



The University of the State of New York

The State Education Department

State Review Officer

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No. 09-121

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 Baldwin Union Free School district

Appearances:

Ingerman Smith, LLP, attorneys for respondent, Susan M. Gibson, Esq., of counsel

DECISION

Petitioner (the parent) appeals from the decision of an impartial hearing officer which denied his requests for (1) an independent educational evaluation (IEE) of his son at public expense, and (2) a declaration that the most recent psychoeducational evaluation of his son was "invalid." The appeal must be dismissed.

At the time of the impartial hearing, the student was attending an 8:1+1¹ special class in one of respondent's (the district's) schools (Dist. Exs. 21 at p. 1; 30 at p. 2).² The student has received diagnoses of autism and a pervasive developmental disorder (PDD) (Dist. Ex. 21 at p. 7). The student's eligibility for special education programs and services as a student with autism is not in dispute in this proceeding (see 34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

¹ This figure denotes the number of students (8), teachers (1), and aides (1).

² The hearing record contains multiple duplicative exhibits. To maintain consistency within this decision, only district exhibits are cited, when available as part of the hearing record. Although the impartial hearing officer indicated that the duplication of exhibits was for "clarity and for the benefit of the parties" (Tr. pp. 108-09), I find the duplication to be unduly repetitious. I remind the impartial hearing officer of her responsibility to exclude irrelevant, immaterial, unreliable, or unduly repetitious material (see 8 NYCRR 200.5[j][3][xii][c]).

The hearing record reflects that a preschool student evaluation was conducted on January 14 and 23, 2004, and a "summary report" was prepared (Dist. Ex. 14 at p. 22).^{3,4} The report indicated that the evaluation was conducted to determine the student's eligibility for "further" special education services and to assess the student's speech-language and cognitive development (id.).^{5,6} Administration of the Stanford Binet Intelligence Scales: Fifth Edition (SB-5) yielded a full scale IQ of 71, a verbal IQ of 56 and a nonverbal IQ of 90 (id.). The evaluator reported that the student's "[d]evelopmental milestones were reached within normal limits" (id.). The evaluator further reported, however, that the student did not progress in language development from 12 to 15 months of age and exhibited a regression in language skills from 15 to 18 months of age (id.). Results of the Vineland Adaptive Behavior Scales, Second Edition (Vineland II) indicated a "[m]oderate-[l]ow" level of functioning in the student's overall adaptive behavior and daily living skills (id. at p. 23). The Vineland II results also indicated that in the area of social skills, the student performed at a one year and eleven month developmental level (id.).⁷ The evaluator reported that the student "initiate[d] adult phrases heard on previous occasions, engage[d] in elaborate make believe activities, alone or with others, and share[d] toys or possessions without being told to do so" (id.). The evaluator further reported that the student was unable to "label happiness, sadness, fear, and anger in [him]self" (id.). Regarding the student's communication skills, the evaluator indicated that the student's vocabulary was below the student's age level and that the student's expressive English language was over 40 percent delayed (id.). The evaluator noted that the student's attention and listening skills negatively affected the student's performance in this area (id.). The evaluator reported that the student was able to respond to simple commands in Mandarin and English when the topic was of interest (id.).

On February 14, 2006, the student was referred to the district for a psychological evaluation to help determine the student's needs and functioning levels as a student transitioning because of age from the Committee on Preschool Special Education (CPSE) to the Committee on Special Education (CSE) (Dist. Ex. 14 at p. 15). Background information contained in the resultant evaluation report indicated that the student had been offered a diagnosis of autism (id.). Referencing a bilingual social history form completed by the student's father, the evaluator included as background that discipline problems existed at home; that the student's behavior included throwing toys and running away when angry; that the student was unable to follow directions; that the student did not understand verbal instructions; that the student required much individual assistance; that the student withdrew; and that the student exhibited sensory deficits and

³ The hearing record indicates that on January 23, 2004, a psychologist completed the student's bilingual social history, psychological evaluation, and educational assessment (Dist. Ex. 14 at pp. 24, 26, 30).

⁴ District Exhibit 14 includes documents that are not consecutively numbered. The documents contained in District Exhibit 14 have been numbered sequentially by staff at the Office of State Review in order to provide a clear and efficient means of reference to the record on appeal.

⁵ The report revealed that the student had been receiving speech-language therapy services through the Early Intervention Program (Dist. Ex. 14 at p. 22).

⁶ The report states that the student was referred for an evaluation by his mother due to concerns regarding his speech-language abilities and overall development, as well as to determine whether there was a need to continue special education services (Dist. Ex. 14 at p. 24).

⁷ The student was two years, nine months at the time of the evaluation (Dist. Ex. 14 at p. 26).

language delays (id.). Again referencing the bilingual social history, the evaluator indicated that "discipline problems were not noted in school" (id.). The evaluator reported that the student did not respond to the evaluator's requests and did not engage in spontaneous eye contact or provide eye contact upon request (id. at p. 18). The evaluator indicated that the student did not respond to one-step directions, except for the two occasions when he was asked to sit on his chair (id.). According to the evaluation report, the student appeared to randomly give answers to the verbal comprehension testing questions and was unresponsive to questions relating to visual-spatial ability (id.). The evaluator further reported that when the student's father was asked to join the testing session, the student continued to be unresponsive even when his father repeated the testing items in Chinese and English (id.). The evaluator reported that an "informal language evaluation" was conducted by a speech-language evaluator, demonstrating significant delays by the student in comprehension and functional language usage (id. at p. 16). The speech-language evaluator also indicated that the student was unable to respond to his name, follow directions, or imitate single step directions, sounds, words or motor movements (id.).

The evaluator reported that the Differential Ability Scales (DAS)-Preschool Form and a test identified in the record as the "Brigance Kindergarten Screener" were unable to be administered because the evaluator compromised standardization procedures in order to facilitate responses from the student (Dist. Ex. 14 at p. 16). The evaluator reported that results from the Behavior Assessment System for Children-Parent Rating Scale (BASC-PRS) indicated "clinically significant" scores in the areas of atypicality, withdrawal, attention problems, adaptability and social skills; and "at-risk" scores in the areas of hyperactivity and anxiety (id.).⁸ The evaluator determined that the student's scores indicated that he demonstrated difficulty with withdrawal, inattention, social skills, adapting readily to changes in environment, and the presence of atypical behaviors, (id. at pp. 16-17). Administration of the Vineland-II, completed by the parent, yielded a standard score of 52 (percentile rank of <0.1) in communication,⁹ a standard score of 60 (percentile rank of .4) in daily living skills,¹⁰ a standard score of 63 (percentile rank of 1) in socialization,¹¹ a standard score of 75 (percentile rank of 5) in motor skills,¹² and an adaptive behavior composite of 60 (percentile rank of .4) (id. at p. 17).

