



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 18-017

### **Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability**

#### **Appearances:**

Howard Friedman, Special Assistant Corporation Counsel, attorneys for petitioner, by Amy Fellenbaum, Esq.

The Cuddy Law Firm, PLLC, attorneys for respondents, by Jason Sterne, Esq.

### **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 district) appeals from a decision of an impartial hearing officer (IHO) which determined that its psychoeducational evaluation of the student was not appropriate and ordered the district to reimburse the parents for the cost of an independent educational evaluation (IEE). The appeal must be sustained.

#### **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**

This proceeding is limited to a determination of whether the district's November 2016 psychoeducational evaluation is appropriate. At the time the student was assessed, he had been receiving related services according to a July 9, 2015 Individualized Education Services Program (IESP) as a student with a speech or language impairment (Dist. Ex. 1 at 1). The hearing record reflects that by letter dated September 9, 2016, the student's mother notified the district's CSE that

the student's IESP was outdated and the CSE had not conducted a triennial evaluation or recently evaluated the student (Parent Ex. D). The student's mother further requested neuropsychological, occupational therapy (OT), speech-language including auditory processing, and assistive technology "comprehensive independent external evaluations" of the student (id.).

On September 26, 2016, the New York State Education Department's (NYSED) Office of Special Education received a complaint (see generally 8 NYCRR 200.5[l]) from the student's mother alleging that the district had not conducted an annual review within the prior 12 months, had not conducted a triennial review within the last three years, and failed to provide her with parental notices from the beginning of the 2015-16 school year through the then-present date (Parent Ex. E at pp. 3-5).<sup>1</sup> On October 26, 2016, the student was assessed by a district school psychologist, who completed a psychoeducational evaluation report on November 1, 2016 (November 2016 psychoeducational evaluation) (Dist. Ex. 1 at p. 1). By letter dated November 23, 2016, NYSED's Office of Special Education sustained the mother's three allegations (Parent Ex. E). As part of a compliance assurance plan, the CSE was directed to arrange for the reevaluation of the student and to convene to consider the results by January 9, 2017 (id. at p. 6). The hearing record indicates that an OT evaluation was conducted on January 9, 2017 with the report completed on February 2, 2017, and an assistive technology evaluation was conducted on January 10, 2017, with a trial usage period beginning on January 23, 2017 (Parent Exs. A at pp. 1, 4; B at pp. 1, 4-6). The student's trial usage period concluded on February 16, 2017, and by addendum dated February 28, 2017, the evaluator recommended use of assistive technology for the student (Parent Ex. B at pp. 8, 10-12).

By prior written notice dated January 17, 2017, the district agreed to conduct speech-language, psychoeducational, OT, and assistive technology evaluations using district staff or approved contract providers, denied the mother's request for private evaluators, and further denied her requests for a neuropsychological evaluation, an auditory processing evaluation, and a "functional listening" evaluation (Parent Ex. F at p. 1). The hearing record reflects that a CSE convened on March 16, 2017 to review the November 2016 psychoeducational evaluation report, a February 2, 2017 OT evaluation report, and a February 2017 assistive technology evaluation report (IHO Ex. I at p. 2).<sup>2</sup> Following review of the available evaluative information, the March 2017 CSE determined that the student was no longer eligible for special education and related services (id.). By email dated March 28, 2017, the student's father notified the CSE that he disagreed with the November 2016 psychoeducational evaluation and requested an independent neuropsychological evaluation at public expense (Parent Ex. C).

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<sup>1</sup> The hearing record indicates that the district had sent a letter to the student's father in August 2016, a copy of which is not included in the hearing record (Parent Ex. E at p. 7). The hearing record also indicates that the student's parents do not reside together (see Parent Ex. G at p. 1; IHO Ex. VII at p. 4).

<sup>2</sup> The hearing record reflects that the March 2016 CSE also considered a speech-language evaluation report, a school report card, teacher reports and a privately obtained auditory and language processing evaluation report that were not admitted into evidence at the hearing (IHO Ex. I at p. 2).

On March 30, 2017, the student's father filed a due process complaint notice challenging the district's decision to declassify the student and requested an independent neuropsychological evaluation (IHO Decision at p. 3 n.1).

### **A. Due Process Complaint Notice**

By due process complaint notice dated April 27, 2017, the district requested an impartial hearing to demonstrate the appropriateness of its November 2016 psychoeducational evaluation (IHO Ex. I at p. 1).<sup>3</sup> The district argued that the student's father failed to provide any specific reasons for why he believed the district's psychoeducational evaluation was not reflective of the student's unique needs (*id.*). As relief, the district requested that the IHO find that its psychoeducational evaluation was appropriate and further order that any privately obtained evaluations be at parental expense (*id.* at p. 3).

