

DUE PROCESS HEARING

Case Number D14-007

LEA: [REDACTED] County Board
of Education
Local Education Agency,
Initiator

COUNSEL: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PARENTS: [REDACTED]
Parents of the Student

COUNSEL: [REDACTED]
[REDACTED]
[REDACTED]

STUDENT: [REDACTED]

DATE OF BIRTH: August 15, 2000

DATE OF COMPLAINT: September 17, 2013

DATE OF RECEIPT BY
LEA: September 18, 2013

DATE OF RECEIPT OF
MEMORANDUM OF
APPOINTMENT BY
HEARING OFFICER: September 18, 2013

DATE OF HEARING: January 14, 2014

PLACE OF HEARING: [REDACTED] County Board of Education
[REDACTED]
[REDACTED]

TRANSCRIPTION: [REDACTED]

STATUS OF HEARING: Closed to Public

STUDENT PRESENT: No

POST HEARING
SUBMISSIONS: February 7, 2014

DECISION DATE: March 7, 2014

HEARING OFFICER: Raymond G. Frere, Esquire

WITNESSES FOR THE LOCAL
EDUCATION AUTHORITY:

[REDACTED]
Expert Psychologist

[REDACTED]
Special Education Director

[REDACTED]
School Psychologist

WITNESSES FOR STUDENT/PARENTS:

[REDACTED]
Speech and Language Pathologist

[REDACTED]
Expert Psychologist

[REDACTED]
Mother of the Student

DUE PROCESS HEARING

PROCEDURAL BACKGROUND

On the 17th day of September, 2013, the LEA, through counsel, filed a Complaint in this matter requesting a Due Process Hearing, which was received by the West Virginia Department of Education, Office of Special Programs, on the 18th day of September, 2013. By Memorandum dated the 18th day of September 2013, I was informed of my appointment as the Impartial Hearing Officer in this matter. In keeping with the 45-day rule allowing for the resolution period, the decision in this matter was due by the 2nd day of December, 2013.

The Due Process Hearing in this matter was scheduled for the 4th day of November, 2013, beginning at 9:00 a.m. at the [REDACTED] and the deadline for the decision in this matter was extended at the written request of both parties from the 2nd day of December, 2013, to the 30th day of December, 2013. Pre-hearing submissions, including proposed evidence, exhibits, and witness lists, were to be submitted by each party, to the opposing party, and to me as Impartial Hearing Officer five (5) business days prior to the Hearing or on or before the 28th day of October, 2013. Post-hearing submissions or Memoranda of Law, were to be submitted by each party, to the opposing party, and to me as Impartial Hearing Officer on or before the 2nd day of December, 2013. A Pre-Hearing Conference Order dated the 1st day of October 2013, setting forth the matters above was prepared and forwarded to all parties.

Thereafter, a Pre-Hearing Telephonic Conference Call was conducted on the 30th day of October, 2013, between this Impartial Hearing Officer, counsel for the student and parents of the student, and counsel for the LEA. Counsel for the parents of the student and student requested a continuance of the scheduled hearing because of a scheduling conflict as evidenced by the letters

to the Court from counsel for the student and parents of the student. The proposed date of December 2, 2013, was not available by this Impartial Hearing Officer and according to a message from the LEA's counsel's office, the 16th day of December, 2013, was available for all, including expert witnesses.

By Order of Continuance of this Impartial Hearing Officer dated the 2nd day of November, 2013, the Due Process Hearing was continued to the 16th day of December, 2013; pre-hearing submissions were to be submitted on or before the 28th day of October, 2013; post-hearing submissions or Conclusions of Law and/or any Memoranda of Law were to be submitted by the 3rd day of January, 2014, and the deadline for the decision in this matter was extended to the 31st day of January, 2014.

Because of inclement weather, the hearing in this matter scheduled for the 16th day of December, 2013, was cancelled.

A Pre-Hearing Telephonic Conference Call was conducted on the 23rd day of December, 2013, between this Impartial Hearing Officer and counsel for the LEA in order to reschedule the Due Process Hearing. This Impartial Hearing Officer left a voicemail message for counsel of the parents of the student and student but did not receive a return telephone call.

By Order of Continuance of this Impartial Hearing Officer dated the 27th day of December, 2013, the Due Process Hearing in this matter was continued to the 14th day of January, 2014, beginning at 10:00 a.m. at the [REDACTED] County Board of Education [REDACTED]
[REDACTED]

All Pre-Hearing submissions, including proposed evidence, exhibits and witness lists, had been submitted by each party, to the opposing party, and to me as Impartial Hearing Officer five (5) business days prior to the Hearing scheduled for the 16th day of December, 2013.

Post-Hearing submissions, Proposed Findings of Fact and Conclusions of Law and/or any Memoranda of Law were to be provided in writing to the opposing party, and to me as Impartial Hearing Officer, by the 7th day of February, 2014, and the decision date in this matter was extended at the request of all parties to the 7th day of March, 2014.

The Due Process Hearing in this matter was held on the 14th day of January, 2014, beginning at 10:00 a.m. at the [REDACTED]

Post-hearing briefs were timely received by this Hearing Officer from counsel for the LEA and counsel for the parents of the student on the 7th day of February, 2014, pursuant to this Hearing Officer's Order of the 27th day of December, 2013.

PRELIMINARY STATEMENT

FOLLOWING THE DUE PROCESS HEARING IN THIS MATTER, COUNSEL FOR BOTH PARTIES WERE INVITED TO SUBMIT MEMORANDA INCLUDING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF THEIR RESPECTIVE POSITIONS. ALL PROPOSED FINDINGS, CONCLUSIONS AND SUPPORTING ARGUMENTS SUBMITTED BY THE PARTIES HAVE BEEN CONSIDERED. TO THE EXTENT THAT THE PROPOSED FINDINGS, CONCLUSIONS, AND ARGUMENTS ADVANCED BY THE PARTIES ARE IN ACCORDANCE WITH THE FINDINGS, CONCLUSIONS AND VIEWS AS STATED HEREIN, THEY HAVE BEEN ACCEPTED, AND TO THE EXTENT THAT THEY ARE INCONSISTENT THEREWITH, THEY HAVE BEEN REJECTED. CERTAIN PROPOSED FINDINGS AND CONCLUSIONS HAVE BEEN OMITTED AS NOT RELEVANT OR NOT NECESSARY TO A PROPER DETERMINATION OF THE MATERIAL ISSUES AS PRESENTED. TO THE EXTENT THAT THE TESTIMONY OF VARIOUS WITNESSES IS NOT IN ACCORD WITH FINDINGS AS STATED HEREIN, IT IS NOT CREDITED.

