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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



JAN 28 2012

GWINNETT COUNTY SCHOOL DISTRICT, :
:
:
Plaintiff, :
:
v. :
~~DOE~~, :
:
Defendant. :

Docket No. :
OSAH-DOE-SE-1209885-67-KENNEDY :
: **12-268920** :
:
:
:

K. Westray

Kevin Westray, Legal Assistant

FINAL DECISION

For Plaintiff:
Victoria Sweeny, Esq.
Catherine T. Followill, Esq.
Thompson & Sweeny, PC

For Defendant:
Roger Pittman, Father
Mildred Pittman, Mother

I. INTRODUCTION AND PROCEDURAL BACKGROUND

~~DOE~~ (Defendant) is a high school student who is eligible to receive services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). Defendant attends school in Plaintiff's district. On September 27, 2011, the Gwinnett County School District (Plaintiff) filed a Due Process Hearing Request ("Complaint") contending that Plaintiff's psycho-educational evaluation conducted by Dr. Matt Turner in the Spring of 2011, was appropriate and met the requirements under IDEA such that Plaintiff should not be required to fund, at public expense, an Independent Educational Evaluation requested by Defendant. Defendant filed his response on October 4, 2011. A hearing was held on October 25 and 28, 2011. Following the hearing, the parties submitted closing arguments.

After careful consideration of the evidence, arguments and submissions, and for the reasons set forth below, the court concludes that Plaintiff's evaluation met the requirements of IDEA. Accordingly, Plaintiff's is not required to fund an Independent Educational Evaluation at public expense.

II. FINDINGS OF FACT

1.

Defendant is [REDACTED] years-old (D.O.B. [REDACTED]). (T. p. 29.) [REDACTED] has been diagnosed with Asperger's Syndrome,¹ and Dysthmic Disorder². [REDACTED] may also suffer from Narcolepsy.³ T. p. 108-109, 191-192, 310, 331.

2.

Defendant currently attends North Gwinnett High School. [REDACTED] receives services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) through an Individual Education Program (IEP). [REDACTED] has been found eligible to receive such services under the Autism Spectrum Disorder (ASD) eligibility category. (T. pp. 30-31; Exs. J. 84-92, 124.)

3.

In April 2011, Defendant consented to submit to a psycho-educational evaluation. (D. 142; Ex. J. 141.) Defendant's parents informed Plaintiff of their consent via email on April 11, 2011, but noted that their consent was contingent upon receiving information regarding the name and credentials of the individual who would perform the evaluation. (Ex. P. 20.) They signed the consent form on April 15, 2011. (T. p. 238; Ex. J. 141.) Following receipt of the consent form,

¹ Although the parents assumed that the manner in which Dr. Turner wrote his report cast doubt for the IEP team whether Defendant actually suffers from Asperger's, there is no evidence in the record to support the parent's assumption. (T. p. 72.) Defendant's parents expressed frustration that Dr. Turner would address Defendant's disability when no one specifically asked him to confirm whether the diagnosis was accurate. (T. p. 93-94.)

² Essentially a chronic, low-level or mild depressed mood. (T. p. 108-109.)

³ It should be noted that, although Dr. Turner was told that Defendant had recently been diagnosed with narcolepsy, a sleep study conducted in March 2009, states that Defendant does not meet criteria for narcolepsy. (Ex. P-17.)

Plaintiff completed the hearing and screening evaluations and academic testing on April 22, 2011. (T. p. 239; Ex. J. 142.)

4.

Dr. Matthew Turner, Plaintiff's school psychologist, completed a psycho-educational evaluation of Defendant between May and July 2011. The purpose of the evaluation was to gather updated information of Defendant's overall functioning. At the request of Defendant's parents, Dr. Turner also addressed whether Defendant exhibited a school phobia, in general, and/or in particular toward North Gwinnett High School. The parent's also asked that Dr. Turner address whether Defendant's attendance at North Gwinnett High School was causing ~~any~~ harm, and to assess Defendant's apparent lack of motivation and increased anxiety and depression. Essentially, Defendant's parents wanted to know what Defendant required to be successful in school. Following the completion of his evaluation, which included conducting assessments, interviews and document review, Dr. Turner issued a report on July 8, 2011. (T. pp. 27-29, 94-95, 289-290, 307; Exs. J. 124-140.)

5.

