

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

Pennsylvania

## Special Education Hearing Officer

### FINAL DECISION AND ORDER

Student's Name: K.B.

Date of Birth: [redacted]

ODR No. 14800-1314KE

### CLOSED HEARING

Parties to the Hearing:

Abington School District  
970 Highland Avenue  
Abington, PA 19001

Parent[s]

Representative:

Claudia Huot, Esquire  
Blue Bell Executive Campus  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422

*Pro se*

Dates of Hearing: April 28, 2014

Record Closed: April 28, 2014

Date of Decision: May 12, 2014

Hearing Officer: Brian Jason Ford

## **Introduction**

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* [The] (Parents) are the parents of [the] Student. The Parents and the Student reside within the Abington School District (District), and the District is the Student's local educational agency (LEA). Both the Parents and the District agree that the Student is IDEA-eligible, meaning that the Student has disabilities that are recognized by the IDEA, and by reason thereof, requires special education.

The IDEA recognizes 13 disabilities or categories of disabilities. Historically, the Student has met eligibility criteria under several categories, including the category of speech or language (S/L) impairment. According to a recent reevaluation report (RR) conducted by the District, the Student no longer satisfies the criteria for that category. Consequently, the District recommended the discontinuation of the Student's S/L therapy. The Parents disagreed with both the conclusion in the RR about Student's S/L needs, and the recommendation to discontinue S/L therapy.

After receiving the District's RR and program recommendation, the Parents requested an independent educational evaluation (IEE) at the District's expense. The District denied that request and, as required by law, requested this hearing to defend its RR. In its due process complaint (Complaint), the District asks me to find both that its RR is appropriate and that it may discontinue the Student's S/L therapy. The District agrees, however, that the Student remains IDEA-eligible under other categories. Parents argue that the District reached an inaccurate conclusion about the Student's S/L needs, and ask me to order the District to fund an IEE, and to maintain the Student's S/L therapy.

## **Issues**

1. Was the District's most recent RR appropriate?
2. May the District discontinue the Student's S/L therapy?

## **Findings of Fact**

1. The Student started the 2011-12 school year with an IEP dated June 9, 2011. S-4.
2. The June 2011 IEP included a summary of prior S/L testing and a recommendation that S/L therapy "should focus on improving word retrieval skills in the area of retelling, comprehension and vocabulary (antonyms, synonyms) as well as requesting and providing relevant information." S-4 at 8.
3. The June 2011 IEP included three goals. Two of those goals were S/L goals targeting word retrieval and the ability to distinguish between relevant and irrelevant information. The third goal targeted reading comprehension. S-4 at 11.
4. The June 2011 IEP provided one half hour S/L therapy session per week. The session was designated as a small group session (up to four sessions) but was

often smaller and the Student often received the therapy one-to-one (1:1 or as an individual session).

5. The same person provided the Student's S/L therapy since the 2011-12 school year (the S/L therapist). That person is licensed and certified to provide S/L therapy, and is also a certified teacher in Pennsylvania. NT at 28-31. This person is also qualified to conduct S/L assessments. *Id.*
6. The S/L therapist took progress notes during the 2011-12 school year. These notes indicate the Student's abilities based on informal but objective measures during therapy sessions.
7. The 2011-12 S/L therapy notes indicate significant progress in the assessed areas overall, although the Student would occasionally perform poorly on isolated days. See S-6.
8. During the 2011-12 school year, the Student was placed in regular education classes (albeit sometimes at a remedial level) for all classes except for Reading and English. For Reading and English, the Student was placed in a special education class called Communication Arts. There, the Student received a research-based remedial reading program. S-6.
9. The Student's IEP team reconvened on May 23, 2012. S-7.
10. The resulting IEP, also dated May 23, 2012, noted that the Student was IDEA-eligible under the category of Specific Learning Disability (SLD) as a result of the Student's reading disability. S-7.
11. The present educational levels section of the May 2012 IEP include an updated description of the S/L therapy that the Student had been receiving. At that time, the Student was seen 1:1 as a result of scheduling. S-7. The S/L therapist noted significant progress in the Student's ability to complete tasks involving vocabulary or inferencing, if the Student was given "minimal cues/support." *Id.*
12. At the same time, the S/L therapist noted that the Student did not do as well "on [Student's] own" – meaning without cues – and recommended continued S/L therapy to develop the Student's independent use of strategies for problem solving and word finding.
13. The May 2012 IEP included two goals. One goal was a reading comprehension goal connected to the reading program used in the Communication Arts class. The other goal was a S/L goal. The S/L goal was as follows: "[Student] will join in speech support once monthly to review strategies for word finding, and [Student] will maintain at least a 75% average on all tests/quizzes in English/Reading classes." S-7 at 18.

