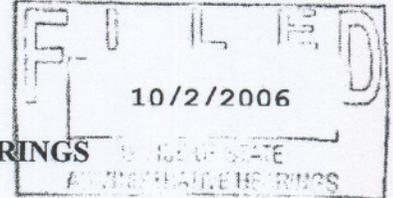


06-005966



IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

COBB COUNTY SCHOOL DISTRICT,)
Petitioner,)
v.)
)
)
)
)
Respondent.)

Administrative Action No:
OSAH-DOE-SE-0612290-33-Gatto

FINAL ORDER

COUNSEL: Sylvia Eaves, for Petitioner.

Chris E. Vance, for Respondent.

GATTO, Judge

I. INTRODUCTION

This action came before this Court pursuant to a complaint filed by the Cobb County School District (the "District") under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 *et seq.*,¹ and its implementing regulations, 34 C.F.R. §§ 300.1, *et seq.* (1999)² seeking an order that the District's August 2005 psychoeducational evaluation was appropriate and that [redacted] is not entitled to an independent psychoeducational evaluation ("IEE") at public expense. For the reasons indicated below, this Court finds that the District's evaluation was appropriate and that [redacted] is not entitled to an IEE at public expense.

¹ Congress reauthorized and amended IDEA in 2004. *See* Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat.2647 (to be codified at 20 U.S.C. 1400 *et seq.*). Therefore, citations are to the statute as amended in 2004.

² Citations to the federal regulations are to the 1999 federal regulations implementing IDEA. Although final federal regulations implementing IDEA as amended in 2004 and replacing the 1999 regulations were published in the Federal Register on August 14, 2006, they are not yet effective.

II. FINDINGS OF FACT

█ was █ years old and an eighth-grade student at █ Middle School at the time of the psychological evaluation conducted by the District and was receiving special education services from the District under the Other Health Impaired (“OHI”)³, autism, and speech- language impairment categories pursuant to an Individualized Education Program (“IEP”). (Tr. 51; Compl. 1; Pretrial Order ¶ 5; Respt.’s Ex. A.)

In December of 2004, █ attended the Lindamood-Bell program, which is a program dealing with reading and some math. When █ returned to the District in the fall of 2005, an I.E.P. meeting was held on August 5, 2006. At that I.E.P. meeting, the only information the I.E.P. team had were some test scores from Lindamood-Bell. Lindamood-Bell is not a private school that provides all academic subjects for students, and the I.E.P. team was concerned that they did not have current data. (Tr. 51-52, 67-67; Respt.’s Ex. A.) Having reviewed the Lindamood-Bell, the District members of the IEP team expressed concern that the team did not have sufficient information as to how █ was currently functioning in an academic school setting in order to develop appropriate goals and objectives. (Tr. 74, 77.) The District IEP team members were also concerned that the Re-Testing Summary did not provide information concerning █’s reading performance that was reliable or in an understandable format. The scores were not consistently reported in either standard scores or percentiles. The IEP team was also concerned that many of the items measured in the Lindamood-Bell battery of tests were out of date.⁴ (Tr.73-74.)

³ █ has a diagnosis of Attention-Deficit/Hyperactivity Disorder (“ADHD”).

⁴For example, the Detroit Test of Learning Aptitude Lindamood-Bell administered was published in 1935 and has gone through three additional revisions. The scoring on the 1935 version is based on a normed sample of the population in the 1930’s. (Tr. 74.) The Gray Oral Reading Test, Reading Passages, administered by Lindamood-Bell was normed in 1963. (Tr.75.)

The IEP team requested an academic achievement assessment. (Tr.68.) The team also wanted updated cognitive testing to determine [REDACTED]'s overall learning potential because of discussions at the meeting regarding his prior evaluations and how he had previously functioned within the classroom prior to leaving the District. (Tr.70.) Because the team was concerned that [REDACTED]'s overall ability to learn was impaired across the board, it requested an adaptive behavior assessment. (Tr.79.) Therefore, the comprehensive evaluation requested by the IEP team was in the areas of cognitive functioning, academic achievement, and adaptive behavior.

During the meeting as the discussion regarding the evaluation proceeded, Ms. Matte, Special Education Lead Teacher at ~~East Mountain~~ Middle School and the staff member completing the necessary paperwork during the meeting, retrieved the District's 2-page Parental Consent for Evaluation ("PCE") form from the District's computer system. She gave both pages of the form to Mr. [REDACTED] (¶ 6, written direct testimony ("WDT") of D. Matte at Tr. 1696, *et seq.*) for his signature.⁵ After Mr. [REDACTED] signed indicating consent on the first page, Ms. Matte collected that page from him. Because the second page was not marked by anyone at the meeting, Ms. Matte did not collect it as part of [REDACTED]'s file, and Mr. [REDACTED] was free to keep the second page for his information. (¶¶ 6,8, WDT of D. Matte.) Ms. Matte wrote in the right margin of the PCE clarifying that the IEP team had requested specifically "academic, cognitive, Adaptive behavior" assessments. (¶ 8, WDT of D. Matte, Tr. 1696; Tr. 1739.) After the IEP team developed goals and objectives and discussed placement, Mr. [REDACTED] requested that the District conduct a speech evaluation for stuttering and pragmatics. Ms. Matte also wrote in the right margin of the PCE to clarify the speech evaluation that was to be done, specifically "Also for speech (stuttering and pragmatics.)" (¶8, WDT of D. Matte, Tr. 1696.) At the end of the meeting, Ms. Matte provided

⁵ By permission of the Court, the Affidavit of Dana Matte that accompanied the District's Response to [REDACTED]'s Motion to Dismiss, Motion to Strike and Motion for Sanctions became her WDT at trial. (Tr. 1695-1696).

Mr. [REDACTED] copies of the documents generated at the meeting including the PCE.⁶ (§ 10, WDT of D. Matte, Tr. 1696; Tr.1741.)