Dr. Turner is well-qualified to conduct psycho-educational evaluations.⁴ He is an expert in selecting, administering, and analyzing the results of assessments and other evaluation material

⁴ Dr. Turner's expertise is based on his education, training and experience. Dr. Turner holds a bachelor's degree in psychology from the University of Georgia, and a masters degree in general psychology from Georgia College and State University. He also holds a Ph.D in school psychology from the University of Kentucky. He wrote his dissertation on the MMPI-(A), short form, a personality measure used in assessing emotionality in adolescents. He is certified through the Professional Standards Commission as a school psychologist in the State of Georgia, and is also licensed to engage in the private practice of psychology within the State of Georgia for counseling or assessment purposes. Neither his state certification nor his state license has ever lapsed, and he attends continuing education courses on a yearly basis to maintain his certification and licensure. He is a member of the American Psychological Association, Georgia Psychological Association, and the Georgia Association of School Psychologists. Dr. Turner has authored numerous papers and/or articles in professional journals while in graduate school; was a lead psychologist for Plaintiff until July 2011, when he reduced his hours to part-time so he could pursue his private practice. Dr. Turner also has vast experience. He has conducted an estimated 600 psycho-educational evaluations of school-aged children and adolescents, has attended an estimated 1,000 Individuals with

for the purposes of determining eligibility and developing educational programming for IDEA eligible students. T. p. 18-26, 418.

6.

In the ten years that Dr. Turner has worked for Plaintiff, he has completed hundreds of psycho-educational evaluations of school-aged children. Throughout that time, he has never had a formal challenge to any of his evaluations. Additionally, Dr. Turner has never had an adverse employment evaluation. (T. pp. 21-22.)

7.

Tom Owen, Plaintiff's Director of Psychological Services, is also qualified in selecting tests and assessment instruments for administration under the provisions of IDEA, administering test and assessment instruments, and reviewing evaluations for IDEA compliance.⁵ (T. 459-465.)

8.

Dr. Turner discussed his report and findings with Dr. Owen. Dr. Owen also reviewed Dr. Turner's written evaluation. Based on his review and discussions, Dr. Owen concluded that Dr. Turner's evaluation was conducted appropriately and met the requirements of IDEA. (T. pp. 63-64, 465-466, 472.)

9.

Dr. Turner began his report with a summary of background information, including information provided by Defendant's parents. This included his developmental history and his educational

Disabilities and Education Act eligibility meetings, and has attended an estimated 50 Individual Education Program meetings. T. p. 18-26, T. p. 132-133.

⁵ He holds a bachelor's degree in psychology from Appalachian State University, a masters degree in school psychology and an educational specialist degree from the College of William and Mary. He is a certified school psychologist in Georgia. He has over twenty years of experience as a school psychologist; and is responsible for identifying and procuring the most current and sound testing instruments for use by school psychologists employed by Plaintiff. (T. p. 459-465.)

history, including difficulties Defendant had in prior years and information regarding [REDACTED] success at Hull Middle School. (T. pp. 30-32.)

10.

Dr. Turner's report then details the assessments that he and others administered, and the results of those assessments that served as the basis for his conclusions and recommendations. (T. pp. 244-248, 254-264.) Dr. Turner, in his report, notes that Defendant put forth a genuine effort during the testing and had a good rapport with Dr. Turner. (T. p. 39.)

11.

One assessment Dr. Turner administered was the Wechsler Intelligence Scale for Children-IV (WISC-IV),⁶ a general cognitive measure (i.e, sometimes referred to as an IQ test) that is well normed and widely used. (T. p. 33, 403.) Defendant's scores fell in the low-average range for processing speed, average for verbal processing, and high-average range in working memory. (T. p. 35, Ex. J-128, J-130.) [REDACTED] overall score was 105, which is considered average. (T. p. 38.) Therefore, the results did not indicate a need for further testing in these areas, with the exception of determining whether other factors may have influenced Defendant's low-average score on processing speed. (T. p. 36.)

12.

Dr. Turner's report also details Defendant's achievement test scores. Mr. King, Defendant's case manager at North Gwinnett High School, administered the achievement tests, which are

⁶ Defendant was previously evaluated by other psychologists who also used the WISC assessment in 2002, 2005, twice in 2008 and twice in 2009. (T. p. 403.) It is a comprehensive, individually administered instrument designed to assess the intellectual functioning of children. It is particularly useful because it breaks down various elements of processing so an evaluator can note if there are any learning difficulties that may warrant further exploration. The assessment includes indicies that measure a variety of cognitive functions, including verbal comprehension and reasoning, perceptual and fluid reasoning, working memory and processing speed. (Exs. J. 127-130; T. pp. 33-35.) For example, the verbal comprehension index is comprised of three subjects: similarities (measuring verbal reasoning and concept formation), vocabulary (measuring expressive word knowledge), and comprehension (measuring verbal reasoning and expression, and practical judgment). (Ex. J. 130.)

considered to be normed tests. (T. p. 42.) It is typical for a teacher or case manager to administer the achievements tests. Defendant's scores on the achievements tests were consistent with the results obtained from the WISC-IV. Based on this, Dr. Turner determined that Defendant's skills are within grade level expectations. Therefore, any difficulties that ~~he~~ may have are not based on a skills deficit. (T. p. 40.)

13.

Dr. Turner also administered the Behavior Assessment System for Children-2 (BASC-2), in part, to assess Defendant's social/emotional status, in light of issues reported by Defendant's parents. The BASC-2 is considered to be a normed assessment that assesses communication skills as perceived by Defendant's parents and teachers, as well as Defendant ~~himself~~.⁷ (T. pp. 43-44, 52, 472, 484; Exs. J. 131-137.)

