

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



JUN 8 2015

**FULTON COUNTY SCHOOL
DISTRICT,** :
 :
 :
 Petitioner, :
 :
 v. :
 individually, and by and through his :
 parent, :
 :
 Respondents. :

Docket No.
OSAH-DOE-IEE-██████████-60-KENNEDY
15-300822

K. Westray
Kevin Westray, Legal Assistant

FINAL DECISION

For Petitioner:
Neeru Gupta, Esq.
Nelson Mullins Riley & Scarborough LLP

For Respondents:
F.G., Father

I. INTRODUCTION AND PROCEDURAL BACKGROUND

██████████ (Respondent) is a student who is eligible to receive services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). Respondent attends school in Petitioner’s district. On September 30, 2014, the Fulton County School District (Petitioner) filed a Due Process Hearing Request (“Complaint”) contending that Petitioner’s Speech and Language evaluation conducted by Sarah B. Hughes in May, 2014, was appropriate and met the requirements under IDEA such that Petitioner should not be required to fund, at public expense, an Independent Educational Evaluation requested by Respondents. The parties requested an extended period of time to attempt to resolve this matter informally through a resolution session and mediation. However, such attempts to resolve the underlying issue that led to the filing of this matter were unsuccessful. A hearing was held on April 2, 2015. Following the hearing, the parties submitted closing arguments on April 28, 2015.

15-300822

After careful consideration of the evidence, arguments and submissions, and for the reasons set forth below, the court concludes that Petitioner's evaluation met the requirements of IDEA. Accordingly, Petitioner is not required to fund an Independent Educational Evaluation at public expense. However, this decision does not preclude Respondents from obtaining an Independent Educational Evaluation at their own expense.

II. FINDINGS OF FACT

1.

Respondent, [REDACTED] is [REDACTED]-years-old (D.O.B. [REDACTED]). He just completed his [REDACTED] grade year at [REDACTED] Middle School, which is located within the Fulton County School District. *Exhibits P-1, P-3, R-1; Due Process Complaint, p. 2 of 4.*

2.

Petitioner has performed well on state and national tests, such as the Criterion Competency Referenced Test (CRCT) and the Iowa Tests of Basic Skills (ITBS). He also has performed well academically in advanced classes. However, he has required speech therapy since kindergarten. *Testimony of Sarah Hughes, Petitioner's Lead Speech-Language Pathologist; Exhibit P-1.*

3.

Respondent was referred for a speech evaluation at the age of 5 because he was unintelligible.¹ At that time, Petitioner found Respondent to be eligible to receive speech-language services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), and an Individual Education Program (IEP) was developed to address Respondent's specific areas of weakness. *Exhibit P-1.*

¹ From 2006 through 2012, Respondent was considered to exhibit language skills within normal limits, but with significant articulation errors; by 2012 the testing revealed "intelligible speech with notable errors." *Exhibit P-1.*

4.

Respondent began receiving speech therapy through school on February 1, 2006. He continued to receive speech-language services until October 2013, at which time Respondent voluntarily chose to terminate the services he was receiving through school because he felt he was not benefitting from the services. Respondent explained that he preferred to attend the classes he was missing than attend speech therapy because of the behavioral issues exhibited by the other students that the speech therapist was unable to adequately address, and because of the lack of structure provided in the therapy sessions. *Testimony of Hughes; Testimony of Respondent; Exhibit P-1.*

5.

When Respondent first began receiving services under IDEA, he had “severe issues.” Respondent has remediated a majority of his issues. In fact, Respondent has been able to demonstrate mastery of all speech sounds with the exception of the /r/ sound. *Testimony of Hughes; Testimony of Erickson; Exhibit P-1.*

6.