CREDIBILITY OF THE WITNESSES, TESTIMONY AND EXHIBITS

The Hearing Officer is satisfied that the witnesses testified credibly. After considering the demeanor of the witnesses, any inconsistencies, conflict or any motive on their behalf, the hearing officer is satisfied that any inconsistencies were not a result of deliberate untruthfulness. Rather, any inconsistencies in the testimony were a result of a difference of opinion or a lack of knowledge or miscomprehension. The expert witnesses testified to the best of their abilities and the credentials of those witnesses was unquestioned. The hearing officer is satisfied that all records and documents entered as exhibits by the LEA at the time of hearing are authentic and valid and that they were entered with the proper evidentiary foundation; all records and documents entered by the parents of the student as exhibits at the time of hearing are authentic and valid and they were entered with the proper evidentiary foundation. Any evidence submitted after the conclusion of the hearing was not considered herein.

All decisions rendered at the aforesaid hearing on motions or objections filed or presented in this action are hereby affirmed and all other motions or objections filed or presented in this action by either of the parties which were not previously ruled upon by the hearing examiner are hereby denied and rejected.

ISSUE

Whether the comprehensive Psycho-Educational Evaluation completed by the LEA's School Psychologist on August 5, 2013 is an appropriate evaluation of the student pursuant to the Resolution Session Agreement between the parties dated March 7, 2013 and West Virginia Board of Education Policy 2419, Chapter 10, §7(C).

FINDINGS OF FACT

1. The student, [REDACTED] with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §§ 1400 et seq. and West Virginia Department of Education Policy 2419 126 C.S.R. 16 et seq.
2. The LEA's Expert Psychologist teaches psychology at a [REDACTED] and has a private practice. She has a Master's Degree of Education in school psychology and a doctorate in school psychology and neuropsychology. She has extensive experience teaching in the area of psycho-educational evaluations. She is licensed and certified as a school psychologist in [REDACTED] She reviews assessments performed by other psychologists and has performed tens of thousands of evaluations since 1977 in public schools in West Virginia, in private practice with adults, and supervises assessments while teaching. She is qualified as an expert witness. (Tr. pp. 21-25) (LEA's Exhibit No. 5)
3. The LEA's Expert Psychologist is knowledgeable of the West Virginia Board of Education Policy 2419. (Tr. p. 28)
4. The definition and purpose of a comprehensive psycho-educational evaluation is to conduct different kinds of assessments to get information about a child's current functionings in cognitive ability, intelligence, academic achievement, behavior, social skills, development for the purpose of identifying problem areas, and to see if that child is eligible for special education and related services. The purpose of such an evaluation in special education is to inform the IEP team of a student's strengths, weaknesses and needs. (Tr. pp. 25 & 26)

5. The LEA's Expert Psychologist knows the LEA's School Psychologist and considers her to be a professional qualified to perform a comprehensive psycho-educational evaluation, appropriately certified, and knowledgeable in the areas covered by the evaluation that she performed. (Tr. pp. 26-28) (LEA Exhibit 6)
6. The LEA's Expert Psychologist is of the opinion that the psycho-educational evaluation performed by the LEA's School Psychologist was comprehensive and thorough, reflected a variety of instruments used and referenced a record review. The assessments and tools used were technically sound. The evaluation was sufficiently comprehensive to identify the student's special education needs; adequate to provide relevant information to directly assist in determining the educational needs of the student and included information from the student's mother. (Tr. pp. 28 & 29)
7. The psycho-educational evaluation performed by the LEA's School Psychologist produced necessary and relevant information to assist the IEP team in developing an IEP that would provide a FAPE for the student and meets the standards for a psycho-educational assessment. (Tr. pp. 29-31)
8. The addendum to the LEA's School Psychologist's psycho-educational evaluation of August 5, 2013, in response to the student's parents' request was appropriate. The information provided in the addendum did not materially affect the initial results or conclusions of the evaluation. (Tr. p. 31) (LEA Exhibit No. 3)
9. The LEA's Expert Psychologist is not familiar with the Student Diagnostic Report Enterprise Test (STAR) which was conducted on December 3, 2013 for a period of 11 minutes and 36 seconds. (Tr. pp. 32 & 33) (Parent Exhibit No. 7)

10. The recommendation in the psycho-educational evaluation is that the IEP Committee and the Eligibility Committee will make a determination as to the eligibility and needs of the student based on the evaluation results. To the LEA's Expert Psychologist, "comprehensive" means it is complete and has everything that it needs to address a student's needs. The evaluation report contains background information about the progression of the student's disabilities and conditions. (Tr. pp. 34 & 35)
11. The student's background indicates he has behavioral difficulty. Broad written language tests include writing fluency, spelling and writing samples. In writing fluency, the child writes short sentences very quickly for seven minutes using target words and/or a picture. In writing samples: the student writes sentences under no time constraints, given a picture and a question or an instruction. The student is to write a complete and good sentence, including punctuation, spelling, syntax and grammar. (Tr. pp. 37 & 38) (LEA Exhibit No. 2)
12. Part of a school psychologist's skills and training includes learning to administer rating scales such as the Connors and the BASCS. The rating scales are often given to two or three teachers to get their opinions in different classroom settings. A child's behavior in one setting can differ from behavior in another. (Tr. pp. 38 & 39)
13. Observations would not occur in unstructured environments such as in the cafeteria. The behavior rating scales are structured mostly for classrooms and home. (Tr. p. 39)
14. It is necessary for a teacher to have some experience with a child before doing an observation and completing rating scales. (Tr. p. 40)
15. The portion of the Evaluation Report for Social Skills Rating System for the student contained teachers' evaluations. (Tr. pp. 41 & 42) (LEA Exhibit No. 2)

16. It was reasonable for the student's mother to request three more teachers to complete the Social Skills Rating System in Connors-3. The LEA followed through on her request and the results were reported in an addendum to the LEA's School Psychologist's report dated August 5, 2013 and the information would be important for the IEP team to consider when reviewing the report. (Tr. pp. 42 & 43) (LEA Exhibit No. 3)
17. The school psychologists are usually participants in an IEP meeting and are able to discuss matters contained in their reports and are available to answer questions, which is equivalent to making a recommendation. (Tr. pp. 43 & 44)
18. In lieu of personal observation, Functional Behavioral Assessment (FBA) performed by someone other than a classroom teacher would provide information that would be helpful to an IEP team. An FBA was to be performed on the student as part of the Resolution Session Agreement dated March 7, 2013. (Tr. pp. 45 & 46) (LEA Exhibit No. 1)
19. The LEA's Expert Psychologist did not review the Report of Functional Behavioral Assessment (FBA) and Behavior Support Plan dated May 13, 2013, authored by James Ball. If it had been presented to the IEP team during its August 16, 2013 meeting at the same time that the psycho-educational report was presented, it would have provided important information to the IEP team regarding observation in the classroom. (Tr. pp. 47 & 48)
20. An FBA includes observations of a student in different environments and teacher rating scales and reports. It is not interchangeable with a classroom observation. (Tr. pp. 48 & 49)

