IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FULTON COUNTY SCHOOL DISTRICT, **Petitioner,** **v.** **[redacted] by and through [redacted] and [redacted] and [redacted]** **Respondents.**	**Docket No. OSAH-DOE-IEE-1800546-60-Baxter**
[redacted] by and through [redacted] and [redacted] and [redacted] **Petitioners,** **v.** **FULTON COUNTY SCHOOL DISTRICT,** **Respondent.**	**Docket No. OSAH-DOE-IEE-1804396-60-Baxter**

FILED
OSAH
DEC 27 2017
Kevin Westray, Legal Assistant

FINAL DECISION

I. INTRODUCTION

This matter came before the Office of State Administrative Hearings for an appeal under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 to 1482 and its implementing regulations. Fulton County School District ("District") filed for a hearing in response to a request for an independent educational evaluation ("IEE") at public expense by [redacted] by and through her parents, [redacted] and [redacted] ("Family"). The District sought a determination that its evaluation was appropriate and, therefore, that neither [redacted] nor her parents, individually, have a right to an IEE at public expense. The Family filed for a hearing seeking an IEE at public

expense and an injunction ordering the District to comply with the IDEA. A hearing was held on September 20, 2017 and October 16, 2017.[1]

Based on the evidence presented, the District's evaluation was not appropriate and although the District failed to follow certain procedural guidelines, the Family failed to show substantive harm. Accordingly, the Family's request for an IEE at public expense is **GRANTED** and all other forms of injunctive relief requested are hereby **DENIED**.

II. FINDINGS OF FACT

1.

At all times relevant to this case, [redacted] was a [redacted]-year-old student in [redacted] grade at [redacted] Middle School, a school within the District. (Ex. D-7.)

2.

While in the seventh grade, [redacted] had a primary exceptionality of Other Health Impaired, secondary exceptionality of Specific Learning Disability, and tertiary exceptionality of Speech/Language Impairment. (Ex. D-7; Tr. 59.)

3.

On November 14, 2016, [redacted]s mother, [redacted] ("Mother") consented to [redacted]s re-evaluation for special education services. The purpose of the evaluation was to determine if [redacted] continued to be eligible for services under Other Health Impaired ("OHI"), Speech Language, and Specific Learning Disabilities ("SLD") and to assist with understanding her needs for future programming. (Exs. D-48, D-49; Tr. 58-60.)

4.

On November 30, 2016, Instructional Support Teacher ("IST"), [redacted] administered a vision and hearing screening and [redacted] passed both screenings. At the time she

[1] The record remained open until December 1, 2017, for the parties to submit proposed orders.

passed the vision screening, [redacted] was not wearing any glasses or corrective lenses. (Ex. D-12; Tr. 64-65, 163, 180, 258.)

5.

In May 2017, Dr. M[redacted] N[redacted], the District's school psychologist, completed a psychoeducational assessment [redacted] (Exs. D-7, D-13 to D-44; Tr. 53, 64-66.)

6.

Dr. N[redacted] testing occurred during three sessions over a two-day period. During that time, he administered nine separate evaluation instruments. Dr. N[redacted] also considered the student's previous IEPs and eligibility report, a neuropsychological evaluation from Children's Healthcare of Atlanta from 2014, a psychological evaluation from the DeKalb County School District from 2014, teacher observations on a litany of behaviors, including fine and gross motor skills, reading, math, written expression, oral expression, listening comprehension, behavior, and memory, rating scales, parent questionnaires, and student self-reports and work samples. (Exs. D-7, D-13 to D-50; Tr. 66, 89-95.)

7.

