

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

ADMINISTRATIVE DUE  
PROCESS HEARING  
CASE #LL 12-39

SOUTH KINGSTOWN SCHOOL DISTRICT

v.

STUDENT:

**DECISION**

SUMMARY OF ISSUES AND DECISION:

ISSUES:

1. Are the present evaluations conducted by the District in May 2012, appropriate?

**HELD FOR THE DISTRICT IN PART – THE PSYCHOLOGICAL  
AND THE SPEECH AND LANGUAGE EVALUATIONS ARE  
APPROPRIATE**

**HELD FOR THE PARENT IN PART – THE EDUCATIONAL  
AND OCCUPATIONAL THERAPY EVALUATIONS ARE NOT  
APPROPRIATE**

The District did not fully meet its Burden.

2. Are any further evaluations needed?

**HELD FOR THE PARENT**

**PAGE LEFT BLANK – PRINTER ERROR**

**PAGE LEFT BLANK – PRINTER ERROR**

CASE # LL 12-39

SOUTH KINGSTOWN SCHOOL DISTRICT v. STUDENT PJ S

IDENTIFYING DATA

Student.....

Parent.....

**LEXICON**

For purposes of the Decision in the within Hearing and to ensure confidentiality of the student, the following Lexicon will be used in this decision:

Student: the Student

Mother: the Parent

LEA: South Kingstown School District (The District)

Director of Special Education: Teresa Eagan (Ms Eagan)

Hearing Officer: Gloria S. Feibish (H.O.)

LEA Attorney: Mary Ann Carroll (Ms Carroll)

Student's Attorney: Christine Barrington (Ms Barrington)

**WITNESSES**

For the Petitioner .....Direct Examination by Ms Carroll:

.....	Parent
Teresa Eagan.....	Director of Special Education – South Kingstown S.D.
Susan Casey Torrey.....	School Psychologist – South Kingstown S.D.
Molly Flynn.....	Speech/Language Pathologist – South Kingstown S.D.
Margot Izzi.....	Occupational Therapist – South Kingstown S.D.
Kate Priel.....	Special Education Teacher – South Kingstown S.D.
Rosaline Granoff.....	Admissions Director – Wolf School
Karen Seal.....	Math Teacher – Wolf School

Maureen Gagne..... Literacy Teacher – Wolf School  
Anissa Khouri..... Speech and Language Therapist – Wolf School  
Andrea Horgan..... Occupational Therapist – Wolf School

For the Respondent (Direct Examination by Ms Barrington):

..... Student  
..... Parent  
Dr. Steven C. Imber..... Parent’s Expert Witness  
  
Jonathan Sigman..... Social Worker – South Kingstown S.D.  
Cheryl Johnson..... Director of Special Education – Wolf School  
Bonnie DiMeo..... Social/Emotional Educator – Wolf School

**LIST OF EXHIBITS**

Petitioner’s (marked “P”):

1. Due Process Request filed by Student/Parent-Case #12-11 (about 2/17/12)
2. Settlement Agreement to Case #12-11 (about 4/18/12)
3. Parents Requested Evaluations (10/22/12) **also R-58**
4. Psychological Evaluation by Paul Trickett, Psy.D. (4/2/12 and 4/10/12) **also R-50**
5. Educational Evaluation by K. Priel (4/10/12 and 4/13/12) **also R-51**
6. Speech and Language Evaluation by M. Flynn (4/24/12) **also R-52**
7. Functional Behavioral Assessment (2/13/12) **also R-40**
8. Occupational Therapy Evaluation by M. Izzi (4/4/12) **also R-49**
9. IEP Developed by Wolf School (10/9/12) **also R-56**
10. Progress Notes from Wolf School (10/9/12) **NOT USED**
11. Notes from Wolf School (Student Assessments Given through 11/27/12)

Respondent's (marked "R"):

1. Educational Evaluation (Fishing Cove School) (5/23/08)
2. Language Evaluation (Fishing Cove School) (6/10/08)
3. WISC-IV Test Scores (6/10/08)
4. Behavior Assessment (Fishing Cove School) (6/10/08)
5. Team Evaluation Summary (Fishing Cove School) (6/10/08)
6. Speech Dismissal Summary (NK School District) (12/23/08)
7. Psychological Evaluation by McGrath (3/23/09)
8. Bradley School Social History (6/20/09)
9. 2009 NECAP Results (Undated)
10. Bradley School Multidisciplinary Diagnostic Review (9/15/09)
11. Psychological Evaluation by L. Hirshberg, PhD (11/4/09)
12. Written Prior Notice (Undated)
13. IEP Team Minutes (South Kingstown School District) (4/28/10)
  
14. South Kingstown District Parent Letter (6/11/10) **NOT USED**
15. Progress Report (South Kingstown School District) (6/22/10)
16. Progress Report (South Kingstown School District) (8/12/10)
17. Team Minutes (South Kingstown School District) (10/7/10) **NOT USED**
18. IEP Team Minutes (South Kingstown School District) (12/9/10) **NOT USED**
19. Weigle Letter (1/31/11) **NOT USED**
20. IEP Team Minutes (South Kingstown School District) (3/21/11) **NOT USED**
21. IEP Team Minutes and IEP (South Kingstown School District) (4/28/11)
22. Team Minutes (South Kingstown School District) (9/27/11) **NOT USED**
23. Team Minutes (South Kingstown School District) (10/3/11) **NOT USED**
24. Team Minutes (South Kingstown School District) (10/11/11) **NOT USED**
25. Team Minutes (South Kingstown School District) (11/3/11) **NOT USED**
26. Progress Reports (South Kingstown School District) (11/9/11) **NOT USED**
27. 6<sup>th</sup> Grade 1<sup>st</sup> Quarter Grades (11/11) **NOT USED**
28. IEP Team Minutes (South Kingstown School District) (12/19/11) **NOT USED**
29. Parent to Eagan Letter (1/16/12) **NOT USED**
30. Parent to Eagan Email (1/16/12) **NOT USED**