In accordance with State regulation, the district's due process complaint notice was assigned to the same IHO who had been appointed to hear the father's due process complaint notice (IHO Ex. II at p. 2). Noting that she had declined the initial appointment and upon information and belief that the father's due process complaint notice had been reassigned, she declined to consolidate the complaints (*id.*). The IHO later recused herself (IHO Decision at p. 3).

### **B. Impartial Hearing Officer Decision**

The IHO who presided over this matter was assigned to hear the district's due process complaint notice on May 17, 2017 (IHO Decision at p. 3). The district requested that the IHO reconsider consolidation of the complaints (IHO Ex. IV at p. 1). The parents agreed on the issue of consolidation; however, based on concerns raised by the impartial hearing office, as well as the parents' desire that the matter of the independent neuropsychological evaluation be determined before their other claims and their filing of an amended due process complaint notice in the other matter, the IHO declined to consolidate the complaints (IHO Decision at p. 3 n.2; IHO Exs. IV at p. 1; V at p. 2).<sup>4</sup> The IHO scheduled the hearing dates concurrently for the convenience of the parties (IHO Decision at p. 3 n.2).

A prehearing conference was held on May 19, 2017 (Tr. pp. 1-3). Additional status conferences occurred on June 8, 2017 (Tr. pp. 4-16), July 6, 2017 (Tr. pp. 4-10), August 10, 2017 (Tr. pp. 11-15), August 28, 2017 (Tr. pp. 16-20), September 8, 2017 (Tr. pp. 21-26), and October 23, 2017 (Tr. pp. 27-38).<sup>5</sup> The hearing began on November 15, 2017 and concluded on December 5, 2017 after two days of proceedings (Tr. pp. 52-193).

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<sup>3</sup> The filing date of the district's due process complaint notice is listed incorrectly as April 7, 2017 in the Request for Review and as April 17, 2017 in the IHO decision (Req. for Rev. p. 3; IHO Decision at p. 3).

<sup>4</sup> The parents appeared jointly for the impartial hearing and in this appeal.

<sup>5</sup> As shown above, the prehearing transcripts are not numbered consecutively. The page numbering was corrected on the first day of the hearing on November 15, 2017, beginning with page 52.

The IHO found that the district school psychologist's use of a single assessment of the student's social/emotional and behavioral functioning was not appropriate, given that the student was receiving counseling services under the July 2015 IESP (IHO Decision at p. 11). The IHO also noted that the student's elevated self-reported scores for inattention, family relations, hyperactivity/impulsivity, and learning problems was inconsistent with the father's report and as a result required further investigation (*id.*). The district school psychologist reported that testing results may indicate the student had difficulty with concentrating and distractibility, restless or impulsive behavior, academic struggles, and executive functioning deficits, nevertheless, the school psychologist did not include any further analysis of social/emotional or behavioral concerns the student had reported (*id.*). In particular, the IHO agreed with the parents' expert that both parents should have completed reports relative to the student's social/emotional and behavioral functioning (*id.*). The IHO determined that testing in this domain was not appropriate and incomplete (*id.* at pp. 11-12).

The IHO further found that the November 2016 psychoeducational evaluation was deficient because the report failed to examine or explain the student's weakness in processing speed and its relation to the student's executive functioning, and further failed to explain the student's reading comprehension score, which was much lower than expected given the student's cognitive ability (IHO Decision at p. 12). With regard to the parents' privately obtained auditory processing and language evaluation considered by the March 2017 CSE, the IHO credited the mother's testimony that the evaluator recommended a neuropsychological evaluation and that testing had revealed indicators of an attention deficit hyperactivity disorder (ADHD) (IHO Decision at p. 12; *see* IHO Ex. I at p. 2). For these reasons, the IHO determined that the district's psychoeducational evaluation was not appropriate and that the parents were entitled to reimbursement for a privately obtained independent neuropsychological evaluation (*id.*).

#### **IV. Appeal for State-Level Review**

The district appeals, and requests that the IHO's decision be reversed. Specifically, the district challenges four of the IHO's findings relative to the appropriateness of the November 2016 psychoeducational evaluation. The district argues that the student's social/emotional needs were properly assessed; the school psychologist was not required to obtain Conners 3rd Edition (Conners 3) questionnaires from both parents; the discrepancy between the Conners 3 evaluation results and the mother's concerns did not warrant additional assessment; and the student's relative weaknesses in the areas of processing speed and reading comprehension did not require further examination.

In an answer, the parents respond with admissions and denials, and request that the IHO's decision be upheld in its entirety.

#### **V. Applicable Standards**

The IDEA and State and federal regulations guarantee parents the right to obtain an independent educational evaluation (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]). Parents have the right to have an IEE conducted at public expense if the parent expresses disagreement 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 Riv. Union Free Sch. Dist., 2012 WL 234392, at \*5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE is a disagreement with a specific evaluation conducted by the district"]; R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234-35 [D. Conn. 2005] [finding parental failure to disagree with an evaluation obtained by a public agency defeated a parent's claim for an IEE at public expense]). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either (1) ensure that an IEE is provided at public expense; or (2) initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school 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]).