Dr. N[redacted] and IST [redacted] performed a broad range of tests when evaluating [redacted] including the Wechsler Intelligence Scale for Children-Fifth Edition, (WISC-V) (which assesses cognitive processing skills including language, verbal skills, visual organization, visual reasoning, spatial reasoning, working memory, and provides a full scale IQ), the Wide Range Assessment of Memory and Learning - 2 (WRAML-2) Number/Letter Memory, Sentence Memory subtests (which assess auditory memory functioning), the Bender Visual-Motor Gestalt Test (BVMGT-II) (which assesses fine-motor integration and visual-motor integration skills), the Rey Complex Figure Test (which assesses a student's ability to copy, recall, and recognize

information), the Behavior Rating Inventory of Executive Function-Self Report Version (BRIEF-SR) (which assesses the student's perception of her executive functioning and work completion abilities), the Behavior Assessment System for Children-Self Report Third Edition (BASC-3-SRP-A) (which assesses the student's feedback on her emotional and behavior strengths and weaknesses and adaptive, functional, and communicative skills), the Piers-Harris Children's Self Concept Scale-Second Edition (which assesses the student's assessment of her own strengths and weaknesses), the Revised Children's Manifest Anxiety Scale-Second Edition (RCMAS-2) (which digs deeper into the student's feelings of anxiety), a sentence completion test (which allows students to give answers to open-ended questions on a variety of issues), subtests of the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) (which assesses the student's academic achievement across a variety of areas), the Behavior Rating Inventory of Executive Function-Teacher Profile Form (BRIEF-TR) (which assesses the teachers' observations in the area of executive functioning), the Behavior Rating Inventory of Executive Function-Parent Profile Form (BRIEF-PR) (which assesses the parent's input on the child's executive functioning), the Behavior Assessment System for Children-Teacher Rating Scales-Third Edition (BASC-3-TRS), and the Behavior Assessment System for Children-Parent Rating Scales-Third Edition (BASC-3-PRS). (Exs. D-7, D-16 to D-44; Tr. 66, 97-98, 107-08, 112, 116-17, 125-28, 134-40, 142-43, 145-47, 187, 230-31.)

8.

[redacted] did not wear her reading glasses during testing. The District's expert witnesses each provided credible testimony that it is proper to evaluate a student without glasses if they have passed their vision screening without the aid of glasses or corrective lenses. The Family's expert, Dr. [redacted] B[redacted], testified that he would not evaluate a child without her glasses

simply based upon a vision screening, he would send that child home to get the glasses and reschedule, and that any issues with vision would invalidate a report. (Tr. 163-64, 180, 259, 264, 407-08, 412.)

9.

IST [redacted] testified that it was not unusual to see [redacted] in school without her glasses and that she frequently had observed [redacted] participate in classroom instruction without the aid of glasses. Mother testified that she had not seen [redacted] wear her glasses for an extended period of time and that [redacted] reported to her that she had stopped wearing them. (Tr. 180, 574.)

10.

During the administration of the final testing instrument, [redacted] expressed statements of self-harm. Dr. N[redacted] immediately implemented the District's crisis protocol, which resulted in [redacted]s parents checking her into an inpatient care facility. (Tr. 149-151.)

11.

Although [redacted] made expressions of self-harm at the end of his testing, Dr. N[redacted] testified that, in his expert opinion, she did not exhibit any signs of anxiety or stress throughout the course of his testing sessions with her, and that the results of the evaluation were still valid and reliable. (Tr. 91-92, 151, 162.)

12.

Dr. B[redacted], the Family's expert psychologist, stated that he believed a child being informed that her parents were going to be called due to statements she made during the evaluation and the possibility of having to obtain psychiatric treatment would be troubling and affect her emotional stability. (Tr. 482-483, 488.)

13.

Dr. N[redacted] completed his testing on May 3, 2017, and completed his written report on May 18, 2017. (Tr. 191.)

14.

Mother was provided with the evaluation report on May 18, 2017, at 9:19 p.m., and the District attempted to hold an eligibility meeting on May 19, 2017. (Exs. D-56; Tr. 158-59, 191-93.)

15.

At that meeting, Mother requested that the IEP team go over her parental rights, which were provided to her in writing. The depth of discussion prevented the IEP team from reviewing the evaluation and completing the eligibility meeting that day. (Exs. D-45, D-46; Tr. 197.)

16.

On May 31, 2017, special education coordinator S[redacted] B[redacted]r and compliance coordinator R[redacted] A[redacted] participated in a phone call with Mother regarding the parental rights document. (Tr. 283-84.)

17.

Following this phone call, B[redacted]r sent an email to Mother suggesting possible dates for another phone conference to continue the discussions. (Ex. D-59, Tr. 284-85.)

18.