- 31. Parent to Eagan Email (1/30/12) **NOT USED**
- 32. Parent to Eagan Letter (1/30/12) **NOT USED**
- 33. Attendance Record (South Kingstown School District) (2/2/12) **NOT USED**
- 34. Parent to Eagan Email (2/2/12) **NOT USED**
- 35. Authorization to Evaluate (South Kingstown School District) (2/6/12)
- 36. Russell to South Kingstown District (2/7/12) **NOT USED**
- 37. Draft Parent ICAP (2/9/12)
- 38. IEP Team Minutes (South Kingstown School District) (2/10/12)
- 39. Consent for Evaluation (2/10/12)
- 40. FBA Summary Report (2/13/12)
- 41. BIP (2/13/12)
- 42. "Current Concerns" Statement (2/17/12) **NOT USED**
- 43. Parent to Eagan Letter (2/24/12) **NOT USED**
- 44. Eagan to Parent Letter (2/27/12) **NOT USED**
- 45. "Arriving to School" Plan (Undated) **NOT USED**
- 46. Parent to Eagan Email (3/7/12) **NOT USED**
- 47. Eagan to Parent Email (3/7/12) **NOT USED**
- 48. Parent to Eagan Email (3/8/12) **NOT USED**
  
- 49. Occupational Therapy Evaluation Report (South Kingstown School District) (4/4/12) **also P-8**
- 50. Psychological Evaluation Report (South Kingstown School District) (4/10/12) **also P-4**
- 51. Educational Evaluation Report (South Kingstown School District) (4/13/12) **also P-5**
- 52. Speech and Language Evaluation Report (South Kingstown School District) (4/24/12) **also P-6**
- 53. RI Family Services to Eagan Letter (5/9/12) **NOT USED**
- 54. RI Family Services to Eagan Letter (5/14/12) **NOT USED**
- 55. Eagan to Parent Letter (8/7/12)
- 56. IEP Team Minutes and IEP (South Kingstown School District) (10/9/12) **also P-9**
- 57. MAC TO CHB Letter (10/10/12)
- 58. Parent to Eagan Letter (10/22/12)
- 59. IEP Team Minutes (South Kingstown School District) (11/13/12)



- 60.Parent to Eagan Letter (11/14/12)
- 61.Parent to Eagan Letter (11/14/12)
- 62.Eagan to Parent Letter (11/19/12) **NOT USED**
- 63.Eagan to Parent Letter (11/20/12)
- 64.Khoury to Parent Letter (11/21/12)
- 65.Eagan to Parent Email (11/27/12) **NOT USED**
- 66.Parent to Eagan Email (11/28/12) **NOT USED**
- 67.Parent to Miller Email (11/28/12) **NOT USED**
- 68.Miller to Parent Email (11/29/12) **NOT USED**
- 69.USDOE Memorandum (3/28/12) **NOT USED**
- 70.Steven C. Imber, PhD (Curriculum Vitae)
- 71.Steven C. Imber, PhD (Abbreviated Resume)
- 72.Imber Invoice to Parent (11/30/12) **NOT USED**

**N.B. Items marked “NOT USED” were, by agreement of the parties, not used for Testimony, nor as reference, therefore not used by the H.O. in reaching a Decision in this case.**

### **TRAVEL OF THE CASE**

A request for a Due Process Hearing in this matter was filed on October 30, 2012 by Attorney Carroll, on behalf of the South Kingstown School District in accordance with 34 CFR and 307.507-515 of the RI Board of Regents for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities (July 1,

2010). This request was received at the RI Department of Education on October 31, 2012 and this Hearing Officer was appointed on November 5, 2012. by J. David Sienko, Director of the Office of Student, Community and Academic Supports.

A pre-Hearing Conference was scheduled by the Hearing Officer, for Monday, November 12, 2012. There was no Resolution Period required in this case.

On November 15, 2012, Attorney Carroll (for the District), submitted a Motion for an Extension of Time, which was objected to by the Attorney Barrington (for the Parent) for the reasons given.

Attorney Carroll resubmitted the Motion for an Extension of Time on November 17, 2012, for the reason that she would be out of state during the period of time when the Hearing in this matter would be held, and was "court excused". The request was granted, and the date for a Decision in this case, was advanced to January 15, 2013.

Hearing meetings were scheduled and held on December 13, 2012, December 14, 2012, December 17, 2012 and December 20, 2012.

On November 27, 2012, the Hearing Officer received a Motion from Attorney Barrington (for the Parent), to clarify and/or revise the issues for this Hearing. Attorney Carroll for the District, objected to this motion, and was unwilling to amend the complaint. The motion was denied under RI Regulations, 300.508 (d) (3) (i)(ii) forthwith.