14. Despite the language of the S/L goal in the May 2012 IEP, the same IEP placed the Student in the special education Communication Arts class instead of regular education Reading and English classes. S-7 at 22. The IEP also called for one, 20 minute S/L therapy session per week, not per month. S-7 at 20. The IEP did not specify whether the S/L sessions were to be group or individual.
15. The S/L therapist took progress notes during the 2012-13 school year. These notes indicate that the Student received S/L therapy weekly. As with the notes from the 2011-12 school year, these notes indicate significant progress. The Student scored perfectly on whatever task was assigned in many of the sessions, and performed very well overall. S-10
16. As the end of the 2012-13 school year approached, the Student was due for a three-year reevaluation. Based on conversations with District personnel, the Parents initially indicated that they would waive the reevaluation. Shortly thereafter, the Parents became concerned that the District was going to propose the discontinuation of S/L therapy. Consequently, on April 28, 2013, the Parents wrote to the District saying that they wanted the reevaluation to go forward. S-12, P-3, P-5; NT *passim*.
17. After the Parents asked for the three-year reevaluation to go forward, but before the District completed the reevaluation, the IEP team met on May 2, 2013.
18. The S/L therapist provided updated present levels for the May 2, 2013 IEP. Therein, the S/L therapist explained that the Student would say "I don't know" if asked about how to use S/L strategies, but that the Student had objectively demonstrated mastery both on the S/L goal in the prior IEP, and on any S/L related task that the Student was asked to perform. S-17 at 10.
19. The May 2, 2013 IEP contains two goals that are best described as maintenance goals. One goal is a reading goal that calls for the Student to "demonstrate continued proficiency" in the general education curriculum in areas that require reading. The other goal is a S/L goal, which reads: "[Student] will maintain an overall average of 85% or better in [Student's] English class, and a 80% or better in Science and Social Studies classes. Baseline: >90% acc. in READ 180, >89% in Science, >74% in Social Studies." S-17 at 13.
20. The May 2, 2013 IEP removed S/L therapy provided to the Student, but added S/L consultative support as a related service. This was intended to allow the S/L therapist to monitor the Student's progress, even without providing therapy to the Student. S-17 at 20, NT at 63-64.
21. On May 2, 2013, the District also issued a Permission to Reevaluate – Consent Form (PTRE). The Parents signed the form, providing consent, on the same day. S-14.