21. If an FBA was going to be performed and considered by the IEP team, it would not be necessary for the school psychologist to do a classroom observation, in addition to the Connors rating scale, to complete a comprehensive Psycho-educational evaluation report. (Tr. p. 50)
22. It is up to a school district or the psychologist to choose whether to use the WIAT and Wechsler tests to assess writing skills. The LEA's Expert Psychologist prefers the Woodcock-Johnson test over the WIAT for writing. The WIAT essay is very intense for a child. The Woodcock-Johnson test has the child specifically compose sentences from a few target words. The student composes a short sentence and writes it. There is a time limit. The spelling is the same on both tests. The writing fluency is an adequate test and the writing samples are better and it is more comprehensive. She does not have a problem with a school psychologist preferring one over the other, but prefers the Woodcock-Johnson test which she thinks provides a better example of a child's ability to come up with a sentence or two. (Tr. pp. 167-170)
23. The LEA's Special Education Director (SED) has held this position for one and one-half years. She is familiar with the Resolution Session Agreement, entered into by the parties on March 7, 2013, in settlement of Due Process No. D13-008. (Tr. pp. 51 & 52) (LEA Exhibit 1)
24. There is nothing in the Resolution Session Agreement that requires the LEA and the parent to mutually agree upon a school psychologist to perform a psycho-educational evaluation. There was some delay in determining who was going to perform the evaluation. The SED worked with the student's mother's request for her preferred Center in Morgantown, West Virginia to do the evaluation. The delay with that Center was in

trying to get the cost of the evaluation. The SED was told there was a waiting list at the Center and that another office handled its cost structure. The SED was told that to be placed on the waiting list, she needed to send on school or county letterhead, a request for the evaluation and to agree to pay the fee amounts. The SED would not send the letter until she was given a fee. The SED tried to keep the student's mother updated on her progress in setting up the evaluation. Time was going by and the goal was to get the evaluation completed prior to the end of the student's seventh grade school year so that an IEP meeting could be held and the evaluation used to help write the student's IEP. (Tr. pp. 52-55, 56 & 63)

25. The SED contacted a second psychologist's office and inquired about testing. She then sent the student's mother an email stating they planned to contract with the second psychologist to do the evaluation, and asked the student's mother to provide her with specific dates for testing. The student's mother responded that they were available and would work with whatever was arranged. The SED contacted the second psychologist's office and scheduled the testing. She notified the student's mother on the same day by email with the date and time for the comprehensive evaluation. Thereafter, the student's mother left the SED a message in reference to the LEA not providing her with three qualified individuals that could do an Independent Educational Evaluation (IEE). (Tr. pp. 55-57, 64-66)
26. The SED received a message from the second psychologist's office saying the student's mother had contacted his office and the evaluation was cancelled, and would not be re-scheduled. (Tr. p. 57)

27. The SED sent a letter to the student's parents on September 17, 2013 stating that she had received the student's mother's email requesting an IEE, and that the LEA was going to file a due process complaint in response to that. The LEA had a qualified school psychologist on staff, and the SED had previously notified the student's mother that they were going to go ahead and do this "in-house". The LEA conducted its testing on August 5, 2013. They sent the student's parents a Permission to Evaluate form but did not get the original parent permission form back. The SED sent a second notice. The first available day to have the evaluation scheduled was the LEA's School Psychologist's first day back at work. (Tr. pp. 54, 58 & 59) (LEA Exhibit No. 4)
28. When the student's mother requested the Independent Educational Evaluation (IEE), she did not tell the SED what she disagreed with in the LEA's School Psychologist's report. (Tr. p. 59)
29. The SED attended the student's August 16, 2013 IEP meeting. At the meeting, the student's mother was concerned about the difference in the actual IQ score from a previous psychological report. There was no other disagreement voiced by the student's mother during that IEP meeting. (Tr. p. 60) (LEA Exhibit No. 3)
30. The LEA felt that the psycho-educational evaluation completed by its School Psychologist is accurate, produces valid results, is comprehensive, complete, and appropriate and declined to obtain the independent educational evaluation requested by the parent. (Tr. pp. 60 & 61)
31. The LEA's School Psychologist was at the August 16, 2013 IEP meeting and reviewed her report with those attending. She responded to questions and her report was used by the Eligibility Committee members in determining eligibility. (Tr. pp. 60 & 61)

32. The Center in Morgantown does behavioral testing, FBAs and psychological evaluations. The student's mother told the SED that the Center gave her a fee schedule but she never supplied it to the SED. (Tr. pp. 63 & 64)
33. The LEA's School Psychologist has been in that position since 2001. She has undergraduate and master's degrees in psychology. After finishing her graduate work, she worked for a few months in Pittsburgh doing psycho-educational evaluations until she obtained her current position in the LEA. She is a certified school psychologist in both West Virginia and Pennsylvania and is experienced in reviewing psycho-educational evaluation reports prepared by other professionals and in performing such evaluations. She is an expert in the area of school psychology. (Tr. 67-70) (LEA Exhibit No. 6)
34. The LEA's School Psychologist performed an evaluation of the student on August 5, 2013, at the LEA's Board of Education with his mother present, based on the Resolution Agreement of March 7, 2013, for Due Process No. D13-008, which called for the LEA to cause a comprehensive psycho-educational evaluation to be performed by a qualified professional. It is not typical for a parent to sit in on an evaluation. The School Psychologist checked with the LEA's SED to see if the mother could be present who said it was okay if the School Psychologist was fine with it. (Tr. pp. 70-72) (LEA Exhibit No. 1)
35. The LEA's School Psychologist did not encounter any adverse events that would question the validity of her evaluation. She is familiar with the requirements of West Virginia Policy 2419 concerning evaluation procedures. (Tr. p. 72)
36. In administering the psycho-educational evaluation of the student, the LEA's School Psychologist reviewed the student's file and looked at all of the services and evaluations

he had received. She performed an IQ and achievement test and had the student's mother and a teacher fill out some rating scales to assess the student's behavior, social skills and levels of attention. She observed the requirements contained in Policy 2419 while conducting the psycho-educational evaluation. The LEA's School Psychologist did not do a personal classroom observation and Policy 2419 does not specifically say that the school psychologist has to do so. (Tr. pp. 72-74) (LEA Exhibit No. 2)

37. It was the LEA's School Psychologist's opinion, that the psycho-educational evaluation performed on the student met the requirements of the Resolution Session Agreement, West Virginia Policy 2419, and was appropriate. (Tr. p. 74)
38. The LEA's School Psychologist attended the student's August 16, 2013 IEP meeting and reviewed the results of her psycho-educational evaluation. She answered questions from the student's parents and attorney. (Tr. p. 74) (LEA Exhibits Nos. 2 & 3)
39. The student's mother requested additional ratings by other teachers. The LEA's School Psychologist thought this request was reasonable and she secured additional ratings. She does not believe the results of the additional ratings materially affected the results of her evaluation. (Tr. p. 75) (LEA Exhibit No. 3)
40. After the LEA's School Psychologist finished her testing of the student, she told the student's mother that after she wrote her report, she wanted to sit down and go over the results with the student's mother. This is common practice. The student's mother replied this was not necessary and she did not need the LEA's School Psychologist to go over the results with her. The LEA's School Psychologist did not meet with the student's mother prior to the August 16, 2013 IEP meeting. (Tr. pp. 75 & 76)