Respondent has participated in various speech-language evaluations over the years that were conducted both by Petitioner and by independent agencies. In particular, Respondent was evaluated by Atlanta Speech School in May 2012. In that evaluation, it was noted that Respondent had some difficulty with sentence comprehension, but average performance on word knowledge, retrieval and oral expression. It was also noted that Respondent had some speech motor sequencing difficulties, problems with “r” phonemes and hypernasality on numerous non-nasal sounds. Two months later, in July 2012, Dr. Riski performed an evaluation that revealed motor planning problems and warranted a diagnosis of apraxia of speech. Dr. Riski also noted

that Respondent had auditory memory deficits and was able to recall only four digits. It was further noted that Respondent had a very severe distortion of “R” with incomplete elevation of the posterior tongue. At that time, Respondent seemed stimulable to improve the overall quality by pairing the “R” with lingual-velar stop sounds. Dr. Riski recommended speech therapy, and Respondent was seen for 14 therapy sessions in the Speech Lab from June 2012, through April 2013. Although Respondent made progress, his performance was variable, especially for sounds related to the letter “R.” *Exhibit P-3.*

7.

In May 2014, Petitioner conducted a speech language evaluation for [REDACTED]. The evaluation was conducted by Sarah Hughes, an expert in the areas of speech language pathology and evaluation of students in the areas of speech and language. *Testimony of Hughes.*

8.

Ms. Hughes, the Lead Speech-Language Pathologist for Fulton County School District, met with [REDACTED] on May 1 and May 22, 2014, to complete her speech-language evaluation. The purpose of the evaluation was to gather updated information of Respondent’s current functioning to determine if he has a speech disability that would qualify him to continue receiving services under IDEA. Following the completion of her evaluation, which included conducting assessments, interviews and document review, Ms. Hughes issued a report of her findings and conclusions in June, 2014. *Testimony of Hughes; Exhibit P-1.*

9.

Ms. Hughes is well-qualified to conduct speech-language evaluations. She is a speech pathologist who has worked within the Speech-Language field for 24 years. She holds a Bachelor of Arts from the University of Alabama and a Master’s Degree from Georgia State

University. Ms. Hughes has maintained her clinical competency, most recently completing a 10-hour course in June, 2014. *Testimony of Hughes.*

10.

Nancy Erickson, Fulton County School District's Coordinator for Exceptional Students needing Speech Therapy, reviewed Ms. Hughes' evaluation report. She opined that Ms. Hughes used "best practices" and appropriately completed the evaluation. *Testimony of Nancy Erickson.*

11.

In preparing the evaluation report, Ms. Hughes reviewed information contained in Respondent's file, including a May 2, 2012, evaluation completed by Candace Hogan, M.S. and CCC Speech-Language Pathologist with the Atlanta Speech School;² a one-page summary of an exam completed by Dr. Riski of Children's Healthcare of Atlanta on July 2, 2012; and a Progress Note dated September 12, 2012, that was signed by K. Nett, M.S., CFY-SLP, and Dr. John Riski, PhD, CCC-S, Director of Speech Pathology with Children's Healthcare of Atlanta. *Exhibits P-2, R-1.*

12.

Ms. Hughes began her report with a summary of background information. This included Respondent's developmental history, his educational history, including difficulties Respondent had in prior years, and information regarding his success at [REDACTED] Middle School. *Testimony of Hughes.*

² Ms. Hogan administered an audiometric screening, the Arizona Articulation Proficiency Scale, Third Revision (AAPS-3) to assess Respondent's speech sound production in words, the Comprehensive Assessment of Spoken Language (CASL) to assess Respondent's receptive and expressive language skills, an oral motor examination to assess the anatomical structures and physiological functions that are most often considered to be related to speech disorders, and she also completed an observation and assessed fluency/voice. Ms. Hogan recommended that Respondent be evaluated by Dr. Riski, and that he continue with Speech Therapy, possibly increasing the frequency of therapy sessions. *Exhibit R-1.*

13.

In her report, Ms. Hughes detailed the assessments that she administered, and the results of those assessments that served as the basis for her conclusions and recommendations. *Exhibit P-1.*

14.