## **VI. Discussion**

### **A. The District's Psychoeducational Evaluation**

In its appeal, the district argues that the IHO erred in finding that the November 2016 psychoeducational evaluation was not appropriate. Pursuant to the IDEA, federal and State regulations, 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]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree, and must conduct one at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; see 34 CFR 300.303[b][1]-[2]). Pursuant to State regulation, a reevaluation of a student with a disability must be conducted by a multidisciplinary team or group that includes at least one teacher or specialist with knowledge in the area of the student's disability (see 8 NYCRR 200.4[b][4]). The reevaluation "shall be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education and the student's continuing eligibility for special education" (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]). 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 CFR 300.304[b][1][ii]; 8 NYCRR 200.4[b]; 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, including, where appropriate, social and emotional status (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]).

A relevant area of factual inquiry regarding the appropriateness of the district's psychoeducational evaluation is the comprehensiveness of the assessments conducted and whether the student's areas of need were adequately assessed. Guidance from the United States Department of Education's Office of Special Education Programs (OSEP) indicates that if a parent disagrees with an evaluation because a child was not assessed in a particular area, "the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs" (Letter to Baus, 65 IDELR 81 [OSEP 2015]). In Letter to Carroll, OSEP reiterated its position and again indicated that "the public agency must ensure that in evaluating each child with a disability under 34 CFR §§ 300.304 through 300.311, the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability" (Letter to Carroll, 68 IDELR 279 [OSEP 2016]). As to the factual inquiry required in this case, the assessments conducted and conclusions provided by the district school psychologist are detailed below.

The hearing record indicates that the district's psychoeducational evaluation was administered by a State certified school psychologist (Tr. pp. 64-65).<sup>6</sup> According to the school psychologist, the purpose of conducting the psychoeducational evaluation was to provide information regarding the student's strengths and weaknesses in intellectual functioning and academic performance, as well as "how a student [wa]s doing with regard to social-emotional functioning and behavior" (Tr. pp. 64, 68). The school psychologist further testified that the purpose of the psychoeducational evaluation was to provide information on how the student learned and then to develop program recommendations (Tr. p. 100). When asked if she used all of the same subtests when testing students, the school psychologist testified that subtests are "selected" according to a student's "case record" and that in this instance, she reviewed the student's case record to determine "what battery of tests would really get at the information that I need to get at to make an appropriate recommendation for [the student]" (Tr. pp. 78-79).

The November 2016 psychoeducational evaluation report indicated that the district's school psychologist administered cognitive and achievement assessments, conducted visual-motor testing, and also obtained social/emotional and behavioral evaluative information from the student and his father (Dist. Ex. 1; see also Tr. p. 69). The school psychologist also conducted a student interview, a record review, and obtained an informal writing sample (Dist. Ex. 1 at p. 1; see also Tr. p. 69). With regard to administration of the evaluation, the school psychologist testified that all of the assessments were administered in a standardized and formalized fashion consistent with

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<sup>6</sup> The school psychologist testified that a school psychologist typically conducts the psychoeducational evaluations (Tr. pp. 68-69).

the way the test publishers and her training indicated that they should be administered to students (Tr. pp. 81-82, 126). She further testified that "scoring" of the assessments was in compliance with the standards for psychoeducational evaluations (Tr. p. 82).

According to results from administration of the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), the student's full scale IQ was within the high average range of intellectual ability (Dist. Ex. 1 at p. 2; see also Tr. pp. 83-84). The student's verbal comprehension index was within the high average range and his fluid reasoning index was within the very high average range (Dist. Ex. 1 at p. 2). The student's working memory and visual spatial indices were within the average range, and his processing speed index fell within the low average range (Dist. Ex. 1 at p. 2; see also Tr. p. 84). The school psychologist reported that while a full scale IQ is generally considered the most reliable estimate of an individual's cognitive ability, in this instance, it should be "interpreted with caution" due to "significant scatter" among the student's individual index scores obtained using the WISC-V as demonstrated by the student's relative strength in fluid reasoning and relative weakness in processing speed (Dist. Ex. 1 at p. 2; see also Tr. p. 84). The school psychologist also reported that the student's WISC-V index scores should be "examined separately" to better understand the student's cognitive functioning (Dist. Ex. 1 at p. 2).

Specifically, on the verbal comprehension index, which the school psychologist indicated was a measure of general verbal skills requiring an understanding of words and drawing conceptual similarities, the student's scores were within the high average range, demonstrating his verbal fluency, ability to understand and use verbal reasoning and verbal knowledge (Dist. Ex. 1 at p. 2). The school psychologist also reported that the student demonstrated understanding of individual vocabulary words within the "upper limits of the average range," and the ability to recognize and state similarities among orally presented ideas and concepts at a similar level of proficiency (id. at pp. 2-3).