41. The LEA's School Psychologist's report is one part of an Eligibility Committee meeting. It is a team decision on what the student may or may not be eligible for. The LEA's School Psychologist attends IEP meetings where her reports are considered, to answer questions and clarify her report. (Tr. pp. 76 & 77)
42. The student's mother was concerned that the student's IQ had dropped a few points in the evaluation. The LEA's School Psychologist told the student's mother she was not concerned because it was still in the average range and the change was not significant. (Tr. pp. 78 & 79)
43. Previously in 2007, the student's IQ was 99 on the full scale. The student scored 91 overall full scale in the current evaluation. The student's verbal comprehension was higher the first time he was tested versus the last time the LEA's School Psychologist evaluated him. The student's mother was concerned about the student's language, writing and reading. (Tr. pp. 79 & 80)
44. The student has vision problems. The LEA's School Psychologist did not report this in her most recent evaluation but did in her 2007 report. (Tr. 81)
45. There are other tests of written language evaluations that the LEA's School Psychologist did not administer in her August 5, 2013 evaluation of the student. There was no essay portion on her test which is part of the Woodcock-Johnson test. The LEA's School Psychologist felt her evaluation was appropriate. (Tr. pp. 82 & 83)
46. The LEA's School Psychologist's report included the student's academic strengths and weaknesses. The student's reading and math achievements were average; his written language skills were low average. (Tr. p. 83)

47. The LEA's School Psychologist attached the results of the additional rating scales as an addendum. Her recommendation was that the Eligibility Committee review the report and any other relevant information to determine services and eligibility. She summarized her results and stated what they were. (Tr. p. 94) (LEA Exhibits Nos. 2 & 3)
48. The Eligibility Committee could use the specific strengths and weaknesses of the student reported in the LEA's School Psychologist's report. (Tr. pp. 84 & 85)
49. The LEA's School Psychologist usually goes to Eligibility Committee meetings with a student's file and her most recent report. In her experience, other information brought to the meeting could be part of a record review by other attendees such as speech and language pathologists or behavioral specialists. (Tr. pp. 86-88)
50. The psycho-educational evaluation by the LEA's School Psychologist of the student on August 5, 2013 was a re-evaluation. It should have information about what is most beneficial to the student. When a permission form for an evaluation is sent to parents, evaluations that will be performed are checked, and the parents sign the form. The purpose of the Permission to Evaluate Form is to make sure that all areas of concern are covered. (Tr. pp. 88 & 89)
51. The Parents' S/L Pathologist evaluates and treats children and adults with disabilities. She has a Master's degree in S/L Pathology and has more than twenty years' experience in working with adults and children. (Tr. pp. 12 & 13)
52. The S/L Pathologist evaluated the student's written expression on October 16, 2013 and prepared a report. The student has weaknesses in working memory and significant difficulty in sentence assembly abilities. (Tr. pp. 13-18) (Parent Exhibit No. 2)

53. The S/L Pathologist had reviewed the August 5, 2013, psycho-educational report prepared by the LEA's School Psychologist and does not disagree with the results of the report. (Tr. pp. 19 & 20) (LEA Exhibit No. 2)
54. The Parents' Expert Psychologist is certified in Pennsylvania, is a nationally certified school psychologist, and a licensed psychologist. She has a Bachelor's of Science and Master's and TAG certificate in psychology. She has worked in mental health since 1999 and has been working as a certified school psychologist since 2006. She has worked in various settings in performing psycho-educational evaluations. She is qualified as an expert in school psychology. (Tr. pp. 91-94) (Parent Exhibit No. 1)
55. The student's mother contacted the Parents' Expert Psychologist seeking some educational consulting services and a possible evaluation. They discussed the student's case history and reviewed many of the student's psychological reports, the most recent speech and language report, the AT evaluation, some OT evaluations, the vision evaluations and the LEA's psycho-educational report of August 5, 2013. (Tr. pp. 94-96)
56. The Parents' Expert Psychologist read West Virginia Policy 2419, but is not thoroughly familiar with it. She is currently in the process of applying for reciprocity as a certified school psychologist in West Virginia. She has attended and participated in IEP meetings and in developing IEPs. (Tr. pp. 96 & 97)
57. In the Parents' Expert Psychologist's experience, the IEP team relies heavily on an evaluation of the child. She believes the LEA's School Psychologist's psycho-educational evaluation is a basic one. She did not see recommendations for strategy or approaches or accommodations linked to the assessments conducted and the results received. She did

- not see a comprehensive developmental and medical history or descriptions of other diagnoses the student has. (Tr. pp. 97 & 98)
58. Basic IQ in achievement and behavior were reported in the LEA's School Psychologist's psycho-educational report, but the Parents' Expert Psychologist believes it lacks information to develop an IEP for the student. (Tr. p. 98)
59. It was the Parents' Expert Psychologist's opinion that the school psychologist's role is not only to report on results but to interpret and integrate those results and provide information about how that affects the child's functioning and to make recommendations based on that to the team. According to the Parents' Expert Psychologist, there is some interpretation and analysis lacking in the LEA's report. It is a good start but there's another paragraph that is missing. (Tr. pp. 98 & 99) (LEA Exhibit No. 2, page 13)
60. Since the student's verbal comprehension score showed a drop between previous and current testing, the Parents' Expert Psychologist would want to look at that and at the difference between the perceptual score, which measures reasoning or problem solving, using visual, spatial, perceptual, non-language tied information, and the verbal score. (Tr. pp. 99-101)
61. Based on the difference in the perceptual score and verbal score, the Parents' Expert Psychologist would take some language measures, like the Self test that the speech and language pathologist uses, or the language domain on the neurodevelopmental neuro-psych evaluation. (Tr. p. 102)
62. The student's written expression on the LEA's School Psychologist's psycho-educational evaluation is of concern to the Parents' Expert Psychologist and to his mother. The evaluation shows a trend in the area of written language which is a weakness for the

student. The Parents' Expert Psychologist would want to look into more complex writing tasks, such as an essay task, since the student is at the secondary level. There are various stand-alone tests of written expression including the WIAT which includes an essay component. If the Parents' Expert Psychologist had been conducting the psycho-educational evaluation on the student, she would have done the Wechsler Achievement test to see how the student would perform and might also give a test of written language in that the two essays differ slightly. (Tr. pp. 102-105)

63. There was a study done in 2011 that showed children with ADHD, such as the student, show some differences when they are provided with a verbal prompt versus a picture prompt. (Tr. p. 105)
64. The Parents' Expert Psychologist reviewed the evaluation of the student by a previous Certified School Psychologist who reported that the essay was unscorable so she did not score that portion of the student's writing. (Parent Exhibits Nos. 4 & 5) The Parents' Expert Psychologist did so and it shows that on a more complex task, the student had some significant difficulty producing a coherent composition. The Parents' Expert Psychologist went through the scoring software and came out with a standard score of 83. (Tr. pp. 105 & 106)
65. The previous Certified School Psychologist had noted that because the student provided only one run-on sentence with no punctuation, the essay portion did not provide a valid representation of his writing skills. The writing score of 83 is the same that he scored in the August 2013 evaluation. (Tr. pp. 106-109) (Parent Exhibits Nos. 4 & 9)
66. An additional essay in the evaluation would have shown if the student had progressed at all or if his skills stalled resulting in a lower score. If he maintained the same standard