As part of her evaluation, Ms. Hughes provided Educational Performance of Sound Production questionnaires to Respondent's teachers to assess the impact of Respondent's speech production in the classroom. On this assessment, Respondent's Language Arts and Spanish teachers noted that Respondent's articulation seriously impacts approximately 70% of his communication in the classroom, while Respondent's Math, Social Studies and Science teachers reported a 90% understanding with a minimal impact of understanding related to speech sounds. Overall, it was noted that Respondent avoids answering questions in all classes with the exception of Science, and his speech is a distraction to listeners in all classes with the exception of Social Studies. *Exhibit P-1.*

15.

In addition to teacher questionnaires, Ms. Hughes also provided Language Checklists to Respondent's teachers to determine if Respondent's receptive and expressive language skills have an impact on Respondent's educational performance. This assessment revealed that Respondent meets or exceeds language skills expectations required for competency of classroom performance in all classes with the exception of Spanish. In Language Arts and Math class, Respondent demonstrates appropriate language skills with the exception of asking and answering inferential questions about text or information presented orally, and difficulty summarizing information presented orally. *Exhibit P-1.*

16.

Ms. Hughes also provided Respondent's teachers a Fulton County Schools Skills Inventory to assess Respondent's competence with Motor Coordination, Oral Expression, Listening Comprehension, Written Expression, Basic Reading, Reading Comprehension, Math Calculations, Math Reasoning, Attention and Memory, Work Habits, and Emotional/Behavioral and Social skills. Ms. Hughes reviewed the teachers' responses and summarized any areas of concern.³ *Exhibit P-1.*

17.

Ms. Hughes also reviewed Respondent's Standardized Testing scores from the Spring 2014 CRCT exam, as well as his final grades for the 2013-2014 academic school year. *Exhibit P-1.*

18.

In Ms. Hughes' June 2014 report, she next detailed the instruments and evaluations she administered to specifically address Respondent's Speech and Language. More specifically, Ms. Hughes completed an Oral Motor Assessment, during which Ms. Hughes noted that Respondent exhibited overall weakness and coordination of articulators, and an elongated soft palate. *Exhibit P-1.*

19.

Ms. Hughes also assessed Respondent's articulation through the administration of the Photo Articulation Test (PAT) to assess Respondent's ability to correctly produce sounds at the word level. During this assessment, Ms. Hughes noted that Respondent continues to exhibit errors when producing words with /r/ and vocalic /r/, neither of which is stimulable. Ms. Hughes

³ For example, Respondent's Math, Social Studies and Spanish teachers noted issues with printing legibly. Additionally, concerns were noted by Respondent's Spanish, Language Arts and Social Studies teachers regarding his ability to focus attention on relevant stimuli while screening out distracters. Respondent's Innovation and

completed further analysis of this concern using the “World of R” screener to determine if certain vowel + r combinations were more successful than others and if there was an improvement when remembering to use strategies learned previously in speech therapy. *Exhibit P-1.*

20.

Ms. Hughes determined, in regards to articulation, that Respondent continues to exhibit /r/ sound errors. *Exhibit P-1.*

21.

In addition to the assessments above, Ms. Hughes also assessed Respondent’s voice, fluency and language. For the language assessment, Ms. Hughes administered the Oral and Written Language Scales – II (OWLS-II) to assess Respondent’s overall language ability based on a mean of 100 and a standard deviation of 15. Respondent scored within normal range of functioning on this evaluation. *Exhibit P-1.*

22.

Respondent also provided language samples during which he discussed a range of topics, including his favorite author, summer activities, a perfect day, how to play a sport and his favorite sports team. *Testimony of Hughes; Exhibit P-1.*

23.