The school psychologist next reported that the visual spatial index was a measure of the student's ability to evaluate visual details and understand visual spatial relationships in order to construct geometric designs from a model (Dist. Ex. 1 at p. 3). Performance of this skill required visual spatial reasoning, integration and synthesis of part-whole relationships, attentiveness to visual detail, and visual-motor integration (id.). The student's score on this index placed his skill level within the average range (id.). The student performed within the above average range in his use of fine motor skills to recreate pictured designs using small blocks, and within the average range in his ability to view a completed puzzle and select three response options that combine to reconstruct the puzzle (id.). The school psychologist reported that the student's scaled scores within this domain suggested that the student was performing at an age appropriate level in spatial reasoning and in analyzing visual details (id.).

On the fluid reasoning index, a measure of the student's ability to detect the underlying conceptual relationship among visual objects and to use reasoning to identify and apply rules, the student's score was in the very high range of functioning (Dist. Ex. 1 at p. 3). The student demonstrated an above average ability to apply abstract reasoning to analyze an incomplete matrix and identify the missing piece (id.). The student also performed similarly on a subtest requiring him to determine weight equivalents based on visual representations of quantity (id.). The school



psychologist noted that the fluid reasoning index yielded the student's strongest performance and represented his relative strength in utilizing new information to formulate patterns and recognize underlying concepts (id.).

According to his performance on working memory index subtests involving attention, concentration, mental control, and reasoning, the student's ability to register, maintain, and manipulate visual and auditory information in conscious awareness fell within the average range (Dist. Ex. 1 at pp. 2, 3). The student's ability to recall a series of numbers forward, backward, and sequentially was within the upper limits of the average range (id. at p. 3). The student's visual working memory skills also fell within the average range (id.).

The student's scores on measures of processing speed were within the low average range of functioning (Dist. Ex. 1 at p. 3). The school psychologist reported that this index measured the student's ability to quickly and correctly scan or discriminate simple visual information and was also a measure of short-term visual memory, attention, and visual-motor integration (id.). The school psychologist administered two subtests which she characterized as "timed, paper and pencil tasks" (id.). On a timed task that required him to copy symbols that were paired with numbers, the student performed within the lower limits of the average range (id.). The student performed within the below average range on a subtest measuring his ability to visually scan a group of symbols and mark a target symbol (id.). According to the school psychologist, the student's performance on subtests within the domain of processing speed revealed an area of weakness for the student both "relative to his own abilities and in comparison to [same] age peers" (id.).

Turning to the student's academic achievement, according to an administration of the Wechsler Individual Achievement Test, Third Edition (WIAT-III), the student's scores were within the average range on all but two math subtests, which were in the above average and superior ranges (Dist. Ex. 1 at pp. 4-5). The student's skill in reading and recognizing words in isolation was assessed using the word reading subtest (id. at p. 4). The student's score was within the upper limits of the average range, demonstrating his ability to apply phonetic decoding skills to identify single and multisyllabic words, and self-correct on occasion (id.). On an oral reading fluency task, the student read passages while being timed, and obtained a score within the average range on this subtest (id.). The student's scores on subtests of oral reading accuracy and reading rate were also within the average range (id.). The student's score on a subtest measuring reading comprehension was within the average range (id.). The student read passages in untimed conditions and answered open-ended questions about each passage, demonstrating the ability to glean meaning from connected text and answer both literal and inferential questions (id.).

The student's writing skills were assessed using spelling and sentence composition subtests (Dist. Ex. 1 at p. 4). On the spelling subtest, the student was asked to spell words dictated and presented as part of a sentence by the school psychologist (id.). The student correctly spelled words including 'progressive' and 'sympathetic' (id.). The student's ability to compose a sentence using a target word and to combine two or three sentences into one meaningfully equivalent sentence was measured by the sentence composition subtest (id.). The student's scores were within the average range on both subtests (id.).

The student's math skills were also assessed using the WIAT-III (Dist. Ex. 1 at p. 4). On a measure of conceptual math requiring the use of reasoning skills to solve problems involving basic operations with integers and everyday applications (e.g., money, time), the student obtained a score within the above average range (id. at pp. 4-5). Information required to complete this subtest was presented to the student verbally and in writing (id. at p. 4). The student demonstrated the ability to draw conclusions from a graph, simplify fractions, perform order of operations, and demonstrated his understanding of algebra and geometry concepts (id. at p. 5). The student also solved multistep word problems that were orally presented to him (id.). On the numerical operations subtest, which measured his ability to apply basic math skills and compute equations, the student obtained a score within the superior range (id.). The student solved multidigit addition, subtraction, and multiplication equations, and equations that involved long division, fractions, and algebraic concepts (id.). On math fluency tasks, the student was asked to solve simple arithmetic equations under a time constraint (id.). The student obtained scores within the average range on addition, subtraction, and multiplication fluency tasks (id.).