[REDACTED] contended at trial that the evaluation was to assess more areas than cognitive ability, academic achievement, and adaptive behavior. [REDACTED]'s father claims that the use of the term "comprehensive" means testing in all areas. (Tr.1552-1553.) He further claims that all that was discussed at the August 5, 2005 IEP meeting was that a comprehensive evaluation of [REDACTED] needed to be conducted and by implication that the IEP team did not identify the three areas that it required evaluation information. However, at trial, he acknowledged that the IEP team discussed its concerns regarding the Lindamood-Bell testing information and [REDACTED]'s lack of academic instruction and requested testing regarding how [REDACTED] was functioning. (Tr.1644-1645.) He further claims that the PCE he signed did not have the clarifying information in the margin. (Tr.1552-1553.) However, [REDACTED] presented Respondent's Exhibit 1, p. 13, a copy of the PCE with the clarifying statement in the margin as an exhibit at trial. Respondent's Exhibit 1, p. 13, has a facsimile transmittal line at the bottom of the exhibit. Mr. [REDACTED] testified that the exhibit had been faxed from his business on October 7, 2005. (Tr.1658-1659.) He did not complain to anyone at the time that this was not the PCE he had signed or that the evaluation was not to be limited to these areas. (Tr.1659-1660.) In addition, following the August 5 IEP meeting, Mr. [REDACTED] received a letter dated September 6, 2005, from Dr. Downing that reiterated the purpose of the evaluation. Dr. Downing wrote: "As stated at the IEP meeting of August 5, the IEP team determined that it requires additional assessment regarding Scott's current level of cognitive and academic functioning for educational planning purposes." (Petr.'s Ex. A; Tr.1652-1654.) Mr. [REDACTED] did not

⁶ Mr. [REDACTED] denies receiving the PCE with the clarifying statement in the margin. (Tr. 1552-1553). However, he never produced a PCE he signed without the statement. During the hearing, Mr. [REDACTED] could not testify clearly as to what documents he did or did not receive. (See Tr. 983-984, 996). He further testified that he did not look at documents from the District when he received them. (Tr. 1655, 1659).

call Dr. Downing or notify him in any way at the time he received the letter or thereafter that the statement regarding the testing was incorrect. (Tr.1654-1655.) Mr. ● met with Dr. Goldman in October 2005 to review the evaluation. At that meeting, Dr. Goldman gave Mr. ● a copy of her report and went over it page by page. (Tr. 376.) The report stated that “[t]he current evaluation was requested in order to gather information regarding current functioning (specifically intelligence, achievement, and adaptive behavior) and to aid in academic planning.” (Petr.’s Ex.1, p. 2.) Mr. ● did not complain to Dr. Goldman or anyone that this statement was incorrect. (Tr.1661-1663.)

The purpose of the re-evaluation is further identified in the August 5 IEP document. (Pet. Ex. 5.) The IEP states that re-evaluation considerations were discussed, that Dr. Downing asked for permission to conduct a comprehensive evaluation, and that Mr. ● agreed to bring ● for the evaluation. The IEP further states that “[s]ince [S.] is just returning from private school, Cobb County needs updated IQ and achievement scores.” (Petr.’s Ex.5, p. 14.) At trial, ● contended that the District altered the IEP document to include the above-quoted statement in order to bolster its position that the evaluation was appropriate. ● claims that his Exhibits A and D are the actual IEP and that any additions made after these two exhibits were done in violation of IDEA.

At the beginning of the August 5th IEP meeting, Ms. Matte provided Mr. ● and the participants a draft IEP document. (§ 4, WDT of D. Matte, Tr. 1696.) As the IEP discussion progressed, Ms. Matte made notes of the IEP team’s decisions on one copy of the draft document. This document is known as a “red-inked” copy of the IEP. At the end of the meeting, Ms. Matte copied all the documents prepared during the course of the meeting including the “red-inked” IEP and provided those to the family. (§ 9, WDT of D. Matte, Tr. 1696.) ●’s

Exhibit A purports to be the “red-inked” copy; however, it is incomplete as two (2) pages of the minutes are missing. (Respt.’s Ex. A.) After the meeting, Ms. Matte entered into GoalView, the District’s web-based computer IEP program, the revisions made by the IEP team at the meeting as reflected in the documents prepared at that meeting including the “red-inked” IEP, the minutes, and the PCE. (¶ 10, WDT of D. Matte, Tr. 1696.) On August 10, 2005, Ms. Matte sent this draft IEP document to Mr. ● and to Dr. David Downing, the special education supervisor who had been present at the meeting, to gain input from them and ensure that the IEP accurately reflected discussion and decisions made at the meeting before the IEP document was finalized. (¶ 11, WDT of D. Matte, Tr. 1696.) Mr. ● acknowledges that he received this draft on August 10 (Tr.1572-1583) and identifies it as ●’s Exhibit Respt.’s Ex. D. Respt.’s Ex. D is marked as a draft. (Respt.’s Ex. D, first page.) Ms. Matte reviewed the minutes, the “red inked” IEP, and PCE and, based upon those IEP meeting documents, incorporated into GoalView the changes that were necessary to clarify the IEP team’s decisions. To ensure that the IEP team’s purpose in requesting the evaluation was clear, Ms. Matte took wording from the minutes about ●’s returning from private school and the language from the PCE form about the testing and added to the re-evaluation consideration section the sentence that reads, “Since Scott is just returning from private school, Cobb County needs updated IQ and achievement scores on Scott.” Ms. Matte made this clarification in August 2005 and would have forwarded this revised draft IEP document to Mr. ● in the final weeks of August 2005. (¶ 11, WDT of D. Matte, Tr. 1696.) GoalView engineers confirm that the wording in the IEP document, “Since Scott is just returning from private school, Cobb County needs updated IQ and achievement scores on Scott,” was entered into the document between August 1 and September 1, 2005. (Aff. Cathy Zier, ¶ 9, filed with the Court on May 31.)⁷ In late September, when reviewing special education students’

⁷ On May 19, the court requested that the District investigate and report to the court when the wording was added to

classification and services segments in the GoalView database for purposes of federal data reporting and the FTE count due October 1, Ms. Matte found that the most recent IEP had not been formally finalized by checking the final IEP box at the top of the document. She formally finalized the document on October 5, 2005. (§ 12, WDT of D. Matte, Tr. 1696.) This was the only change. GoalView confirms that the August 5, 2005 IEP document for [REDACTED] was captured within GoalView as a final PDF document on October 5, 2005, at 8:13 a.m. by the GoalView user Dana Matte. (Aff. Cathy Zier, §§ 6 and 7..)

In this case, the District and the family had extensive evaluation information. The District conducted an initial psychological evaluation of [REDACTED] in August 1997 at the request of his parent when he was enrolling in the District as a first-grader. (Respt.'s Ex. 1, pp. 154-163.) The District conducted a re-evaluative psychological in the spring of 2001. (Petr.'s Ex.12; Respt.'s Ex. 1, pp. 144-153.) The District has also conducted speech and language evaluations of [REDACTED], the most recent being October 2004. (Petr.'s Ex.11.) This latter evaluation included testing of [REDACTED]'s oral expression and listening comprehension: the two areas [REDACTED]'s father testified the District evaluation should have included. (Petr.'s Ex.11, p. 111; Tr. 1553.)