On December 3, 2012, Attorney Jon Anderson representing the Wolf School, which the

Student attends, wrote to object to eight of the staff at the school, being subpoenaed as third-party witnesses to testify on December 20<sup>th</sup>. Inasmuch as this is a very small private school, this would cause a disruption, whereby the school would have to close

that day, as a result. Additionally, Attorney Carroll indicated that she would be requiring the testimony of five of the same witnesses. The location of the Hearings had been established to take place in the South Kingstown School District, a distance of approximately 35 miles from the Wolf School. A conference call ensued among the parties, and it was agreed that the Wolf School witnesses would give testimony at the Wolf School, on the December 17<sup>th</sup> and 20<sup>th</sup> dates, to which they could accommodate, and that the remaining Hearing meetings would take place at the South Kingstown location.

On December 5, 2012, Attorney Carroll submitted a Motion to Request that Relief Sought be Granted, i.e., that the Parent's request for further evaluations be denied, citing an April 12, 2012 Settlement Agreement for a previous Due Process Hearing brought by the Parent, claiming the issue of evaluations had previously been addressed and settled. This motion was denied by the Hearing Officer.

On December 11, 2012, Attorney Barrington for the Parent, submitted two motions to the Hearing Officer: Motion to Prohibit the Petitioner from Introducing Evidence at Hearing; and Motion to Dismiss. Both motions were predicated on procedural violations,, both of which took place prior to the start of this Hearing.. These motions reached the Hearing Officer two days prior to the first Hearing Date. Both motions were denied by the Hearing Officer on December 24, 2012, there being no time for an immediate response.

On December 11, 2012, the Hearing Officer also received the Parent's Objection to the Motion for Relief Sought, brought by the Petitioner, Attorney Carroll. Since the Motion brought by Attorney Carroll had already been denied, there was no further action (on the objection) taken by the Hearing Officer.

Hearing meetings were held on December 13<sup>th</sup> and 14<sup>th</sup> within the District, and on December 17<sup>th</sup> and December 20<sup>th</sup> at the Wolf School.

On December 20, 2012, Attorney Carroll submitted a Motion for Extension of Time for a due date for the Decision, from January 15, 2013 to January 25, 2013. The request

cited multiple holidays falling within the time frame, and the unavailability of transcripts prior to December 28, 2012, thereby not allowing adequate time for closing arguments. Attorney Barrington objected to the motion. The motion was granted on December 20, 2012, and the Due Date for the Decision was moved ahead by 15 days to January 25, 2013.

January 12, 2013 was the date set by the Hearing Officer for briefs to be filed for closing arguments.

**POSITION OF THE PARTIES**

**THE PETITIONER (THE DISTRICT):**

The Petitioner's principal argument is that it (the District) maintains that it settled its dispute with the Parent relative to providing additional evaluations (both Independent and comprehensive others) as a party to a Settlement Agreement signed on April 18, 2012. The Settlement Agreement was the result of a Due Process Request filed by the Parent in February, 2012. With the signing of the Settlement Agreement, that Hearing was dismissed. The Parent, in that Due Process complaint, requested separate independent evaluations in: assistive technology; speech and language; occupational therapy; reading; and math (Ex. P-1). Additionally, the Parent requested at that time, two comprehensive evaluations: achievement and cognitive.

The Settlement Agreement of April 18, 2012 included an agreement by the District to expeditiously complete educational, cognitive, speech and language and occupational therapy evaluations of the Student, without which the Student could not begin a new placement at the Wolf School. (Id.). These evaluations were completed in the time frame promised, so that application for a diagnostic placement at the Wolf School, could proceed. These were the only evaluations for which there was agreement of both parties (Parent and District), said evaluations being the subject of the instant Hearing, as to their appropriateness..

The District maintains that its evaluations completed in April 2012, are appropriate for the purpose for which they were performed (SK Memorandum of Law, pp. 13-14), i.e., to provide the Wolf School with baseline data in the areas they required, in order to complete the application process for the Student to be placed there. The District further maintains that no further assessment is needed at this time, relying on the testimony of the Student's current teachers in the areas of: math, science, reading, writing, speech and language, social studies, occupational therapy, as well as the Admissions Director, who supervises the Speech and Language Pathologists (SK Memorandum of Law, p.13 and Tr., Vol. III, p.41; p.57, Tr., Vol. IV, pp. 22, 28).

THE RESPONDENT (THE PARENT):

The Respondent (Parent) maintains that the evaluations completed by the District in April 2012, were wholly inadequate, not comprehensive, conducted in ways that were procedurally incorrect according to the *RI Regulations*, do not conclusively pinpoint the Student's disabilities, particularly in the areas of reading, writing, spelling, math, language functioning, behavior, physical ability, and sensory functioning (Respondent's Closing Brief, p.8, Ex.R-29). Further, the Parent believes ("knows...") that the Student has a specific learning disability (Dyslexia, Agraphia) from her research, and from the behaviors that he displays at home (Tr. Vol.I, pp. 50 and 51,1-1) and believes that a comprehensive psychoneurological exam will answer the question of whether the Student has a learning disability (Vol.I, p.50, 21-25). The Parent further claims that the April, 2012 evaluations were not appropriate because the Student was in a "highly exasperated, anxious and traumatized state" at the time when they were administered (Tr., Vol.I, pp.41-42).