14.

He also administered the Autism Spectrum Rating Scales (ASRS), another assessment that is normed and used to assess communication skills. (T. pp. 42-43, 405, 490.)

15.

The ASRS includes several scales that assess communication, including a Social Communication scale (assesses the inappropriate use of verbal and nonverbal communication to initiate, engage in, and maintain social content), an Atypical Language scale (assesses whether spoken communication is repetitive, unstructured, or unconventional), a Peer Socialization scale, and an Adult Socialization scale. The ASRS can be used to assist in diagnostic decision, treatment

⁷ The BASC-2 includes a Functional Communication scale that assesses "the ability to express ideas and communicate in ways others can easily understand." It included a Self-Report of Personality (SRP), Teacher Rating Scale and Parent Rating Scale. (T. pp. 159, 472; J. 135.)

planning, and ongoing progress monitoring for Response to Intervention. Dr. Turner had several teachers and Defendant's parents complete the ASRS. (Exs. J-131, J-132.)

16.

Dr. Turner's report includes a narrative discussing the communication scores, his behavioral observations of Defendant, his interview with Defendant, and his extensive interview with Defendant's parents. For example, Dr. Turner's report shows that for the behaviors symptoms index on the BASC-2, which is a compilation of all the scores, Defendant's teachers rated [REDACTED] in the at-risk range and Defendant's parents rated [REDACTED] in the clinically significant range. Additionally, the parents indicated a higher concern regarding anxiety and depression than did Defendant's teachers. In reaching his conclusions and making his recommendations, Dr. Turner considered that an adolescent may be more willing to discuss emotional issues at home than at school and that parents are more likely to note emotional concerns than teachers who interact with Defendant in a setting with multiple students. Likewise, as it relates to Defendant's ability to work well with others, the teachers and parents perspectives will likely be different because the teacher has the opportunity to observe Defendant when [REDACTED] is interacting with groups and [REDACTED] classmates, whereas the parents observe Defendant at home when [REDACTED] invites friends over or otherwise has an opportunity to interact with [REDACTED] peers in a social setting. (T. pp. 31-32, 42-51; Ex. J. 124-140.)

17.

As for the BASC-2 Self-Report, Dr. Turner noted that Defendant reported an at-risk attitude toward school and attention problems. Dr. Turner found that Defendant feels [REDACTED] is watched excessively and that [REDACTED] teachers are looking for [REDACTED] to get into trouble, which causes [REDACTED] to experience some anxiety or excessive worry. Dr. Turner also found that Defendant feels

indifferent toward school, but that it is typical of a child with Asperger's to be disinterested in school when [REDACTED] feels [REDACTED] is not supported and/or sees no point to school. (T. pp. 52-53, 147, 154-155, 159, 164, 308, 436.) Finally, based on his overall assessment, including a clinical interview, Dr. Turner determined that Defendant's concerns and/or thoughts about family illnesses contributes to some of Defendant's anxiety and/or excessive worry. (T. p. 320, 436.)

18.

In addition to the assessments set forth above, Dr. Turner also administered the Developmental Test of Visual-Motor Integration (VMI), which is designed to determine graphomotor skills. Dr. Turner administered this evaluation, in part, because of Defendant's low score on the processing speed measure of the WISC-IV. He administered the evaluation to determine if Defendant had fine motor difficulties that may have attributed to [REDACTED] score. Defendant's overall score was considered average. (T. pp. 29-31, 39-40.)

19.

Dr. Turner also administered the Thematic Apperception Test (TAT). The TAT is a supplemental instrument designed to reveal a pattern of thought regarding a person's perceptions and how they problem solve. He further administered sentence completion tasks, another supplemental measure of emotionality. Dr. Turner also conducted an extensive interview of Defendant, interviewed and/or consulted Defendant's parents and Defendant's case manager, Tim King. Additionally, he considered information provided to him by Defendant's parents, including prior evaluations conducted by other psychologists.⁸ Defendant's parents provided Dr. Turner a box of materials, which he recalls reviewing in its entirety though he did not list each

⁸ At a minimum, Dr. Turner reviewed a report prepared by Dr. Conner on 8/22/2008 that noted rating information indicative of depression, impulse control difficulties, attention issues, and a lack of initiative. He also reviewed a report prepared by Dr. Gayle on 9/8/2008 and reports prepared by Dr. Montgomery on 12/31/08, 1/05/09 and 1/12/09. (T. p. 78.) Dr. Turner reviewed all of the information provided by Defendant's parents. (T. p. 78.)

and every document reviewed on his report. (T. pp. 29-32, 39-40, 54, 66-67, 159, 195, 260, 264, 299-300, 416, 427, 472, 480.)

20.

All of the measures used by Dr. Turner produced relevant information about Defendant's behavior, functional performance, developmental performance, and academic performance. More specifically, the evaluation addressed Defendant's behavior, cognitive abilities, graphomotor abilities, academic abilities, autism ratings, and social-emotional areas as they related to Defendant's disability and education. (T. p. 34, 41-42, 244-248, 254-264, 417.)