On March 13, 2006, the student's special education itinerant teacher (SEIT) completed an educational progress report (Dist. Ex. 14 at p. 20). The SEIT reported that the student attended a Board of Cooperative Educational Services (BOCES) school and received "special instruction" in

⁸ The evaluator indicated that scores denoted as "at risk" "may deserve attention or monitoring;" scores denoted as "clinically significant" suggest "a higher level of maladjustment and may require formal treatment" (Dist. Ex. 14 at p. 16).

⁹ The evaluator reported that the communication domain measures pragmatic language, receptive communication, expressive language, following directions, listening attentively, use of functional language, and reading and writing ability (Dist. Ex. 14 at p. 18).

¹⁰ Daily living skills domain refers to demonstration of personal, domestic, and community skills (id.).

¹¹ Socialization refers to social interaction, play skills, use of leisure time, and responsibility and sensitivity to others (id.).

¹² Motor skills domain measures movement and coordination and use of hand and fingers to manipulate objects (id.).

the home two days per week for 90 minutes "at a time" to develop language, social skills, cognitive abilities, and motor skills (id.). The SEIT further reported that the student was "mostly non-verbal" and "at times" used one word requests to communicate a need or want (id.). The SEIT also indicated that the student's communication skills were inconsistent and that he exhibited limited play skills, preferring "parallel play" (id.). The SEIT reported that the student "crave[d] sensory stimulation through deep pressure" and did not respond to interaction with the examiner during play (id.). The SEIT further reported that the student rarely demonstrated eye contact and would "often continue an activity despite any stimulation around the room" (id.). The SEIT indicated that the student was "increasing his cognitive skills" and that he was able to match colors, shapes, numbers, and the alphabet on a puzzle board; demonstrated good problem solving skills when working with puzzles; and that he enjoyed puzzles, coloring, and painting (id. at p. 21). The SEIT reported that the student had previously been able to identify several pictures in books, such as animals and simple objects; however, at the time of the progress report she described the student as "less verbal" (id.). The SEIT further reported that the student was able to run and jump and that he was able to manipulate small toys (id.). The SEIT indicated that the student enjoyed sensory input such as tickling and rolling and "crave[d] sensory stimulation on his face, head and feet" (id.).

As reflected on an individualized education program (IEP) dated September 10, 2008, the CSE revised the student's June 25, 2008 IEP by an amendment form that was signed by the parent on that date (see Dist. Ex. 14 at p. 3; see also District Ex. 29).¹³ The amendment included the addition of direct consultant teacher services¹⁴ four hours per week for the remainder of the 2008-09 school year and removal of the following statement from the student's June 2008 IEP (under "Notations for Programs and/or Related Services"): "Parent training and counseling at home provided by the district must include practical application of skills. Parent should be instructed then the parent should attempt lesson with the student and the parent trainer should address and adjust the lesson to make it effective for the parent" (Dist. Exs. 14 at p. 3; 37 at p. 3).¹⁵ The student's September 2008 IEP included the CSE's recommendation from the June 2008 IEP that the student was eligible for special education services as a student with autism, and only included the changes delineated above (see Dist. Ex. 14 at pp. 3-12; see also Dist. Ex. 29). The student's September 2008 IEP recommended a 12-month 8:1+1 special class with related services of parent counseling and training one time per month for one hour, and speech-language therapy four times per week individually for 30 minutes and one time per week in a group of two for 30 minutes (Dist. Ex. 14 at p. 4). The student's September 2008 IEP indicated that the recommended

¹³ The June 25, 2008 CSE meeting was attended by the "CSE [c]hairperson/LEA Rep," a psychologist, a special education teacher, a speech-language provider, a regular education teacher, a participant from "Behavior Analysts, Inc.," and the parents (Dist. Ex. 29 at p. 1). The parents declined an additional parent member's attendance at the meeting (id.; see 8 NYCRR 200.3[a][1][viii]).

¹⁴ The student's September 2008 IEP provided the student's home as the location of the student's direct consultant teacher services (Dist. Ex. 14 at p. 4). The direct consultant teacher services were recommended to be provided for 90 minutes daily at home to supplement the extended school year (ESY) summer special class program that was only recommended to be provided for 1/2 day (id.).

¹⁵ This amendment was executed as a result of a settlement agreement between the parties, dated September 2008, wherein the parties resolved disputes raised in the parents' prior due process complaint notice, dated June 30, 2008, concerning CSE recommendations for the 2006-07 and 2007-08 school years (Dist. Ex. 37 at pp. 1, 3).

services/supports included provision of consistent structure, emphasis on socialization skills, a positive reinforcement plan and behavior modification techniques, as well as teacher consultation with a speech-language therapist (id. at p. 5). The September 2008 IEP provided that, as part of the 8:1+1 special class, an occupational therapist would "push-in" to the class to assist the classroom staff with the student's fine motor needs (id. at p. 4). Additionally, the September 2008 IEP provided that an additional "aide" would be placed in the classroom to support the student's needs (id.). The student's September 2008 IEP included annual goals and short-term objectives in the areas of reading, math, speech-language, social-emotional, behavioral, motor, cognition, and daily living skills (id. at pp. 7-12).

The hearing record reflects that on December 3, 2008, the district wrote a letter to the parents advising that the district would be conducting a reevaluation of the student during the 2008-09 school year to assess the student's educational needs and continued eligibility for special education and further requesting written consent to perform the evaluations (Dist. Ex. 6 at p. 1). The letter informed the parents that they had "the right to request a test or assessment as part of this evaluation" and requested that if the parents had any evaluative information about the student that they wanted the CSE to consider, they submit such information to the district (id.). The letter further reflected that the district would consider any evaluations that the parents submitted (id.). The letter informed the parents that if they had any questions, they should contact the district and a meeting would be arranged to discuss any concerns they may have (id.).

By letter dated December 8, 2008, the parent, in response to the district's December 3, 2008 letter, requested an occupational therapy (OT) evaluation (Dist. Ex. 7). In addition, the parent informed the district that there were "reasons" that he believed it would be inappropriate for the CSE to evaluate the student and requested that "third parties" conduct the psychological evaluation, speech-language evaluation, and educational evaluation (id.). By letter dated December 11, 2008, the district responded to the parent that it would include an OT evaluation as part of the student's reevaluation and included an updated consent form (Dist. Ex. 8). The district also explained its responsibility to arrange for a reevaluation at least once every three years and the parent's right to request in writing an independent evaluation once the evaluations have been completed if the parent disagrees with the findings of the evaluations (id.).

