

XXXX XXXX,

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

*** BEFORE LORRAINE E. FRASER,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH No.: MSDE-AARU-OT-17-33255**

*** * * * ***

DECISION

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STATEMENT OF THE CASE

On October 18, 2017, Anne Arundel County Public Schools (AACPS) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that its educational evaluations of XXXX XXXX (Student) were appropriate and that the Parents did not have a right to independent evaluations at public expense under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).

I held a telephone prehearing conference on November 15, 2017. The Parents represented themselves. Eric Brousaides, Esquire, represented AACPS. By agreement of the parties, the hearing was scheduled for January 8 and 9, 2018.

The hearing dates requested by the parties fell more than forty-five days after the triggering events described in the federal regulations, which was the date my decision was due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2017).¹

I held the hearing on January 8 and 9, 2018. Wayne Steedman, Esquire, represented the Parents. Eric Brousaides, Esquire, represented AACPS. At the close of the hearing, the Parties agreed to allow an extension of time until February 8, 2018, for me to issue a decision. 34 C.F.R. § 300.515 (2017); Md. Code Ann., Educ. § 8-413(h) (Supp. 2017). The parties agreed thirty days from the close of the record was a reasonable time for the issuance of my decision as the forty-five day due date had already passed.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2017); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2017); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are whether the AACPS evaluations in the areas of reading, math, written expression, pragmatic language, and social emotional development were appropriate and, if not, whether the Parents have a right to independent educational evaluations at public expense.

¹ The Parents submitted medical documentation to support their request for an accommodation under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12103 (2013), of additional time to prepare for the hearing.

SUMMARY OF THE EVIDENCE

Exhibits²

I admitted the following exhibits on behalf of AACPS:

- AACPS Ex. 2 Referral with Student Evaluation Plan, 12/14/16
- AACPS Ex. 3 Academic Assessment Report, 12/22/16
- AACPS Ex. 5 Psychological Assessment Report, 2/2/17
- AACPS Ex. 7 Communication Assessment Report, 2/9/17
- AACPS Ex. 11 IEP Team Meeting Report Prior Written Notice, 3/15/17
- AACPS Ex. 12 Referral with Student Evaluation Plan, 3/15/17
- AACPS Ex. 14 Academic Assessment Report, 3/22/17
- AACPS Ex. 18 IEP Team Meeting Report Prior Written Notice, 5/5/17
- AACPS Ex. 19 Comprehensive Evaluation Review, 5/5/17
- AACPS Ex. 25 The Student's Report Cards for sixth and seventh grades
- AACPS Ex. 27 Resume for XXXX XXXX, Speech-Language Pathologist
- AACPS Ex. 28 Resume for XXXX XXXX, School Psychologist
- AACPS Ex. 29 Resume for XXXX XXXX, Special Educator

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 25 Auditory Information Processing Assessment, XXXX XXXX, Ed.D., CCC-A/SLP, FAAA, 8/25/17
- Parents Ex. 27 Neuropsychological Evaluation, XXXX XXXX, Ph.D., ABN, 11/3/17
- Parents Ex. 34 Speech Language Evaluation, XXXX XXXX, MA, CCC-SLP, 12/9/17
- Parents Ex. 36 Resume for XXXX XXXX, Special Educator
- Parents Ex. 37 Resume for XXXX XXXX, Neuropsychologist

² The parties premarked their exhibits; only the exhibits identified were admitted into evidence.

Parents Ex. 38 Resume for XXXX XXXX, Speech Language Pathologist

Parents Ex. 41 Photograph of the Student

Testimony

AACPS presented the following witnesses:

- XXXX XXXX, School Psychologist, accepted as an expert in school psychology
- XXXX XXXX, Speech-Language Pathologist, accepted as an expert in speech language services
- XXXX XXXX, Special Educator, accepted as an expert in special education

The Parents presented the following witnesses:

- The Student's mother
- XXXX XXXX, Special Educator, accepted as an expert in special education and reading
- XXXX XXXX, Neuropsychologist, accepted as an expert in psychological assessment and students with learning disabilities
- XXXX XXXX, Speech Language Pathologist, accepted as an expert in speech language therapy and assessment

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student is currently in the eighth grade at [Middle School] for the 2017-2018 school year, where she receives special education services pursuant to an Individualized Education Plan (IEP). The Student's native language is English.