21.

Dr. Turner did not use any single measure or assessment as the sole criterion for determining whether Defendant is a child with a disability or for determining an appropriate educational program for Defendant. (T. pp. 244-248, 254-264, 493-494.) He used technically sound instruments that could assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (T. p. 34, 42, 244-248, 254-264, 403, 405, 408, 416, 487-488.) Moreover, Dr. Turner selected and administered the assessments in a manner so as not to be discriminatory on a racial or cultural basis. (T. p. 34.)

22.

He provided and administered the assessments in English, Defendant's native language, and he administered them in the form most likely to yield accurate information. (T. pp. 244-248, 254-264.) Dr. Turner used the assessments for the purposes for which they are valid and reliable. (T. p. 55, 244-248, 254-263) He also administered them in accordance with the instructions that were provided by the producer of the assessments. (T. p. 266.) Finally, the assessments were

tailored to assess specific areas of educational need, and were not merely those that are designed to provide a single general intelligence quotient. (T. pp. 244-248, 254-263.)

23.

Dr. Turner assessed Defendant in all areas related to his suspected disability, including Defendant's social and emotional status, general intelligence, academic performance, and communicative status.⁹ Among other things, Dr. Turner specifically addressed the concerns raised by Defendant's parents regarding signs of anxiety and depression.¹⁰ (T. pp. 94-95, 108-124, 158, 244-248, 254-264, 266, 422-423, 434.)

24.

Dr. Turner spent quite a bit of time on Defendant's evaluation. He spent approximately 10 hours interviewing Defendant's parents, 5 hours face-to-face with Defendant, and hours reviewing, interpreting, and writing his report. The evaluation was sufficiently comprehensive to identify all of Defendant's special education and related service needs.¹¹ (T. p. 59, 87-88, 158, 260.) Finally, Dr. Turner's evaluation provided relevant information that could directly assist in determining Defendant's educational needs.

25.

Based on his assessment, Dr. Turner concluded that Defendant has a disability. He also made recommendations based on his evaluation. For example, Dr. Turner found that it is critical that

⁹ Defendant complained that Dr. Turner conducted assessments that are used to assess and determine disabilities rather than focusing on determining the cause of the Defendant's anxiety and depression. However, Dr. Turner did so in compliance with IDEA, which requires that he use assessment tools and strategies that address whether Defendant is a child with a disability and can assist with the content of Defendant's IEP. (T. pp. 30, 244-248, 254-264, 307, 472.)

¹⁰ Although Defendants want Dr. Turner to conduct testing that would have pinpointed the exact source of Defendant's anxiety and the amount of anxiety that can be attributed to each cause (i.e. how much of Defendant's anxiety is related to school and how much is related to the concern over family illnesses), Dr. Turner is not familiar with any such test that has been validated and is considered to be reliable. Instead, the assessment as a whole, and the interview in particular, is the best method to determine the likely cause of Defendant's anxiety. (T. p. 170, 173, 175, 179, 202-203, 206, 444.)

Defendant have a school contact with whom [REDACTED] is comfortable. Moreover, although Dr. Turner determined that it did not appear that Defendant suffered from a school phobia, he recommended that it may be in Defendant's best interests to attend a school other than North Gwinnett High School because of the negative attitude Defendant and Defendant's family held against North Gwinnett High School, and further recommended that regardless [REDACTED] should be prepared in advance for the school year. Unfortunately, because the parties were unable to schedule a mutually agreeable time to meet prior to the school year, any decisions regarding which school Defendant would attend for the 2011-2012 school year could not be decided prior to the commencement of the school year. (T. p. 65, 128-129, 143, 159, 164, 285, 287; J - 139.)

26.

When the IEP team was able to meet on August 11, 2011, they reviewed Dr. Turner's report for the purpose of developing an appropriate educational program for Defendant. Following the IEP meeting, the parties conducted a resolution session to attempt to settle a pending due process complaint filed by Defendant on or about August 2, 2011. At the conclusion of the resolution session, when the parties were unable to reach a consensus as to which school Defendant should attend, the parents requested that an Independent Educational Evaluation be conducted at public expense. (T. p. 58; J. 118-122.)

27.

Plaintiff declined to fund an Independent Educational Evaluation.¹² On August 26, 2011, two weeks after the request for an IEE was made, Plaintiff issued a notice to Defendant detailing the

¹¹ Defendant's parents assert that Dr. Turner did not delve far enough into certain issues. However, a report such as the one completed by Dr. Montgomery, is not legally required. (T. p. 70-71.)