Finally, in her evaluation, Ms. Hughes discussed a classroom observation completed by Lydia Kopel, another speech pathologist employed by Petitioner. Ms. Hughes asked Ms. Kopel to complete a classroom observation to allow for a second, independent observation of Respondent’s classroom experience. *Testimony of Hughes; Exhibit P-1.*

Inventions teacher also noted the need to work on diction and the “r” sound, while Respondent’s Language Arts teacher reported that [REDACTED] does not participate in small group goals and objectives. *Exhibit P-1.*

24.

After completing a comprehensive evaluation, Ms. Hughes did not note any concerns that needed to be addressed through therapeutic services. She concluded that Respondent is a bright child that has demonstrated mastery of other sounds with the exception of /r/, /rblends/ and vocalic /r/. Ms. Hughes opined that Respondent may never be able to sustain a /r/ due to an elongated palate. She further opined that continuation of services to address a skill that may never be mastered may not be in Respondent's best interest. She recommended that Respondent may be better served through activities that focus on speaking up and enunciating, such as drama club or camp. Finally, Ms. Hughes recommended that if Respondent's IEP team does not go forward with eligibility, Respondent's family and pediatrician may want to explore the consideration of a 504 to ensure accommodations continue to be provided to help Respondent perform his best in the classroom, in particular regarding organizational skills, staying on task and completing tasks, and improved written expression skills at the story level. *Exhibit P-1.*

25.

Ms. Hughes did not use any single measure or assessment as the sole criterion for determining whether Respondent is a child with a disability or for determining an appropriate educational program for Respondent. Instead, she used technically sound instruments that could assess Respondent's speech and ability to be understood, and she administered them in accordance with the assessments' instructions. Moreover, Ms. Hughes selected the assessments in a manner so as not to be discriminatory on a racial or cultural basis. *Testimony of Hughes; Testimony of Erickson.*

26.

She provided and administered the assessments in English, Respondent's native language, and she administered them in the form most likely to yield accurate information. Ms. Hughes used the assessments for the purposes for which they are valid and reliable. Finally, the assessments were tailored to assess specific areas of educational need. *Testimony of Hughes.*

27.

Ms. Hughes assessed Respondent in all areas related to his suspected disability. Ms. Hughes gathered information from Respondent's teachers and also asked for a second individual to conduct a classroom observation. Ms. Hughes obtained this information, in part, because it is necessary to know how Respondent interacts with his peers and whether they are able to understand him. *Testimony of Hughes.*

28.

Ms. Hughes' evaluation was sufficiently comprehensive to identify all of Respondent's special education and related service needs. Finally, Ms. Hughes evaluation provided relevant information that could directly assist in determining Respondent's educational needs. *Testimony of Hughes; Testimony of Erickson.*

29.

Based on her assessment, Ms. Hughes concluded that it may not be in Respondent's best interests to continue speech therapy services. Ms. Hughes found that Respondent has overcome all of his speech issues with the exception of the "R" sound. She further found that this one remaining issue does not currently adversely impact his education in that it "does not impact his ability to communicate with others." However, Respondent "tends to be very quiet and does not participate in class frequently." Respondent explained he is hesitant to speak in class because his

peers usually ask him to repeat himself several times. *Testimony of Hughes; Testimony of Respondent; Exhibit P-1.*

30.

Approximately 4 months after Ms. Hughes issued her evaluation report, Respondent obtained an Independent Evaluation on October 20, 2014, that was completed by Dr. John E. Riski, Director of the Speech Pathology Laboratory for Children's Healthcare of Atlanta. Dr. Riski noted that Respondent continues to demonstrate severe distortion of the "R," both as a consonant and a vowel. To complete his evaluation, Dr. Riski administered the Van Denmark Sentence Articulation Test, in addition to completing an oral examination, voice assessment, and velopharyngeal screening. Based on his evaluation, Dr. Riski determined that Ms. Hughes concerns that Respondent may be physically incapable of making the "R" is unfounded because any limitation in elevating the posterior tongue would also limit tongue elevation for the lingual-velar sounds, "K, G, NG," which is not present indicating that the muscle pair that elevates the posterior tongue is functioning normally. Dr. Riski recommended that Respondent would "benefit from aggressive speech therapy when he is ready to commit the time." Dr. Riski opined that therapy "is going to require a commitment on [Respondent's] part to practice throughout the day with techniques that help maintain the the [sic] posterior tongue in an elevated position." Dr. Riski also opined "that the severe distortion is making him reluctant to speak in many situation." He also agreed to "reach out to other clinicians [that] might have some special skills working on 'R' problems." *Exhibit P-3.*

31.