- score, it would mean the student was gaining skills but still at a rate slower than age-commensurate peers. Average would be around a score of 100. (Tr. pp. 109 & 110)
67. The Parents' Expert Psychologist is familiar with the social skills rating system and the Connors which are part of a school psychologist's training. In the evaluation, the parent and one teacher were given scales. The Parents' Expert Psychologist did not see any of the scores reported for either measure as far as what scores were at risk and what were clinically significant. (Tr. pp. 110 & 111)
68. If a teacher is being asked to complete the scales, they should have seen the student more than once after the student is comfortable in the classroom. (Tr. p. 114)
69. The Parents' Expert Psychologist does not have any objections to the LEA's School Psychologist being appropriately certified, licensed or qualified to administer the tests in her evaluation report and does not have any issue as to whether she was appropriately trained to administer those instruments. (Tr. pp. 116 & 117)
70. WV Policy 2419 requires that the evaluator be knowledgeable of West Virginia regulations and the Parents' Expert Psychologist does not have any issue with that. She believes the LEA's School Psychologist's report lacks an overall analysis, interpretation and conclusion as well as recommendations linked to the assessments that were administered. The Parents' Expert Psychologist has a basic knowledge of Policy 2419 but would have to review it to answer questions about it. (Tr. pp. 117-119)
71. The Parents' Expert Psychologist agreed that two school psychologists might approach a problem or task of evaluating a student differently yet still produce competent reports. (Tr. p. 119)

72. The student's mother asked the Parents' Expert Psychologist to review the test protocol done by the previous Certified School Psychologist to give an opinion on whether it could be scored or not and to find out what she thought of the writing sample. The standard score that was produced was from information put into the computer. The written product produced by the student during that test session was scorable, through the scoring program provided by Wechsler for the test. It is not being interpreted in any way other than it is a standard score of 83. There are a multitude of factors to take into account when looking at writing, especially for a child with ADHD, putting aside factors such as not liking to approach tasks that require mental effort and lack of attention to detail. (Tr. pp. 120-122)
73. The experiment was just to see if the written composition could be scored as it stood and through the rubric provided by Wechsler, it could. It had nothing to do with the evaluation being reviewed by the IEP team; it just showed a pattern of difficulty in written language over time. (Tr. p. 122)
74. The score of 83 was the same score the student achieved in the August 5, 2013 evaluation, which is low average. The student's history of language difficulties on a receptive and expressive level and lack of attention and focus difficulties, is important and should be considered by the IEP team. (Tr. p. 123)
75. As part of a full re-evaluation of a student, how the student is doing currently in the classroom should be noted, along with current grades, and progress on goals. (Tr. pp. 128 & 129)
76. The Parents' Expert Psychologist does not just do testing, interpretation and analysis is part of it. She has been trained that it is her job and responsibility as the school

psychologist to take the numbers as well as the rest of the information gathered and integrate that into a conclusion and recommendations. It is necessary to make recommendations and analyze the report in terms of reviewing with those at an IEP meeting. Answering questions and offering suggestions is not sufficient. All of the conclusions, determinations, and recommendations need to be documented. In the Parents' Expert Psychologist's opinion, the documentation is extremely important and needs to be complete and stand alone. The Parents' Expert Psychologist saw no recommendations in the LEA's psycho-educational report. (Tr. pp. 129-133)

77. The Parents' Expert Psychologist was not involved with the student's case in August 2013 at the time of the last IEP meeting. (Tr. pp. 134 & 135)

78. The student's mother is a teacher for the Wetzel County Board of Education. She is a reading specialist/interventionist. (Tr. pp. 136 & 137)

79. The student has a melanoma in his left eye. He is treated by Dr. Singh at the Cleveland once year. It is a serious condition called oculodermal melanocytosis, diagnosed when he was in the sixth grade. Dr. Bowen from the Learning Clinic, who diagnosed the student with visual, Aase-Smith syndrome and other things when he was in the second grade, provided the LEA with multiple recommendations to use in helping the student with his education. (Tr. pp. 137 & 138)

80. There is no re-evaluation report for the student which is supposed to be done under West Virginia law, but there are multiple evaluations. (Tr. p. 139) (LEA Exhibit No. 2)

81. The Assistive Technology Evaluation Report was done on June 18, 2013 and paid for by the LEA. It was never integrated into a re-evaluation report. (Tr. pp. 139-141) (Parent Exhibit No. 6)

82. The student's mother asked for an independent education evaluation of the student because the LEA's evaluation was not complete. It was supposed to be a comprehensive psycho-educational evaluation and it was missing several components. According to the student's mother, there should have been more planning involved in it. It should have included a speech component and the student's progress monitoring. (Tr. pp. 143 & 144)
83. The student's mother said that Policy 2419 states that testing needs to be taken into consideration and progress monitoring information. That information was not provided and was not utilized in the student's evaluation and there should have been more OT. The student's mother has mentioned her concern many times about the student's written expression. She brought it up again at the August 16, 2013 meeting when the psychologist gave her report who said that in her professional opinion the student did not have a written expression disability. The student's mother raised speech as being a primary issue. (Tr. pp. 144 & 145)
84. The student's mother said there have not been any other evaluations for the student since 2007 except for psycho-educational evaluations. (Tr. p. 147)
85. The student's mother does not believe the LEA met her objection by giving additional rating scales to three teachers in an addendum. It did not meet the standard because the teachers requested to fill the rating scale knew the student for one day. (Tr. p. 148)
86. The student's mother found the attempt to schedule an evaluation by the Morgantown Center to be difficult. She spoke to the LEA's SED who told the student's mother she had contacted the Center and until she received fees it would not be an appropriate choice. The SED also told the student's mother she had contacted a second psychologist to get some other options for a psycho-educational evaluation. (Tr. p. 149)

87. The student's mother responded to the SED expressing her concern that they were in jeopardy of not fulfilling the requirements under the agreement because it was taking so long. The student's mother talked with the SED by phone and asked her if the LEA would consider it, and she said they would. The SED started contacting an agency in Pittsburgh. (Tr. pp. 149 & 150)
88. The student's mother received fee information from a person at the Morgantown Center who told the student's mother that the SED had not left a phone or fax number or forwarded any information so that she could get the fee schedule back to her and had not completed any of the referral process. (Tr. pp. 150 & 151)
89. The student's mother called the second psychologist's office and asked if he was a certified school psychologist. He was a clinical psychologist and most of his work was with adults in the corrections department. (Tr. p. 152)
90. The student's mother sent the SED an email saying she would make herself available to get the evaluations completed as quickly as possible. (Tr. p. 153)
91. The SED emailed the student's mother and gave her a date that was scheduled with the second psychologist. (Tr. pp. 154 & 155)
92. The student's mother already had an appointment set up with Yale University with a person who deals with children with ODD and ADHD but cancelled it because her attorney did not feel the LEA would pay for those. (Tr. p. 155)
93. At some point, the SED said she sent permission to the student's mother to test in May, but the student's mother did not receive it. The student's mother had not received the permission to test so she started emailing and calling the SED who returned her call on

June 4 and sent out a new permission to test. The student's mother signed and returned it.