2. The Student has the following diagnoses: autism spectrum disorder, chromosomal anomalies, attention deficit hyperactivity disorder, [additional disorders]. The Student has been evaluated extensively privately and by the schools she has attended.
3. On December 14, 2016, while the Student was in seventh grade, the IEP team was preparing to reevaluate the Student as part of a triannual review. The IEP team considered as part of the review a progress report prepared by the Parents and information from independent sources provided by the Parents, as well as the Student's current educational performance, existing data, curriculum based assessments, and progress on her annual IEP goals. The team reviewed the need for assessments in specific areas and determined the need for further assessment in the following areas: written expression, pragmatic language, fine/visual, sensorimotor, and social/emotional development. The Student's mother participated in the discussion and consented to the evaluations.
4. On December 22, 2016, Ms. XXXX, a special educator, assessed the Student's present levels of performance in written expression, without accommodations. Ms. XXXX assessed the Student's written expression using the Wechsler Individual Achievement Test (WIAT III) subtests on sentence combining, sentence building, spelling, and essay composition. Ms. XXXX administered the subtests on one day for a total of approximately thirty-five minutes. Ms. XXXX administered the subtests in accordance with the test manufacturer's instructions. Ms. XXXX also evaluated the Student's writing on the essay portion of her December 20, 2016, Social Studies quarterly assessment using the Skill-Based Writing Inventory for Grades 7-12. The Student was hard-working and focused during the testing.
5. Ms. XXXX co-taught the Student in Language Arts and Social Studies during the seventh grade and served as the Student's special education case manager.

6. The WIAT III and the Skill-Based Writing Inventory for Grades 7-12 were valid procedures to assess the Student and provided valid information regarding the Student's present level of functioning in written expression, including her strengths and weaknesses.
7. The Student's performance on the WIAT III and the essay portion of her December 20, 2016, Social Studies quarterly assessment was consistent with Ms. XXXX's observations of her written performance in class. Specifically, the Student made some mistakes in spelling and punctuation; however, the content of her writing was strong.
8. On January 11, 12, 18, 19, and 25, 2017, Ms. XXXX, School Psychologist, assessed the Student's present levels of social and emotional development using the following methods: parent and teacher ratings on the Social Responsiveness Scale, Second Edition (SRS-2); the Developmental Neuropsychological Assessment, Second Edition (NEPSY-II) social perception subtests; the Test of Problem-Solving 2 – Adolescent (TOPS2); teacher consultation; student interview; and classroom observations. Ms. XXXX administered the tests in accordance with the test manufacturer's instructions.
9. Ms. XXXX provided direct psychology services to the Student during sixth grade and consultative psychology services to the Student during seventh grade.
10. The Student told Ms. XXXX what times in the day would work best for her to participate in testing but was flexible about Ms. XXXX's schedule. The Student easily engaged in testing and was polite and cooperative. The Student engaged in social conversations with Ms. XXXX about a movie she wanted to see, a book she had read, and being sick. The Student remained focused during testing and put forth good effort.
11. The testing instruments used by Ms. XXXX (the SRS-2, NEPSY-II, and TOPS2) were technically sound and the results were valid and reliable.