22. The District then conducted a reevaluation, culminating with the issuance of a RR on August 30, 2013. S-18.
23. The 2013 RR includes a summary of the Student's prior evaluations and diagnoses, including a historical diagnosis of attention deficit hyperactivity disorder (ADHD). The 2013 RR also includes a detailed summary of the Student's academic performance both in class and on standardized assessments.<sup>1</sup> S-18.
24. The 2013 RR includes input from the Student's teachers, as well as a structured observation from a school counselor. The observation recorded that the Student was consistently on-task. S-18.
25. The District assessed the Student's cognitive functioning and academic achievement using the Woodcock-Johnson, Third Edition (WJ-III) Normative Update Test of Cognitive Abilities and Academic Achievement Form B. The WJ-III scores generally indicate that the Student is of average intellectual ability, although some difficulty with long-term retrieval was noted. S-18.
26. The Student's average intellectual ability, as measured by the WJ-III, was consistent with the results of a Test of Non-verbal Intelligence, Third Edition (TONI-3) that was also given as part of the 2013 RR. S-18.
27. The WJ-III was also used to assess the Student in the areas of Math, Reading and Writing. Although the Student exhibited some variability in subtests in each of these categories, the Student tested in the average range for both Math and Writing, and the low average range in Reading. S-18.
28. The District assessed the Student's social and emotional functioning using the Behavior Assessment System for Children, Second Edition (BASC-2), the Behavior Rating Inventory of Executive Functioning (BRIEF), and a student interview. The BASC-2 and the BRIEF are both rating scales, and were completed by multiple raters including the Parents and Student. In sum, the Student and [Student's] parents reported more significant problems, particularly in areas relating to attention, than [Student's] teachers. S-18
29. The 2013 RR also included a S/L evaluation. Part of the S/L evaluation was conducted by the S/L therapist who was working with the Student. Another part was conducted by a different S/L therapist. S-18.

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<sup>1</sup> The Student took some standardized tests, like the PSSA with permissible accommodations. The Student's mother testified that some impermissible accommodations were also provided (e.g. reading to the student from the portion of the test that is supposed to assess the Student's reading ability). No evidence was presented to support this, and the Student did not confirm this in [Student's] own testimony.

30. As part of the S/L evaluation, the Student's vocabulary was assessed using the Peabody Picture Vocabulary Test, Fourth Edition (PPVT-4). The Student scored in the average range on this assessment. S-18 at 16.<sup>2</sup>
31. As part of the S/L evaluation, the Student's language skills were assessed using both the Comprehensive Assessment of Spoken Language (CASL) and the Word Test 2 (Adolescent). The Student scored in the average range on both of these assessments. S-18 at 16.
32. Based on the results of the 2013 RR, the District concluded that the Student continued to have a disability and continued to require specially designed instruction. S-18 at 17. In doing so, the District found that the Student met eligibility criteria as a student with a Specific Learning Disability resulting from a reading disability and Other Health Impairment (OHI) resulting from ADHD. S-18 at 17.
33. At the same time, the District also concluded that, "based on [Student's] performance over the years, along with the strong standard scores obtained during testing, it is apparent that [Student] no longer demonstrates impairment in [Student's] speech/language skills." S-18 at 17.
34. The Student's IEP team reconvened on September 26, 2013 with the Parents participating by phone. During this meeting, the District proposed an updated IEP. The updated IEP includes information from the 2013 RR. S-22 at 6.
35. The IEP of September 2013 includes one goal: "Given the general education curriculum in all content areas [Student] will demonstrate continued proficiency in the areas of reading as evidenced by proficient scores on assessments and assignments that require reading and writing. Baseline: Demonstrated proficiency on grade level reading and writing probes."
36. The IEP of September 2013 removes S/L therapy and S/L consultation.
37. During the September 2013 IEP meeting, the Parents expressed concern about the removal of S/L therapy. S-26 at 11.
38. The IEP team met again in October of 2013. S-26. The District proposed a slightly modified version of the September 2013 IEP at this meeting. The revisions include a note that the Parents expressed concern during the September 2013 meeting.
39. The September 2013 IEP and October 2013 IEP are identical in terms of their goal and the discontinuation of S/L therapy.

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<sup>2</sup> A typo suggests that the Student scored in the Low Average range. The Student's actual results are in the Average range.