(Tr. pp. 155 & 156)

94. The student's mother does not believe the LEA's psycho-educational evaluation of August 2013 was comprehensive enough and there was not enough testing to look into the student's written expression. (Tr. pp. 158 & 159)
95. The student was supposed to receive social skills last year and the team did not do anything with that goal. (Tr. p. 159)
96. The student's mother believes they should have at least done the NEPSY in the student's evaluation. With his ADHD diagnosis, that would have been a useful tool. (Tr. p. 160)
97. The student's mother is concerned about the student's organization and abilities to sustain a task in executive functioning skills and eye functioning. There have been disciplinary issues with the student. (Tr. pp. 161 & 162)

CONCLUSIONS OF LAW

1. The student is a disabled child within the meaning of 20 U.S.C., Section 1400 et seq. (IDEA) and W.V. Policy 2419 - Regulations for the Education of Students with Exceptionalities. 126 CSR 16-1 et seq.
2. The purpose of the Individuals with Disabilities Education Act (IDEA), is to make available a Free Appropriate Public Education (FAPE) for every disabled child regardless of the severity of the child's disability. Timothy W. v. Rochester, New Hampshire School District, EHLR 441:393 (CA-1 1989); 20 U.S.C., Section 1400, et. seq., W.V. Policy 2419-126 CSR 16-1 et seq.
3. "Free Appropriate Public Education" (FAPE) means, among other things, special education and related services that are provided in accordance with the Individualized Education Program (IEP). 20 U.S.C., Section 1400 et seq., W.V. Policy 2419-126 CSR 16-1 et seq.
4. The provision of an IEP is a procedural requirement set forth in the IDEA. 20 U.S.C., Section 1400 et. seq., W.V. Policy 2419-126 CSR 16-1 et seq.
5. The importance of the IEP cannot be understated because it is the decision making document and primary vehicle for implementing the Congressional goals and the centerpiece of the statute's educational delivery system for exceptional students. Honig v. John Doe and Jack Smith, 108 S.Ct. 592 (1988).
6. In order for the student's IEP to be valid, it must contain, among other things, a "statement of the specific educational services to be provided to such child", and "appropriate objective criteria for determining, at least on an annual basis, whether

instructional objectives are being achieved". 20 U.S.C., Section 1400 et. seq., WV Policy 2419-126 CSR 16.

7. Failure to meet the Act's procedural requirements for an IEP are adequate grounds, by themselves, for holding that the school has failed to provide a FAPE. Board of Education of the Hendrick Hudson Central District, et al. v. Rowley, et al., 458 U.S. 176 (1982); Hall v. Vance, 774 F.2d 629 (4th Cir. 1985); Jackson v. Franklin County School Board, 806 F.2d 623 (5th Cir. 1986).
8. The IDEA requires that disabled children, to the maximum extent appropriate, shall be educated with children who are not disabled, i.e., they should be mainstreamed. Each public agency shall ensure that a continuum of alternative placement is available. 20 U.S.C., Section 1400, et. seq., W.V. Policy 2419-126 CSR 16-1 et seq.
9. The Federal mandate to mainstream students to the maximum extent possible is to be balanced with the primary objective of providing handicapped children with an appropriate education. Wilson v. Marana Unified School District of Pine County, 735 F.2d 1178 (9th Cir. 1984).
10. The School District has the burden of proving the appropriateness of a recommended placement by substantial evidence. Case No. 11966 (SEA N.Y. 1988) EHLR 509:271; Sylvio v. Commonwealth of Pennsylvania, (SEA PA 1982) EHLR 553:557. Board of Educ. of Co. of Kanawha v. Michael M., 95 F. Supp. 2d 600 (S.D. W.Va. 2000) (Goodwin, J.). It must demonstrate that it has adhered to required procedural steps to guarantee the appropriateness of its placement. In Re Jefferson Local School District, (SEA OH 1979) EHLR 501:394. W.V. Policy 2419-126 CSR 16. Chapter 11 §3(A), p.

103. See also Bd. of Ed. of Nicholas County v. H.A., a minor, Monica A., Parent of H.A., 2011 U.S. Dist. Lexis 24311, (Feb. 1, 2011).

11. A child is receiving an appropriate education if the IEP is reasonably calculated to enable the child to receive educational benefit. Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).
12. The educational benefit must be more than trivial. Polk v. Central Susquehanna Intermediate Unit, 853 F.2d 171 (3rd Cir. 1988). Carter v. Florence County School District Four, 950 F.2d 156, 160 (4th Cir. 1991) aff'd 510 U.S. 7; 114 S. Ct. 361; 126 L.Ed.2d 284 (1993) citing Hall ex rel. Hall v. Vance County Board of Education, 774 F.2d 629, 636 (4th Cir. 1985). But neither is it required to provide every service or accommodation which might bring a child with disabilities an educational benefit. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 199; 102 S.Ct. 3034, 3047; 73 S.Ed.2d 690 (1982); Board of Education of the County of Kanawha v. Michael M., 95 F. Supp.2d 600, 607 (S.D.W.Va. 2000). See also Sumter County School District 17 v. Heffernan ex rel. TH, 642 F.3d 478 (4th Cir. 2011); Deal v. Hamilton County Board of Education, 392 F.3d 840, 861-62 (6th Cir. 2004).
13. The IDEA does not require that a school district provide a disabled child with the best possible education and once a FAPE is offered, the school district need not offer additional educational services. MM v. School Dist. of Greenville Co., 303 F.3d 523, 526 (4th Cir. 2002) (citing Board of Education v. Rowley, 458 U.S. 176, 192 (1982) (“Rowley”) and citing Matthews v. Davis, 742 F.2d 825, 830 (4th Cir. 1984).
14. WV Policy 2419, pg. 13, 126 CSR16, Chapter 3, §2, (B) Re-evaluation states:

Within three years of the date of the last EC, or more frequently if the parent or teacher requests or conditions warrant (e.g., if the district determines that the

educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation), the district shall conduct, as appropriate, an individual multidisciplinary reevaluation to determine a student's educational needs and continued eligibility for special education and related services and whether any additions or modifications to the student's special education and related services are needed to enable the student to meet their measurable annual IEP goals and to participate, to the extent appropriate, in the general education curriculum. As part of the reevaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the student, including:

1. The current IEP and the student's progress toward meeting the annual goals;
2. Evaluations and information provided by the parent of the student;
3. Current classroom-based, local or state assessments and classroom-based observations; and
4. Observations by teachers and related service providers.