The family has also obtained numerous private evaluations. In March 1996, [REDACTED] was evaluated at the Atlanta Speech School Language and Learning Disabilities Diagnostic Clinic. (Respt.'s Ex. 1, p. 155.) In April 2003, The Children's Therapy Works conducted an occupational therapy evaluation (Respt.'s Ex. 1, pp. 51-58); and in September 2004, the Progressive Hearing Center at Auditory-Verbal Center of Atlanta, Inc., conducted an Auditory Processing Disorder evaluation. (Respt.'s Ex. 1, pp. 41-45, 51-58.) Twice the Roswell Eye Clinic also evaluated [REDACTED], once on October 28, 2004, and again on October 18, 2005. (Respt.'s Ex. 1, pp. 26-33.)

the IEP. The affidavit was filed in response to that request.

Dr. Meredith Goldman, a District school psychologist, conducted the psychological evaluation of █████⁸ (Petr.'s Ex. 1; Tr. 301.) Prior to beginning the actual testing of █████, Dr. Goldman reviewed the August 5, 2005 IEP, the signed PCE, and █████'s special education record. (Tr.305-306.) It is important for a school psychologist to review these records in order to familiarize himself or herself with the student and his or her educational history. (Tr. 307.) She also reviewed the Lindamood-Bell Re-Testing Summary that S.C.'s family had submitted to the District at the August 5 IEP meeting to ensure that she would not re-administer tests that had recently been administered to █████. It is standard practice in psychological testing not to administer the same test within a 12-month period because of a phenomenon called "practice effect" whereby a student who has taken the test recently may get more items correct on the second administration because he or she is familiar with the test. (Tr. 308.)

It is important for a psychologist to establish rapport with the student her or she is evaluating. Prior to testing █████, Dr. Goldman observed him in his classroom to assess the severity of his autism and how to best interact with him. Before removing him from the classroom for testing, she has his classroom teacher introduce her so he would feel more comfortable with her and ease the transition that is often difficult for autistic children. █████ left

⁸ Dr. Goldman has a Masters of Arts in Educational Psychology from the University of Connecticut and earned her Doctor of Philosophy degree in school psychology at the University of Georgia. (Tr. 295.) The University of Georgia is one of the leading training programs for school psychologists in the United States, and it graduates national leaders in the field of school psychology and psychological assessments. (Tr.626, 724.) Dr. Goldman's formal education included course work in the selection and conducting of psychological assessments and interpretation techniques. Her formal education also included extensive clinical practice in which she evaluated children under the supervision of university professors, one of whom was Dr. Randy Kamphaus, Director of the School Psychology Department at the University of Georgia.⁸ (Tr.296-297, 299.) In addition to her formal education, Dr. Goldman completed a one-year, 2,000-hour pre-doctoral internship in the District during which she conducted psychological evaluation of students while under the supervision of a doctoral licensed school psychologist. (Tr.296, 625-626.) Dr. Goldman is certified by the Georgia Professional Standards Commission as a school psychologist at the doctoral level. (Tr. 299.) Dr. Goldman is a member of the National Association of School Psychologists and the American Psychological Association. She has presented at the National Association of School Psychologists on ethics in school psychology. (Tr. 300.) During her career as a school psychologist, Dr. Goldman has evaluated approximately 250 to 300 children with at least half of the students having a speech deficit or speech impairment. (Tr.300-301.)

the classroom for the testing with no difficulty. Dr. Goldman and [REDACTED] talked on the way to the testing room. Dr. Goldman noted that [REDACTED] was very friendly and liked talking about movies, particularly one he had recently seen. When he learned that Dr. Goldman had also seen the movie, he asked questions about her favorite parts and told her about the part of the movie he enjoyed. Not only did this conversation establish rapport on a mutually agreeable topic and relax [REDACTED], it enabled Dr. Goldman to assess [REDACTED]'s verbal abilities and his anxiety level. Based upon her interaction with him, Dr. Goldman observed that [REDACTED] did not seem anxious about the testing and was comfortable with her. (Tr.310-311, 506-507.)

Dr. Goldman selected the Wechsler Intelligence Scale for Children, Fourth Edition ("WISC-IV") and the Reynolds Intellectual Assessment Scales ("RIAS") for assessing [REDACTED]'s cognitive abilities, one of the referring questions from the August 5 IEP team. The purpose of a cognitive ability test is to provide a predictor of how one could expect a student to perform in school. (Tr. 317.) Dr. Goldman selected two intelligence instruments because when administering the WISC-IV, [REDACTED]'s intelligence score was in the moderately disabled range. It is best practice that whenever one has a score in that range, the psychologist should administer a second assessment to ensure accuracy. (Tr.317-318.)

The WISC-IV is the latest version of the Wechsler scales for children 6 to 16 years old. (Tr.318, 624.) It is well developed, well normed, and considered a superior cognitive abilities test. (Tr. 319.) The Wechsler scales are one of the most important cognitive measures within the field of school psychology. (Tr. 629.) The WISC-IV is a standardized test that has been validated for the purpose of intelligence testing and is not racially or culturally biased. (Tr.320, 621, 625.) Dr. Goldman was trained on the administration of the WISC-IV by a representative of the publisher (Tr. 322), administered the test in accordance with the instructions provided by

the publisher of the WISC-IV, and did not deviate from the standard conditions required by the publisher. (Tr. 320.) Since S.C.'s native language is English, Dr. Goldman administered all tests to him in English. (Tr. 316.)

The RIAS is a standardized test that also has been validated for the purpose of assessing intelligence and cognitive ability. (Tr.342-343.) It was normed using children from a variety of minority and cultural backgrounds. (Tr., 342.) Dr. Goldman was trained to administer the test by Dr. Randy Kamphaus who was the creator of the test, and Dr. Goldman administered the test in accordance with the instruction manual provided by the publisher of the RIAS. (Tr. 343.) The assessment was conducted under standard conditions. (Tr. 343.)

It is important not to solely use intelligence tests in assessing a student's cognitive functioning. How a student functions independently across environments in everyday settings, that is, his or her adaptive behavior, provides another part of the picture of the student. Dr. Goldman used the Adaptive Behavior Assessment System, Second Edition ("ABAS-II") to measure ■■■'s adaptive behavior. Adaptive behavior assessments such as the ABAS-II measure how children are able to care for themselves, feed themselves, dress themselves, interact with others, read stop signs, and other like activities. (Tr.351-352.) The ABAS-II is a standardized measure that has been validated for the purpose of measuring a student's adaptive behavior. The ABAS-II is a ratings scale that is completed by a parent and teachers. (Tr.352-353.) Mr. ● completed the parent ABAS-II, and ■■■'s special education teacher during the fall of 2005 completed the teacher ratings scale. (Tr. 353.) The ABAS-II was sent to Mr. and Mrs. ● on September 7, 2005. (Petr.'s Ex. 7; T, p. 354.)

