to answer questions and she did not observe any indication that he had hearing problems (Tr. p. 172). She further opined that it was not necessary to assess the student's memory because she did not see any indication that the student had a memory deficit that was so overwhelming that he couldn't complete the test (Tr. p. 173).¹⁰ In addition, the evaluator testified that she conducted a clinical assessment of the student's audition, articulation, phonation, and fluency (Tr. p. 182; Dist. Ex. 2 at p. 2). Based on her clinical assessment, the speech-language pathologist concluded that the student's audition appeared adequate for the reception of speech and language, his speech skills (articulation) and

¹⁰ Moreover, as previously noted, in addition to the November 2014 speech-language evaluation, the hearing record shows that the district obtained information regarding the student's reading comprehension and working memory skills from results of the WJ-III ACH and SB5, which were administered as part of the December 2014 neuropsychological evaluation (see Dist. Ex. 1 at pp. 2-3, 6). The district also ascertained information regarding the student's reading (decoding and comprehension), written language (spelling and sentence composition), and listening comprehension skills (comprehension of single words, sentences, and extended discourse) from the November 2014 educational evaluation with administration of the Wechsler Individual Achievement Test-Third Edition (Dist. Ex. 7).

fluency were within normal limits, and his vocal pitch, intensity and quality were unremarkable for age and gender (Dist. Ex. 2 at p. 2).

Results of the November 2014 speech-language evaluation indicated that the student's overall receptive and expressive language abilities were well below average (Dist. Ex. 2 at pp. 1-3). Notably, the student's lowest scores were on a subtest designed to measure the ability to comprehend non-literal language in the form of figurative speech, indirect requests and sarcasm; and a second subtest designed to measure the ability to use information within a sentence to determine the meaning of an unknown word (*id.* at p. 2). Based on her evaluation, the evaluator opined that she had a sufficient amount of information to conclude that the student exhibited speech-language deficits and he required speech-language services (Tr. pp. 174-75). The speech-language pathologist testified that although she recommended speech-language therapy for the student, at district request she did not make frequency recommendations in her evaluation report (Tr. p. 173; *see* Dist Ex. 2 at p. 1).¹¹ She noted that the district "asked contracted people not to determine any mandate for the child" (Tr. p. 173). However, the evaluator testified that she wrote goals for the student (Tr. pp. 173-74).

Based on the above, the speech-language evaluation performed as part of a larger assessment by the district was sufficient. Although the parent may have preferred that the student be evaluated using different evaluation measures, the hearing record supports the IHO's determination that the 2014 speech-language evaluation report provided sufficient information to accurately understand the student's speech-language needs.

VII. Conclusion

Based on the foregoing, the hearing record supports the IHO's determination that the neuropsychological and speech-language evaluations conducted by the district were appropriate and, when viewed with the totality of the evaluation process, indicates that the district relied on technically sound instruments and used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, that was sufficient to determine the student's needs (20 U.S.C. §§ 1414[b][2][A], [C]; [b][3][B]; 34 CFR 300.304[b][1][ii]; [b][3]; [c][4], [6]; 8 NYCRR 200.4[b][6][vii], [ix], [x]; *see Mackey v. Bd. of Educ.*, 373 F. Supp. 2d 292, 299 [S.D.N.Y. 2005] [noting that the "IDEA does not compel a school district to perform every sort of test that would arguably be helpful before devising an IEP for a student"]). Accordingly, the parent is not entitled to neuropsychological or speech-language IEEs at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]).

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
November 6, 2015**

**CAROL H. HAUGE
STATE REVIEW OFFICER**

¹¹ The evaluator testified that she believed the student should receive three sessions of speech-language therapy per week, both individually and in a group (Tr. p. 183).