15. WV Policy 2419, pg. 17, 126 CSR16, Chapter 3, §4 (B) states:

B. Evaluation Procedures and Instruments

The district must ensure, at a minimum, that the evaluation or reevaluation meets the following requirements:

2. No single measure or evaluation may be used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student.

16. WV Policy 2419, p. 18, 126 CSR16, Chapter 3, §4 (C) states:

C. Qualifications and Responsibilities of Evaluators:

Individuals conducting evaluations shall be:

1. Appropriately certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;
2. Trained in the use of the specific evaluation instruments or techniques for which they are responsible;
3. Knowledgeable in the area of concern; and
4. Knowledgeable in the applicable state and federal regulations.

17. The psycho-educational evaluation of the student, performed by the LEA's School Psychologist, was appropriate pursuant to the Resolution Session Agreement of March 7, 2013, and West Virginia Board of Education Policy 2419, Chapter 10, §7(C).

DISCUSSION

The issue before this Court is very limited in scope. A resolution session in Due Process Complaint No. D13-008 was held in March of 2013 and an agreement was reached between the student's parents and the LEA on March 7, 2013. (LEA Exhibit No. 1) Paragraph "3" of the Resolution Session Agreement provides that the LEA shall promptly cause a comprehensive psycho-educational evaluation to be performed by a qualified professional. After the psycho-educational evaluation was completed on August 5, 2013, in compliance with Paragraph 3 of the Resolution Session Agreement, the student's mother, on September 9, 2013, emailed the LEA stating that the parents were in disagreement with the psycho-educational report and wanted an Independent Educational Evaluation (IEE). The LEA is of the opinion that the psycho-educational evaluation that was performed by the School Psychologist on August 5, 2013, is complete, accurate, and appropriate. (FOF 30)

After the student's mother requested, by email communication, that the LEA pay for an IEE. The LEA responded by letter dated September 17, 2013, from its Special Education Director (SED), informing the student's parents that the LEA elected to initiate a due process complaint in lieu of paying for an IEE. (FOF 27) (LEA Exhibit No. 4)

The Due Process Complaint filed by the LEA on September 17, 2013, states, in part that:

The LEA feels the comprehensive Psycho-Educational evaluation completed by the LEA's School Psychologist on 8-5-13 is a complete and accurate evaluation. The evaluation meets the requirements for evaluation criteria described in Chapter 3 of Policy 2419, Regulations for the Education of Students with Exceptionalities. The evaluation provides the IEP Team with a valid and reliable sample of the student's current ability and achievement levels. Therefore, the LEA is requesting a due process hearing to show that the district's evaluation is appropriate.

To be in compliance with West Virginia Board of Education Policy 2419, Chapter 10, Section 7, paragraph C, which provides, in part that

If a parent/adult student requests an IEE at public expense, the district must do one of the following within ten school days of written request:

1. Agree, in writing, to pay for an IEE at reasonable and prevailing rates, and provide the district's IEE criteria and information about where an IEE may be obtained.
2. Offer WVDE mediation to try to resolve differences. This is only available if parents agree to mediate.
3. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.

The LEA responded to the Parents' request for an IEE by filing this Due Process Complaint with the sole issue of whether the psycho-educational evaluation performed by the LEA's School Psychologist is appropriate.

Neither the student's parents nor their attorney filed a response or answer to the LEA's Complaint, nor did they make any counterclaims to have any other issues decided in this Due Process Hearing. They were both informed that they could file a counterclaim by this Impartial Hearing Officer, but chose not to do so. Now at the Due Process Hearing, multiple issues have been raised which are "outside" the stated issue as set forth in the Court's Order of October 1, 2013.

A delay in conducting the psycho-educational evaluation was partly because the LEA was trying to accommodate the student's parents by letting them choose an evaluator for the psycho-educational evaluation, although it was not required to, under the Resolution Session Agreement. (FOF 24, 25 & 26) (LEA Exhibit No. 1, Paragraph 3)

Paragraph 4 of the Resolution Session Agreement covers the performance of a Functional Behavioral Assessment (FBA). In that paragraph, the parties agreed to mutually agree upon a qualified professional to perform the FBA and develop a Behavior Intervention Plan (BIP). No

such mutual agreement was required for the comprehensive psycho-educational evaluation required under Paragraph 3 of the Resolution Session Agreement, and after considerable delay, the LEA had the evaluation performed "in-house" by its school psychologist. (FOF 24 & 27)

Of the two independent expert psychologists who testified, they opined that the LEA's school psychologist was a professional qualified to perform a comprehensive psycho-educational evaluation, was appropriately certified and knowledgeable in the areas covered by the evaluation. (FOF 5 & 69) The only criticisms leveled at the LEA's school psychologist were based on the fact that two school psychologists might approach an evaluation differently while still producing complete, accurate and competent reports. Any two or a dozen experts can approach an evaluation and write a report differently but still be accurate, complete, and appropriate. (FOF 71)

West Virginia Board of Education Policy 2419, Chapter 3, Section 4, paragraph C, provides:

Individuals conducting evaluations shall be:

1. Appropriate certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;
2. Trained in the use of the specific evaluation instruments or techniques for which they are responsible;
3. Knowledgeable in the area of concern; and
4. Knowledgeable in the applicable state and federal regulations.

The report prepared by the LEA's School Psychologist included a comprehensive record review covering the period beginning with the 2006-2007 school year and ending with the conclusion of the 2012-2013 school year, which covered the student's first through seventh grades at the LEA. The LEA's School Psychologist administered the Wechler Intelligence Scale

for Children - Fourth edition; Woodcock-Johnson Tests of Achievement - III; Social Skills Rating System; and Conners 3. (LEA Exhibit No. 2) The evaluation was done in compliance with West Virginia Policy 2419, Chapter 3, Section 4(B) and 34 U.S.C. §300.304 which bears upon the appropriateness of the evaluation performed by the LEA's School Psychologist.

It is undisputed that the LEA's School Psychologist meets the qualifications necessary to perform a psycho-educational evaluation. She has a B.A. and M.S. in Psychology and in excess of twelve years of experience as a practicing school psychologist. (FOF 33 & 35) (LEA Exhibit No. 6) The student's parents conceded that she was qualified as an expert witness in the area of school psychology. The Expert Psychologist called on behalf of the student's parents acknowledged that the LEA's School Psychologist met the qualification requirements contained in Policy 2419. (FOF 36 & 69)

The LEA's Expert Psychologist testified, without contradiction, that the evaluation conducted on August 5, 2013, by the LEA's School Psychologist satisfied the requirements of Policy 2419. (FOF 6) The LEA's School Psychologist testified that she undertook to comply with the requirements of Policy 2419 in conducting the evaluation in question. (FOF 36) The LEA's School Psychologist's report reflects that her testing results are valid. (LEA Exhibit No. 2) The student's Parents produced no evidence of shortcomings in any of the areas identified within 34 U.S.C. §300.304 or Policy 2419, Chapter 3, Section 4, Paragraph B.