The hearing record reflects that an agreement was reached between the district and the parent in a telephone conversation on or about January 5, 2009, and that the agreement was expressed in a letter dated January 7, 2009, sent by the district to the parent (Tr. pp. 469-70; Dist. Ex. 11). The January 7, 2009 letter indicated that the parent and the district agreed that the psychological and educational components of the reevaluation would be conducted by a "mutually agreed upon evaluator," that the student's then current therapist would complete the speech-language evaluation, and that the OT evaluation would be conducted by a specific private therapy agency (id.). On January 7, 2009, the parent signed a "Parental Consent for Reevaluation" form with the following conditions attached to the form: (1) copies of reports or recommendations would be provided to the parent "in a timely manner such that the parent has a sufficient time to review the reports and ask evaluators questions;" (2) the parent would be permitted to ask questions about the reports in writing, and the evaluators would answer questions in writing within seven days after submission by the parent to the CSE; (3) the parent's questions and the responses by the evaluators "if any" would be part of the reports; and (4) the reports would be available to the parent

before the CSE met to develop the student's IEP (Dist. Ex. 12 at p. 2). The parent indicated that "[i]f any condition ... cannot be met, the consent is void" (id.).

The hearing record reflects that the parent did not know of an evaluator to conduct the psychoeducational reevaluation and that the district requested a recommendation for an evaluator from the New York State Special Education Directors' website in December 2008 (Tr. pp. 467-68; Dist. Ex. 10 at p. 1). The hearing record further reflects that a recommendation for an evaluator was provided by a district administrator in December 2008 as a result of the referral request on the website and that the parent agreed to the recommendation (Tr. p. 474; Dist. Ex. 10 at p. 2).

By letter dated January 26, 2009, the district authorized the recommended independent evaluator to conduct a psychoeducational reevaluation of the student, indicating that the parent was "fully aware" of the evaluation and providing the parent's contact information so that an appointment could be arranged (Dist. Ex. 14 at p. 1). In a report received by the parties on February 24, 2009 (Tr. pp. 480-81), the evaluator reported the results of the student's psychoeducational reevaluation, which was conducted on February 2, 2009 (Dist. Ex. 21). The psychoeducational reevaluation included a review of prior assessments, a parent interview, a teacher interview, a student observation, and administration of the Kaufman Assessment Battery for Children-Second Edition (KABC-II), the Kaufman Test of Educational Achievement-Second Edition (KTEA-II), Informal (Non-Standardized) Skills Assessment (using the Brigance K & 1 Screen-II), the Pervasive Developmental Disorders Behavior Inventory-Parent Rating Form (PDDBI-P), the Pervasive Developmental Disorders Behavior Inventory-Teacher Rating Form (PDDIBI-T), the Vineland-II - Teacher Rating Form, the Vineland-II - Parent Rating Form, as well as test results and interpretation, a summary, and recommendations (id.).

On February 26, 2009, a subcommittee of the CSE met for the student's reevaluation review and to revise the student's IEP for the 2008-09 school year (Dist. Ex. 30 at p. 1). Attendees at the February 2009 CSE meeting included the chairperson of the CSE subcommittee who also acted as the district representative, two district psychologists, a special education teacher, a regular education teacher, the student's special education teacher, an "LSH" provider,¹⁶ an occupational therapist, the independent psychologist who conducted the February 2009 reevaluation, and the parent (id. at p. 11).¹⁷ The February 2009 CSE subcommittee recommended continuation of the student's eligibility for special education services as a student with autism and a 12-month, 8:1+1 special class, with related services of parent counseling and training one time per month for one hour, and speech-language therapy four times per week individually for 30 minutes and one time per week in a group of two for 30 minutes (id. at pp. 1, 2). During the student's extended school year, he was recommended to receive OT one time per week individually for 30 minutes (id. at p. 2). The February 2009 IEP provided that, as part of the 8:1+1 special class, an occupational therapist would "push-in" to the class to assist the classroom staff with the student's fine motor needs (id.). In addition, the February 2009 IEP provided that an aide would be placed in the classroom to support the student's needs (id.). The February 2009 IEP indicated that the recommended services/supports included provision of consistent structure, emphasis on socialization skills, a positive reinforcement plan and behavior modification techniques, as well as

¹⁶ An "LSH" provider is presumed to mean a "language/speech/hearing" provider.

¹⁷ At the request of the parent, there was no additional parent member in attendance (Dist. Ex. 30 at p. 11).

teacher consultation with a speech-language therapist (id. at p. 3). The February 2009 IEP provided the student with annual goals and short-term objectives in the areas of reading, speech-language, social/emotional, behavioral, motor, cognition, and daily living skills (id. at pp. 6-10). Consistent with the September 10, 2008 amendment to the student's June 25, 2008 IEP (Dist. Ex. 14 at p. 3; see District Ex. 29), the IEP provided for direct consultant teacher services for four hours per week for the remainder of the 2008-09 school (Dist. Ex. 30 at pp. 1, 2, 11). The student's February 2009 IEP further provided the student's home as the location of the student's direct consultant teacher services (id. at p. 2). The direct consultant teacher services were recommended to be provided for 90 minutes daily at home to supplement the ESY summer special class program that was only provided for 1/2 day (id.).¹⁸

In a due process complaint notice dated March 10, 2009, the parent requested an impartial hearing seeking to "strike" the student's February 2009 psychoeducational reevaluation funded by the district and requested "compensation" and "damages" (District Ex. 1 at pp. 3, 8). The parent's allegations included that: (1) the psychoeducational reevaluation was conducted without parental consent; (2) the evaluator failed to include information provided by the parent; (3) the evaluator failed to gather "relevant functional and developmental data to show [the student's] life skills;" and (4) the student's educational needs were determined by the evaluator, not by a team of qualified professionals and the parent (id. at pp. 3-8). In addition, the parent alleged that the February 2009 psychoeducational reevaluation contained erroneous information,¹⁹ and that some of the evaluator's recommendations were unsupported (id. at pp. 6-7).

On March 23, 2009, a resolution session was held, which was unsuccessful (IHO Ex. 10; see IHO Decision at p. 3; see also 8 NYCRR 200.5[j][2]).