¹² During a resolution meeting/settlement conference in March 2011, in relation to a separate due process hearing request filed by Defendant, Plaintiff offered to fund an IEE if the parents would sign a consent to allow a school evaluation to be conducted and if they expressed disagreement with the evaluation once completed. However, the parties did not settle at that time because Defendant's parents declined Plaintiff's offer and left the meeting refusing

reasons why the request was being denied.¹³ Specifically, Plaintiff maintained that Dr. Turner used a variety of evaluation tools and strategies (including record reviews, interviews, and a variety of assessments) to gather relevant academic functional, and developmental information about Defendant, no single procedure was used as the sole criterion for determining Defendant's needs and the evaluation included technically sound instruments, including tests of academic achievement, a cognitive measure, and social-emotional assessments. These assessments were not discriminatory on a racial or cultural basis, they were administered in Defendant's native language, and in the form most likely to yield accurate information, they were used for the purposes for which the evaluations are valid and reliable and were administered by trained, and knowledgeable personnel in accordance with the test producer's instructions. Furthermore, Plaintiff concluded that Defendant had not set forth any actual disagreement with Dr. Turner's administration of the assessments or his conclusions. Rather, it appeared Defendants simply wanted more testing and a more thorough discussion. On September 27, 2011, Plaintiff filed a Due Process Hearing request to prove that its evaluation was appropriate and met the requirements of the IDEA.¹⁴ (T. p. 304; J. 512-515.)

to sign even the consent form for the school to conduct an evaluation. Accordingly, Plaintiff was not bound by those terms as no agreement was reached. (T. pp. 382-383; Exs. J. 105-107.)

¹³ Plaintiff initially advised Defendant that the request was being denied via an email addressed to ~~828~~ from John Shaw dated August 15, 2011. (Ex. P-20.)

¹⁴ The amount of time that elapsed from the parents request for an IEE in August 2011 and the filing of the due process Complaint on September 27, 2011 does not amount to a per se violation of the procedural requirement for the District to act without unnecessary delay because in the interim the parties were working toward a resolution of the pending due process complaint and the request for an IEE. Moreover, even if the District's delay in filing the Complaint rose to the level of a procedural violation, there is insufficient evidence to show that such delay denied Defendant a free and appropriate public education (FAPE). L.S. v. Abington School District, 2007WL2851268 (2007)

Defendant's parents acknowledge that Dr. Turner did the best he could do. However, they strongly believe that Dr. Turner could have gathered more information and could have administered a greater variety and more appropriate variety of assessments. (T. p. 329-330.)

III. CONCLUSIONS OF LAW

1.

In April 2011, the Gwinnett County School District obtained consent from Defendant's parents to conduct an evaluation of Defendant. Plaintiff then conducted the evaluation, culminating in a report that was issued on July 8, 2011. 20 U.S.C. 1414(a); 34 C.F.R. 300.301(c)(1)(i).

2.

Following the issuance of Dr. Turner's report, the parties met on August 11, 2011 at an IEP meeting to develop an appropriate plan for Defendant. Subsequently, the parties participated in a resolution meeting. At the conclusion of the meetings, when no consensus could be reached, Defendant's parents requested an Independent Educational Evaluation to be conducted at public expense. However, they did not specify any disagreement with the evaluation conducted by Plaintiff.¹⁵ Instead, Defendant's parents desired that additional testing be conducted, especially in the areas of depression and anxiety. Defendant's parents asserted that Dr. Turner failed to

¹⁵ Prior to the meeting, Defendant's parents advised Plaintiff that they had "reviewed Dr. Turner's report which confirmed many things we already were aware of and some things we had suspicions of. When we last met with Dr. Turner at North Gwinnett to pick up the report he prepared, we had a very long and informative talk." Defendant's parents further stated "We do not feel the need to continually discuss and/or debate interpretation of the data and his conclusions as this will change nothing, the data being what it is and showing what it shows." Defendant's parents also said "With the information we have on hand, there is ample time to make the determination of placement prior to the school year" and that they believed Defendant will be better served at Peachtree Ridge High School, but that "if [Plaintiff] cannot make this determination with the information [it] now [has, Plaintiff] will need to make arrangements for an IEE with Dr. Robert Montgomery." (Ex. P-20). On a separate occasion, Defendant's parents indicated that if Plaintiff did not make a decision regarding transferring Defendant to Peachtree Ridge High School by August 1, that they will "file due process and present Dr. Turner's findings in that forum." (Ex. P-20.) However, upon the school failing to make a decision to transfer Defendant to his choice of school, Defendant's parents determined that the information supplied by Dr. Turner to the IEP team must have been insufficient and, therefore, the evaluation must have been inappropriate. (Ex. P-20.)

appropriately identify the source of Defendant's anxiety and depression. However, Dr. Turner used a variety of tools and strategies, including the administration of a variety of assessments and interviews, to gather information regarding Defendant's anxiety and depression. Based on the information he gathered, and based on his education, training and experience, Dr. Turner reached certain conclusions and made recommendations. Although Defendant's parents would prefer to have more information and further testing, Plaintiff has met its burden to prove that the evaluation conducted by Dr. Turner met the requirements of the law such that Plaintiff should not be obligated to fund an Independent Educational Evaluation at public expense.