The LEA's School Psychologist testified that a psycho-educational evaluation was only one piece of information to be considered by an eligibility committee that should be considered along with information derived from other evaluations in separate disciplines. (FOF 41, 47 & 49)

The Parents' Speech Language Pathologist testified that her assessment of written expression, reflect in her report of October 16, 2013, was consistent with the results of the testing performed by the LEA's School Psychologist. The Parents' Speech Language Pathologist's report and testimony served to fortify the validity of the results obtained by the LEA's School Psychologist. (FOF 53) (Parent Exhibit No. 2)

The Parents' Expert Psychologist testified that the evaluation conducted by the LEA's School Psychologist was appropriate, but that it was deficient because it did not include recommendations or suggested strategies, and that it did not contain a comprehensive developmental and medical history. (FOF 57, 59 & 76) The Parents' Expert Psychologist is a school psychologist who does not practice in West Virginia. She testified that she "reviewed" the provisions of Policy 2419 in preparation for the due process hearing. (FOF 56) When asked whether Policy 2419 contained a provision that requires evaluations to include recommendations or suggested strategies, the Parents' Expert Psychologist indicated she was unable to cite such a provision, despite the fact that her principal disagreement with the evaluation in question turned upon the existence of such a requirement. (FOF 70-76) Policy 2419 contains no requirement that psycho-educational evaluation reports that include testing results also provide recommendations.

A comprehensive psycho-educational evaluation that contains valid testing results may be interpreted by qualified school psychologists and may form the basis of independent recommendations. The ability of school psychologists to make independent recommendations based upon valid testing results, is not dependent upon the existence of recommendations of other school psychologists. (FOF 71)

The student's mother testified that she disagreed with the LEA's School Psychologist's evaluation because: it had "missing components"; did not address speech/language issues; did

not address progress monitoring; did not address OT; the evaluation was not comprehensive; did not include a NEPSY test; did not include testing related to "executive functions"; and that the evaluation of written expression was inadequate. (FOF 82) The testimony of the student's mother was not generally supported by the Parents' Expert Psychologist, except in the area of written expression.

The student's parents labored under a misunderstanding of the nature of the evaluation in dispute. The student's parents sought an IEE based upon their disagreement with the August 5, 2013 psycho-educational evaluation. The LEA's request for due process was based solely on the appropriateness of the August 5, 2013 psycho-educational evaluation. The student's parents, through their counsel, asserted that the terms of the March 7, 2013 Resolution Session Agreement required the LEA to perform a comprehensive "re-evaluation" that included additional evaluations in all areas of suspected disability, including speech/language. (FOF 80-84) As noted, the terms of the Resolution Session Agreement require that a psycho-educational evaluation be conducted. The Resolution Session Agreement does not contain any terms requiring a comprehensive re-evaluation.

The United States District Court for the Southern District of West Virginia considered the question of the appropriateness of an evaluation subject to challenge in the context of a parent request for an IEE. Kirby v. Cabell County Board of Education, Dist. Court, SD West Virginia 2006. The Court weighed: whether the evaluation was comprehensive and thorough; whether the evaluation used multiple instruments; whether the evaluation considered parent input; whether the evaluation considered previous evaluations and tests; expert testimony regarding the appropriateness of the evaluation; and whether the assessment tools and strategies used were

comprehensive and produced the necessary, relevant information to assist the LEA in providing the student with a FAPE.

Consideration of the same factors considered by the Court in Kirby v. Cabell County Board of Education warrants a finding that the evaluation performed by the LEA's School Psychologist was complete and appropriate.

As stated, this Due Process was brought by the LEA with the sole issue being the appropriateness of the August 5, 2013, Psycho-Educational Evaluation. However, Policy 2419 requires LEAs to request a Due Process hearing if there is a request for an IEE by the Parents/Adult Student at public expense and the LEA is in disagreement. (Policy 2419, Chapter 10 §7(C). According to Policy 2419, Chapter 10 (A) 4, the Parent/Adult Student is not automatically entitled to additional assessments beyond those determined necessary for an evaluation. If the parent is interested in additional or different assessments, and the LEA refuses, the parent may pursue additional assessment through a Due Process hearing.

There was no evidence presented to indicate what an IEE consisted of or was composed of and the difference between an IEE and a Psycho-Educational Evaluation. The only reference to additional tests or evaluations was from the student's mother who had a list of possible evaluations (FOF 94-97) and by the Parent's Expert Psychologist who preferred different test media in the performance of the Psycho-Educational Evaluation.

The student had Psycho-Educational Evaluations done in 2007, 2009, 2011 (Parent Exhibit Nos. 8, 3, 4 and 5) and the current one of August 5, 2013. (LEA Exhibit No. 2) Reference to a re-evaluation was alluded to by the student's mother and counsel and the LEA's School Psychologist. (FOF 50) It is my understanding that the reference to a re-evaluation was a re-psycho-educational evaluation.

The student's mother and counsel provided no evidence that a triennial re-evaluation or a request for a re-evaluation was in question. However, Policy 2419 states that a re-evaluation can be requested at any time, but cannot rest on a single evaluation and that a multidisciplinary approach must be used. (COL 14 & 15)

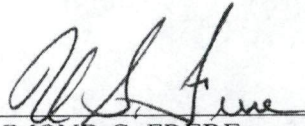
It must be remembered that the Resolution Session Agreement was the product of Due Process Hearing No. D13-008 of which this Hearing Officer has absolutely no knowledge.

In coming to a resolution agreement, if counsel for the parents of the student and the parents wanted a re-evaluation pursuant to WV Policy 2419, Chapter 3 §2 (B) or an Independent Educational Evaluation (IEE), they should have negotiated that and made it a part of the Resolution Session Agreement. They cannot revisit the Resolution Session and re-write the binding contract they entered into on March 7, 2013. (LEA Exhibit No. 1) Secondly, the IEE that was requested was denied and the LEA brought this Due Process Hearing to show the appropriateness of its Psycho-Educational Evaluation, which the LEA successfully presented to this Court.

The LEA has offered substantial evidence to support a conclusion that the psycho-educational evaluation performed by the LEA's School Psychologist on August 5, 2013, was appropriate.

DECISION

The comprehensive Psycho-Educational Evaluation completed by the LEA's School Psychologist on August 5, 2013 was an appropriate evaluation of the student pursuant to the Resolution Session Agreement between the parties dated March 7, 2013 and West Virginia Board of Education Policy 2419, Chapter 10, §7(C).

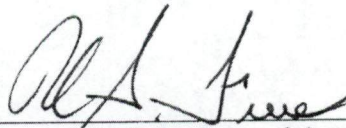


RAYMOND G. FRERE
IMPARTIAL DUE PROCESS
HEARING OFFICER

DATE: February 28, 2014

APPEAL RIGHTS

A decision made in a hearing is final unless a party to the hearing appeals the decision through civil action. Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in any state court of competent jurisdiction within 90 days of the date of the issuance of the hearing officer's written decision or in a district court of the United States.



By: _____

Raymond G. Frere, Impartial
Due Process Hearing Officer

Date: February 28, 2014