By letter and e-mail dated March 30, 2009 to the impartial hearing officer, the parent reasserted the issues contained in the March 10, 2009 due process complaint notice and added an allegation that the evaluator failed to gather "relevant functional and developmental data to show [the student's] ... play skills, communication skills, and which skills [the student] has at school but does not have at home" (Parent Ex. N). In addition, the parent alleged that he was not invited to determine the student's educational needs following the reevaluation (id.).

On March 31, 2009, a prehearing conference was held by telephone to clarify the issues (IHO Decision at p. 3). On April 9, 2009, the parent, by letter and e-mail to the impartial hearing officer, amended the proposed solution in the March 10, 2009 due process complaint notice and requested a declaration that the February 2009 psychoeducational reevaluation "failed to comply

¹⁸ The February 2009 IEP provided that should the district develop a full day ESY special class program, the direct consultant teacher program would no longer be necessary (id. at p. 2).

¹⁹ The parent asserted that the evaluator provided erroneous information in the report by stating that the home program initially emphasized life skills to the student and that the program was changed to emphasize academic skills upon parent dissatisfaction (Dist. Ex. 1 at p. 6). The parent further asserted that the student's home program was initially for 1:1 Applied Behavioral Analysis (ABA) instruction, not life skills, and that the district subsequently shifted from "academic skills" to "life skills," but then shifted the home program back to "academic skills" in September 2008 (id.).

with the laws and is invalid," and an order compelling the district to conduct another psychoeducational reevaluation (Dist. Ex. 3).

An impartial hearing convened on May 13, 2009 and concluded on July 28, 2009, after four days of testimony (Tr. pp. 1, 239, 560, 956). In a 54-page decision dated September 21, 2009, the impartial hearing officer denied the parent's application for: (1) a declaration that the February 2009 psychoeducational reevaluation was invalid; and (2) an order compelling the district to arrange for a "new" psychoeducational reevaluation (IHO Decision at p. 54). The impartial hearing officer found that the evidence showed that the February 2009 psychoeducational reevaluation was administered in compliance with State and federal law (*id.* at p. 53). The impartial hearing officer also found that the parent was not entitled to an IEE at public expense because the psychoeducational reevaluation conducted on February 2, 2009 constituted an IEE at public expense, citing the fact that an independent consultant conducted the evaluation and the parent agreed to the independent evaluator conducting the evaluation (*id.*). The impartial hearing officer specifically found that the evidence did not show that the psychoeducational reevaluation was conducted without parental consent (*id.* at p. 48). In support of this finding, the impartial hearing officer concluded that the evidence showed that: (1) the parent had returned a signed consent form with conditions that were accepted by the district; (2) the district complied with each of the parent's conditions; and (3) the parent did not revoke his consent at any time prior to the February 2, 2009 psychoeducational reevaluation (*id.* at pp. 48-50). The impartial hearing officer further found that, even if the parent's consent was void, such a procedural violation did not impede the student's right to a free appropriate public education (FAPE),²⁰ nor did it significantly impede the parent's opportunity to participate in the decision-making process regarding provision of a FAPE to the student, or cause a deprivation of educational benefits (*id.* at p. 50). The impartial hearing officer noted that the hearing record reflected that the student's program was not changed as a result of the psychoeducational reevaluation and reflected the parent's "full participation" in the process that resulted in the psychoeducational evaluation and an appropriate IEP for the student (*id.*).

In addition, the impartial hearing officer found that the evidence showed that the evaluator who conducted the February 2009 psychoeducational reevaluation included information provided by the parents in his psychoeducational reevaluation report and that the evaluator gathered relevant functional and developmental data regarding the student's life skills, play skills, communication skills, and those skills that the student exhibited at school but not at home (IHO Decision at pp. 51-52). Moreover, the impartial hearing officer found that the evaluator reviewed relevant background information relating to the student (including prior assessments and his then current IEP); that the evaluator conducted an observation of the student in the classroom; that the evaluator

²⁰ The term "free appropriate public education" means special education and related services that--

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(20 U.S.C. § 1401[9]; *see* 34 C.F.R. § 300.17).

made educational recommendations for the student based on his findings; that the evaluator's recommendations were reviewed by the full CSE, including the parent, at its meeting held on February 26, 2009; and that the parent fully participated at the February 26, 2009 CSE meeting (id. at pp. 51-53).

This appeal ensued. The parent asserts in his petition that "[t]he central dispute in this hearing is whether the evaluation gathered information in support of the recommendations" (Pet. at p. 5). The parent specifically asserts that the evaluator's recommendation that the student's home instruction program be changed "to skills and for parents to learn" is part of the dispute because there is no basis for such recommendation (id.). In addition, the parent alleges that the parent was not invited to participate in a determination of the student's educational needs and that there should have been an additional meeting held before the February 26, 2009 CSE meeting to determine the student's educational needs. The parent further alleges that the district may potentially use the psychoeducational reevaluation in the future to improperly discontinue the student's home-based program. The parent also alleges that the district did not obtain proper consent for the reevaluation because the district did not fully comply with the conditions contained in the consent form signed by the parent on January 12, 2009. The parent specifically alleges that the parent did not receive a copy of the psychoeducational reevaluation in a timely manner; that the evaluator did not answer the parent's questions in writing within seven days of the parent submission; that the parent's questions and the evaluator's responses were not included as part of the reevaluation; and that the reevaluation was incomplete (since the evaluator never provided a response to the parent's questions) and therefore not available before the CSE meeting. The parent requests that a State Review Officer "declare" that the psychoeducational reevaluation is "invalid due to failing to comply with the laws" and order the district to conduct a new "psychology" evaluation.

In its answer, the district asserts that the impartial hearing officer correctly found that the February 2, 2009 psychoeducational reevaluation was administered in compliance with State and federal law and that the parent is not entitled to another evaluation. The district further asserts that the impartial hearing officer was correct in finding that the district obtained parental consent before conducting the evaluation and that the conditions provided for in the consent form were satisfied. In addition, the district asserts that, even if the parent's consent was void, such a procedural violation did not impede the student's right to a FAPE. Moreover, the district asserts that the February 2, 2009 psychoeducational reevaluation constituted the parent's IEE, rendering the parent ineligible for another IEE, and that, in any event, the February 2, 2009 psychoeducational reevaluation was appropriate. The district further contends that a State Review Officer does not have jurisdiction to declare the evaluation "invalid" and that the parent's allegations regarding the student's home-based program were not raised in the due process complaint notice; therefore, he is barred from raising the issue on appeal.