In response, Mother stated, "Thank you Ms. B[redacted]. I just realized I did not get a response, that I can remember, on how to request an IEE. I would like to do that."[2] (Ex. D-59).

[2] The parties have stipulated that this May 31, 2017 email from Mother constitutes a request for an IEE.

19.

A[redacted] sent an email to Mother on June 2, 2017, in which he responded that he had located a requested recording, provided the contact information for the District's parent liaison to help Mother with any questions she may have, and told Mother that he was "continuing to research several of [her] questions and will have more information to share with [her] next week." (Ex. D-60; Tr. 286-87.)

20.

On June 8, 2017, B[redacted]r and A[redacted]y had scheduled another phone conference with Mother to continue answering her questions about her parental rights. This meeting was canceled due to A[redacted] having a family emergency. (Ex. D-60; Tr. 288-89.)

21.

On June 20, 2017, B[redacted], A[redacted], and Mother had another phone conference. On that phone call, A[redacted] asked Mother to share what concerns she had with the District's evaluation and Mother stated her belief that [redacted] was not stable at the time of the evaluation and another evaluation should be given while she was mentally stable. (Tr. 289-91.)

22.

A[redacted] offered for the District to conduct additional testing to alleviate Mother's concerns about [redacted]'s mental state. Mother indicated that she did not want the District to perform another evaluation and she wanted an IEE performed by an independent evaluator. (Tr. 291-92; 356; 567.)

23.

During June, the District had already ended the school year and many key District staff members were unavailable at various times. Special education coordinator B[redacted], and Director

C[redacted] F[redacted] both took pre-scheduled vacations and IST [redacted] was not under contract beginning around May 26, 2017. S[redacted] B[redacted] was on vacation from June 9 to 16, 2017, and C[redacted] F[redacted] was on vacation from June 16 to 25, 2017. Dr. N[redacted] was off contract and overseas visiting family during the summer. (Tr. 199, 220, 226, 289.)

24.

A[redacted] testified that throughout the month of June, he worked on evaluating the appropriateness of the evaluation in an effort to respond to Mother's IEE request. (Tr. 293).

25.

A[redacted]y ultimately concluded that the Family's request for an IEE at public expense should be denied. (Tr. 298.)

26.

On June 26, 2017, B[redacted] contacted Mother by email to schedule another meeting to continue discussing [redacted] and continue the discussion of her parental rights. Mother responded asking for an update on her request for an IEE. (Ex. D-61; Tr. 303-304.)

27.

On that same day, the District issued a formal denial letter for Mother's IEE request at public expense. The formal denial letter states that the District's decision was based on a review of the evaluation results. The letter did not contain a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the denial, provide sources for parents to contact to obtain assistance in understanding the notice, or a description of other options that the IEP Team considered and the reasons why those options were rejected. The District provided Mother with another copy of her parental rights, but did not provide agency

criteria or information about where an IEE could be obtained. Without such information, Mother did not know where or how to obtain the IEE. (Ex. D-62, Tr. 299, 315-16, 586.)

28.

The District filed its Due Process Hearing Request on July 7, 2017, eight business days after the denial letter was sent to the Family rejecting the request for an IEE at public expense. (See District's Due Process Hearing Request.)

29.

In response to an allegation contained in the Family's complaint, A[redacted]y sent an email to Mother on July 30, 2017, which stated that he attached both the agency criteria and the list of independent evaluators, however, only the agency criteria was attached to the email. (Ex. D-68, Tr. 314-15.)

30.

A[redacted] supplemented his email on August 1, 2017, and provided Mother with the list of independent evaluators. (Tr. 315.)

31.

Dr. B[redacted] testified that the District's evaluation needed to administer a spelling and phonological processing subtest in order to obtain a proper composite score, that the KTEA-3 was not the "gold standard" achievement test to administer, that [redacted] should have been tested in the area of math fluency, reading fluency, and word fluency because it is "a standard part of any comprehensive evaluation," that [redacted]'s IQ score does not reconcile with her listening comprehension score, that the child should have been evaluated for autism, and that the evaluation was "impossible to interpret" because it did not contain all the necessary data. (Tr. 419-20, 423-24, 426-27, 432-33, 448-49, 451, 457-58.)

32.