Dr. Goldman assessed ■■■'s academic achievement using the Woodcock-Johnson Test of Achievement, Third Edition ("Woodcock-Johnson III".) The Woodcock-Johnson III is an

excellent, well-respected standardized measure of academic achievement (Tr.630-631) and has been validated for the specific purpose of measuring academic achievement. (Tr.362-363.) The Woodcock-Johnson III assesses students from age four through college. Dr. Goldman is trained in the administration of the Woodcock-Johnson III and administered it in accordance with the instruction manual. (Tr.363-364.)

The WISC-IV, the RIAS, and the Woodcock-Johnson III are individually administered to a student. Individual assessments allow for clinical interpretation of the child's behavior within the testing setting and the child's response patterns. This provides for more reliable and valid results than a group test. (Tr.322-323.)

The WISC-IV measures an individual's abilities in four (4) cognitive domains: Verbal Comprehension, Perceptual Reasoning, Working Memory, and Processing Speed. These domains combine to provide a composite score that represents a child's general intellectual ability (full-scale IQ.) (Petr.'s Ex. 1; Tr. 323.) The developers of the WISC-IV established four separate domains for measurement because research has shown that a variety of areas contribute to an individual's overall intelligence. (Tr. 325.) The Verbal Comprehension portion of the WISC-IV is a measure of verbal concept formation, verbal reasoning, and knowledge acquired from one's environment. This area measures a student's ability to express him or herself orally and to use language and understand language. (Petr.'s Ex. 1; Tr. 324.) Perceptual Reasoning is a measure of reasoning ability, spatial processing, and visual motor integration. Perceptual Reasoning measures a student's nonverbal reasoning skills. These are skills that do not use language. In this area, the sub-tests include block design, picture concepts, and matrix reasoning. Block design requires the student to construct shapes that have been shown to him or her in a picture using blocks that all red on one side, all white on the other, and then half red and

half white on others. Picture-concepts and matrix reasoning require the student to identify patterns. These sub-tests required [REDACTED] to view a constructed model or picture and recreate the design, pick pictures from groups with common characteristics, and select missing pieces from a series of options. (Petr.'s Ex. 2; Tr.324-326.) Working Memory is a measure of an individual's ability to retain information in memory, perform manipulations with the information, and produce an outcome. These processes involve attention, concentration, mental control, and reasoning. (Petr.'s Ex. 1; Tr. 326.) Processing Speed is a measure of an individual's ability to quickly and correctly scan, sequence, or discriminate simple visual information. Basically, it is how quickly one works with new information. In this measurement, the student is timed. (Petr.'s Ex. 1; Tr. 327.)

[REDACTED] contends that the WISC-IV was not appropriate to assess his cognitive abilities because he had severe language impairments. [REDACTED] further contends that Dr. Goldman should have administered a nonverbal intelligence test to eliminate the effect of his language impairment on the assessment of his cognitive abilities. The Court does not agree. The WISC-IV has a nonverbal domain (Perceptual Reasoning) as well as a verbal domain (Verbal Comprehension.) If a student has significant language impairment, one would expect to see a higher Standard Score on the Perceptual Reasoning portion of the WISC-IV. (Tr.219-220, 326, 688.) [REDACTED]'s Perceptual Reasoning Standard Score was the same as his Verbal Comprehension Standard Score. (Petr.'s Ex. 1.) In addition, the District had previously administered the Matrix Analogies Test (MAT) to [REDACTED], and his resulting Standard Score of 65 placed him in the mildly intellectually disabled range. (Petr.'s Ex. 12, p. 136.)

[REDACTED] further contends that Dr. Goldman's testing was inappropriate because he has difficulty following directions, motor skill deficits, and visual motor integration deficits. School

psychologists are trained to clinically assess students' difficulties during testing. (Tr. 647.) A psychologist can evaluate whether a student is having difficulty-understanding directions. The tests provide sample items where the student practices items, and the examiner provides feedback to the student. The psychologist evaluates during the administration of sample items whether the student understands what he or she is being asked. The other way a psychologist assesses whether the child understands directions is how the student answers easy items versus difficult items. If the student does not understand the directions, he or she is not likely to be able to do the easy items either. If the student is able to do easier items and then their performance drops off as the items get more difficult, it is not a directions problem but a cognitive ability concern. (Tr.328-329, 646.) Dr. Goldman's clinical assessment was that [REDACTED] understood the directions in the WISC-IV. There is other evidence of [REDACTED]'s ability to follow directions and understand. For example, [REDACTED] mastered his IEP objective of following one- to two-step directions. (Respt.'s Ex. 1, pp. 124.) [REDACTED]'s teachers indicated he could follow directions. (Respt.'s Ex 1, pp. 130, 132.) Dr. Goldman testified that if a student's fine motor deficits were affecting the testing, the psychologist would observe it during the testing, would report that deficit in the written report, and would interpret whether or not the results were accurate based on the child's behavior. Dr. Goldman did not see any deficits with [REDACTED]'s fine motor skills during the testing. (Tr.327-328.) Dr. Goldman was also aware of [REDACTED]'s visual motor skills. She knew that in 2001 the District assessed these skills, using the Beery Development Test of Visual-Motor Integration. The evaluation found that [REDACTED] functioned in the mildly intellectually deficit range, which was consistent with measures of overall intellectual functioning. (Petr.'s Ex. 12, p. 132; Tr. 399.)

█'s Standard Scores on the WISC-IV in the four domains are: Verbal Comprehension, 47; Perceptual Reasoning, 47; Working Memory, 50; and Processing Speed, 56. His full-scale IQ was a 40, placing him in the moderately intellectually disabled range.⁹ Dr. Goldman computed █'s scores according to the directions and charts in the WISC-IV manual. She double-checked scores at each stage of the scoring process to ensure that she had not made a mathematical error or misread the charts. (Petr.'s Ex. 1; Tr.336-339.) Dr. Goldman reported the scores in the psychoeducation report of █'s assessment as Standard Scores and Percentiles and included confidence interval scores in order to provide meaningful information to the reader of the report regarding how █ is performing compared to other children his age. (Tr. 337.) In each of the domains, except processing speed, █ performed in a moderately disabled range. His highest score was in the Processing Speed, which he performed in the mildly disabled range. (Petr.'s Ex. 1.)

█ also alleged that he was anxious on the first day of testing and that his anxiety affected the test results. In her report, Dr. Goldman did note that █ appeared anxious during the administration of the WISC-IV when he encountered difficult items. There is no evidence that he was anxious when he came to the testing room or was anxious throughout the test. When he became anxious, he batted his hair and rocked back and forth on his feet. As she had been trained, Dr. Goldman assured █ that there were hard items on the test and that she did not expect him to be able to do them all and to just try his best. She testified that he was easily soothed with these assurances. She allowed breaks and █ to stand during the test, which are standard techniques or strategies. (Tr.312-313.) She finished the WISC-IV on the first day of testing and decided not to continue with another test but to work with him on another date.