3.

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school, subject to certain conditions. 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. § 300.502(b)(1). When a parent requests an independent educational evaluation at public expense, the school has the right to file a due process complaint to request a hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2)(i). If the school files a due process complaint notice to request a hearing, and the final decision is that the school's evaluation is appropriate, the parent has the right to an independent educational evaluation, but **not** at public expense. 34 C.F.R. § 300.502(b)(3) (emphasis added).

4.

In determining whether a school's evaluation is appropriate, IDEA requires that the school:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining –

- i. Whether the child is a child with a disability . . . ; and
 - ii. The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum . . . ;
- (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 that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C.A. § 1414(b)(3); 34 C.F.R. § 300.304(b)(1) – (3); Ga. Comp. R. & Regs. r. 160-4-7-.04(4)(b).

5.

Additionally, the school must ensure that –

- (1) Assessments and other evaluation materials used to assess a child .
 - 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 on what the child knows and can do academically,

developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

- 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 any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, 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 (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

- (5) Assessment 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, as necessary and as expeditiously as possible, . . . , to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability . . . , the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

20 U.S.C. §§ 1414(b)(1)-(3), 1412 (a)(6)(B); 34 C.F.R. § 300.304(c)(1)-(7); Ga. Comp. R. & Regs. r. 160-4-7-.04(4).

6.

Based on the evidence presented, Plaintiff has met its burden to prove that the evaluation conducted by Dr. Turner in the Spring of 2011 met the criteria set forth above. Dr. Turner used a variety of assessment tools and strategies to assess Defendant and gather relevant information, including reviewing prior evaluations, conducting interviews, and administering various technically sound tests, in English, for purposes for which they are valid and reliable. Accordingly, Plaintiff's evaluation was comprehensive and appropriate and Defendant is not entitled to a publicly funded IEE. Amador Co. Unified Sch. Dist. 55 IDELR 241 (Ca. SEA

October 19, 2010) (district's evaluation found comprehensive and appropriate despite parents' expert testifying that additional assessments could have been administered, and two of district's evaluators admitted they erred in not including the results of the Gilliam Autism Rating Scale in one report and the child's Brigance math score on another)¹⁶; DeMerchant v. Springfield Sch. Dist., 48 IDELR 181 (D. Vt. 2007) (district satisfies IDEA when evaluation identifies areas of potential disability, uses qualified professionals to conduct the assessments, and gathers supplemental information through classroom observations and parent interviews); R.L. v. Plainville Bd. of Ed., 363 F.Supp. 2d 222 (2005) (parents not entitled to an independent educational evaluation at public expense when there is no disagreement as to the district's evaluation but, instead, parents simply desire an additional source of information); Maine School Administrative District #17, 39 IDELR 281 (ME SEA, August 15, 2003) (district's evaluation meets standards required by IDEA where student was assessed in all areas of suspected disabilities, professionals conducting the assessments selected a variety of tools and strategies to gather information to assist the IEP team in determining whether the child meets the criteria of a student with a disability, the evaluation met state standards, the evaluator was qualified to administer and interpret the tests and he/she employed technically sound instruments validated for the particular purpose for which they were used); Ford v. Long Beach Unified Sch. Dist., 291 F.3d 1086 (2002) (assessment report appropriate where, in part, evaluation discusses child's emotional state and social behavior, includes results of the tests conducted by the evaluator and the evaluator's conclusions on the basis of those tests and contains the evaluator's opinion).

¹⁶ In *Amador*, no evidence was offered to show that the omissions were either material or that they otherwise rendered the assessment inappropriate. Amador County Unified School District, 55 IDELR 241 (Ca. SEA October

7.

Defendant has not presented sufficient, admissible evidence to effectively rebut Plaintiff's prima facie case. Maine School Administrative District #17, 39 IDELR 281 (ME SEA, August 15, 2003) (while the parents clearly takes exception with the school district's psychologist's determination, they presented no expert witness to contradict the psychologist's interpretations and conclusions); Amanda Ford v. Long Beach Unif. Sch. Dist., 291 F.3d 1086 (2002) (parents did not provide any empirical grounds on which to base a challenge to the district's choice in assessment tools and strategies); Edie F. v. River Falls Sch. Dist., 243 F.3d 329 (2001) (parents not entitled to an IEE where they do not identify an area of disagreement with the diagnosis or the educational methodology used by the school).

8.

Defendant asserts that Plaintiff's evaluation is inappropriate because Dr. Turner failed to review every evaluation ever prepared regarding [REDACTED].¹⁷ 34 C.F.R. 300.305(a)(1). Specifically, Defendant argues that Dr. Turner failed to review a three-page psychiatric evaluation report completed by Dr. Evans on November 21, 2008, and a three-page report completed by Dr. Minassian on January 2, 2009. However, Defendant has not shown that Dr. Turner is required to review every single evaluation [REDACTED] has ever had performed. Instead, Dr. Turner was required to review existing evaluation data, as appropriate. 34 C.F.R. 300.305(a)(1). Arguably, Dr. Turner was required to review evaluations provided to him by Defendant's parents. 34 C.F.R. 300.305(a)(1)(i). According to Dr. Turner's testimony, he did so, though he did not reference

19, 2010.)