At some point, Respondent's father, F.G., informed Petitioner that he disagreed with the conclusions Ms. Hughes reached in her May 2014, evaluation, and that he wanted a second

opinion.⁴ Petitioner was unclear whether Respondent's father was requesting an Independent Educational Evaluation (IEE) be completed at public expense, or whether he simply wanted a second opinion that he would be responsible for paying himself. Because Petitioner was unclear as to Respondent's intentions, and because Petitioner was unwilling to fund an Independent Educational Evaluation, Petitioner filed a Due Process Hearing request to prove that Ms. Hughes' May 2014, evaluation was appropriate and met the requirements of the IDEA such that Petitioner should not be required to complete an IEE at public expense. *Exhibits P-4, P-5; Due Process Hearing Request, p. 2 of 4.*

32.

Respondent explained at the hearing that he is seeking an Independent Education Evaluation at public expense to determine if Respondent's inability to pronounce the "r" sound can be remediated. Respondent's father is concerned that Petitioner has taken the position that speech therapy will no longer benefit Respondent, when others, such as Dr. Riski, have opined that Respondent could potentially benefit from continued speech therapy services if Respondent commits the time necessary to improve further. Respondent's father is also concerned that ■■■'s IEP team has determined that ■■■ no longer qualifies to receive speech therapy and believes that the IEP team may have reached this decision in retaliation for Respondent voicing concerns about the assigned speech therapist, Ms. Bopp. *Respondent's Closing Argument.*

33.

Respondent hopes to pursue a career in law. Accordingly, Respondent and his father feel it is important that he be easily understood by others. At the present time, Respondent is not always

⁴ Respondent's father acknowledged at the hearing that Ms. Hughes is competent to perform speech-language evaluations, and that she did the best she could do. However, he strongly disagrees with her conclusion that ■■■ will never master the "R" sound. *Statement made by ■■■*

easily understood, and he is asked to repeat himself on occasion. Respondent's father believes that Respondent would benefit from continuing speech therapy. *Respondent's Closing Argument*. However, the sole issue in this matter is whether Respondent is entitled to an IEE at public expense, and not whether he qualifies to receive special education services. *Exhibit ALJ-1 (Due Process Hearing Request)*.

III. CONCLUSIONS OF LAW

1.

In May 2014, the Fulton County School District's Lead Speech Pathologist, Ms. Hughes, conducted an evaluation of █████ culminating in a report that was issued in June, 2014. 20 U.S.C. 1414(a); 34 C.F.R. 300.301(c)(1)(i).

2.

Following the issuance of Ms. Hughes' report, Respondent's father, █████, expressed concerns regarding the conclusions and recommendations made by Ms. Hughes, in particular, Respondent's father took exception with Ms. Hughes' conclusion that █████ may never correct his articulation errors with the letter R, and her recommendation that █████'s IEP team consider discontinuing speech language therapy. █████ requested a second opinion be obtained due to his concerns. The school interpreted █████'s request as a request for an Independent Educational Evaluation at public expense. Because Petitioner felt that the evaluation conducted by Ms. Hughes met the requirements of IDEA, Petitioner filed a due process hearing request to establish the appropriateness of the District's evaluation such that Respondents would not be entitled to an IEE at public expense.

3.