The school psychologist obtained an informal writing sample to further assess the student's written language skills (Dist. Ex. 1 at p. 5). The student was asked to write an essay about a favorite game and chose to write about football (id.). The school psychologist indicated that "[a] qualitative interpretation of [the student's] writing piece and testing observation" revealed that the student wrote with "relative ease to produce nearly a full page of writing within approximately six minutes" (id.). The student included an introductory sentence, remained on topic, and completed the task direction, which was to provide at least three reasons for liking the game (id.). The school psychologist indicated that the student generally observed punctuation and capitalization rules; however, she reported that error analysis revealed the absence of distinct paragraphs, poor letter formation, and inconsistent spacing between words (id.). The school psychologist also noted that the student's handwriting was difficult to decipher at times (id.).

To measure the student's visual-motor integration skills and hand-eye coordination, the school psychologist administered the Bender Visual-Motor Gestalt Test, Second Edition (Bender-Gestalt II) (Dist. Ex. 1 at p. 5). The school psychologist indicated that the student's visual-motor skills fell within the average range for a student his age (id.). Using a developmental sequence of geometric designs copied with a pencil, the student was able to copy abstract designs presented to him as well as draw designs from memory that he had previously copied (id.). According to the school psychologist, the student's performance suggested appropriately developed visual processing ability, evidenced by his replication of abstract images (id.). The school psychologist reported that the student did not exhibit physical impediments, motor disturbance, or visual difficulties when drawing (id.). She noted that the student presented with a solid grip and pencil control, and that he maintained adequate attention and motivation while completing the symbol copying task (id.). Despite the increasing complexity of the designs, the student persevered attempting to complete every item (id.). Overall, his visual-motor integration skills appeared to be "on par" for his age, according to the school psychologist (id.).

The school psychologist's behavioral observations of the student were that he presented as easygoing and pleasant, had initiated commentary during the evaluation, responded to questions easily, and exhibited adequate eye contact (Dist. Ex. 1 at p. 1). The student was cooperative

throughout the evaluation, complied with all directions, and completed tasks asked of him (*id.*). The school psychologist indicated that the student's attention was adequate in the one-to-one setting (*id.*). She reported that the student worked conscientiously and persevered even when presented with challenging tasks (*id.* at pp. 1-2). The student was described as generally prompt with his responses and appeared to put forth his best effort (*id.* at p. 2). During the interview portion of the evaluation, the school psychologist indicated that the student displayed appropriate engagement and affect (*id.*).

To assess the student's social/emotional and behavioral functioning, the school psychologist utilized the Conners 3 (Dist. Ex. 1 at p. 5). The school psychologist noted that the Conners 3 self-report (Conners 3-SR) and parent form (Conners 3-P) were completed by the student and his father (*id.*). The student's responses on the Conners 3-SR revealed scores in the elevated range in the areas of inattention and family relations; in the very elevated range in the areas of hyperactivity/impulsivity and learning problems; and in the average range in the area of aggression (*id.* at p. 6). The student's father's responses on the Conners 3-P revealed scores in the average range in all areas measured (*id.*). The school psychologist reported that common characteristics of individuals who obtain high scores on the inattention and hyperactivity/impulsivity scales may have difficulty concentrating and be easily distracted (*id.*). She also noted that high activity levels and a tendency toward restless or impulsive behavior may be present (*id.*). Additionally, the school psychologist wrote that an elevated score on the learning problems scale was suggestive of academic struggles and executive functioning deficits (*id.*). Concerning family relations, the school psychologist reported that elevated scores may reveal feelings of being unjustly criticized or punished at home (*id.*). The school psychologist also noted that in contrast to the student's self-report, the father's responses on the Conners 3-P indicated typical levels of concern in the above-described areas (Dist. Ex. 1 at p. 6; *see also* Tr. p. 85).