Another educational expert presented by the Family, [redacted] W[redacted], testified that the KTEA-3 requires the administration of a spelling subtest. Specifically, the KTEA-3 manual requires that in order to complete a comprehensive evaluation, one must administer the subtests required for the academic skills battery composite and the oral language composite. The District did not complete all of the subtests of the academic skills battery by omitting the spelling subtest. Moreover, the District omitted the associational fluency subtest. (Ex. D-34; Tr. 312-13, 603-604, 633-634.)

33.

According to Ms. W[redacted], the mere understanding that [redacted] has issues with spelling is no replacement for evaluation as it does not give standardized data to show where [redacted] stands and does not obtain baselines to measure growth over time. Likewise, Ms. W[redacted] testified that, for [redacted] the most critical area of evaluation was her phonological processing for educational planning in teaching [redacted] how to read because that test would indicate where her skills are and where to begin in her programming. Ms. W[redacted] explained that it was critical to give [redacted] the orthographic processing composite consisting of three subtests (spelling, letter naming facility, and word recognition facility) because [redacted] has documented written expression disabilities and this testing would show where her problems are in spelling, which is a building block for writing. This testing was necessary to design the right kind of instruction and objectives. (Tr. 611-22.)

34.

Dr. B[redacted] testified that the District did not provide an appropriate, comprehensive evaluation when it omitted evaluation in several critical areas of known or suspected disability, including spelling, associational fluency, phonological processing, and writing fluency.

According to Dr. B[redacted], a spelling assessment was necessary for an appropriate evaluation for educational planning purposes. Dr. B[redacted] testified that it was also necessary to assess [redacted]'s phonological processing. (Tr. 417-32, 496.)

35.

Dr. N[redacted] and IST [redacted] testified that the KTEA-3 was administered in all of [redacted]s areas of weakness and that the lack of administering the spelling subtest did not invalidate or compromise the results as that subtest was not a requirement to assess her achievement level or abilities. (Tr. 123, 189-190.)

36.

Dr. B[redacted] testified that his hypothesis that [redacted] may have autism was based on an evaluation from December 2011 and that a skilled evaluator would likely be able to determine whether the child should be tested for autism during testing. (Tr. 460, 473, 500.)

37.

Following the filing of these Due Process Hearing Requests and during the litigation of this case before this Court, District personnel and the family reconvened for an Eligibility Meeting on August 11, 2017. (Ex. D-45; Tr. 160, 202.)

38.

At that meeting, Dr. N[redacted] evaluation was used as the basis for the IEP team and the Family to unanimously find [redacted] was still eligible for special education services under her previous eligibility categories of SLD, OHI, and Speech Language, and adding an additional area of Emotional Behavioral Disorder ("EBD"). The Eligibility Team found [redacted] eligible for SLD in seven of the eight areas of academic achievement that make up SLD. (Ex. D-45; Tr. 161-162, 202-203, 239, 260.)

III. CONCLUSIONS OF LAW

1.

The IDEA grants the parents of a child with a disability the opportunity to obtain an IEE for the child. 20 U.S.C. § 1415(b)(1). Federal regulations permit parents to request an IEE at public expense if they disagree with an evaluation conducted by a school district. 34 C.F.R. § 300.502. A school district can elect to grant the IEE at public expense, but if it does not, the school district must request a due process hearing without unnecessary delay. 34 C.F.R. § 300.502(b)(2).

2.

As this case was consolidated, the burden of proof is shared. The District must establish that it provided [redacted] with an appropriate psychoeducational evaluation. Schaffer v. Weast, 546 U.S. 49, 62 (2005); Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). "The District must prove the adequacy of the assessment; the [p]arents do not bear a burden of proving the inadequacy of the assessment." Indep. Sch. Dist. No. 2310 v. Minnesota State Educ. Agency, 29 IDELR 330, 5 (SEA MN 1998).

3.

The Family bears the burden of proving that the District's provision of agency criteria and independent evaluators, the timing of its denial of the IEE request, and its provision of prior written notice was a denial of FAPE that must result in the provision of an IEE at public expense. The Family also bears the burden of proof with respect to their request for injunctive relief. Schaffer, 546 U.S. at 62; Ga. Comp. R. & Regs. 616-1-2-.07.