The inquiry of whether an evaluation is “appropriate” under IDEA “focuses primarily on procedural compliance, rather than delving into the substance of the evaluation itself.” North St. Francois County R-1 School District, Missouri State Educational Agency, 59 IDELR 170, 20-24 (Mo. SEA 2012). After careful consideration, the court concludes that Ms. Hughes’ 2014 evaluation met the requirements of IDEA. Ms. Hughes used a variety of technically sound tools and strategies to gather information regarding Respondent’s speech and language disabilities that she is qualified to administer. Based on the information she gathered, and based on her education, training and experience, Ms. Hughes reached certain conclusions and made recommendations. Although Respondent’s father disagrees with the conclusions and recommendations made, Petitioner has met its burden to prove that the evaluation conducted by Ms. Hughes met the requirements of the law such that Petitioner should not be obligated to fund an Independent Educational Evaluation.

4.

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).

5.

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).

6.

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).

7.

Based on the evidence presented, Petitioner has met its burden to prove that the evaluation conducted by Ms. Hughes in May 2014, met the criteria set forth above. Ms. Hughes used a variety of assessment tools and strategies to assess Respondent and to 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. Petitioner's evaluation was comprehensive and appropriate and Respondent 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)⁵; 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).

8.

Respondents have not presented sufficient evidence to effectively rebut Petitioner'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).

9.

Although Respondent's father may disagree with the conclusions drawn by Ms. Hughes it does not necessarily equate 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).

⁵ 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

Additionally, although Respondent's father believes Respondent can benefit from additional speech therapy and can overcome his issues with the letter R, Respondent's father is not entitled to an Independent Educational Evaluation at public expense solely because he disagrees with Ms. Hughes' findings or feels she should have done more. 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, Ms. Hughes is well-qualified to have conducted the evaluation. Furthermore, she used a variety of assessment tools and strategies to gather relevant information regarding Respondent.

IV. DECISION

The sole issue before this court is whether the evaluation conducted by Petitioner's speech pathologist is appropriate and met the requirements under IDEA such that Petitioner should not be required to fund an Independent Educational Evaluation at public expense. This case does not address whether Respondent, [REDACTED] is eligible to receive special education services. Based on the foregoing Findings of Fact and Conclusions of Law, and considering the issue at hand, Petitioner's request that the court conclude the May 2014, evaluation was appropriate and that Petitioner should not be required to fund an independent educational evaluation at public

expense is **GRANTED**. Nothing in this decision precludes Respondents from obtaining an IEE at their own expense.

SO ORDERED, this 8th day of June, 2015.



Ana P. Kennedy
Administrative Law Judge

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

FULTON COUNTY SCHOOL DISTRICT,	:	
Petitioner,	:	Docket No.: OSAH-DOE-IEE-██████████-60-Kennedy
	:	
v.	:	
	:	
██████████	:	
Respondent.	:	

NOTICE OF FINAL DECISION

This is the Final Decision of the Judge in the case. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or, if applicable, a motion to vacate or modify a default order with the Judge. A party may also seek judicial review of this decision by any State court of competent jurisdiction or in a District Court of the United States.

FILING A MOTION WITH THE JUDGE

The motion must be filed within ten (10) days of the entry, i.e., the issuance date, of this decision. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the Clerk at:

Office of State Administrative Hearings
Attn.: Kevin Westray, kwestray@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

PETITION FOR JUDICIAL REVIEW

Any party aggrieved by the findings and decision of the Judge has the right to appeal the decision under 20 U.S.C. § 1415 by bringing a civil action with respect to the complaint presented which action may be brought in any State court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy. In any action or proceeding under 20 U.S.C. § 1415, courts may award reasonable attorney's fees. A copy of the Notice of Appeal should be simultaneously filed with the Department of Education.

IMPLEMENTING THIS DECISION

Should any party contend that this decision is not being fully implemented, except if this decision is being reviewed under the above options, it may file an administrative complaint with the Georgia Department of Education pursuant to State Board of Education Rule 160-4-7-.17 Complaint Process.