12. Ms. XXXX's testing, teacher consultation, student interview, and classroom observations were valid procedures to assess the Student and provided valid information regarding the Student's present levels of social and emotional functioning, including her strengths and weaknesses.
13. The Student's test results were consistent with Ms. XXXX's observations of her behavior in the classroom and her diagnosis of autism spectrum disorder. Specifically, the Student's difficulties with social skills do not substantially interfere with her social interactions in the classroom or impact her academic or functional performance. The Student has some difficulty understanding the meaning of others' tone of voice and facial expressions. She is able to work well in small peer groups in the classroom. She does not socialize much outside of school.
14. On January 27, 2017 and February 3, 2017, Ms. XXXX, Speech-Language Pathologist, assessed the Student's present level of performance in pragmatic language. She noted that the Student's language had been previously assessed by the school and private speech-language pathologists. Ms. XXXX assessed the Student's pragmatic language using the Clinical Evaluation of Language Fundamentals – 5 (CELF-5) pragmatics profile subtest, the pragmatics activities checklist, and classroom observation. Ms. XXXX completed the pragmatics profile in consultation with Ms. XXXX. Ms. XXXX administered the subtest and checklist in accordance with the test manufacturer's instructions. The Student was motivated and cooperative during testing. The Parents completed the pragmatics profile independently and shared the information with Ms. XXXX.
15. Ms. XXXX conducted speech-language testing of the Student in the sixth grade and provided speech-language services to the Student in the sixth and seventh grades.

16. The CELF-5 pragmatics profile subtest, the pragmatics activities checklist, and classroom observation were valid procedures to assess the Student and provided valid information regarding the Student's present level of functioning in pragmatic language, including her strengths and weaknesses.
17. The Student's results on the CELF-5 pragmatics profile subtest and the pragmatics activities checklist were consistent with Ms. XXXX' observations of her use of language in class. Specifically, the Student's conversations in class were focused on tasks required to complete her work and impacted her positively academically. She had weaknesses in nonverbal communication skills, such as interpreting facial cues, gestural cues, and tone of voice, and knowledge of social scripts, which could impact her social interactions with peers.
18. On March 15, 2017, an IEP team meeting was held during which the team agreed to conduct additional assessments in the areas of basic reading skills, reading comprehension, math calculation, math reasoning, and sensorimotor. The Parents participated in the discussion and consented to the assessments.
19. On March 16 and 22, 2017, Ms. XXXX assessed the Student's present levels of performance in reading and math. Ms. XXXX assessed the Student in math using the following WIAT III subtests: numerical operations, math fluency addition, math fluency subtraction, math fluency multiplication, and math problem solving. Ms. XXXX assessed the Student in reading using the following WIAT III subtests: reading comprehension, word reading, pseudoword decoding, and oral reading fluency. Ms. XXXX administered the subtests during two one-hour sessions. The Student was focused and worked hard during both sessions; she did not appear rushed or careless.

20. The WIAT III was a valid procedure to assess the Student and provided valid information regarding the Student's present level of functioning in math and reading, including her strengths and weaknesses.
21. The Student's results on the WIAT III showed she was performing in the average range in math and reading, with the exception that she was performing below average in math fluency.
22. On May 5, 2017, an IEP team meeting was held during which the team reviewed AACPS assessments and private assessments from 2016 and 2017. The Parents participated in the IEP meeting.
23. During the May 5, 2017 IEP meeting, the team conducted a comprehensive evaluation review. The team reviewed the Student's performance on the Maryland School Assessments in reading, math, and science; her classroom performance in reading, math, and written language; her performance on classroom assignments and work samples; teachers' anecdotal information; her psychological, academic, communication, and occupational therapy assessments; and a diagnosis of dysgraphia and recommendation from XXXX XXXX, Ph.D. The IEP team also reviewed the Student's grade-level achievement in the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving; her intellectual development, processing strengths and weaknesses; and her academic achievement results. The IEP team included the Parents.
24. The Parents disagreed with the IEP team's conclusion that the Student did not have a specific learning disability. They did not express any disagreement with the assessments or evaluations at that time.

DISCUSSION

The issues in this case are limited. Independent educational evaluations are addressed in 34 C.F.R § 300.502. Section 300.502(b) provides, in relevant part:

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either –

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

34 C.F.R § 300.502(b) (2017).

In this case, AACPS assessed the Student based on the IEP team’s request for additional information in the following areas: written expression, social and emotional development, pragmatic language, reading, and math. AACPS staff conducted the assessments during December 2016 through March 2017. On May 5, 2017, the IEP team conducted a comprehensive evaluation review of the Student, including the recent assessments as well as additional information regarding the Student’s history and current school performance. At the IEP meeting, the Parents disagreed with the IEP team’s conclusion that the Student does not have a specific learning disability. However, they did not express any disagreement with the assessments or

evaluations at that time. Sometime later, the Parents requested independent educational evaluations in the areas of psychology, academics, and speech-language,³ stating that they disagreed with AACPS evaluations. On October 18, 2017, AACPS requested a hearing to show that its evaluations were appropriate and that the Parents do not have a right to independent educational evaluations at public expense. Thus, the first question I must answer is whether the AACPS evaluations in the areas of reading, writing, math, pragmatic language, and social emotional development were appropriate. If not, I must then answer the question whether the Parents have a right to independent educational evaluations at public expense. For the reasons that follow, I find that the AACPS evaluations were appropriate and the Parents are not entitled to independent educational evaluations at public expense.

Ms. XXXX was accepted as an expert in school psychology and has worked as a school psychologist for fourteen years. She is familiar with the Student; she provided direct services to the Student in sixth grade and consultative services to her in seventh grade. She stated that she had extensive neuropsychology reports regarding the Student.

Ms. XXXX assessed the Student's present levels of social and emotional development using the SRS-2, the NEPSY-II social perception subtests, the TOPS2, teacher consultation, student interview, and classroom observations. She stated she has been trained and/or read the testing manuals regarding how to administer the tests and that she administers these tests several times per year. She testified she administered the testing in accordance with the test manufacturer's instructions. She noted the Student was focused during testing and put forth good effort. She opined the SRS-2, NEPSY-II, and TOPS2 were technically sound and the results were valid and reliable. She stated the testing, teacher consultation, student interview, and

³ Prior to the hearing, the Parents withdrew their request for an independent occupational therapy evaluation.

classroom observations were valid procedures to assess the Student and provided valid information regarding the Student's present levels of social and emotional functioning.

In her report and at the hearing, Ms. XXXX explained that the Student's test results were consistent with classroom observations of her behavior and her diagnosis of autism spectrum disorder. She noted the Student's difficulties with social skills do not substantially interfere with her social interactions in the classroom or impact her academic or functional performance. She noted further the Student has some difficulty understanding the meaning of others' tone of voice and facial expressions but is able to work well in small peer groups in the classroom. She also noted the Student does not socialize much outside of school. She explained that differences in each teacher's responses on the SRS-2 reflect each person's style of answering the questions but did not mean that the responses were invalid or could not be trusted. She explained further that she discussed with each teacher his/her responses to get a better understanding of the ratings.

Ms. XXXX was accepted as an expert in speech language services and has worked as a speech language pathologist since 1998. She is familiar with the Student and provided direct services to the Student in the sixth and seventh grades. She stated that she tested the Student in sixth grade, had independent speech language testing from the Parents, and that she did not need more testing of the Student in seventh grade. She explained that the Parents wanted additional testing in pragmatics so the IEP team agreed she would perform additional pragmatics testing to look at the Student's academic functioning in the school setting. She stated she had extensive information on the Student's articulation and speech intelligibility.

Ms. XXXX assessed the Student's pragmatic language using the CELF-5 pragmatics profile subtest, the pragmatics activities checklist, and classroom observation. She explained the CELF-5 is focused on a student's performance in real life situations. She stated she has been

trained to administer the CELF-5 and that she has administered it hundreds of times. She completed the pragmatics profile in consultation with Ms. XXXX, in accordance with the test manufacturer's instructions. She noted the Student was motivated and cooperative during testing. She opined the procedures were valid and provided valid information regarding the Student's present level of functioning in pragmatic language.

Ms. XXXX explained that any articulation error by the Student on a formal assessment would look drastic because of her age and that it is more meaningful to understand how her articulation affects her intelligibility and academic performance. She stated that she observed the Student during Language Arts and Social Studies because those classes rely heavily on language. She noted that Language Arts and Social Studies are co-taught by Ms. XXXX, a special educator. She said she observed the Student in Science because the class is not co-taught with a special educator. She testified the Student was very task focused, asked questions, and was focused on what she was supposed to be doing, while some of the other groups were socializing. In her report, Ms. XXXX stated that the Student's performance on the CELF-5 pragmatics profile subtest and the pragmatics activities checklist was consistent with her observations of the Student's use of language in class. Specifically, the Student's conversations in class were focused on tasks required to complete her work and impacted her positively academically. She had weaknesses in nonverbal communication skills, such as interpreting facial cues, gestural cues, and tone of voice, and knowledge of social scripts, which could impact her social interactions with peers.