A. The District's Psychoeducational Evaluation was not appropriate.

4.

The relevant inquiry in an IEE hearing filed by a school district is the appropriateness of the district's evaluation. See, e.g., Holmes v. Millcreek Twp. Sch. Dist., 205 F.3d 583 (3d Cir. 2000); Grapevine-Colleyville Indep. Sch. Dist. v. Danielle R., 31 IDELR 103 (N.D. Tex. 1999). If the school district demonstrates that its evaluation was appropriate, the parent still has the right to an independent evaluation, but not at public expense. 34 C.F.R. § 300.502(b)(3).

5.

IDEA regulations require that a school district provide that evaluations meet the following standards:

> (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—
>
> (i) Whether the child is a child with a disability under § 300.8; and
>
> (ii) The content of the child's IEP . . .
>
> (2) Not use any single measure or assessment 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; and
>
> (3) Use technically sound instruments . . . .

Additionally, each public agency must ensure that—

> (1) Assessments and other evaluation materials . . .
>
> (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
>
> (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information. . . ;
>
> (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
>
> (iv) Are administered by trained and knowledgeable personnel; and
>
> (v) Are administered in accordance with [the producer's] instructions . . . .
>
> (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need . . . .

> (3) Assessments are selected and administered so as best to ensure that . . . the assessment 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 . . . .
>
> (4) The child is assessed in all areas related to the suspected disability . . . ;
>
> (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools . . . .
>
> (6) [T]he evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs . . . .
>
> (7) Assessment tools and strategies . . . that directly assist[ ] persons in determining the educational needs of the child are provided.

34 C.F.R. § 300.304; see also 20 U.S.C. § 1414(b)(2), (3).

6.

The District failed to meet its burden of showing that the psychoeducational evaluation provided by the District was appropriate under the IDEA. As stated, the IDEA requires that assessments and evaluation materials must be administered in accordance with the test producer's instructions. 20 U.S.C. § 1414(b)(3)(A)(v); 34 C.F.R. § 300.304(c)(1)(v). The District failed to follow the KTEA-3 manual, which requires that the spelling and associational fluency subtests be administered. As a result, the District was unable to measure any improvements in spelling and associational fluency because it did not establish a baseline. A family's position that an evaluation "should have" included a component not specifically required by the IDEA will not defeat the appropriateness of a district's evaluation. See Worcester Cty. Pub. Sch., 111 LRP 74233 (SEA MD April 15, 2011) (finding district's evaluation was appropriate as it met requirements of 34 C.F.R. § 300.304 and family's claim that school's failure to include observations not required by IDEA could not serve as basis to find district's

evaluation inappropriate). In direct contrast, when the IDEA specifically requires that testing protocols must be followed and were not, the evaluation is not appropriate. Therefore, the evaluation tools and strategies utilized by the District were not sufficiently comprehensive to assist the IEP team in determining the educational needs of the child as required by the IDEA. 20 U.S.C. § 1414(b).

B. The District did not unnecessarily delay denying the request for an IEE and submitting its due process complaint.

7.

The Family contends that the District failed to comply with its obligations under the IDEA when (1) it did not deny Mother's request for an IEE "without unnecessary delay" and (2) it did not submit its due process complaint "without unnecessary delay."

8.

"Unnecessary delay" is not defined in the law. C.W. v. Capistrano Unified Sch. Dist., No. SACV 11-1157, 2012 WL 3217696, at *6 (S.D. Cal. Aug. 3, 2012) (noting no California case at administrative or appellate levels has held that 41 days or less constitutes an unnecessary delay). Because unnecessary delay is not defined, courts look to the surrounding circumstances to determine whether the delay was appropriate. See Volusia Cty. Sch. Dist., 114 LRP 47025 (SEA FL Mar. 24, 2014). Numerous courts have found delays longer than the delay in this case were appropriate and did not constitute an unnecessary delay. See, e.g., Monica-Maibu Unified Sch. Dist., 62 IDELR 279 (SEA CA Dec. 23, 2013) (finding that two-month delay in filing due process was not unreasonable where parents received prior written notice within 10 days of IEE request); J.P. v. Ripon Unified Sch. Dist., 52 IDELR 125 (E.D. Calif. Apr. 14, 2009) (finding delay of two months to file due process request was timely where school district continued to

communicate with family); Los Angeles Unified Sch. Dist., 57 IDELR 55 (SEA CA May 24, 2011) (finding that 53-day delay was appropriate given intervening winter break).