¹⁷ Defendant's parents suggest that Dr. Turner did not even review the evaluations he claimed he had reviewed. Defendant's parents base their opinion, in part, on the fact that Dr. Turner had questions regarding Defendant's communication skills. According to Defendant's parents, if Dr. Turner reviewed the prior evaluations as he said he did, then he would have noted the assessment completed by Dr. Montgomery addressing communication and would not have had any questions. However, Dr. Turner credibly testified the he reviewed Dr. Montgomery's report

each and every one in his report. Dr. Turner's recollection is that he was provided prior evaluations, with the exception of Dr. Minassian's report, and that he did review the reports he was given. T. p. 221.

9.

Defendant also asserts that the evaluation was inappropriate, in part, because other individuals used different assessments¹⁸ and/or reached a different conclusion than those drawn by Dr. Turner. For example, Defendant's parents raised concerns that Dr. Turner noted that Defendant appeared to have a flat affect, and they believe this observation may have influenced Dr. Turner's conclusion that Defendant feels indifferent about school, whereas Dr. Minassian recognized that Defendant had difficulties in school settings and described Defendant's feelings as fear and anxiety rather than indifference. Additionally, Dr. Evans noted that Defendant's affect was constricted with limited range, but he did not describe Defendant as indifferent, but rather recommended that Defendant be served via a curriculum that is conducive in working with children with Autism rather than an EBD classroom that is likely insufficient to meet academic and social needs. Defendant's parents also argue that Dr. Turner's evaluation is deficient because he failed to address the Theory of Displacement. (T. p. 129-134.) However, it has not been shown that this theory is, in fact, applicable. Nor has it been shown that Dr. Turner, who is unfamiliar with the theory, was required to address it. Defendant presented insufficient admissible evidence to contradict Dr. Turner's interpretation or conclusions. See Maine School Administrative District #17, 39 IDELR 281 (ME SEA, August 15, 2003) (while the parents

carefully. Furthermore, Dr. Turner is required to base his assessment on all of the data he gathers, and not just the opinion of another doctor. Accordingly, Defendant's parents argument on this point fails. (T. p. 70-76.)

¹⁸ Defendant's parents noted that the evaluation completed by Dr. Montgomery in January 2009 was much more extensive than the evaluation completed by Dr. Turner. (Ex. P-8.)

clearly take exception with the school district's psychologist's determination, they presented no expert witness to contradict the psychologist's interpretations and conclusions).

10.

Defendant's parents also raised concerns that Dr. Turner did not adequately address [REDACTED]'s developing depression and anxiety. According to Defendant's parents, although Dr. Turner addressed these issues, he did not adequately explain the elevated levels of anxiety and depression that Defendant's parents have noted since Defendant enrolled at North Gwinnett High School; Dr. Turner did not conduct testing to determine the source of the anxiety and depression; offered no explanation for the number of detentions Defendant has received at North Gwinnett High School or why [REDACTED] would be driven to skip school; and did not delve deeply enough into figuring out the cause of Defendant's developing depression, anxiety and "learned hopelessness." (T. p. 126, 422-423.) Defendant's parents argued that if you don't understand the source of the problem, you cannot address it. Therefore, Defendant argues, if Dr. Turner failed to adequately address the source of the problems, he failed to provide the IEP team essential information so that Defendant's situation can be improved. (T. pp. 74, 333, 435.)

However, Dr. Turner did address these concerns and, based on his assessment, found that Defendant exhibited some level of depressed mood at the time [REDACTED] was evaluated, and further found that Defendant suffered from excessive worry. Dr. Turner went on to provide his opinion and recommendations, such as suggesting that it may be in Defendant's best interests to attend a school other than North Gwinnett High School. He also recommended that Defendant have a school contact with whom [REDACTED] is comfortable. Dr. Turner believes that if Defendant is provided a school contact with whom [REDACTED] can relate it will help relieve some of [REDACTED] anxiety and increase [REDACTED] motivation. (T. pp. 143, 145.) Despite these conclusions and recommendations set forth in Dr.

Turner's evaluation report, Defendant's parents believe the evaluation is inappropriate because Dr. Turner failed to make a definitive determination. For example, Dr. Turner indicated it "does not appear" that Defendant has a school phobia. According to Defendant's parents, the use of the word "appear" suggests that Dr. Turner failed to perform adequate testing because he was unable to make a definitive statement. (T. pp. 92, 440-442.) However, Defendant did not present any expert testimony or other admissible, credible evidence that Defendant does, in fact, suffer from a school phobia. (T. pp. 429, 447-448, 451-452). See generally DeMerchant v. Springfield School District, 48 IDELR 181 (D. Vt. 2007).

11.