Ms. XXXX emphasized that she was looking at whether the Student's articulation difficulties impacted her in the school setting. She stated that the Parents wanted to participate so she gave them the pragmatics profile to complete independently. She explained that she used the

Parents' pragmatics profile as additional information but did not include it in her assessment results because she was looking at the Student's functioning in the school setting. She noted she already had extensive information from the Parents.

Ms. XXXX was accepted as an expert in special education and has worked as a special educator since 2011. She is familiar with the Student; she was the Student's co-teacher in Language Arts and Social Studies during seventh grade and was the Student's case manager in seventh grade.

Based on the IEP team's December 14, 2016, referral, Ms. XXXX assessed the Student's written expression. She explained that her assessment was performance based in order to determine what the Student was able to do in the classroom and that the team was already aware that the Student had identified weaknesses in written expression. Ms. XXXX assessed the Student's written expression using the WIAT-III subtests on sentence combining, sentence building, spelling, and essay composition. She stated she has been trained to administer the WIAT-III and that she has administered it at least fifteen times, to two to three students per year. She explained that the WIAT-III produces better information regarding what a student is able to do in the classroom. She assessed the Student without accommodations. She testified that she administered the WIAT-III in accordance with the test manufacturer's instructions. She noted that the Student was hard-working and focused during the testing, that the Student asked clarifying questions, and that this was typical of the Student. She opined the procedures were valid and provided valid information regarding the Student's present level of functioning in written expression. She testified that she also conducted informal assessments at the Parents' request, evaluating the Student's writing on the essay portion of her December 20, 2016, Social Studies quarterly assessment using the Skill-Based Writing Inventory for Grades 7-12. Ms.

XXXX explained that the Student's performance was consistent with her writing in class: some mistakes in spelling and punctuation, and strong content.

Based on the IEP team's March 15, 2017 referral, Ms. XXXX assessed the Student in reading and math. She assessed the Student in math using the following WIAT III subtests: numerical operations, math fluency addition, math fluency subtraction, math fluency multiplication, and math problem solving. She assessed the Student in reading using the following WIAT III subtests: reading comprehension, word reading, pseudoword decoding, and oral reading fluency. She noted the Student was pleasant and hard-working, as usual. She opined the procedures were valid and provided valid information regarding the Student's present level of functioning in reading and math. She stated the Student's scores were consistent with how she performed in the classroom.

The Parents offered three expert witnesses in support of their contention that the AACPS assessments were inappropriate.

Ms. XXXX was accepted as an expert in special education and reading. She is a special educator for AACPS in the emotional disturbance program and a reading intervention teacher. She worked with the Student three days a week after school privately. She testified that she looked at the AACPS assessments and agreed the Student had a history of need in those areas. She said she conducted some informal assessments herself. She stated that the Student needs support in phonemic awareness. She said that the Student does not hear all the sounds in words or fully understand the rules for letter combinations, which leads to misspellings. She opined that the testing adequately assessed that the Student has a need in pseudoword decoding. She stated that she would like more information and that this assessment did not provide enough information regarding pseudoword decoding. However, Ms. XXXX admitted that she has never

administered the WIAT-III before. She stated that she had not prepared a report that contested the AACPS assessment.

Dr. XXXX was accepted as an expert in psychological assessment and students with learning disabilities. He opined that Ms. XXXX's report was inadequate because the Student has an extensive history that must be considered when interpreting her scores. He stated that the data required further analysis and therefore the conclusions from the assessment were invalidated. He opined that the assessment was unduly narrow and failed to discuss the Student's complex history. He said he is aware the Student had other issues but they were not assessed. He stated that Ms. XXXX's comment regarding caution when interpreting the SRS-2 teacher ratings⁴ left the reader with questions and that he did not know whether SRS teacher rating scales from the four teachers who agreed were valid or whether the fifth teacher's scales were valid. He then said the assessments were appropriate for the Student but that it would have been useful to consider broader measures. He agreed the IEP team working with the Student had the context and that it is the IEP team who makes diagnoses and decisions, not individual assessors.