⁹ Standard Scores have a mean of 100 and a standard deviation of 15. Standard Scores between 90 and 109 are considered average.

School psychologists are trained as clinicians to assess whether a child's behavior impacts his or her performance on a test and to provide a report of that assessment. (Tr. 647.) Sometimes behavior may be so severe that the psychologist knows the child is not able to accurately answer items to his or her ability level. This did not happen with [REDACTED] in Dr. Goldman's professional opinion. (Tr. 313.)

Dr. Goldman continued her testing of [REDACTED] on September 1, 2005. (Petr.'s Ex. 1.) She administered a second cognitive abilities assessment. She selected the RIAS, a test she likes to use with children who have tested on other instruments with an IQ at 70 or below. She selects this test because children like it and enjoy it. (Tr.341-342.) The RIAS yields two index scores: Verbal Intelligence Index and Nonverbal Intelligence Index. It also yields a Composite Intelligence Index. The Composite Intelligence Index is a summary estimate of global intelligence. (Petr.'s Ex. 1; Tr. 344.) Verbal Intelligence is reasoning skills using language, while Nonverbal Intelligence is reasoning skills that do not use language. (Tr. 344.) There are two sub-tests in the Verbal Intelligence portion. One sub-test is designed to assess verbal reasoning in combination with vocabulary, language development, and knowledge development. The second assesses the child's verbal-analytical reasoning ability. (Petr.'s Ex. 1; Tr.344-345.) The Nonverbal Intelligence portion of the RIAS also consists of two sub-tests designed to assess reasoning skills without a verbal component. In both, the student is allowed to make a second choice if the first answer is incorrect. If the student provides the correct answer on the second opportunity, the score drops from two points to one. (Tr. 345.)

Dr. Goldman reported [REDACTED]'s scores on the RIAS as Standard Scores and Percentiles following the scoring directions and charts in the RIAS manual. She also provided a confidence interval. (Petr.'s Ex. 1; Tr. 346.) [REDACTED]'s Verbal Intelligence Standard Score was 63, placing him

in the mildly disabled range. His Nonverbal Intelligence Index Standard Score was 75, placing him in the borderline range of ability. The Composite Intelligence Standard Score was 64, placing [REDACTED] in the mildly disabled range of global intelligence. (Petr.'s Ex. 1; Tr. 347.)

Because there was a difference between the Standard Score of the Verbal Intelligence Index (63) and the Nonverbal Intelligence Index (75) of the RIAS, Dr. Goldman analyzed the sub-tests to determine where the difference was emerging. She noted that [REDACTED]'s T-Scores on all the sub-tests were in the 20's except one.¹⁰ The Odd-Item Out T-Score was 38 and nine (9) points higher than any other sub-test. This T-Score is what psychologists call an "outlier", which is a score that stands out and is not consistent with other scores. Dr. Goldman opined that the outlier skewed the total Nonverbal Intelligence Index Standard Score. (Tr.348-349.)

The two cognitive assessments administered to [REDACTED] produced different intelligence scores. [REDACTED]'s full-scale IQ on the WISC-IV was 40, while the Composite Intelligence on the RIAS was 64. Dr. Goldman testified that it is not unusual to see some differences in a student's cognitive abilities composite scores, as different tests tap into different skills with different ways of assessing them. Further, intelligence research reveals that when scores are below 70 there is less stability in the scores as they move around more in that range. Also, the difference between the composite scores appears larger than it actually is because so few children actually score are this range. (Tr.347-348.)

These scores are consistent with psychological testing of [REDACTED] conducted over the years. In March 1996, [REDACTED]'s parents had him evaluated by the Atlanta Speech School Language and Learning Disabilities Diagnostic Clinic, which reported that his intellectual functioning was

¹⁰ A T-Score is the first score obtained from the student's raw scores on the sub-tests of the RIAS using the charts in the manual. A T-Score has a mean of 50 with a standard deviation of 10. The T-Scores are added together and then converted to the Standard Score with the average being 100 using the charts in the RIAS manual. (Tr. 346, 1824-1825).

within the mildly handicapped range. (Respt.'s Ex. 1, p. 155.) In August 1997, [REDACTED] scored in the mentally deficient range on the Stanford-Binet Intelligence Scale, Fourth Edition, administered as part of the District's psychological evaluation. His test composite score was 58. (Respt.'s Ex. 1, pp. 155, 157-158.) His full-scale score on the WISC-III administered as part of the District's psychological evaluation in the spring of 2001 was 51, placing him in the moderately intellectually disabled range. (Petr.'s Ex. 12; Respt.'s Ex. 1, pp. 144-153.) Dr. Lyndon Waugh, [REDACTED]'s private psychologist, has also stated that [REDACTED] has below-average intelligence. (Tr.1615, 1636.) The only Standard Score outside this consistent range of scores is S.C.'s nonverbal IQ score of 84 on the Comprehensive Test of Nonverbal Intelligence ("C-TONI") administered to him in 1997 when was seven years old. A Standard Score of 84 is in the low average range. (Respt.'s Ex. 1, p. 158.) However, in 2001 S.C. was given the MAT, which is also a nonverbal assessment of intelligence. His Standard Score of 65, placed him in the mildly intellectually deficit range, consistent with all prior intelligence tests. (Petr.'s Ex. 12; Respt.'s Ex. 1, pp. 144-153.) [REDACTED]'s WISC-IV and RIAS scores inform educators that his cognitive skill, that is, his ability to work with new information, was in the moderately to mildly disabled range based on the State of Georgia criteria. (Tr.350-351.)

The assessment of [REDACTED]'s adaptive behavior through the ABAS-II answered the IEP team's referring question concerning [REDACTED]'s overall learning ability across environments. [REDACTED]'s father rated [REDACTED]'s overall independent functioning on the ABAS-II in the mildly disabled range. His teacher indicated [REDACTED]'s overall independent functioning was in the moderately disabled range. (Petr.'s Ex. 1; Tr. 351-352.) The composite Standard Scores for the teacher's rating was 45 and 62 for the parent's, both below the average range. (Petr.'s Ex. 1; Tr. 356.)

To assess [REDACTED]'s academic achievement as requested by the IEP team, Dr. Goldman used the Woodcock-Johnson III. The Woodcock-Johnson III provides assessments of a variety of academic areas including reading, math, and writing and different types of assessments within each academic area. (Tr. 364.) The Woodcock-Johnson III consists of a standard battery and an extended battery of tests. Evaluators most often use the standard battery. In administering the Woodcock-Johnson III, an evaluator is not required to use the entire standard battery according to the Woodcock-Johnson III manual. (Tr.133-134, 365, 633.) The evaluator may select different sub-tests to administer. Each sub-test is independent of each other and scored individually. This makes the Woodcock-Johnson III appealing to evaluators as the evaluation can be tailored specifically to the requests of an IEP team for educational planning for the child. (Tr.134, 365.)