Defendant also argues that Dr. Turner's report is full of contradictions and, therefore, cannot be considered appropriate. For example, Dr. Turner noted that Defendant's teachers described [REDACTED] as a "superstar," yet [REDACTED] received various disciplinary actions. According to Defendant's parents, it is not possible for a child to be a "superstar" and at the same time have so many disciplinary issues. However, Defendant has not presented any evidence to show how the questions raised in their minds undermines the appropriateness of the tests administered, the qualifications of Dr. Turner to administer them, or his conclusions that he drew from the results of the assessments. Instead, Defendant argues that the "problem" with the report is that it fails to delve into and explore the issues of anxiety and depression that Defendant experiences. Defendant's parents believe that Dr. Turner's conclusions regarding the anxiety and depression are not accurate. For example, although Dr. Turner only noted a degree of depressed mood and excessive worry, Defendant's parents believe [REDACTED] depression and anxiety are much more severe. Additionally, although Dr. Turner concluded that Defendant's excessive worry can be attributed, in part, to concerns about getting into trouble at school and family illnesses, Defendant's parents believe it

is directly attributable to the negative feelings Defendant harbors against the Walton County School District that [REDACTED] has displaced onto North Gwinnett High School. However, as noted above, although Defendant's parents may disagree with the conclusions drawn by Dr. Turner, that does not necessarily show that the evaluation was inappropriate or that it failed to meet the requirements of the law. See DeMerchant v. Springfield Sch. Dist., 48 IDELR 181 (D. Vt. 2007); Maine School Administrative District #17, 39 IDELR 281 (ME SEA, August 15, 2003) (while the parents clearly take exception with the School District's psychologist's determination, they presented no expert witness to contradict the psychologist's interpretations and conclusions).

12.

Finally, Defendant argued that the evaluation was inappropriate, in part, because it (1) failed to adequately assess whether Defendant received services appropriate to [REDACTED] unique needs, (2) failed to adequately assess whether the services Defendant received were effective in meeting [REDACTED] unique needs, (3) failed to adequately assess whether the services, or lack thereof, exacerbated Defendant's needs, or caused [REDACTED] harm, and (4) failed to sufficiently address whether Defendant's attitude toward [REDACTED] environment is a contributing factor to [REDACTED] lack of motivation in school. Defendant's parents argue that they have the right to have the evaluation include such assessments and that such information would be useful to Defendant's IEP team.¹⁹ However, Dr. Turner's evaluation used assessment tools and strategies that provided relevant information about Defendant and [REDACTED] present needs. For example, Dr. Turner concluded, based on the assessment tools and strategies used, that Defendant did not appear to have a school phobia of [REDACTED] current school, but that [REDACTED] would nevertheless benefit from being transferred to another

¹⁹ Defendant cites to 34 C.F.R. 300.552(d), which provides, in relevant part, that when determining placement, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

school because of the negative attitude and family held against North Gwinnett High School. Although Defendant's parents believe Defendant does suffer from a school phobia and may desire a different outcome or interpretation than that given by Dr. Turner,²⁰ they are not entitled to an Independent Educational Evaluation at public expense solely because they disagree with his findings or feel he should have done more.²¹ Merchant v. Springfield School District, 48 IDELR 181 (D. Vt. 2007) (district does not have to honor a parent's request for an IEE merely because the parent disagrees with the results of an evaluation).

Likewise, parents are not entitled to an independent educational evaluation simply because the District's evaluation could have contained more detail. "There are no magic tools or tests that an individual assessor must use in every case, nor any specific number of assessments that must be utilized." Amador County Unif. Sch. Dist., 55 IDELR 241 (Ca. SEA October 19, 2010). Rather, the "key is in the methodology." L.S. v. Abington School District, 2007 WL 2851268 (2007). The IDEA "requires only that the proper assessment tools and qualified individuals conduct the evaluation." Id. Here, Dr. Turner is well-qualified to have conducted the evaluation. Furthermore, he used a variety of assessment tools and strategies to gather relevant information regarding Defendant.

IV. ORDER

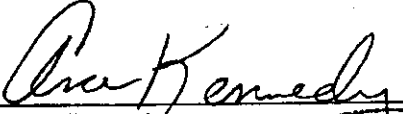
Based on the foregoing Findings of Fact and Conclusions of Law, Plaintiff's request that it not be required to fund an independent educational evaluation at public expense is GRANTED.

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²⁰ For example, Defendant's parents disagree with Dr. Turner's statement that Defendant feels indifferent toward school. Instead, they believe, given Dr. Turner's notation that Defendant feels being sent to North Gwinnett High School is like a punishment, that the correct interpretation would be to say that Defendant is "resentful" rather than "indifferent."

²¹ Defendant's parents assert that Dr. Turner should have administered the Hamilton Anxiety Scale and the Anxiety Disorders Interview Schedule to determine the source of Defendant's anxiety.

SO ORDERED, this 23rd day of January, 2012.


Ana P. Kennedy
Administrative Law Judge