Ms. XXXX was accepted as an expert in speech language therapy and assessment. She agreed that the CELF-5 was an appropriate assessment for pragmatics. She stated that the CELF-5 alone was not adequate and that she would want to measure the Student in different environments, use different data points, and also look at her social cognitive functioning. She opined that allowing the Parents to fill out the CELF-5 independently was not in accordance with

⁴ Ms. XXXX wrote:

Several of [the Student's] teachers (XXXX, XXXX, XXXX) indicated that they had not had the opportunity to observe certain items in the classroom and had to make their best guess. Teachers took different approaches to addressing these not observed behaviors, including leaving items blank, marking them as "not true" because they had not personally observed that behavior, or marking them as "almost always true" because they did not see that item as a likely area of concern. As such, scores must be interpreted with some caution as they could be impacted by response styles of the individual rater.

AACPS Ex. 5 p. 3.

the instructions because the evaluator should have filled it out in conjunction with the Parents. She expressed concern that the results of the CELF-5 minimized the complexity of the Student's deficits. She stated that Ms. XXXX' report noted the Student's previous testing but did not review her records. She opined that Ms. XXXX' assessment was not adequate because the Student's pragmatic profile is so complex. She testified the assessment was not invalidated, just inadequate. She also opined that Ms. XXXX' assessment was inadequate because it did not include articulation. She said she was aware Ms. XXXX worked with the Student but that she could not assume that Ms. XXXX knew the Student's articulation difficulties. She admitted that she had not observed the Student in the classroom. She agreed that Ms. XXXX' assessment was one data point to be considered by the IEP team. She said that it would have been more appropriate to give data points from a file review, but that did not invalidate Ms. XXXX' data. She suggested that Ms. XXXX may have had a different insight if she had completed the CELF-5 with the Parents and that she should have taken their findings into consideration.

While I respect the opinions of the Parents' experts, what each expert ignored was that Ms. XXXX's, Ms. XXXX', and Ms. XXXX's assessments were purposely limited in scope by the IEP team and its need for additional information. The Parents did not dispute that the IEP team had current comprehensive assessments in all areas, performed both privately and by AACPS, as well as numerous past assessments. Based on the IEP team's discussions with input from the Parents, the IEP team agreed to seek specific additional information. Specifically, the IEP team requested assessments in the areas of reading, math, written expression, pragmatic language, fine/visual, sensorimotor, and social/emotional development. These assessments were never intended to be comprehensive assessments in each area for the simple reason that the IEP team already had that information. I disagree with the assertion made by Dr. XXXX and Ms.

XXXX that these assessments were inappropriate because they did not include a thorough review of the Student's history. The IEP team had that information and every single assessment of the Student need not repeat lengthy background information every time. Moreover, the IEP team conducted a comprehensive evaluation review of all the information it had regarding the Student once it received the most recent assessments.

In *E.P. v. Howard Cty. Pub. Sch. Sys.*, 2017 WL 3608180 (D. Md. Aug. 21, 2017), the court affirmed an administrative law judge's finding that the school's educational and psychological assessments were appropriate. As in the case before me, *E.P.* involved Howard County Public School Systems' (HCPSS) due process complaint under 34 C.F.R. § 300.502(b)(2) seeking a ruling on the appropriateness of its assessments. As the court noted:

Of import here, this is not a case where the Parents filed a due process complaint under 34 C.F.R. § 300.507, to establish the improper denial of a 'free appropriate public education' or to establish that E.P. should have been found eligible for special education services. . . . Accordingly the suit does not implicate the determination of [the IEP team], which found that E.P. is not eligible for special education services under IDEA; the IEP team's eligibility determination is not relevant to the question of whether HCPSS's evaluation was appropriate.