40. On October 30, 2013, the District sent a Notice of Recommended Educational Placement (NOREP) proposing the termination of S/L therapy.<sup>3</sup> The Parents rejected that NOREP on November 14, 2013 and requested a due process hearing.<sup>4</sup>
41. On December 5, 2013, the Parents obtained a “Speech and Language School Age Evaluation” (Outside Report) from a private organization that conducts testing and provides therapy including S/L therapy. P-27.
42. The Outside Report includes a very brief summary of information provided by the Student’s mother, and three subtests of the CASL. A comparison of the District’s administration of the CASL and the results reported in the Outside Report is as follows:

Subtest	District RR (Scaled Score / Percentile Rank)	Outside Report (Scaled Score / Percentile Rank)
Antonyms	94/34	66/1
Synonyms	97/42	81/10
Grammaticality	94/34	80/9
Nonliteral Language	91/27	NOT ASSESSED
Meaning from Context	95/37	NOT ASSESSED
Pragmatics	106/66	NOT ASSESSED
CORE (total) Language Score	96/39	NOT PROVIDED

43. The total language score is a composite score based on the sub-tests of the CASL. The total language score cannot be derived without completion of the sub-tests.
44. The Students mother was present in the room with the Student during the testing for the Outside Report.

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<sup>3</sup> It does not appear that the District asked the Parents to approve the October 2013 IEP with this NOREP, but rather sought to continue the May 2012 IEP without S/L services. The parties agree that the May 2012 IEP has been pendent through these proceedings. Further, the District does not ask me to find that the October 2013 IEP is appropriate. Rather, the District only asks me to consider whether it may discontinue S/L services. In essence, therefore, the District is asking me to approve the October 2013 NOREP over parental objection.

<sup>4</sup> It is not clear that the Parents ever actually filed a due process complaint with the Office for Dispute Resolution. No such complaint is before me. The record indicates that the District continued the May 2012 IEP, including S/L therapy, at all times.

45. Based on the information provided by the Student's mother and the three sub-tests of the CASL, the Outside Report concludes that the Student meets diagnostic criteria for a Receptive/Expressive Language Disorder. P-27.
46. The Outside Report recommends that the Student should receive outpatient speech therapy two times per week for 12 weeks. P-27.
47. The Parents have obtained outpatient S/L therapy from the same organization that prepared the Outside Report. Both the Student's mother and the Student testified that this therapy has been helpful.
48. On February 14, 2014, the Parents obtained a private Audiological Report. Although no testimony was provided to explain the audiological tests or their results, the report concludes that the Student performed poorly on tasks that required the Student to remember a sequence of auditory information. P-53. In the absence of testimony, it appears that these results are consistent with some subtests in the 2013 RR, which indicate that the Student may have long-term memory difficulties.
49. Strikingly, the Audiological Report makes no diagnosis. Rather, the results of testing are reported, along with recommendations. One such recommendation is: "Continued speech and language therapy is recommended in order to evaluate auditory short term and auditory working memory difficulties, both relating to language function." P-53 at 4.
50. The Audiological Report was provided to the Parents on March 17, 2014.
51. The Student's mother testified, credibly, that the Parents complete much of the Student's homework and projects completed at home. I find that this has inflated the Student's grades to a degree, but has not altered the Student's performance on work completed in school.
52. On March 17, 2014, the District requested this hearing.
53. The record does not clearly indicate when the Parents requested an IEE at public expense.

## **Legal Principles**

### ***The Burden of Proof***

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High*



*Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the District is the party seeking relief and must bear the burden of persuasion.

### ***Speech or Language Impairment***

A speech or language impairment is defined by the IDEA's federal implementing regulations as follows:

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(11).

### ***Evaluation Requirements***

All evaluations have two overarching purposes. The first purpose of any evaluation is to generate information that can be used to determine whether a student is IDEA-eligible. 20 U.S.C. § 1414(b)(2)(A)(i). The second purpose of any evaluation is to generate information that can be used to determine a student's educational needs. 20 U.S.C. § 1414(b)(2)(A)(ii). This information is then used to develop a student's individualized educational program (IEP). *See id*, *see also* 20 U.S.C. § 1414(b)(3)(C).