In the summary and conclusions portion of the evaluation, the school psychologist indicated that the assessment was conducted as part of a "[m]andated [t]hree [y]ear [r]evaluation," and at the time the student was receiving speech-language therapy and counseling (Dist. Ex. 1 at p. 7). The student was described as mild mannered and cooperative, as exhibiting adequate attention, appropriate engagement, affect, and motivation, and as diligently working on all tasks (*id.*). Of note to the school psychologist were the student's responses on the Conners 3-SR, which highlighted concerns in a number of areas including academic performance (*id.*). The student's performance on the WISC-V revealed a significantly scattered cognitive profile, with index scores ranging from low average in processing speed, to very high in fluid reasoning (*id.*). On the WIAT-III, the student obtained scores within the average range on subtests that assessed decoding, oral reading fluency, reading comprehension, spelling, sentence composition, and math fluency (*id.*). On measures of math reasoning and math computation, the student obtained scores in the above average and superior ranges, respectively (*id.*). The student's visual motor skills, exhibited by his replication of abstract images as part of his performance on the Bender Gestalt II, were determined to be within the average range (*id.*). During an informal writing task, the student "produced a sufficient amount of writing, completed the task direction, and demonstrated an understanding of general writing mechanics" (*id.*). The school psychologist did note that poor letter formation and inconsistent spacing between words made his composition difficult to decipher (*id.*). In conclusion, the school psychologist acknowledged that her findings should be considered in

conjunction with other reports, records, and data; and indicated that final recommendations would be decided upon convening with the CSE (id.).

### **1. Need for Additional Cognitive and Academic Achievement Testing**

The district appeals the IHO's finding that the November 2016 psychoeducational evaluation failed to appropriately examine the student's needs related to processing speed and executive functioning (IHO Decision at p. 12). Contrary to the IHO's conclusion, and as described above, the psychoeducational report reflected specific information regarding the student's needs in processing speed and executive functioning (Dist. Ex. 1 at pp. 1-6). For example, the November 2016 psychoeducational evaluation report reflected that the student's processing speed composite score of 86 fell within the low average range, and also included an assessment of the student's verbal and nonverbal cognitive skills as measured by the WISC-V (id. at pp. 2-3). The school psychologist noted in the evaluation report that the student had a weakness in processing speed relative to his own abilities and relative to same age peers (id. at p. 2). The report reflected that the processing speed index measured a student's ability to quickly and correctly scan or discriminate simple visual information as well as measure short-term visual memory, attention, and visual-motor integration (id. at p. 3). To assess the student's processing speed, two timed subtests were administered, paper and pencil tasks requiring the student to copy symbols paired with numbers and visually scan a group of symbols and then mark a target symbol (id.). With respect to executive functioning, information provided by the student's father (Conners 3-P) resulted in a t-score of 52 in the area of executive functioning, which fell within the average range (id. at p. 6). The father's report also yielded a t-score of 49 on the learning problems scale, which in part measured executive functioning, and also fell within the average range (id.) The student's self-report (Conners 3-SR), yielded a t-score of 75 in learning problems, which fell within the very elevated range (id.).

The district also appeals the IHO's finding that the November 2016 psychoeducational evaluation failed to evaluate the student's needs related to reading comprehension (IHO Decision at p. 12). The testimonial and documentary evidence in the hearing record reflects that the school psychologist assessed the reading abilities of the student in multiple domains including reading comprehension, word reading, oral reading fluency, and oral reading rate (Tr. pp. 73-77; Dist. Ex. 1 at p. 4). To assess the student's reading comprehension, the student was administered a subtest which required him to read passages under untimed conditions and answer open-ended questions about each passage wherein he achieved a standard score of 97, which fell within the average range (Dist. Ex. 1 at p. 4). The school psychologist noted that the student gleaned meaning from connected text to answer both literal and inferential questions (id.).<sup>7</sup>

Review of the hearing record reveals that the parents questioned whether the student's academic achievement was accurately assessed given the significant scatter in his cognitive

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<sup>7</sup> For the July 2017 neuropsychological evaluation, the neuropsychologist assessed the student's reading using subtests of the WIAT-III, the Nelson-Denny Reading Test, and the Gray Oral Reading Test-Fifth Edition (GORT-5) all of which assessed the student's reading skills as below average to average (Parent Ex. G at pp. 10, 20-21).

profile; and specifically, whether the psychoeducational evaluation adequately examined the discrepancies between scores relating to the student's cognitive and academic abilities (see Tr. pp. 90-99).<sup>8</sup> At the impartial hearing, the parents' neuropsychologist described the student's educational profile based upon the results in the district psychoeducational evaluation (Tr. pp. 171-74, 177, 187-90). According to the neuropsychologist, the difference in the processing speed and fluid reasoning scores was "highly statistically significant" (Tr. pp. 171-74). The neuropsychologist stated that such a difference had "implications" related to the student's ability to learn, the presentation of material, how much work the student puts in, as well as for the student's self-esteem, anxiety, and comfort level (Tr. pp. 173-74). Further, according to the neuropsychologist, the WISC and the WIAT were normed together to allow an evaluator to predict academic achievement (Tr. p. 177). The neuropsychologist testified that the student's academic performance, particularly his oral reading accuracy score, was lower than what would be predicted given his cognitive abilities and potential (*id.*).