The Parent claims that she has been expressing her concerns to the District since the Student began attending the District in the second half of the 2010-2011 school year, when his attendance and program participation steadily declined (Respondent's Closing Arguments and Brief, p.2). The Parent further maintains that her concerns were not considered, with respect to the Student's program developed at the Wolf School, which was based on the evaluations done by the District in April, 2012, said concerns being expressed prior to, and since April, 2012 (Id., p.10).

The Parent claims that the District's evaluations in April, 2012 did not produce valid or reliable outcomes, because they were not conducted in a way, nor for the purpose intended by the publisher(s), i.e., the Educational, the Speech and Language and Occupational Therapy evaluations (Id., p. 4,10). The Parent also questions the validity of the Psychological evaluation conducted in April, 2012, based on the interpretation given by her Expert Witness (Vol. IV, p.85, p.86, 1-2; Respondent's Closing Brief, p. 10). The Parent further maintains that when her concerns/inputs were not considered,

she was prevented from having the opportunity to meaningfully participate in the IEP process for the Student (Respondent's Closing Brief, p.10).

In addition to the procedural violations that purportedly took place during the course of the District's evaluations in April, 2012 already mentioned, the Parent questions the qualifications of the Occupational Therapist, as she believes that this evaluator was not trained, nor knowledgeable in the area of sensory integration, which is a violation of *RI Regulations* 300.304 (c)(1)(iv) (Id., p. 11).

The Parent complains that the reports of the April, 2012 evaluations were not provided to her until August, 2012, nor were they discussed with her, nor the IEP Team at the Wolf School until October 9, 2012, without any of the evaluators from April, 2012 in attendance, precluding the possibility of posing questions about the April evaluations (Id, p.12).

In conclusion, the Parent feels that she *must* know the Student's current educational needs and strengths, i.e., more comprehensive information, administered by highly qualified professionals in order to meaningfully participate in making educational decisions, which can only occur if the Student receives further evaluations in the areas requested, and conducted by highly qualified, trained individuals in the areas in question (P-1, p.6). The Respondent (Parent) therefore, requests that this Hearing Officer find the evaluations of April, 2012 inappropriate and affirm that independent evaluations be administered as follows: educational achievement, psychological, speech and language and occupational therapy (Respondent's Closing Brief, p.16), as well as an independent Functional Behavior Assessment (Id., p.16).

**FINDING OF FACTS:**

The Student is thirteen years-seven months old, born June 28, 1999, residing in South Kingstown, RI with his mother. He was found eligible as a child with a disability in April, 2010, after having moved from North Kingstown to South Kingstown, (Ex. R-13). While living in North Kingstown, the Student was referred to Bradley Hospital by the North Kingstown School District, for a 45-day Diagnostic Placement, due to severe difficulties he was experiencing making the transition from home to school each day (Ex. R-10), which, according to the Parent, has been a problem since Pre-School (Ex. R-8). The Student repeated third grade, because of social and academic reasons, according to the mother, who also reported emotional, behavioral and social difficulties at home (Id.).

While at Bradley, the Student received a multidisciplinary review and evaluation. The Student's school record was reviewed, as well as his medical history, which included medication prescribed by his Psychiatric care-giver at the NeuroDevelopment Center. He received a Psychological evaluation, which included anxiety testing, as well as for Autism Spectrum Disorder and Psychoeducational testing. Their testing placed the Student well below the cutoff score for an Autism Spectrum Disorder. Additionally, the Student displayed many strengths academically, but also difficulties with reading and written language. The Student made a great deal of progress within the self-contained, behaviorally managed structured setting at Bradley, and was able to be discharged to his new school district (South Kingstown), where an IEP meeting was scheduled for November 2, 2009 (R-10).

Bradley's diagnostic impression was not one that included Autism Spectrum Disorder. Rather, they indicate that the results have been mixed on testing. While parent reports indicate a range of difficulties that imply the presence of an Autism Spectrum Disorder, reports from other sources (teachers at school, both at Bradley and North Kingstown and the NeuroDevelopmental Center) did not indicate difficulties in the same areas.



There was a suggestion that the Student's performance on the ADOS (Autism Diagnostic Observation Schedule) Report did not address anxiety, which may have influenced his scores on that evaluation, with the possibility that the outcome may not truly represent an underlying Autism Spectrum Disorder. In short, the Bradley staff did not feel there was enough evidence to warrant a diagnosis of Autism Spectrum Disorder. The Bradley Diagnoses therefore, were: Anxiety Disorder NOS, Disruptive Behavior Disorder NOS, Parent-Child Relational Problem, Psychosocial and Environmental Problems: Educational Problems. A number of recommendations were made for school placement, medication management, and parental therapeutic services. South Kingstown would address the educational issues at the November IEP conference (Ex. R-10).

On November 4, 2009, the Student received a comprehensive psychological evaluation from Dr. Lawrence Hirshberg, Director of the NeuroDevelopmental Center, preceded in March 2009, by a Psychological Evaluation administered by Dr. McGrath and Dr. Hirshberg (Ex. R-7), which is when the Student was given the ADOS evaluation. According to the testing done by Dr. Hirshberg and Dr. McGrath, it was felt that their measures indicated the Student's scores fell well within the range for an Autism Spectrum Disorder, although they did indicate..." it was difficult to draw a firm conclusion, given the discrepancy of reports between home and school.." (Ex. R-11). Numerous recommendations were made, to deal with the Student's behavioral and social problems. Other recommendations included: speech and language therapy in a small group setting, incorporated with consultation of the Speech Language Therapist with the classroom teacher; an Occupational Therapy evaluation by a therapist with training and experience in sensory integration evaluation and treatment, because the Student exhibited a degree of sensory processing dysfunction on testing; team meetings and professional collaboration with the specialists providing services to the Student; and close collaboration with the Parents, perhaps using a daily notebook, so that strategies with the Student can be coordinated; and consultation with the Student's educational service providers so that they understand and know how to work with children who have an Autism Spectrum Disorder. The Parents were also recommended to obtain family therapy and group therapy (Ex. R-11, pp.11-12).