Initially, a procedural matter must be addressed. The parent submitted a reply dated November 15, 2009. The district responded to the reply by letter dated November 19, 2009, requesting that the parent's reply be disregarded because part of the reply contains a new allegation and the remainder of the reply is an attempt to "buttress" allegations in the petition and add new assertions. Both the parent and the district submitted subsequent letters to this office. I note that a reply is limited by State regulations to the procedural defenses interposed by a respondent or to any additional documentary evidence served with an answer (8 NYCRR 279.6). In this case, the district's answer did not contain any procedural defenses and did not include any additional

documentary evidence. Accordingly, the reply is beyond the scope permitted by State regulations and I will not consider it (8 NYCRR 279.6).

I will now consider whether the February 2, 2009 psychoeducational evaluation was appropriate (see IHO Decision at p. 54).

Federal and State regulations mandate that each student with a disability be reevaluated at least once every three years (34 C.F.R. § 300.303[b][2]; 8 NYCRR 200.4[b][4]). The procedure for a reevaluation requires that a group that includes the CSE and other qualified professionals, as appropriate, conduct an initial review of the existing evaluation data including information provided by the student's parents, current classroom-based assessments and observations, and observations by teachers and related service providers (34 C.F.R. § 300.305[a][1]; 8 NYCRR 200.4[b][5][i]). Such review may take place without a meeting (8 NYCRR 200.4[b][5][i]). Based on that review, and based on input from the student's parents, the CSE must then identify what additional information, if any, is needed to determine whether the student continues to have an educational disability, the student's present levels of performance, whether the student needs special education services, or whether any additions or modifications to the special education services are needed (34 C.F.R. § 300.305[a][2]; 8 NYCRR 200.4[b][5][ii]). If additional data is needed, the school district shall administer tests and obtain other evaluation materials as may be needed to produce the needed data (34 C.F.R. § 300.305[c]; 8 NYCRR 200.4[b][5][iii]). However, subject to certain exceptions, a school district must obtain informed parental consent prior to conducting an initial evaluation or a reevaluation (34 C.F.R. § 300.300[c]; 8 NYCRR 200.5[b][1][i]; see Letter to Sarzynski, 51 IDELR 193 [OSEP 2008]) and provide adequate notice to the parent of the proposed evaluation (8 NYCRR 200.5[a][5]).

Consent is defined in the Federal and State regulations as meaning that the parents have been informed of all relevant information in their native language or other mode of communication, that they understand and agree in writing to the activity for which consent is sought, that the written consent form fully describes the activity for which consent is sought, lists any records that will be released and the people to whom any records will be released, and further that the parent must be aware that the consent is voluntary, may be revoked at any time, and if revoked, that revocation is not retroactive (34 C.F.R. § 300.9; 8 NYCRR 200.1[1]).²¹

However, if the parent refuses to consent to the evaluation, the school district "may, but is not required to" pursue the reevaluation using consent override procedures, including mediation and the filing of a due process complaint notice (34 C.F.R. § 300.300[c][1][ii]; 8 NYCRR 200.5[b][3]).

In determining whether the February 2, 2009 psychoeducational reevaluation was appropriate, I will first consider the parent's assertion that the evaluator did not include information provided by the parents in the reevaluation (see 34 C.F.R. § 300.305[a][1]; 8 NYCRR 200.4[b][5][i]). First, I find that the hearing record indicates that the evaluator included information provided by the parent in a January 31, 2009 telephone conversation conducted as part of the evaluation process (Dist. Ex. 21 at p. 2). A review of the psychoeducational reevaluation

²¹ Revocation of consent "does not negate an action that has occurred after the consent was given and before the consent was revoked" 34 C.F.R. § 300.9(c)(2).

reflects the parent's indication that the student had difficulties with language usage and processing and could not speak in sentences, and the parent's request that the evaluator provide the grade level at which the student exhibited skills (id.; see Tr. pp. 262-64). The evaluator also indicated in the psychoeducational reevaluation some detail provided by the parent; for example, that the student's understanding of a word might differ from the actual meaning of a word (Dist. Ex. 21 at p. 2; see Tr. p. 262).

The hearing record further indicates that the evaluator included information in the February 2, 2009 psychoeducational reevaluation that was provided by the student's mother's completion of the PDDBI-P (Dist. Ex. 21 at p. 5). The hearing record reflects that that student's mother completed the PDDBI-P as part of the student's reevaluation to assess development; the student's "skill[s]" and "behavior" including eye contact, use of "affect," gestures and facial expressions, social skills, and language skills (Tr. pp. 288-89; Dist. Ex. 21 at p. 5). The evaluator testified that the student's mother's ratings in the "approach and withdrawal problems" domain²² indicated that the student was within the average range compared to other children who had been offered a diagnosis of autism (Tr. pp. 289-91). The evaluator also testified that the student's mother's ratings in the area of "social pragmatic problems" indicated a "low level of difficulty with social approach, a moderate level of difficulty with overall social awareness, and a high level of inappropriate reactions to approaches from other people, meaning that it is difficult for [the student] to engage others and to respond accordingly" (Tr. p. 291).

Next, a review of the hearing record reflects that the evaluator included information in the February 2, 2009 psychoeducational evaluation provided by the student's mother from the Vineland-II. The hearing record reflects that the Vineland-II was completed by the student's mother to assess the student's communication, socialization, daily living skills and motor skills, as well as to assess the student's "personal self-sufficiency" as part of the reevaluation process (Tr. pp. 308-10). The evaluator's review in the reevaluation report of the student's mother's ratings indicated that the student had a "very low level of skills" in the area of daily living (Tr. pp. 313-14).²³ The evaluator's review in the reevaluation report of the student's mother's ratings of the student's abilities in the socialization domain indicated "a low level of actual application of skills within those areas" (Tr. pp. 314-15).²⁴

Accordingly, I find that a review of the hearing record reflects that the evaluator incorporated parental input from the student's father and mother into the February 2, 2009 psychoeducational reevaluation through the use of a telephone interview with the father and the mother's completion of the PDDBI-P and Vineland-II.

Next, I will consider the parent's assertion that the evaluator failed to gather relevant data to justify a change in the student's home instruction program. Initially, I note that the February 2,

²² The "approach and withdrawal" problems domain on the PDDBI-P relates to an individual's response to other people regarding either verbal, gestural, or physical types of engagement (Tr. pp. 295- 96; Dist. Ex. 21 at p. 10).

²³ The daily living skills domain includes an assessment of self-care skills, feeding skills, and leisure skills (Tr. pp. 312-13).

²⁴ The socialization domain assesses the student's ability to establish relationships, utilize activities to interact with others, and maintain relationships (Tr. p. 314).