The neuropsychologist indicated that the district psychoeducational evaluation lacked information regarding an interpretation of the results (see Tr. pp. 182-85). Overall, the neuropsychologist testified that he felt that the district's psychoeducational evaluation reported scores and "a lot of pieces... not tied in together to give a complete picture" to the parents or to a CSE that would review it (Tr. pp. 182-83). The parents' neuropsychologist also testified that he would have further examined the discrepancies between the father's report and the student's self-report, and the discrepancies in scores within some areas of academic (i.e., reading) and executive functioning (Tr. pp. 183-86).

While the neuropsychologist testified that the discrepancies in the student's performance on various assessments would have caused him to administer additional testing to determine "why" the discrepancies occurred and "what is going to happen" with the student in various educational situations (see Tr. pp. 184-86), State regulation requires that the district's evaluation "shall be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education and the student's continuing eligibility for special education" (8 NYCRR 200.4[b][4]). The purpose set forth in this regulation is consistent with the school psychologist's testimony that the purpose of the psychoeducational evaluation was to provide information about the student's strengths and weaknesses with regard to intellectual functioning and academic performance, which as described in detail above, was accomplished (Tr. pp. 68, 83-84, 93; Dist. Ex. 1 at pp. 2-5).

Further, although the neuropsychologist testified that there were some areas he would have "pursued more" he did not point to specific areas the November 2016 psychoeducational evaluation did not cover (Tr. pp. 185-86). Rather, the neuropsychologist testified that the district's psychoeducational evaluation employed appropriate, recent, and acceptable evaluative measures

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<sup>8</sup> The student's mother also questioned the school psychologist regarding diagnoses of dysgraphia, specific learning disability in written expression, and ADHD (Tr. pp. 101-08). The school psychologist testified that she could not make a determination relative to dysgraphia, that her testing did not reveal a specific learning disability in written expression, and that the Conners 3 provides information about behaviors related to ADHD symptomology, rather than a diagnosis of ADHD (Tr. pp. 107-08).

which were standard facets of a psychoeducational assessment (Tr. p. 189). The neuropsychologist also testified that the November 2016 psychoeducational evaluation contained all true information (Tr. pp. 189-90). Additionally, the school psychologist did provide some interpretation of the testing results, including that the student's full scale IQ should be interpreted with caution due to the significant scatter among the individual index scores and that the index scores should be examined separately for a better understanding of his cognitive skills (Dist. Ex. 1 at p. 2). Relative to the claim that the school psychologist did not include recommendations in her psychoeducational report, she testified that she provides her recommendations during a CSE meeting (Tr. p. 100).

Consistent with State regulation, the hearing record demonstrates that the district's school psychologist used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. The hearing record also supports finding that the November 2016 psychoeducational evaluation appropriately assessed the student's cognitive and academic needs in a comprehensive manner and further testing was not required.

## **2. Assessment of Social/Emotional and Behavioral Functioning**

Although the IHO concluded the evaluator failed to adequately assess the student's social/emotional functioning, the hearing record indicates that the school psychologist used several methods to evaluate the student, and her report included a description of the student's needs and abilities relative to his social/emotional and behavioral functioning (see Dist. Ex. 1 at pp. 1-2). To assess the student's social/emotional and behavioral skills, the school psychologist utilized a student interview, a behavioral observation of the assessment session, and standardized rating scales (id.). As noted above, the student interview and behavioral observation provided information in the areas of social skills, including a description of the student's ability to engage, express affect, and communicate; his level of eye contact and cooperation; and his ability to provide information about school, friends, and career interests; to which the school psychologist determined all of these areas were adequate or age appropriate (id. at pp. 1-2, 7).

An administration of the Conners 3-SR to the student indicated elevated scores in the areas of inattention and family relations, and very elevated scores in hyperactivity/impulsivity and learning problems, while his self-reported t-score in aggression fell within the average range (Dist. Ex. 1 at p. 6). The psychoeducational evaluation report also included assessment results from the Conners 3-P, with the student's father serving as informant, which indicated t-scores in the average range in the areas of inattention, hyperactivity/impulsivity, learning problems, executive functioning, aggression, and peer relations (id.). The school psychologist noted that "[c]ommon characteristics" of individuals who obtained high scores in the areas the student identified on the Conners 3-SR may include difficulty with concentration and distractibility, high activity levels and a tendency toward restless or impulsive behavior, academic struggles, executive functioning deficits, and feelings of being unjustly criticized at home (id.). Despite the results of the Conners 3-SR, the school psychologist reported that the student presented as "easygoing and pleasant," initiated commentary and responded to questions easily, was cooperative, exhibited adequate attention in a one-to-one setting, worked conscientiously, persevered even when presented with

challenging tasks, appeared to put forth his best effort, displayed appropriate affect, engagement, and the presence of social connections, and testified that she did not feel that any other tests were necessary as part of the psychoeducational evaluation (Tr. p. 82; Dist. Ex. 1 at pp. 6-7). The IHO indicated the psychoeducational evaluation did not account for the discrepancies in the results between the rating scales completed by the student and the father relating to the student's social/emotional and behavioral functioning (IHO Decision at pp. 11-12). However, after reviewing the student's case record and speaking with the student and the student's father, the school psychologist felt that she had "sufficient information" to make her assessment of the Conners 3, and although the results from the Conners 3-SR and the Conners 3-P differed in some respects, the variability between the scores did not invalidate the assessment (see Tr. pp. 81-82, 125-26; Dist. Ex. 1 at p. 6).