9.

Contrastingly, cases where courts have found that filing a due process hearing request was untimely involved significantly longer delays without a reasonable basis. See, e.g., Monticello Cent. Sch. Dist., 37 IDEALR 143, 102 LRP 17734 (NY SEA June 4, 2002) (twenty-month delay unreasonable); Mifflin Cty. Sch. Dist., 102 LRP 10649 (PA SEA, Jan. 23, 2002) (sixteen-month delay unreasonable); DeKalb Cty. Sch. Sys., 4 ECLPR 285, 4 LRP 9908 (GA SEA Feb. 28, 2001) (three-month delay was an undue delay).

10.

The evidence shows that the District denied the Family's May 31, 2017 IEE request less than one month later on June 26, 2017, and that a number of conversations between Mother and the District's personnel occurred during that time. The evidence established that the District's due process complaint was filed eight business days after the request was denied on July 7, 2017. The time spent evaluating Mother's request was delayed, in part, due to the timing of the request, which occurred over the summer when key District personnel had limited availability while school was not in session.

C. The District failed to provide adequate prior written notice.

11.

Prior written notice must be given when the District "proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). Prior written notice must include:

(1) A description of the action proposed or refused by the agency;
(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
(7) A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. § 300.503(b); see also 20 U.S.C. § 1415(c)(1).

12.

The Family was provided with written notice of the District's decision to deny its request for an IEE at public expense on June 26, 2017, which stated in a cursory fashion that the reason for the denial was based upon the District's review of the evaluation. While some of the elements of 34 C.F.R. § 300.503(b) could have been gleaned from the attached procedural safeguards, other requirements were not included in the notice, including a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the denial, sources for parents to contact to obtain assistance in understanding the notice, or a description of other options that the IEP Team considered and the reasons why those options were rejected.

13.

Failure to send prior written notice is a procedural violation, and must be remedied only if it "seriously infring[es]" a parent's right to participate. See Anchorage Sch. Dist. v. M.P., 689 F.3d 1047, 1054 (9th Cir. 2012). Here, the Family was able to participate in the IEP following the denial of the IEE at public expense and has not established a serious infringement on their right to participate. Therefore, the Family has not met its burden.

D. The District failed to provide agency criteria and potential evaluation providers.

14.

The Family also alleges that they were not provided with a list of agency criteria and a list of evaluators to allow Mother to obtain an IEE either at her own expense or with the intention of seeking reimbursement. As a remedy, Petitioner seeks an award of an IEE at public expense and an injunction requiring that the District provide this information to all families when they make a request for an IEE at public expense.

15.

It is undisputed that the District failed to provide the agency criteria and list of educational providers to the Family when it denied their request for an IEE at public expense. In fact, the District did not provide such information until after the Family filed their due process complaint.

16.

Although Petitioner argues hypothetical harm, in that Mother said she was unaware of how to obtain her own IEE, there has not been any showing of actual substantive harm to either [redacted] or her parents. "Not every procedural defect results in a violation of the IDEA." G.J. v. Muscogee Cty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Such a defect only violates the IDEA if it impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the parents' child, or caused a deprivation of educational benefits. See id.; see also T.P. ex rel. T.P. v. Bryan Cty. Sch. Dist., 792 F.3d 1284, 1293 (11th Cir. 2015) (citing 20 U.S.C. § 1415(f)(3)(E)(ii)). Here, with the evidence presented, the Family has not met its burden.

IV. DECISION

For the reasons stated above, the District failed to meet its burden of proof to establish that the District's evaluation was appropriate and [redacted] is entitled to an independent educational evaluation at public expense. The Family failed to establish, however, that the procedural violations impeded [redacted]s right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the parents' child, or caused a deprivation of educational benefits. Therefore, the Family is not entitled to any of the injunctive relief requested in their Due Process Hearing Request.

SO ORDERED, this 27th day of December, 2017.

AMANDA C. BAXTER
Administrative Law Judge