2009 psychoeducational reevaluation provided the following recommendation regarding home instruction: "[h]ome-based instruction represents a unique opportunity to extend programming throughout [the student's] day, and can give [the parents] the skills needed to maximize their son's growth. Home based programming should emphasize activities of daily living (ADL), leisure (play) skills, and communication skills" (Dist. Ex. 21 at p. 8). At the impartial hearing, the evaluator expressed his opinion that the student needed to be taught life skills, based upon the significant degree of impairment in the student's overall level of adaptive ability (Tr. pp. 331-32). The evaluator supported his position with results of the Vineland-II completed by the student's teacher and the student's mother, and based upon his observation of the student (Tr. pp. 337-38; Dist. Ex. 21). The evaluator testified that the purpose of the Vineland-II is to obtain a standardized measure of the skills that an individual has that relates to personal sufficiency; "what can they do from the standpoint of communication, socialization, daily living and motor skills on a daily basis that allows them to function as independently as they can" (Tr. p. 1005). The evaluator explained that students with autism need to be taught generalization skills and they "don't just hop from one setting to another, or from one instructor to another. You need to teach across settings; you need to teach across instructors if you want the skill to become functional" (Tr. p. 337). The evaluator testified that his recommendations did not constitute a negative "commentary" of the parent's skills, but rather the desire to provide the student with as much support as possible because of the nature of the student's disability and "pervasiveness of need of [the student]" (Tr. pp. 450-51).

Moreover, while it is clear that the parent disagrees with the evaluator's recommendation regarding the student's home-based program, it is equally clear that the February 26, 2009 CSE did not incorporate this recommendation into the student's IEP as the student's program remained the same (see Dist. Ex. 30 at p. 13). I note that the comment section in the student's February 2009 IEP notes the parent's desire to only have academics taught to the student, as well as the evaluator's indication that it was important to teach the student ADL skills (*id.*). While the parent has a right to disagree with the evaluator's recommendation, such disagreement does not invalidate the psychoeducational reevaluation and I find that the evaluator's recommendation is not without basis.

Next, I find that the parent's assertion that the student's needs were improperly determined by the evaluator, not by a team of qualified professionals and the parent, is not supported by the hearing record. A review of the hearing record reflects that the February 2, 2009 psychoeducational evaluation included summaries and recommendations prepared by the evaluator (Dist. Ex. 21 at pp. 7-8). Moreover, the hearing record shows that the parent attended the February 26, 2009 CSE meeting,²⁵ at which time the evaluator reviewed the psychoeducational reevaluation (Tr. pp. 340-41). The hearing record further reflects that the parent participated in the CSE meeting and that the CSE, upon review of all relevant information, determined what evaluative recommendations made in the psychoeducational report would be implemented (Tr. pp. 488, 491-94). Accordingly, the hearing record indicates that the student's needs were properly determined by a team of qualified professionals. Likewise, I find that the parent's assertion that he was not invited to determine the student's educational needs after the psychoeducational reevaluation is not supported by the hearing record. The hearing record shows that, at the CSE meeting, all CSE members were provided with a copy of the parent's response to the reevaluation;

²⁵ The CSE meeting lasted for approximately 90 minutes (Tr. p. 491).

that the evaluator reviewed the student's reevaluation; and that the evaluator responded to the parent's concerns (Tr. pp. 340-41, 492). Furthermore, the parent testified that the evaluator answered the parent's questions at the February 2009 CSE meeting (Tr. pp. 808-09). The hearing record reflects that the parent was asked at the CSE meeting if he had any questions (Tr. pp. 341-42). In addition, the hearing record supports a finding that the parent agreed to the changes in the student's IEP at the February 2009 CSE meeting, which included the addition of a speech-language goal to address oral motor skills and articulation and the removal of two academic goals due to a lack of student progress (Tr. p. 493).²⁶ Moreover, the hearing record reflects that the parent's concern about a change in the student's home program is premature as the February 2009 CSE did not make a change to the student's home program (Tr. pp. 493-94, 819; see Dist. Ex. 30 at p. 13).²⁷ Accordingly, I find that the hearing record supports a finding that the parent participated in the determination of the student's educational needs.

I will now consider whether the district complied with the conditions attached to the consent form by the parent. A review of the hearing record reveals that the parent voluntarily consented to the student's psychoeducational reevaluation subject to four conditions that were accepted by the district (Dist Ex. 12 at p. 2). First, I agree with the district that the impartial hearing officer correctly held that the district complied with the first and fourth conditions of the parent's consent by providing the parent with the reevaluation report in a timely manner and by providing the student's reevaluation report to the parent before the February 2009 CSE meeting. The hearing record reflects that the district received the reevaluation report by fax on February 24, 2009, that the district notified the parent by telephone promptly thereafter, and that the parent obtained a copy of the reevaluation report the same day (February 24, 2009) (Tr. pp. 480-81). The CSE meeting to review the results of the student's psychoeducational evaluation was scheduled for February 26, 2009 (Dist. Ex. 17). The parent does not allege that he requested additional time in order to further review the student's psychoeducational evaluation report before or during the February 2009 CSE meeting (see Tr. p. 826). Moreover, testimony reflects that, had the parent requested an adjournment of the February 26, 2009 CSE meeting, such request would have been granted by the district (Tr. pp. 485-86).

Regarding the parent's second condition, which requested that the parent be allowed to ask questions about the evaluation in writing and required that the evaluator answer the parent's questions in writing within seven days after submission, I find that the hearing record supports a finding that the evaluator addressed the parent's written inquiries verbally at the February 26, 2009 CSE meeting (see Dist. Ex. 23). The evaluator testified that he responded to the parent's questions regarding the reevaluation, addressing each of the parent's "disputes and concerns" (Tr. pp. 340-41; see Dist. Ex. 23). Moreover, the district's assistant director testified that the evaluator addressed the parent's concerns for approximately 45 minutes to one hour at the February 2009 CSE meeting (Tr. p. 492). Accordingly, I conclude that the district did not strictly comply with the parent's second condition, based upon the evaluator's verbal, rather than written responses to the parent's concerns. However, I further find, without deciding whether the non-compliance

²⁶ The hearing record indicates that the parent contacted the district subsequent to the CSE meeting "much later on," and expressed that he was not in agreement with removal of one of the student's goals (Tr. p. 503).