On February 9, 2012, the Parent provided a chart detailing her concerns and proposed actions to be taken by the District, which included comprehensive achievement and cognition evaluations and a functional behavior assessment. Also included on the list were independent evaluations in assistive technology, speech and language, occupational therapy and reading, as well as an update of Dr. Hirshberg's neuropsychological evaluation (R-11), which would also be done independently. The training and experience of the evaluators were stipulated in this request. Numerous other actions to be taken by the District were stated, which were not specific evaluations (R-37).

On February 12, 2012, the Parent's concerns were presented and discussed at an IEP Team meeting called specifically for this purpose, and the Team members, including the Parent and Ms Eagan. There was agreement to implement the Functional Behavior Assessment and all the other assessments requested, however, the professionals at the meeting thought an Assistive Technology assessment should be done after the Occupational Therapy evaluation. Of major concern, was the Student's resistance to attend school, although it was reported that he does not exhibit anxiety or non-compliance once he is in school. However, his attendance was poor. There was also a discussion and offer to provide home instruction if the Student is unable to come to school, although the staff would be working to help him make the transition from the bus into the school building, through the implementation of a Behavior Intervention Plan, following the Functional Behavior Assessment. It was noted that the Student was due for a 3-year Re-evaluation. Another IEP Team meeting was scheduled for March 9, 2012 (R-38).

The Functional Behavior Assessment Report of February 13, 2012, utilizing data that had been collected by staff over a period of time (R-38), resulted in a Behavior Intervention Plan that was to be reviewed on April 5, 2012 (R-41).

The Parent filed a Due Process Complaint on February 17, 2012, in which a comprehensive achievement and cognitive evaluations, as well as independent

assistive technology, speech and language, occupational therapy, reading and math evaluations were requested (P-1). The complaint centered around the Student's placement, overall, being a complaint about the denial of a FAPE for the Student.

No Hearing took place inasmuch as there was a Settlement Agreement reached, in which it was agreed that the District would specifically and expeditiously conduct an educational, cognitive, speech and language and occupational therapy evaluations, in order to satisfy the requirement of the Wolf School for a placement there (Ex. P-2).

In compliance with the aforementioned Settlement Agreement, a Psychological Evaluation was conducted on April 2, 2012 and April 10, 2012, by Dr. Paul Trickett, Psy.D. a RI Certified School Psychologist. Dr Trickett administered the WISC-IV, Bender Visual Motor Gestalt and Bender Gestalt II to the Student. He reported that the Student was reluctant to enter the examining room and initially was unintelligible and monosyllabic, and would not proceed without the Parent in the testing room. Dr. Trickett made note in his report, that he accommodated to the Student, that he eventually established enough rapport to proceed with the testing, and that the Student was compliant with most of the examiner's requests. His report indicates that, after a break, the Student returned briefly, but then displayed a mood change, and became oppositional, leaving the testing room without permission. Dr. Trickett decided to terminate the testing for that day, and resume at a second session, which was scheduled. During the second session, the Student related to the examiner more easily, and was compliant and cooperative for the remainder of the session. The examiner also reports that the Student began yawning and the yawns increased as the testing progressed. Again, Dr. Trickett accommodated the Student by allowing the Parent to remain in the testing room, which was noted in his report. After analyzing the results of the testing, Dr. Trickett reports that the Student's visual-motor integrative skills are within normal range, his auditory-verbal processing skills using language and linguistic concepts, were in the high average range his visual processing abilities were in the average range, his working memory ability fell in the average range and his processing speed also fell in the average range (Ex. P-4 and R-50).

On April 4, 2012, an Occupational Therapy Evaluation was conducted by Margot Izzi, OTR/L, the District's Licensed Occupational Therapist. She administered an informal Upper Body and Visual Assessment, an Informal Handwriting Assessment, the Sensory Profile School Companion Questionnaire, and the Bruininks-Oseretsky Test of Motor Proficiency (BOT-2). She reports that the Student refused to be evaluated unless his mother could be present. The examiner accommodated the student by allowing the Parent to sit beside the open door of the testing room, which is so noted.

The Student cooperated, but was nervous and conversed little, although he seemed to be more comfortable as the testing progressed. The examiner noted that the Student exhibited a slouched posture during paper/pencil tasks, and exerted less effort on the paper/pencil tasks of the motor-integration subtests of the BOT-2, as well as during the handwriting assignment. The examiner cautions that the results on the Student's output on these tasks should therefore be viewed with caution. The Student however, exhibited good effort on other subtests of the BOT-2. It was noted also, that the Student reacted negatively toward the timed subtests on the BOT-2, however, there are two trials given, and the Student scored higher on the second trial. It is noted that the Student participated throughout the testing session. The examiner reports results as follows: informal assessments showed the Student had normal range of motion, strength, muscle tone and intact ocular skills; that his inability to focus on the visual fields assessment was probably due to his behavior, but the examiner posits that this skill is intact; standardized testing on the BOT-2 displayed below average scores in the manual coordination composite of subtests, with the examiner noting that the Student appeared not be exerting his best effort; adequate and functional handwriting on the informal handwriting assessment, and he demonstrated an efficient pencil grasp; and the Student demonstrated "typical" sensory processing abilities on the standardized Sensory Profile School Companion Questionnaire (P-8 , R-49).