To satisfy these purposes, LEAs must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent..." and must "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child." 20 U.S.C. § 1414(b)(2)(A), (B). Further, the assessment tools must be "technically sound." 20 U.S.C. § 1414(b)(2)(C), *see also* 20 U.S.C. § 1414(b)(3)(A).

During the evaluation process, LEAs must review existing data, and must determine if additional data is necessary to complete the evaluation. *See* 20 U.S.C. § 1414(c). If additional data is necessary, the LEA must obtain that data through additional evaluations. *See id*.

The IDEA requires not only parental consent for, but parental participation in the evaluation process. The IDEA recognizes that parents are an excellent source of information about their children, and have insight into their children's needs. LEAs must obtain and use parental input as part of the evaluation process. 20 U.S.C. § 1414, *passim*.

Although there is some vagueness in the IDEA, it is widely accepted that the foregoing requirements are the same for both initial evaluations and reevaluations.<sup>5</sup>

### ***Independent Educational Evaluation at Public Expense***

The IDEA's federal implementing regulations establish that parents have the right to obtain an IEE at public expense (paid for by their LEA) under certain circumstances. 34 C.F.R. § 300.502(b). First, parents must disagree with the LEA's evaluation. 34 C.F.R. § 300.502(b)(1). If parents disagree with the LEA's evaluation, they may request an IEE at public expense. *Id.* When the LEA receives such a request, it must either "[e]nsure that an independent educational evaluation is provided at public expense" or "[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

In sum, when LEAs deny parental requests for IEEs at public expense, they must request due process hearings and must prove that their own evaluation is appropriate. If the LEA proves that its own evaluation is appropriate, the LEA is not required to fund the IEE. If the LEA fails to prove that its own evaluation is appropriate, the LEA must fund the IEE. See 34 C.F.R. § 300.502(b)(2)-(3).

### **Discussion**

The District claims that the IDEA's evaluation requirements were satisfied. The Parents do not dispute this claim. The Parents all but stipulate that the RR satisfied the IDEA's requirements. No evidence (documentary or testimonial) suggests that the Parents have ever disputed the RR on the basis that requirements were not satisfied, and the Parents presented no argument in this regard. Although the District bears the burden of proof, the Student's mother's testimony, taken as a whole, indicates an agreement that the 2013 RR satisfied the IDEA's requirements.

In the absence of a dispute, I am hesitant to provide further analysis about whether the IDEA's evaluation requirements were met. I must acknowledge, however, that it would be exceptionally rare to resolve an IEE claim without making this determination. This acknowledgment compels me to simply note that, if this issue were properly before me, the evidence clearly supports a finding that all of the IDEA's evaluation requirements described above were satisfied.

Regardless of the IDEA's evaluation requirements, the Parents argue that the RR reaches an incorrect conclusion. The Parents do not dispute the way that the RR was developed; they only dispute its ultimate conclusion regarding S/L. The correctness of the RR's conclusions and recommendations is important. The District not only asks me to find that the RR is appropriate, but seeks an order permitting it to discontinue S/L

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<sup>5</sup> The IDEA establishes different procedural requirements for initial evaluations and reevaluations. The requirements described herein, however, apply to "evaluations".

therapy over the Parents' objection. The correctness of the RR is the basis for that demand.

In most IEE cases, particularly at the due process level, the question of whether a LEA's evaluation is appropriate is resolved by determining whether the evaluation satisfied the IDEA's requirements. In this case, however, I must determine if the RR is correct. Importantly, I am not deciding if there is a theoretical difference between an *appropriate* evaluation and a *correct* evaluation. Rather, I must determine if the RR is correct in order to resolve the issues presented.