²⁷ I further note that the hearing record reflects that, at the student's subsequent annual review on May 19, 2009, the student's home program was not changed (Tr. pp. 499-500; 823-24).

constituted a procedural inadequacy, that the hearing record supports a determination that the non-compliance did not impede the student's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or cause a deprivation of educational benefits (see 20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]). I further note that, although the parent's consent form stated that the failure to comply with any of the conditions would result in a revocation of consent, a revocation of consent may not be retroactive (see 34 C.F.R. § 300.9[2]; 8 NYCRR 200.1[l][3]). Accordingly, the February 2, 2009 psychoeducational evaluation may not be invalidated due to a failure to comply with a condition of consent after completion of the evaluation.

Regarding the parent's fourth condition, which provides that the parent's questions and the evaluator's responses, "if any," should be made part of the report, I find that the hearing record supports a finding that the district agreed to attach the parent's February 26, 2009 and February 27, 2009 written responses to the psychoeducational reevaluation, and that this offer by the district satisfied the fourth condition (Tr. pp. 486-87).

I will now consider whether the impartial hearing officer erred by denying the parent's request for an order directing the district to "arrange for a new psychoeducational evaluation" (see IHO Decision at p. 54). Federal and State regulations provide that, subject to certain limitations, a parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school district (34 C.F.R. § 300.502[a], [b]; 8 NYCRR 200.5[g][1]). A parent, however, is only entitled to 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]). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure that either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 C.F.R. § 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]; see, e.g., R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234 [D. Conn. 2005] [finding parental failure to disagree with an evaluation obtained by a public agency defeated parent's claim for an IEE at public expense]; A.S. v. Norwalk Bd. of Educ., 183 F. Supp. 2d 534, 549 [D. Conn. 2002] [upholding order of reimbursement where the district failed to demonstrate that its evaluation was appropriate]; Application of the Bd. of Educ., Appeal No. 09-109; Application of a Student with a Disability, Appeal No. 08-101). If a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense (34 C.F.R. § 300.502[b][3]; 8 NYCRR 200.5[g][1][v]; DeMerchant v. Springfield Sch. Dist., 2007 WL 2572357, at *6 [D. Vt. Sept. 4, 2007]; Application of a Student with a Disability, Appeal No. 08-039; Application of a Child with a Disability, Appeal No. 07-126; Application of a Child with a Disability, Appeal No. 06-067; Application of the Bd. of Educ., Appeal No. 05-009; Application of a Child with a Disability, Appeal No. 04-082; Application of a Child with a Disability, Appeal No. 04-027).

In determining whether the parent is entitled to an IEE at public expense, I will further consider whether the February 2, 2009 psychoeducational reevaluation was appropriate. An 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 C.F.R. § 300.304[b][1][ii]; see Letter to Clark, 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 C.F.R. § 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, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 C.F.R. § 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]), and 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 C.F.R. § 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]; see Application of the Dep't of Educ., Appeal No. 07-018).

Initially, the hearing record supports a finding that the evaluator who conducted the psychoeducational reevaluation was a qualified clinical psychologist (Tr. pp. 245-49; Dist. Ex. 13). I find that a review of the hearing record reflects that the evaluator reviewed available information, including the student's prior records and evaluations; the evaluator observed the student in school; the evaluator interviewed the parent and the student's teacher; and the evaluator provided a summary, conclusions, and recommendations consistent with his observations and testing (Dist. Ex. 21).

During the classroom observation, the evaluator indicated that the student's teacher guided the class through the lesson as the student sat in his chair, and that the student did not look in the direction of the visuals being presented to the class (Dist. Ex. 21 at p. 2). The evaluator reported that the student "ran his hands along the edges of the chair immediately in front of him and made soft non-verbal vocalizations" (id.). The evaluator further reported that the student periodically engaged in mild hand flapping and "hand-regard" (id.). The evaluator further indicated that the student responded momentarily to teacher prompts to attend to the visuals and at one point, the student engaged in high pitched vocalization while smiling and giggling (id. at p. 3).

The evaluator also reported upon his observations of the classroom teacher working individually with the student (Dist. Ex. 21 at p. 3). The evaluator reported that the teacher asked the student to choose a reward for the work he would complete; and that after asking the student twice, the student chose candy as his reward (id.). The evaluator observed that the student followed the directive to retrieve a binder and followed the directive to stop grinding his teeth (id.). The evaluator further observed that the teacher greeted the student and received no response from him followed by the teacher prompting the student several times to engage in verbal social exchanges; however, there were no spontaneous or reciprocal verbalizations from the student during this portion of the instruction (id.). The evaluator also observed that the student engaged in "a number of behaviors that produced their own reinforcement throughout instruction, such as hand-regard, hand-flapping, bruxism, and frequent and repetitive non-verbal vocal behavior" (id.). The evaluator reported that several times during instruction, the student "laid his head down on his teacher's leg and was redirected to sit upright" (id.). The evaluator reported that the student needed verbal and physical prompts to follow "receptive commands;" that in responding to commands the student engaged in hand flapping, skipping, and nonverbal vocal behavior; that the student often attempted to retrieve objects in the room that were unrelated to the current activity; and that the student's eye contact was inconsistent and multiple prompts were used for the student to establish

eye contact with the instructor (id.). The psychologist reported that "[d]uring the instructional session, there was a relatively high ratio of demand to reinforcement as well as an emphasis on receptive language," and the student made approximately two spontaneous requests for "reinforcers" during instruction (id.). The evaluator opined that the student was "prompt-dependent" (id.). The evaluator observed that the student "scroll[ed]" through his responses in an attempt to obtain "reinforcers" (id.). The evaluator opined that the student "may provide a series of responses that were reinforced previously and his responses may not be a function of the actual discriminative stimuli being provided" (id.).

The evaluator reported the results of a "pairing" exercise wherein the evaluator made a manual sign for a car, said the word "car," rolled a toy car across a table to the student, and the student stopped the car and held it (Dist. Ex. 21 at p. 3).²⁸ The evaluator reported that during the pairing exercise, the student spontaneously echoed "car" twice, imitated the manual sign for car, and exhibited brief spontaneous eye contact with the evaluator (id.). The evaluator reported that when he required a response from the student, the student's motivation "shifted quickly" and he began to run across the classroom (id.). The evaluator reported that he engaged the student in additional pairing exercises one of which included the use of a "physioball" (id. at p. 4). The evaluator indicated that during the exercise, the student was able to engage in spontaneous speech (id.). The evaluator reported that during testing the student "presented with poor interpersonal relatedness and a proclivity toward performing behaviors that produced their own reinforcement (including hand-flapping, hand-regard, and other repetitive behaviors)" (id.). The evaluator further reported that the student exhibited minimal eye contact with the evaluator, that the student did not engage in spontaneous and directed language with the exception of an occasional request, that the student engaged in several nonverbal vocalizations which did not have communicative intent, that the student mostly did not use objects in the prescribed manner, and that the student demonstrated "great difficulty following verbal directives" (id.). The evaluator opined that the student's behavior improved during the pairing exercises as compared to the standardized tasks in the areas of eye contact, spontaneous verbal behavior, and "shared affect" (id.).