Dr. Goldman administered the following sub-tests of the Woodcock-Johnson: basic reading, reading comprehension, basic math, math reasoning, spelling, and writing sample. (Tr. 366.) The basic reading sub-test requires a student to identify letters and then progress to reading simple words. [REDACTED] achieved a Standard Score of 70, which falls in the second percentile. The passage comprehension sub-test is a reading comprehension assessment that measures a student's ability to gather information from a read passage. [REDACTED]'s Standard Score was 54, which placed him below the second percentile. In math, Dr. Goldman assessed [REDACTED]'s ability to do math calculations including addition and subtraction with increasing difficulty. [REDACTED]'s Standard Score was 38. Applied problems assess a student's ability to use math in everyday situations, what is typically known as word problems. [REDACTED]'s Standard Score was 49. In the spelling sub-test, the evaluator tells the child a word, reads it in a sentence, then says the word again, and the student writes down the spelling. [REDACTED]'s standards score was 70. Dr.

Goldman attempted to administer the Woodcock-Johnson III writing samples to [REDACTED]. While he was able to construct small sentences, Dr. Goldman ended the assessment based upon her clinical impression of the effect this sub-test was having on [REDACTED]. She observed [REDACTED] exhibit undue stress as he struggled to write a sentence. Based upon this clinical impression and her knowledge of other writing tests, she decided not to use another writing assessment as she felt that it would be even more stressful for him and that she would be unable to obtain an accurate score. She felt that a teacher using curriculum-based assessments could have more appropriately assessed him. (Petr.'s Ex. 1; Tr.366-369.)

The Woodcock-Johnson III scores provided information regarding [REDACTED]'s strengths and weaknesses in the basic academic areas for the IEP team. While [REDACTED] is able to decode words, he struggles to gather information from read passages. (Petr.'s Ex. 1.) His math scores had significantly dropped since the previous psychological evaluation. As [REDACTED] did not appear to have been exposed to math during the previous six months, he required extensive basic math instruction to compensate. (Tr. 370.) In addition, Dr. Goldman made recommendations to the IEP team regarding effective teaching methodologies and strategies to use with [REDACTED]. Based upon her evaluation and clinical impressions of [REDACTED], he requires substantial direct instruction, practice with new concepts, and repetition. She further recommended that his educational team work with S.C. to develop core skills that would be practical for him to use in his everyday life. (Tr.371-372.)

Following the completion of the assessments, Dr. Goldman prepared a written report of the evaluation. (Petr.'s Ex. 1; Tr. 302.) The District's Department of School Psychology requires its school psychologists to interpret the results of the testing in the report. (Tr. 373.) Dr. Goldman included interpretations, including suggestions for the IEP team to consider, at the end

of her report in a section entitled "Summary and Impressions". (Petr.'s Ex. 1.) A standard procedure of the District's Department of School Psychology is to have each school psychologist submit his or her psychoeducational report to one of the Department's lead psychologists for review prior to finalization. Dr. Goldman submitted her report to Ms. Marty Hodge. Ms. Hodge did not have any concerns regarding the report.¹¹ (Tr.302-303.)

Dr. Barbara Wideman, Assistant Director of Psychological Services for the District until her retirement on April 28, 2006, testified during the trial as an expert in the evaluation of students with disabilities. (Tr.604-605, 619.) In her career as a school psychologist, Dr. Wideman has conducted over 2,000 evaluations and as a supervisor has reviewed close to 10,000 evaluations. In Dr. Wideman's expert opinion, the evaluation conducted by the District for [REDACTED] is an appropriate comprehensive evaluation that complied with IDEA requirements and the standards in the field. (Tr.628, 634, 637-638.)

[REDACTED] presented Dr. Lori Muskat, a psychologist who has a private consulting practice and is an associate professor of clinical psychology at the Georgia School of Professional Psychology, which is part of Argosy University (Tr.1193, 1314), as an expert. Dr. Muskat had never met [REDACTED], had not evaluated him, and had only reviewed briefly the documents introduced by the two parties into evidence at trial. She had not reviewed his entire school record. (Tr.1222, 1317, 1319.) She had not observed him at Lindamood-Bell where he was attending for the last semester of the 2005-2006 school year, nor had she spoken to his teachers. (Tr. 1319.) She did not attend the IEP meeting at which the psychological evaluation was discussed at length. She only spoke to his father and Ms. Fletcher briefly and had not reviewed all the psychological evaluations of [REDACTED] (Tr.1319-1320.) Dr. Muskat's unfamiliarity with [REDACTED]'s

¹¹ Ms. Hodge had formally evaluated [REDACTED] in 1997 when [REDACTED] was seven years old. (Respt.'s Ex. 1, pp. 154-163). Ms. Hodge would be familiar with [REDACTED] and issues regarding his language impairment.

records was made clear when she testified that [REDACTED] required a nonverbal measure of intelligence for the evaluation to be appropriate. She based her testimony on the "historic finding" that [REDACTED] performed higher on nonverbal measures. The "historic finding" was the C-Toni scores from 1997 when [REDACTED] was seven (7) years old. She was obviously unaware of the intervening MAT scores in 2001 that did not support her opinion. (Tr.1332-1335.) Further, she misstated the method of scoring the RIAS indicating her lack of familiarity with the assessment. (Tr.1322, 1824-1847.) Therefore, the Court gives limited weight to her testimony regarding the appropriateness of [REDACTED]'s evaluation.

[REDACTED] also presented Ms. Cornelia Fletcher, Director of Lindamood-Bell in Atlanta, as an expert in speech and language assessments of children. Again, her testimony is of limited assistance to the Court. She testified at length that it was inappropriate to administer the WISC-IV to a student with language impairment, basing her testimony on literature she had read. Dr. Muskat who testified that she used the Weschler with students with autism directly contradicted her testimony. (Tr.1325-1326.)

On October 28, 2005, the District convened an IEP meeting to discuss the evaluation, review [REDACTED]'s progress and performance, and review and revise his IEP. Mr. and Mrs. [REDACTED] attended the meeting. (Petr.'s Ex. 9.) At the IEP meeting, the family through counsel orally requested an IEE of [REDACTED] as they did not agree with the evaluation conducted by Dr. Goldman. On Sunday, October 30, [REDACTED]'s attorney sent an email to District's counsel requesting an IEE. (Respt.'s Ex. 1, pp. 1-2.) The District reviewed the request and its evaluation. On December 8, 2006, the District filed a due process complaint alleging that its evaluation was appropriate.

III. CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. A. §1400 et seq. (main ed. and Sup2005), is a Spending Clause statute that seeks to ensure that “all children with disabilities have available to them a free appropriate public education,” 20 U. S. C. A. §1400(d)(1)(A.) Schaffer v. Weast, 26 S. Ct. 528, 531; 163 L. Ed. 2d 387, 393 (2005.) Under IDEA, if a school district determines that the educational or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, the school district must ensure that a reevaluation of each child with a disability is conducted in accordance with 20 U.S.C. § 1414(b) and (c.) § 1414(a)(2)(A)(i.)

The parents of a child with a disability have the right to request an IEE. 20 U. S. C. A. § 1415(b)(1.) The federal regulations implementing IDEA further permits parents to obtain an IEE *at public expense* if the parents disagree with the evaluation conducted by the school district. *See* 34 C.F.R. § 300.502(b)(1) (emphasis added.) If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either provide the IEE or request a due process hearing to determine if its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2) (emphasis added.) Therefore, the only relevant inquiry for the purpose of this trial is the appropriateness of the District’s evaluation. Holmes v. Millcreek Township Sch. Dist., 205 F.3d 583 (3d Cir. 2000); Grapevine-Colleyville Indep. Sch. Dist. v. Danielle R., 31 IDELR 103 (N.D. Tex. 1999.) Once a school district’s evaluation has been shown to satisfy the required evaluation procedures set forth in federal and state regulations, the standard has been met and the evaluation must be considered appropriate. 34 C.F.R. § 300.502; Grapevine-Colleyville Indep. Sch. Dist. v. Danielle R., 31 IDELR 103 (N.D. Tex. 1999.)

The federal regulation implementing IDEA outlines the procedures required for an evaluation.

Each public agency shall ensure, at a minimum, that the following requirements are met:

- (a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act --
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
 - (ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and
- (2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- (b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining --
 - (1) Whether the child is a child with a disability under § 300.7; and
 - (2) The content of the child's IEP.
- (c)(1) Any standardized tests that are given to a child --
 - (i) Have been validated for the specific purpose for which they are used; and
 - (ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
- (2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.
- (d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure.)
- (f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
- (g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(h) In evaluating each child with a disability under §§ 300.531-300.536, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

34 C.F.R. § 300.532.

Also pertinent to the issue of whether the District's evaluation is appropriate is its underlying purpose. [REDACTED] had been eligible for special education services in the District for a number of years, and therefore the requested evaluation was not an initial evaluation. As part of any re-evaluation under IDEA, it is the responsibility of the IEP team to review the existing evaluation data on the child and then to identify what additional data, if any, are needed to determine (1) whether the child continues to have a disability; (2) the present levels of performance and educational needs of the child; (3) whether the child continues to need special education and related services; and (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum. 34 C.F.R. § 300.533(a). The implementing federal regulation further states that the school district "shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section." 34 C.F.R. § 300.533(c) (emphasis added.) In this case, the IEP team determined that it required specific information regarding [REDACTED] as a result of his not being in school for the preceding seven (7) months and because of the lack of current information that was relevant and understandable. The IEP team determined that it required

additional data regarding [REDACTED]'s cognitive functioning, academic achievement, and adaptive behavior to ensure his IEP appropriately addressed his educational needs.

The District's evaluation met all the requirements of IDEA and its supporting federal regulations. There is no evidence that the tests administered to [REDACTED] were racially or culturally discriminatory. Each test was provided and administered in English, [REDACTED]'s native language. 34 C.F.R. § 352(a)(1). Further, [REDACTED] passed a hearing and vision screening prior to the evaluation being conducted as required by Ga. Bd. of Education Rule 160-4-7-.07(3)(b)1.(i)(2000.)

The WISC-IV, RIAS, and Woodcock-Johnson III are standardized tests. Dr. Goldman has extensive qualifications in the assessment of children and has been trained in the administration of these tests. Each of these tests has been validated for the specific purpose for which Dr. Goldman used them. Furthermore, Dr. Goldman administered each test in accordance with each test's respective instruction manual and did not deviate from standard conditions. The ABAS-II, a ratings scale completed by [REDACTED]'s teacher and father, is a standardized measure, was administered in accordance with its published guidelines, and was used by Dr. Goldman for the specific purpose for which it was validated. Clearly, the District's evaluation complied with the requirement that any standardized test given to a child must be validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producers of the test. 34 C.F.R. § 300.532(c)(1) and (2).

[REDACTED] contends that the District's evaluation was not sufficiently comprehensive to identify all his special education and related services needs and, therefore, was inappropriate citing 34 C.F.R. § 300.532(h). The Court does not agree. The term "comprehensive" must be read in conjunction with the type of evaluation requested. When a child is being re-evaluated, a school

district is not required to use all possible tests but only to administer tests and other evaluation materials as may be needed to produce the data identified by the IEP team. 34 C.F.R. § 300.533(c). "The IDEA clearly distinguishes between an initial evaluation and a re-evaluation. See 34 C.F.R. § 300.536. In the event of a reevaluation . . . , the IDEA and its implementing regulations do not require the District to perform anew the full scope of testing properly included in a child's initial evaluation." Robert B., et al. v. Westchester Area School District, 2005 U.S. Dist. LEXIS 21558 (E.D. Penn. 2005.) The tests selected and administered by the District yielded information regarding [REDACTED]'s special education and related services needs in the areas identified by the team as requiring assessment.

The District is required to ensure that tests and other evaluation materials are technically sound instruments and include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single intelligence quotient. 34 C.F.R. § 300.532(d) and (i) . Dr. Goldman used two cognitive abilities tests, both well-respected evaluative instruments. The WISC-IV and the RIAS are designed to assess a variety of areas that contribute to an individual's overall intelligence and consist of sub-tests that provide specific information about a variety of abilities and the student's strengths and weaknesses within those areas. The IEP team specifically requested, and Dr. Goldman administered, an adaptive behavior assessment as an important tool in providing a balanced evaluation of [REDACTED]'s cognitive functioning in everyday settings. In addition, Dr. Goldman administered relevant tests within the Woodcock-Johnson III to assess specific areas of academics performance to ascertain [REDACTED]'s achievement as well as needs in response to specific questions from the IEP team.