The District's argument concerning the correctness of the RR starts with its adherence to IDEA requirements. There is no dispute that the District assessed all areas of suspected disability using technically sound instruments. The District's evaluators concluded that none of those tests indicate that the Student has a S/L impairment. Nothing on the record contradicts this analysis. As importantly, the Student's special education teacher and the S/L therapist who works directly with the Student concur with the conclusions in the RR. Both of these witnesses testified credibly that the Student does not present with S/L needs in school. The S/L therapist credibly testified as to the Student's S/L progress, the fact that the Student had met the S/L goal, and the absence of a need for further S/L goals.

The Parents attempted to counter this evidence with the Outside Report, testimony from the Student's mother, and the Student's own testimony. I will address the Outside Report first.

The Outside Report was obtained and paid for by the Parents. The report was generated by a private company that not only evaluates students, but also provides private S/L therapy. None of this taints the outside evaluation *per se*, but in this context I note that the Outside Report is not the IEE that the Parents are seeking. The Parents present no demand for reimbursement for either the Outside Report or the Audiological Evaluation. They are asking for a new IEE.

The Outside Report, however, is hearsay. The traditional definition of hearsay is an out-of-court statement introduced to prove the truth of the matter asserted therein. The report satisfies this definition because its author or authors did not testify. At the due process level, hearsay is admissible, but cannot be used to form the basis of my decision. This rule, and (candidly) deference to the Parents' *pro se* status, compel me to *not* reject the Outside Report offhand.

While I will consider the Outside Report, I find it unconvincing. On the Outside Report, the Student earned radically different scores on three CASL subtests as compared to the District's RR. Uncontested testimony from the District's S/L therapist suggests that the Student's mother's presence in the room during the evaluation was a violation of testing protocols. The District's S/L therapist did not explicitly say that the Mother's presence reduced the Student's scores. Rather, the uncontested testimony suggests that the violation of the testing protocols makes the results inherently suspect.

More compelling is S/L therapist's testimony which, taken as a whole, suggests that it is possible for a student who has mastered a skill to not exhibit that skill on any given testing day. The converse is not true. A student who has not mastered a skill, generally, will not spontaneously exhibit that skill during testing. In other words, a student who has mastered S/L skills may bomb a S/L test, but a student who has not mastered S/L skills cannot ace a S/L test. This is the only well-reasoned, credible explanation for the discrepancy between the District's testing and the outside testing that appears anywhere in the record – especially since the Student's mother testified that she does not question the validity of the District's test results. With no other explanation to turn to, I accept the only credible explanation that was presented to me: the Student simply underperformed on the outside testing, and the District's testing is a better indication of the Student's abilities.

Testimony from the Student's mother and from the Student present a much greater concern. The Parents believe that the Student has a central auditory processing disorder (CAPD). This belief is based both on the Outside Report and the Audiological Examination – although neither of those documents conclude that the Student has a CAPD – and on conversations with third parties who did not testify. The Parents believe that the Student's CAPD makes it difficult for the Student to understand and engage in class discussion, and contributes to the Student's reading comprehension deficit. The Parents further believe that S/L therapy is the type of therapy required to remediate the Student's CAPD.

For purposes of this decision, I will assume that the Student has a CAPD.<sup>6</sup> I will also assume that the Student has difficulties with reading comprehension and participating in class discussion. I will further ignore the District's otherwise compelling argument that CAPD is not recognized as a disability by the IDEA. Even with all of these assumptions and intentional ignorances, no compelling or preponderant evidence was presented to substantiate that the Student's difficulties are a result of CAPD. Similarly, no compelling or preponderant evidence suggests that the Student's difficulties must be addressed under the umbrella of S/L therapy. As such, the Parents have not rebutted the District's preponderant evidence that the RR is both appropriate, and reached the correct conclusion regarding S/L therapy.