The Educational Evaluation was administered by Kate Preil, a RI certified Special Educator (Tr., Vol. II, p.24) on April 10, 2012 and April 13, 2012. She reports that the Student was visibly anxious from the start, and that he had just completed the Psychological evaluation about 15 minutes prior. This examiner accommodated to the Student by allowing the Parent to sit outside the door of the testing room. About halfway through the first subtest, the Student requested a break, and without permission, left the

building. The examiner describes the difficulty encountered in getting the Student to return to the testing room. With the Parent's assistance, the Student did return, but would only do so, carrying his dog, which he placed in his lap. The examiner permitted the Student to do this, and attempted to get the Student to complete more testing. The Student completed one more subtest, and then exited the building again, refusing to return. The examiner ended the session for the day, at that point. For the second session, the examiner reports that the Student was more visibly anxious than for the previous session, and also seemed agitated. An accommodation was again made by the examiner, for the Parent to stay nearby (Tr., Vol. II, p.31, 16-25). The examiner then began to administer a writing subtest, but the Student became upset. The examiner left the room for a few moments to give the Student a chance to calm. When she returned, the Parent suggested trying a math subtest, because she said... "the writing is difficult for him." (Tr., Vol. II, p.32, 8-12), so the examiner did begin administering a math subtest for numerical operations, whereupon the Student again became very upset. The examiner exited the room and waited, hearing shouting, as the Student protested taking the test. The noise was so noticeable, that other staff asked if the examiner needed assistance. No further attempts were made that day, or any other day, to continue the evaluation, as the examiner was concerned that it was too stressful for the Student, especially in view of the fact that he had other evaluations scheduled (Tr., Vol. II, p.33, 11-25; p.34, 1). The examiner further stated during testimony, she conferred with Ms Eagan, and they thought there was enough information from recent curriculum-based testing, which would be added to the baseline measures that would be obtained by the Wolf School staff, at which the Student was to be placed (Id., p.34, 1-10). What was accomplished by this examiner, were two subtests on the WIAT-III, Reading Comprehension and Math Problem-Solving, on which the Student scored in the average range. The examiner noted that these scores may not be a true indication of the Student's current levels of functioning, due to the previously described behaviors (Ex. P-5; R-51).

A Speech and Language Evaluation was administered to the Student by Molly Flynn, CCC-SLP, on April 24, 2012. This examiner reports that the Student demonstrated mild anxiety separating from his mother when entering the testing room, however, he did enter without the Parent. The examiner reports that the Student initially demonstrated

poor eye contact, but became more comfortable in time, and eye contact was then adequate, as were his responses and comments during spontaneous conversation. She also reports that the Student was offered breaks as needed, but only took one, and was motivated to finish all the subtests without additional breaks. The tests that were administered were: Test of Language Development-Intermediate (TOLD-I:4) –all subtests, and the Clinical Evaluation of Language Fundamentals (CELF-4), the expressive language subtests. The results indicate that the Student's receptive and expressive language fall in the average range. Speech and Language services were not deemed necessary (P-6; R-52). The examiner did not know the Student prior to this evaluation (Tr., Vol. II, p.4, 7-19), nor did she review the Student's record prior to the testing, but she did speak to the Student's special education teacher, who made her aware of the Student's issues, particularly the separation anxiety, but Ms. Flynn indicated she had no difficulty getting the Student to go with her into the testing room, without the Parent (Id, p. 5, 6-25; p.6, 1-3).

The Parent sent a letter to Ms Eagan on October 22, 2012 with accompanying statement of concerns and actions that she wanted to propose at the October 9, 2012 IEP Meeting, specifically, to request independent evaluations, e.g., achievement, psychological, speech and language occupational therapy, and following the completion of those, independent evaluations, e.g., neuropsychological, psychiatric, reading, math, assistive technology, physical therapy, as well as special transportation. She complains that she was prevented from expressing her concerns at the IEP meeting, and was told she had to make her request in writing, which she indicated was a procedural violation of the Regulations. She asked that this letter be considered her written request (Ex. R-58).

A Team Meeting was held at the Wolf School at the request of the Parent, on November 13, 2012, prior to the conclusion of the 45 –day Diagnostic period that was agreed to, in the Settlement Agreement of April, 2012 (Tr., Vol. II, p.97, 4-22). It was stated that the purpose of the meeting was to determine the Student's eligibility for the Wolf School program. All of the Student's records were reviewed, and the Parent had an opportunity to express her concerns about the content of the IEP. The Team indicated that they didn't observe any problems in the areas of concern expressed by the Parent, and that

the Student was receiving the services he needed. They also indicated that they did not feel any further evaluations were needed at this time (Ex. R-59).