The federal regulations require that testing be selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills,

the test's results accurately reflect the child's aptitude, achievement level, or whatever other factors the test purports to measure. 34 C.F.R. § 300.532(e). [REDACTED] has a speech and language impairment and has received speech/language services while a student in the District. [REDACTED] contends that the instruments selected tested [REDACTED]'s language impairment and not his cognitive abilities or academic achievement. He further contends that he could not understand directions and had motor deficits. The Court does not agree. Prior to selecting and administering WISC-IV, RIAS, Woodcock-Johnson III, and ABAS-II, Dr. Goldman reviewed [REDACTED]'s education record, including the last psychological evaluation. The prior evaluator had administered the WISC-III and the Matrix Analogies Test ("MAT") (Extended Form), a cognitive abilities measurement that is a language-free, motor-reduced, and culturally reduced measure of intellectual functioning. While [REDACTED] scored slightly higher than his full-scale IQ score on the WISC-III, his score was still in the mildly intellectually deficit range and was consistent with significantly below age-level intellectual functioning. If his language impairment or any alleged motor defects were effecting his performance on cognitive ability tests, one would expect his score on the MAT to be within the average range of intelligence. Further, the WISC-IV administered by Dr. Goldman assesses a student's nonverbal reasoning as one of its domains. [REDACTED]'s score in this domain was the same as in the verbal comprehension domain of the WISC-IV. If language had impacted [REDACTED]'s performance, his score would have been significantly higher in this domain. Based upon evidence presented at trial, including classroom teacher reports, [REDACTED] could understand and follow directions.

In addition, Dr. Goldman clinically assessed his ability during the administration of the test and determined that he understood what he was being asked to do. Dr. Goldman also clinically assessed [REDACTED]'s ability to manipulate a pencil and the test items and did not see motor

deficits in these areas. Because the Court does not have the expertise or experience in the field of education presumably possessed by professional educators, and does not have the opportunity to observe a student's behavior during testing as Dr. Goldman did, the Court must grant much deference to the clinical observation made by Dr. Goldman during [REDACTED]'s evaluations. Clay T. v. Walton County Sch. Dist., 952 F. Supp. 817, 823 (M.D. Ga. 1997). Her clinical observations were consistent with the District in its 2001 evaluation, which also assessed his visual and motor skills, and found that [REDACTED] demonstrated fine motor coordination difficulties but that the difficulties were consistent with measures of overall intellectual functioning.

Once an evaluation is completed, it is a school district's responsibility to convene an IEP meeting to determine if the child continues to be eligible for special education and, if so, to review and/or revise the child's IEP and placement. In the matter before the Court, the District convened an IEP team meeting that included Dr. Goldman as well as the parents, [REDACTED]'s past and present teacher, SLP, and other District personnel to discuss the information provided and consider its implication for [REDACTED]. The evaluation and Dr. Goldman's recommendations were discussed at length. However, the federal regulations and state rules implementing IDEA require school districts in interpreting evaluation data for the purpose of determining if a child is a child with a disability as defined by 34 C.F.R. § 300.7(1999) and the educational needs of the child to draw upon information from a variety of sources, not just the evaluation. The variety of sources include aptitude and achievement tests, parent input, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. 34 C.F.R. § 300.535. Ga. Bd. Ed. Rule 160-4-7-.07(4)(a.) The evaluation conducted by the District was helpful in drafting [REDACTED]'s IEP but was not the only source or single procedure used by the IEP team to develop his educational program as required by 34 C.F.R. § 300.532(f). The Court therefore concludes that

the District's evaluation was appropriate, and that the parents do not have a right to an additional evaluation at public expense. 34 C.F.R. § 300.502(b)(3.) However, ██████'s parents are not without recourse, should they desire an additional evaluation. They have the right to secure an IEE and the right to have that evaluation considered by the District in making educational decisions for ██████. 34 C.F.R. § 300.502(c.)

At trial, ██████ claimed that the District added wording ("Since Scott is just returning from private school, Cobb County needs updated IQ and achievement scores on Scott") to an IEP document without a meeting, without notice, or without written permission of the parents in violation of IDEA and therefore the evaluation was inappropriate. This contention is necessarily premised on a procedural violation, e.g. that Petitioner's Exhibit 5 was not created consistent with IDEA's procedural safeguards including, *inter alia*, the "opportunity for the parents of a child with a disability to participate in meetings with respect to the identification, evaluation and educational placement of the child" 20 U.S.C. § 1415(b)(1)(2004), which is a FAPE issue.

It is well settled that technical or procedural violations of IDEA are not *per se* violations of the IDEA, but rather are actionable only to the extent that they result in a denial of FAPE. "In evaluating whether a procedural defect has deprived a student of a FAPE, the Court must consider the impact of the procedural defect, and not merely the defect *per se*." Weiss v. School Bd. of Hillsborough County, 141 F.3d 990, 994 (11th Cir. 1998); Collier Co. v. K.C., 285 F.3d 977, 982 (11th Cir. 2002). For parents to prove that their child was denied a FAPE, "they must show harm to [the student] as a result of the alleged procedural violations." Weiss at 996; K.C. at 982; see also, Doe v. Alabama State Dept. of Educ., 915 F.2d 651, 661-62 (11th Cir. 1990.) This long-established principle has been codified in the IDEA. 20 U.S.C. § 1415(f)(3)(E)(ii.)

Thus, for a violation of a parental right to participate in meetings to constitute an actionable violation of IDEA, it would have to result in a denial of FAPE.

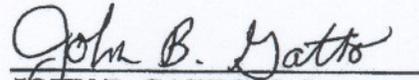
However, the Court ruled consistently throughout this trial that although [REDACTED] was authorized to file a separate due process complaint raising his FAPE claims, and seek the Courts permission to consolidate those claims with the present action, he was precluded from raising those issue in the present action, since this action was limited to the issues raised by the District in its complaint. 20 U.S.C. § 1415(f)(3)(B.) S.C. did not avail himself of that remedy. Accordingly, whether or not [REDACTED]'s (or his family's) right to participate in IEP meetings was violated was not an issue properly before the Court.

[REDACTED] also alleged that the District failed to timely file a due process complaint. At the October 28, 2005 IEP meeting, [REDACTED]'s parents requested an independent educational evaluation pursuant to the IDEA. The District waited until December 8, 2006 to file a due process complaint. The Court concludes that this unnecessary delay was a procedural violation. However, given the Court's determination that the District's evaluation was appropriate, and that the parents do not have a right to an additional evaluation at public expense, the Court concludes that the unnecessary delay did not impede [REDACTED]'s right to a free appropriate public education, significantly impede his parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to S.C. or cause a deprivation of educational benefits. Accordingly, [REDACTED] is not entitled to any relief based upon the District's unnecessary delay. Furthermore, as indicated supra, this procedural violation was a FAPE claim, which [REDACTED] was required to bring in a separate action and was not an issue properly before the Court. Accordingly,

IV. CONCLUSION

IT IS HEREBY ORDERED THAT the evaluation conducted by the District for S.C. in 2005 was appropriate under IDEA and therefore, [REDACTED] is not entitled to an independent educational evaluation at public expense.

SO ORDERED THIS 2th day of October, 2006.


JOHN B. GATTO, Judge