2017 WL 3608180 p. 2. The court reviewed the requirements for determining whether HCPSS' evaluation was appropriate under 20 U.S.C. § 1414(b)(2)(A), 20 U.S.C. § 1414(b)(3)(A)(iv), 34 C.F.R. § 300.304, and COMAR 13A.05.01.05. The court noted an evaluation must include a variety of assessment tools and be administered by qualified examiners. 2017 WL 3608180 p. 26. The court cited two recent cases in its reasoning: *West Chester Area Sch. Dist. v. G.D.*, 2017 WL 379440 p. 3 (E.D. Penn. Jan. 25, 2017) ("When challenging an educational evaluation, the pivotal question is whether the District's methods employed were adequate. . . . Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when plaintiffs challenge a decision reached by an educational

professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt.”) and *Parker C. v. West Chester Area Sch. Dist.*, 2017 WL 2888573 p. 12 (E.D. Penn. Jul. 6, 2017) (“In challenging an evaluation, courts have found that a parent ‘cannot simply argue that the evaluation was inappropriate because they disagree with its findings.’”). The *E.D.* court found that HCPSS conducted comprehensive assessments using a variety of assessment tools, “including teacher input, cognitive and achievement tests, as well as classroom observations.” 2017 WL 3608180 p. 36. The court concluded: “[P]laintiffs have failed to demonstrate that the methodology employed by HCPSS was flawed. Instead, they largely highlight instances of disagreement with the Evaluation and the ultimate determination of non-eligibility. Plaintiffs have not met their burden to demonstrate that the HCPSS Evaluation was inappropriate.” 2017 WL 3608180 p. 36.

The legal question in *E.P.* is identical to the question before me, *i.e.*, whether the evaluation was appropriate. The major distinction between *E.P.* and this case is that in *E.P.* the school was evaluating the student for the first time, and based on that evaluation found that he was not eligible for special education services. In this case, the Student has been attending AACPS, was receiving and continues to receive special education services, and the IEP team had multiple, current assessments conducted by the school and obtained by the Parents. The assessments conducted by Ms. XXXX, Ms. XXXX, and Ms. XXXX were targeted at specific areas of weakness that the IEP team wished to investigate further. Ms. XXXX, Ms. XXXX, and Ms. XXXX used a variety of assessment tools including input from the Student’s teachers and parents, testing commonly used in their respective areas of expertise, and their own observations of the Student in the classroom. Ms. XXXX, Ms. XXXX, and Ms. XXXX are all qualified

examiners with many years of experience in their fields and training in utilizing the assessment tools they used. The only criticism offered by the Parents' experts was that the assessments should have been broader and should have included more information regarding the Student's history. The Parents' experts did not testify that Ms. XXXX, Ms. XXXX, and Ms. XXXX were unqualified or that the assessment tools they used were inappropriate. The Parents' experts disagreed with some of the conclusions drawn from the assessments but not with the assessment data itself.

The evidence before me demonstrates that the AACPS evaluations in the areas of reading, math, written expression, pragmatic language, and social emotional development were appropriate. AACPS' targeted assessments provided additional specific information to the IEP team that was then considered along with the extensive existing data AACPS had regarding the Student. There is no evidence showing the assessment tools were inappropriate, the examiners were unqualified, or that the examiners' professional judgment was wrong. Thus, I find AACPS' assessments were appropriate and the Parents do not have a right to independent educational evaluations at public expense.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the AACPS evaluations in the areas of reading, math, written expression, pragmatic language, and social emotional development were appropriate. 34 C.F.R § 300.502(b) (2017); *E.P. v. Howard Cty. Pub. Sch. Sys.*, 2017 WL 3608180 (D. Md. Aug. 21, 2017). Therefore, I conclude that the Parents do not have a right to independent educational evaluations at public expense. *Id.*

ORDER

I **ORDER** that the AACPS evaluations in the areas of reading, math, written expression, pragmatic language, and social emotional development administered during the 2016-2017 school year were appropriate and that the Parents’ request for independent educational evaluations at public expense be denied.

February 6, 2018
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/sw

REVIEW RIGHTS

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2017). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.