### **DECISION**

There are two issues in this case, both of which deal with evaluations: Independent and additional evaluations that may be needed, arising from a Settlement Agreement from a Due Process Hearing just previous to this one, The Parent disagrees with the District's evaluations that were completed following the Settlement Agreement, and is exercising her right under *RI Regulations 300.502 (b)(1)* by requesting an Independent Evaluation. The District filed this Due Process complaint under *RI Regulations 300.502 (b)(2)(i)* to show that its evaluation is appropriate.. The District has the burden of persuasion in this case (Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 44 IDELR 150 (2005)). Ms Barrington, Attorney for the Parent, has sought, from the outset, to widen the issues, and barring that, sought dismissal of this case based on procedural violations of the *Regulations*, committed by the District. Ms Barrington submitted three motions, which if granted, would have effectively caused this case to be dismissed. Those motions and the Hearing Officer's rulings are part of the record of this Hearing These motions were denied. However, throughout the Hearing, Ms Barrington persistently attempted to go beyond the issues during questioning of witnesses. Although many of the concerns that Ms Barrington attempted to question witnesses about, are referenced in sections of this Decision, this Hearing Officer will rule only on the issues established for this case.

Issue #1: Are the Present Evaluations conducted by the District in May 2012 appropriate?

The District conducted four evaluations: a Psychological, an Occupational Therapy, an Educational and a Speech and Language evaluation. Each will be discussed separately. These evaluations were to be provided to the Wolf School, where the Student was to be placed, and were needed to complete the application process, although the Student was due for a 3-Year Re-evaluation, anyway. The RI Regulations, 300.303 (a) and

300.304 (b)(1)(2)(3)(c)(iii)(v)(6) apply to these evaluations, even though the Wolf School may have required them only to establish baseline data on the Student, and even though it was necessary to complete them quickly.

#### The Psychological Evaluation

The Student was highly anxious for this evaluation, as he was for all of them, but the examiner reported that he was able to establish rapport, and complete his evaluation. The examiner, highly trained, qualified and certified by the State, conducted the evaluation utilizing three separate standardized instruments. His report included an analysis of each test given, with the results indicated. The examiner had reviewed the Student's record, and was in fact, familiar with the Student. The examiner made an accommodation for the Student, by permitting the Parent to remain in the room, as the Student would not cooperate, otherwise. The American Psychological Association standards indicate that accommodations may include altering the test setting, among other modifications, and still yield valid results. The accommodations must be appropriately documented and accounted for in the interpretation of the assessment results. The examiner did do this. Relative to the "rapport", the Parent's Expert Witness, Dr. Steven Imber, who was hired by the Parent to review and advise her about the evaluations that were done, refuted the examiner's remark, indicating that the Parent told him she was there the entire time, and the rapport was...."far from good"...(Tr. Vol. IV, p.85, 5-25), even questioning the ethics of the examiner by reporting as he had, and also questioning the validity of the results if they were really poor (Id, p.86, 1-3). Although Dr. Imber's credentials are very impressive, his remarks were based solely on the Parent's information, which was not borne out in her testimony as a witness, and which this Hearing Officer can only regard as hearsay, therefore not finding it credible. Further, Dr. Imber does not know the student, did not observe him, and did not speak to any of his teachers, nor the examiners that conducted this evaluation.

**Having complied with the procedures indicated in the *Regulations (cited)*, this Hearing Officer finds this evaluation to be appropriate.**



The Occupational Therapy Evaluation

This evaluation was conducted by a qualified, licensed and experienced Occupational Therapist. She indicated that the Student had been tested once before in another building, but refused to be evaluated in the testing room assigned this time, unless his mother could be present. The examiner accommodated to the Student, and this was so noted in her report. The examiner indicated also, that the Student's demeanor throughout the testing was intense (Tr., Vol. I, p.126, 9-11). although he became more comfortable as the testing progressed. She administered some informal tests for assessing upper body and visual skills, as well as a handwriting assessment. She also administered a fine manual control composite and a manual coordination composite, which covers a broad array of fine and gross motor skills, which are subtests of the Bruininks-Oretsky Test of Motor Proficiency (BOT-2). The BOT-2 is the most widely used standardized test for motor proficiency. Additionally, the examiner administered an informal handwriting test. Sensory processing information was obtained from the standardized Sensory Profile School Questionnaire, which in this instance, was completed by the Student's teacher. The examiner felt it was most important to obtain information on how the Student performs certain tasks in the school setting, and that the Parent Questionnaire in this area, is not typically used with children of the Student's age. This questionnaire indicated that the Student demonstrates "typical" sensory processing abilities, but "typical" is not defined. The examiner noted that the Student demonstrated atypical behavior and felt that he did not exert his best effort on some of the tests, and the examiner felt the results should be viewed with caution (Ex. P-5).

It is not clear whether the examiner had reviewed the Student's records prior to the evaluation, and she was unaware of the Parent's concerns about the Student's sensory functioning. Ms Barrington, the Parent's attorney stated that she did not believe this examiner administered the BOT-2 instrument according to the producer's instructions (Respondent's Closing Brief, p.4), however there was no evidence produced by Ms Barrington, to support her claim.

The Student spent one hour with the examiner and completed all the tests given him. Still, this Hearing Officer does not feel that the evaluation was sufficiently comprehensive to identify all of the Student's needs in this area, thereby not complying with 300.304 (c) (6) of the *Regulations*.

**The Hearing Officer finds this evaluation NOT to be appropriate.**

The Educational Evaluation

The Educational Evaluation was administered by the Student's Special Education Teacher, at the school he previously attended. She is RI Certified, experienced and has conducted numerous educational evaluations during her tenure in the District.