Administration of the KABC-II to assess the student's cognitive abilities yielded a sequential standard score of 49 (percentile rank of <.1), a learning standard score of 48 (percentile rank of <.1) and a planning standard score of 54 (percentile rank of .1) (Dist. Ex. 21 at pp. 4, 9). The evaluator reported that the student did not earn any raw score points on eight of the twelve KABC-II subtests and that his "best performance" was on a subtest that required him to label pictures (id. at p. 4). Administration of the KTEA-II to assess the student's reading, math, and writing ability yielded scores that were at or below the .1 percentile (id. at pp. 4, 9). The evaluator further reported that the student was not able to earn any raw score points on the five subtests of the KTEA-II and that the student did not understand the verbal instructions (id. at p. 5).

The evaluator indicated that he engaged the student in reinforcement-based interaction using "edibles" and forms of social reinforcement such as "tickles and hugs" (Dist. Ex. 21 at p. 5). The evaluator also indicated that the student made several spontaneous verbal requests for edible items and even responded to a question (id.). The evaluator reported that he asked the student

²⁸ The psychologist testified that "pairing exercises" are "a way of pairing yourself, the instructor, the evaluator, with reinforcement and presenting it to the child in such away that they don't actually need to do anything to access the reinforcement" (Tr. p. 269).

several questions, regarding "personal data" taken from the Brigance K and 1 Screen-II (id.). The evaluator further reported that the student did not exhibit knowledge of the skills being tested; however, the student's eye contact and the frequency with which he requested "reinforcers" were improved compared to standardized assessments (id.). The evaluator indicated that when he used "errorless instruction" with the student, he responded "well and quickly" to testing items (id.).²⁹

Administration of the PDDBI-P was used to assess aspects of the student's presentation that may be consistent with individuals who have been offered diagnoses of a PDD (Dist. Ex. 21 at p. 5).³⁰ According to the evaluator's report, the student's mother completed the PDDBI-P and her ratings yielded average t-scores in the area of approach/withdrawal problems (id.). Additionally, the evaluator indicated that the "parent ratings yielded a t-score that implied a more severe level of difficulty with receptive and expressive social language" (id. at pp. 5-6).

Administration of the PDDBI-T was completed by the student's classroom teacher and yielded an autism composite t-score of 65 (Dist. Ex. 21 at p. 6). The evaluator reported that the teacher ratings yielded t-scores that were "average to high" in the area of approach/withdrawal problems that in the area of "Receptive/Expressive Social Communication Abilities," the teacher ratings yielded t-scores that indicated a more significant degree of impairment in language production, usage, and language comprehension (id.). The evaluator indicated that the student's expressive language was significantly impaired and that the student had still greater difficulty in applying his expressive language skills (id.).

Administration of the Vineland-II completed by the student's mother yielded a communication standard score of 59 (percentile rank of <1), a daily living skills standard score of 63 (percentile rank of 1), a socialization standard score of 62 (percentile rank of 1), a motor skills standard score of 72 (percentile rank of 3), and an adaptive behavior composite of 61 (percentile rank of <1) (Dist. Ex. 21 at p. 11). The evaluator determined that the student's performance was "low" in receptive, expressive, and written communication and that the student's scores further indicated low functioning abilities in the personal and community subdomains and moderately low abilities in the domestic skills subdomain (id. at p. 6). The evaluator also reported that the student's skills in the areas of interpersonal relationship, play and leisure time, and coping skills were in the low range and that the student obtained the highest rating in the area of motor skills which was considered in the moderately low range (id. at pp. 6-7).

Administration of the Vineland-II completed by the student's teacher yielded a communication standard score of 40 (percentile rank of <1), a daily living skills standard score of 44 (percentile rank of <1), a socialization standard score of 32 (percentile rank of <1), a motor skills standard score of 59 (percentile rank of 3), and an adaptive behavior composite of 32 (percentile rank of <1) (Dist. Ex. 21 at p. 10). The student's adaptive behavior composite of 32

²⁹ The psychologist testified that "errorless instruction" means that when teaching a new response to a student, the instructor prompts the correct response immediately so that the student does not make mistakes (Tr. pp. 347-48).

³⁰ The evaluator noted that the "reader is advised that the PDDBI was standardized on children with autism and that a t-score of 50 with a standard deviation of 10 is considered typical of children with autism" (Dist. Ex. 21 at p. 5).

indicated a "low overall level of global adaptive functioning" (id. at p. 7). The student's highest rating was in the area of motor skills (id.).

As a result of testing, the recommendations by the evaluator included that the student continue to be classified as a student with autism; that individual instruction with the use of applied verbal behavior (AVB) and strategies such as repetition and dense reinforcement be implemented with the student to acquire, maintain and generalize skills; that during instruction, the amount of effort needed by the student to respond should remain at a "low level;" that the Assessment of Basic Language and Learning Skills (ABLSS) be used to assess the student's skill level because of past conflicting assessment results; and that the student's home-based program "emphasize activities of daily living (ADL), leisure (play) skills, and communication skills" (Dist. Ex. 21 at pp. 7-8).

After reviewing the entire hearing record, including the February 2, 2009 psychoeducational reevaluation, I find that the evaluator employed 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 assisted in determining, among other things, the content of the student's IEP (see 20 U.S.C. § 1414[b][2][A]; 34 C.F.R. § 300.304[b][1][ii]). I further find that the student's psychoeducational reevaluation was sufficiently comprehensive to identify all of the student's special education needs (see 34 C.F.R. § 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]; see also Application of the Dep't of Educ., Appeal No. 07-018).

Accordingly, I conclude that the hearing record supports a finding that the February 2, 2009 psychoeducational reevaluation was appropriate; therefore, the parent is not entitled to an IEE at public expense based upon his disagreement with this particular evaluation. I further find that the hearing record supports the impartial hearing officer's decision that the psychoeducational reevaluation was conducted in compliance with federal and State law and regulations (see IHO Decision at p. 53), and I will uphold the impartial hearing officer's decision.

I have considered the parties' remaining contentions and find it is unnecessary to address them in light of my decision herein.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
January 7, 2010**

**PAUL F. KELLY
STATE REVIEW OFFICER**