What is much more important is that the Student's needs must be met. The Student has a reading disability. Reading comprehension is a fundamental component of reading. Consequently, the District must address the Student's reading comprehension needs, if any. Similarly, the Student has ADHD. ADHD is a disability that can be recognized under the IDEA category Other Health Impairment (OHI), which specifically relates to a student's alertness. See 34 C.F.R. § 300.8(c)(9). Consequently, the District must address the Student's inability to participate in class, if any. It makes no difference if the District chooses to address these issues through S/L therapy or anything else – provided

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<sup>6</sup> Actual evidence that the Student has a CAPD is scant and unpersuasive.

that the strategy selected by the District is reasonably calculated to yield a meaningful educational benefit.<sup>7</sup>

Although I have very serious concerns about the Student's past and currently proposed IEPs, the overall appropriateness of any of the Student's IEPs is not before me. Rather, it is the District's burden to establish that its RR is appropriate regarding its determination that the Student does not meet eligibility criteria as a student with an S/L impairment. The District presented preponderant evidence in support of its RR. The Parents' evidence to the contrary is not compelling. The District has, therefore, satisfied its burden. The District has also satisfied its burden regarding the correctness of its RR, for the same reasons. Consequently, the District may discontinue S/L therapy.

### ***Dicta***

As noted herein, the Parents are *pro se*. For their benefit, and avoiding jargon, *dicta* is non-binding commentary that does not change the outcome of the case. I rarely include *dicta* in decisions, but am compelled to do so here. Some of the evidence and testimony presented during this hearing is so deeply concerning that it cannot be ignored.

The appropriateness of the Student's IEPs beyond the removal of S/L therapy is not an issue in this case. Even so, I cannot help but notice that the Student's IEPs require little more than achieving passing grades with accommodations. Goals must be measurable, objective, baselined, and individualized for the Student. It is theoretically conceivable that maintaining passing grades satisfies that standard. In reality, such goals are routinely found to be inappropriate when analyzed along with evidence and testimony concerning any student's individualized needs. Along the same lines, there is also a world of difference between accommodating a reading disability and providing special education to enable a student to overcome a reading disability. Typically, an IEP must do both in order to be appropriate.

Even more troubling is the very obvious disconnect between the Student's abilities and the Student's perception of [Student's] abilities. The Student describes [Student's] self as someone who has difficulty participating in conversation and difficulty understanding the conversations around [Student]. The Student also describes [Student's] self as having a limited vocabulary. The opposite of these perceived deficits was on display during the hearing. The poise and sophistication with which the Student testified, particularly under cross examination, was remarkable. The Student demonstrated an ability to clearly express [Student's] ideas, using sophisticated language, in response to

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<sup>7</sup> IDEA case law gives LEAs broad discretion regarding methodology selection, and there is a clear analogy here. The District concedes that the Student is IDEA eligible and has "qualified" the Student under categories that directly relate to the Parents' concerns. Consequently, the District must address those concerns, if they are manifest in school, but has significant discretion concerning what type of service is used.

questioning from an experienced litigator. Nobody, including the Parents, should do anything to persuade this [Student] that [Student] is any less talented than [Student] is.<sup>8</sup> The Student's demonstrated ability to advocate for [Student's] self will carry [Student] far, if coupled with the self confidence that the Student has earned and deserves.

### **ORDER**

Now, May 12, 2014, it is hereby **ORDERED** as follows:

1. The District's current reevaluation report is appropriate.
2. The District is not ordered to fund an independent educational evaluation of the Student.
3. The District may discontinue speech and language therapy for the Student.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER

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<sup>8</sup> Although beyond the purview of this hearing, the testimony concerning P-21 troubles me deeply. The Student is in 9th grade and takes a special education Communication Arts class rather than a regular education 9th grade English class. The Parents were able to access the 9th grade English lessons online, and then were upset by the Student's inability to perform well on those lessons. The fact that the Parents have presented the Student's performance on lessons from a class that the Student did not take as evidence of the Student's inabilities is vexing. The fact that they have held up the same thing *to the Student*, to suggest that the Student is unready for a more vigorous curriculum is deeply troubling.