The examiner reported that it was a struggle to enlist the cooperation of the Student to be tested. He was in a state of high anxiety, and insisted that his mother had to be nearby, although he was able to separate from her at the onset of the testing. The Parent sat outside the door of the testing room, which was noted in the examiner's report as an accommodation to the Student, in an effort to calm him. After completing only one subtest on the WIAT-III, the Student bolted, and refused to return. He did eventually come back with the Parent's prompting, but his behavior was out of control. He left the building again, this time refusing to return. The session was ended, and another session was rescheduled for a few days later. The second session was as bad as the first, and the examiner was unable to complete her testing. She was able to complete two subtests: reading comprehension and math problem solving, on which he scored in the average range. This examiner made a valiant effort to move forward to assess the Student, but her effort failed.

After consulting with Ms Eagan, the examiner's supervisor and Special Education Director, it was decided that no additional testing would be attempted with the Student. Instead they would rely on curriculum-based testing done recently, and whatever would be done in the new placement at the Wolf School (Tr., Vol. II, p. 34, 1-10).

**This attempted evaluation was incomplete, and is found to be not appropriate..**

### The Speech and Language Evaluation

This evaluation was administered by the Speech and Language Therapist, who is highly qualified, certified in RI as a Speech and Language Therapist, and holds national accreditation through the American Speech and Hearing Association (ASHA). She did not know the Student, but visited with his Special Education teacher for information.

She noted that the Student demonstrated mild anxiety upon separating from his mother when entering the testing room. He soon became more comfortable and was motivated to complete all the subtests before the testing session ended. The examiner administered The Test of Language Development-Intermediate, 4<sup>th</sup> Edition (TOLD-4). This is a standardized instrument that measures oral language proficiency, listening and organizing abilities, the combination of which represents spoken language. She also administered two subtests of the Clinical Evaluation of Language Fundamentals

CELF-4), a standardized instrument that measures receptive and expressive language. The Student 's scores fell in the average range for receptive and expressive language, but demonstrated a slight weakness during word ordering tasks, and exceptional abilities with vocabulary tasks. Overall, his scores fell in the average range when compared to peers of his chronological age. The Parent stated that there was no assessment done in written expression (Respondent's Closing Brief, p.4) which is one of the Parent's concerns, but Speech and Language Pathologists don't typically include those measures in their assessments. Again, Ms Barrington indicates that the Parent asserts that the CELF-4 was not administered according to the producer's instructions (Responder's Closing Arguments and Brief, p. 4), but did not produce any evidence evidence to support this claim.

**This evaluation provided useful information and met the requirements of 300.304 of the Regulations, therefore this evaluation was found to be appropriate.**

In reaching the decisions for this issue, this Hearing Officer was guided by the purposes of completing an evaluation, as described in, and required by the *RI Regulations*, i.e., to gather relevant functional, developmental and academic information, including

information provided by the parent, that may assist in determining whether the child is a child with a disability and to determine the child's educational needs (*Regulations: 300.301-300.305*).

Issue #2: Are any further evaluations needed at this time?

To respond to this question, this Hearing Officer believes that she must consider the history of this case, the parent's concerns, what the teachers and other professionals working with the Student on a daily basis, say, and the appropriateness of the most current evaluations, i.e., whether they are compliant with the Regulations---in other words, the big picture. The Parent has been requesting independent evaluations for some time, requests that have been considered, but with no agreement to do them. There was a discussion about obtaining a psychoneurological evaluation apparently, which was rejected in the Settlement Agreement (Ex. P-2). Taking everything into consideration, this Hearing Officer believes the Parent has some legitimate concerns.

**This Hearing Officer believes that further evaluation is needed** and orders a comprehensive psychoeducational evaluation, which should include assessments in reading, writing, math, sensory difficulty, written language, executive function, behavior, independent functioning, difficulty with balance and gross motor skills, and assistive technology if deemed necessary by any of the aforementioned assessment. These assessments should be completed by individuals who are trained and knowledgeable in working with children, like this Student, who have dual diagnoses of emotional disturbance and an autism spectrum disorder.

**So Ordered.**

Addendum: Much has been said during the course of this Hearing, about independent evaluations, and how they should be requested. In the instant case, the District utilizes a policy that such requests must be made in writing. However, OSEP's Letter to Anonymous (110 LRP 522283, 1/4/10) indicates there is no requirement in the Regulations that a parent notify the public agency in writing or at an IEP meeting that s/he will be requesting or requests an independent evaluation (IEE) at public expense.

I, the undersigned Hearing Officer, hereby certify that on January 25, 2013, I mailed a true and accurate copy of the Decision in the case of South Kingstown School District v XXX, #LL-12-39 to:

Mary Ann Carroll, Esq.  
Brennan, Recupero, Cascione, Scungio & McAllister, LLP  
Attorneys at Law  
362 Broadway  
Providence, RI 02909

Teresa Eagan  
Director of Pupil Personnel Services  
South Kingstown School District  
307 Curtis Corner Road  
Wakefield, RI 02879

Christine H. Barrington, Esq. (BY EXPRESS MAIL)  
429 Campbell Avenue  
West Haven, CT 06516

Parent  
Address:

J. David Sienko, Director  
c/o Sally Arsenault, Educational Specialist  
Office of Student, Community and Academic Supports  
RI Department of Education  
255 Westminster Street, Ste. 500  
Providence, RI 02903-3400

---

Gloria S. Feibish  
Hearing Officer