The IHO also determined that because the school psychologist only obtained Conners 3 rating scales from the student and his father, the failure to obtain a Conners 3-P from the student's mother rendered the assessment of the student's social/emotional needs inadequate (IHO Decision at pp. 11-12). The school psychologist testified that it was her practice to obtain a rating scale from whichever parent brought the student to the testing session (Tr. pp. 108-09). She further testified that the "standard" for administering the Conners 3 "as far as the family is concerned" was that "usually one parent" filled out the form, which was "usually sufficient" (Tr. pp. 109-10). When asked if the Conners 3 had requirements regarding who was "supposed" to complete the questionnaires, the school psychologist replied that there are different informants who could provide information and that she "usually" liked to get two different types of informants; the student and "somebody else in [the student's] life, either a parent or a teacher" (Tr. p. 110). She further testified that "it's not a situation where standard fashion" was to have three to five different informants for one individual, and it was sufficient to get responses from the student and the parent (Tr. pp. 111-12). Although the neuropsychologist stated that given the discrepancies between the Conners 3-SR and Conners 3-P results, the same questionnaire should have also been given to the "other parent," the student's mother testified that her concerns would "more match" the student's elevated areas of concern; information already known to the district (Tr. pp. 142, 181-82).

Therefore, as discussed above and contrary to the IHO's conclusion that the assessment of the student's social/emotional and behavioral skills was inadequate, the hearing record supports a finding that the school psychologist assessed those skills using several methods and included a comprehensive description of the student's skills and needs related to social/emotional and behavioral functioning in the psychoeducational evaluation report (see Dist. Ex. 1 at pp. 1-2, 5-6).

A thorough review of the hearing record does not support the IHO's determination that the district's November 2016 psychoeducational evaluation was not appropriate. Rather, the evidence in the hearing record demonstrates that the November 2016 psychoeducational evaluation was appropriate and sufficient to determine the student's needs, abilities, strengths, and deficits with respect to cognitive skills, academic achievement, and social/emotional and behavioral functioning to develop the student's educational program. While not relevant to the appropriateness of the district's evaluation, it is noteworthy that the parents' privately obtained neuropsychological evaluation conducted approximately eight months later, yielded testing results consistent with the district's psychoeducational evaluation and did not reveal any areas of need unknown to the district

(compare Parent Ex. G at pp. 20-24; with Dist. Ex. 1 at pp. 2, 4-6).<sup>9</sup> Additionally, to the extent the parents assert that the neuropsychological evaluation was "far more comprehensive" (see Parents Mem. of Law p. 5), the fact that a private evaluation is more comprehensive and thorough does not render a district evaluation inappropriate (see Parker C. v. West Chester Area Sch. Dist., 2017 WL 2888573, at \*13 [E.D. Pa. July 6, 2017]). As set forth above, overall the hearing record supports a finding that the November 2016 psychoeducational evaluation appropriately assessed the student's cognitive functioning and academic achievement as well as social/emotional and behavioral functioning.

## **VII. Conclusion**

Based on the foregoing, I find that the district's psychoeducational evaluation was appropriate and, as such, the parents are not entitled to reimbursement for a privately obtained neuropsychological evaluation.

### **THE APPEAL IS SUSTAINED.**

**IT IS ORDERED** that the IHO's decision, dated January 5, 2018, which found that the district's evaluation was not appropriate and granted the parents' request for reimbursement of a neuropsychological evaluation is reversed in its entirety.

**Dated:**            **Albany, New York**  
                         **April 9, 2018**

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**STEVEN KROLAK**  
**STATE REVIEW OFFICER**

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<sup>9</sup> As noted above, the CSE had before it at the March 16, 2017 meeting a privately obtained auditory and language processing evaluation (IHO Ex. I at p. 2). The neuropsychologist included a listing of prior evaluations in his report and noted that the auditory and language processing evaluation "suggested" ADHD and recommended further neuropsychological evaluation (Parent Ex. G at p. 3). However, as there is no indication in the hearing record as to whether the evaluator who conducted the auditory and language processing evaluation reviewed the November 2016 psychoeducational evaluation, and a copy of the evaluation report is not included in the hearing record, this passing reference in the neuropsychological evaluation report does not call into question the appropriateness of the district evaluation.